



NOTICE OF OPEN MEETING
SEPTEMBER BOARD OF TRUSTEES
NBU Board Room, 263 Main Plaza, New Braunfels, Texas 78130
September 26, 2024, at 1:00 PM
www.nbutexas.com

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND INVOCATION

Board President Wayne Peters

NBU EMPLOYEE RECOGNITIONS

1. Presentation of Service Pins
 - a. Recognizing Jeffrey Morriss for 20 Years of Service
 - b. Recognizing Robert Oliva for 25 Years of Service

PUBLIC COMMENT

ITEMS FROM THE CHAIR

1. Report from the Governance Committee
2. Items Permitted Under Section 551.0415 of the Texas Government Code

ITEMS FROM STAFF

1. CEO's Update
 - a. NBU's Mark Steelman Chosen for Leadership New Braunfels Class of 2025
 - b. NBU's Participation in the 2024 New Braunfels Chamber of Commerce Business Showcase
 - c. NBU Awarded the Government Finance Officers Certificate of Achievement for Financial Excellence in Financial Reporting
 - d. Leadership Announcements of Position Changes: Enterprise Communications Manager Becca Graham
 - e. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code
 - [2.](#) Financial Update and Report
 - [3.](#) Quarterly Investment Report
 - [4.](#) Quarterly Update on the Headwaters at the Comal
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CONSENT ITEMS FOR ACTION

- [1.](#) Approve Minutes of the NBU Regular Board Meeting of August 29, 2024
- [2.](#) Approve the Change Order Log from July 15, 2024, through August 15, 2024
- [3.](#) Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through August 15, 2024
- [4.](#) Approve the Electric Line of Business Alternative Procurements from July 15, 2024, through August 15, 2024
- [5.](#) Approve 2024 First Quarter Charge-Off Accounts
- [6.](#) Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with Blastco Texas Inc. for the Construction of the County Line Standpipe Rehabilitation Project
- [7.](#) Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with CFG Industries, LLC for the Construction of the Loop 337 Ground Storage Tank Rehabilitation Project
- [8.](#) Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Senate Bill 3 Emergency Preparedness Plan Generators Phase 2 Project
- [9.](#) Authorize the CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with OPIN, LLC dba American FR and Safety, for a Web-Based Uniform Purchase Program
- [10.](#) Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Townsend Tree Service Company, LLC for Tree Trimming Services
- [11.](#) Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with E-Z Bel Construction, LLC for the Construction of the Union Avenue Water Replacement Project
- [12.](#) Authorize the CEO or His Designee to Negotiate and Execute a Second 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 Amended and Restated Utility Construction Cost Sharing Agreement Dated December 14, 2023, Among the Same Parties

PRESENTATION ITEMS

- [1.](#) Review and Discuss Proposed Revisions to the NBU Board Governance Policies
- [2.](#) Presentation on the New Braunfels Utilities Aquifer Storage and Recovery Project

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. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney-Client Privilege (Section 551.071 – Texas Government Code)
 - a. Discuss Legal Matters Relating to McKenzie Water Reclamation Facility and Gruene Wastewater Treatment Plant
 - b. Discuss Legal Matters Relating to *Campbellton Road, Ltd. v. City of San Antonio by and through the San Antonio Water System*, 688 S.W.3d 105 (Tex. 2024)
 - c. Discuss and Consider *Allison McCumbee vs. Shawn Benbrook and New Braunfels Utilities*, Comal County, 207th Judicial District Cause No. C2024-1273B
 - d. Discuss and Consider Items Related to Public Utility Commission of Texas Docket No. 56440, *Application of New Braunfels Utilities to Change Transmission Cost of Service and Wholesale Transmission Rates*, Including Litigation Status and Settlement Negotiations
2. Power Supply Resources – Competitive Matters (Section 551.086 – Texas Government Code)
 - a. Power Supply Update

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

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

ACTION ITEMS

1. Discuss and Consider Approving an Uncontested Stipulation and Settlement Agreement Among NBU, the Staff of the Public Utility Commission, and the Office of Public Utility Counsel to be Filed for Final Approval by the Public Utility Commission in Docket No. 56440 Relating to NBU's Application to Change its Transmission Cost of Service Rates

ADJOURN

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

CERTIFICATE OF POSTING

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



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



Meeting Date: September 26, 2024 **Agenda Type:** Items from Staff

From: Kimberly Huffman **Reviewed by:** John Warren
Accounting Manager Director of Finance

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

RECOMMENDED ACTION: Financial Update and Report

BACKGROUND

NBU's service territory experienced higher temperatures and higher rainfall during the month of July than historically. The average temperature was 85.3 degrees, which was 1.4 degrees higher than the historical average temperature of 83.9 degrees. Rainfall totaled 3.01 inches for the month of July, which was 0.81 inches higher than the historical average rainfall of 2.2 inches.

Amounts reported are preliminary numbers for July 2024. A few expenses are pending close out as well as finalizing capital projects for the fiscal year. For the month of July 2024, NBU recorded a change in net position after contributions ("CNPAC") of \$9,532,000 which represents an increase of \$4,625,000 compared to the budgeted monthly CNPAC of \$4,907,000. Operating service revenues of \$30,729,000 were greater than budget by \$4,069,000, or 15%, for the month of July. A \$5,618,000 increase in electric revenue, \$1,416,000 decrease in water revenue, and a \$133,000 decrease in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$553,000 were greater than budget by \$132,000 for the month of July. Purchased power costs were \$2,349,000 greater than budget for July 2024 and \$451,000 greater for Year-to-Date ("YTD"). A decrease in other operating expenses of \$2,122,000 resulted in total operating expenses to be \$227,000, or 1%, greater than the budgeted amount of \$22,149,000. The net revenue and operating expense variances contributed to a favorable net operating income variance of \$3,974,000 from budget. Net non-operating items had a \$409,000 favorable variance compared to budget. Impact fees were greater than budget by \$21,000, services income was greater than budget by \$266,000, and capital participation fees was less than budget by \$66,000. July 2024 YTD CNPAC was \$60,257,000, which was \$36,706,000 greater than the budgeted amount of \$23,551,000.

FINANCIAL IMPACT

Electric

The Electric Line of Business reported total operating revenues of \$23,641,000, a \$5,703,000 increase, from the July budgeted amount of \$17,938,000. The net rate realized per kWh was \$0.1387, which was 46% greater than the budgeted rate of \$0.0949 for the month of July. July kWh sales were 167.3 million kWh, an 18.1 million kWh decrease, or 10%, in comparison to the budgeted amount of 185.4 million kWh.

Purchased power costs totaled \$13,878,000, which was \$2,349,000 greater than the budgeted amount of \$11,529,000. Electric gross margin, which is total operating revenues minus purchased power, resulted in the amount of \$9,763,000 for the month of July and \$68,456,000 YTD. These amounts were \$3,354,000 greater and \$12,679,000 greater than the budgeted amount of \$6,409,000 Month-to-Date (“MTD”) and \$55,777,000 YTD. Other operating expenses were less than budget by \$926,000. These items resulted in the Electric Line of Business reporting net operating income of \$7,319,000, which was \$4,280,000 greater than the budgeted amount of \$3,039,000. Net non-operating items provided an unfavorable variance from budget of \$367,000. Services income was greater than budget by \$167,000. The Electric Line of Business reported July 2024 CNPAC of \$6,563,000 and YTD CNPAC of \$32,791,000. These amounts were \$4,080,000 greater and \$19,998,000 greater than their respective July 2024 MTD and July 2024 YTD budget amounts.

Water

The Water Line of Business reported total operating revenues of \$4,121,000, a \$1,381,000 decrease, or 25%, from the July budgeted amount of \$5,502,000. In July, water gallons sold of 388,886,000 was less than the budgeted amount of 482,027,000 (a 93,140,000-gallon variance from budget, or 19%). NBU’s net realized price per 1,000 gallons sold in July was \$10.36, which was less than the budgeted amount of \$11.30. Operating expenses for July were \$3,427,000, which was \$863,000 less than the budgeted amount of \$4,290,000. The net effect of less revenues and less operating expenses than budgeted resulted in the Water’s net operating income of \$695,000, which was less than budget. Net non-operating items provided a favorable variance of \$752,000 from budget. Impact fees of \$833,000 were less than budget by \$183,000, and services income was greater than budget by \$98,000. The Water Line of Business reported July 2024 CNPAC of \$1,975,000 and YTD CNPAC of \$15,789,000. These amounts were \$170,000 greater than and \$11,050,000 greater than their respective July 2024 MTD and July 2024 YTD budget amounts.

Wastewater

The Wastewater Line of Business reported total operating revenues of \$3,520,000, a \$121,000 decrease, or 3%, from the July budgeted amount of \$3,641,000. Total operating expenses of \$2,628,000 were \$333,000 less than the budgeted amount of \$2,961,000. As a result, the Wastewater Line of Business reported net operating income of \$892,000, which was \$212,000 greater than the budgeted amount of \$680,000. Net non-operating items provided a favorable variance of \$25,000 from budget. Impact fees were greater than budget by \$204,000, and capital participation fees were less than budget by \$66,000. The Wastewater Line of Business reported July 2024 CNPAC of \$994,000 and YTD CNPAC of \$11,677,000. These amounts were \$375,000 greater than and \$5,658,000 greater than their respective July 2024 MTD and July 2024 YTD budget amounts.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

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

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

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV	Variance Explanation +/-30%
ELECTRIC						
Sales Volume (MWh)	Actual	1,748.6				
	Budget	1,917.9	(169.3)	-9%		
	Prior Year	1,752.5	(3.9)	0%		
Revenues (\$M)	Actual	\$ 206.3				
	Budget	\$ 193.2	\$ 13.1	7%		
	Prior Year	200.9	\$ 5.4	3%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Pwr)</i>	Actual	\$ 68.5				
	Budget	\$ 55.8	\$ 12.7	23%		
	Prior Year	58.5	\$ 10.0	17%		
Operating Income (\$M)	Actual	\$ 38.4				
	Budget	\$ 19.5	\$ 18.9	97%		Higher YTD operating revenues, primarily from residential. Lower operating expenses to-date.
	Prior Year	28.2	\$ 10.2	36%		Higher YTD operating revenues, primarily from lower Power Cost Recovery
WATER						
Sales Volume (Million Gallons)	Actual	4.4				
	Budget	4.5	(0.1)	-3%		
	Prior Year	4.2	0.2	4%		
Revenues (\$M)	Actual	\$ 41.6				
	Budget	\$ 45.1	\$ (3.5)	-8%		
	Prior Year	36.2	\$ 5.4	15%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Water)</i>	Actual	\$ 29.5				
	Budget	\$ 32.7	\$ (3.2)	-10%		
	Prior Year	27.7	\$ 1.8	7%		
Operating Income (\$M)	Actual	\$ (0.3)				
	Budget	\$ (2.4)	\$ 2.1	-89%		Lower YTD operating expenses.
	Prior Year	1.4	\$ (1.7)	*		Higher YTD operating expenses compared to Prior Year. Primarily from Purchased Water costs.
WASTEWATER						
Revenues (\$M)	Actual	\$ 36.1				
	Budget	\$ 39.8	\$ (3.7)	-9%		
	Prior Year	32.5	\$ 3.6	11%		
Operating Income (\$M)	Actual	\$ 6.6				
	Budget	\$ 6.7	\$ (0.2)	-3%		
	Prior Year	5.9	\$ 0.7	11%		
COMBINED						
Operating Expenses (\$M)**	Actual	\$ 50.7				
	Budget	\$ 61.8	\$ (11.1)	-18%		
	Prior Year	49.0	\$ 1.6	3%		
Operating Income (\$M)	Actual	\$ 44.7				
	Budget	\$ 23.8	\$ 20.9	87%		YTD Electric Service revenues are greater than budget, primarily from Residential. Electric expenses are lower than expected, primarily from Purchased Power.
	Prior Year	35.5	\$ 9.2	26%		
Change in Net Position Before Contributions (\$M)	Actual	\$ 30.2				
	Budget	\$ 2.8	\$ 27.4	*		YTD Electric Service revenues are greater than budget, primarily from Residential. Electric expenses are lower than expected, primarily from Purchased Power. Interest Income is also higher than budget.
	Prior Year	20.4	\$ 9.8	48%		
Impact Fees (\$M)	Actual	\$ 25.5				
	Budget	\$ 16.8	\$ 8.7	52%		Several apartment complexes contributed to higher impact fees.
	Prior Year	25.3	\$ 0.2	1%		
Change in Net Position After Contributions (\$M)	Actual	\$ 60.3				
	Budget	\$ 23.6	\$ 36.7	*		
	Prior Year	50.7	\$ 9.6	19%		

*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 July 31, 2024 - Preliminary
Amounts Shown in Thousands

	July 31 2024	June 30 2024	Variance	% Change
ASSETS				
UTILITY PLANT				
Utility Plant in Service	\$ 1,233,212	\$ 1,222,302	\$ 10,910	1%
Less: Accumulated Depreciation	(380,278)	(376,893)	(3,385)	1%
Construction in Progress	204,961	183,772	21,190	12%
TOTAL UTILITY PLANT	\$ 1,057,895	\$ 1,029,181	\$ 28,715	3%
CURRENT & ACCRUED ASSETS				
Cash & Temporary Investments	\$ 34,702	\$ 22,338	\$ 12,364	55%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	20,001	20,049	(49)	0%
Accounts Receivable - Other	7,067	7,191	(124)	-2%
Accrued Unbilled Revenue	18,192	14,900	3,291	22%
Inventory	8,366	8,805	(439)	-5%
Prepaid Expenses	25,662	24,673	989	4%
Accrued Interest Receivable	319	223	95	43%
Rents Receivable	3	3	-	0%
TOTAL CURRENT & ACCRUED ASSETS	\$ 114,311	\$ 98,183	\$ 16,127	16%
RESTRICTED ASSETS & DEFERRED DEBITS				
Restricted Funds	\$ 82,711	\$ 77,133	\$ 5,578	7%
Designated Funds	80,911	76,730	4,181	5%
Pension Deferred Outflows	16,755	16,755	-	0%
Mid-Basin Regulatory Asset	3,685	3,545	140	4%
Other Deferred Debits	3,559	3,574	(15)	0%
TOTAL RESTRICTED ASSETS & DEFERRED DEBITS	\$ 187,622	\$ 177,737	\$ 9,885	6%
TOTAL ASSETS	\$ 1,359,828	\$ 1,305,101	\$ 54,727	4%
LIABILITIES & NET POSITION				
BONDS PAYABLE				
Bonds Payable	466,228	\$ 466,877	\$ (649)	0%
Unamortized Bond Discount/Premium	26,022	26,254	(232)	-1%
TOTAL BONDS PAYABLE	\$ 492,251	\$ 493,131	\$ (880)	0%
CURRENT & ACCRUED LIABILITIES				
Accounts Payable	\$ 25,614	\$ 7,934	\$ 17,680	223%
Accrued Purchased Power	11,970	8,006	3,964	50%
Commercial Paper Payable	15,000	-	15,000	0%
Customer Deposits	13,851	13,706	145	1%
Accrued Payroll & Benefits (Including Compensated Absences)	5,523	5,631	(108)	-2%
Interest Accrued on Long Term Debt	1,617	-	1,617	0%
Current Portion of Long Term Debt	8,700	8,045	655	8%
Other Payables	3,157	3,641	(484)	-13%
TOTAL CURRENT & ACCRUED LIABILITIES	\$ 85,433	\$ 46,963	\$ 38,469	82%
NONCURRENT LIABILITIES & DEFERRED CREDITS				
Accumulated Provision for Pension	\$ 29,068	\$ 29,068	\$ -	0%
Power Cost Adjustments - Over-Recovered	14,161	13,148	1,012	8%
Other Deferred Credits	24,981	20,769	4,212	20%
TOTAL NONCURRENT LIABILITIES & DEFERRED CREDITS	\$ 68,209	\$ 62,985	\$ 5,225	8%
TOTAL LIABILITIES	\$ 645,893	\$ 603,079	\$ 42,814	7%
NET POSITION				
Reserve for Restricted Assets	\$ 66,702	\$ 66,702	\$ -	0%
Reserve for Intergovernmental	8,617	9,561	(945)	-10%
Unrestricted Assets	360,993	353,151	7,841	2%
Contributed Capital	277,624	272,607	5,016	2%
TOTAL NET POSITION	\$ 713,935	\$ 702,022	\$ 11,913	2%
TOTAL LIABILITIES & NET POSITION	\$ 1,359,828	\$ 1,305,101	\$ 54,727	4%

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

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
VOLUME/RATES								
Electric Sales kWh	167,331	185,395	(18,064)	-10%	1,748,575	1,917,864	(169,288)	-9%
Electric Sales Rate Per kWh	\$ 0.1387	\$ 0.0949	\$ 0.0438	46%	\$ 0.1153	\$ 0.0986	\$ 0.0167	17%
Purchased kWh	166,439	199,347	(32,908)	-17%	1,919,374	1,990,995	(71,621)	-4%
Purchased Rate per kWh	\$ 0.0834	\$ 0.0578	\$ 0.0255	44%	\$ 0.0718	\$ 0.0690	\$ 0.0028	4%
Gallons Sold	388,886	482,027	(93,140)	-19%	4,411,198	4,539,422	(128,224)	-3%
Rate per 1,000 Gallons Sold	\$ 10.36	\$ 11.30	\$ (0.94)	-8%	\$ 9.19	\$ 9.79	\$ (0.60)	-6%
OPERATING REVENUES								
SERVICE REVENUE								
Electric Service	\$ 23,210	\$ 17,592	\$ 5,618	32%	\$ 201,616	\$ 189,033	\$ 12,583	7%
Water Service	4,029	5,445	(1,416)	-26%	40,549	44,444	(3,895)	-9%
Wastewater Service	3,490	3,623	(133)	-4%	35,721	39,544	(3,823)	-10%
TOTAL SERVICE REVENUE	\$ 30,729	\$ 26,660	\$ 4,069	15%	\$ 277,886	\$ 273,021	\$ 4,865	2%
OTHER OPERATING REVENUE								
Electric Other	\$ 150	\$ 100	\$ 50	50%	\$ 1,407	\$ 1,200	\$ 207	17%
Water Other	72	42	30	71%	787	500	287	57%
Wastewater Other	30	18	12	67%	340	210	130	62%
Transmission System Revenue	243	217	26	12%	2,849	2,603	246	9%
Electric Pole Attachments	38	29	9	31%	443	349	94	27%
Water Tower Antenna Lease	20	15	5	33%	251	175	76	43%
TOTAL OTHER OPERATING REVENUE	\$ 553	\$ 421	\$ 132	31%	\$ 6,077	\$ 5,037	\$ 1,040	21%
TOTAL OPERATING REVENUE	\$ 31,282	\$ 27,081	\$ 4,201	16%	\$ 283,963	\$ 278,058	\$ 5,905	2%
OPERATING EXPENSES								
ELECTRIC								
Purchased Power	\$ 13,878	\$ 11,529	\$ 2,349	20%	\$ 137,859	\$ 137,408	\$ 451	0%
Electric O&M Expenses	1,191	999	192	19%	7,333	10,017	(2,684)	-27%
Electric Depreciation & Amortization	1,253	1,215	38	3%	13,484	14,581	(1,097)	-8%
Electric Support Services Allocated Operating Expenses	-	1,156	(1,156)	-100%	9,229	11,706	(2,477)	-21%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 16,322	\$ 14,899	\$ 1,423	10%	\$ 167,905	\$ 173,712	\$ (5,807)	-3%
WATER								
Purchased Water	\$ 1,024	\$ 1,032	\$ (8)	-1%	\$ 12,071	\$ 12,385	\$ (314)	-3%
Water O&M Expenses	1,444	1,015	429	42%	8,684	10,344	(1,660)	-16%
Water Depreciation & Amortization	958	1,032	(74)	-7%	11,229	12,384	(1,155)	-9%
Water Support Services Allocated Operating Expenses	-	1,210	(1,210)	-100%	9,866	12,382	(2,516)	-20%
TOTAL WATER OPERATING EXPENSE	\$ 3,426	\$ 4,289	\$ (863)	-20%	\$ 41,850	\$ 47,495	\$ (5,645)	-12%
WASTEWATER								
Wastewater O&M Expenses	\$ 1,454	\$ 826	\$ 628	76%	\$ 8,744	\$ 8,892	\$ (148)	-2%
Wastewater Depreciation & Amortization	1,174	1,306	(132)	-10%	13,948	15,676	(1,728)	-11%
Wastewater Support Services Allocated Operating Expenses	-	829	(829)	-100%	6,812	8,439	(1,627)	-19%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 2,628	\$ 2,961	\$ (333)	-11%	\$ 29,504	\$ 33,007	\$ (3,503)	-11%
TOTAL OPERATING EXPENSES	\$ 22,376	\$ 22,149	\$ 227	1%	\$ 239,259	\$ 254,214	\$ (14,955)	-6%
NET OPERATING INCOME								
ELECTRIC	\$ 7,319	\$ 3,039	\$ 4,280	*	\$ 38,410	\$ 19,473	\$ 18,937	97%
WATER	695	1,213	(518)	-43%	(263)	(2,376)	2,113	-89%
WASTEWATER	892	680	212	31%	6,557	6,747	(190)	-3%
TOTAL NET OPERATING INCOME	\$ 8,906	\$ 4,932	\$ 3,974	81%	\$ 44,704	\$ 23,843	\$ 20,861	87%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 165	\$ 431	\$ (266)	-62%	\$ 9,102	\$ 5,173	\$ 3,929	76%
Intergovernmental Expense	(944)	(989)	45	-5%	(11,323)	(11,867)	544	-5%
Interest and Amortization Expense	(1,591)	(1,376)	(215)	16%	(17,748)	(16,514)	(1,234)	7%
Other	1,023	178	845	*	5,435	2,131	3,304	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (1,347)	\$ (1,756)	\$ 409	-23%	\$ (14,534)	\$ (21,077)	\$ 6,543	31%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 7,559	\$ 3,176	\$ 4,383	*	\$ 30,170	\$ 2,766	\$ 27,404	*
CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 1,420	\$ 1,399	\$ 21	2%	\$ 25,510	\$ 16,792	\$ 8,718	52%
Services	532	266	266	100%	4,556	3,197	1,359	43%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	796	(796)	-100%
TOTAL CAPITAL CONTRIBUTIONS	\$ 1,973	\$ 1,731	\$ 242	14%	\$ 30,087	\$ 20,785	\$ 9,302	45%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 9,532	\$ 4,907	\$ 4,625	94%	\$ 60,257	\$ 23,551	\$ 36,706	*

*Denotes variance greater than 100%

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

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
ELECTRIC OPERATING REVENUES								
ELECTRIC SERVICE REVENUE								
Electric Service	\$ 23,210	\$ 17,592	\$ 5,618	32%	\$ 201,616	\$ 189,033	\$ 12,583	7%
TOTAL ELECTRIC SERVICE REVENUE	\$ 23,210	\$ 17,592	\$ 5,618	32%	\$ 201,616	\$ 189,033	\$ 12,583	7%
OTHER ELECTRIC OPERATING REVENUE								
Electric Other	\$ 150	\$ 100	\$ 50	50%	\$ 1,407	\$ 1,200	\$ 207	17%
Transmission System Revenue	243	217	26	12%	2,849	2,603	246	9%
Electric Pole Attachments	38	29	9	31%	443	349	94	27%
TOTAL OTHER ELECTRIC OPERATING REVENUE	\$ 431	\$ 346	\$ 85	25%	\$ 4,699	\$ 4,152	\$ 547	13%
TOTAL ELECTRIC OPERATING REVENUE	\$ 23,641	\$ 17,938	\$ 5,703	32%	\$ 206,315	\$ 193,185	\$ 13,130	7%
ELECTRIC OPERATING EXPENSES								
Purchased Power & Other Power Supply	\$ 13,878	\$ 11,529	\$ 2,349	20%	\$ 137,859	\$ 137,408	\$ 451	0%
Transmission & Distribution	1,136	944	192	20%	6,784	9,381	(2,597)	-28%
Customer Service	(11)	35	(46)	*	231	422	(191)	-45%
Administrative & General	66	20	46	*	318	214	104	49%
Depreciation & Amortization	1,253	1,215	38	3%	13,484	14,581	(1,097)	-8%
Support Services Allocated Operating Expenses	0	1,156	(1,156)	-100%	9,229	11,706	(2,477)	-21%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 16,322	\$ 14,899	\$ 1,423	10%	\$ 167,905	\$ 173,712	\$ (5,807)	-3%
ELECTRIC NET OPERATING INCOME	\$ 7,319	\$ 3,039	\$ 4,280	*	\$ 38,410	\$ 19,473	\$ 18,937	97%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 165	\$ 183	\$ (18)	-10%	\$ 4,342	\$ 2,199	\$ 2,143	97%
Intergovernmental Expense	(752)	(799)	47	-6%	(9,016)	(9,593)	577	-6%
Interest and Amortization Expense	(697)	(246)	(451)	*	(5,422)	(2,957)	(2,465)	83%
Other	145	90	55	61%	1,537	1,082	455	42%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (1,139)	\$ (772)	\$ (367)	48%	\$ (8,559)	\$ (9,269)	\$ 710	8%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 6,180	\$ 2,267	\$ 3,913	*	\$ 29,851	\$ 10,204	\$ 19,647	*
ELECTRIC CAPITAL CONTRIBUTIONS								
Services	\$ 383	\$ 216	\$ 167	77%	\$ 2,940	\$ 2,589	\$ 351	14%
TOTAL ELECTRIC CAPITAL CONTRIBUTIONS	\$ 383	\$ 216	\$ 167	77%	\$ 2,940	\$ 2,589	\$ 351	14%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 6,563	\$ 2,483	\$ 4,080	*	\$ 32,791	\$ 12,793	\$ 19,998	*

*Denotes variance greater than 100%

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

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
WATER OPERATING REVENUES								
WATER SERVICE REVENUE								
Water Service	\$ 4,029	\$ 5,445	\$ (1,416)	-26%	\$ 40,549	\$ 44,444	\$ (3,895)	-9%
TOTAL WATER SERVICE REVENUE	\$ 4,029	\$ 5,445	\$ (1,416)	-26%	\$ 40,549	\$ 44,444	\$ (3,895)	-9%
OTHER WATER OPERATING REVENUE								
Water Other	\$ 72	\$ 42	\$ 30	71%	\$ 787	\$ 500	\$ 287	57%
Water Tower Antenna Lease	20	15	5	33%	251	175	76	43%
TOTAL OTHER WATER OPERATING REVENUE	\$ 92	\$ 57	\$ 35	61%	\$ 1,038	\$ 675	\$ 363	54%
TOTAL WATER OPERATING REVENUE	\$ 4,121	\$ 5,502	\$ (1,381)	-25%	\$ 41,587	\$ 45,119	\$ (3,532)	-8%
WATER OPERATING EXPENSES								
Purchased Water	\$ 1,024	\$ 1,032	\$ (8)	-1%	\$ 12,071	\$ 12,385	\$ (314)	-3%
Supply Source	8	10	(2)	-20%	91	113	(22)	-19%
Transmission & Distribution	855	402	453	*	3,355	3,817	(462)	-12%
Pumping	240	284	(44)	-15%	2,347	2,928	(581)	-20%
Water Treatment	283	262	21	8%	2,321	2,760	(439)	-16%
Customer Service	(40)	9	(49)	*	30	102	(72)	-71%
Administrative & General	99	49	50	*	540	624	(84)	-13%
Depreciation & Amortization	958	1,032	(74)	-7%	11,229	12,384	(1,155)	-9%
Support Services Allocated Operating Expenses	-	1,210	(1,210)	-100%	9,866	12,382	(2,516)	-20%
TOTAL WATER OPERATING EXPENSE	\$ 3,427	\$ 4,290	\$ (863)	-20%	\$ 41,850	\$ 47,495	\$ (5,645)	-12%
WATER NET OPERATING INCOME	\$ 695	\$ 1,212	\$ (517)	-43%	\$ (263)	\$ (2,377)	\$ 2,114	-89%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ -	\$ 120	\$ (120)	-100%	\$ 2,308	\$ 1,442	\$ 866	60%
Intergovernmental Expense	(93)	(90)	(3)	3%	(1,117)	(1,080)	(37)	3%
Interest and Amortization Expense	(508)	(578)	70	-12%	(6,740)	(6,930)	190	-3%
Other	878	73	805	*	2,826	881	1,945	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ 277	\$ (475)	\$ 752	*	\$ (2,723)	\$ (5,687)	\$ 2,964	-52%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 972	\$ 737	\$ 235	32%	\$ (2,986)	\$ (8,064)	\$ 5,078	-63%
WATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 833	\$ 1,016	\$ (183)	-18%	\$ 17,138	\$ 12,195	\$ 4,943	41%
Services	149	51	98	*	1,616	608	1,008	*
TOTAL WATER CAPITAL CONTRIBUTIONS	\$ 1,003	\$ 1,067	\$ (64)	-6%	\$ 18,775	\$ 12,803	\$ 5,972	47%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 1,975	\$ 1,805	\$ 170	9%	\$ 15,789	\$ 4,739	\$ 11,050	*

*Denotes variance greater than 100%

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

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
WASTEWATER OPERATING REVENUES								
WASTEWATER SERVICE REVENUE								
Wastewater Service	\$ 3,490	\$ 3,623	\$ (133)	-4%	\$ 35,721	\$ 39,544	\$ (3,823)	-10%
TOTAL WASTEWATER SERVICE REVENUE	\$ 3,490	\$ 3,623	\$ (133)	-4%	\$ 35,721	\$ 39,544	\$ (3,823)	-10%
OTHER WASTEWATER OPERATING REVENUE								
Wastewater Other	\$ 30	\$ 18	\$ 12	67%	\$ 340	\$ 210	\$ 130	62%
TOTAL OTHER WASTEWATER OPERATING REVENUE	\$ 30	\$ 18	\$ 12	67%	\$ 340	\$ 210	\$ 130	62%
TOTAL WASTEWATER OPERATING REVENUE	\$ 3,520	\$ 3,641	\$ (121)	-3%	\$ 36,061	\$ 39,754	\$ (3,693)	-9%
WASTEWATER OPERATING EXPENSES								
Transmission & Distribution	\$ 1	\$ -	\$ 1	100%	\$ 4	\$ -	\$ 4	100%
Wastewater Operations & Maintenance	1,443	796	647	81%	8,401	8,416	(15)	0%
Customer Service	(15)	9	(24)	*	75	108	(33)	-31%
Administrative & General	25	21	4	19%	264	368	(104)	-28%
Depreciation & Amortization	1,174	1,306	(132)	-10%	13,948	15,676	(1,728)	-11%
Support Services Allocated Operating Expenses	0	829	(829)	-100%	6,812	8,439	(1,627)	-19%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 2,628	\$ 2,961	\$ (333)	-11%	\$ 29,504	\$ 33,007	\$ (3,503)	-11%
WASTEWATER NET OPERATING INCOME	\$ 892	\$ 680	\$ 212	31%	\$ 6,557	\$ 6,747	\$ (190)	-3%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ -	\$ 128	\$ (128)	-100%	\$ 2,452	\$ 1,532	\$ 920	60%
Intergovernmental Expense	(99)	(100)	1	-1%	(1,190)	(1,194)	4	0%
Interest and Amortization Expense	(386)	(552)	166	-30%	(5,586)	(6,627)	1,041	-16%
Other	-	14	(14)	-100%	1,072	168	904	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (485)	\$ (510)	\$ 25	-5%	\$ (3,252)	\$ (6,121)	\$ 2,869	-47%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 407	\$ 170	\$ 237	*	\$ 3,305	\$ 626	\$ 2,679	*
WASTEWATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 587	\$ 383	\$ 204	53%	\$ 8,372	\$ 4,597	\$ 3,775	82%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	796	(796)	-100%
TOTAL WASTEWATER CAPITAL CONTRIBUTIONS	\$ 587	\$ 449	\$ 138	31%	\$ 8,372	\$ 5,393	\$ 2,979	55%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 994	\$ 619	\$ 375	61%	\$ 11,677	\$ 6,019	\$ 5,658	94%

*Denotes variance greater than 100%

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

	<u>MTD</u>	<u>YTD</u>
NET POSITION BEFORE CONTRIBUTIONS	\$ 7,559	\$ 30,170
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 3,385	\$ 38,661
Decrease (increase) in accounts receivable	(3,118)	3,483
Decrease (increase) in inventories	439	(1,829)
Decrease (increase) in other assets	3,240	35,807
Increase (decrease) in current liabilities	39,816	(9,262)
Increase (decrease) in other liabilities	5,225	5,908
Net Cash Flow from Operating Activities	<u>\$ 56,546</u>	<u>\$ 102,939</u>
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (32,100)	\$ (185,687)
Investments	(9,759)	(23,536)
Rents/Interest Receivable	(95)	256
Net Cash Flow from Investing Activities	<u>\$ (41,954)</u>	<u>\$ (208,968)</u>
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (1,347)	\$ (14,534)
Increase (decrease) in long-term debt	(880)	94,775
Net Cash Flow from Financing Activities	<u>\$ (2,227)</u>	<u>\$ 80,241</u>
Net Increase (Decrease) in Cash and Cash Equivalents	<u>\$ 12,364</u>	<u>\$ (25,788)</u>

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



Department	Capital Equipment Description	YTD Actual	FY 2024 Budget	Budget Remaining
ELECTRIC				
117	SEA Air Excavation Unit	-	650,000	650,000
117	Altec Pressure Digger	429,317	400,000	(29,317)
117	Altec AM 60E	-	300,000	300,000
117	Altec 55' Articulating Boom	232,192	300,000	67,808
117	Altec AM 60E	236,461	185,000	(51,461)
117	Arc Demo Trailer	-	120,000	120,000
117	Ford F-550	111,982	111,982	-
117	Ford F-550	-	111,982	111,982
117	Ford F-550	-	111,982	111,982
117	Ford F-550	-	111,982	111,982
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Locator Unit	-	45,000	45,000
117	Dump Trailer	12,733	15,000	2,267
119	Ford F-550 w/Crane	-	150,437	150,437
119	Ford F-550 Electric	-	61,393	61,393
TOTAL ELECTRIC		\$ 1,022,685	\$ 2,894,758	\$ 1,872,073
WATER				
216	Ford F-150	26,995	55,000	28,005
220	Ford F-550 w/Crane	151,567	150,437	(1,130)
220	Ford F-150	54,845	55,000	155
TOTAL WATER		\$ 233,407	\$ 260,437	\$ 27,030
WASTEWATER				
320	Ford F-550 w/Crane	-	150,437	150,437
320	Ford F-150	54,845	55,000	155
320	Small Utility Unit	10,580	15,000	4,420
TOTAL WASTEWATER		\$ 65,425	\$ 220,437	\$ 155,012
SHARED WATER/WASTEWATER				
217/317	CAT 313 Excavator	214,865	250,000	35,135
217/317	Ford F-550	388,120	244,534	(143,586)
217/317	International Dump Truck	-	230,000	230,000
217/317	International M37	165,749	175,000	9,251
217/317	SEA Truck Mounted Jetter	192,947	150,000	(42,947)
217/317	CAT Backhoe w/Ext	158,995	125,000	(33,995)
217/317	Ford F-550	123,417	122,267	(1,150)
217/317	Ford F-550	-	122,267	122,267
217/317	Ford F-550	-	122,267	122,267
217/317	International Dump Truck	-	115,000	115,000
217/317	CAT Backhoe	137,855	115,000	(22,855)
217/317	CAT Backhoe	137,855	115,000	(22,855)
217/317	CAT Backhoe	158,995	115,000	(43,995)
217/317	E.H. Wachs Large VE	83,732	86,000	2,268
217/317	E.H. Wachs Large VE	83,732	86,000	2,268
217/317	1500' of Bypass Hose	72,898	85,000	12,102
217/317	CAT Skid Steer	57,985	65,000	7,015
217/317	Ford F-150	54,845	55,000	155
217/317	Scorpion Towable Attenuator	37,232	35,000	(2,232)
217/317	Towable Air Compressor	23,444	25,000	1,556
217/317	Tools for F-550	-	15,000	15,000
217/317	DTS Trailer	6,637	10,000	3,363
TOTAL SHARED WATER/WASTEWATER		\$ 2,099,303	\$ 2,463,335	\$ 364,032
BUSINESS PLANNING				
425	Ford Escape	-	30,000	30,000
425	GPS Unit	-	30,000	30,000
TOTAL BUSINESS PLANNING		\$ -	\$ 60,000	\$ 60,000
SAFETY				
524	Ford Explorer	54,845	38,000	(16,845)
TOTAL SAFETY		\$ 54,845	\$ 38,000	\$ (16,845)
PURCHASING				
527	Ford F-350	-	75,500	75,500
TOTAL PURCHASING		\$ -	\$ 75,500	\$ 75,500

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

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

TECHNOLOGY				
531	Server Replacements	646,595	600,000	(46,595)
531	PC Replacements	463,230	400,000	(63,230)
531	Dell Nodes	-	400,000	400,000
531	Network Equipment Replacements	95,650	200,000	104,350
531	IT to Purchase Unit	-	50,000	50,000
531	Copier and High-end Printer & Plotter Replacements	-	37,500	37,500
531	UPS Replacements	-	10,000	10,000
TOTAL TECHNOLOGY		\$ 1,205,475	\$ 1,697,500	\$ 492,025

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

TOTAL CAPITAL EQUIPMENT	\$ 5,106,529	\$ 8,626,543	\$ 3,520,014
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BUDGETED PRIOR YEAR ITEMS:

ELECTRIC				
117	Magnum Pintle Trailer (FY23)	50,813	-	(50,813)
TOTAL ELECTRIC		\$ 50,813	\$ -	\$ (50,813)

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

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

TOTAL BUDGETED PRIOR YEAR CAPITAL EQUIPMENT	\$ 891,978	\$ -	\$ (808,246)
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UNBUDGETED ITEMS:

PURCHASING				
527	2024 Kawasaki Timberlin	9,853	-	(9,853)
TOTAL PURCHASING		\$ 9,853	\$ -	\$ (9,853)

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

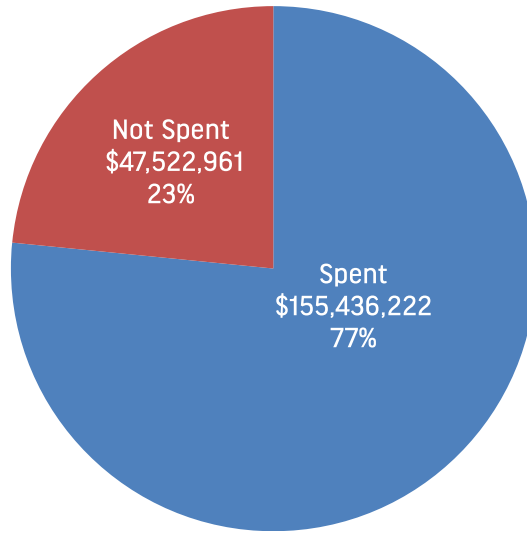
TOTAL UNBUDGETED CAPITAL EQUIPMENT	\$ 87,841	\$ -	\$ (87,841)
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TOTAL	\$ 6,086,348	\$ 8,626,543	\$ 2,623,927
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FY 2024 Capital Expenditure Summary As of Jul 31, 2024

100% of Year
Completed

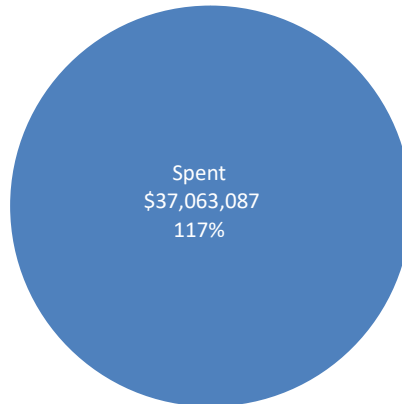
	<u>Spent</u>		<u>Not Spent</u>		<u>Total Budget</u>	<u>% of Total Budget</u> <u>Spent</u>
Electric	\$ 37,063,087	\$	(5,475,268)	\$	31,587,819	117%
Water	64,782,538		7,202,618		71,985,156	90%
Wastewater	30,707,125		21,623,430		52,330,555	59%
Support Services	22,883,472		24,172,181		47,055,653	49%
TOTAL	\$ 155,436,222	\$	47,522,961	\$	202,959,183	
	<i>77%</i>		<i>23%</i>		<i>100%</i>	



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

100% of Year Completed

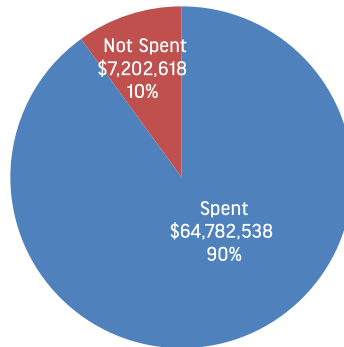
Project	¹ Total Spent YTD	² FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 9,804,988	\$ 5,582,835	\$ (4,222,153)	\$ 5,582,835	176%	100
Distribution Transformers	11,264,747	5,642,698	(5,622,049)	5,642,698	200%	100
Electric Meters	2,451,363	3,514,000	1,062,637	3,514,000	70%	100
Electric Aging Infrastructure	1,786,980	2,967,536	1,180,556	2,967,536	60%	100
Electric Technology Upgrades	77,879	149,106	71,227	149,106	52%	22%
Three-Phase Extensions	1,244,049	1,806,177	562,128	9,313,421	69%	100%
Fiber Optic Extensions	26,645	102,624	75,979	1,107,798	26%	5%
Hueco Springs Substation	2,920,752	7,301,106	4,380,354	9,939,535	40%	49%
Electric Aging Infrastructure, Substation	307,831	115,672	(192,159)	4,666,606	266%	100%
Freiheit Breaker Additons & Control House	232,745	2,371,748	2,139,003	2,445,650	10%	15%
EC23 FM 482 Feeder	162,774	712,665	549,891	812,622	23%	50%
HE11 Conrads Rd Feeder	487,882	114,026	(373,856)	1,966,183	428%	50%
Transmission Access & Wildlife Protection	247,677	175,117	(72,560)	953,166	141%	100%
Comal T3 Replacement & Feeder C033	236,364	377,427	141,063	3,644,220	63%	52%
Distribution Feeder Breaker Addition & Replacements	-	159,067	159,067	3,113,453	0%	10%
FR24 Kowald Ln. Feeder	55,876	91,221	35,345	880,778	61%	10%
Henne Substation Breaker & Half	163,494	171,040	7,546	2,419,085	96%	27%
CONB Road Widening Adjustments	139,523	233,754	94,231	2,256,995	60%	40%
Total Budgeted Projects	\$ 31,611,570	\$ 31,587,819	\$ (23,751)	\$ 61,375,687	100%	
Unbudgeted Projects:						
Sheriff's Posse T3 Addition	\$ 20,904	\$ -	\$ (20,904)	\$ 7,622,556	0%	99%
E.C. Mornhinweg T2 & Feeders	772,498	-	(772,498)	4,093,931	0%	95%
Residential OH to UG Conversion	458,743	-	(458,743)	3,776,463	0%	99%
Weltner Rd Feeder 13, Clear Springs	23,543	-	(23,543)	965,027	0%	100%
L023 Loop 337 FM 1863 Extension Phase 2	15,330	-	(15,330)	1,224,681	0%	100%
C014 Kentucky Rd Feeder	1,909,528	-	(1,909,528)	601,370	0%	75%
HE23 IH-35 Stolte Feeder	840,851	-	(840,851)	1,564,074	0%	45%
Freiheit Feeder 11, Alves Ln	41,874	-	(41,874)	1,951,344	0%	100%
Kohlenberg Rd Substation	1,363,240	-	(1,363,240)	44,780	0%	29%
Industrial Substation PWT Replacement (TXI T1)	5,005	-	(5,005)	1,155,967	0%	100%
Total Unbudgeted Projects	\$ 5,451,517	\$ -	\$ (5,451,517)	\$ 23,000,192		
TOTAL	\$ 37,063,087	\$ 31,587,819	\$ (5,475,268)	\$ 84,375,879	117%	



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

100% of Year Completed

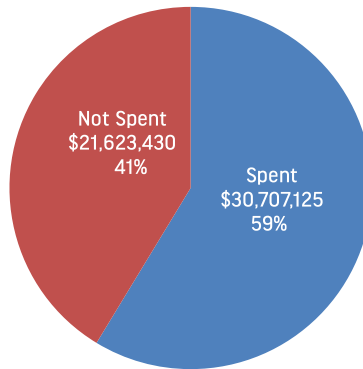
Project	¹ Total Spent YTD	² FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 1,556,047	\$ 375,703	\$ (1,180,344)	\$ 375,703	414%	81%
Water Meters	3,076,709	1,844,670	(1,232,039)	1,844,670	167%	55%
Water Technology Upgrades	-	140,116	140,116	140,116	0%	100%
Aging System Replacements	2,167,057	2,092,123	(74,934)	2,092,123	104%	23%
ASR Feasibility Dev (IF)	450,478	2,069,462	1,618,984	38,120,155	22%	55%
Wood Meadows Water Line River Crossing	481,936	216,373	(265,563)	3,052,319	223%	28%
I-35 Water Line (Downtown)	9,846,733	7,963,912	(1,882,821)	11,468,136	124%	93%
1.00MG Solms Ground Storage Tank and Flow Control Valve	210,894	235,473	24,579	4,337,137	90%	1%
Western Downtown to Morningside PZ Conversion	128,395	308,393	179,998	8,525,525	42%	21%
FM 306 Pump Station & Discharge Pipeline	2,813,894	1,885,704	(928,190)	10,821,940	149%	84%
Conrads EST	6,228,189	5,488,218	(739,971)	6,852,776	113%	60%
Goodwin Lane Water Main	6,196,606	6,884,157	687,551	12,624,155	90%	97%
Klein Rd Reconstruction Phase 2	465,132	1,126,496	661,364	1,404,382	41%	92%
Landa Pump Station Phase 2/Well 5	5,189,528	6,242,981	1,053,453	15,931,146	83%	97%
Trinity Expansion- Treatment Plant	15,259,547	17,173,917	1,914,370	27,357,602	89%	82%
Trinity Expansion- Well Field	4,372,201	7,057,207	2,685,006	10,222,796	62%	45%
FM 1044 EST	421,484	1,373,451	951,967	13,187,743	31%	4%
GBRA Interconnect Metering Station	1,429,109	701,780	(727,329)	996,909	204%	94%
Garden Street Bridge Water Line	401,646	390,851	(10,795)	587,926	103%	100%
Goodwin/Conrads Water Adjustments	1,191	403,683	402,492	434,276	0%	4%
Misison/Westpointe Connection Waterlines	2,219,619	5,539,877	3,320,258	6,495,952	40%	14%
Senate Bill 3 EPP Generators	266,629	1,301,224	1,034,595	1,328,362	20%	8%
Tank Decommission	711,396	865,803	154,407	954,937	82%	100%
Water Tank Rehabilitations	433,073	303,582	(129,491)	303,582	143%	10%
Total Budgeted Projects	\$ 64,327,494	\$ 71,985,156	\$ 7,657,662	\$ 179,460,368	89%	
Unbudgeted Projects:						
Infrastructure Replacement Package 1-W	\$ (5,451)	\$ -	\$ 5,451	\$ 5,451		100%
30/24-inch SWTP Discharge Line (Downtown)	17,449	-	(17,449)	21,587,112		100%
Well 4 to Grandview Pump Station & Discharge Line Upgrades	205,287	-	(205,287)	9,460,061		100%
Weltner Rd Ground Strg Tank & Pump Station-Ph 1	161,831	-	(161,831)	24,173,897		100%
24-inch McQueeney Road Parallel Water Line (Downtown)	75,927	-	(75,927)	9,659,699		
Total Unbudgeted Projects	\$ 455,044	\$ -	\$ (455,044)	\$ 64,886,220		
TOTAL	\$ 64,782,538	\$ 71,985,156	\$ 7,202,618	\$ 244,346,587	90%	



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

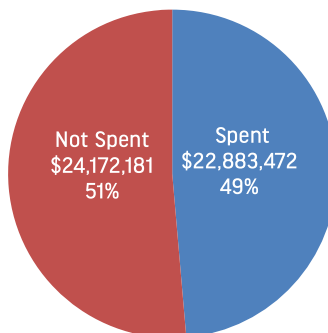
100% of Year Completed

Project	¹ Total Spent YTD	² FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	⁽⁰⁾⁽²⁾ % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 797,880	\$ 249,038	\$ (548,842)	\$ 249,038	320%	73%
Aging System Replacements	1,177,551	2,046,224	868,673	2,046,224	58%	13%
Wastewater Technology Upgrades	-	145,563	145,563	145,563	0%	1%
Manhole Rehabilitation	644,252	789,673	145,421	789,673	82%	41%
South Kuehler Interceptor Phase 1	263,512	480,284	216,772	5,426,066	55%	20%
Gruene Rd Sewer Main Rehabilitation/Relocation	126,019	107,441	(18,578)	2,896,802	117%	6%
McKenzie WRF Expansion	22,153,992	20,026,694	(2,127,298)	72,312,120	111%	32%
Solms Lift Station Expansion	1,315,066	1,076,397	(238,669)	1,705,332	122%	56%
I-35 Interceptor Upgrade	384,141	4,090,487	3,706,346	14,155,678	9%	8%
Kuehler WRF Access Road-Courtyard Dr	148,014	3,265,043	3,117,029	3,739,824	5%	18%
McKenzie Interceptor Upgrade	1,101,891	2,291,295	1,189,404	50,706,156	48%	4%
Kuehler WRF Rehabilitation	58,190	12,890,556	12,832,366	44,788,333	0%	3%
Sewer Infrastructure Replacement Package 2	567,213	739,180	171,967	4,957,511	77%	13%
Saengerhalle North Interceptor	92,581	215,817	123,236	5,888,532	43%	14%
Goodwin/Conrads Adjustments (CNB)-WW	27,600	406,908	379,308	1,114,676	7%	6%
Gruene WRF Spoils & Materials Yard	80,135	447,632	367,497	1,061,999	18%	100%
North Kuehler Manhole Rehabilitation-Segment 3	(205,740)	494,109	699,849	1,016,271	-42%	100%
Kuehler WRF Rehabilitation-Clarifier Replacement	1,756,282	2,568,214	811,932	2,758,806	68%	10%
Total Budgeted Projects	\$ 30,488,579	\$ 52,330,555	\$ 21,841,976	\$ 215,758,603	58%	
Unbudgeted Projects:						
North Kuehler 42" Interceptor Upgrade	\$ 3,357	\$ -	\$ (3,357)	\$ 15,524,017		100%
North Kuehler 30 and 33-inch Interceptor Upgrade	-	-	-	26,748,112		100%
Gruene Rd Sewer Main Odor Control	119,882	-	(119,882)	239,659		18%
Infrastructure Replacement Package 1-WW	10,823	-	(10,823)	123,819		20%
Rio Lift Station Expansion	63,769	-	(63,769)	3,576,417		100%
Schmidt I-35 N Sewer Main Replacement	4,233	-	(4,233)	376,069		97%
Saengerhalle Lift Station Expansion & Force Main	16,481	-	(16,481)	4,892,290		100%
Total Unbudgeted Projects	\$ 218,545	\$ -	\$ (218,545)	\$ 51,480,383		
TOTAL	\$ 30,707,125	\$ 52,330,555	\$ 21,623,430	\$ 267,238,986	59%	



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

Project	¹ Total Spent YTD	² FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	⁽¹⁾⁽²⁾ % Spent YTD	% Physical Completion
Budgeted Projects:						
Headwaters at the Comal	\$ 5,475,715	\$ 4,500,000	\$ (975,715)	\$ 25,670,681	122%	60%
Cyber Security System	179,900	325,000	145,100	325,000	55%	15%
Software Replacement and Enhancements	-	130,000	130,000	130,000	0%	10%
NBU Headquarters, Maint & Support Facility	14,278,651	25,000,000	10,721,349	134,505,960	57%	10%
Laserfiche Development	-	300,000	300,000	570,867	0%	20%
Backup Operations Center	203,776	1,280,000	1,076,224	8,452,700	16%	20%
Upgrade or Replace all NBU Radios	-	200,000	200,000	200,000	0%	10%
Kerlick Tower Modifications	(7,597)	450,000	457,597	457,597	-2%	20%
Data Strategy Upgrades - BDAP	792,092	1,185,653	393,561	1,185,653	67%	33%
System Technology Upgrades - Monitoring	223,895	400,000	176,105	400,000	56%	0%
Fiber Network Distribution Expansion	-	650,000	650,000	1,428,700	0%	10%
Fleet AVL	6,452	75,000	68,548	75,000	9%	0%
Data Strategy Upgrades - GIS Upgrades	-	200,000	200,000	1,900,000	0%	15%
Pioneer Upgrade	-	171,000	171,000	171,000	0%	5%
Smartsheet Control Center	-	73,000	73,000	73,000	0%	0%
Tele-Communications Enhancements	-	102,000	102,000	181,754	0%	40%
Water/Wastewater SCADA Aging Infrastructure	-	1,000,000	1,000,000	1,000,000	0%	0%
Water SCADA Replacement & Integration	571,822	2,000,000	1,428,178	3,413,098	29%	50%
OT Security	-	50,000	50,000	50,000	0%	0%
Customer Bill Pay Portal	47,442	160,000	112,558	230,044	30%	0%
ARCGIS Indoors	-	50,000	50,000	50,000	0%	0%
Loop 337 Substation Control House	-	42,000	42,000	42,000	0%	0%
Replace Control Center Console	196,525	100,000	(96,525)	100,000	197%	0%
Future Facilities Rehab Projects	19,248	150,000	130,752	1,229,990	13%	0%
Firewall and VPN Replacement	-	120,000	120,000	120,000	0%	0%
Gruene Rd Fence	21,250	32,000	10,750	32,000	66%	100%
CIS Functionality Upgrade	-	1,500,000	1,500,000	1,500,000	0%	0%
Ipads for Cityworks Mobile & mcare	20,500	125,000	104,500	125,000	16%	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	80,698	125,000	44,302	125,000	65%	60%
RTU replacement 4.6,7 Main office	62,800	40,000	(22,800)	40,000	157%	100%
New Braunfels Police Department	574,894	3,585,000	3,010,106	3,645,000	16%	0%
RuggedCom Switch Replacement	-	200,000	200,000	600,000	0%	10%
Sheriff's Posse Control House Recondition	-	35,000	35,000	35,000	0%	0%
Solar Array and Battery Storage	-	50,000	50,000	50,000	0%	0%
Mass Meter Change Out	-	2,000,000	2,000,000	2,000,000	0%	0%
Water Meter Study	-	500,000	500,000	500,000	0%	0%
Total Budgeted Projects	\$ 22,748,064	\$ 47,055,653	\$ 24,307,589	\$ 190,765,042	48%	
Unbudgeted Projects:						
Physical Security Systems	\$ 135,409	\$ -	\$ (135,409)	\$ 135,409		90%
Total	\$ 135,409	\$ -	\$ (135,409)	\$ 135,409		
Total	\$ 22,883,472	\$ 47,055,653	\$ 24,172,181	\$ 190,900,451	49%	



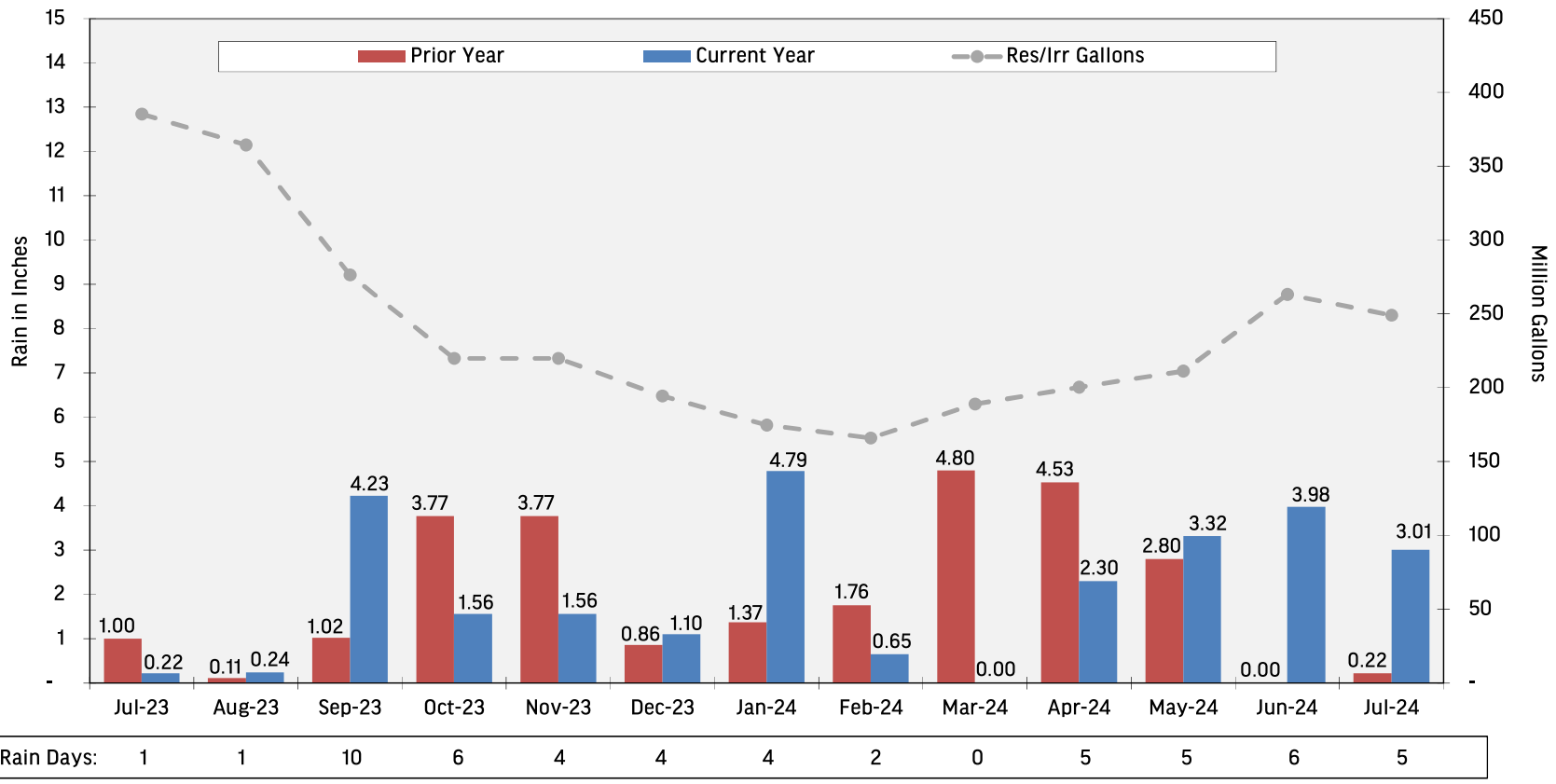
Electric Statistics are provided separately due to competitive matters.

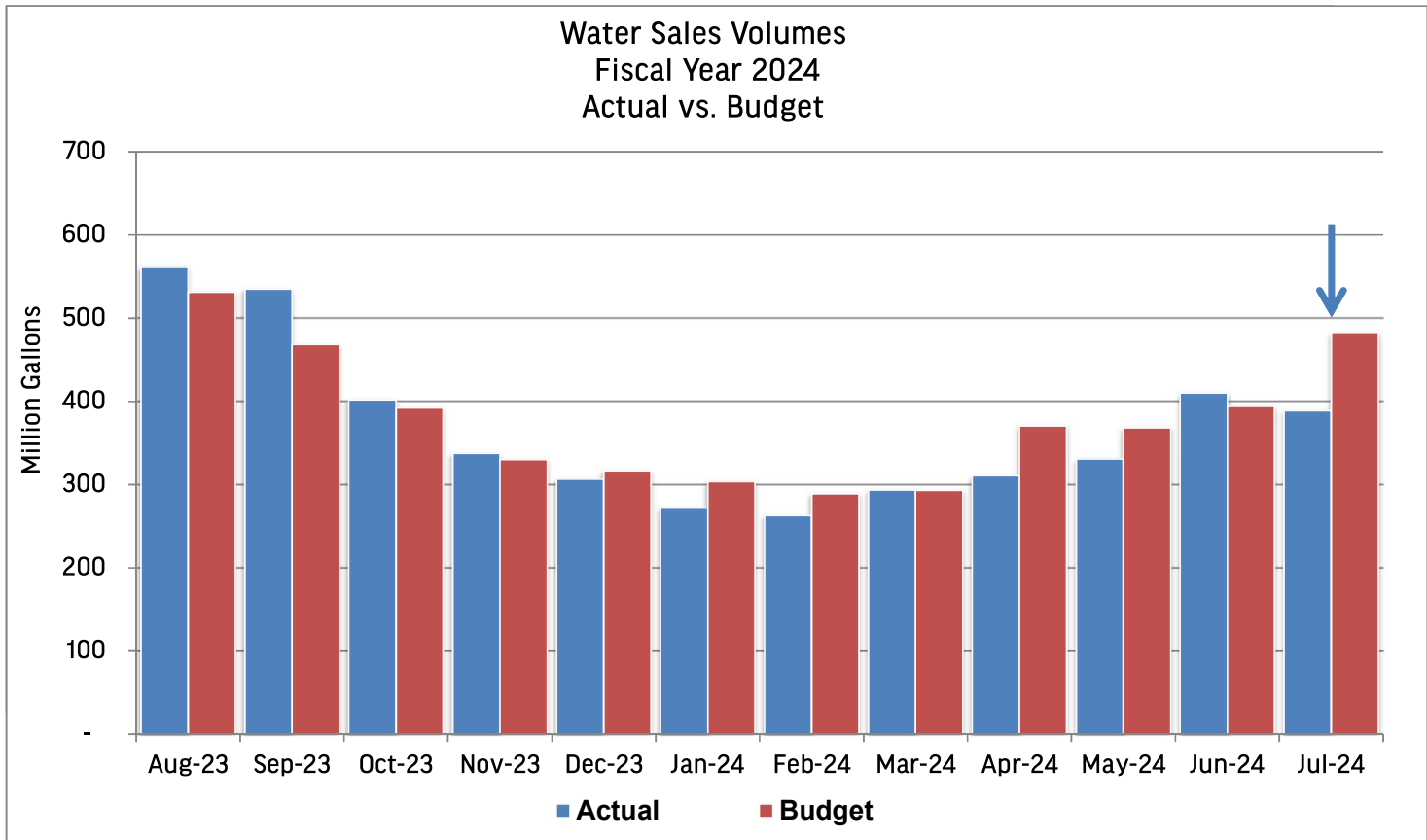
WATER STATISTICS

**NEW BRAUNFELS UTILITIES
WATER STATISTICS
HIGHLIGHTS OVERVIEW**

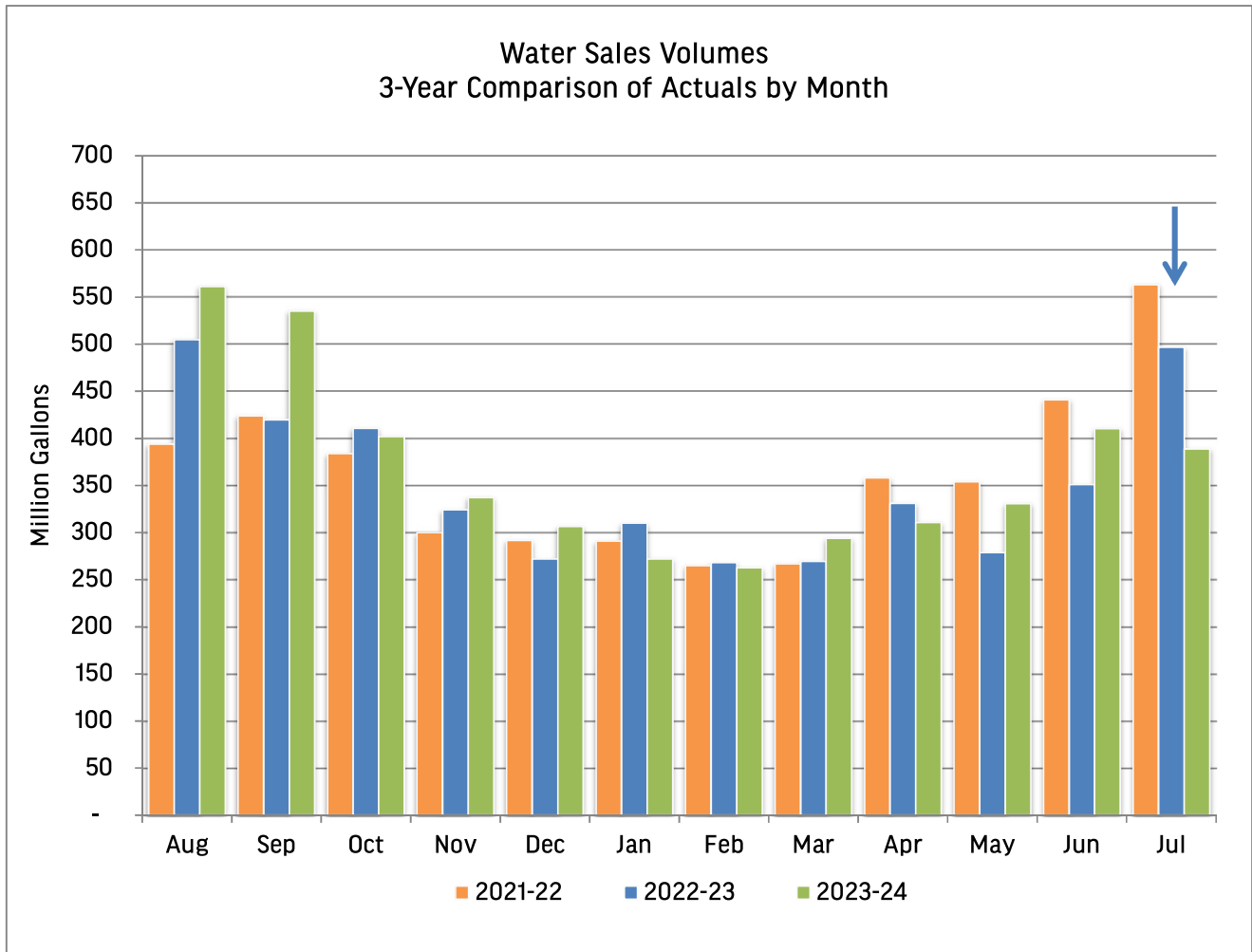
- July MTD rainfall was higher than the prior year rainfall, totaling 3.01 inches for the month. The July rainfall total of 3.01 inches was 0.81 inches higher than the historical average rainfall of 2.20 inches. For July 2024, there were five rain days during the month compared to one rain day in July 2023.
- July YTD rainfall totaled 26.74 inches compared to the prior year total of 25.01 inches, which is an increase of 1.73 inches compared to prior year YTD. For YTD, there have been 52 rain days compared to 47 rain days for prior year YTD.
- Average MTD consumption by residential water customer in July 2024 was 5,170 gallons compared to 7,393 gallons in July 2023, reflecting a 30.1% decrease.
- Actual YTD consumption by residential water customer through July 2024 was 62,903 gallons compared to 63,951 for YTD through July 2023, reflecting a decrease of 1.6%.
- 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 174.2 million gallons, or 4.1% (4,411.2 million gallons for FY 2024 YTD vs. 4,237.0 million gallons for FY 2023 YTD).
- Actual total water sales volume for year-to-date FY 2024 is 4,411.2 million gallons, which is 128.2 million less than the budgeted amount of 4,539.4 million gallons for the same time period.
 - The following are major contributors, by rate classification, towards the 128.2 million gallons change from budget:
 - Residential – decrease of 112.3 million gallons (down 4.7% from budget)
 - Multi-Unit 5+ - increase of 24.7 million gallons (up 8.4% from budget)
 - Residential Irrigation – decrease of 118.1 million gallons (down 16.3% from budget)
 - Commercial Irrigation – increase of 18.6 million gallons (up 7.6% from budget)
 - Small General Services – increase of 93.4 million gallons (up 28.9% from budget)
 - Large General Services – decrease of 70.0 million gallons (down 14.3% from budget)
 - Other Sales – increase of 27.0 million gallons (up 60.4% from budget)
 - ReUse Water – increase of 8.2 million gallons (up 514.5% from budget)

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



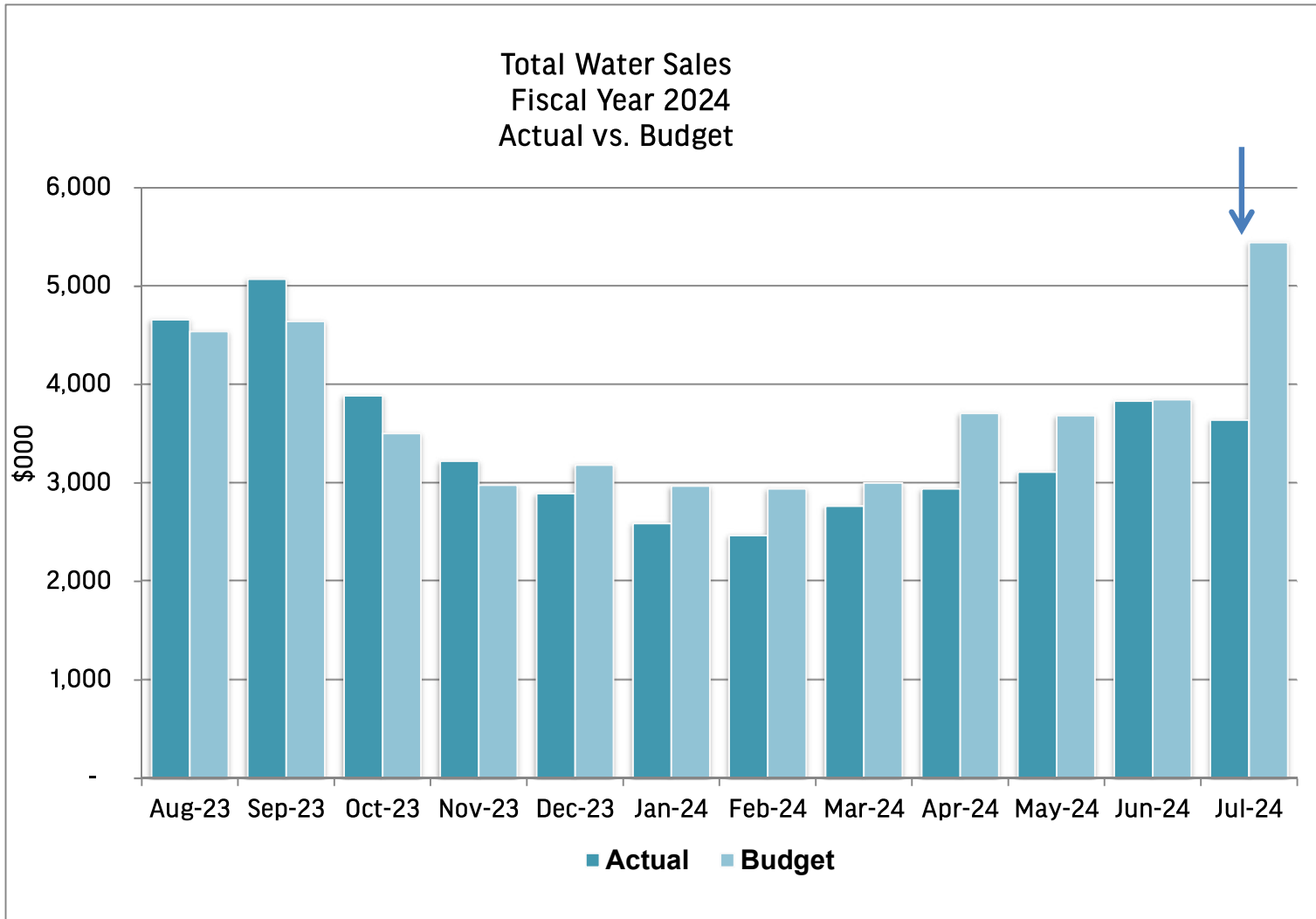


Month	Actual	Budget
Aug-23	561	531
Sep-23	535	468
Oct-23	402	392
Nov-23	337	330
Dec-23	306	317
Jan-24	272	304
Feb-24	263	289
Mar-24	294	293
Apr-24	311	371
May-24	331	368
Jun-24	410	394
Jul-24	389	482
TOTAL	4,411	4,539



Water Sales Volumes (Million Gallons)			
Month	2021-22	2022-23	2023-24
Aug	394	505	561
Sep	424	420	535
Oct	384	411	402
Nov	300	324	337
Dec	292	272	306
Jan	291	310	272
Feb	265	268	263
Mar	267	269	294
Apr	358	331	311
May	354	279	331
Jun	441	351	410
Jul	563	497	389
TOTAL	4,333	4,237	4,411

Meter Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	34,783	2.26%	35,570	4.80%	37,276
Irrigation	13,306	5.79%	14,076	10.32%	15,528
Other	2,962	0.98%	2,991	4.88%	3,137
TOTAL	51,051	3.11%	52,637	6.28%	55,941



Month	Total Water Sales (\$000)	
	Actual	Budget
Aug-23	\$ 4,660	\$ 4,539
Sep-23	\$ 5,070	\$ 4,642
Oct-23	\$ 3,888	\$ 3,503
Nov-23	\$ 3,224	\$ 2,978
Dec-23	\$ 2,890	\$ 3,184
Jan-24	\$ 2,587	\$ 2,971
Feb-24	\$ 2,465	\$ 2,943
Mar-24	\$ 2,767	\$ 2,999
Apr-24	\$ 2,942	\$ 3,708
May-24	\$ 3,112	\$ 3,685
Jun-24	\$ 3,833	\$ 3,847
Jul-24	\$ 3,641	\$ 5,445
TOTAL	\$ 41,082	\$ 44,444

WATER SUPPLEMENTAL INFORMATION

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	ACT	AVG
Residential														
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	152,601,010	153,302,646	157,174,649	161,205,629	169,357,747	205,533,519	192,734,742	2,287,869,826	190,655,819
Budget	278,669,478	237,292,325	207,072,688	175,109,490	173,209,570	174,176,159	163,056,961	162,170,495	194,797,667	192,150,195	202,613,378	239,844,122	2,400,162,528	200,013,544
Prior Year	264,945,370	214,133,721	210,921,150	168,052,918	147,195,572	177,670,848	150,738,797	147,502,230	178,229,197	149,505,620	178,158,403	262,973,939	2,250,027,765	187,502,314
Multi-Unit 2-4														
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	1,409,153	1,552,115	1,324,190	1,401,093	1,600,113	1,856,569	1,665,225	20,165,081	1,680,423
Budget	2,133,762	2,020,591	1,702,965	1,531,918	1,502,289	1,598,116	1,411,754	1,326,910	1,520,816	1,588,266	1,734,356	1,808,743	19,880,486	1,656,707
Prior Year	2,255,895	1,811,283	1,706,631	1,468,178	1,558,732	1,991,094	1,731,278	1,499,746	1,772,742	1,328,557	1,540,991	2,156,891	20,822,018	1,735,168
Multi-Unit 5+														
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	25,622,619	27,819,886	26,634,330	24,746,326	26,419,852	28,285,751	28,036,177	317,214,223	26,434,519
Budget	25,326,666	25,620,852	24,285,693	22,896,149	23,054,060	23,641,597	23,603,566	23,290,338	23,808,093	24,208,591	26,153,310	27,290,905	292,508,820	24,375,735
Prior Year	25,435,941	26,247,479	23,126,169	22,573,660	22,243,553	27,640,694	24,981,709	20,919,119	23,207,100	20,994,653	24,183,355	24,520,980	286,074,412	23,839,534
Residential Irrigation														
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	22,127,445	12,702,243	31,763,383	39,166,067	41,938,674	57,762,049	56,334,697	606,609,178	50,550,765
Budget	101,916,516	89,848,970	67,370,554	47,455,669	40,755,051	29,226,787	25,896,276	31,239,450	62,350,426	63,491,605	65,391,976	99,723,756	724,667,036	60,388,920
Prior Year	75,502,265	57,908,800	60,546,492	42,139,788	25,242,936	22,372,220	18,434,179	28,352,401	37,104,469	30,094,914	39,530,931	87,178,036	524,407,431	43,700,619
Commercial Irrigation														
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	10,744,133	5,317,364	9,807,255	14,536,190	18,360,454	25,178,307	25,820,545	263,664,405	21,972,034
Budget	31,806,969	32,170,482	23,953,236	19,136,346	16,184,358	13,285,633	10,869,113	11,380,673	18,210,497	20,136,263	20,256,740	27,676,391	245,066,703	20,422,225
Prior Year	33,744,774	30,535,334	28,118,852	21,721,253	14,886,687	8,439,663	8,440,206	9,447,251	15,636,975	14,154,511	17,559,378	22,682,938	225,367,822	18,780,652
SGS														
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	26,281,878	27,100,968	27,988,408	28,101,017	28,286,413	31,968,927	29,933,384	416,180,392	34,681,699
Budget	31,764,131	29,773,888	26,212,617	27,978,022	28,661,024	23,437,606	27,384,033	28,582,232	24,726,924	31,605,916	20,071,874	22,628,666	322,826,933	26,902,244
Prior Year	78,178,199	78,468,416	69,448,844	58,815,374	57,772,260	67,638,990	59,416,751	55,376,946	68,417,902	58,582,716	81,486,691	83,718,720	817,321,810	68,110,151
LGS														
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	36,014,141	40,978,466	52,401,985	50,298,110	418,050,492	34,837,541
Budget	51,137,660	44,700,916	38,954,200	34,714,127	32,435,703	36,602,561	33,955,022	31,959,274	40,994,427	34,737,590	52,026,852	55,817,711	488,036,044	40,669,670
Prior Year*	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Sales														
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	2,123,877	2,696,819	5,633,216	4,339,353	3,893,510	7,217,944	4,063,611	71,655,770	5,971,314
Budget	7,964,649	7,211,502	2,237,575	1,361,680	320,031	1,497,983	2,870,647	3,420,026	4,305,181	389,289	5,747,079	7,354,909	44,680,549	3,723,379
Prior Year	19,291,639	10,429,974	11,829,866	6,504,861	2,722,722	4,009,008	2,940,187	5,494,272	5,654,538	3,998,169	8,597,405	11,345,723	92,818,364	7,734,864
ReUse Water														
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	1,232,407	-	-	-	9,788,656	815,721
Budget	613,050	(292,400)	117,738	177,998	442,163	235,575	84,025	219,800	70,149	-	43,400	(118,600)	1,592,897	132,741
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	762,700	1,138,300	-	100	2,340,100	20,179,100	1,681,592
Total Sales														
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	272,090,315	262,824,137	293,796,498	310,742,223	330,835,228	410,205,051	388,886,491	4,411,198,023	367,599,835
Budget	531,332,881	468,347,126	391,907,266	330,361,397	316,564,249	303,702,017	289,131,396	292,918,198	370,784,181	368,307,716	394,038,966	482,026,603	4,539,421,995	378,285,166
Prior Year	504,840,083	419,802,207	410,811,004	324,222,832	271,907,662	310,232,817	268,052,507	269,354,665	331,161,223	278,659,140	351,057,254	496,917,327	4,237,018,722	353,084,894

*LGS is a new water customer class for FY2024.

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD		
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	ACT	AVG	
Residential															
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	152,601,010	153,302,646	157,174,649	161,205,629	169,357,747	205,533,519	192,734,742	2,287,869,826	190,655,819	
Actual vs Budget	7,708,959	32,678,690	(1,565,002)	(2,607,610)	(11,608,704)	(21,575,149)	(9,754,315)	(4,995,846)	(33,592,038)	(22,792,448)	2,920,141	(47,109,380)	(112,292,702)	(9,357,725)	
Actual vs Prior Year	21,433,067	55,837,294	(5,413,464)	4,448,962	14,405,294	(25,069,838)	2,563,849	9,672,419	(17,023,568)	19,852,127	27,375,116	(70,239,197)	37,842,061	3,153,505	
Multi-Unit 2-4															
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	1,409,153	1,552,115	1,324,190	1,401,093	1,600,113	1,856,569	1,665,225	20,165,081	1,680,423	
Actual vs Budget	108,101	293,754	196,958	(9,706)	(124,008)	(188,963)	140,361	(2,720)	(119,723)	11,847	122,213	(443,518)	284,595	23,716	
Actual vs Prior Year	(14,032)	503,062	193,292	54,034	(180,452)	(581,944)	(179,163)	(175,556)	(371,649)	271,556	315,578	(491,666)	(656,937)	(54,745)	
Multi-Unit 5+															
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	25,622,619	27,819,886	26,634,330	24,746,326	26,419,852	28,285,751	28,036,177	317,214,223	26,434,519	
Actual vs Budget	1,808,652	1,787,130	(1,812,216)	1,642,741	5,039,555	1,981,022	4,216,320	4,014,992	938,233	2,211,261	2,132,441	745,272	24,705,403	2,058,784	
Actual vs Prior Year	1,699,377	1,160,503	(652,692)	1,965,230	5,850,062	(2,018,075)	2,838,177	5,715,211	1,539,226	5,425,199	4,102,396	3,515,197	31,139,811	2,594,984	
Residential Irrigation															
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	22,127,445	12,702,243	31,763,383	39,166,067	41,938,674	57,762,049	56,334,697	606,609,178	50,550,765	
Actual vs Budget	(2,850,427)	4,616,876	3,593,888	(26,770)	(7,865,707)	(7,099,342)	(13,194,033)	523,933	(23,184,359)	(21,552,931)	(7,629,927)	(43,389,059)	(118,057,858)	(9,838,155)	
Actual vs Prior Year	23,563,824	36,557,046	10,417,950	5,289,111	7,646,408	(244,775)	(5,731,936)	3,410,982	2,061,598	11,843,760	18,231,118	(30,843,339)	82,201,747	6,850,146	
Commercial Irrigation															
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	10,744,133	5,317,364	9,807,255	14,536,190	18,360,454	25,178,307	25,820,545	263,664,405	21,972,034	
Actual vs Budget	7,389,631	9,778,635	8,960,510	3,620,110	899,880	(2,541,500)	(5,551,749)	(1,573,418)	(3,674,307)	(1,775,809)	4,921,567	(1,855,846)	18,597,702	1,549,809	
Actual vs Prior Year	5,451,826	11,413,783	4,794,894	1,035,203	2,197,551	2,304,470	(3,122,842)	360,004	(1,100,785)	4,205,943	7,618,929	3,137,607	38,296,583	3,191,382	
SGS															
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	26,281,878	27,100,968	27,988,408	28,101,017	28,286,413	31,968,927	29,933,384	416,180,392	34,681,699	
Actual vs Budget	56,380,749	6,311,243	5,635,380	3,163,393	638,951	2,844,272	(283,065)	(593,824)	3,374,093	(3,319,503)	11,897,053	7,304,718	93,353,459	7,779,455	
Actual vs Prior Year	9,966,681	(42,383,285)	(37,600,847)	(27,673,959)	(28,472,285)	(41,357,112)	(32,315,783)	(27,388,539)	(40,316,885)	(30,296,304)	(49,517,764)	(53,785,336)	(401,141,418)	(33,428,452)	
LGS															
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	36,014,141	40,978,466	52,401,985	50,298,110	418,050,492	34,837,541	
Actual vs Budget	(51,137,660)	3,666,488	(11,924,886)	(141,756)	(564,317)	(5,422,361)	(1,622,926)	1,045,745	(4,980,286)	6,240,876	375,133	(5,519,601)	(69,985,552)	(5,832,129)	
Actual vs Prior Year*	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	33,005,019	36,014,141	40,978,466	52,401,985	50,298,110	418,050,492	34,837,541	
Other Sales															
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	2,123,877	2,696,819	5,633,216	4,339,353	3,893,510	7,217,944	4,063,611	71,655,770	5,971,314	
Actual vs Budget	6,808,615	5,358,460	5,130,264	1,454,650	3,840,014	625,894	(173,828)	2,213,190	34,172	3,504,221	1,470,865	(3,291,298)	26,975,221	2,247,935	
Actual vs Prior Year	(4,518,375)	2,139,988	(4,462,027)	(3,688,531)	1,437,323	(1,885,131)	(243,368)	138,944	(1,315,185)	(104,659)	(1,379,461)	(7,282,112)	(21,162,594)	(1,763,550)	
ReUse Water															
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	1,232,407	-	-	-	9,788,656	815,721	
Actual vs Budget	3,699,850	2,248,300	1,703,662	(177,998)	(442,163)	(235,575)	(84,025)	246,249	1,162,259	-	(43,400)	118,600	8,195,759	682,980	
Actual vs Prior Year	(1,173,100)	1,688,700	(3,291,600)	(2,946,800)	(285,200)	(470,300)	(1,369,400)	(296,651)	94,107	-	(100)	(2,340,100)	(10,390,444)	(865,870)	
Total Sales															
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	272,090,315	262,824,137	293,796,498	310,742,223	330,835,228	410,205,051	388,886,491	4,411,198,023	367,599,835	
Actual vs Budget	29,916,470	66,739,576	9,918,558	6,917,056	(10,186,500)	(31,611,702)	(26,307,259)	878,301	(60,041,958)	(37,472,487)	16,166,085	(93,140,112)	(128,223,973)	(10,685,331)	
Actual vs Prior Year	56,409,268	115,284,495	(8,985,180)	13,055,621	34,470,087	(38,142,502)	(5,228,370)	24,441,833	(20,419,000)	52,176,088	59,147,797	(108,030,836)	174,179,301	14,514,942	

*LGS is a new water customer class for FY2024.

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	ACT	AVG
Residential														
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 1,224,701	\$ 1,225,157	\$ 1,264,360	\$ 1,311,569	\$ 1,380,713	\$ 1,698,681	\$ 1,602,679	\$ 18,393,762	\$ 1,532,814
Budget	\$ 1,675,906	\$ 1,751,798	\$ 1,399,790	\$ 1,266,297	\$ 1,417,615	\$ 1,371,746	\$ 1,309,178	\$ 1,327,852	\$ 1,556,587	\$ 1,555,006	\$ 1,524,293	\$ 2,174,220	\$ 18,330,287	\$ 1,527,524
Prior Year	\$ 1,435,468	\$ 1,424,172	\$ 1,284,509	\$ 1,094,836	\$ 976,144	\$ 1,109,772	\$ 972,939	\$ 975,688	\$ 1,119,548	\$ 994,105	\$ 1,081,313	\$ 1,877,030	\$ 14,345,524	\$ 1,195,460
Multi-Unit 2-4														
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 15,725	\$ 16,542	\$ 15,215	\$ 15,642	\$ 16,683	\$ 17,997	\$ 17,038	\$ 206,073	\$ 17,173
Budget	\$ 20,133	\$ 22,197	\$ 18,479	\$ 17,431	\$ 18,354	\$ 19,284	\$ 18,172	\$ 17,245	\$ 18,850	\$ 18,850	\$ 18,771	\$ 19,097	\$ 226,861	\$ 18,905
Prior Year	\$ 19,176	\$ 17,926	\$ 16,683	\$ 15,050	\$ 16,630	\$ 17,942	\$ 16,479	\$ 15,143	\$ 16,741	\$ 14,251	\$ 15,697	\$ 19,667	\$ 201,384	\$ 16,782
Multi-Unit 5+														
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 255,463	\$ 270,981	\$ 260,191	\$ 253,681	\$ 264,100	\$ 282,857	\$ 281,234	\$ 3,121,403	\$ 260,117
Budget	\$ 266,804	\$ 279,964	\$ 279,474	\$ 255,175	\$ 286,678	\$ 288,535	\$ 286,395	\$ 284,064	\$ 303,441	\$ 307,495	\$ 324,390	\$ 332,524	\$ 3,494,938	\$ 291,245
Prior Year	\$ 241,401	\$ 258,388	\$ 239,757	\$ 226,649	\$ 220,174	\$ 253,389	\$ 237,675	\$ 217,571	\$ 228,301	\$ 219,562	\$ 238,015	\$ 250,082	\$ 2,830,965	\$ 235,914
Residential Irrigation														
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 421,127	\$ 336,040	\$ 510,115	\$ 579,763	\$ 607,603	\$ 759,352	\$ 748,905	\$ 8,221,118	\$ 685,093
Budget	\$ 1,313,660	\$ 1,294,138	\$ 883,179	\$ 648,549	\$ 645,400	\$ 503,243	\$ 523,810	\$ 556,623	\$ 880,800	\$ 887,423	\$ 893,619	\$ 1,497,120	\$ 10,527,563	\$ 877,297
Prior Year	\$ 876,750	\$ 751,431	\$ 715,064	\$ 518,829	\$ 371,346	\$ 345,040	\$ 310,796	\$ 396,258	\$ 477,192	\$ 414,872	\$ 509,250	\$ 1,061,422	\$ 6,748,249	\$ 562,354
Commercial Irrigation														
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 136,872	\$ 75,668	\$ 126,890	\$ 181,555	\$ 227,164	\$ 308,632	\$ 316,242	\$ 3,241,769	\$ 270,147
Budget	\$ 424,000	\$ 469,064	\$ 310,403	\$ 234,897	\$ 222,201	\$ 184,303	\$ 153,156	\$ 159,906	\$ 254,611	\$ 278,386	\$ 289,375	\$ 453,306	\$ 3,433,607	\$ 286,134
Prior Year	\$ 405,253	\$ 401,101	\$ 328,274	\$ 240,204	\$ 164,788	\$ 94,550	\$ 97,630	\$ 109,278	\$ 175,133	\$ 159,224	\$ 199,913	\$ 450,757	\$ 2,826,105	\$ 235,509
SGS														
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 267,962	\$ 267,142	\$ 280,827	\$ 278,162	\$ 278,855	\$ 306,124	\$ 289,869	\$ 3,982,698	\$ 331,892
Budget	\$ 434,693	\$ 388,629	\$ 291,965	\$ 281,162	\$ 354,123	\$ 315,931	\$ 346,915	\$ 358,489	\$ 321,559	\$ 380,198	\$ 303,624	\$ 361,533	\$ 4,138,823	\$ 344,902
Prior Year	\$ 616,047	\$ 678,287	\$ 558,030	\$ 450,987	\$ 450,757	\$ 516,134	\$ 461,766	\$ 434,665	\$ 524,879	\$ 456,551	\$ 640,254	\$ 782,262	\$ 6,570,621	\$ 547,552
LGS														
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 242,619	\$ 269,394	\$ 329,525	\$ 316,289	\$ 2,759,406	\$ 229,951
Budget	\$ 290,436	\$ 325,951	\$ 289,257	\$ 252,430	\$ 233,412	\$ 259,549	\$ 243,598	\$ 229,544	\$ 295,520	\$ 250,856	\$ 393,263	\$ 491,342	\$ 3,555,158	\$ 296,263
Prior Year*	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Sales														
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 50,717	\$ 55,637	\$ 84,058	\$ 72,005	\$ 67,633	\$ 129,903	\$ 68,540	\$ 1,099,725	\$ 91,644
Budget	\$ 110,730	\$ 111,853	\$ 30,081	\$ 20,845	\$ 5,798	\$ 28,566	\$ 61,475	\$ 65,352	\$ 76,585	\$ 6,437	\$ 99,497	\$ 116,220	\$ 733,440	\$ 61,120
Prior Year	\$ 241,628	\$ 145,742	\$ 143,275	\$ 89,711	\$ 50,358	\$ 62,775	\$ 51,200	\$ 76,503	\$ 77,511	\$ 61,662	\$ 113,431	\$ 154,924	\$ 1,268,718	\$ 105,727
ReUse Water														
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 7,330	\$ 56	\$ 56	\$ 55,664	\$ 4,639
Budget	\$ 3,125	\$ (1,309)	\$ 634	\$ 952	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,402	\$ 284
Prior Year	\$ 25,191	\$ 1,078	\$ 24,810	\$ 14,201	\$ 1,166	\$ 2,072	\$ 6,476	\$ 3,504	\$ 5,344	\$ 56	\$ 57	\$ 11,230	\$ 95,183	\$ 7,932
Total Sales														
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 2,587,060	\$ 2,465,474	\$ 2,767,131	\$ 2,942,326	\$ 3,112,201	\$ 3,833,126	\$ 3,640,853	\$ 41,081,619	\$ 3,423,468
Budget	\$ 4,539,486	\$ 4,642,285	\$ 3,503,262	\$ 2,977,737	\$ 3,183,581	\$ 2,971,156	\$ 2,942,699	\$ 2,999,075	\$ 3,707,953	\$ 3,684,651	\$ 3,846,830	\$ 5,445,363	\$ 44,444,079	\$ 3,703,673
Prior Year	\$ 3,860,913	\$ 3,678,125	\$ 3,310,402	\$ 2,650,466	\$ 2,251,363	\$ 2,401,673	\$ 2,154,961	\$ 2,228,611	\$ 2,624,648	\$ 2,320,282	\$ 2,797,930	\$ 4,607,375	\$ 34,886,751	\$ 2,907,229

*LGS is a new water customer class for FY2024.

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	ACT	AVG
Residential														
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 1,224,701	\$ 1,225,157	\$ 1,264,360	\$ 1,311,569	\$ 1,380,713	\$ 1,698,681	\$ 1,602,679	\$ 18,393,762	\$ 1,532,814
Actual vs Budget	\$ 151,366	\$ 640,842	\$ 347,460	\$ 146,062	\$ (111,232)	\$ (147,045)	\$ (84,021)	\$ (63,492)	\$ (245,018)	\$ (174,293)	\$ 174,388	\$ (571,541)	\$ 63,476	\$ 5,290
Actual vs Prior Year	\$ 391,804	\$ 968,468	\$ 462,741	\$ 317,523	\$ 330,238	\$ 114,929	\$ 252,218	\$ 288,671	\$ 192,020	\$ 386,609	\$ 617,368	\$ (274,351)	\$ 4,048,238	\$ 337,353
Multi-Unit 2-4														
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 15,725	\$ 16,542	\$ 15,215	\$ 15,642	\$ 16,683	\$ 17,997	\$ 17,038	\$ 206,073	\$ 17,173
Actual vs Budget	\$ (176)	\$ (1,410)	\$ 10	\$ (1,060)	\$ (2,726)	\$ (3,559)	\$ (1,630)	\$ (2,030)	\$ (3,208)	\$ (2,167)	\$ (774)	\$ (2,059)	\$ (20,788)	\$ (1,732)
Actual vs Prior Year	\$ 781	\$ 2,861	\$ 1,806	\$ 1,321	\$ (1,001)	\$ (2,216)	\$ 62	\$ 73	\$ (1,099)	\$ 2,432	\$ 2,299	\$ (2,629)	\$ 4,689	\$ 391
Multi-Unit 5+														
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 255,463	\$ 270,981	\$ 260,191	\$ 253,681	\$ 264,100	\$ 282,857	\$ 281,234	\$ 3,121,403	\$ 260,117
Actual vs Budget	\$ (6,575)	\$ (22,694)	\$ (48,714)	\$ (13,849)	\$ (23,366)	\$ (33,072)	\$ (15,414)	\$ (23,873)	\$ (49,760)	\$ (43,395)	\$ (41,533)	\$ (51,290)	\$ (373,536)	\$ (31,128)
Actual vs Prior Year	\$ 18,828	\$ (1,119)	\$ (8,997)	\$ 14,676	\$ 43,138	\$ 2,074	\$ 33,305	\$ 42,620	\$ 25,380	\$ 44,539	\$ 44,842	\$ 31,152	\$ 290,437	\$ 24,203
Residential Irrigation														
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 421,127	\$ 336,040	\$ 510,115	\$ 579,763	\$ 607,603	\$ 759,352	\$ 748,905	\$ 8,221,118	\$ 685,093
Actual vs Budget	\$ (195,872)	\$ (188,188)	\$ (13,200)	\$ (1,062)	\$ (128,393)	\$ (82,116)	\$ (187,769)	\$ (46,507)	\$ (301,037)	\$ (279,820)	\$ (134,267)	\$ (748,215)	\$ (2,306,445)	\$ (192,204)
Actual vs Prior Year	\$ 241,039	\$ 354,519	\$ 154,916	\$ 128,659	\$ 145,660	\$ 76,086	\$ 25,245	\$ 113,857	\$ 102,571	\$ 192,731	\$ 250,102	\$ (312,517)	\$ 1,472,868	\$ 122,739
Commercial Irrigation														
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 136,872	\$ 75,668	\$ 126,890	\$ 181,555	\$ 227,164	\$ 308,632	\$ 316,242	\$ 3,241,769	\$ 270,147
Actual vs Budget	\$ 53,522	\$ 35,845	\$ 88,505	\$ 41,894	\$ (11,584)	\$ (47,431)	\$ (77,488)	\$ (33,016)	\$ (73,056)	\$ (51,223)	\$ 19,257	\$ (137,064)	\$ (191,838)	\$ (15,987)
Actual vs Prior Year	\$ 72,269	\$ 103,808	\$ 70,634	\$ 36,587	\$ 45,828	\$ 42,322	\$ (21,962)	\$ 17,612	\$ 6,423	\$ 67,940	\$ 108,719	\$ (134,515)	\$ 415,664	\$ 34,639
SGS														
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 267,962	\$ 267,142	\$ 280,827	\$ 278,162	\$ 278,855	\$ 306,124	\$ 289,869	\$ 3,982,698	\$ 331,892
Actual vs Budget	\$ 330,538	\$ (44,787)	\$ 17,063	\$ 22,896	\$ (62,525)	\$ (47,969)	\$ (79,774)	\$ (77,663)	\$ (43,397)	\$ (101,343)	\$ 2,500	\$ (71,664)	\$ (156,125)	\$ (13,010)
Actual vs Prior Year	\$ 149,184	\$ (334,445)	\$ (249,002)	\$ (146,929)	\$ (159,159)	\$ (248,172)	\$ (194,625)	\$ (153,839)	\$ (246,717)	\$ (177,696)	\$ (334,131)	\$ (492,393)	\$ (2,587,923)	\$ (215,660)
LGS														
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 242,619	\$ 269,394	\$ 329,525	\$ 316,289	\$ 2,759,406	\$ 229,951
Actual vs Budget	\$ (290,436)	\$ (37,006)	\$ (80,664)	\$ (17,421)	\$ (19,812)	\$ (45,112)	\$ (25,346)	\$ (6,801)	\$ (52,900)	\$ 18,538	\$ (63,738)	\$ (175,052)	\$ (795,751)	\$ (66,313)
Actual vs Prior Year*	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 222,743	\$ 242,619	\$ 269,394	\$ 329,525	\$ 316,289	\$ 2,759,406	\$ 229,951
Other Sales														
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 50,717	\$ 55,637	\$ 84,058	\$ 72,005	\$ 67,633	\$ 129,903	\$ 68,540	\$ 1,099,725	\$ 91,644
Actual vs Budget	\$ 68,689	\$ 43,939	\$ 75,222	\$ 37,625	\$ 66,451	\$ 22,151	\$ (5,838)	\$ 18,706	\$ (4,580)	\$ 61,196	\$ 30,406	\$ (47,680)	\$ 366,285	\$ 30,524
Actual vs Prior Year	\$ (62,209)	\$ 10,051	\$ (37,972)	\$ (31,240)	\$ 21,891	\$ (12,059)	\$ 4,437	\$ 7,554	\$ (5,505)	\$ 5,971	\$ 16,472	\$ (86,385)	\$ (168,993)	\$ (14,083)
ReUse Water														
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 7,330	\$ 56	\$ 56	\$ 56	\$ 55,664	\$ 4,639
Actual vs Budget	\$ 9,420	\$ 1,482	\$ (470)	\$ 31,430	\$ 56	\$ 56	\$ 56	\$ 2,732	\$ 7,330	\$ 56	\$ 56	\$ 56	\$ 52,262	\$ 4,355
Actual vs Prior Year	\$ (12,646)	\$ (905)	\$ (24,645)	\$ 18,181	\$ (1,109)	\$ (2,016)	\$ (6,419)	\$ (772)	\$ 1,986	\$ -	\$ (0)	\$ (11,173)	\$ (39,519)	\$ (3,293)
Total Sales														
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 2,587,060	\$ 2,465,474	\$ 2,767,131	\$ 2,942,326	\$ 3,112,201	\$ 3,833,126	\$ 3,640,853	\$ 41,081,619	\$ 3,423,468
Actual vs Budget	\$ 120,477	\$ 428,022	\$ 385,214	\$ 246,514	\$ (293,131)	\$ (384,096)	\$ (477,225)	\$ (231,944)	\$ (765,628)	\$ (572,450)	\$ (13,704)	\$ (1,804,510)	\$ (3,362,460)	\$ (280,205)
Actual vs Prior Year	\$ 799,050	\$ 1,392,183	\$ 578,074	\$ 573,785	\$ 639,087	\$ 185,387	\$ 310,513	\$ 538,520	\$ 317,677	\$ 791,919	\$ 1,035,196	\$ (966,522)	\$ 6,194,869	\$ 516,239

*LGS is a new water customer class for FY2024.

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AVG	
Residential														
Actuals	35,651	35,942	36,027	36,016	36,162	36,355	36,419	36,593	36,820	36,952	36,951	37,276	36,430	
Budget	35,570	35,716	35,862	36,008	36,154	36,301	36,447	36,593	36,739	36,885	37,031	37,177	36,374	
Prior Year	34,863	35,017	35,058	35,080	35,155	35,219	35,235	35,253	35,155	35,186	35,467	35,570	35,188	
Multi-Unit 2-4														
Actuals	208	221	225	223	223	222	222	220	221	220	217	219	220	
Budget	208	208	208	208	208	208	208	208	208	208	208	208	208	
Prior Year	208	209	207	208	209	209	208	206	207	207	208	207	208	
Multi-Unit 5+														
Actuals	262	269	270	270	273	274	275	275	275	283	296	296	277	
Budget	260	262	263	265	267	269	270	272	274	276	277	279	269	
Prior Year	257	257	259	258	258	259	259	259	257	259	258	258	258	
Residential Irrigation														
Actuals	13,351	13,533	13,592	13,610	13,749	13,895	13,938	14,102	14,262	14,391	14,454	14,656	13,961	
Budget	13,187	13,347	13,507	13,668	13,828	13,989	14,149	14,310	14,470	14,630	14,791	14,951	14,069	
Prior Year	12,525	12,620	12,669	12,722	12,769	12,831	12,901	12,915	12,893	12,940	13,069	13,198	12,838	
Commercial Irrigation														
Actuals	884	830	831	832	839	841	845	847	852	856	864	872	849	
Budget	860	862	865	868	870	873	876	878	881	884	886	889	874	
Prior Year	845	835	849	849	850	851	855	858	859	866	875	878	856	
SGS														
Actuals	2,412	2,282	2,276	2,270	2,290	2,293	2,290	2,293	2,297	2,297	2,410	2,295	2,309	
Budget	2,268	2,271	2,275	2,277	2,280	2,284	2,288	2,292	2,296	2,300	2,304	2,308	2,287	
Prior Year	2,380	2,383	2,383	2,386	2,389	2,384	2,383	2,382	2,381	2,389	2,401	2,408	2,387	
LGS														
Actuals	-	198	213	214	219	218	219	221	225	228	229	229	201	
Budget	133	134	134	136	137	137	137	137	137	137	137	137	136	
Prior Year*	-	-	-	-	-	-	-	-	-	-	-	-	-	
Other Sales														
Actuals	109	111	116	108	107	102	101	100	104	102	205	97	114	
Budget	151	153	154	156	158	160	161	163	165	166	168	170	160	
Prior Year	124	124	130	132	124	120	115	118	114	115	111	117	120	
ReUse Water														
Actuals	1	1	1	1	1	1	1	1	1	1	1	1	1	
Budget	1	1	1	1	1	1	1	1	1	1	1	1	1	
Prior Year	1	1	1	1	1	1	1	1	1	1	1	1	1	
Total Meters														
Actuals	52,878	53,387	53,551	53,544	53,863	54,201	54,310	54,652	55,057	55,330	55,627	55,941	54,362	
Budget	52,638	52,954	53,271	53,588	53,904	54,221	54,537	54,854	55,171	55,487	55,804	56,121	54,379	
Prior Year	51,203	51,446	51,556	51,636	51,755	51,874	51,957	51,992	51,867	51,963	52,390	52,637	51,856	

*LGS is a new water customer class for FY2024.

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	ACT	AVG
Residential														
Actuals	8,033	7,511	5,704	4,790	4,469	4,198	4,209	4,295	4,378	4,583	5,562	5,170	62,903	5,242
Budget	7,834	6,644	5,774	4,863	4,791	4,798	4,474	4,432	5,302	5,209	5,471	6,451	66,045	5,504
Prior Year	7,600	6,115	6,016	4,791	4,187	5,045	4,278	4,184	5,070	4,249	5,023	7,393	63,951	5,329
Multi-Unit 2-4														
Actuals	10,778	10,472	8,444	6,826	6,181	6,348	6,992	6,019	6,340	7,273	8,556	7,604	91,832	7,653
Budget	10,258	9,714	8,187	7,365	7,223	7,683	6,787	6,379	7,312	7,636	8,338	8,696	95,579	7,965
Prior Year	10,846	8,666	8,245	7,059	7,458	9,527	8,323	7,280	8,564	6,418	7,409	10,420	100,214	8,351
Multi-Unit 5+														
Actuals	103,570	101,888	83,235	90,885	102,907	93,513	101,163	96,852	89,987	93,356	95,560	94,717	1,147,634	95,636
Budget	97,504	97,976	92,253	86,400	86,426	88,050	87,340	83,159	86,970	87,871	94,331	97,816	1,086,097	90,508
Prior Year	98,973	102,130	89,290	87,495	86,215	106,721	96,454	80,769	90,300	81,060	93,734	95,043	1,108,184	92,349
Residential Irrigation														
Actuals	7,420	6,980	5,221	3,485	2,392	1,592	911	2,252	2,746	2,914	3,996	3,844	43,755	3,646
Budget	7,729	6,732	4,988	3,472	2,947	2,089	1,830	2,183	4,309	4,340	4,421	6,670	51,710	4,309
Prior Year	6,028	4,589	4,779	3,312	1,977	1,744	1,429	2,195	2,878	2,326	3,025	6,605	40,887	3,407
Commercial Irrigation														
Actuals	44,340	50,541	39,607	27,352	20,363	12,775	6,293	11,579	17,061	21,449	29,142	29,611	310,112	25,843
Budget	36,995	37,302	27,689	22,053	18,594	15,217	12,411	12,956	20,668	22,785	22,853	31,130	280,652	23,388
Prior Year	39,935	36,569	33,120	25,585	17,514	9,917	9,872	11,011	18,204	16,345	20,068	25,835	263,973	21,998
SGS														
Actuals	36,544	15,813	13,993	13,719	12,795	11,462	11,834	12,206	12,234	12,315	13,265	13,043	179,222	14,935
Budget	14,002	13,108	11,520	12,285	12,568	10,260	11,966	12,468	10,767	13,739	8,710	9,803	141,194	11,766
Prior Year	32,848	32,928	29,143	24,650	24,183	28,372	24,934	23,248	28,735	24,522	33,939	34,767	342,269	28,522
LGS														
Actuals	-	244,280	126,898	161,553	145,531	143,028	147,635	149,344	160,063	179,730	228,830	219,642	1,906,535	158,878
Budget	384,494	333,589	290,703	255,251	236,757	267,172	247,847	233,279	299,229	253,559	379,758	407,429	3,589,067	299,089
Prior Year*	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Sales														
Actuals	135,535	113,243	63,516	26,077	38,879	20,822	26,701	56,332	41,725	38,172	35,209	41,893	638,104	53,175
Budget	52,714	47,203	14,487	8,721	2,028	9,391	17,809	20,998	26,162	2,342	34,224	43,364	279,441	23,287
Prior Year	155,578	84,113	90,999	49,279	21,957	33,408	25,567	46,562	49,601	34,767	77,454	96,972	766,257	63,855
ReUse Water														
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	466,049	1,232,407	-	-	-	9,788,656	815,721
Budget	613,050	(292,400)	117,738	177,998	442,163	235,575	84,025	219,800	70,149	-	43,400	(118,600)	1,592,897	132,741
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	762,700	1,138,300	-	100	2,340,100	20,179,100	1,681,592

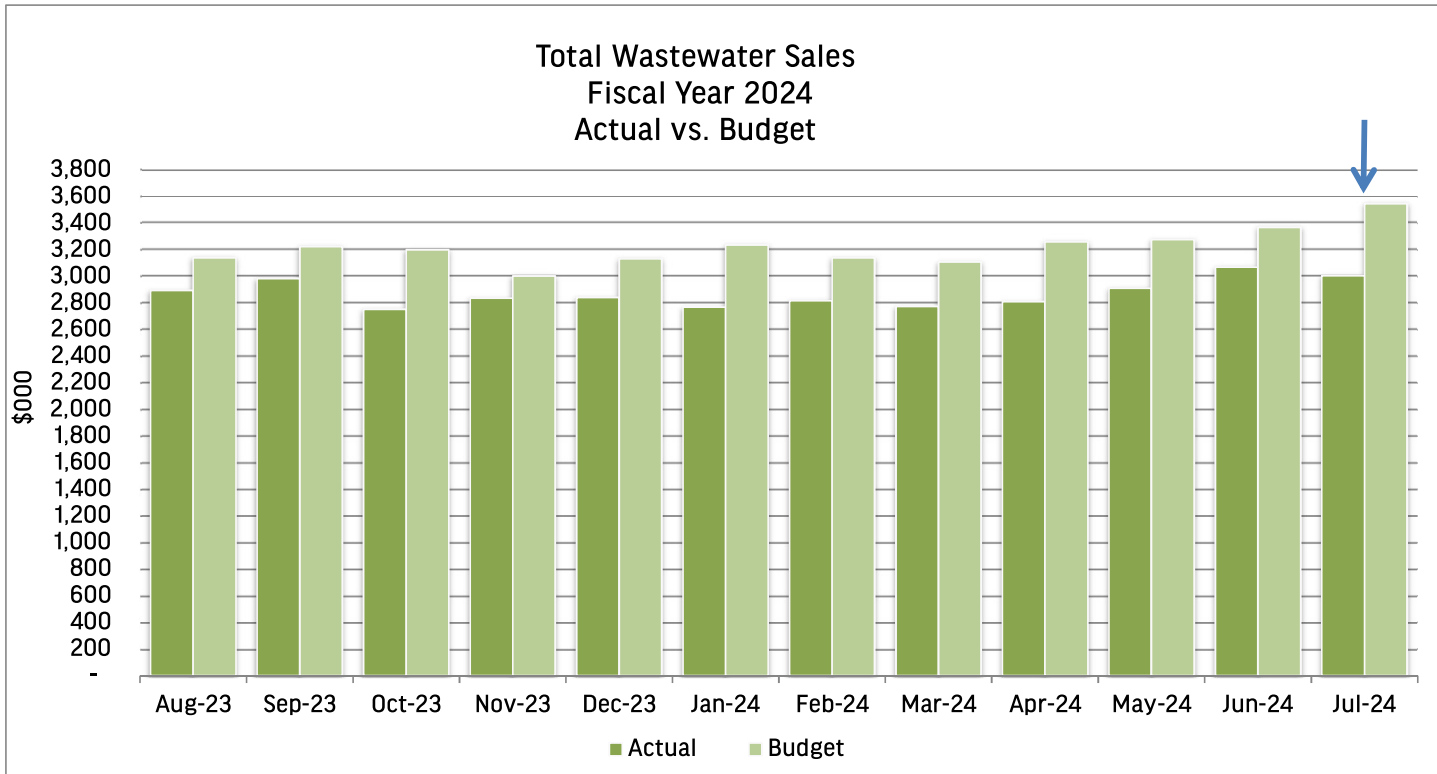
*LGS is a new water customer class for FY2024.

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AVG	
Residential														
Actuals	\$ 0.0064	\$ 0.0089	\$ 0.0085	\$ 0.0082	\$ 0.0081	\$ 0.0080	\$ 0.0080	\$ 0.0080	\$ 0.0081	\$ 0.0082	\$ 0.0083	\$ 0.0083	\$ 0.0081	\$ 0.0081
Budget	\$ 0.0060	\$ 0.0074	\$ 0.0068	\$ 0.0072	\$ 0.0082	\$ 0.0079	\$ 0.0080	\$ 0.0082	\$ 0.0080	\$ 0.0081	\$ 0.0075	\$ 0.0091	\$ 0.0077	\$ 0.0077
Prior Year	\$ 0.0054	\$ 0.0067	\$ 0.0061	\$ 0.0065	\$ 0.0066	\$ 0.0062	\$ 0.0065	\$ 0.0066	\$ 0.0063	\$ 0.0066	\$ 0.0061	\$ 0.0071	\$ 0.0064	\$ 0.0064
Multi-Unit 2-4														
Actuals	\$ 0.0089	\$ 0.0090	\$ 0.0097	\$ 0.0108	\$ 0.0113	\$ 0.0112	\$ 0.0107	\$ 0.0115	\$ 0.0112	\$ 0.0104	\$ 0.0097	\$ 0.0102	\$ 0.0104	\$ 0.0104
Budget	\$ 0.0094	\$ 0.0110	\$ 0.0109	\$ 0.0114	\$ 0.0122	\$ 0.0121	\$ 0.0129	\$ 0.0130	\$ 0.0124	\$ 0.0119	\$ 0.0108	\$ 0.0106	\$ 0.0115	\$ 0.0115
Prior Year	\$ 0.0085	\$ 0.0099	\$ 0.0098	\$ 0.0103	\$ 0.0107	\$ 0.0090	\$ 0.0095	\$ 0.0101	\$ 0.0094	\$ 0.0107	\$ 0.0102	\$ 0.0091	\$ 0.0098	\$ 0.0098
Multi-Unit 5+														
Actuals	\$ 0.0096	\$ 0.0094	\$ 0.0103	\$ 0.0098	\$ 0.0094	\$ 0.0100	\$ 0.0097	\$ 0.0098	\$ 0.0103	\$ 0.0100	\$ 0.0100	\$ 0.0100	\$ 0.0099	\$ 0.0099
Budget	\$ 0.0105	\$ 0.0109	\$ 0.0115	\$ 0.0111	\$ 0.0124	\$ 0.0122	\$ 0.0121	\$ 0.0126	\$ 0.0127	\$ 0.0127	\$ 0.0124	\$ 0.0122	\$ 0.0120	\$ 0.0120
Prior Year	\$ 0.0095	\$ 0.0098	\$ 0.0104	\$ 0.0100	\$ 0.0099	\$ 0.0092	\$ 0.0095	\$ 0.0104	\$ 0.0098	\$ 0.0105	\$ 0.0098	\$ 0.0102	\$ 0.0099	\$ 0.0099
Residential Irrigation														
Actuals	\$ 0.0113	\$ 0.0117	\$ 0.0123	\$ 0.0137	\$ 0.0157	\$ 0.0190	\$ 0.0265	\$ 0.0161	\$ 0.0148	\$ 0.0145	\$ 0.0131	\$ 0.0133	\$ 0.0152	\$ 0.0152
Budget	\$ 0.0129	\$ 0.0144	\$ 0.0131	\$ 0.0137	\$ 0.0158	\$ 0.0172	\$ 0.0202	\$ 0.0178	\$ 0.0141	\$ 0.0140	\$ 0.0137	\$ 0.0150	\$ 0.0152	\$ 0.0152
Prior Year	\$ 0.0116	\$ 0.0130	\$ 0.0118	\$ 0.0123	\$ 0.0147	\$ 0.0154	\$ 0.0169	\$ 0.0140	\$ 0.0129	\$ 0.0138	\$ 0.0129	\$ 0.0122	\$ 0.0134	\$ 0.0134
Commercial Irrigation														
Actuals	\$ 0.0122	\$ 0.0120	\$ 0.0121	\$ 0.0122	\$ 0.0123	\$ 0.0127	\$ 0.0142	\$ 0.0129	\$ 0.0125	\$ 0.0124	\$ 0.0123	\$ 0.0122	\$ 0.0125	\$ 0.0125
Budget	\$ 0.0133	\$ 0.0146	\$ 0.0130	\$ 0.0123	\$ 0.0137	\$ 0.0139	\$ 0.0141	\$ 0.0141	\$ 0.0140	\$ 0.0138	\$ 0.0143	\$ 0.0164	\$ 0.0139	\$ 0.0139
Prior Year	\$ 0.0120	\$ 0.0131	\$ 0.0117	\$ 0.0111	\$ 0.0111	\$ 0.0112	\$ 0.0116	\$ 0.0116	\$ 0.0112	\$ 0.0112	\$ 0.0114	\$ 0.0199	\$ 0.0122	\$ 0.0122
SGS														
Actuals	\$ 0.0087	\$ 0.0095	\$ 0.0097	\$ 0.0098	\$ 0.0100	\$ 0.0102	\$ 0.0099	\$ 0.0100	\$ 0.0099	\$ 0.0099	\$ 0.0096	\$ 0.0097	\$ 0.0097	\$ 0.0097
Budget	\$ 0.0137	\$ 0.0131	\$ 0.0111	\$ 0.0100	\$ 0.0124	\$ 0.0135	\$ 0.0127	\$ 0.0125	\$ 0.0130	\$ 0.0120	\$ 0.0151	\$ 0.0160	\$ 0.0129	\$ 0.0129
Prior Year	\$ 0.0079	\$ 0.0086	\$ 0.0080	\$ 0.0077	\$ 0.0078	\$ 0.0076	\$ 0.0078	\$ 0.0078	\$ 0.0077	\$ 0.0078	\$ 0.0079	\$ 0.0093	\$ 0.0080	\$ 0.0080
LGS														
Actuals	\$ -	\$ 0.0060	\$ 0.0077	\$ 0.0068	\$ 0.0067	\$ 0.0069	\$ 0.0068	\$ 0.0067	\$ 0.0067	\$ 0.0066	\$ 0.0063	\$ 0.0063	\$ 0.0061	\$ 0.0061
Budget	\$ 0.0057	\$ 0.0073	\$ 0.0074	\$ 0.0073	\$ 0.0072	\$ 0.0071	\$ 0.0072	\$ 0.0072	\$ 0.0072	\$ 0.0072	\$ 0.0076	\$ 0.0088	\$ 0.0073	\$ 0.0073
Prior Year*	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Sales														
Actuals	\$ 0.0121	\$ 0.0124	\$ 0.0143	\$ 0.0208	\$ 0.0174	\$ 0.0239	\$ 0.0206	\$ 0.0149	\$ 0.0166	\$ 0.0174	\$ 0.0180	\$ 0.0169	\$ 0.0171	\$ 0.0171
Budget	\$ 0.0139	\$ 0.0155	\$ 0.0134	\$ 0.0153	\$ 0.0181	\$ 0.0191	\$ 0.0214	\$ 0.0191	\$ 0.0178	\$ 0.0165	\$ 0.0173	\$ 0.0158	\$ 0.0169	\$ 0.0169
Prior Year	\$ 0.0125	\$ 0.0140	\$ 0.0121	\$ 0.0138	\$ 0.0185	\$ 0.0157	\$ 0.0174	\$ 0.0139	\$ 0.0137	\$ 0.0154	\$ 0.0132	\$ 0.0137	\$ 0.0145	\$ 0.0145
ReUse Water														
Actuals	\$ 0.0029	\$ 0.0001	\$ 0.0001	\$ -	\$ -	\$ -	\$ -	\$ 0.0059	\$ 0.0059	\$ -	\$ -	\$ -	\$ 0.0012	\$ 0.0012
Budget	\$ 0.0051	\$ 0.0045	\$ 0.0054	\$ 0.0053	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.0017	\$ 0.0017
Prior Year	\$ 0.0046	\$ 0.0040	\$ 0.0049	\$ 0.0048	\$ 0.0041	\$ 0.0044	\$ 0.0047	\$ 0.0046	\$ 0.0047	\$ -	\$ 0.5671	\$ 0.0048	\$ 0.0511	\$ 0.0511

*LGS is a new water customer class for FY2024.

WASTEWATER STATISTICS



Month	Total Wastewater Sales (\$000)	
	Actual	Budget
Aug-23	\$ 2,896	\$ 3,143
Sep-23	\$ 2,985	\$ 3,224
Oct-23	\$ 2,755	\$ 3,201
Nov-23	\$ 2,838	\$ 3,005
Dec-23	\$ 2,845	\$ 3,134
Jan-24	\$ 2,770	\$ 3,238
Feb-24	\$ 2,818	\$ 3,140
Mar-24	\$ 2,775	\$ 3,111
Apr-24	\$ 2,811	\$ 3,260
May-24	\$ 2,911	\$ 3,279
Jun-24	\$ 3,069	\$ 3,370
Jul-24	\$ 3,007	\$ 3,549
TOTAL	\$ 34,483	\$ 38,653

Customer Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	31,342	2.45%	32,109	5.22%	33,786
Other	2,554	1.25%	2,586	3.44%	2,675
TOTAL	33,896	2.36%	34,695	5.09%	36,461

WASTEWATER SUPPLEMENTAL INFORMATION

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	ACT	AVG
Residential														
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 1,732,442	\$ 1,739,432	\$ 1,718,326	\$ 1,726,642	\$ 1,768,497	\$ 1,821,523	\$ 1,785,761	\$ 20,880,164	\$ 1,740,014
Budget	\$ 1,877,005	\$ 1,952,128	\$ 1,949,215	\$ 1,872,739	\$ 1,976,311	\$ 2,036,536	\$ 1,986,258	\$ 1,949,832	\$ 2,012,386	\$ 2,020,816	\$ 2,051,641	\$ 2,088,133	\$ 23,772,999	\$ 1,981,083
Prior Year	\$ 1,431,988	\$ 1,602,167	\$ 1,517,326	\$ 1,513,842	\$ 1,516,902	\$ 1,594,334	\$ 1,541,595	\$ 1,489,397	\$ 1,595,886	\$ 1,501,037	\$ 1,574,447	\$ 1,596,669	\$ 18,475,588	\$ 1,539,632
Multi-Unit 2-4														
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 15,819	\$ 15,767	\$ 15,496	\$ 15,387	\$ 15,704	\$ 16,018	\$ 15,673	\$ 188,646	\$ 15,721
Budget	\$ 15,982	\$ 16,707	\$ 16,656	\$ 15,857	\$ 16,392	\$ 16,876	\$ 16,643	\$ 16,260	\$ 17,527	\$ 17,100	\$ 17,207	\$ 17,458	\$ 200,665	\$ 16,722
Prior Year	\$ 12,873	\$ 14,215	\$ 13,595	\$ 13,583	\$ 13,704	\$ 14,466	\$ 13,990	\$ 13,418	\$ 14,418	\$ 13,538	\$ 14,220	\$ 14,130	\$ 166,149	\$ 13,846
Multi-Unit 5+														
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 349,101	\$ 367,256	\$ 344,244	\$ 338,402	\$ 352,669	\$ 371,761	\$ 370,164	\$ 4,246,451	\$ 353,871
Budget	\$ 387,068	\$ 401,507	\$ 399,515	\$ 372,282	\$ 397,709	\$ 411,152	\$ 404,255	\$ 389,172	\$ 404,391	\$ 411,324	\$ 422,123	\$ 448,523	\$ 4,849,021	\$ 404,085
Prior Year	\$ 324,197	\$ 352,643	\$ 334,562	\$ 322,131	\$ 318,915	\$ 360,340	\$ 334,996	\$ 310,016	\$ 325,846	\$ 312,742	\$ 333,832	\$ 342,786	\$ 3,973,006	\$ 331,084
SGS														
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 671,740	\$ 694,327	\$ 696,069	\$ 729,560	\$ 772,851	\$ 858,431	\$ 833,909	\$ 9,151,096	\$ 762,591
Budget	\$ 861,177	\$ 851,972	\$ 833,952	\$ 741,792	\$ 741,660	\$ 771,065	\$ 730,594	\$ 753,402	\$ 823,837	\$ 827,305	\$ 877,152	\$ 992,422	\$ 9,806,330	\$ 817,194
Prior Year	\$ 720,511	\$ 787,794	\$ 743,962	\$ 649,301	\$ 662,503	\$ 740,317	\$ 672,769	\$ 629,555	\$ 741,030	\$ 651,870	\$ 814,086	\$ 902,365	\$ 8,716,062	\$ 726,338
Schertz Sewer														
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 1,311	\$ 1,407	\$ 1,192	\$ 1,449	\$ 1,543	\$ 1,599	\$ 1,535	\$ 16,485	\$ 1,374
Budget	\$ 1,902	\$ 1,867	\$ 1,902	\$ 1,865	\$ 1,853	\$ 2,085	\$ 2,178	\$ 1,877	\$ 2,082	\$ 2,112	\$ 2,171	\$ 2,123	\$ 24,017	\$ 2,001
Prior Year	\$ 1,476	\$ 1,282	\$ 1,310	\$ 1,306	\$ 1,194	\$ 1,269	\$ 1,425	\$ 1,178	\$ 1,251	\$ 1,272	\$ 1,307	\$ 1,264	\$ 15,534	\$ 1,294
Total Sales														
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 2,770,413	\$ 2,818,188	\$ 2,775,328	\$ 2,811,440	\$ 2,911,265	\$ 3,069,331	\$ 3,007,043	\$ 34,482,842	\$ 2,873,570
Budget	\$ 3,143,133	\$ 3,224,180	\$ 3,201,239	\$ 3,004,535	\$ 3,133,925	\$ 3,237,713	\$ 3,139,928	\$ 3,110,543	\$ 3,260,223	\$ 3,278,657	\$ 3,370,295	\$ 3,548,659	\$ 38,653,031	\$ 3,221,086
Prior Year	\$ 2,491,044	\$ 2,758,100	\$ 2,610,754	\$ 2,500,162	\$ 2,513,218	\$ 2,710,727	\$ 2,564,775	\$ 2,443,564	\$ 2,678,431	\$ 2,480,459	\$ 2,737,892	\$ 2,857,213	\$ 31,346,339	\$ 2,612,195

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	ACT	AVG
Residential														
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 1,732,442	\$ 1,739,432	\$ 1,718,326	\$ 1,726,642	\$ 1,768,497	\$ 1,821,523	\$ 1,785,761	\$ 20,880,164	\$ 1,740,014
Actual vs Budget	\$ (256,620)	\$ (171,872)	\$ (258,420)	\$ (135,477)	\$ (217,468)	\$ (304,094)	\$ (246,826)	\$ (231,506)	\$ (285,744)	\$ (252,318)	\$ (230,119)	\$ (302,372)	\$ (2,892,835)	\$ (241,070)
Actual vs Prior Year	\$ 188,397	\$ 178,089	\$ 173,470	\$ 223,421	\$ 241,941	\$ 138,108	\$ 197,837	\$ 228,929	\$ 130,756	\$ 267,461	\$ 247,076	\$ 189,093	\$ 2,404,576	\$ 200,381
Multi-Unit 2-4														
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 15,819	\$ 15,767	\$ 15,496	\$ 15,387	\$ 15,704	\$ 16,018	\$ 15,673	\$ 188,646	\$ 15,721
Actual vs Budget	\$ (1,628)	\$ (430)	\$ (738)	\$ 270	\$ (286)	\$ (1,056)	\$ (876)	\$ (764)	\$ (2,139)	\$ (1,396)	\$ (1,189)	\$ (1,785)	\$ (12,018)	\$ (1,002)
Actual vs Prior Year	\$ 1,481	\$ 2,063	\$ 2,323	\$ 2,544	\$ 2,402	\$ 1,353	\$ 1,776	\$ 2,078	\$ 969	\$ 2,167	\$ 1,798	\$ 1,542	\$ 22,497	\$ 1,875
Multi-Unit 5+														
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 349,101	\$ 367,256	\$ 344,244	\$ 338,402	\$ 352,669	\$ 371,761	\$ 370,164	\$ 4,246,451	\$ 353,871
Actual vs Budget	\$ (24,285)	\$ (32,143)	\$ (72,316)	\$ (28,430)	\$ (48,054)	\$ (62,050)	\$ (37,000)	\$ (44,928)	\$ (65,989)	\$ (58,655)	\$ (50,362)	\$ (78,358)	\$ (602,570)	\$ (50,214)
Actual vs Prior Year	\$ 38,586	\$ 16,721	\$ (7,364)	\$ 21,721	\$ 30,740	\$ (11,239)	\$ 32,260	\$ 34,228	\$ 12,556	\$ 39,927	\$ 37,928	\$ 27,379	\$ 273,444	\$ 22,787
SGS														
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 671,740	\$ 694,327	\$ 696,069	\$ 729,560	\$ 772,851	\$ 858,431	\$ 833,909	\$ 9,151,096	\$ 762,591
Actual vs Budget	\$ 36,188	\$ (33,935)	\$ (113,873)	\$ (2,025)	\$ (22,698)	\$ (99,326)	\$ (36,267)	\$ (57,332)	\$ (94,277)	\$ (54,454)	\$ (18,722)	\$ (158,513)	\$ (655,234)	\$ (54,603)
Actual vs Prior Year	\$ 176,854	\$ 30,242	\$ (23,883)	\$ 90,466	\$ 56,459	\$ (68,578)	\$ 21,558	\$ 66,515	\$ (11,470)	\$ 120,981	\$ 44,345	\$ (68,455)	\$ 435,034	\$ 36,253
Schertz Sewer														
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 1,311	\$ 1,407	\$ 1,192	\$ 1,449	\$ 1,543	\$ 1,599	\$ 1,535	\$ 16,485	\$ 1,374
Actual vs Budget	\$ (595)	\$ (547)	\$ (606)	\$ (552)	\$ (640)	\$ (774)	\$ (771)	\$ (685)	\$ (633)	\$ (569)	\$ (572)	\$ (588)	\$ (7,531)	\$ (628)
Actual vs Prior Year	\$ (169)	\$ 38	\$ (14)	\$ 7	\$ 19	\$ 41	\$ (18)	\$ 14	\$ 198	\$ 271	\$ 292	\$ 272	\$ 952	\$ 79
Total Sales														
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 2,770,413	\$ 2,818,188	\$ 2,775,328	\$ 2,811,440	\$ 2,911,265	\$ 3,069,331	\$ 3,007,043	\$ 34,482,842	\$ 2,873,570
Actual vs Budget	\$ (246,941)	\$ (238,926)	\$ (445,953)	\$ (166,214)	\$ (289,145)	\$ (467,300)	\$ (321,740)	\$ (335,215)	\$ (448,783)	\$ (367,392)	\$ (300,963)	\$ (541,616)	\$ (4,170,189)	\$ (347,516)
Actual vs Prior Year	\$ 405,148	\$ 227,154	\$ 144,532	\$ 338,159	\$ 331,561	\$ 59,686	\$ 253,414	\$ 331,764	\$ 133,009	\$ 430,806	\$ 331,439	\$ 149,830	\$ 3,136,503	\$ 261,375

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	ACT	AVG
Residential														
Actuals	104,591,818	110,400,361	98,017,580	104,695,640	106,901,538	102,505,493	103,123,767	100,389,112	99,651,088	105,063,485	112,520,175	104,921,316	1,252,781,377	104,398,448
Prior Year	105,945,683	113,046,276	100,144,142	99,574,341	99,394,434	165,422,006	103,083,536	95,079,883	112,004,672	96,091,872	106,496,139	110,103,570	1,306,386,555	108,865,546
Multi-Unit 2-4														
Actuals	835,859	859,259	803,385	849,140	838,636	814,487	800,547	771,054	756,820	807,749	867,871	802,335	9,807,142	817,262
Prior Year	834,405	876,991	783,357	774,377	790,783	904,980	832,938	758,277	902,042	776,317	868,611	862,944	9,966,022	830,502
Multi-Unit 5+														
Actuals	26,464,494	26,498,569	21,294,621	23,400,792	23,794,355	23,835,720	25,905,743	23,228,453	22,304,354	23,818,525	24,978,326	24,685,587	290,209,539	24,184,128
Prior Year	25,753,140	28,032,246	23,907,336	22,819,107	22,650,042	27,891,169	24,467,609	20,651,634	22,916,972	20,798,039	23,856,366	25,229,715	288,973,375	24,081,115
SGS														
Actuals	147,287,980	131,416,134	111,637,606	114,268,301	111,907,830	102,975,607	107,558,109	108,463,284	115,704,856	125,955,294	140,826,238	134,258,867	1,452,260,109	121,021,676
Prior Year	130,005,417	129,722,018	125,164,836	97,417,889	104,504,690	119,839,409	108,336,432	99,625,140	121,947,383	104,364,672	134,644,800	149,706,570	1,425,279,260	118,773,272
Schertz Sewer														
Actuals	433,200	437,700	429,500	435,300	402,200	434,500	466,400	395,200	429,100	422,500	437,900	420,300	5,143,800	428,650
Prior Year	145,500	141,667	144,733	144,333	131,933	140,267	157,433	130,133	138,233	140,600	144,467	139,633	1,698,933	141,578
Total Sales														
Actuals	279,613,351	269,612,023	232,182,693	243,649,174	243,844,560	230,565,808	237,854,567	233,247,104	238,846,219	256,067,554	279,630,510	265,088,405	3,010,201,967	250,850,164
Prior Year	262,684,145	271,819,198	250,144,405	220,730,048	227,471,883	314,197,831	236,877,949	216,245,068	257,909,303	222,171,500	266,010,383	286,042,433	3,032,304,145	252,692,012

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AVG
Residential													
Actuals	32,187	32,472	32,558	32,545	32,691	32,878	32,947	33,120	33,338	33,469	33,477	33,786	32,956
Budget	34,071	34,211	34,352	34,494	34,636	34,779	34,922	35,066	35,211	35,356	35,502	35,648	34,854
Prior Year	31,424	31,569	31,602	31,627	31,697	31,757	31,772	31,793	31,703	31,733	32,000	32,109	31,732
Multi-Unit 2-4													
Actuals	173	186	189	188	188	187	187	186	187	186	183	185	185
Budget	182	182	182	182	182	182	182	182	182	182	182	182	182
Prior Year	174	174	173	174	175	175	174	172	173	172	173	173	174
Multi-Unit 5+													
Actuals	261	268	269	269	270	270	270	270	270	278	290	290	273
Budget	260	261	263	265	267	268	270	272	274	275	277	279	269
Prior Year	256	257	259	258	258	258	258	258	256	258	257	257	258
SGS													
Actuals	2,158	2,167	2,168	2,167	2,185	2,191	2,190	2,192	2,202	2,202	2,190	2,199	2,184
Budget	2,135	2,139	2,142	2,146	2,150	2,154	2,158	2,162	2,166	2,169	2,173	2,177	2,156
Prior Year	2,125	2,127	2,131	2,131	2,134	2,127	2,130	2,133	2,132	2,140	2,149	2,155	2,135
Schertz Sewer													
Actuals	1	1	1	1	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1	1	1	1	1
Total Accounts													
Actuals	34,780	35,094	35,185	35,170	35,335	35,527	35,595	35,769	35,998	36,136	36,141	36,461	35,599
Budget	36,648	36,794	36,941	37,088	37,236	37,384	37,533	37,683	37,833	37,984	38,135	38,288	37,462
Prior Year	33,980	34,128	34,166	34,191	34,265	34,318	34,335	34,357	34,265	34,304	34,580	34,695	34,299
New Customers	85	314	91	(15)	165	192	68	174	229	138	5	320	147
New Customer Growth %	0.2%	0.9%	0.3%	0.0%	0.5%	0.5%	0.2%	0.5%	0.7%	0.4%	0.0%	0.9%	0.4%

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

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024	2024	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AVG	
Residential														
Actuals	\$ 50.34	\$ 54.82	\$ 51.93	\$ 53.38	\$ 53.80	\$ 52.69	\$ 52.79	\$ 51.88	\$ 51.79	\$ 52.84	\$ 54.41	\$ 52.86	\$ 52.80	
Budget	\$ 55.09	\$ 57.06	\$ 56.74	\$ 54.29	\$ 57.06	\$ 58.56	\$ 56.88	\$ 55.60	\$ 57.15	\$ 57.16	\$ 57.79	\$ 58.58	\$ 56.83	
Prior Year	\$ 45.57	\$ 50.75	\$ 48.01	\$ 47.87	\$ 47.86	\$ 50.20	\$ 48.52	\$ 46.85	\$ 50.34	\$ 47.30	\$ 49.20	\$ 49.73	\$ 48.52	
Multi-Unit 2-4														
Actuals	\$ 82.97	\$ 87.52	\$ 84.22	\$ 85.78	\$ 85.67	\$ 84.60	\$ 84.31	\$ 83.31	\$ 82.29	\$ 84.43	\$ 87.53	\$ 84.72	\$ 84.78	
Budget	\$ 87.80	\$ 91.78	\$ 91.48	\$ 87.08	\$ 90.01	\$ 92.65	\$ 91.36	\$ 89.25	\$ 96.19	\$ 93.84	\$ 94.41	\$ 95.78	\$ 91.80	
Prior Year	\$ 73.98	\$ 81.69	\$ 78.58	\$ 78.06	\$ 78.31	\$ 82.66	\$ 80.40	\$ 78.01	\$ 83.34	\$ 78.71	\$ 82.20	\$ 81.68	\$ 79.80	
Multi-Unit 5+														
Actuals	\$ 1,389.97	\$ 1,378.22	\$ 1,216.35	\$ 1,278.26	\$ 1,295.02	\$ 1,292.97	\$ 1,360.21	\$ 1,274.98	\$ 1,253.34	\$ 1,268.59	\$ 1,281.93	\$ 1,276.43	\$ 1,297.19	
Budget	\$ 1,490.48	\$ 1,535.99	\$ 1,518.40	\$ 1,405.67	\$ 1,491.88	\$ 1,532.25	\$ 1,496.72	\$ 1,431.48	\$ 1,477.75	\$ 1,493.28	\$ 1,522.49	\$ 1,607.16	\$ 1,500.30	
Prior Year	\$ 1,266.40	\$ 1,372.15	\$ 1,291.75	\$ 1,248.57	\$ 1,236.11	\$ 1,396.67	\$ 1,298.43	\$ 1,201.61	\$ 1,272.83	\$ 1,212.18	\$ 1,298.96	\$ 1,333.80	\$ 1,285.79	
SGS														
Actuals	\$ 415.83	\$ 377.50	\$ 332.14	\$ 341.38	\$ 329.04	\$ 306.59	\$ 317.04	\$ 317.55	\$ 331.32	\$ 350.98	\$ 391.98	\$ 379.22	\$ 349.21	
Budget	\$ 403.40	\$ 398.37	\$ 389.25	\$ 345.61	\$ 344.93	\$ 357.97	\$ 338.57	\$ 348.52	\$ 380.42	\$ 381.34	\$ 403.59	\$ 455.82	\$ 378.98	
Prior Year	\$ 339.06	\$ 370.38	\$ 349.11	\$ 304.69	\$ 310.45	\$ 348.06	\$ 315.85	\$ 295.15	\$ 347.57	\$ 304.61	\$ 378.82	\$ 418.73	\$ 340.21	
Schertz Sewer														
Actuals	\$ 1,306.75	\$ 1,320.32	\$ 1,295.59	\$ 1,313.08	\$ 1,213.24	\$ 1,310.67	\$ 1,406.90	\$ 1,192.12	\$ 1,449.00	\$ 1,543.18	\$ 1,599.43	\$ 1,535.15	\$ 1,373.79	
Budget	\$ 1,902.07	\$ 1,866.97	\$ 1,901.70	\$ 1,864.68	\$ 1,853.06	\$ 2,084.54	\$ 2,178.27	\$ 1,877.19	\$ 2,081.67	\$ 2,111.82	\$ 2,171.20	\$ 2,123.39	\$ 2,001.38	
Prior Year	\$ 1,476.00	\$ 1,282.01	\$ 1,309.76	\$ 1,306.14	\$ 1,193.93	\$ 1,269.34	\$ 1,424.69	\$ 1,177.64	\$ 1,250.94	\$ 1,272.36	\$ 1,307.35	\$ 1,263.61	\$ 1,294.48	

Financial Update



- **July 2024 Financials**

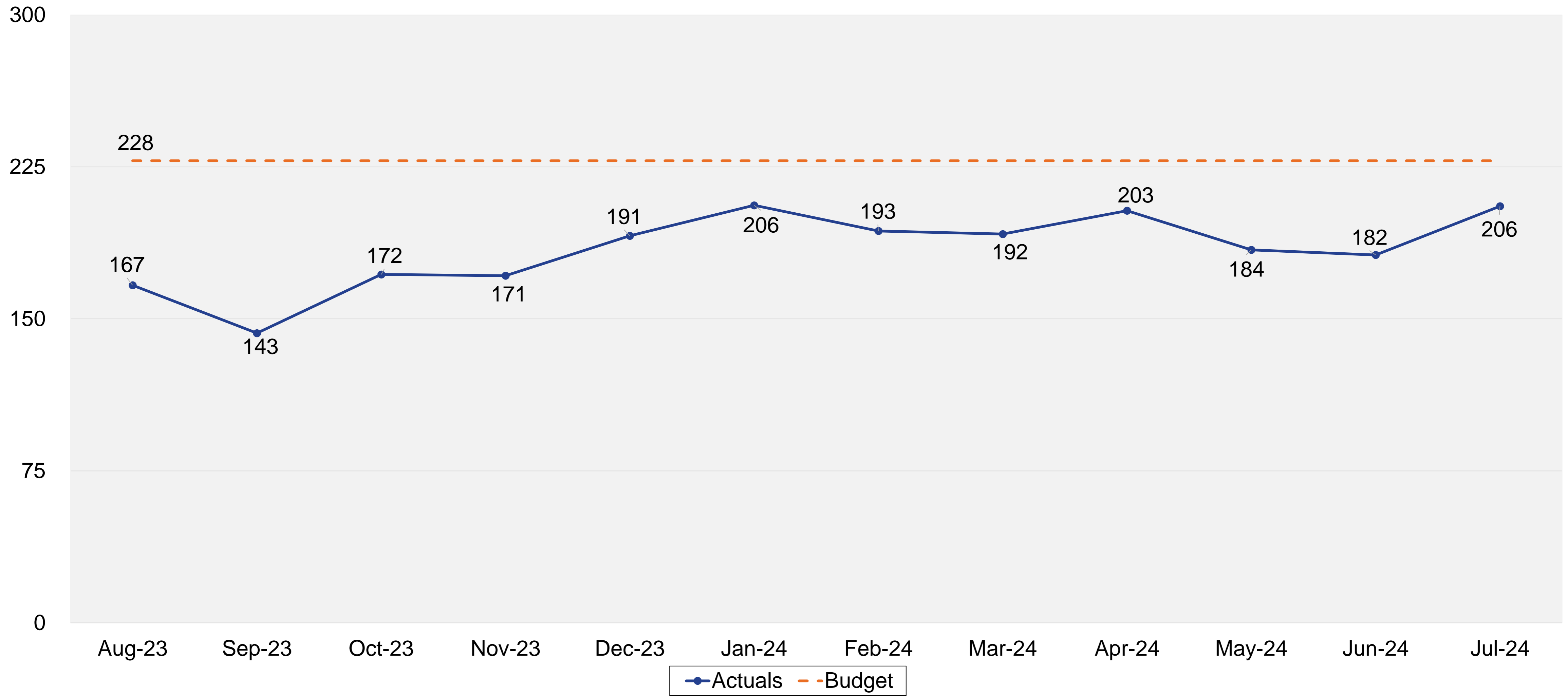
- Kimberly Huffman, Accounting Manager

Board Financial Policy Compliance - July 2024 YTD

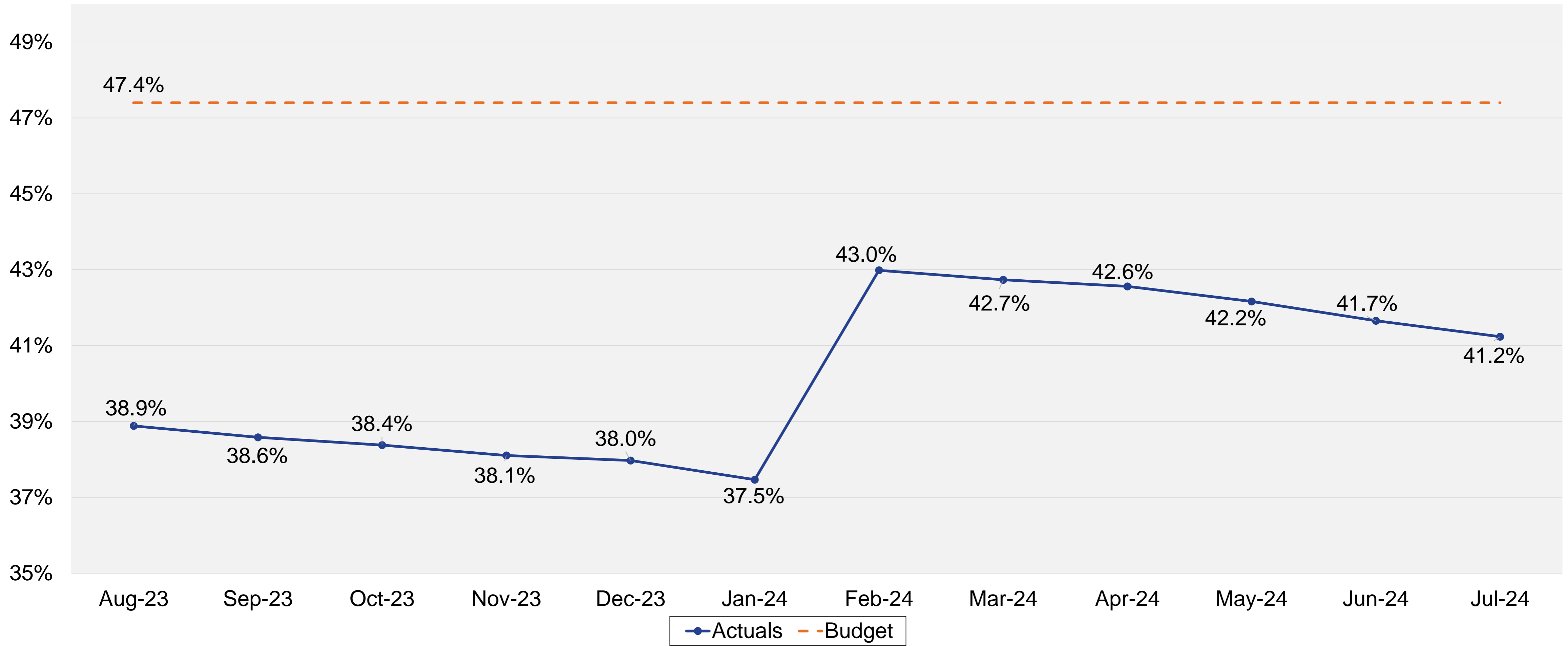
	FY 2023 Actual	FY 2024 Budget	Financial Policy	FY 2024 Actual*
Debt to Capitalization (lower is better)	39.1%	47.4%	≤55.0%	41.2%
Debt Service Coverage (higher is better)	5.05	4.28	≥2.40	5.05
Days Cash on Hand (higher is better)	214	228	≥140	206
Days Liquidity on Hand (higher is better)	442	N/A	N/A	490

* Amounts are calculated by annualizing the YTD results

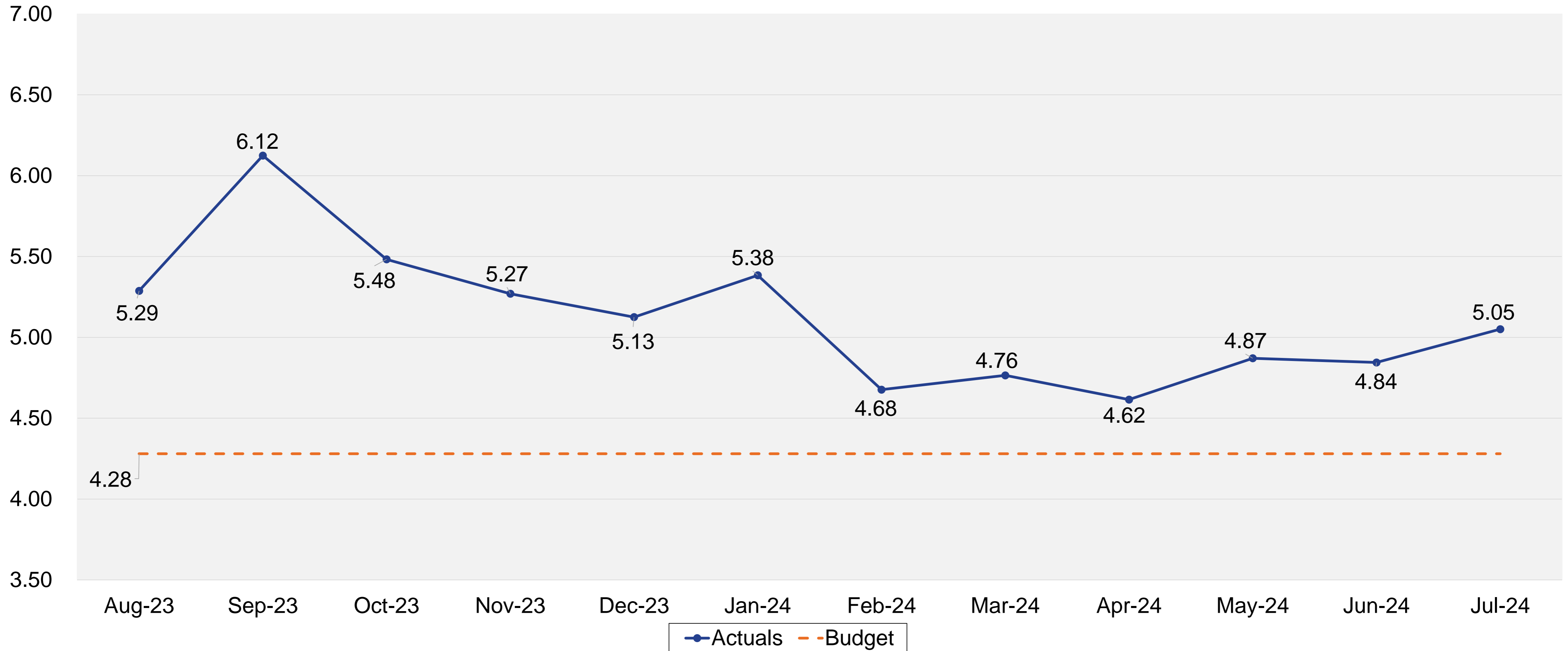
Days Cash on Hand - July 2024 YTD



Debt to Capitalization - July 2024 YTD

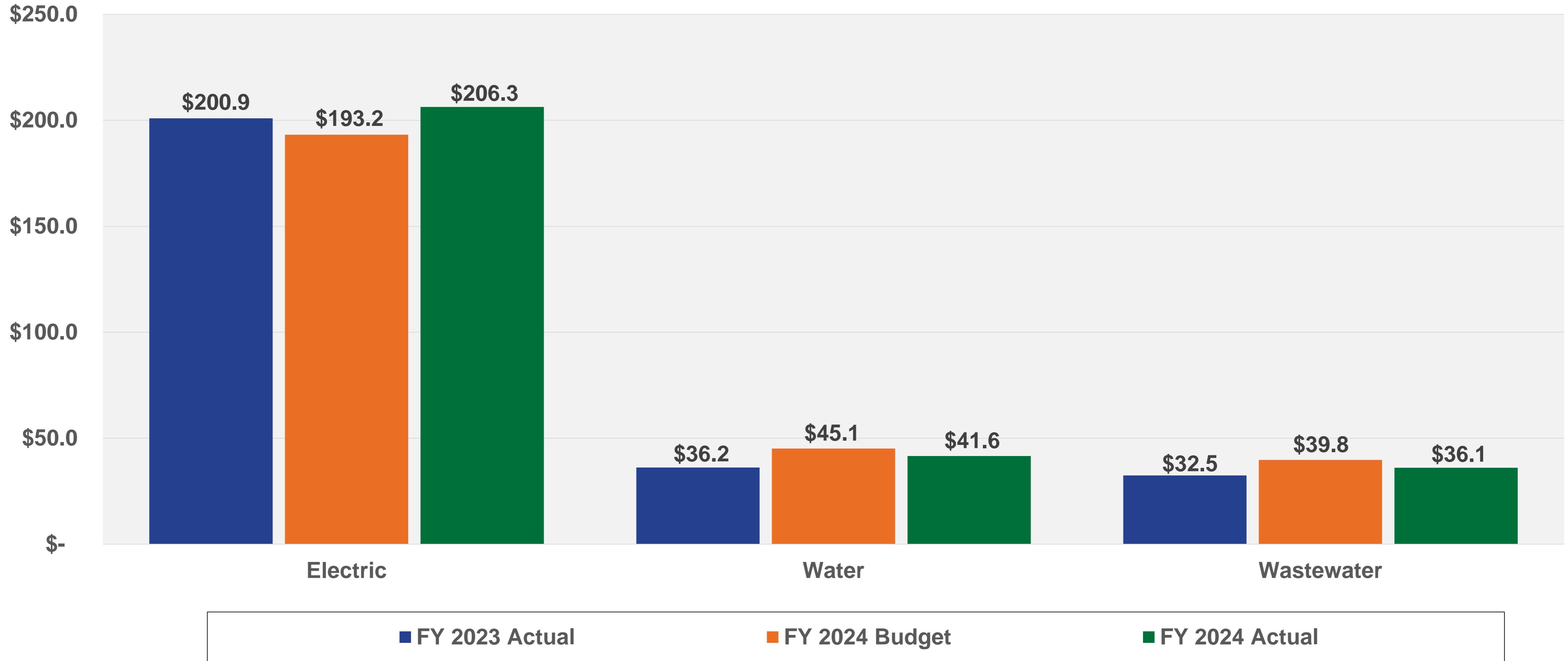


Debt Service Coverage - July 2024 YTD



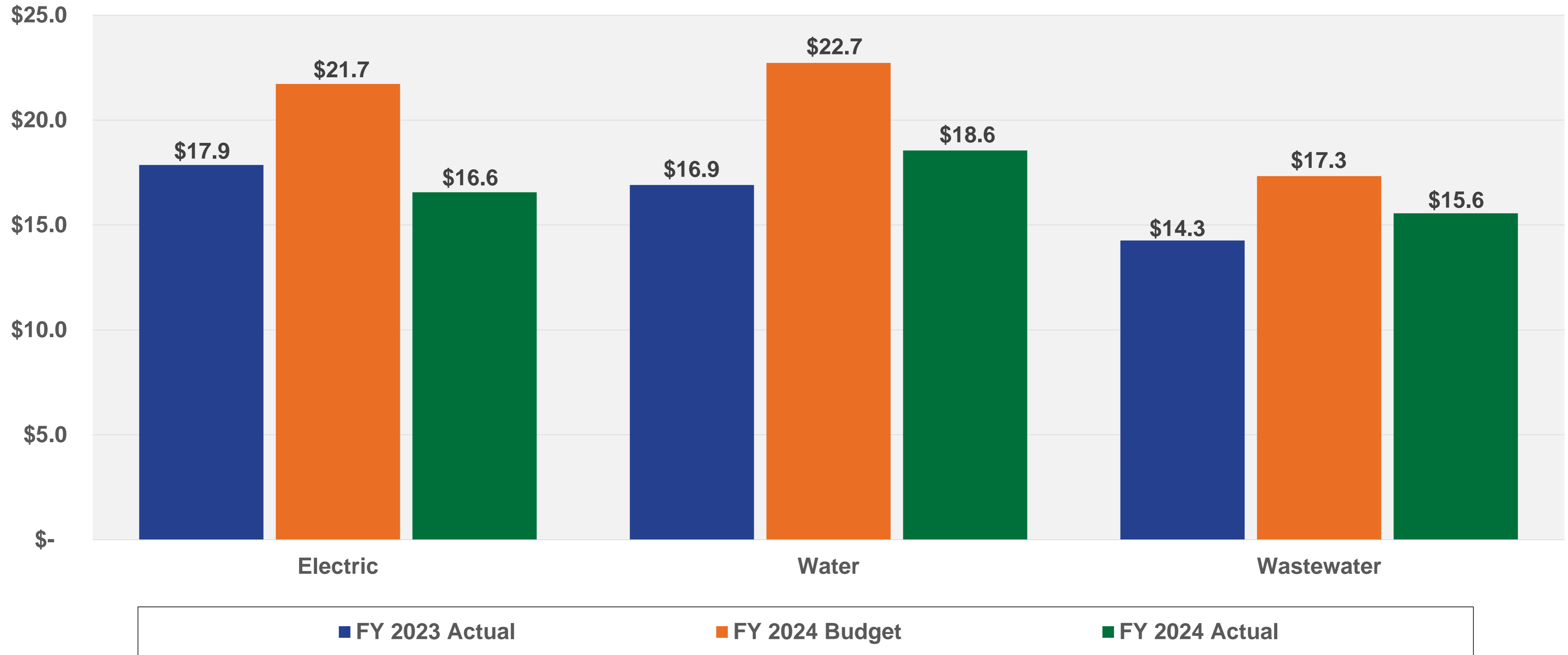
Operating Revenue by LOB

July 2024 YTD – Amounts in Millions



Operating Expenses* by LOB

July 2024 YTD – Amounts in Millions



*Excludes purchased power, purchased water, and depreciation expense

Mission

Strengthening our community by providing resilient essential services



Vision

Be a trusted community partner dedicated to excellence in service

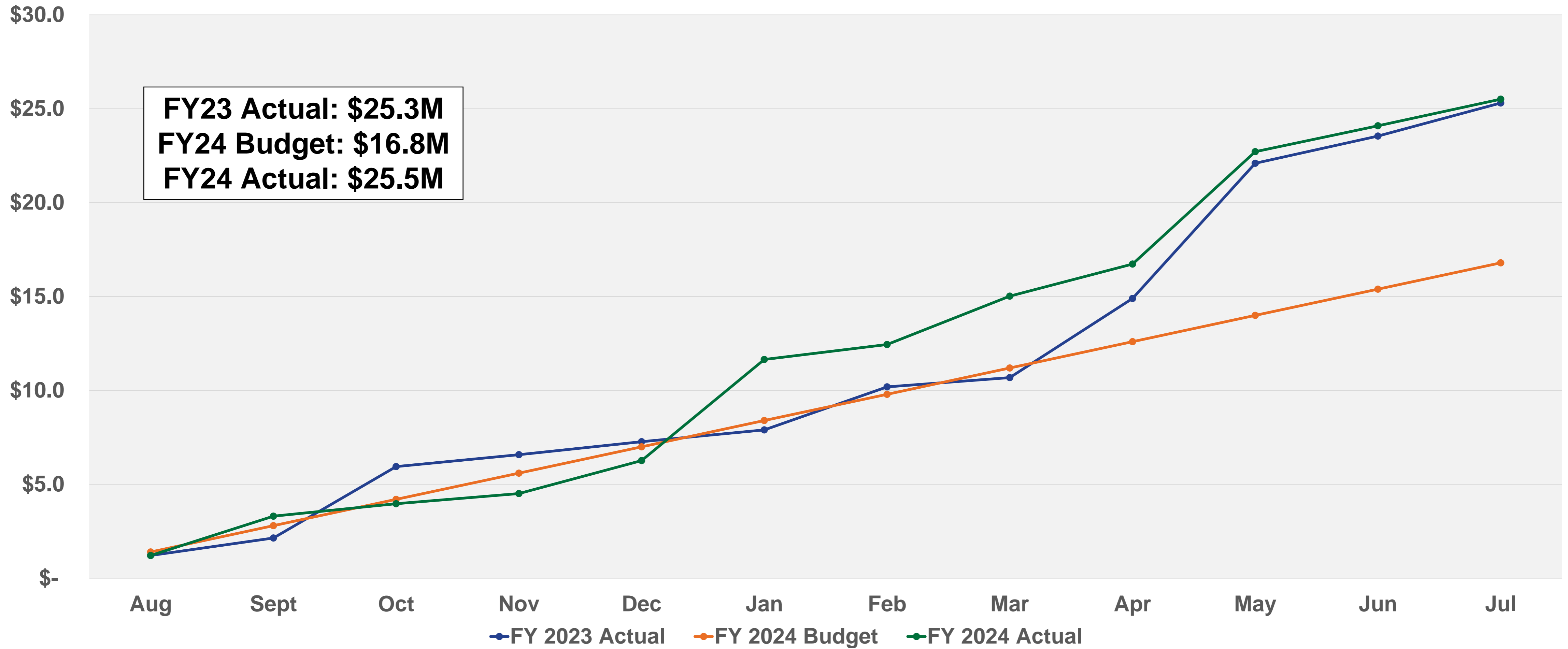


Core Values

Safety, Team, Integrity, Culture, and Stewardship

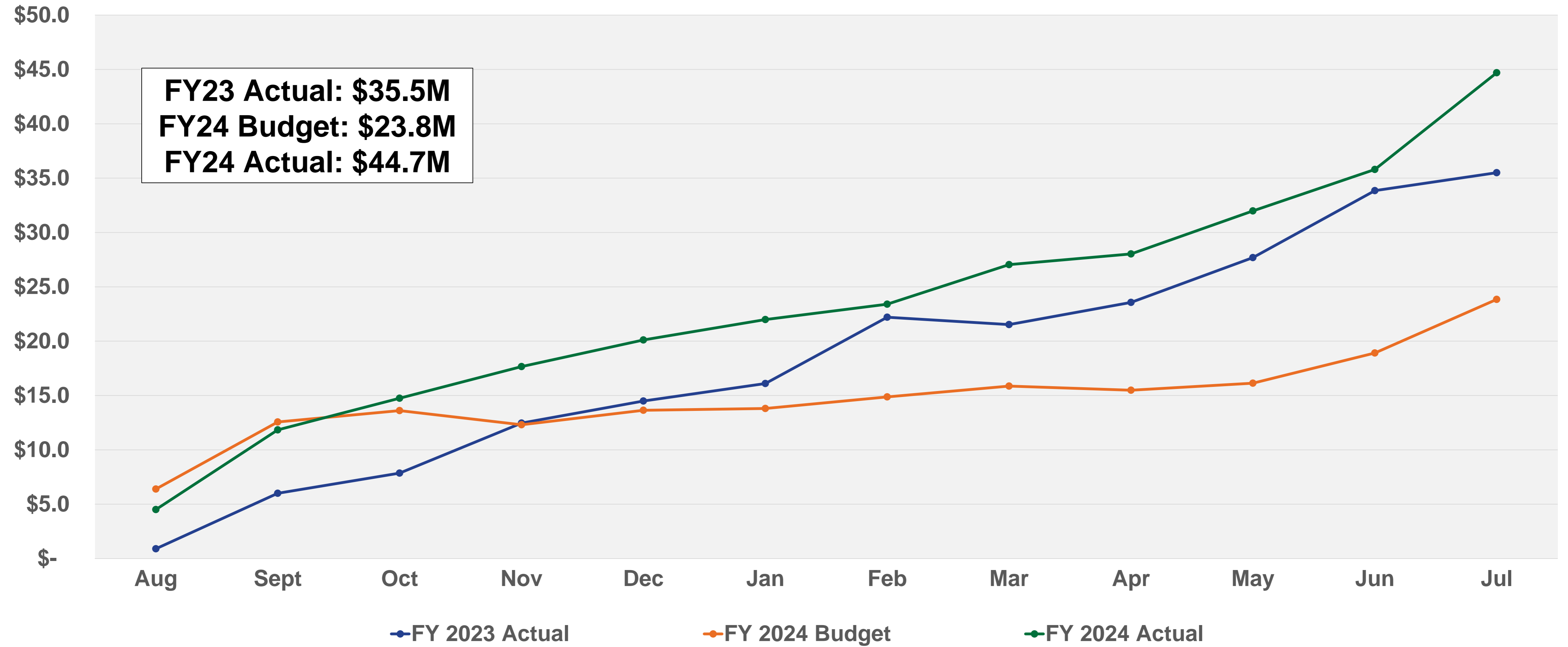
Impact Fees

July 2024 YTD – Amounts in Millions*



* Amounts shown are YTD for each month

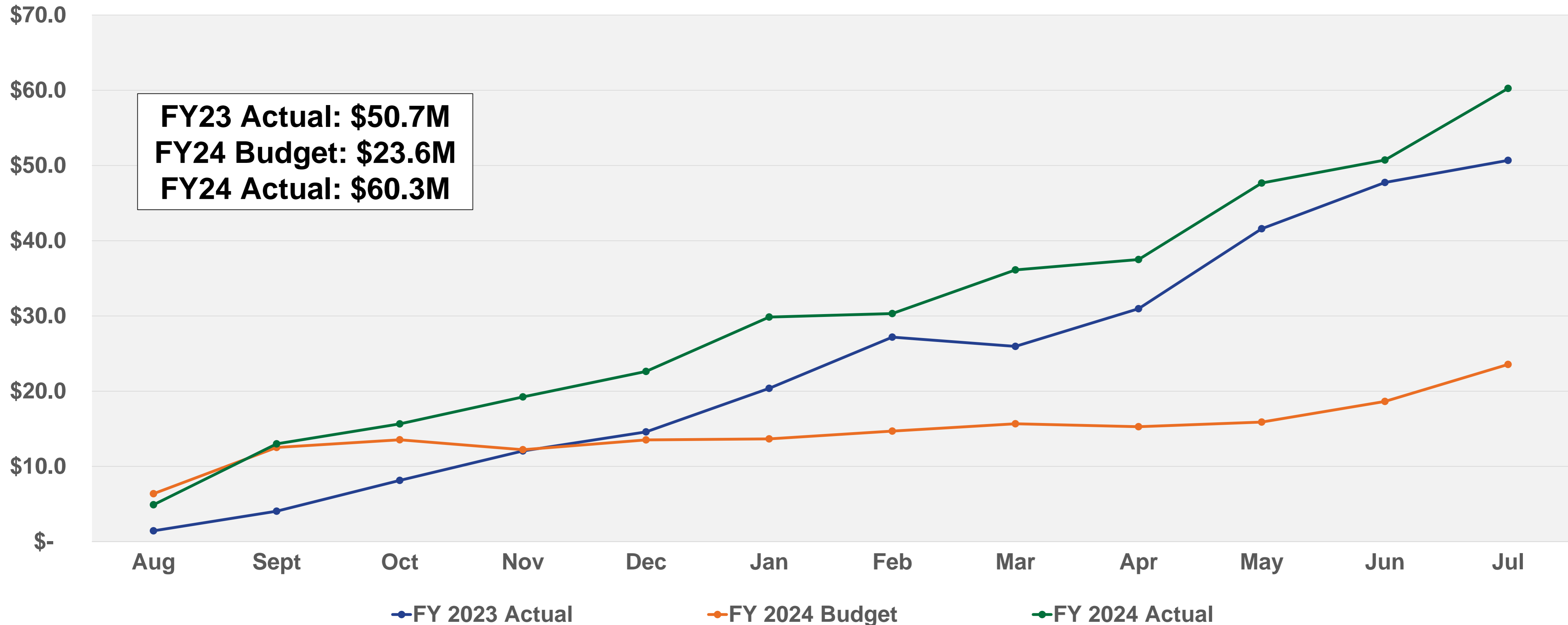
Net Operating Income July 2024– Amounts in Millions*



* Amounts shown are YTD for each month

Change in Net Position After Contributions

July 2024– Amounts in Millions*



* Amounts shown are YTD for each month

Mission

Strengthening our community by providing resilient essential services



Vision

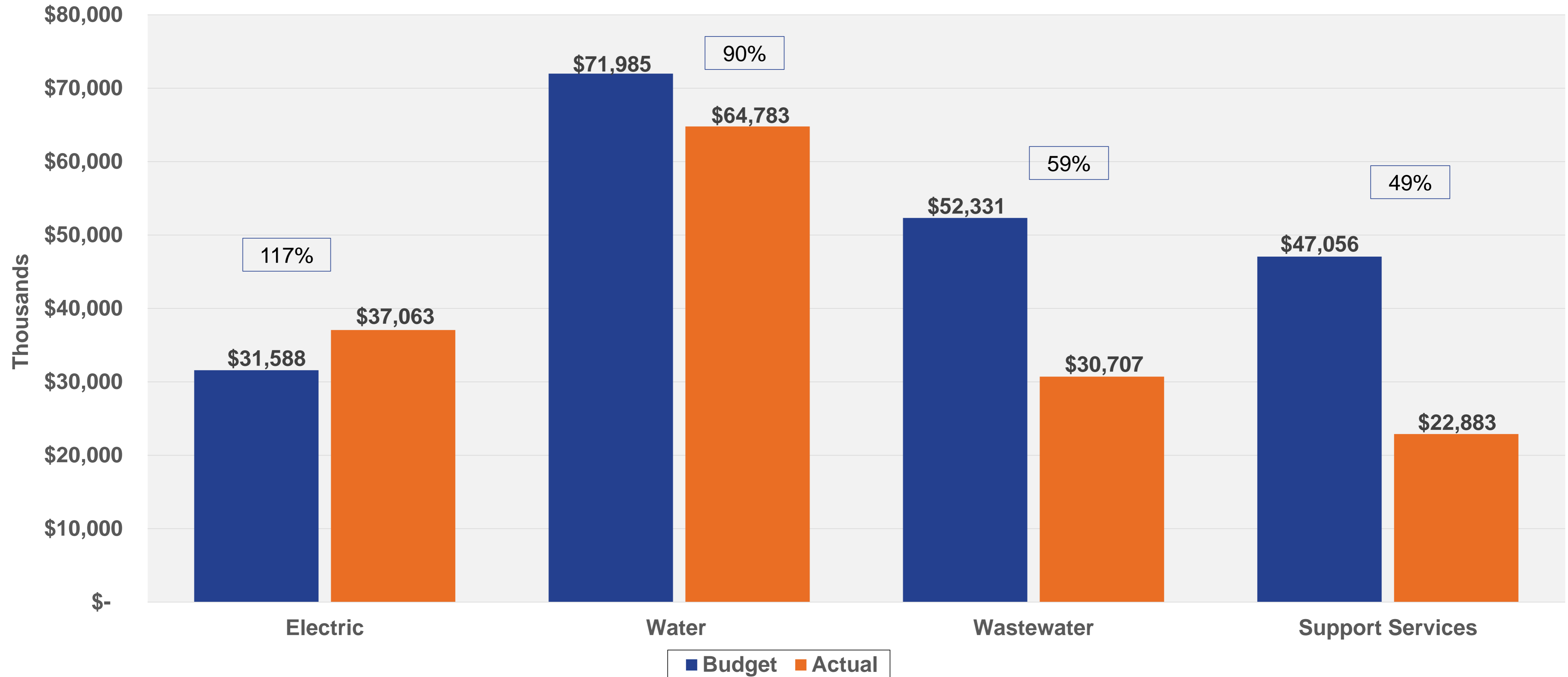
Be a trusted community partner dedicated to excellence in service



Core Values

Safety, Team, Integrity, Culture, and Stewardship

Capital Project Expenditures July 2024 YTD – Amounts in Thousands



Questions?

New Braunfels Utilities
Quarterly Investment Report
04/30/2024 – 07/31/2024

Investment Balances and Activity

As required by the Public Funds Investment Act and the New Braunfels Utilities Investment Policy, the Investment Officers of NBU hereby submit this quarterly report of investment activity for the quarter ended July 31, 2024. Statement No. 31 of the Governmental Accounting Standards Board, effective for reporting periods beginning after June 15, 1997, mandates fair value accounting on investments held by public entities. Attached is the NBU Investment Portfolio beginning April 30, 2024 and ending July 31, 2024. This is a report showing the changes to the portfolio during the quarter. This report has been modified to conform to the preferred reporting format illustrated in Statement No. 31.

The fair values of the Federally Insured Cash Account, Pooled, and Money Market Fund Groups (including \$33,260,460.64 in demand deposits and \$39,061,676.30 in escrow funds at July 31, 2024). for the beginning and end of the reporting period are as follows:

	Fair Value
04/30/2024	\$164,348,644.23
07/31/2024	\$150,771,587.54

NBU had additions to the Pooled Fund Groups of \$75,370,478.89 and withdrawals totaling \$88,947,535.58.

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

	Fair Value
04/30/2024	\$55,950,756.99
07/31/2024	\$52,031,643.11

NBU had additions to the Separately Invested Assets of \$22,463,285.63 and withdrawals of \$27,000,000.00 due to maturities. The change in fair value due to amortization of premium and discount and mark to market changes from April 30, 2024 to July 31, 2024 was an increase of \$617,600.49.

The fair values of the entire portfolio for the beginning and end of the reporting period for the quarter ended July 31, 2024 are as follows:

	Fair Value
04/30/2024	\$220,299,401.22
07/31/2024	\$202,803,230.65

New Braunfels Utilities
Quarterly Investment Report
04/30/2024 – 07/31/2024

Compliance with GAAP

The investment portfolio complied with generally accepted accounting principles (GAAP) throughout the quarter. Although the Public Funds Investment Act requires book value accounting for investments, it also contains a clause that requires conformance to GAAP. Statement No. 31 supersedes the Public Funds Investments Act in the GAAP hierarchy and mandates fair value accounting. The fair market value of investments was determined by utilizing a third-party service provider, ICE Data Pricing and Reference Data, LLC, formerly called Interactive Data Pricing.

Compliance with NBU Investment Policy

The investment portfolio funds are invested in compliance with the strategies outlined in the NBU Investment Policy, which the Board re-affirmed on March 30, 2023. Investments in each security type are within the allowable range established by the Investment Policy. The investment portfolio's weighted-average maturity of 62 days and weighted-average maturity to first call date of 53 days are within the 450 days and 300 days limit, respectively, stated in the NBU Investment Policy. Please note that the WAM and WAMC do not include the investment in the Community Assistance Fund, which was specifically authorized in the Investment Policy to permit investments up to ten years.

NBU is also required to maintain daily liquid funds of at least 30 days of budgeted operating expenses. At July 31, 2024, NBU had daily liquid funds of 210 days. Pooled investments are in no load money market mutual funds and eligible specified investment pools that are continuously rated AAA or higher by at least one nationally recognized rating agency and that have a dollar-weighted average stated maturity of 90 days or less. These same investments maintain a stable net asset value of \$1 for each share.

NBU has obtained collateral reports at quarter-end from third party custodians that confirm the collateral securities in NBU's name are at least equal to or greater than the required amount of uninsured balances as of July 31, 2024.

NBU Investment Officers:



Director of Finance



Chief Financial Officer



NBU Investments
GASB 31 Compliance Detail
Sorted by Fund - Fund
May 1, 2024, 2024 - July 31, 2024

CUSIP	Investment #	Fund	Maturity Date	Beginning Invested Value	Purchase of Principal	Addition to Principal	Redemption of Principal	Change in Market Value/Amortization	Ending Invested Value
Fund: Special Funds-Cont. Sys.									
313384XF1	10914	114F	05/24/2024	3,985,933.32	-	-	4,000,000.00	14,066.68	-
3133ERLV1	10928	114F	07/22/2025	-	4,999,903.55	-	-	2,877.75	5,002,781.30
912797JV0	10913	114F	05/07/2024	2,997,360.75	-	-	3,000,000.00	2,639.25	-
912797LD7	10924	114F	11/14/2024	-	2,922,358.54	-	-	33,050.00	2,955,408.54
Subtotal				6,983,294.07	7,922,262.09	-	7,000,000.00	52,633.68	7,958,189.84
Fund: Consumer Deposit									
3130B0LC1	10920	119F	03/27/2025	7,976,101.28	-	-	-	19,662.96	7,995,764.24
912797KC0	10919	119F	08/22/2024	4,917,949.45	-	-	-	66,679.70	4,984,629.15
Subtotal				12,894,050.73	-	-	-	86,342.66	12,980,393.39
Fund: Special Funds- Community Assistance									
912828YS3	10853	117F	11/15/2029	4,296,875.00	-	-	-	175,781.25	4,472,656.25
Subtotal				4,296,875.00	-	-	-	175,781.25	4,472,656.25
Fund: Unrestricted Short Term									
912797JS7	10923	110F	07/18/2024	3,954,435.00	-	-	4,000,000.00	45,565.00	-
Subtotal				3,954,435.00	-	-	4,000,000.00	45,565.00	-
Fund: Power Stabilization Fund									
912797HR1	10918	195F	05/23/2024	6,977,413.31	-	-	7,000,000.00	22,586.69	-
Subtotal				6,977,413.31	-	-	7,000,000.00	22,586.69	-
Fund: Bond Reserve Fund									
3130ANRB8	10867	170F	12/17/2024	1,942,471.90	-	-	-	23,003.92	1,965,475.82
3130AWBY5	10926	170F	06/13/2025	-	2,989,800.00	-	-	4,386.93	2,994,186.93
3130AYBQ8	10915	170F	12/26/2024	3,985,362.92	-	-	-	6,607.84	3,991,970.76
313384H36	10927	170F	09/25/2024	-	2,960,339.17	-	-	15,184.16	2,975,523.33
313384WR6	10910	170F	05/10/2024	4,992,673.60	-	-	5,000,000.00	7,326.40	-
3133EP5K7	10921	170F	03/13/2026	5,932,065.78	-	-	-	66,207.48	5,998,273.26
912797KS5	10925	170F	04/17/2025	-	8,590,884.37	-	-	104,089.16	8,694,973.53
91282CCC3	10864	170F	05/15/2024	3,992,114.68	-	-	4,000,000.00	7,885.32	-
Subtotal				20,844,688.88	14,541,023.54	-	9,000,000.00	234,691.21	26,620,403.63
Total				55,950,756.99	22,463,285.63	-	27,000,000.00	617,600.49	52,031,643.11
Change due to amortization of premium/discount								301,029.96	
Change due to mark to market								316,570.53	
Total								617,600.49	



NBU Investments
GASB 31 Compliance Detail
Sorted by Fund - Fund
May 1, 2024, 2024 - July 31, 2024

Investment #	Fund	Beginning Invested Value	Purchase of Principal	Addition to Principal	Redemption of Principal	Change in Market Value	Ending Invested Value		
FEDERALLY INSURED CASH ACCOUNT, POOLED, AND MONEY MARKET FUND GROUPS									
TexPool - Commercial Paper Series A	RRP	10845	191	10,389.34	-	15,012,463.97	10,295,881.52	-	4,726,971.79
TexPool - Commercial Paper Series B	RRP	10846	192	390.35	-	5.52	-	-	395.87
TexPool - Impact Fees W	SYS10090	10090	184F	10,927,269.63	-	4,159,175.02	6,315,655.75	-	8,770,788.90
TexPool - Temp-Cash	SYS10149	10149	110T	111,843.47	-	1,505.07	-	-	113,348.54
TexPool - Impact Fees S	SYS10221	10221	185F	1,300,291.22	-	1,821,615.95	3,108,879.26	-	13,027.91
TexPool - Central Facilities-W	SYS10224	10224	182F	966.56	-	12.88	-	-	979.44
TexPool - Central Facilities-S	SYS10225	10225	183F	0.01	-	-	-	-	0.01
Texas Daily - Temp-Cash	SYS10244	10244	110D	580,117.36	-	7,769.53	-	-	587,886.89
Texas Daily - I&P 2004	SYS10543	10544	163	467,351.57	-	136,579.95	550,000.00	-	53,931.52
TexPool - Contingency Systems	SYS10572	10573	114F	7,048,482.52	-	5,993,441.51	4,999,903.55	-	8,042,020.48
TexPool - Consumer Deposit	SYS10572	10572	119T	383,618.70	-	707,791.28	-	-	1,091,409.98
TexPool - Bond Reserve	SYS10701	10701	170	5,679,723.47	-	559,881.81	5,955,285.00	-	284,320.28
Texas Daily - I&P 2015	SYS10763	10763	167	157,872.60	-	26,627.20	154,609.38	-	29,890.42
StoneCastle - Community Assistance	SYS10779	10779	117SC	45,101.73	-	583.41	-	-	45,685.14
Texas Daily - I&P 2016	SYS10788	10788	168	1,428,019.33	-	725,015.07	1,886,400.01	-	266,634.39
Frost Bank - General Fund	SYS10809	10809	110FGF	23,200,790.22	-	21,464,517.68	15,482,294.86	-	29,183,013.04
Frost Bank - Payroll Fund	SYS10810	10810	110FPR	2,195,106.95	-	4,816,793.40	2,934,452.75	-	4,077,447.60
Texas Daily - I&P 2018	SYS10831	10831	169	1,590,043.58	-	725,299.68	2,049,912.50	-	265,430.76
TexPool - Power Stabilization Fund	SYS10849	10849	195	22,631,209.32	-	12,608,265.81	-	-	35,239,475.13
Texas Daily - I&P 2020	SYS10855	10855	196	2,776,390.01	-	1,303,214.98	3,596,650.00	-	482,954.99
TexPool - Taxable Note Payment Fund	SYS10863	10863	197	0.01	-	-	-	-	0.01
Texas Daily - I&P 2021	SYS10866	10866	198	1,843,119.97	-	922,301.35	2,428,950.00	-	336,471.32
StoneCastle - Contingency Systems	SYS10880	10880	114SC	10,828,137.61	-	140,066.00	-	-	10,968,203.61
Texas Daily - I&P 22	SYS10889	10889	199	2,166,796.60	-	1,172,631.35	2,914,125.00	-	425,302.95
Texas Daily - I&P 22A	SYS10894	10894	200	731,386.53	-	353,539.16	951,966.25	-	132,959.44
Bond Fund 22A	SYS10896	10896	201	38,556,503.81	-	505,172.49	-	-	39,061,676.30
Texas CLASS - Temp-Cash	SYS10904	10904	110TC	10,120,706.42	-	98,567.36	5,000,000.00	-	5,219,273.78
TexPool - One Water Fund	SYS10908	10908	202	113,057.28	-	1,519.96	1,650.00	-	112,927.24
Texas Daily - I&P 2024	SYS10916	10916	203	2,202,924.10	-	1,582,458.78	3,219,435.08	-	565,947.80
TexPool - Bond Fund 2024	SYS10917	10917	204	17,011,163.75	-	90,320.92	17,101,484.67	-	-
TexPool - Mayfair Impact Fees Water	SYS10922	10922	205	239,870.21	-	433,341.80	-	-	673,212.01
Total				164,348,644.23	-	75,370,478.89	88,947,535.58	-	150,771,587.54
Portfolio Total				220,299,401.22	22,463,285.63	75,370,478.89	115,947,535.58	617,600.49	202,803,230.65

**New Braunfels Utilities
Investment Summary
Quarter Ended July 31, 2024
(000's)**



	Ending Invested Value	Percentage of Portfolio	Weighted Average Maturity (in days)	Weighted Average Days to Call
Daily Liquidity Funds				
Money Markets	\$ -	0.0%	1	1
Pooled Funds	67,435,562	33.3%	1	1
Total Money Markets & Pooled	\$ 67,435,562	33.3%	1	1
Federally Insured Cash Account	\$ 11,013,889	5.4%	1	1
Demand Deposits	33,260,461	16.4%	1	1
Daily Liquidity Funds Total	\$ 111,709,911	55.1%	1	1
Escrow Funds Total				
U.S. Agencies	\$ 30,923,976	15.2%	45	36
U.S. Treasuries *	21,107,667	10.4%	13	13
Certificates of Deposit	-	0.0%	0	0
Obligations of The State of Texas, Agencies & Instrumentalities	-	0.0%	0	0
Total Invested Funds	\$ 202,803,231	100.0%	62	53

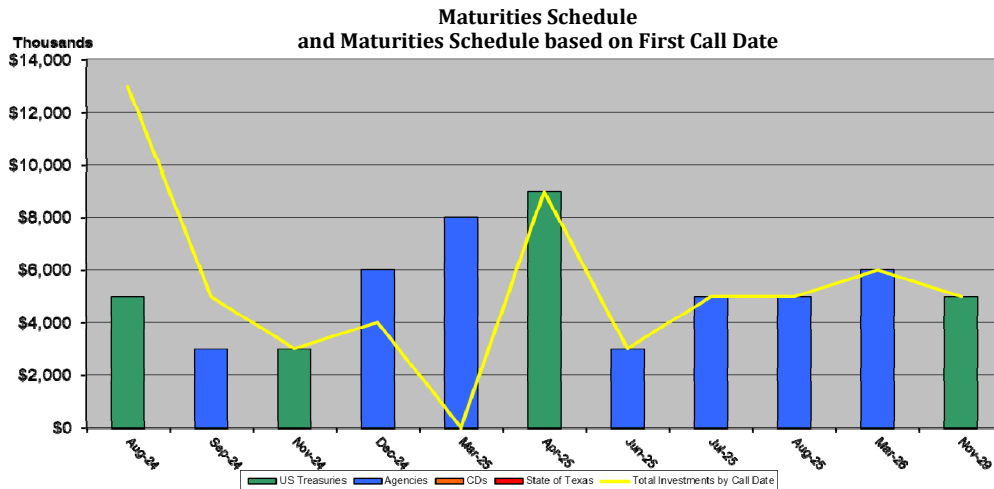
Max = 450

Max = 300

* WAM and WAM to Call exclude a \$5 Million investment in the Community Assistance Fund having a remaining maturity of 5.3 years.

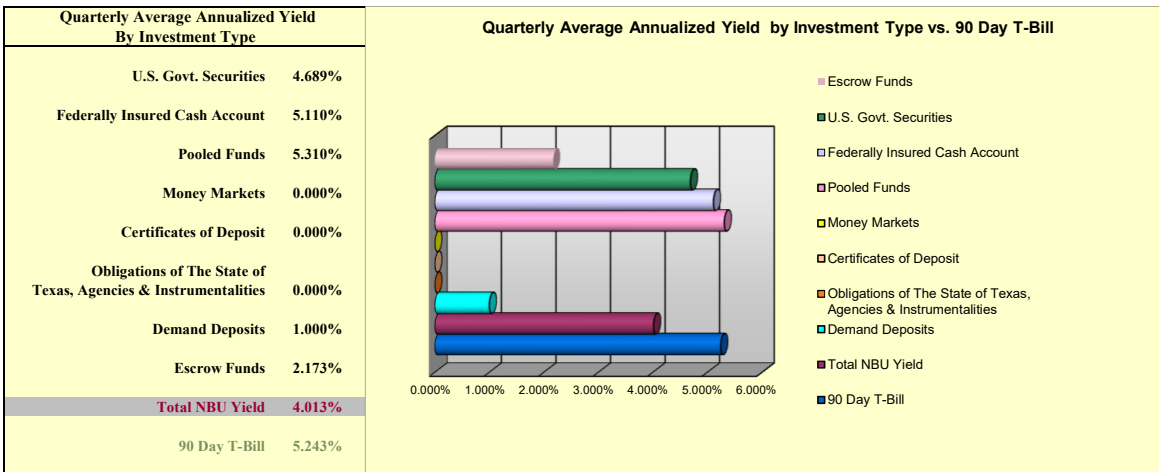
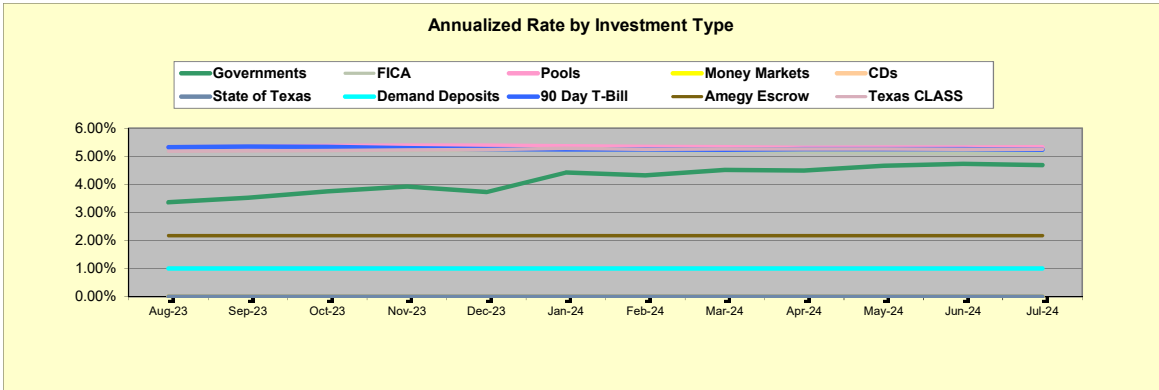
Liquidity Requirement	
Total Daily Liquid Funds	\$ 111,709,911
Average Monthly Operating Expense (FY 2024 Budgeted Operating Expenses ÷ 12)	\$ 15,943,333
Operating Expense Liquidity Coverage Ratio	\$ 7.01
Number of Days Coverage of Operating Expenses	210

Min = 30



* U.S Treasury Securities include a \$5 Million 10 year Community Assistance investment with a remaining maturity of 5.3 years as an approved exception to the investment policy.

New Braunfels Utilities
Investment Comparison
Quarter Ended July 31, 2024



Rolling Four Quarter Annualized Yield By Investment Type For The Fiscal Quarter Ended

	10/31/2023	1/31/2024	4/30/2024	7/31/2024	Rolling Four Quarter Average
U.S. Govt. Securities*	3.537%	4.019%	4.436%	4.689%	4.170%
Federally Insured Cash Account	5.193%	5.200%	5.177%	5.110%	5.170%
Pooled Funds	5.335%	5.364%	5.310%	5.310%	5.329%
Money Markets	0.000%	0.000%	0.000%	0.000%	0.000%
Certificates of Deposit	0.000%	0.000%	0.000%	0.000%	0.000%
Obligations of The State of Texas, Agencies & Instrumentalities	0.000%	0.000%	0.000%	0.000%	0.000%
Demand Deposits**	1.000%	1.000%	1.000%	1.000%	1.000%
Escrow Funds	2.173%	2.173%	2.173%	2.173%	2.173%
Total NBU Yield	3.719%	3.648%	3.967%	4.013%	3.837%
90 Day T-Bill	5.328%	5.253%	5.240%	5.243%	5.266%

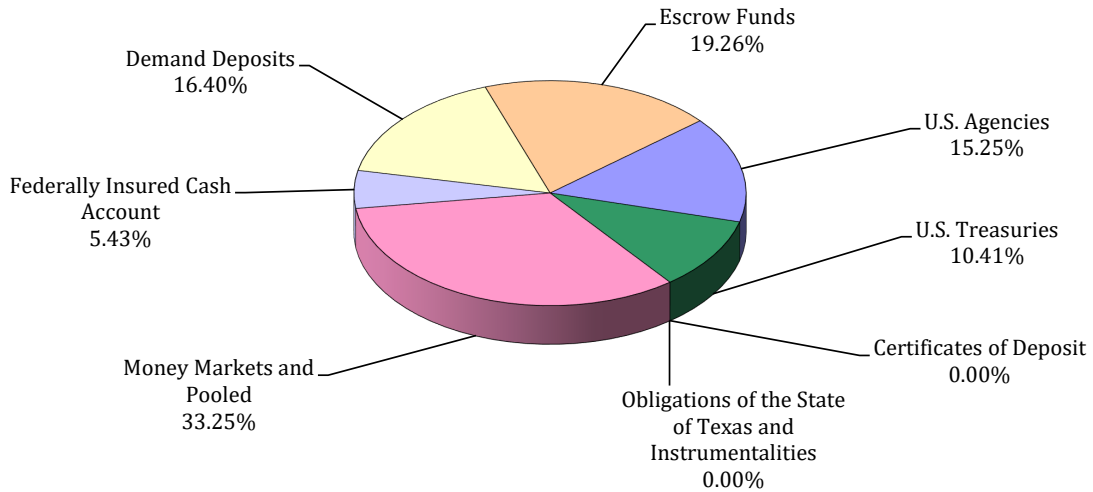
* U.S. Govt. Securities includes a \$5 million 10 year Community Assistance maturity at 1.79%

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

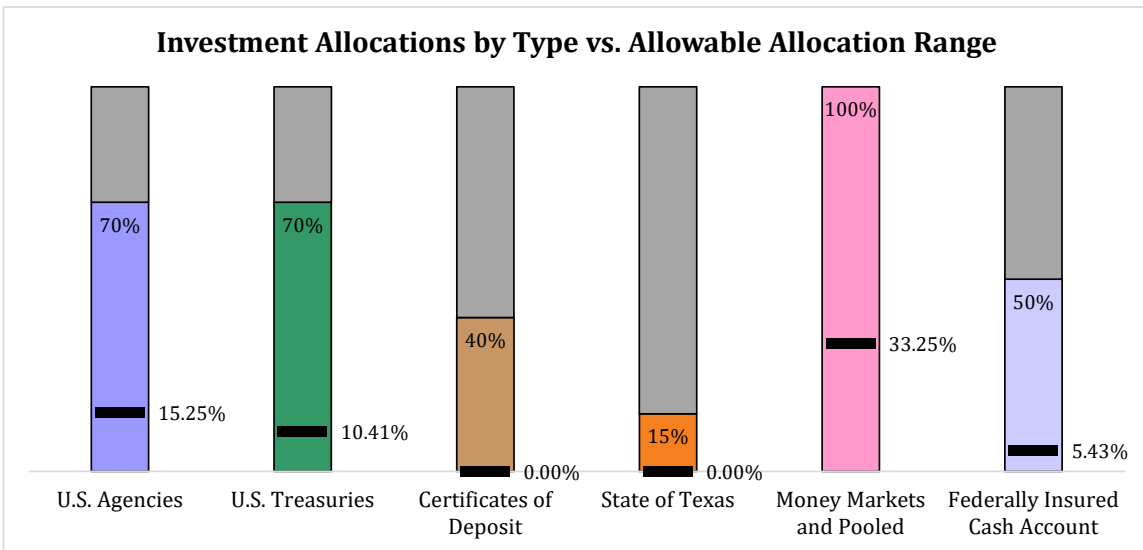
New Braunfels Utilities
Investment Portfolio Mix vs. Allowable Allocations
Quarter Ended July 31, 2024
(000's)



Investments by Type



Investment Allocations by Type vs. Allowable Allocation Range



Note: Colored area in bar represents allowable allocation range

Quarterly Investment Report

As of July 31, 2024



John Warren, Director of Finance

Investment Portfolio Summary

	Ending Invested Value	Percentage of Portfolio	Weighted Average Maturity (in days)	Weighted Average Days to Call
Daily Liquidity Funds				
Money Markets	\$ -	0.0%	1	1
Pooled Funds	67,435,562	33.3%	1	1
Total Money Markets & Pooled	\$ 67,435,562	33.3%	1	1
Federally Insured Cash Account	\$ 11,013,889	5.4%	1	1
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U.S. Treasuries *	21,107,667	10.4%	13	13
Certificates of Deposit	-	0.0%	0	0
Obligations of The State of Texas, Agencies & Instrumentalities	-	0.0%	0	0
Total Invested Funds	\$ 202,803,231	100.0%	62	53

Max = 450

Max = 300

* WAM and WAM to Call exclude a \$5 Million investment in the Community Assistance Fund having a remaining maturity of 5.3 years.

Liquidity Requirement	
Total Daily Liquid Funds	\$ 111,709,911
Average Monthly Operating Expense (FY 2024 Budgeted Operating Expenses ÷ 12)	\$ 15,943,333
Operating Expense Liquidity Coverage Ratio	\$ 7.01
Number of Days Coverage of Operating Expenses	210

Min = 30

Rolling Four Quarter Annualized Yield By Investment Type

Item 3.

Investment Type	7/31/2024	Rolling Four Quarter Average
U.S. Govt. Securities*	4.689%	4.170%
Federally Insured Cash Account	5.110%	5.170%
Pooled Funds	5.310%	5.329%
Money Markets	0.000%	0.000%
Certificates of Deposit	0.000%	0.000%
Obligations of The State of Texas, Agencies & Instrumentalities	0.000%	0.000%
Demand Deposits**	1.000%	1.000%
Escrow Funds	2.173%	2.173%
Total NBU Yield	4.013%	3.837%
90 Day T-Bill	5.243%	5.266%

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

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

Mission

Strengthening our community by providing resilient essential services

+ Vision

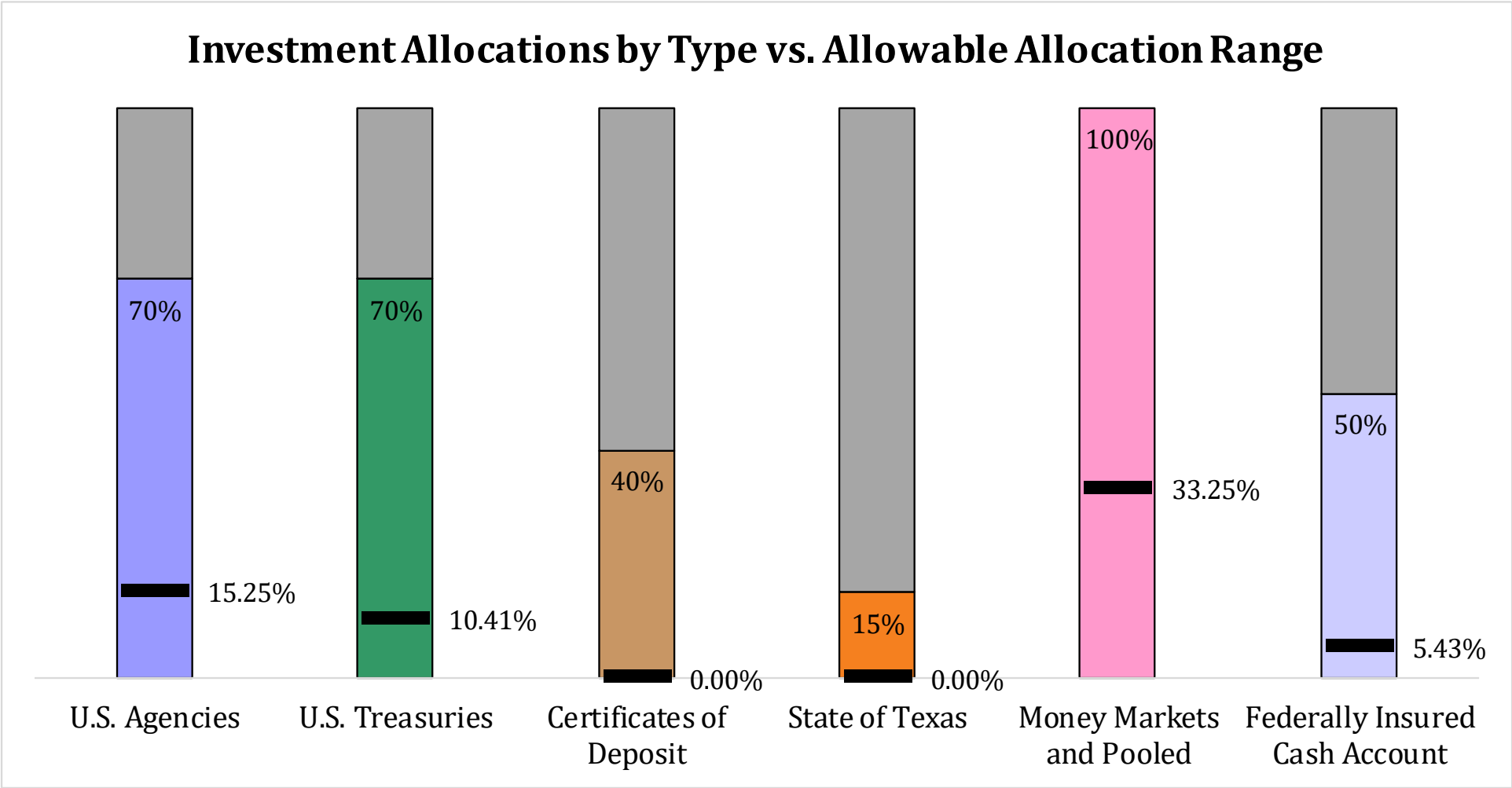
Be a trusted community partner dedicated to excellence in service

+ Core Values

Safety, Team, Integrity, Culture, and Stewardship

Investment Allocations vs. Investment Allowable Range

Item 3.



Note: Colored area in bar represents allowable allocation range

Mission

Strengthening our community by providing resilient essential services

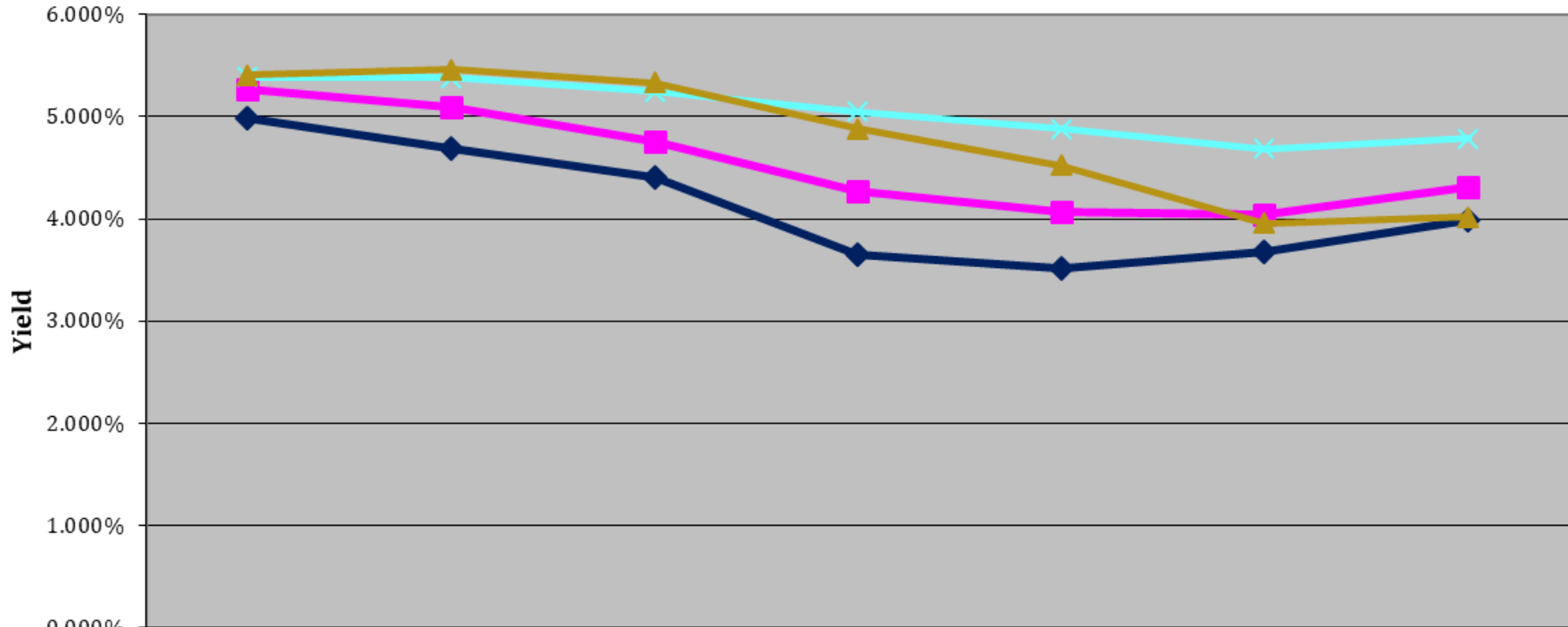
+ Vision

Be a trusted community partner dedicated to excellence in service

+ Core Values

Safety, Team, Integrity, Culture, and Stewardship

U.S. Treasury Yield Curve



	3 Mo	6 Mo	12 Mo	2 Yr	3 Yr	10 Yr	30 Yr
◆ Current (09/10/2024)	4.990%	4.690%	4.400%	3.648%	3.510%	3.680%	3.980%
■ Quarter End (07/31/2024)	5.264%	5.089%	4.749%	4.266%	4.061%	4.035%	4.306%
✕ Last Quarter (04/30/2024)	5.384%	5.377%	5.244%	5.050%	4.882%	4.682%	4.786%
▲ Four Quarters Ago (07/31/2023)	5.408%	5.461%	5.331%	4.877%	4.525%	3.957%	4.016%

Commercial Paper Update

CUSIP	Par Amount	Nominal Rate	Issue Date	Maturity Date	Total Days	Total Interest
64257PBV1	10,400,000.00	3.75%	7/23/2024	9/17/2024	56	59,672.13
64257PBW9	4,600,000.00	3.95%	7/23/2024	9/17/2024	56	27,801.09

Note: The table above shows the commercial paper notes with an issue date and/or maturity date that occurred during the reporting period and any currently outstanding commercial paper notes.



Meeting Date: September 26, 2024 **Agenda Type:** Items from Staff

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

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

RECOMMENDED ACTION: Quarterly Update on the Headwaters at the Comal

Quarterly Update

Item 4.



HEADWATERS™
AT THE COMAL

Construction Update

Item 4.

- In progress
 - Additional stormwater management features
 - Security; including fence along Klingemann
 - Lighting
- Next package projected to come to NBU Board in October
 - \$4.1 Million building finish-out
- Future items in process
 - Main parking area (TCEQ funding)
 - Updated Lake|Flato AIA agreement

Construction Update

Item 4.



HEADWATERS™
AT THE COMAL



Development Update

Item 4.

- September 12, 2023 Presented to NBEDC
- September 18th – 19th Big Give 2024
- \$100,000 grant to Less Trust (Frost Bank), pending
- Santikos Capital Grant, letter of intent, pending
- October 4th Preview Event

Development Update

Item 4.



HEADWATERS™
AT THE COMAL

Development Update

Item 4.



HEADWATERS™
AT THE COMAL

One Water Spotlight: Headwaters at the Comal

Site/Prairie Restoration and Green Stormwater Infrastructure Installation, 2016 – 2017

A historic fleet facility yard was converted to native prairie, a green stormwater management system was installed, and enhancements for continued water plant operations within a sensitive area were added.



One Water Spotlight: Headwaters at the Comal



One Water Components

DEMAND REDUCTION

- ✓ Native and/or drought tolerant plants
- ✓ Low impact development

SITE-HARVESTED SUPPLY

- ✓ Storm water capture

WATER QUALITY PROTECTION

- ✓ Green stormwater infrastructure
- ✓ Natural infrastructure
- ✓ Low impact development

INTEGRATED MANAGEMENT

- ✓ One Water Plan, Roadmap element
- ✓ Coordinated policies and programs
- ✓ Community awareness, input and support

Program Update

Item 4.



PROTECTING WATER RESOURCES WITH SUSTAINABLE DEVELOPMENT



This cooperative project has been funded in part by the United States Environmental Protection Agency through the Texas Commission on Environmental Quality.



Program Update

Item 4.

AGENDA



Introductions



Need for Sustainable Development in New Braunfels



Low Impact Development at Home and in Our Community



Local Guidelines and Resources



Opportunities to Engage



HEADWATERS™
AT THE COMAL



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

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

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

RECOMMENDED ACTION: Approve Minutes of the NBU Regular Board Meeting of August 29, 2024

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

- 1. August 29, 2024 Regular Board Meeting Minutes

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

**1:00 P.M.
Thursday, August 29, 2024
NBU Board Room
263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130**

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

PRESENT

Board President Wayne Peters, Board Vice President Judith Dykes-Hoffmann, Board Trustee John Harrell, *Board Trustee Yvette Barrera Villanueva, and Mayor Neal Linnartz
*Board Trustee Yvette Barrera Villanueva left at 5:01pm

ABSENT

None

NBU PERSONNEL

Ryan Kelso, Ragan Dickens, Greg Brown, Dawn Schriewer, Connie Lock, Rocio Gallegos, Sheila Lavender, David Hubbard

NBU CONSULTANTS

None

PLEDGE AND INVOCATION

Mayor Neal Linnartz led the pledge of allegiance and offered the invocation.

NBU EMPLOYEE RECOGNITION

1. Recognition of NBU Texas Lineman Rodeo Participants

NBU employees who participated in the 2024 Texas Lineman Rodeo were recognized. NBU had a Journeyman Team made up of Bradley Dietert, Chris Gavigan, and Ty McFarlin, as well as five Apprentices made up of Brenner Magott, Chance Miller, Klayton Rothrock, and Nate Wallsmith. Additionally, two barbeque teams made of John Espinoza, Mike Vineyard, and Gerald Lehmann, as well as George Herrera, Javier Nieto, and Joseph Lopez. Additional NBU staff that assisted with judging, coordinator, and coaches included Michael Najera, Justin Green, Ryan Voges, Coby Henk, Keith Marsh, Mike Hardick, and Austin Kloerner.

PUBLIC COMMENT

There were no public comment requests.

ITEMS FROM THE CHAIR

1. Report from the Investment Committee

Board Trustee Yvette Barrera Villanueva provided a report from the Investment Committee meeting on July 17, 2024. Items discussed included a market update and the Commercial Paper and Taxable Note Programs, including the cost of extending them and the steps needed to pursue their extension.

2. Report from the Records and Information Management Committee

Board Trustee Yvette Barrera Villanueva provided a report from the Records and Information Management Committee meeting that took place on August 13, 2024. Items discussed included information on the Texas State Library and Archives Commission (TSLAC), the FY2024 records recap, the FY2024 destruction report, the current destruction approval process, and the proposal to review and modify the current process to a more efficient and economical process to bring to the Board for approval at a later date.

3. Report from the Governance Committee

Board Vice President Judith Dykes-Hoffmann provided a report from the July 20, 2024, Governance Committee meeting. Items discussed included the proposed schedule for reviewing and approving the Governance Policy.

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

No additional comments were made.

ITEMS FROM STAFF

1. CEO Update

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

a. Texas Public Power Association Annual Conference Update

Several members of NBU's Leadership Team and board members attended the Texas Public Power Association (TPPA) Annual Conference in Austin, TX, from July 22nd to July 24th. The conference featured legislative updates and current and upcoming regulations.

b. CEO Roadshow Events: New Braunfels Conservative Group, New Braunfels Jaycees, and the Retirees are Progressive Group

Presentations in July on the State of NBU were given at the New Braunfels Conservative Group and New Braunfels Jaycees. A presentation on Water Supply was given at the Retirees are Progressive group in July.

c. NBU Interns Appreciation Luncheon

NBU summer intern hires were honored at a lunch, during which they were also given the opportunity to explore their Clifton Strengths reports.

- d. NBU Cashiering Team Visits New Braunfels Library to Participate in Utility Bill Assistance Training

The NBU Cashiering Team visited the New Braunfels Library to participate in Utility Bill Assistance and better understand the process from start to finish.

- e. NBU Hosts All-Employee Meeting:

The NBU All-Employee Meeting was held on August 8, 2024. Employees heard presentations on the strategic goals and priorities for Fiscal Year 2025, Gallup employee engagement survey results, Employee Experience Team updates, and leadership presentations from NBU employee Justin Green and guest speaker Clint Rutledge.

- f. Community Outreach: NBU Participation at the New Braunfels Independent School District Education Expo

NBU employees from Customer Service, Conservation & Customer Solutions, and Enterprise Communications attended the NBISD Education Expo to provide information on conservation tips, available rebates, and information on our bill assistance programs.

- g. Leadership Announcements of New Hires and Position Changes

Ragan Dickens was introduced as the new Chief Communications and Strategy Officer. He comes to NBU after leading the communications team for Walmart and Tyson. Prior to that, he worked in State and federal government for a sitting Governor.

Sheila Lavender was introduced as the new Chief Customer Officer. She comes to NBU after serving as the Vice President of Technology and Security Engineering at RSI.

Additionally, Reagan Pena was introduced as the new Director of Enterprise Communication, Ashley Van Booven has transitioned from the Director of Finance to the position of Director of Energy Risk, and John Warren has been named the Director of Finance.

- h. Any other items permitted under Section 55.0415 of the Texas Government Code: No additional items were discussed.

*no discussion under this item

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

Accounting Manager Kimberly Huffman provided an update on the financial status of NBU. Energy Risk Manager Missy Quent provided an update on the Transmission Cost of Service application with the Public Utility Commission of Texas that was filed in April 2024.

3. Water Supply Fee Report

Finance Manager John Warren provided an update on the Water Supply Fee Report.

4. Quarterly Capital Improvement Plan Update

Jacob Tschoepe updated the board on the Quarterly Capital Update

CONSENT ITEMS FOR ACTION

Trustee John Harrell made a motion, and Board Trustee Yvette Barrera Villanueva 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, and #16. The vote was unanimous.

1. Approve Minutes of the NBU Regular Board Meeting of June 27, 2024
2. Approve the Change Order Log from May 15, 2024, through July 15, 2024
3. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through July 15, 2024
4. Approve the Electric Line of Business Alternative Procurements from May 15, 2024, through July 15, 2024
5. Approval of the City Transfer Payable in Fiscal Year 2025, Based on Preliminary Financial Results for Fiscal Year 2024
6. Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with C.F. McDonald Electric, Inc. for the Construction of the Emergency Preparedness Plan Generators, Phase 1 Project
7. Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with Hydro Resources Mid-Continent, Inc. for the Construction of the Aquifer Storage and Recovery D1 Well Deepening Project
8. Authorize the CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the FM 1044 Elevated Storage Tank Project
9. Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the FM 1101 Discharge Line Project
10. Ratify the First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Conrads Elevated Storage Tank (Goodwin Lane) Project, and Authorize the CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Conrads Elevated Storage Tank Project
11. Authorize the CEO or His Designee to Negotiate and Execute a Third Amendment to the Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Interstate Highway 35 24-inch Water Line Downtown Project
12. Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Quiddity Engineering, LLC for the FM 1101 Pump Station and Ground Storage Tank Project

13. Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with Guido Construction Company for the Construction of the Aquifer Storage and Recovery EAA Interlocal Agreement Monitoring Well Site Improvements Project
14. Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Central Downtown to Morningside Pressure Zone Conversion Project
15. Authorize the CEO or His Designee to Negotiate and Execute a Materials Agreement with Chemtrade Chemicals US, LLC, for the Purchase of Water and Wastewater Chemicals
16. Authorize the CEO or His Designee to Negotiate and Execute a Materials Agreement with Pencco Inc. for the Purchase of Water and Wastewater Chemicals

PRESENTATION ITEMS

1. **Presentation on the Gallup Employee Engagement Survey Results**
Director of People and Culture Adriana Sanchez introduced Mason Hults with Gallup, who presented the Gallup Employee Engagement Survey results via a prerecorded Zoom session.
2. **Presentation from the NBU Employee Experience Team on the Proposed NBU Employee Engagement Action Items, Based on the Results from the Gallup Employee Engagement Survey Results**
Following the Gallup Employee Engagement Survey Results, the NBU Employee Experience Team presented information on the key takeaways, successes, and future action items proposed to address the Employee Engagement Survey Results.
3. **Presentation on the Guadalupe-Blanco River Authority's Wholesale Delivery of Gonzales Carrizo Water Supply and Its Impact on NBU**
Charles Hickman with GBRA presented information on the Carrizo Groundwater Supply Program, which included the completion of the water treatment plant facilities.
4. **Presentation on the New Braunfels Utilities Aquifer Storage and Recovery Project**
*This item was pulled from the agenda and will be presented at the September board meeting.
5. **Presentation on the NBU Fiscal Year 2024 Strategic Plan Results**
Shawn Schorn presented information on the Fiscal Year 2024 Strategic Plan, including the Strategic Goal overview and results, Annual Priorities overview and results, and Performance Measure payout.

ITEMS FOR FUTURE ACTION

1. **Review and Discuss Proposed Revisions to the NBU Board Governance Policies**
Board Vice President Judith Dykes Hoffmann shared the timeline to review and discuss the proposed revisions to the Governance Policy, which will be up for approval in the October meeting.

ACTION ITEMS

1. **Discuss and Consider Approval of the Fiscal Year 2025 Strategic Plan**

Shawn Schorn presented information on the Fiscal Year 2025 Strategic Plan, including the recommended changes to the FY25 Strategic Goals, Annual Priorities, and proposed Performance Measure payout.

Board Trustee Yvette Barrera Villanueva made a motion, and Board Vice President Judith Dykes Hoffmann seconded the motion to approve the Fiscal Year 2025 Strategic Plan. The vote was unanimous.

EXECUTIVE SESSION

Board President Wayne Peters recessed the Open Session at 3:22 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included:

Power Supply Resources – Competitive Matters: a. Discuss and Consider Edison Electric Institute (EEI) Resolution allowing NBU to enter into a Master Agreement related to power supply transactions; Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney-Client Privilege: a. Discuss the Effects of the San Antonio Water System's Application for Water Use Permit No. 13098 on NBU's Water Rights in the Guadalupe River Basin; b. Discuss Utility Construction Cost Sharing Agreement Letter Agreement Conditionally Approving Certain Subdivision Plans among NBU, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC; c. Discuss Proposed High-Density Multifamily Development Platted as Minor Plat; Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney-Client Privilege (Section 551.071 – Texas Government Code); Real Property (Section 551.072 – Texas Government Code): Discuss Legal Matters Relating to Potential Eminent Domain Actions to Secure the Following Easements Regarding the McKenzie Interceptor Upgrade Project (collectively hereinafter referenced as the "McKenzie Interceptor Upgrade Project Easements"):

- i. a 0.296 Acre Permanent Utility Easement, a 0.044 Acre Temporary Construction Easement, and a 0.213 Acre Temporary Construction Easement, on, over, across, and/or under Lot 18, Block J, Avery Park Subdivision, Unit 2 (Amended), Guadalupe County, Texas, owned by N.B. Avery Park Homeowners Association, Inc.
- ii. a 0.632 Acre Permanent Utility Easement, on, over, across, and/or under Lots 901 and 902, Block 4, Avery Park 13, Guadalupe County, Texas, owned by N.B. Avery Park Homeowners Association, Inc.
- iii. a 0.312 Acre Temporary Construction Easement and a 0.022 Acre Temporary Construction Easement, on, over, and/or across Lot 902, Block 4, Avery Park 13, Guadalupe County, Texas, owned by N.B. Avery Park Homeowners Association, Inc.
- iv. a 2.088 Acre Permanent Utility Easement and a 1.395 Acre Temporary Construction Easement, on, over, across, and/or under a 52.50 acre tract described in a deed recorded in Document Number 202399002975, Official Public Records, Guadalupe County, Texas, owned by Rockspring Saur LLC

v. a 1.879 Acre Permanent Utility Easement and a 1.253 Acre Temporary Construction Easement, on, over, across, and/or under the remainder of a 32 acre tract described in a deed recorded in Volume 2502, Page 699, Official Public Records, Guadalupe County, Texas and part of a 4.307 acre tract designated as Third Tract in a deed recorded in Volume 2659, Page 759, Official Public Records, Guadalupe County, Texas, owned by MSSC Investments, LP

vi. a 1.937 Acre Permanent Utility Easement and a 1.127 Acre Temporary Construction Easement, on, over, across, and/or under Lot 2, Block 1 of Titan Industrial NB Park Unit 2, Comal County, Texas, and Lot 3, Block 1 of Titan Industrial NB Park Unit 3, Comal County, Texas, and the remainder of a 66.182 acre tract, designated Tract 1, in a deed recorded in Document Number 202106057346, Official Public Records, Comal County, Texas, owned by GCP III St. Croix Landco, LLC

vii. a 1.846 Acre Permanent Utility Easement and a 0.847 Acre Temporary Construction Easement, on, over, across, and/or under a 40.37 acre tract described in a deed recorded in Document Number 202206025070, Official Public Records, Comal County, Texas, owned by MP New Braunfels, LLC; and

Personnel Matters – CEO Evaluation (Section 551.074 – Texas Government Code): Deliberate the appointment, employment, evaluation, and duties of the CEO

The Executive Session was opened at 3:22 pm and closed at 5:00 pm.

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

The Regular Session resumed at 5:01 pm, and the following actions were taken relating to the Executive Session as described above.

1. Board Trustee John Harrell made a motion, and Mayor Neal Linnartz seconded the motion to authorize the CEO of NBU or His Designee to Prepare and File One or More Amicus Curiae Briefs in Support of the Guadalupe-Blanco River Authority's Judicial Appeal of the Texas Commission on Environmental Quality's Decision and Order Issuing Water Use Permit No. 13098 to the San Antonio Water System. The vote was unanimous.
2. Board Vice President Judith Dykes Hoffmann made the motion, and Mayor Neal Linnartz seconded the motion to increase CEO's salary to \$328,900.00 annually and to increase his annual phone allowance to \$1170.00, with no change regarding the vehicle allowance, effective September 1, 2024.

ACTION ITEMS

1. **Discuss and Consider Approving Utility Construction Cost Sharing Agreement Letter Agreement Conditionally Approving Certain Subdivision Plans among NBU, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC**

Mayor Neal Linnartz made a motion, and Board Vice President Judith Dykes Hoffmann seconded the motion to approve the Utility Construction Cost Sharing Agreement Letter at

Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC. The vote was unanimous.

2. Discuss and Consider Approving Resolution R-2024-186 of the New Braunfels Utilities Board of Trustees Recommending the Acquisition of the McKenzie Interceptor Upgrade Project Easements. The Acquisitions are Necessary to Advance and Achieve the Public Use of Expanding the New Braunfels Utilities' Wastewater System to Increase Sewer Capacity to Meet Existing and Future Needs and Ensure Reliability

Board Vice President Judith Dykes Hoffmann made a motion, and Mayor Neal Linnartz seconded the motion to approve Resolution R-2024-186 of the New Braunfels Utilities Board of Trustees Recommending the Acquisition of the McKenzie Interceptor Upgrade Project Easements. The Acquisitions are Necessary to Advance and Achieve the Public Use of Expanding the New Braunfels Utilities' Wastewater System to Increase Sewer Capacity to Meet Existing and Future Needs and Ensure Reliability. The vote was unanimous.

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

Board Vice President Judith Dykes Hoffmann made a motion, and Mayor Neal Linnartz seconded the motion to approve Resolution R-2024-187 of the New Braunfels Utilities Board of Trustees Recommending Any Legal Action Necessary to Remove the Cemetery Dedication by MP New Braunfels, LLC Encumbering a 40.37 Acre Tract Described in A Deed from Mary Ann Scott, et. al. to MP New Braunfels, LLC, Recorded in Document Number 202206025070, Official Public Records, Comal County, Texas, and Situated in the A. M. Esnaurizar Survey, Abstract Number 1, Comal County, Texas. The vote was unanimous.

ADJOURN

There was no further business, and Board President Wayne Peters adjourned the meeting at 5:06 p.m.

Wayne Peters, President
Approved

Attest:

Ryan Kelso, Secretary of the Board
Chief Executive Officer

Date Approved: September 26, 2024



Meeting Date: September 26, 2024 **Agenda Type:** Consent Items for Action

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

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

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

BACKGROUND

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

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

FINANCIAL IMPACT

Change orders less than \$50,000:

- Landa Pump Station Phase 2 / Well 5, SCADA FAT changes, MGC Contractors Inc., Chand order No. 7, Cost increase of \$13,425.51.
- Solms Lift Station Expansion, Add bollards around transformer, additional bypass pump, additional bypass pipe, clean effluent pipe, manhole riser install, Pesado Construction Company, Change order No. 3, Cost increase of \$30,711.16.
- I-35 Water Line (Downtown), Deduct change order - unused bid items credited, and remaining \$36,116.42 in Owner's contingency returned, contract price reduced, Pesado Construction Company, Change order No. 4, Cost decrease of \$214,664.42.

Change orders more than \$50,000:

- None reported during this period

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None



Meeting Date: September 26, 2024 **Agenda Type:** Consent Items for Action

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

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

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

BACKGROUND

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

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

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

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

FINANCIAL IMPACT

There were no new contracts reported during the period from July 15th to August 15th.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

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

Water Engineering PSAs Presented to the Board FY 2024

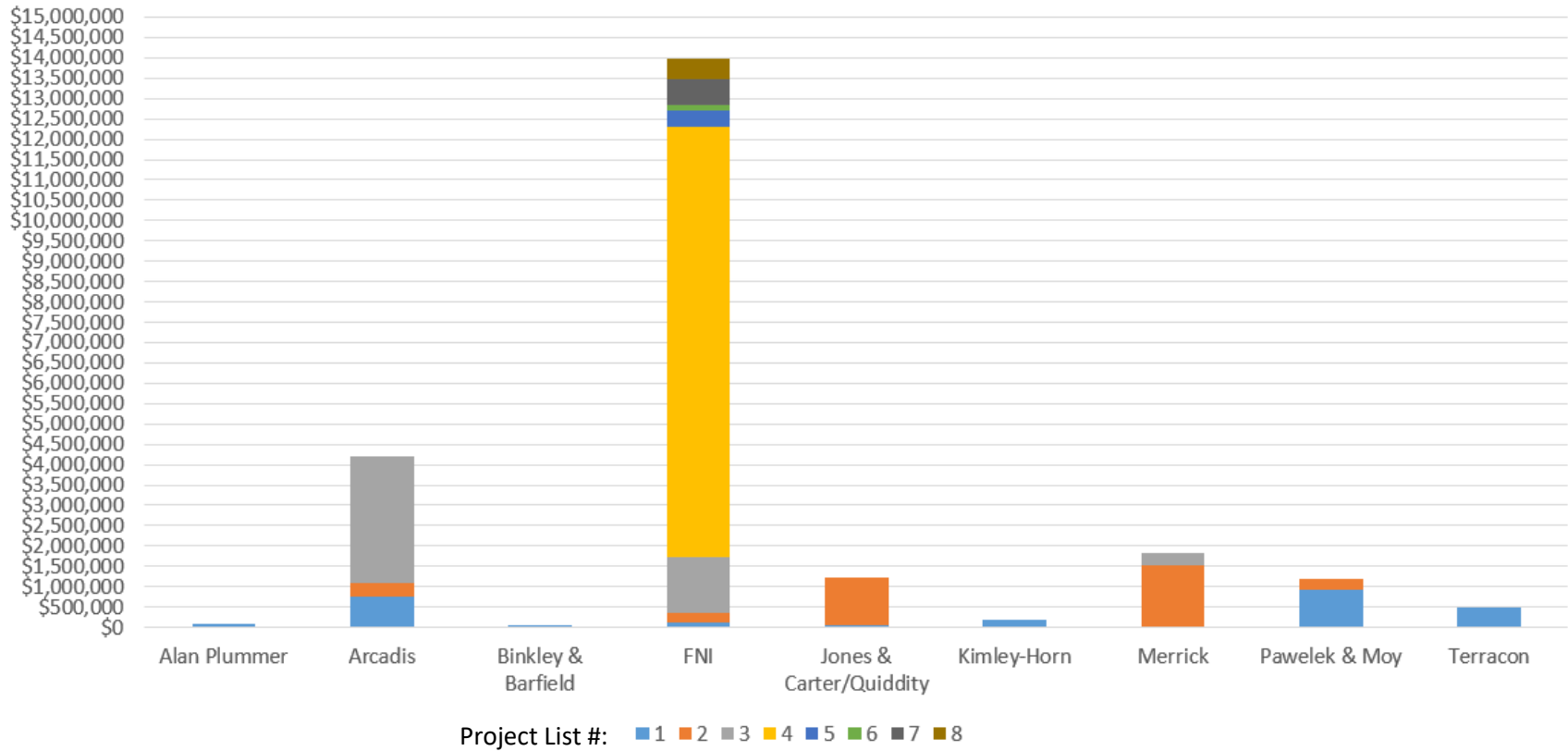


Exhibit A – Report for Water Engineering Contracts August 2024

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

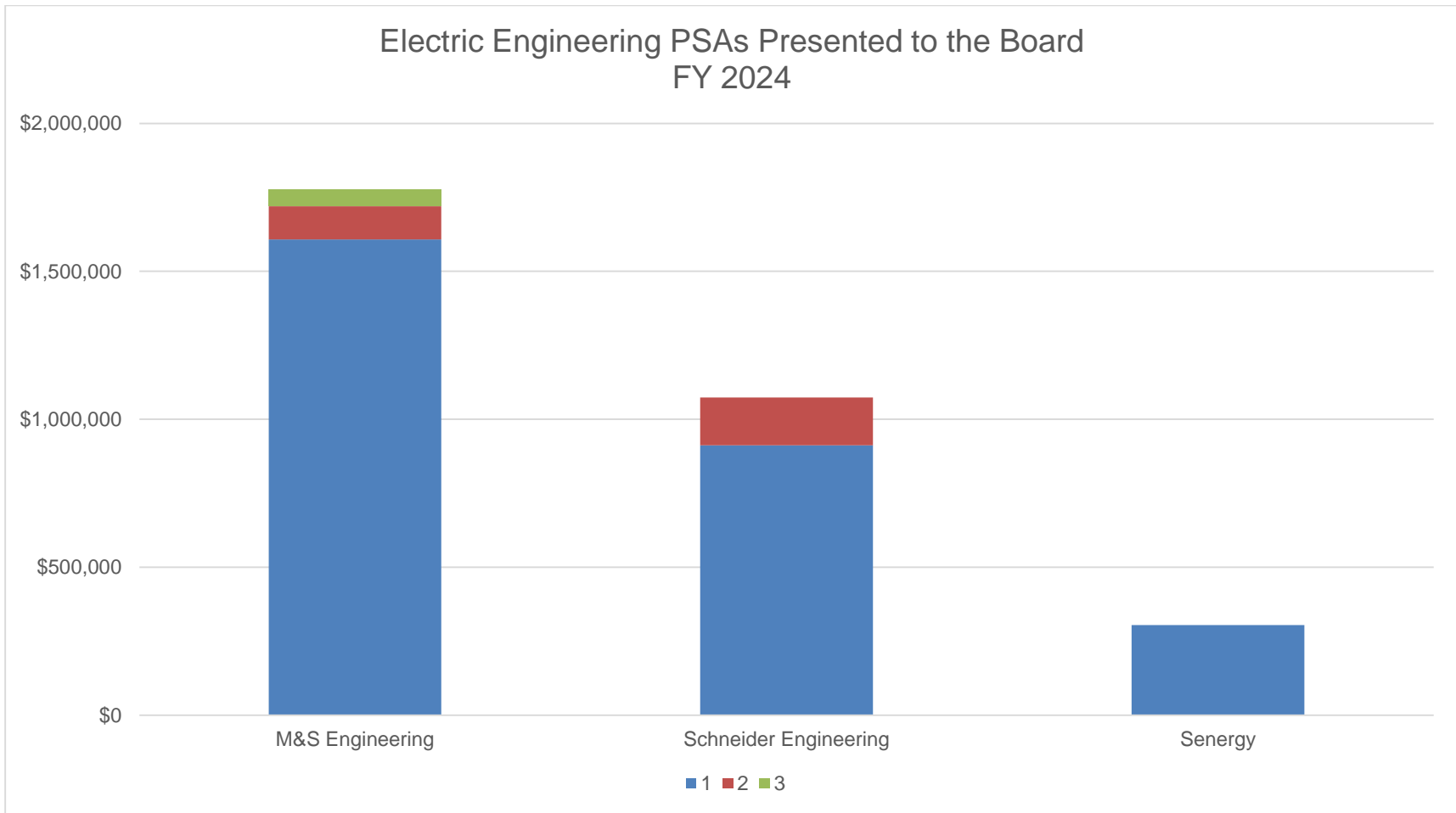


Exhibit B – Report for Electrical Engineering Contract August 2024

Item 3.

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



Meeting Date: September 26, 2024 **Agenda Type:** Consent Items for Action

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

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

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

BACKGROUND

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

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

FINANCIAL IMPACT

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

- Inventory Materials procurement for upcoming projects, four 25 kV pad mount switchgear, two 300 kVA three phase transformers, two 500 kVA three phase transformers, KBS Electrical Distributor, Cost of \$253,920.00.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Stewardship

EXHIBITS

None



Meeting Date: September 26, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve 2024 First Quarter Charge-Off Accounts

BACKGROUND

Charge-offs for the first quarter of calendar year 2024 (January, February, and March) netted \$76,910.34 for NBU accounts that have unpaid balances. New Braunfels Utilities applied \$43,643.71 in customer deposits to the delinquent account balance of \$120,554.05, which reduced the total unpaid balance by 36%.

When compared to total revenue billings for the same quarter, the charge-off balance amounts to 0.11%. For every \$100 billed to our customers, we received \$99.89.

The number of residential accounts included in the charge-offs decreased by 10.93% compared to the previous 3 years' average for the same quarter, and the dollar amount decreased by 19.61%. Residential customers accounted for 98% of the number of charge-off accounts.

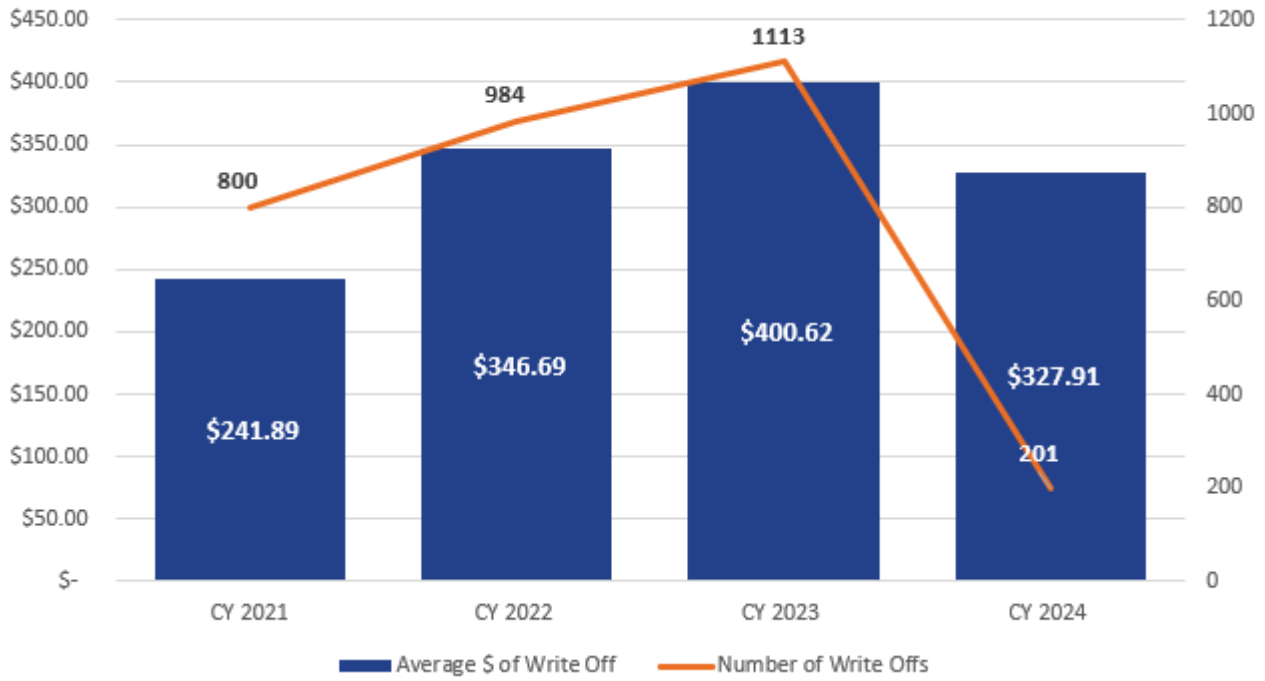
The accounts that included insufficient funds due to returned checks and failed auto-draft payments totaled \$2,864.79.

The main factors in the charge-offs for Q1 of 2024 include failure to comply with payment extensions, moratorium of disconnects for nonpayment due to low-temperature indexes, and account deposits calculated on previous rates and not equaling a two-month annual average.

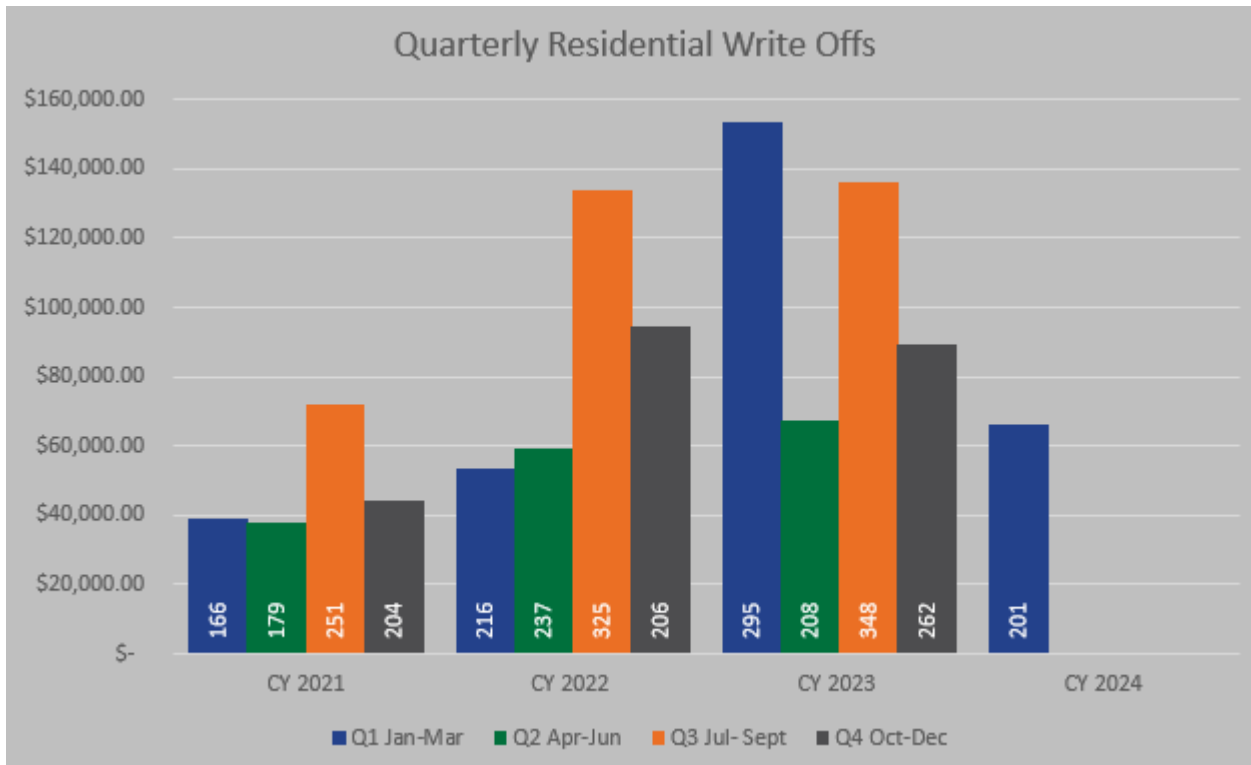
The NBU credit rating summary for this report is as follows:

Credit Rating*	Number of Active Customers	Number of Charge-off Customers	Percentage of Charge-off Customers
A	53,859	9	0.02%
B	7,488	55	0.73%
C	4,405	139	3.16%
D	1	3	300.00%

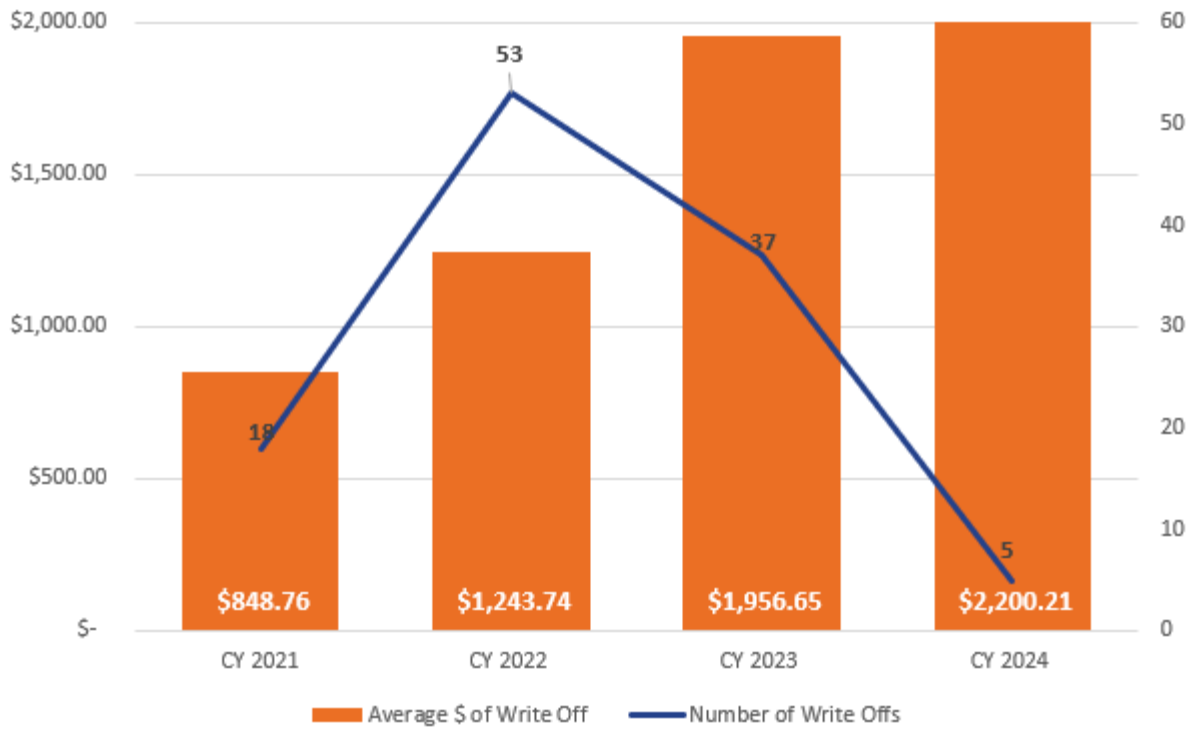
Residential Annual Write Off Average & Total Write Off Accounts



Quarterly Residential Write Offs

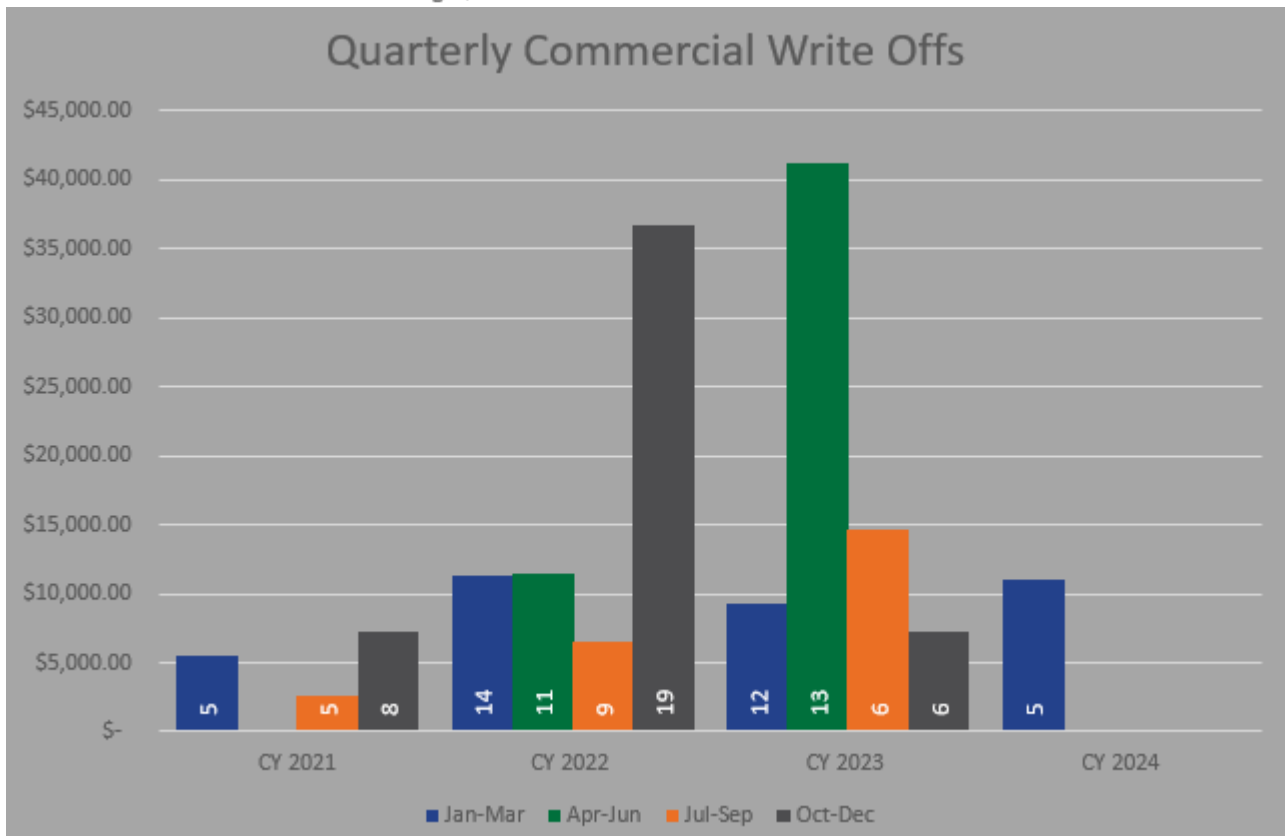


Commercial Annual Write Off Average & Total Write Off Accounts



Legend: Average \$ of Write Off (Orange Bar), Number of Write Offs (Blue Line)

Quarterly Commercial Write Offs



Legend: Jan-Mar (Blue), Apr-Jun (Green), Jul-Sep (Orange), Oct-Dec (Grey)

FINANCIAL IMPACT

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

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. Charge-off Summary

**Charge Off Summary
May 2024**

<u>TYPE OF CUSTOMER</u>	<u>AMOUNT BEFORE DEPOSIT/INTEREST APPLIED</u>	<u>DEPOSIT APPLIED</u>	<u>AMOUNT AFTER DEPOSIT/INTEREST APPLIED</u>	<u>AMOUNT OF CHARGE OFF PER \$100 BILLED</u>
Residential	\$106,391.37	\$40,749.13	\$65,642.24	0.095%
Commercial	\$13,145.05	\$2,622.86	\$10,522.19	0.015%
Miscellaneous	\$0.00	\$0.00	\$0.00	0.000%
Bankruptcy	\$1,017.63	\$271.72	\$745.91	0.001%
Total	\$120,554.05	\$43,643.71	\$76,910.34	0.119%

Historical Charge-Off Information

	2024			2023			2022		
	<u>Charge-Off Amount</u>	<u># of Charge-Offs</u>	<u>Average Amount</u>	<u>Charge-Off Amount</u>	<u># of Charge-Offs</u>	<u>Average Amount</u>	<u>Charge-Off Amount</u>	<u># of Charge-Offs</u>	<u>Average Amount</u>
1st Qtr	\$76,910.34	206	\$373.35	\$166,886.39	309	\$540.09	\$64,808.78	230	\$281.78
2nd Qtr				\$108,696.15	221	\$491.84	\$70,413.13	248	\$283.92
3rd Qtr				\$152,227.82	359	\$424.03	\$140,408.89	334	\$420.39
4th Qtr				\$96,414.09	268	\$359.75	\$131,429.63	225	\$584.13



Meeting Date: September 26, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with Blastco Texas Inc. for the Construction of the County Line Standpipe Rehabilitation Project

BACKGROUND

On June 4, 2024, New Braunfels Utilities (“NBU”) issued a request for bids for the County Line Standpipe Rehabilitation Project, which includes (i) full rehabilitation of interior and exterior coating systems, including structural repairs and replacement of appurtenances for the existing County Line 1.5 million-gallon steel standpipe, (ii) demolition of minor structures, (iii) site security fencing (iv) stormwater pollution prevention plan, (v) site restoration, and (vi) all other appurtenances necessary to complete the Project (the “Project”). The Project will ensure the County Line Standpipe remains in compliance with TCEQ requirements.

On June 28, 2024, NBU received five (5) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of Blastco Texas Inc. (“Blastco”) for the Project. Blastco was selected as the respondent who provides the best value to NBU based on the selection criteria, the weighted value for those criteria, and the ranking evaluation, including their cost of work, proposed schedule, past performance on similar projects, overall qualifications, available resources, corporate history, and references. Blastco’s proposal includes a base bid for Water Utility Adjustments of \$1,085,000.00 and a base bid for General Items of \$485,000.00 for a total base bid of \$1,570,000.00. Blastco’s proposal includes Add/Alternates for a total of \$272,725.00. The total contract price that is recommended for award to Blastco is \$1,842,725.00.

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

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

FINANCIAL IMPACT

The total financial impact of the Contract with Blastco for the Project is \$1,842,725.00. The Project is budgeted within the fiscal year 2025 NBU Board-approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency of \$180,000.00, which is approximately 10% of the total contract amount, will be added to the project construction budget. The total contract amount plus contingency is \$2,022,725.00.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

1. Construction Contract with Blastco
2. Bid Tab – (RFB 24-0083)

Bid Tab	
<i>Bidder</i>	<i>Total Cost</i>
Blastco Texas Inc	\$1,842,725
CFG Industries LLC	\$1,799,975
N. G. Painting LLC	\$2,795,500
O&J Coatings Inc.	\$1,896,450
Viking Painting LLC	\$1,768,250

3. Bid Evaluation Matrix – Competitive Sealed Proposal (RFB 24-0083)

Bid Evaluation Matrix						
Item	Criteria	Blastco	CFG	NG Painting	O&J	Viking
1.	Cost of the Work	48	49.1	31.6	46.6	50
2.	Proposed Schedule / Contract Time	14.3	13.7	.3	.3	11.0
3.	Past Performance on Similar Projects	14.7	12.3	10.7	5.3	11.7
4.	Overall Qualifications, Reputation, Past Relationship with NBU and Public Owners	9	6.7	4.3	4.3	7.7
5.	Contractor's Corporate History and Stability	4.7	3.3	1.7	1.7	4.3
6.	References	5.0	2.3	2.3	5.0	3.3
	Total Score	95.6	87.5	51.0	63.3	88.0

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

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

ARTICLE 1 - WORK

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

- Contract Agreement and the related Exhibits;**
- Standard General Conditions of the Contract;**
- Special Conditions;**
- Technical Specifications;**
- Payment Bond;**
- Performance Bond;**
- Technical Specifications produced by Freese and Nichols, Inc. dated April 26, 2024; and**
- Design Plans produced by Freese and Nichols, Inc. dated April 26, 2024.**

1.02 The Work is generally described as follows:

The Project is anticipated to include some or all of the following items within its scope: (i) full rehabilitation of interior and exterior coating systems, including structural repairs and replacement of appurtenances for the existing County Line 1.5 million gallon (“MG”) steel standpipe, (ii) demolition of minor structures, (iii) site security fencing (iv) storm water pollution prevention plan, (v) site restoration, and (vi) all other appurtenances necessary to complete the Project.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

County Line Road Standpipe Rehabilitation

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

- Dalton Warren, P.E.**
- Freese and Nichols, Inc.**
- 1251 Sadler Drive, Building I, Suite 1150**
- San Marcos, Texas 78666**
- 512-924-9770**

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

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work shall be substantially complete within **one hundred eighty (180) calendar days from the Notice to Proceed date** and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

4.03 *Liquidated Damages*

A. The Contractor and NBU recognize that time is of the essence of this Agreement and that NBU will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by NBU if the Work is not completed on time. Accordingly, instead of requiring any such proof, NBU and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to NBU **One Thousand Four Hundred Thirty-Eight Dollars and Thirteen cents (\$1,438.13)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by NBU, the Contractor shall pay to NBU **One Thousand Four Hundred Thirty-Eight Dollars and Thirteen Cents (\$1,438.13)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 *Special Damages*

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

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

ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

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

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

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

6.03 *Final Payment*

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

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

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

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

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

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

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

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

8.02 *Assignment of Contract*

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

8.03 *Successors and Assigns*

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

8.04 *Severability*

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

8.05 *Governing Law*

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

8.06 *Venue*

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

8.07 *Prohibition on Contracts with Companies Boycotting Israel*

- A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to

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

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

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

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

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

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

A. If the Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Contractor represents the following:

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

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

infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

8.10 *Prohibition on Contracts with Companies Boycotting Energy Companies*

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

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

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

8.12 *Texas Public Information Act*

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

b. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

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

8.13 *Electronic Signatures*

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

ARTICLE 9 - INSURANCE

9.01 *Evidence of the Contractor's Insurance*

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

Add Exhibit A – Insurance Rider

Add Exhibit B – Contractor's Bid Form

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

Item 6.

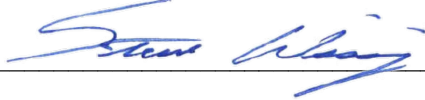
IN WITNESS WHEREOF, NBU and the Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to NBU and the Contractor. All portions of the Contract Documents have been signed or identified by NBU and the Contractor or on their behalf.

This Agreement will be effective on _____, 2024 (which is the Effective Date of the Agreement).

NBU:
NEW BRAUNFELS UTILITIES

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

CONTRACTOR:
BLASTCO TEXAS INC.

By: 
Printed Name: Steve Wissing
Title: Project Controls Manager


[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

Attest: 

Title: Estimator

Address for giving notices:
16201 Wood Dr.
Channelview, TX 77530

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

License No.: _____
(Where Applicable)

Agent for service or process:

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

END OF DOCUMENT

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

1. Specific Insurance Requirements

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

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

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

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

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

A. Definitions. For purposes of this Agreement:

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

B. Policies.

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

C. Limits, Deductibles and Retentions

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

D. Evidence of Insurance.

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

Insurance must be evidenced as follows:

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

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

E. Contractor Insurance Representations to Owner Parties

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

F. Insurance Requirements of Contractor's Subcontractors

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

G. Use of the Owners Equipment

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

H. Release and Waiver

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

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

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

Item 6.

New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

PROJECT: County Line Road Standpipe Rehabilitation

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

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

Item 6.

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

Water Adjustments

DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
Ground Storage Tank Rehabilitation: Including but not limited to structural repairs, replacing appurtenances, and safety modifications.	LS	1	\$455,000.00	\$455,000.00
Ground Storage Tank Interior Coating Replacement: Including but not limited to removal of existing coatings, surface preparation, and application of new coatings.	LS	1	\$370,000.00	\$370,000.00
Ground Storage Tank Exterior Coating Replacement: Including but not limited to removal of existing coatings, surface preparation, and application of new coatings.	LS	1	\$260,000.00	\$260,000.00

General Item

DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
Mobilization: Not to exceed 5% of Water Adjustments and General Items.	LS	1	\$70,000.00	\$70,000.00
Site Civil Improvements: Including but not limited to erosion and sedimentation control, fencing replacement, driveway improvements, and all other appurtenant work.	LS	1	\$155,000.00	\$155,000.00
Electrical and Instrumentation Improvements: Including but not limited to instrumentation, SCADA, start-up and testing, and all other electrical items.	LS	1	\$260,000.00	\$260,000.00

Add/Alternates

DESCRIPTION	UNIT	QUANTITY	UNIT COST, \$	TOTAL, \$
Additional Grinding Ground Storage Tank: Includes all appurtenant work to perform additional grinding.	MH	50	\$120.00	\$6,000.00
Miscellaneous Welding Ground Storage Tank: Includes all appurtenant work to perform additional miscellaneous welding.	MH	200	\$250.00	\$50,000.00

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

Seam Welding Ground Storage Tank: Includes all appurtenant work to perform seam welding.	LF	100	\$150.00	\$15,000.00
Pit Welding Ground Storage Tank: Includes all appurtenant work to perform pit welding.	SQIN	125	\$65.00	\$8,125.00
Patch Plates Ground Storage Tank: Includes all appurtenant work to install additional patch plates.	SF	200	\$200.00	\$40,000.00
Floor Plate Replacement Ground Storage Tank: Includes all appurtenant work to remove and replace damaged floor plates.	SF	200	\$200.00	\$40,000.00
Roof Rafter Repair Ground Storage Tank: Includes all appurtenant work to repair roof rafters.	LF	200	\$155.00	\$31,000.00
Roof Rafter Replacement Ground Storage Tank: Includes all appurtenant work to replace roof rafters in kind.	EA	34	\$1,250.00	\$42,500.00
Flanged Dollar Plate and Crow's Nest Ground Storage Tank: Includes all appurtenant work to install a flanged dollar plate and crow's nest.	LS	1	\$11,500.00	\$11,500.00
Additional Tank Vents: Includes all appurtenant work to repair the vents on the additional tanks.	EA	3	\$7,500.00	\$22,500.00
Additional Hatch Gaskets: Includes all appurtenant work to install hatch gaskets on the additional tanks.	EA	7	\$300.00	\$2,100.00
Seguin Road EST Handhole Covers: Includes all appurtenant work to replace the handhole covers on the Seguin Road EST.	LS	1	\$1,500.00	\$1,500.00
Morning Side EST Hatch II: Includes all appurtenant work to replace the hatch on Morning Side EST.	LS	1	\$2,500.00	\$2,500.00

BASE BID WATER UTILITY ADJUSTMENTS: \$ 1,085,000.00

BASE BID GENERAL ITEMS: \$ 485,000.00

TOTAL BASE BID: \$ 1,570,000.00

TOTAL ADD/ALTERNATES: \$ 272,725.00

TOTAL BASE BID + ADD/ALTERNATES: \$ 1,842,725.00

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

Item 6.

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

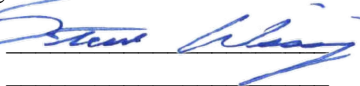
Addendum No. 1 dated	June 21, 2024	Received	
Addendum No. 2 dated		Received	
Addendum No. 3 dated		Received	

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



Secretary, *if bidder is a corporation

(Seal)

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

Blastco Texas Inc.

Company Name of Bidder



Authorized Signature

6/27/2024

Date

Steve Wissing

Printed Name of Authorized Signature

16201 Wood Dr.

Channelview, TX 77530

Address

281-802-9592

Telephone Number/Fax Number

END OF DOCUMENT



Meeting Date: September 26, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with CFG Industries, LLC for the Construction of the Loop 337 Ground Storage Tank Rehabilitation Project

BACKGROUND

On June 4, 2024, New Braunfels Utilities (“NBU”) issued a request for bids for the Loop 337 Ground Storage Tank Rehabilitation Project. The Project is anticipated to include some or all of the following items within its scope: (i) full rehabilitation of interior and exterior coating systems, including structural repairs and replacement of appurtenances for the existing Loop 337 0.5 million-gallon steel ground storage tank, (ii) demolition of minor structures, (iii) site security fencing (iv) stormwater pollution prevention plan, (v) site restoration, and (vi) all other appurtenances necessary to complete the Project. The Project will ensure that the Loop 337 Ground Storage Tank remains in compliance with TCEQ requirements.

On July 1, 2024, NBU received four (4) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of CFG Industries, LLC (“CFG”) for the Project. CFG was selected as the respondent who provides the best value to NBU based on the selection criteria, the weighted value for those criteria, and the ranking evaluation, including their cost of work, proposed schedule, past performance on similar projects, overall qualifications, available resources, corporate history, and references. CFG’s proposal includes a Base Bid for Water Utility Adjustments of \$529,000.00 and a Base Bid for General Items of \$358,250.00 for a Total Base Bid of \$887,250. The CFG’s Bid Form also included a list of Add/Alternates recommended for the Project totaling \$180,250. The total contract price recommended for the CFG award is \$1,067,500.00.

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

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

FINANCIAL IMPACT

The total financial impact of the Contract with CFG for the Project is \$1,067,500. The Project is budgeted within the fiscal year 2025 NBU Board-approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency of \$105,000, which is approximately 10% of the total contract amount, will be added to the project construction budget. The total contract amount plus contingency is \$1,172,500.00.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

1. Construction Contract with CFG
2. Bid Tab – (RFB 24-0084)

Bid Tab	
<i>Bidder</i>	<i>Total Cost</i>
Blastco Texas Inc.	\$1,422,225
CFG Industries LLC	\$1,098,500
N. G. Painting LLC	\$1,556,000
Viking Painting LLC	\$1,346,450

3. Bid Evaluation Matrix – Competitive Sealed Proposal (RFB 24-0084)

Bid Evaluation Matrix					
Item	Criteria	Blastco	CFG	NG Painting	Viking
1.	Cost of the Work	38.6	50	35.3	40.8
2.	Proposed Schedule / Contract Time	14.3	13.7	.3	11
3.	Past Performance on Similar Projects	14.7	12.3	10.7	11.7
4.	Overall Qualifications, Reputation, Past Relationship with NBU and Public Owners	9	6.7	4.3	7.7
5.	Contractor's Corporate History and Stability	4.7	3.3	1.7	4.3
6.	References	5	2.3	2.3	3.3
	Total Score	86.3	88.3	54.6	78.8

THIS AGREEMENT (the “Agreement” or the “Contract”) is between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **CFG INDUSTRIES, L.L.C.**, a Texas limited liability company (the “Contractor”).

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

ARTICLE 1 - WORK

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

- Contract Agreement and the related Exhibits;**
- Standard General Conditions of the Contract;**
- Special Conditions;**
- Technical Specifications;**
- Payment Bond;**
- Performance Bond;**
- Design Plans produced by Freese and Nichols, Inc. dated April 26, 2024; and**
- Technical Specifications produced by Freese and Nichols, Inc. dated April 26, 2024.**

1.02 The Work is generally described as follows:

The Project is anticipated to include some or all of the following items within its scope: (i) full rehabilitation of interior and exterior coating systems, including structural repairs and replacement of appurtenances for the existing Loop 337 0.5 million gallon (“MG”) steel ground storage tank, (ii) demolition of minor structures, (iii) site security fencing (iv) storm water pollution prevention plan, (v) site restoration, and (vi) all other appurtenances necessary to complete the Project.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Loop 337 Ground Storage Tank Rehabilitation

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

Dalton Warren, P.E.
Freese and Nichols, Inc.
1251 Sadler Drive, Building I, Suite 1150
San Marcos, Texas 78666
512-924-9770

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

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work shall be substantially complete within **one hundred eighty (180) calendar days from the Notice to Proceed date** and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

4.03 *Liquidated Damages*

A. The Contractor and NBU recognize that time is of the essence of this Agreement and that NBU will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by NBU if the Work is not completed on time. Accordingly, instead of requiring any such proof, NBU and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to NBU One Thousand Three Hundred and Eighty-Four Dollars and Thirteen Cents (**\$1,384.13**) per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by NBU, the Contractor shall pay to NBU One Thousand Three Hundred and Eighty-Four Dollars and Thirteen Cents (**\$1,384.13**) per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 *Special Damages*

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

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

ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

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

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

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

6.03 *Final Payment*

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

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

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

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

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

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

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

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

8.02 *Assignment of Contract*

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

8.03 *Successors and Assigns*

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

8.04 *Severability*

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

8.05 *Governing Law*

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

8.06 *Venue*

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

8.07 *Prohibition on Contracts with Companies Boycotting Israel*

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

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

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

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

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

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

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

A. If the Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Contractor represents the following:

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

B. The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment

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

8.10 *Prohibition on Contracts with Companies Boycotting Energy Companies*

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

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

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

8.12 *Texas Public Information Act*

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

- a. provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
 - b. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

8.13 *Electronic Signatures*

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

ARTICLE 9 - INSURANCE

9.01 *Evidence of the Contractor's Insurance*

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

Exhibit A – Insurance Rider

Exhibit B – Contractor's Bid Form

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

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

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

NBU:

NEW BRAUNFELS UTILITIES

By: _____

Printed Name: Ryan Kelso

Title: Chief Executive Officer

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

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

CONTRACTOR:

CFG INDUSTRIES, L.L.C.

By:  _____

Printed Name: David Cadriel

Title: President

[CORPORATE SEAL]

Attest:  _____

Title: Joshua Houten, CFO

Address for giving notices:
8118 Fry Road #403
Cypress, TX 77433

License No.: _____
(Where Applicable)

Agent for service or process:
Joshua E. Houten

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

END OF DOCUMENT

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

1. Specific Insurance Requirements

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

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

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

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

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

A. Definitions. For purposes of this Agreement:

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

B. Policies.

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

C. Limits, Deductibles and Retentions

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

D. Evidence of Insurance.

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

Insurance must be evidenced as follows:

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

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

E. Contractor Insurance Representations to Owner Parties

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

F. Insurance Requirements of Contractor's Subcontractors

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

G. Use of the Owners Equipment

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

H. Release and Waiver

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

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

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

Item 7.

New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

PROJECT: Loop 337 Ground Storage Tank Rehabilitation

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

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

Item 7.

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

Water Adjustments

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
Ground Storage Tank Rehabilitation: Including but not limited to structural repairs, replacing appurtenances, and safety modifications.	LS	1	\$159,000	\$159,000
Ground Storage Tank Interior Coating Replacement: Including but not limited to removal of existing coatings, surface preparation, and application of new coatings.	LS	1	\$250,000	\$250,000
Ground Storage Tank Exterior Coating Replacement: Including but not limited to removal of existing coatings, surface preparation, and application of new coatings.	LS	1	\$120,000	\$120,000

General Item

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
Mobilization: Not to exceed 5% of Water Adjustments and General Items.	LS	1	\$42,250	\$42,250
Site Civil Improvements: Including but not limited to a concrete retaining wall, drainage channel, fencing replacement, and all other appurtenant work.	LS	1	\$140,000	\$140,000
Piping Improvements: Including but not limited to all pipe, fittings, tie-ins, disinfection, hydrostatic testing, and valves.	LS	1	\$80,000	\$80,000
Electrical and Instrumentation Improvements: Including but not limited to instrumentation, SCADA, start-up and testing, and all other electrical items.	LS	1	\$95,000	\$95,000
Trench Safety	LF	50	\$20	\$1,000

Add/Alternates

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
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**Exhibit B to Contract Agreement
Bidding Requirements, Contract Forms & Conditions of the Contract
BID FORM**

Additional Grinding Ground Storage Tank: Includes all appurtenant work to perform additional grinding.	MH	50	\$75	\$3,750
Miscellaneous Welding Ground Storage Tank: Includes all appurtenant work to perform additional miscellaneous welding.	MH	200	\$150	\$30,000
Seam Welding Ground Storage Tank: Includes all appurtenant work to perform seam welding.	LF	100	\$60	\$6,000
Pit Welding Ground Storage Tank: Includes all appurtenant work to perform pit welding.	SQIN	125	\$20	\$2,500
Patch Plates Ground Storage Tank: Includes all appurtenant work to install additional patch plates.	SF	200	\$45	\$9,000
Floor Plate Replacement Ground Storage Tank: Includes all appurtenant work to remove and replace damaged floor plates.	SF	200	\$45	\$9,000
Roof Rafter Repair Ground Storage Tank: Includes all appurtenant work to repair roof rafters.	LF	200	\$150	\$30,000
Roof Rafter Replacement Ground Storage Tank: Includes all appurtenant work to replace roof rafters in kind.	EA	28	\$2,500	\$70,000
Flanged Dollar Plate and Crow's Nest Ground Storage Tank: Includes all appurtenant work to install a flanged dollar plate and crow's nest.	LS	1	\$20,000	\$20,000
Additional Tank Vents: Includes all appurtenant work to repair the vents on the additional tanks.	EA	3	\$4,500	CFG Initial NBU Initial \$13,500
Additional Hatch Gaskets: Includes all appurtenant work to install hatch gaskets on the additional tanks.	EA	7	\$500	CFG Initial NBU Initial \$3,500
Seguin Road EST Handhole Covers: Includes all appurtenant work to replace the handhole covers on the Seguin Road EST.	LS	1	\$6,500	CFG Initial NBU Initial \$6,500
Morning Side EST Hatch II: Includes all appurtenant work to replace the hatch on Morning Side EST.	LS	1	\$7,500	CFG Initial NBU Initial \$7,500

DC David
MS
MS
MS
MS

The 4 add/alternates that are lined out/stricken above were not accepted by NBU for this contract.

BASE BID WATER UTILITY ADJUSTMENTS: \$ 529,000

BASE BID GENERAL ITEMS: \$ 358,250

TOTAL BASE BID \$ 887,250

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

CFG Initial DC *MS*

TOTAL ADD/ALTERNATES:

~~\$211,250~~ \$180,250 NBU Initial: _____

CFG Initial DC *MS*

TOTAL BASE BID + ADD/ALTERNATES:

~~\$1,098,500~~ \$1,067,500 NBU Initial: _____


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

Addendum No. 1 dated	06/21/24	Received	06/21/24	D.C
Addendum No. 2 dated	_____	Received	_____	_____
Addendum No. 3 dated	_____	Received	_____	_____

MS
MICHAEL G SHORT
7/25/2024

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

Item 7.

Joshua Howen 
Secretary, *if bidder is a corporation

CFG Industries LLC
Company Name of Bidder

(Seal)




Authorized Signature

07/01/24
Date

David Cadriel
Printed Name of Authorized Signature

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

8118 Fry Rd, Suite 403
Cypress, TX 77433
Address

281-259-7244
Telephone Number/Fax Number

END OF DOCUMENT



Meeting Date: September 26, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Senate Bill 3 Emergency Preparedness Plan Generators Phase 2 Project

BACKGROUND

This Professional Services Agreement (the “Agreement”) with Freese and Nichols, Inc. (“FNI”) provides project management services, preliminary engineering phase services, final design phase services, permitting and coordination with stakeholders, field services, bid phase services, and construction phase services for the New Braunfels Utilities (“NBU”) Senate Bill 3 Emergency Preparedness Plan (“EPP”) Generators Phase 2 Project (the “Project”). The Project is anticipated to install permanent generators required by NBU’s EPP and will provide power redundancy at FM 306 Pump Station, County Yard Pump Station, and Newks Pump Station facilities.

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

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

Upon completion of the final design, NBU staff will solicit a construction contract and anticipates bringing the construction contract to the Board for approval in March 2026. NBU staff plans to begin construction in April 2026 and complete construction by January 2028.

FINANCIAL IMPACT

The total financial impact for the Agreement with FNI for the Project is \$551,176.00, including supplemental services. The Project is budgeted within the Fiscal Year 2025 through Fiscal Year 2027 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

Safety and Security

Stewardship

EXHIBITS

1. Professional Services Agreement with FNI

PROFESSIONAL SERVICES AGREEMENT

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

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

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

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

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

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

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

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

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

Section 6. Personnel. The Professional shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Professional agrees that, upon commencement of the Services to be performed

under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Professional shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

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

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

Section 9. Indemnification.

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

- i. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY THE PROFESSIONAL, ITS AGENT, EMPLOYEE, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;**

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

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

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

Section 10. Insurance.

(A) General.

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

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

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

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

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

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

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

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

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

Section 11. Termination.

(A) For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional’s

control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

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

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

this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

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

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

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

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

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

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

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

and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

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

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

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

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

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

(M) Offset.

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

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

If to NBU:

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

With copy to:

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

If to the Professional:

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

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

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

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

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

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

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

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

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

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

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

(X) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer

upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

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

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

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

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

Section 16. Information Technology

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

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

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

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

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(The remainder of this page intentionally left blank)

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

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

PROFESSIONAL:

FREESE AND NICHOLS, INC.,
a Texas corporation

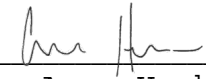
By:  _____
Name: Anne Hoskins
Title: Principal

Exhibit A
Services

The Professional shall provide all labor, material, and equipment necessary to provide project management services, preliminary engineering phase services, final design phase services, permitting and coordination with stakeholders, field services, bid phase services, and construction phase services for the Senate Bill 3 Emergency Preparedness Plan (“EPP”) Generators Phase 2 Project. The Professional shall design the installation of generators required by NBU’s recently completed EPP located at multiple NBU facilities, including the FM 306 Pump Station, Newks Pump Station, and County Yard Pump Station in New Braunfels, Texas (the “Project Sites”).

I. SUMMARY OF PROJECT SERVICES

A. Water Pump Station Improvements

1. Back-up electric generating facilities with diesel fuel storage and an automatic transfer switch at the following NBU facilities:
 - a) FM 306 Pump Station
 - b) County Yard Pump Station
 - c) Newks Pump Station

II. SERVICES BY TASK

The Professional shall provide the services in accordance with the tasks described herein, corresponding to the schedule set out in Table 1 below.

Task 1. Project Management

1. The Professional shall provide the project management services described in this Section.
 - 1.1. **SCHEDULE.** The Professional shall develop a baseline design schedule for the Project and prepare updated design schedules for the Project on a monthly basis on or before the 25th day of each month for NBU to monitor progress and identify design submittal dates. The Professional shall provide the schedules to the NBU project manager (“Project Manager”) in PDF format via email.
 - 1.2. **QUALITY CONTROL.** The Professional shall develop a quality assurance/quality control program for the Project, which shall be explained in detail via a written document and provided to NBU’s Project Manager via email within thirty (30) days of notice to proceed (“NTP”).
 - 1.3. **PROGRESS REPORTS.** The Professional shall provide NBU with electronic monthly project progress reports and submit written invoices on or before the 25th day of each

month for the previous month's effort. The Professional shall provide progress reports to NBU's Project Manager via email.

- 1.4. MEETING AGENDA/MINUTES. The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the documented meeting minutes and action item logs to NBU's Project Manager within one (1) week after meetings.
- 1.5. PROJECT CONTROLS. The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, the following:
 - 1.5.1. assigning a senior advisor to oversee quality assurance;
 - 1.5.2. developing cost estimates using recent bid tabs from similar projects or vendor prices;
 - 1.5.3. using Microsoft Project to manage the schedule; and
 - 1.5.4. coordinating communication with sub consultants through emails and meetings.
- 1.6. DESIGN COORDINATION MEETINGS. The Professional shall lead up to four (4) design coordination meetings. Each meeting shall be up to two (2) hours in length, either at NBU offices or virtual, as determined by NBU, and the Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the summary meeting minutes and action item log to NBU's Project Manager within one (1) week after the meeting. The meetings may occur at any point during the preliminary engineering or final design phases, as requested by NBU's Project Manager.

Task 2. Preliminary Engineering Phase

2. Upon NBU providing NTP to the Professional, the Professional shall perform the preliminary engineering phase services described in this Section.
 - 2.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and summary meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
 - 2.1.1. Project kick-off meeting with NBU (one (1) meeting);
 - 2.1.2. preliminary engineering report ("PER") review meeting (one (1) meeting); and
 - 2.1.3. meetings with additional stakeholders (two (2) meetings).

2.2. GENERATOR ANALYSIS. The Professional shall analyze the back-up power design requirements as described below.

- 2.2.1. The Professional shall determine the electrical equipment need and layout and provide a one-line diagram and overall process diagram for each pump station to NBU via email.
- 2.2.2. The Professional shall perform preliminary sizing and capacity of the load for the Project Sites, and no future expansion will be accounted for in the design.
- 2.2.3. The Professional shall size the generators according to the loads they will serve.
- 2.2.4. The Professional shall prepare a life cycle cost analysis of the generators, the automatic transfer switches, and miscellaneous costs that include the supervisory control and data acquisition (“SCADA”) connections.
- 2.2.5. The Professional shall include in the design the connection of the new generator systems to the existing SCADA cabinets for remote monitoring.
- 2.2.6. The Professional will assume that all generators will be diesel unless otherwise instructed by NBU in writing and accepted by the Professional.
- 2.2.7. The Professional shall design noise attenuation generator enclosures for all sites.
- 2.2.8. The Professional assumes the existing SCADA system is in operation, and it can receive the new data to be transmitted to the Central Station. It is assumed the existing cabinets and programmable logic controllers (“PLC”) will not be replaced and have the available spare discrete and analog inputs, or have available space for additional Input/Output cards or Ethernet switches.
- 2.2.9. The requirements for deliverables in this Section 2.2 are more specifically described in Section 2.5

2.3. 30% DESIGN DOCUMENTS

- 2.3.1. The Professional shall perform up to two (2) preliminary site visits to the Project Sites during the 30% preliminary design phase timeframe described in Table 1 to gather Project information.
- 2.3.2. The Professional shall collect and review the existing data, reports, mapping, and records upon written request from NBU. The Professional shall review documents associated with the Project. The Professional shall provide analyses of NBU’s requirements for the Project, including planning, surveys, site evaluations, and

comparative studies of prospective sites and solutions.

- 2.3.3. The Professional shall prepare 30% design drawings including plan views of all proposed infrastructure within the Project Site.
- 2.3.4. The Professional shall prepare a Class 4 opinion of probable construction cost (“OPCC”) based on 30% design drawings.
- 2.3.5. The requirements for deliverables in this Section 2.3 are more specifically described in Section 2.5.
- 2.4. **PRELIMINARY ENGINEERING REPORT.** The Professional shall prepare a PER that includes 30% design plans and describes the scope of the Project for final design, right-of-way requirements, easement requirements, permitting, constructability, OPCC, and schedule. The PER shall include Project implementation, phasing and packaging for all portions of the Project. The Professional shall submit a draft PER for NBU review and comment, as well as a final PER incorporating all NBU comments. The final PER shall be submitted to NBU within 30 days of receiving comments.
- 2.5. **DELIVERABLES.** The Professional shall provide the following preliminary engineering phase deliverables to NBU during the 30% preliminary design phase timeframe described in Table 1:
 - 2.5.1. PER and Class 4 OPCC – one (1) PDF electronic file; and
 - 2.5.2. 30% design drawings – one (1) PDF electronic file, and one (1) electronic Keyhole Markup language Zipped (“KMZ”) file or shape (“SHP”) file.

Task 3. Final Design Phase

- 3. Upon NBU’s written approval of the PER and 30% design documents, the Professional shall perform the final design phase services described in this Section.
 - 3.1. **MEETINGS.** The Professional shall attend the following meetings and provide meeting agendas and meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
 - 3.1.1. 90% design review meeting (one (1) in-person meeting);
 - 3.1.2. 100% design review meeting (one (1) virtual meeting);
 - 3.1.3. meetings with property owners (one (1) meeting each);
 - 3.1.4. meetings with franchise utilities (one (1) meeting each);

- 3.1.5. permitting meeting with City of New Braunfels (“CoNB”) (one (1) meeting); and
- 3.1.6. meetings with additional stakeholders (one (1) meeting each).
- 3.2. 90% DESIGN DOCUMENTS. Upon NBU’s written approval of 30% design documents and PER, the Professional shall prepare 90% drawings, specifications, and an OPCC. 90% design documents shall include:
 - 3.2.1. plan view and/or site layout of the proposed facilities;
 - 3.2.2. call outs for all design items on the plan sheets;
 - 3.2.3. an electrical one-line diagram;
 - 3.2.4. description of the generators and the automatic transfer switches for the proposed facilities;
 - 3.2.5. complete specifications with the exception of NBU’s standard specifications; and
 - 3.2.6. a Class 2 OPCC based on 90% design documents.
- 3.3. 100% (FINAL) DESIGN DOCUMENTS. Upon NBU’s written approval of 90% drawings and specifications, the Professional shall prepare 100% drawings, specifications, and an OPCC. 100% drawings and specifications shall include:
 - 3.3.1. final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase. NBU shall provide the Professional with easement requirements for each parcel via email to incorporate into the plans;
 - 3.3.2. Project file types to include .dwg, .mxd, and .kmz;
 - 3.3.3. preparation of the bid form; and
 - 3.3.4. a Class 1 OPCC based on 100% design documents.
- 3.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU:
 - 3.4.1. 90% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file, and one (1) PDF electronic file of a Class 2 OPCC to be provided to NBU during the 90% final design phase timeframe in Table 1; and
 - 3.4.2. 100% design - the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file, and one (1) PDF electronic file of a Class 1 OPCC to be provided to NBU during the 100% final design phase timeframe in Table 1.

Task 4. Field Services

4. The Professional shall perform the field services described in this Section.
 - 4.1. TOPOGRAPHIC SURVEY. The Professional shall prepare a topographic, utility, and boundary survey as described below.
 - 4.1.1. The Professional shall tie in all existing surface topographic features and structures within the survey limits shown in Figure 1, which shall include, but not be limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges and flow line), channels and drainage ways (tops, toes and flow line), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits, and visible valves, meters, clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits) mailboxes, etc. The Professional shall tag and tabulate trees by size and specific species in compliance with the CoNB Tree Preservation Ordinance as defined in the CoNB Zoning Ordinance Chapter 5.3-5i. The survey limits shall extend approximately 100 feet on intersecting streets. The Professional shall provide sufficient ground shots to create one (1) foot contours for the Project.
 - 4.1.2. The Professional shall conduct a utility survey and locate existing utilities within the Project boundary in Figure 1. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipally owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey. The Professional shall bear all costs for the services associated with utility locates.
 - 4.1.3. The Professional shall locate up to three (3) geotechnical borings and tie them into the Project survey.

- 4.1.4. The Professional shall set and install control points and/or benchmarks as required for the survey work (minimum 1-foot intervals). The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing.
 - 4.1.5. NBU shall coordinate right of entry (“ROE”). NBU shall contact private property owners to ascertain permission to enter and perform field services within private properties. NBU shall coordinate with the Professional to provide the acquired ROE before field services begin.
 - 4.1.6. The Professional shall research and review adjoining plats and deeds along the survey corridor. The Professional shall locate property corners and identify existing right of way (“ROW”) along the survey corridor, based on found monuments and record documents.
- 4.2. EASEMENT DOCUMENTS. The Professional shall prepare a metes and bounds description and exhibits for required easements for the Project for up to one (1) parcel based on the following criteria:
- 4.2.1. The Professional shall perform deed, plat and courthouse record research, request title reports and obtain copies of deeds and easement documents;
 - 4.2.2. The Professional shall survey property corners, fences, and appurtenant property evidence;
 - 4.2.3. Easements shall consist of a permanent easement and a temporary construction easement. There shall be a separate document for permanent easements and temporary easements for each parcel. Easements shall be signed and sealed by a registered professional land surveyor, currently registered in the State of Texas. Each easement shall have attached to it a copy of the corresponding deed for that property and a closure computation sheet for the easement tract. A draft copy of the easement shall be submitted for review by the Professional to NBU. The Professional shall incorporate comments as appropriate and submit one final copy of the easement and deed to NBU. Each draft metes and bounds exhibit shall be revised up to one (1) time per NBU’s review;
 - 4.2.4. The exhibit plat and legal description will meet all rules of the Texas Board of Professional Land Surveying and the Professional Land Surveying Practices Act

and the Manual of Practice for Land Surveying in the State of Texas as published by the Texas Society of Professional Surveyors and utilizing the latest version;

4.2.5. legal descriptions shall include sufficient information to identify the location, boundaries, monumentation, and area of the described tract, as well as its relationship to the parent tract out of which it is surveyed. Each legal description shall be accompanied by an exhibit plat that depicts the worded description. Legal descriptions and exhibit plats shall be reproduced on 8.5” x 14” size paper. All documents provided by the Professional must be legible. The exhibit plat or legal description should be able to stand alone; and

4.2.6. the Professional shall stake final easement boundaries.

4.3. GEOTECHNICAL DATA REPORT. The Professional shall conduct a geotechnical investigation to complete a Geotechnical Data Report (“GDR”) for the Project as described below.

4.3.1. Field Exploration:

4.3.1.1. The Professional shall determine the required boring locations on the Project Site. The Professional shall provide a Project Site boring location map that shows the exploratory borings within the vicinity of the proposed improvements.

4.3.1.2. The Professional shall coordinate with NBU, CoNB, and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.

4.3.1.3. The Professional shall drill exploratory borings for the proposed improvements according to the schedule provided below:

4.3.1.3.1. One boring to a maximum depth of twenty (20) feet below existing grade at each of the three (3) Project Sites (FM 306 Pump Station, Newks Pump Station, and County Yard Pump Station) for a total of three (3) borings for this Project.

4.3.1.4. The borings conducted on each Project Site shall be advanced using standard rotary drilling equipment with continuous-flight augers or rotary wash methods. Subsurface samples shall be collected continuously within the upper ten (10) feet and at 5-foot intervals afterwards using 3-inch

diameter Shelby tube samples and a 2-inch diameter split-spoon sampler in conjunction with the standard penetration test (“SPT”). Rock and rock-like materials, if encountered, will be cored and/or tested in-situ testing (SPT or the Texas Cone Penetration Test) at 5-foot intervals.

- 4.3.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.
 - 4.3.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.
 - 4.3.1.7. The Professional shall patch borings drilled through pavement with like material (asphalt, concrete) upon completion of backfilling.
 - 4.3.1.8. The Professional shall have personnel experienced in logging borings, directing the drilling, and handling and transporting the samples. The Professional shall provide visual classification of the subsurface stratigraphy in general accordance to the American Society for Testing and Materials (“ASTM”), standard number D2488 and the Unified Soil Classification System (“USCS”) during drilling and sampling.
- 4.3.2. The Professional shall provide laboratory testing to include the following:
- 4.3.2.1. testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials; and
 - 4.3.2.2. laboratory tests assigned for the specific subsurface materials encountered during exploration on the Project Site, but which are expected to include the following number and type of tests:
 - 4.3.2.2.1. Atterberg limits tests (up to six (6) tests);
 - 4.3.2.2.2. percent passing the #200 sieve (up to six (6) tests);
 - 4.3.2.2.3. sieve analysis (gradation) tests (up to six (6) tests);
 - 4.3.2.2.4. moisture content tests (up to six (6) tests); and
 - 4.3.2.2.5. unconfined compressive strength tests (with unit weights; up to ten (10) tests).
- 4.3.3. The Professional shall prepare a GDR that includes the following information and recommendations, as applicable:
- 4.3.3.1. a summary of the field and laboratory sampling and testing program;

- 4.3.3.2. boring logs and laboratory testing results;
 - 4.3.3.3. a review of general site conditions including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered;
 - 4.3.3.4. foundation recommendations for each generator pad and general discussion of expected construction related issues; and
 - 4.3.3.5. earthwork related recommendations for use during development of plans and specifications.
- 4.3.4. The Professional shall provide the final GDR electronically as a 100% design deliverable with the specifications.
- 4.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU in the timeframe described in Table 1 for the 100% final design phase:
- 4.4.1. signed and sealed metes and bounds (electronic submission); and
 - 4.4.2. GDR (electronic submission with 100% design specifications).

Task 5. Permitting & Stakeholders

5. The Professional shall coordinate with the following stakeholders/agencies as described below.
- 5.1. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit permit applications to the CoNB to obtain permits for:
- 5.1.1. Commercial Development Permit – The Commercial Development Permit will not require drainage analysis given the limited additional impervious cover proposed for the new generators.
- 5.2. EASEMENT ACQUISITION COORDINATION. The Professional shall coordinate and provide support to NBU and/or NBU hired consultant to obtain easements for up to one (1) parcel(s). The Professional shall provide the following easement acquisition coordination support services:
- 5.2.1. attend up to two (2) meetings per easement with NBU, the hired consultant, and/or the property owner; and
 - 5.2.2. review draft and final easement documents for up to one (1) parcel.
- 5.3 DELIVERABLES.
- 5.3.1 CoNB permit described in Section 5.1 - one (1) PDF electronic copy.

Task 6. Bid Phase Services

6. Upon completion of the final design, the Professional shall proceed with the bid phase services described in this Section.
 - 6.1. **PREBID CONFERENCE.** The Professional shall attend a pre-bid conference administered by NBU. The Professional shall assist NBU with preparation of the agenda, provide NBU with a meeting summary, and coordinate conference responses with NBU. The Professional shall provide NBU with written responses to issues identified at the pre-bid conference and shall be in the form of addenda issued after the conference and prior to bid opening.
 - 6.2. **INTERPRET BID DOCUMENTS.** The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare addenda to the bid documents if necessary.
 - 6.3. **BID EVALUATION.** The Professional shall attend a bid-opening conference if administered by NBU. The Professional shall assist NBU in the opening and analyzing of the bids received for the Project, including researching contractor qualifications and references. The Professional shall recommend award of contract or other actions as appropriate to be taken by NBU in the form of a letter of recommendation provided in accordance with Section 6.5.2.
 - 6.4. **CONFORMED CONSTRUCTION DOCUMENTS.** If requested by NBU, the Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications.
 - 6.5. **DELIVERABLES.** The Professional shall deliver the following:
 - 6.5.1. up to four (4) addenda between advertisement and bid opening - one (1) PDF electronic copy of each addenda to NBU and bidders;
 - 6.5.2. a letter of recommendation provided within (14) days after the bid opening - one (1) PDF electronic copy to NBU; and
 - 6.5.3. conformed construction documents provided prior to construction NTP - one (1) PDF electronic copy to NBU.

Task 7. Construction Phase Services

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

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

- 7.1.1. description of new facilities – major components and equipment, purpose and intent and how new facilities fit into existing infrastructure;
- 7.1.2. integration requirements - completion & testing procedures, owner staff required, responsibilities, and notifications; and
- 7.1.3. operational and maintenance requirements - design settings & controls, operating procedures and maintenance procedures.

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

- 7.2.1. assist NBU in conducting a pre-construction conference with the construction contractor and prepare agenda one (1) day prior to meetings, and prepare and provide NBU with meeting notes and coordinate conference responses with NBU within one (1) week of the meeting;
- 7.2.2. conduct one construction document control workshop for the contractor;
- 7.2.3. attend up to a total of twenty-four (24) bi-weekly and six (6) monthly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor in accordance with the requirements listed in Section 1.4;
- 7.2.4. attend up to a total of twelve (12) monthly site visits during construction of the Project, as distinguished from the continuous services of a resident Project representative, to observe the progress and the quality of work and to determine if the work is proceeding in accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports for each site visit within seven (7) days after each visit and notify NBU of any non-

conforming work performed by the contractor, observed on the site visits.

- 7.2.5. conduct, with NBU's representatives, two (2) substantial completion inspections and punch list reviews of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare a list of deficiencies to be corrected by the contractors before recommendation of final payment; and
- 7.2.6. conduct one (1) final completion inspection of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make recommendation of final payment.
- 7.3. **SUBMITTAL MANAGEMENT.** The Professional shall use FNiManager, a document management system for construction documents. The Professional shall monitor the processing of contractor's submittals (shop drawings, requests for information, schedules, certified test reports, etc.), provide for filing and retrieval of Project documentation, and verify that the contractor is sending and processing submittals in accordance with the schedules. The Professional shall produce monthly reports and submit to NBU indicating the status of all submittals in the review process.
- 7.3.1. **SUBMITTAL REVIEW.** The Professional shall review all contractor submittals for compliance with the design concepts to include the following:
- 7.3.1.1. shop drawings (up to ten (10));
 - 7.3.1.2. record data (up to ten (10));
 - 7.3.1.3. requests for information (up to five (5));
 - 7.3.1.4. schedules (up to eighteen (18));
 - 7.3.1.5. certified test reports (up to ten (10));
 - 7.3.1.6. operation and maintenance manuals;
 - 7.3.1.7. miscellaneous submittals (up to ten (10)); and
 - 7.3.1.8. SCADA support services – Includes review of SCADA operational testing plan and review of SCADA screens.
- 7.4. **CHANGE ORDERS.** The Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project as described below.
- 7.4.1. The Professional shall establish procedures and document construction changes

required to implement modifications to the Project.

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

- 7.7.1.2. The RPR shall conduct periodic progress meetings with NBU, EOR, and contractor on a level of frequency reasonable determined by NBU, to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any Project related issues.
- 7.7.1.3. The RPR shall prepare an agenda prior to the progress meetings and record and distribute the meeting minutes to NBU and the contractor as described in Section 1.4.
- 7.7.1.4. The RPR shall submit monthly reports of the construction progress to NBU. The reports shall describe the construction progress and summarize Project costs, cash flow, construction schedule, pending and approved contract modifications, change order status, and outstanding issues.

7.7.2. Quality Assurance

- 7.7.2.1. The RPR shall observe the contractor's work to determine if the work is proceeding in accordance with the contract. The RPR shall prepare site visit reports to be submitted electronically to NBU documenting the RPR's observations.
- 7.7.2.2. The RPR shall document when non-conforming work is observed and submit this documentation via email to NBU and the contractor within seventy-two (72) hours of observation of any non-conforming work. The Professional shall verify and document when the observed non-conforming work has been corrected and submit documentation to that effect to NBU via email.
- 7.7.2.3. The RPR shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.
- 7.7.2.4. The RPR shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in accordance with applicable testing and inspection bureaus who set standards for the testing of materials, witness tests, and factory testing.

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

7.7.3. Document Management

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

7.7.3.2. The RPR shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties for documents, and of (ii) the EOR in reviewing and responding to submittals. The RPR shall verify that documentation is being processed according to the schedule.

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

7.7.4. Schedule Management

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

7.7.5. Cost Management

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

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

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

7.7.6. Issues Management

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

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

7.7.7. Change Management

7.7.7.1. The RPR shall be responsible for change management as described in Section 7.4.

7.7.7.2. The RPR shall establish and document procedures for administering changes to the construction contract.

7.7.7.3. The RPR shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's Texas engineering seal affixed.

7.7.8. Project Completion

7.7.8.1. The RPR shall coordinate the start-up and commissioning of the facility and all of the process systems with the EOR, the contractor, and NBU. The RPR shall provide engineering and technical assistance to the contractor during the commissioning process.

7.7.8.2. When the contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the RPR shall conduct a review of the Project to determine conformance or non-conformance with the Project design and construction documents. The RPR shall determine if a review of the work is required by the EOR, and if so, shall schedule the reviews of the work with the EOR. The RPR shall prepare a list of deficiencies to be corrected by the contractor before substantial completion is granted and any

partial release or reduction of retainage is approved. The RPR shall prepare a certificate of substantial completion within thirty (30) days after substantial completion that includes a list of work to be completed prior to issuance of a final completion certificate.

7.7.8.3. The RPR shall conduct a final review of the Project for conformance with all of the Project documents within thirty (30) days after final completion of construction. The RPR shall confirm work is complete and in accordance with the Project documents prior to recommending final payment.

7.7.8.4. The RPR shall assist NBU in obtaining permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the contractor. The RPR shall review and confirm that the contractor has submitted all required documents to NBU prior to recommending the final payment.

7.7.9. Start-up Services

7.7.9.1. The Professional shall coordinate the start-up and commissioning of the facility and all the process systems with the EOR, the contractor, and NBU. Start-up services will include the submittal of a generator start-up checklist, start-up meeting and testing, and SCADA support (review of SCADA Factory Acceptance Test (“FAT”) plan, and SCADA FAT. Start-up services are described in more detail below:

7.7.9.2. Start-up checklist – Engineer will develop a detailed project specific, start-up checklist(s) for the contractor to follow during testing. Checklist(s) will include items necessary to prove the proper installation and function of generator equipment and will be a supplement to the start-up plan that is being provided by the contractor.

7.7.9.3. Start-up coordination meeting with contractor – Attend up to one (1) videoconference or similar meeting to coordinate the start-up plan with the contractor.

7.7.9.4. On-site performance testing – Attend on-site performance testing of equipment and system start-up and commissioning activities for the generators. Includes services of electrical controls engineer (three (3) days).

7.7.10. Materials Transfer

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

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

7.7.11. Record Drawings

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

7.7.12. Limitations of Authority of RPR

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

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

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

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

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

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

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

7.8. CLOSE-OUT DOCUMENTS

7.8.1. RECORD DRAWINGS. The Professional shall prepare the record drawings based on the revised redline construction drawings and information furnished by the construction contractor reflecting changes in the Project made during construction. The Professional shall prepare one (1) set of record drawings at the completion of the Project and submit to NBU via email within sixty (60) days of final completion.

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

- 7.8.2.1. Address;
- 7.8.2.2. year built;
- 7.8.2.3. description;
- 7.8.2.4. square footage of building;
- 7.8.2.5. building value; and
- 7.8.2.6. contents value.

7.8.3 ADDITION AND RETIREMENT SHEETS. The Professional shall prepare individual addition and retirement sheets for each piece of above-ground equipment, and one sheet each for below-ground water and/or wastewater piping. The Professional shall provide the addition and retirement sheets within 30 days after substantial completion by the contractor. Information on each sheet includes, but is not limited to, the following:

- 7.8.3.1 equipment identification;
- 7.8.3.2 location;
- 7.8.3.3 network structure;
- 7.8.3.4 warranty date;
- 7.8.3.5 manufacturer;
- 7.8.3.6 model; and
- 7.8.3.7 serial number.

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

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

- 7.9.2. one (1) Project Site visit memo per site visit, which must be submitted (i) in PDF format; (ii) on FNI Manager; and (iii) no later than three (3) days after each site visit;
- 7.9.3. responses to contractor submittals, requests for information, and other documents within fourteen (14) days of receipt;
- 7.9.4. one (1) PDF electronic copy and one (1) georeferenced .dwg file of record drawings in accordance NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor and provided to NBU within sixty (60) days of receipt of record drawings from the contractor or final completion; and one (1) PDF electronic copy of asset information memorandum as described in Section 7.8.2.

SUPPLEMENTAL SERVICES

Pursuant to Section 4(B) of this Agreement, the Professional shall seek prior written approval from NBU before commencing work on any Supplemental Services described in this Section. If NBU requests the Professional to perform the Supplemental Services, NBU and the Professional shall execute a supplemental services agreement or contract amendment, as appropriate, detailing the Supplemental Services to be performed and the completion date. The Supplemental Services shall only include Project specific professional engineering services contemplated by Chapter 2254 of the Texas Government Code. The Professional acknowledges the contract duration will not increase as result of engaging the Supplemental Services unless noted in the supplemental services agreement or contract amendment, as appropriate.

TIME OF COMPLETION

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

Table 1

Project Milestones	Start Date	End Date
Notice to Proceed	10/2/2024	N/A
30% Preliminary Design Phase	10/11/2024	2/15/2025
90% Final Design Phase	2/16/2025	7/20/2025
100% Final Design Phase	7/23/2025	8/30/2025
Permitting Phase	8/31/2025	11/22/2025
Bid Phase	8/31/2025	4/16/2026
Construction Phase	4/17/2026	1/21/2028

FIGURE 1

Created By: **MapInfo** 10.0.1.1
 Project: **MapInfo** 10.0.1.1
 Location: **MapInfo** 10.0.1.1
 Source: **MapInfo** 10.0.1.1
 Date: **MapInfo** 10.0.1.1

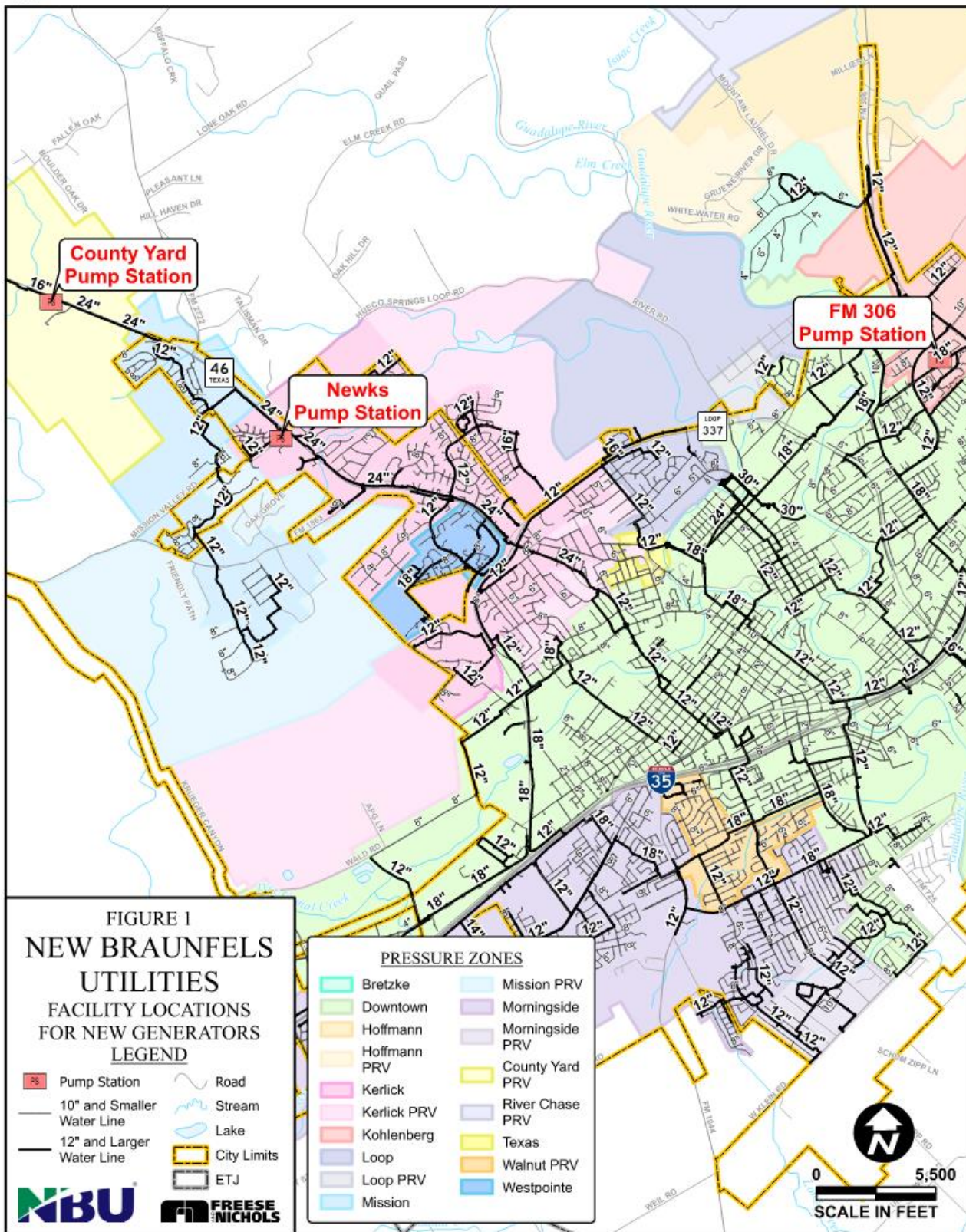


Exhibit B

Compensation

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

Services

NBU agrees to pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$521,176 as further described in the table below and made a part of this Agreement.

Task	Cost
Task 1: Project Management	\$42,092
Task 2: Preliminary Engineering Phase	\$91,034
Task 3: Final Design Phase	\$139,008
Task 4: Field Services	\$54,520
Task 5: Permitting & Stakeholders	\$8,839
Task 6: Bid Phase Services	\$13,782
Task 7: Construction Phase Services	\$171,901
Total	\$521,176

Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$30,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.



Meeting Date: September 26, 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 Chief Executive Officer

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with OPIN, LLC dba American FR and Safety, for a Web-Based Uniform Purchase Program

BACKGROUND

This Services and Goods Agreement (the “Agreement”) with OPIN, LLC dba American FR and Safety, provides for a 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”) for New Braunfels Utilities (“NBU”). The Services will include (i) a secure online ordering portal that is mobile friendly for NBU and NBU employees; (ii) online catalogs of items approved by NBU; (iii) secure maintenance of all transaction details; (iv) a detailed website with a customizable dashboard that can be filtered and searched by individual employees or departments of NBU; (v) the ability for NBU to provide designated users “administrative” access to view/manage this dashboard; (vi) an option for the Vendor to set employee balances or provide a credit to allow employees to shop for themselves, monitor expenditures, and maintain their budget on selected predefined NBU items; (vii) all items requiring flame resistant (“FR”) ratings meeting the requirements of the Occupational Safety and Health Administration’s Standard number: 1910.269 App E for arc-rated clothing and conforming to Hazard Risk Category 2 Flame Resistant Clothing standard; (viii) oversize options for shirts, sweatshirts, and jackets in sizes 3XL to 4XL, and pants with waist size 52” and above; (ix) an option for orders to be placed via telephone and/or electronic mail; (x) a customer service component available during NBU’s business hours for questions, comments, concerns or for sizing assistance; (xi) training for NBU personnel on how to use the Vendor’s secure web portal; (xii) alteration and customization services; (xiv) unconditional warranties against failures of defects whether such failures or defects are caused by the Vendor, the garment manufacturer, or any third party.

NBU staff requests that the Board of Trustees approve the Agreement with OPIN, LLC. for the Services.

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

FINANCIAL IMPACT

This is a one-year contract with up to four one-year renewals. Each year has a total not-to-exceed of \$750,000.00 with the entire contract not-to-exceed of \$3,750,000.00.

LINK TO STRATEGIC PLAN

People and Culture

Safety and Security

EXHIBITS

1. Services and Goods Agreement with OPIN, LLC dba American FR and Safety

SERVICES AND GOODS AGREEMENT

This **SERVICES AND GOODS AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **OPIN, LLC DBA AMERICAN FR AND SAFETY**, a South Carolina limited liability company authorized to transact business in the State of Texas (the “Vendor”).

For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, and intending to be legally bound hereby, the parties agree as follows.

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below (the “Effective Date”), and will remain in full force and effect for a period of one (1) year from October 1, 2024, to September 30, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond September 30, 2029.
2. **Scope of Services, Purchases.**
 - 2.1. **Scope of Services.** The Vendor shall perform the Services described in Exhibit A (the “Services”) within the timeframe specified therein.
 - 2.2. **Purchase of Goods.** Unless otherwise directed in writing by NBU, the Vendor shall purchase, as needed, goods related to the Services described in Exhibit A, which shall be reimbursed in accordance with Section 3.
3. **Payment.**
 - 3.1. **Amount.** NBU shall pay the Vendor in accordance with the terms and conditions herein the amount set forth in Exhibit B for the Services. Exhibit B shall contain the Total Compensation for the Vendor, which is the maximum dollar amount that the Vendor can be paid under this Agreement for Services and goods.
 - 3.2. **Billing Period.** NBU shall pay the Vendor within thirty (30) days after receipt and approval of invoices to the extent the Services have been satisfactorily performed under the terms of this Agreement. NBU shall pay the Vendor for any goods purchased in accordance with the terms stated therein. All invoices provided by the Vendor to NBU shall include documentation and itemization that is satisfactory to NBU of all work completed to date. In the event NBU fails to timely pay any uncontested portion of any invoice within thirty (30) days of receipt and approval of the Vendor’s invoice, the Vendor shall have the right to suspend work.

3.3. Reimbursable Expenses and Goods. In order for a Vendor expense, including the purchase of a good related to the Services hereunder, to be reimbursable under this Agreement, each such expense must first have been described in detail and/or contemplated in Exhibit A and shall be specifically described in detail in an invoice provided by the Vendor to NBU after such expense has been incurred. All reimbursable expenses, including goods purchased in connection with performing the Services under this Agreement, shall be included in the calculation of the elements of the Total Compensation listed in Exhibit B. An expense not complying with these requirements shall not be reimbursable by NBU in NBU's sole discretion.

4. Obligations and Representations of Vendor.

4.1. Performance and Compliance with Laws. The Vendor shall perform the Services in compliance with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested in writing by NBU, the Vendor shall promptly furnish satisfactory proof of compliance to NBU.

4.2. Warranties.

a. Performance Warranty. The Vendor warrants that the Services provided under this Agreement shall be of the highest quality and standards in accordance with such industry in this country. This warranty shall be in addition to and not in lieu of all other warranties or guaranties offered or provided by the Vendor for the Services and goods.

b. Warranties for Goods. All manufacturer warranties and guaranties of goods provided pursuant to this Agreement shall inure to the benefit of NBU. The Vendor shall warrant all work free of defects in materials and workmanship for a period of 90 days from the date of final acceptance of all work. The Vendor shall, within 30 calendar days after receipt of written notice, repair defects in materials and workmanship that may develop during said 90 day period, and any damage to other work caused by such defects or the repairing of same, at the Vendor's expense, in a manner acceptable to NBU. The Vendor shall provide NBU the full original equipment manufacturer ("OEM") warranties and guaranties provided by the OEM for all Services and goods under this Agreement free of all liens, claims, and encumbrances. For example, if an OEM offers full replacement of a warranted product at no charge to the Vendor, then the Vendor shall replace such item and shall not charge NBU for such replacement.

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

shall replace such personnel with personnel possessing substantially equal ability and qualifications.

- 4.4. Licenses; Materials. The Vendor shall maintain in current status all federal, state, and local licenses and permits required for the Vendor to perform the Services and operate its business. NBU has no obligation to provide the Vendor, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Vendor.
- 4.5. Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE OR AGENT THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN “INDEMNIFIED PARTY”), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS’ FEES AND COURT COSTS) TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER (“CLAIMS”), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE GOODS OR SERVICES PROVIDED BY THE VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, OR ANY TIER OF SUBCONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS FOR THE VENDOR SET FORTH HEREIN SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**
- 4.6. Insurance. The Vendor shall continuously during the Term comply with the following requirements regarding insurance:
- a. Insurer Qualifications. Without limiting any obligations or liabilities of the Vendor, the Vendor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A-VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU’s option.
 - b. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Vendor. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Vendor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
 - c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or

an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.

- d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- e. Primary Insurance. The Vendor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- g. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Vendor. The Vendor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- i. Use of Subcontractors. The Vendor shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Vendor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Vendor. The Vendor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- j. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Vendor shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance

requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Vendor's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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

i. Commercial General Liability. The Vendor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$500,000 for each occurrence and a \$500,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

ii. Auto Liability. The Vendor shall maintain Automobile Liability insurance with a limit of \$100,000 combined single limit on the Vendor's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Vendor under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

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

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

4.7. Additional Representations.

a. Prohibited Gifts, Bonus, Commission, Money, and Other Consideration. The Vendor represents and warrants that the Vendor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration

- to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. Violation of this Section shall subject this Agreement to termination under the Termination provisions of this Agreement. The Vendor further agrees that the Vendor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Vendor, the Vendor shall immediately report that fact to NBU and, NBU, in its sole discretion, may terminate this Agreement.
- b. Prohibition on Contracts with Companies Boycotting Israel. The Vendor hereby verifies that it and its parent company, wholly- or majority owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.
- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. The Vendor represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

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

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

- d. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. If the Vendor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Vendor represents the following:
- i. it is not owned by or the majority of stock or other ownership interest in the Vendor is not held or controlled by:
 1. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
 2. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
 - ii. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

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

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

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

- f. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. The Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not

discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

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

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

5. Obligations and Representations of NBU.

- 5.1. Authority to Enter into Agreement. To the fullest extent authorized by law, NBU warrants that it has authority to execute and enter into this legally binding Agreement.
- 5.2. Binding Obligation. This Agreement constitutes a legal, valid, and binding obligation of NBU enforceable against it in accordance with the terms herein.

6. Termination.

- 6.1. For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Vendor. Upon termination for convenience, the Vendor will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Vendor may suspend work if the Vendor reasonably determines that working conditions at the site (outside the Vendor’s control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Vendor that are materially interfering with the normal progress of the work. The Vendor’s suspension of work hereunder shall be without prejudice to any other remedy of the Vendor at law or equity.
- 6.2. For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party’s nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and

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

- 6.3. Non-Collusion. If NBU determines that the Vendor gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, or if the Vendor otherwise violated its obligations under Section 4.7(a), NBU may, in its sole discretion, terminate this Agreement.
- 6.4. Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Vendor fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Vendor shall be relieved of any subsequent obligation under this Agreement.

7. Confidentiality; Texas Public Information Act.

- 7.1. Confidentiality of Records. The Vendor shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Vendor's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Vendor's duties under this Agreement. Persons requesting such information should be immediately referred to NBU. The Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Vendor as needed for the performance of duties under this Agreement.
- 7.2. Confidential Information. To the extent that confidential and proprietary information of each party ("Confidential Information") is exchanged and received in connection with the Services or goods, each party agrees not to use the other party's Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties. Use by third party contractors may be permitted so long as such contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section. "Confidential Information" includes (but is not limited to) the Vendor's Confidential Information (as defined below), and does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information previously known by or developed by the receiving party

independent of the Confidential Information or (iii) information that the receiving party rightfully obtains without restrictions on use and disclosure.

- 7.3. Vendor Confidential Information. “Vendor Confidential Information” means any pre-existing proprietary or Confidential Information of the Vendor created by the Vendor and used to perform the Services, or included in any goods provided, including but not limited to software, appliances, methodologies, code, templates, tools, records, data or other intellectual property shall remain the exclusive property of the Vendor.
- 7.4. Conflict with Applicable Statute or Law. Nothing in this Section is intended to reduce or conflict with any duty, obligation or provision contained in the Texas Public Information Act, the Texas Open Meetings Act, or any other applicable statute or rule.
- 7.5. Texas Public Information Act. The Vendor recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Vendor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU’s audit rights in Section 9.13.

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

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

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

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

8. Information Technology and Intellectual Property Infringement.

- 8.1. Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the Vendor with non-exclusive, limited access to NBU’s information technology infrastructure. The Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU’s information technology infrastructure. The Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all

the Vendor's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Vendor's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Vendor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

- 8.2. Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Vendor shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.
- 8.3. Data Security. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Vendor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- 8.4. Compromised Security. In the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Vendor shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **THE VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM VENDOR'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.**
- 8.5. Intellectual Property Infringement. **THE VENDOR SHALL DEFEND AND INDEMNIFY NBU AGAINST ANY COSTS, LIABILITIES OR DAMAGES (INCLUDING ATTORNEY'S FEES) ARISING FROM A CLAIM THAT NBU'S AUTHORIZED USE OF ANY SERVICE OR GOODS PURCHASED PURSUANT TO THIS AGREEMENT INFRINGES ANY PATENT, COPYRIGHT, TRADEMARK OR TRADE SECRET.** NBU agrees to notify the Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify the Vendor of such claim or suit, NBU's failure to so notify the Vendor shall not diminish the Vendor's indemnity obligations hereunder. The Vendor shall have control of any such suit and NBU shall cooperate with the Vendor in connection with its defense at the expense of the Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if the Vendor believes that such Service or good is likely to become the subject of an infringement claim, the Vendor shall (i) obtain the right for NBU to continue to use such Service or good or (ii) replace or modify the Service or good so as to make it non-infringing and equal to the functionality of such Service or good described in this Agreement.

9. Miscellaneous.

- 9.1. Independent Contractor. The Vendor acknowledges that the Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Vendor shall not represent, either expressly or through implication, that the Vendor is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Vendor.
- 9.2. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- 9.3. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Vendor.
- 9.4. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- 9.5. Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 9.6. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.
- 9.7. Subcontractors. The Vendor shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Vendor of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Vendor.
- 9.8. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- 9.9. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.
- 9.10. Liens. All goods or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.
- 9.11. Offset for Damages, Delinquent Fees or Taxes. In addition to all other remedies at law or equity, NBU may offset from any money due to the Vendor any amount the Vendor owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, goods, equipment rental, travel expenses and associated costs. NBU may offset from any money due to the Vendor any amount the Vendor owes to NBU for delinquent fees, including any interest or penalties.
- 9.12. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

To NBU:

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

With a copy to:

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

To the Vendor:

OPIN, LLC dba American FR & Safety
 910 Industrial Blvd., Suite B
 Sugarland, Texas 77478

or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in the manner set forth in this Section. Notices shall be deemed received (i) when delivered

to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 9.13. Right to Audit. NBU shall have the right to examine and audit the books and records of the Vendor with regard to the Services and/or goods obtained pursuant to this Agreement, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- 9.14. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- 9.15. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- 9.16. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- 9.17. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 9.18. Exhibits. All Exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- 9.19. Conflicting Terms. In the case of any conflicts between the terms of this Agreement and an Exhibit to this Agreement, the statements in the body of this Agreement shall govern.
- 9.20. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

- 9.21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 9.22. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.
- 9.23. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, pandemics, epidemics, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.
- 9.24. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give written notice within five (5) business days to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.
- 9.25. Survival. The sections of this Agreement that by their terms are intended to survive the termination of this Agreement shall so survive.

- 9.26. Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.
- 9.27. Electronic Signatures. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

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

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 A – Scope of Services

1. SCOPE

- 1.1 The Vendor shall provide a secure 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.
- 1.2 A detailed list of items and unit prices is contained in Exhibit B.

2. GENERAL REQUIREMENTS

The Vendor shall adhere to the requirements described herein.

A. Web-Based Uniform Program

- 2.1 The Vendor shall provide a secure online ordering portal that is mobile friendly for NBU and NBU employees.
- 2.2 The portals shall include secure user accounts to make online purchases.
- 2.3 The Vendor shall provide two (2) online catalogs of items approved by NBU: one (1) catalog for direct uniform purchases by NBU and one (1) for purchases by NBU employees.
- 2.4 The online order shall include a record of each transaction noting account holder, date of transaction, items ordered, unit and total cost, method of delivery, delivery tracking, and instructions on returning and exchanging items with the capability to generate reports. The Vendor's system shall be able to securely maintain all transaction details in an "order history file" that includes manufacturer, brand, quantity, size, and all other pertinent data ordered by each individual employee.
- 2.5 The Vendor shall provide a detailed website that has a customizable dashboard that shows real-time information that can be filtered and searched by individual employees or departments of NBU.
- 2.6 NBU shall have the ability to provide designated users "administrative" access to view/manage this dashboard.
- 2.7 The Vendor shall provide an option to set employee balances or provide a credit to allow employees to shop for themselves, monitor expenditures, and maintain their budget on selected predefined NBU items.
- 2.8 All NBU employees may purchase additional uniforms from the NBU catalog of a preselected list of items as needed at their own expense from the authorized Vendor.

B. Uniform Specifications

- 2.9 All items requiring flame resistant (“FR”) ratings shall meet the requirements of the Occupational Safety and Health Administration’s Standard number: 1910.269 App E for arc-rated clothing. The garments are to conform to Hazard Risk Category 2 Flame Resistant Clothing standard. The clothing shall have a minimum arc rating of 8 cal/cm². Shirts shall have a material maximum weight of 8 ounces and pants shall have a material maximum weight of 15 ounces.
- 2.10 Oversize items shall include shirts, sweatshirts, and jackets in sizes 3XL to 4XL, and pants with waist size 52" and above.
- 2.11 The Vendor shall provide an option for orders to be placed via telephone and/or electronic mail.
- 2.12 The Vendor shall provide garment compatibility recommendations and care instructions upon request.
- 2.13 All orders shall be shipped to the NBU Service Center Warehouse located at 355 FM 306, New Braunfels, TX 78130, and shall contain the purchaser’s name and NBU department they belong to. NBU shipping address is subject to change. Vendor shall be notified if the NBU shipping address changes.
- 2.14 Each piece of arc-rated clothing shall include a permanent label, meeting the requirements of the American Standards for Testing and Materials Standard F2302. All labels shall include the following:
- 2.14.1 name of manufacturer;
 - 2.14.2 style number;
 - 2.14.3 size;
 - 2.14.4 arc thermal protective value; and
 - 2.14.5 laundering instructions.
- 2.15 The Vendor shall provide embroidery, or other decoration services for all shirts. FR thread shall be used on all FR rated clothing for embroidery, including bobbins and backing. The embroidered work shall include an NBU logo (shown below) and should be placed on the left sleeve. The right side sleeves of all shirts, coveralls, sweatshirts/hoodies and jackets/coats shall have the embroidered phrase, "Safety Is My Responsibility." No logo is required on pants or bib overalls.



C. Customer Service Support and Staffing

- 2.16 The Vendor shall provide and operate a customer service component that shall be available during NBU's business hours, Monday through Friday (8:00 a.m.-5:00 p.m.) for questions, comments, concerns or for sizing assistance.
- 2.17 An online customer website and support help desk, an email address contact, and a telephone contact shall be made available as communication and support options.
- 2.18 The Vendor shall provide training to NBU personnel on how to use the Vendor's secure web portal to purchase uniforms, return uniforms, or any other function NBU personnel may have to perform on the Vendor's secure web portal related to uniforms.

D. Alterations

- 2.19 The Vendor must customize orders to the specifications of NBU employees, if needed. All alterations and customizations shall be coordinated with the NBU department as to whether items requiring alterations should be shipped back or performed at NBU's facility as needed, and at no additional costs to the NBU employee or NBU. Significant alterations and customizations will have an additional cost and must be agreed upon and authorized/approved by an NBU appointed representative prior to work commencement.

E. Warranty

- 2.20 All uniform items, alterations, workmanship, and materials shall be unconditionally warranted against failures of defects whether such failures or defects are caused by the Vendor, the garment manufacturer, or any third party.

F. Delivery of Good(s) or Service(s)

- 2.21 Delivery of goods shall be FOB Destination. The Vendor shall bear the expense and sole responsibility to take any action necessary to replace goods delivered in an unacceptable condition.
- 2.22 The order processing and delivery time frame should be expressed at the time between the online submittal of an order and the time the uniform item is delivered to the NBU employee who placed the order.
- 2.23 **Normal delivery hours are 8:00 a.m. to 3:00 p.m. Monday through Friday, except NBU holidays.** NBU's acceptance of deliveries outside of normal delivery hours is extremely limited and NBU shall not guarantee receipt of items delivered outside of normal delivery hours. NBU shall have a reasonable time (but no less than 30 days) after receipt of delivery to inspect the good(s) or service(s) delivered by the Vendor. NBU may reject all or any portion of delivered good(s) or service(s) that do not, in NBU's sole discretion, comply with the terms and conditions of the contract. NBU may reject the entirety of good(s) or service(s) delivered even if only a portion is nonconforming. If NBU elects to accept any nonconforming good(s) or service(s), NBU shall deduct a reasonable amount from the price thereof to compensate NBU for the disparity, in addition to any other remedies. An acceptance by NBU shall not be deemed as a waiver or settlement for any defect in such good(s) or service(s).

3. OTHER REQUIREMENTS OF THE UNIFORM PROGRAM

- 3.1 The Vendor shall provide garments from manufacturers that have been manufacturing garments for a minimum of five (5) years and arc-rated garments for a minimum of two (2) years.
- 3.2 The Vendor shall be required to make two (2) scheduled on-site visits at NBU's discretion to the NBU service center for sizing of the employees, as well as providing a sample of each product at no additional charge to NBU.
- 3.3 The Vendor shall provide an NBU specific catalog that is available online, and shall offer detailed listings of all NBU approved apparel, including pricing, arc rating, weight, and designated color options for each style.
- 3.4 On all orders placed, the Vendor shall submit a confirmation email notifying the NBU employee that his or her order has been received. Additionally, the Vendor shall notify NBU employees, via email, when orders are shipped and notifying employees of any delayed or unfulfilled items in their orders, if necessary.
- 3.5 The Vendor shall be responsible for sorting all orders by NBU employee name for delivery. The invoices shall detail the employee name, employee number, item description and cost of item ordered.
- 3.6 NBU has the right to remove any item from the NBU catalog at any time.
- 3.7 NBU shall provide the Vendor an employee list on a regular basis and update as necessary.
- 3.8 The Vendor shall handle all returns to the manufacturer due to product defect, and shall refund or replace any defective garment determined to be defective as the result of manufacturing. NBU maintains all rights, at law or in equity, against the Vendor or any other party regarding any product defect.
- 3.9 The Vendor shall assume responsibility for lost and damaged items from the time of shipment to customer receipt. The Vendor shall promptly replace such lost or damaged items, or provide a full refund for such items, at NBU's choice.
- 3.10 Garments sent in error, embroidered incorrectly, or damaged in shipment shall be returned at the cost of the Vendor. Items that do not meet specifications and are returned to the Vendor with the NBU logo and/or personalization shall be destroyed and shall not be salvaged for any future use, at no cost to NBU. The Vendor's failure to completely destroy such items with logos and/ or personalization shall constitute a material breach of this Agreement.
- 3.11 The Vendor shall offer "repair services" for rips or tears that are determined to be repairable. FR thread shall be used for repairs on all FR clothing. A repair estimate shall be transmitted to the NBU employee, via email, prior to any repair work being performed. All repairs shall be billed separately and shall be approved in advance by the NBU employee.
- 3.12 The Vendor shall notify NBU within 24 hours of any item that has been discontinued. Brands may be changed throughout the life of the contract based on mutual agreement with NBU.

- 3.13 The Vendor shall establish individual accounts for each NBU department participating so each department participating is able to manage its own finances and uniform purchases.
- 3.14 The Vendor shall provide a link for all NBU employees to be able to log in and be able to purchase NBU emblemed products directly through an electronic catalog utilizing the NBU employee's personal funds.
- 3.15 The Vendor shall provide NBU with a secure online order option for large quantity orders of NBU-logoed products.

Exhibit B Compensation

NBU shall pay the Vendor for goods and services as described in this Agreement in an amount not to exceed \$750,000 annually, with a total not to exceed amount of \$3,750,000 for the duration of this Agreement.

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

Descriptions	Item Unit Price (EA)	Item Unit Price (EA)		Item Unit Price (EA)	Item Unit Price (EA)	Item Unit Price (EA)
T-Shirts (FR, 8 cal rating, long sleeve, with collar)	Khaki	High Vis.	Alt. Khaki		Alt. High Vis.	
Bulwark SET2	N/A	N/A	STT2KH	\$ 76.00	SMK8HV	\$ 142.00
LAPCO FRT-USHLSP6KH	\$ 58.00	N/A	N/A	N/A	MFRHVST-1	\$ 100.00
Carhartt 100235	\$ 67.00	N/A	N/A	N/A	N/A	N/A
Ariat 10022328	\$ 61.00	N/A	N/A	N/A	10025432	\$ 146.00
Wrangler FRI61	N/A	N/A	FR3W5KH	\$ 65.00	TSHMA HV	\$ 85.00
Dragonwear 146370-749X & 146344-749	\$ 115.00	\$ 165.00	N/A	N/A	N/A	N/A
	\$ 45.00	\$ 80.00	MFRCNT-LW	\$ 45.00	MFRCNT-3	\$ 80.00
Henley Shirts (long sleeve, khaki, FR, <8 oz., 8 cal rating)	Khaki	High Vis.	Alt. Khaki		Alt. High Vis.	
Bulwark SEL2	\$ 80.00	N/A	N/A	N/A	SML4HV	\$ 145.00
LAPCO FRT-HJE	\$ 57.00	N/A	N/A	N/A	FRT-HJE HV2	\$ 114.00
Carhartt 100237	\$ 72.00	N/A	N/A	N/A	N/A	N/A
Ariat 10022598	\$ 61.00	N/A	N/A	N/A	10025432	\$ 146.00
Wrangler FR3W8	N/A	N/A	N/A	N/A	HENCO	\$ 39.00
Dragonwear	N/A	N/A	MFRHNLY-004	\$ 45.00	HENMA HVBK	\$ 90.00
Button Down Shirts (long sleeve, khaki, FR, < 8 oz., 8 cal rating)	Khaki	High Vis.	Alt. Khaki		Alt. High Vis.	
Bulwark SLW2	\$ 70.00	N/A	N/A	N/A	SMW4HV	\$ 142.00
LAPCOIXX7	\$ 50.00	N/A	N/A	N/A	TCSHV5C2	\$ 111.00
Carhartt FRS003	N/A	N/A	FRS160	\$ 72.00	TCSHV5C2	\$ 111.00
Ariat 10012251	\$ 80.00	N/A	N/A	N/A	10030292	\$ 95.00
Wrangler FR3W5KH	\$ 65.00	N/A	TCS5KH	\$ 80.00	2C3FRCB	\$ 140.00
Dragonwear	N/A	N/A	9888FUZ	\$ 55.00	N/A	N/A
BULWARK	N/A	N/A	QS40KH	\$ 73.00	S1W2HV	\$ 145.00
Hooded Sweatshirts (FR, 8 cal rating)	Khaki	High Vis.	Alt. Khaki		Alt. High Vis.	
Bulwark (pullover) SEH8	\$ 192.00	N/A	N/A	N/A	HODMA HVBKKA-01	\$ 145.00
LAPCO (pullover) SWHFR14NY	\$ 147.00	N/A	N/A	N/A	N/A	N/A
Carhartt (pullover) 102907	N/A	N/A	104983	\$ 123.00	105786	\$ 253.00
Ariat (pullover) 10023989	\$ 170.00	N/A	10032830	\$ 119.00	10052589 - FALL 2024	\$ 192.00
Wrangler (pullover) FRI 71	N/A	N/A	MFRHDY-0033	\$ 115.00	N/A	N/A
Dragonwear	N/A	N/A	DFMC141X	\$ 220.00	DFMN134X	\$ 295.00
Bulwark (zippered) SEH4	\$ 198.00	N/A	N/A	N/A	SMH4HV	\$ 247.00
LAPCO (zippered) SWHFR14ZNY	\$ 166.00	N/A	N/A	N/A	N/A	N/A
Carhartt (zippered) 102908	N/A	N/A	104982	\$ 131.00	N/A	N/A
Ariat (zippered) 10023979	\$ 177.00	N/A	N/A	N/A	10027912	\$ 246.00
Tiger Workwear (zippered) HODCS NVYZF - 01	\$ 120.00	N/A	HODCS NVYKA - 01	\$ 110.00	HODMA HVBKZF-01	\$ 155.00
Denim Pants (FR, 8 cal rating)	Khaki	High Vis.	Alt. Khaki		Alt. High Vis.	
Bulwark PEJ2DD	\$ 63.00	N/A	PEJ4DW	\$ 71.00	PSJ4SD	\$ 80.00
LAPCO P-INDMIO	\$ 58.00	N/A	P-INDM10U	\$ 61.00	P-INDFC11	\$ 81.00
Carhartt FRBI00	\$ 80.00	N/A	FRB13	\$ 85.00	105069	\$ 103.00
Ariat 10012555	\$ 87.00	N/A	10014450	\$ 87.00	10015166	\$ 87.00
Wrangler FR3W0S0	\$ 65.00	N/A	FR13MWZ	\$ 68.00	FR31MWZ	\$ 68.00
MCR SAFETY P2D	\$ 61.00	N/A	909PFR12	\$ 57.00	909PFR14	\$ 62.00
Ariat & Twisted X Boots	Khaki	High Vis.	Alt. Khaki		Alt. High Vis.	
10011943	\$ 185.00	N/A	N/A	N/A	N/A	N/A
10024954	\$ 115.00	N/A	N/A	N/A	N/A	N/A
10024966	\$ 194.00	N/A	N/A	N/A	N/A	N/A
MLCA001	\$ 168.00	N/A	N/A	N/A	N/A	N/A
MLCS003	\$ 165.00	N/A	N/A	N/A	N/A	N/A
MXBA001	\$ 176.00	N/A	N/A	N/A	N/A	N/A
Non FR shirts						
REDKAP SS14	\$ 66.00	N/A	N/A	N/A	MHVST-004	\$ 19.00
REDKAP SVY4	\$ 25.00	N/A	N/A	N/A	MHVLT-001	\$ 19.00
REDKAP SVY3	\$ 32.00	N/A	N/A	N/A	N/A	N/A
ARIAT 10016222	\$ 57.00	N/A	N/A	N/A	N/A	N/A
ARIAT 10016223	\$ 48.00	N/A	N/A	N/A	N/A	N/A
ARIAT 10018377	\$ 55.00	N/A	N/A	N/A	N/A	N/A
ARIAT 10022608	\$ 57.00	N/A	N/A	N/A	N/A	N/A
WRANGLER 13MWZ	\$ 33.00	N/A	N/A	N/A	N/A	N/A
WRANGLER 31MWZ	\$ 33.00	N/A	N/A	N/A	N/A	N/A



Meeting Date: September 26, 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 Chief Executive Officer

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Townsend Tree Service Company, LLC for Tree Trimming Services

BACKGROUND

This Professional Services Agreement (the “Agreement”) with Townsend Tree Service Company, LLC provides labor, material, and equipment necessary to perform vegetation management around electric infrastructure (the “Services”) for New Braunfels Utilities (“NBU”). Townsend Tree Service Company, LLC shall trim, chemically treat, and/or remove trees and other vegetation as directed at the locations specified by NBU.

NBU has a tree trimming program in place that is designed to maintain our easements, ensure service reliability, and provide safety for our crews and customers. The goal is to balance the aesthetics of a healthy urban forest with regulating entities’ requirements for having standards in place to protect our local electric system and the state’s electric grid. NBU Electric Ops implemented a formal vegetation management program in FY 2020 that was designed to complete tree trimming throughout the entire NBU electric distribution system within five years. This goal was accomplished in four years and the system is now in a maintenance mode. The benefits of this program have been extensive as the NBU distribution system has experienced minimal outages attributed to tree limbs over the past four years and none during Winter Storm Uri. In FY 2024, only 17 of 382 outages were directly attributed to limbs coming in contact with distribution lines. Since FY 2020, over 1,200 miles of distribution lines have been cleared of tree limbs and vegetation with the percentage of system cleared dependent upon the level of forestation of the area and the length of the circuit.

NBU staff requests that the Board of Trustees approve the Agreement with Townsend Tree Service Company LLC for the Services.

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

FINANCIAL IMPACT

This is a one-year contract with up to four one-year renewals. Each year has a total not-to-exceed of \$1,000,000.00 with the entire contract not-to-exceed of \$5,000,000.00.

LINK TO STRATEGIC PLAN

Customers and Community

Financial Excellence

Stewardship

EXHIBITS

1. Professional Services Agreement with Townsend Tree Service Company, 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 **TOWNSEND TREE SERVICE COMPANY LLC**, an Indiana 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 October 15, 2024, to October 14, 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 October 14, 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. 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. 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 year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

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

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

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

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

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

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

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

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

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

(J) Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the

same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

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

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

(M) Offset.

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

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

If to NBU:

New Braunfels Utilities
 Attn: Director of Electric Services and Compliance
 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:

Townsend Tree Service Company LLC
1015 W. Jackson Street
Muncie, IN 47305

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 23. Electronic Signatures. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process

attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

(The remainder of this page intentionally left blank)

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

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

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

PROFESSIONAL:
TOWNSEND TREE SERVICE COMPANY LLC,
an Indiana limited liability company authorized
to transact business in the State of Texas

By: Amy E. Townsend
Name: Amy E. Townsend
Title: Chief Executive Officer

Exhibit A

Services

The Professional shall trim, chemically treat, and/or remove trees and other vegetation as directed at the locations specified by NBU. NBU's service territory consists of 160 square miles and approximately 1,076.63 miles of overhead and underground distribution lines.

I. Technical Requirements

- A. Supervision of Tree Trimming Crew. The Professional shall furnish an area supervisor for the tree trimming crew as needed. The area supervisor shall be required to check-in with NBU's Utility Forester every Monday morning regarding scheduling, problems, issues, and concerns. The area supervisor shall monitor the quality and performance of the crew on a daily basis.
- B. Experience. NBU requires that the Professional use a crew with experience working in the electric utility industry and in tree care operations. NBU's Utility Forester will inspect work performed by the Professional's crew members who are performing the tree trimming. If the work performed by the tree trimmer(s) is not acceptable to the NBU Utility Forester, NBU shall require the Professional to return to the site and re-trim until the work is acceptable to the NBU Utility Forester. If the work performed by a specific employee is repeatedly found unacceptable by the NBU Utility Forester, NBU will request a replacement for that tree trimmer.
- C. Energized Lines. The Professional shall perform all work with the lines and equipment energized unless previous arrangements have been made with NBU in writing to de-energize and properly ground the line and/or equipment. Under no circumstances shall the Professional deenergize any line or equipment on its own. NBU's distribution system voltage is 7,200/12,470.
- D. Clearance. When trimming, treating, and/or removing trees, brush, and/or other vegetation, the Professional shall provide a tree to overhead conductor clearance of eight (8) feet from the primary and three (3) feet from service drops. The Professional shall also provide a clearance of ten (10) feet in front and three (3) feet for both the side and the back of all underground equipment. The primary is the conductor energized at 7,200 volts, including lines and equipment.
- E. Pruning/Cutting Requirements. When pruning and cutting, the Professional shall use a directional method of pruning to help train the tree growth away from the facilities. NBU shall notify the landowner of the need to remove or cut back all lateral growth that may come into contact with NBU's infrastructure in the event it should break or hinge down. Notification requirements are described herein in Section II.A.

- F. Oak Wilt. The Professional shall be knowledgeable of Oak Wilt disease and how to recognize it. The Professional shall sterilize all trimming equipment whenever cutting around all oak trees. All oak tree wounds shall be painted with an approved pruning paint or anytime an NBU customer requests it on other species of trees as soon as possible/feasible. The Professional shall dispose of clippings at a disposal location designated by NBU, if an oak is cut that shows signs of oak wilt, without exception.
- G. Tree Removal. The Professional shall receive permission from the respective landowner to remove a tree that measures four (4) inches in diameter or larger. If the Professional removes a tree after obtaining any necessary approvals, the Professional shall make an effort to remove the entire tree growth below NBU infrastructure whenever possible. If a tree is removed completely, the Professional shall treat the stump with an herbicide to prevent it from re-spouting. The Professional shall cut the stump to ground level and apply pruning paint to the stump.
- H. Job Site Clean-Up. The Professional shall promptly clean and haul away all debris and spoils from the job site and dispose of the debris and spoils in a manner specified by NBU. The job site shall be swept and blown clear of any saw dust and small debris.
- I. Waste Disposal.
- a. NBU has an agreement with the Comal County Recycling Department for waste disposal and no disposal fees are required for the Comal County Recycling Department site located at 281 Resource Drive, New Braunfels, Texas 78132.
 - b. The Professional shall not dispose of any waste generated from sites other than those approved by NBU. If the Professional brings in vegetation or mulch from outside the NBU trimming assignment under the pretense of being allowed per the NBU/Comal County Recycling Department agreement and dumped at the designated dump site, NBU will immediately terminate this Agreement.
- J. Required Equipment.
1. The Professional shall furnish employees with equipment, machinery, tools, implements, safety equipment, and personal protective gear of the proper type necessary to perform the Services, including but not limited to:
 - a. a rope and a saddle for each employee;
 - b. pruning chainsaws for each employee;
 - c. hand saws and limb loppers with fiberglass pruning sticks for each employee;
 - d. one saw large enough to accept thirty-six (36) inch bar and chain on each crew;
 - e. at a minimum one (1) extra rope set up on each crew;
 - f. hand blowers, rakes, shovels, and brooms for each crew;
 - g. signs, cones, and flagging equipment per Texas Department of Transportation requirements for each crew;
 - h. tree paint, sterilization, and disinfectant for trimming equipment for each crew;
 - i. sprayers for herbicide for each crew; and

- j. a global positioning system locator in each of the Professional's vehicles (used to find work locations).
 - 2. The Professional shall provide all of the equipment in good working condition and assumes full responsibility for loss of or damage to the equipment.
 - 3. The Professional shall be solely responsible for its vehicles, equipment, tools, supplies, materials, and other property. NBU shall not provide a secured location for the Professional's equipment and is not liable for any vandalism or damage due to weather.
- K. Specific Conditions of The Services. The Professional understands and agrees to the conditions described herein to perform the services.
- 1. The Professional shall notify NBU's Utility Forester or NBU's Electric Operations Supervisor each morning of its work plan for the area that day while the project is ongoing.
 - 2. The Professional shall enter and exit properties by access of the right-of-way unless otherwise stated by NBU's Utility Forester or NBU's Electric Operations Supervisor.
 - 3. The Professional shall leave all gates as they are found (locked, unlocked, closed, open, etc.).
 - 4. The Professional shall paint all cuts or scraps and disinfect all equipment when trimming on or moving from oak tree to oak tree.
 - 5. The Professional shall paint all other cuts when requested by NBU's Utility Forester or NBU's Electric Operations Supervisor.
 - 6. The Professional shall obtain written approval from NBU prior to complete removal of trees from the right-of-way.
 - 7. The Professional shall use herbicides only in NBU right-of-way after obtaining both NBU written consent and customer permissions.
 - 8. The Professional shall adhere to all state and local ordinances or easement agreements that require special treatment to trees.
 - 9. The Professional's crew leaders must be able to read, write, and speak English.
 - 10. The Professional's crew members will be required to have their company ID badge and include clear company identification, contact information, and the personnel by their name and position.
 - 11. The Professional shall provide a single point of contact for the authorization and settlement of orders, transactions, and disputes.
 - 12. The Professional shall provide live customer service and technical support Monday through Friday, 8:00 a.m. to 5:00 p.m., with a required callback time of one (1) hour or less for all issues.

II. General Requirements

- A. Notification. The Professional shall notify NBU customers and/or landowners affected by impending work before any work has commenced. The initial notification will be through the NBU control center for mass notification with a minimum of two (2) days advance notice and by personal contact with the NBU customer or an NBU-approved door hanger.

The person responsible for notifying NBU customers shall speak and understand English; however, speaking and understanding Spanish is also recommended.

- B. Customer Refusal. All NBU customers who do not allow the Professional to complete scheduled work shall be directed to the Professional's crew foreman who shall notify NBU's Utility Forester or NBU's Electric Operations Supervisor. NBU shall follow up with the customer and provide the Professional with a resolution.
- C. Service Interruption. In the event the Professional causes service interruption to an NBU customer, the Professional shall notify the NBU control center immediately. The Professional shall also provide a written report to NBU's Electric Operations Supervisor within forty-eight (48) hours with details of the incident.
- D. Equipment Maintenance. The Professional shall not perform maintenance on equipment in the field other than routine repairs. In the event a large piece of equipment breaks or ceases to work properly, the Professional must report such information to NBU's Utility Forester or NBU's Electric Operations Supervisor. If the broken equipment prohibits the Professional from completion of the Services, the Professional shall not bill NBU for any time or labor required to repair the equipment during the nonproductive time.
- E. Equipment Parking. The Professional shall find a designated parking area for all equipment outside of NBU Property.
- F. Personnel Parking. No personal vehicles of the Professional shall be allowed on the job site without prior permission from NBU.
- G. Invoicing. Invoicing shall be submitted as described in Section 3(B) of the Agreement.
- H. Safety. The Professional shall work in accordance with established safety practices and those specified in American National Standards Institute Z133.1. The Professional shall be solely and completely responsible for conditions on the job site, including the safety of all employees, property, and the general public during the performance of the Services. This requirement shall apply continuously and shall not be limited to normal working hours. NBU's evaluation of the Professional's performance is intended to include review of the adequacy of the Professional's safety measures in, on, and near the work site. The Professional is to (i) provide and use all protective equipment necessary for the protection of the Professional's employees and the general public and (ii) guard against interfering with the normal operation of NBU's personnel and infrastructure.
- I. Access. While removing brush, limbs, and trees, including entire tree removal from NBU's rights-of-way, the Professional may be required to climb in restricted areas where equipment access is not available. Restricted areas include back lot right-of-ways, customer lawns/yards/properties (after providing notification to the customer in the manner specified herein), or areas that trucks and truck type equipment cannot access.

- J. Emergency Work. In emergencies, the Professional may be asked to provide a crew or crews during off-duty hours. The Professional shall provide two (2) reliable points of contact to NBU to guarantee the ability to assemble and organize crew(s) as requested in accordance with established NBU emergency crew call-out procedures.
- K. Employee File/Personnel. The Professional shall maintain an employee file for each staff assigned to NBU. The Professional shall provide name(s) and contact numbers of the area supervisor and trimming foreman to NBU's Electric Operations Supervisor before any work commences. The Professional shall provide updates to NBU in writing anytime there is a change in personnel, or at the request of NBU. NBU shall assign keys and access badges to designated employees of the Professional. If the Professional fails to return these items to NBU's Electric Operations Supervisor, NBU shall assess a \$500 penalty per key set and badge.
- L. Appearance. The Professional's crewmembers shall be required to maintain a neat, well-groomed appearance and wear a standard uniform with emblem. Shirts shall be buttoned and tails tucked in with no silk screen designs or emblems other than the Professional's emblem. Pants shall be of the Professional's uniform type and not have any tears or holes. Beards and/or over-the-collar haircuts will be acceptable, provided they are neatly groomed and maintained. The Professional's crew members shall wear a company identification badge at all times. The Professional shall not use the NBU logo on his or her badge.
- M. Company Vehicle(s). The Professional's vehicle(s) shall be clearly marked with a company name and logo that is easily identifiable.
- N. Herbicide License/Full-Time Arborist/Forester. The Professional shall maintain an herbicide license and have a full-time arborist/forester on staff and available as needed.
- O. Employee Conduct. Professionalism and courtesy is required at all times. No use of customer's equipment or facilities shall be permitted. No refuse from breaks or lunch shall be left or disposed of on the customer's property.
- P. Intoxicants and Drugs. Unsafe or disorderly conduct by any employee of the Professional shall cause the employee to be promptly removed from the job site.
- Q. Schedule. NBU shall specify the project schedule and locations for completion of the Services under the Agreement in a separate written agreement.
1. All work must be performed during the standard hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, unless written approval is given by NBU's Electric Operations Supervisor or NBU's Electric Operations Manager for work after-hours. Prep work may be performed prior to 7:00 a.m. or after 5:00 p.m.; however, NBU customers' property should not be accessed nor should chainsaws or chippers be used outside normal business hours.

2. The Professional may work 10-hour days (not to exceed 40-hour weeks unless authorized by NBU's Electric Operations Manager or NBU's Electric Operations Supervisor) as long as there is no work being performed on any customer's property outside the noted hours of 7:00 a.m. to 5:00 p.m.
 3. The Professional shall submit all hours worked on invoices to NBU.
- R. Holidays. The Professional shall observe the same holiday schedule as NBU unless prior arrangements have been made in writing and agreed upon by NBU. NBU shall provide its holiday schedule to the Professional upon request.

Exhibit B

Compensation

NBU shall pay the Professional for the Services, including both labor and expenses, in an amount not to exceed \$1,000,000 per year and not to exceed \$5,000,000 for the duration of the Agreement.

Trimming Hourly Rate (for informational purposes only)			
Item Number	Crew Type	Standard Time/Hour	Over-Time/Hour
1	Two Man (with chipper)	\$107.63	\$148.20
2	Three Man (with chipper)	\$139.91	\$196.62
3	Four Man (extra chipper truck and minimum of 2 qualified climbers)	\$191.93	\$267.55
4	Area Supervisor	\$61.90	\$86.35



Meeting Date: September 26, 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
 Services Compliance

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Construction Contract with E-Z Bel Construction, LLC for the Construction of the Union Avenue Water Replacement Project

BACKGROUND

On June 26, 2024, New Braunfels Utilities (“NBU”), along with the City of New Braunfels (“CONB”), issued a request for bids for the CONB City-Wide Streets Program S. Union Ave. Improvements Project, also known as the Union Avenue Water Replacement Project, which includes relocating approximately 1,700 linear feet (“LF”) of 8-inch water main along Union Avenue between the intersections of San Antonio Street and Lincoln Street (the “Project”). The Project will relocate an existing water main that is in conflict with the CONB’s project.

On July 30, 2023, NBU and CONB received two (2) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of E-Z Bel Construction, LLC (E-Z Bel) for the Project. E-Z Bel was selected as the respondent who provides the best value to NBU and CONB based on the selection criteria, the weighted value for those criteria, and the ranking evaluation, including their cost of work, proposed schedule, past performance on similar projects, overall qualifications, available resources, corporate history, and references. E-Z Bel’s proposal includes a base bid of \$2,448,936.67, of which \$848,560.67 is NBU’s portion.

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

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

FINANCIAL IMPACT

The total financial impact of the Contract with E-Z Bel for the Project is \$848,560.67. The Project is budgeted within the fiscal year 2025 NBU Board-approved Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency for \$90,000 which is roughly 10% of the total contract amount, will be added to the project construction budget. The total contract amount plus contingency is \$938,560.67.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

1. Construction Contract with E-Z Bel
2. Bid Tab – (CSP 24-032)

Bid Tab			
<i>Bidder</i>	<i>NBU Cost</i>	<i>CONB Cost</i>	<i>Total Cost</i>
E-Z Bel Construction	\$848,560.67	\$1,600,376.00	\$2,448,936.67
R.L. Jones LP	\$1,268,860.00	\$1,880,548.80	\$3,149,408.80

3. Bid Evaluation Matrix – Competitive Sealed Proposal (24-032)

Criteria	E-Z Bel Construction	R.L. Jones LP
Cost of Proposal	65	51
Experience and Qualifications	18	18
Plan & Schedule	14	13
Interview	0	7
Total Score	97.00	88.52

CONTRACT AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ of the year 20__ by and between CITY OF NEW BRAUNFELS (the "City") and NEW BRAUNFELS UTILITIES ("NBU") (collectively Owners) and E-Z Bel Construction, LLC (Contractor).

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

ARTICLE 1 - WORK

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

- The Contract Agreement
- Standard General Conditions of the Contract
- Special Specifications and Provisions
- Payment Bond
- Performance Bond
- Warranty Bond (if requested by Owners)
- Plans and Standard Specifications

ARTICLE 2 - THE PROJECT

- 2.01 Project Title: S. Union Avenue Improvements (Common St – Lincoln St)
- 2.02 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

This is a joint Road and Utility Project, New Braunfels City-Wide Street Project-S. Union Avenue Improvements (Common St-Lincoln St), between the City of New Braunfels and New Braunfels Utility ("NBU") (collectively "Owners").

The project will include milling and overlaying from Common Street to San Antonio Street. Base repair is required from San Antonio Street to Lincoln Street. The project includes the replacement of curbs, driveways, sidewalks, and pavement markings to match the existing layout within the project limits. Intersection improvements and new signals will be installed at Common Street and San Antonio Street. Additionally, there will be concrete sidewalk widening for the existing shuttle stops at Schlitterbahn near Union and Lincoln, and new sidewalk improvements along Union Avenue.

The project also includes the water main replacement from the intersection of Union Avenue and San Antonio Street to the intersection of Union Avenue and Lincoln Street. The project includes the replacement of the existing 8" water line, new service lines, water meters, valves, and water main connections to side streets.

ARTICLE 3 – DESIGN ENGINEER

3.01 The Project has been designed by the following design engineers:

- Union Ave Street Improvements
- Bryan J. Spina, P.E.
- Ardurra
- 8918 Tesoro Drive, Suite 401

San Antonio, TX 78217
(210) 822-2232

S. Union Ave Water Line Improvements
Erin Mills, P.E.
Freese and Nichols, Inc
9601 Mc Allister Freeway, Suite 1008
San Antonio, Texas 78261
(210) 298-3898

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

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

A. Time is of the essence in all phases of the Work and performance of obligations owed by the Contractor to the Owners as stated in the Agreement and the Contract Documents. All time limits for Milestones, if any, Substantial Completion, and completion and **readiness for final payment** as stated in the Contract Documents are of the essence of the Contract. It is specifically understood and agreed by and between Owners and Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within **180** days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **210** days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. Contractor and Owners recognize that time is of the essence of this Agreement and that Owners will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owners if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owners and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owners One Thousand Two Hundred Eighty-five Dollars (**\$1,285.00**) per day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owners, Contractor shall pay Owners One Thousand Two Hundred Eighty-five Dollars (**\$1,285.00**) per day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 Special Damages

A. In addition to the amount provided for in liquidated damages, Contractor shall reimburse Owners (1) for any fines or penalties imposed on Owners as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual

costs reasonably incurred by Owners for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

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

4.05 Claims for Additional Time

A. Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. Contractor shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service or NOAA:

Average Weather Days per Month											
Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
(4)	(4)	(4)	(3)	(5)	(6)	(4)	(3)	(4)	(4)	(4)	(4)

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement.

B. Requests for an extension of time pursuant to this subsection shall be promptly submitted to Owners in accordance with Article 10 of Section 6. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents.

ARTICLE 5 - CONTRACT PRICE

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

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) at the prices states in the Contractor’s Bid Form, attached hereto as Exhibit B.
- B. The Extended Prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Section 11.03 of the General Conditions,

estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Engineer. Adjustments in the Extended Price following the Engineer's determination shall be memorialized as final adjusted Extended Prices on the approved Schedule of Values to be included with the Contractor's pay applications.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions and Supplemental Conditions (if applicable). Contractor delivers to Owners a Full and Final Release and Affidavit of Bills Paid in the form attached hereto as Attachment No. 1, executed by Contractor.

Applications for Payment will be processed by Design Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owners shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided herein:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Design Engineer may determine or Owners may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
 - a. 95% (percent) of Work completed.
 - b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owners shall pay the remainder of the Contract Price as recommended by Design Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

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

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

any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Proposal Documents, and safety precautions and programs incident thereto.

E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

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

G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. Contractor has given Design Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Design Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions.

8.02 *Assignment of Contract*

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

8.03 *Successors and Assigns*

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

8.04 *Severability*

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

8.05 *Governing Law*

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

8.06 *Venue*

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

8.07 *Indemnity Against Loss*

A. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY OF NEW BRAUNFELS AND NEW BRAUNFELS UTILITIES, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ALL PERSONS, INCLUDING EMPLOYEES OF THE CONTRACTOR OR ANY OF ITS CONSULTANTS, WHICH MAY ARISE FROM ANY NEGLIGENT ACT, ERROR OR OMISSION, ON THE PART OF THE CONTRACTOR, ITS EMPLOYEES, AGENTS, AND CONSULTANTS, PURSUANT TO THIS CONTRACT.

B. THE OWNERS DO NOT ASSUME ANY LIABILITY TO THIRD PERSONS, NOR WILL THE OWNERS REIMBURSE THE CONTRACTOR FOR ITS LIABILITY TO A THIRD PERSON, WITH RESPECT TO LOSS DUE TO DEATH, BODILY INJURY, OR DAMAGE TO PROPERTY RESULTING IN ANY WAY FROM THE PERFORMANCE OF THIS CONTRACT OR ANY SUBCONTRACT HEREUNDER, AND CONTRACTOR FURTHER AGREES TO PROVIDE THE DEFENSE FOR, AND INDEMNIFY AND HOLD HARMLESS OWNERS FROM ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, AND LIABILITY, ARISING IN CONNECTION WITH THIS CONTRACT.

8.08 *Prohibition on Contracts with Companies Boycotting Israel*

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended.

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

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

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

B. The foregoing representation is made solely to comply with Section 2252.152, Texas

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

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

- A. If the Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Contractor represents the following:
1. it is not owned by or the majority of stock or other ownership interest in the Contractor is not held or controlled by:
 - a. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended (“designated country”); or
 - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
 2. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.
- B. The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. “Affiliate,” with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

8.11 Prohibition on Contracts with Companies Boycotting Energy Companies

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

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

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

8.13 *Electronic Signatures (this section is omitted)*

8.14 Texas Public Information Act

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

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

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

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

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

ARTICLE 9 - INSURANCE

9.01 *Evidence of Contractor’s Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owners, Contractor shall also deliver to Owners, with copies to each named insured and additional insured, the certificates and other evidence of insurance required to be provided by Contractor in accordance

with the Insurance Rider that is Exhibit A to this Agreement. Evidence of insurance is attached as Exhibit C to this Agreement.

Exhibit A – Insurance Rider

Exhibit B – Evidence of Insurance

Exhibit C – Contractor’s Bid Form

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

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

OWNERS:

CITY OF NEW BRAUNFELS

By: _____
Printed Name: Robert Camareno
Title: City Manager

Attest: _____

Title: _____

Address for giving notices:

NEW BRAUNFELS UTILITIES

By: _____
Printed Name:
Title:

Attest: _____


Title: _____

CONTRACT AGREEMENT
CSP 24-032 S. UNION AVE IMPROVEMENTS

Address for giving notices:

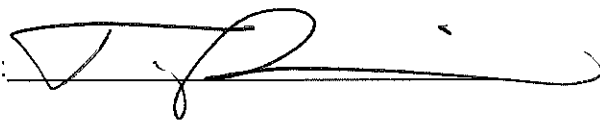
CONTRACTOR:

E-Z BEL CONSTRUCTION, LLC

By: 

Printed Name: Randy Hood

Title: Chief Operating Officer

Attest: 

Title: Division manager, core

Address for giving notices:

License No.: _____
(Where Applicable)

Agent for service or process:

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

END OF DOCUMENT

Exhibit A – Insurance Rider



**City of New Braunfels
 Insurance Requirements
 Construction and/or Renovation**

INSURANCE AND LIABILITY: During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall:

- (i) Name City of New Braunfels and New Braunfels Utilities as additional insured/or an insured, as its interests may appear.
- (ii) Provide City of New Braunfels and New Braunfels Utilities a waiver of subrogation.
- (iii) Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- (iv) Provide the City Purchasing Agent at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.

Submit a certificate of insurance reflecting the following coverages.

Submit a certificate of insurance reflecting coverage as follows:

- a. Automobile Liability:

Bodily Injury (Each person)	-	\$1,000,000.00
Bodily Injury (Each accident)	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00
- b. General Liability (Including Contractual Liability):

Bodily Injury	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00
Aggregate	-	\$2,000,000.00
- c. Excess Liability:

Umbrella Form	-	\$5,000,000.00
---------------	---	----------------
- d. Builders' Risk:

	-	Project Value
--	---	---------------
- e. Worker's Compensation:

	-	Statutory
--	---	-----------

Or Employer's Liability Insurance:

Each Accident	-	\$1,000,000.00
Disease each employee	-	\$1,000,000.00
Policy Limit	-	\$1,000,000.00

Exhibit B – Evidence of Insurance

E-Z Bel Construction
(Insert Certificate of Insurance Here)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD)	Item 11.
8/29/2024	

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

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

PRODUCER HUB International Texas, Inc. One Alamo Center 106 S. St. Mary's Street, Ste. 800 San Antonio TX 78205	CONTACT NAME: Nancy Pruski		
	PHONE (A/C, No, Ext): 210-298-7162	FAX (A/C, No): 210-298-7162	
E-MAIL ADDRESS: nancy.pruski@hubinternational.com			
INSURED E-Z Bel Construction LLC 203 Recoleta San Antonio TX 78216	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Travelers Lloyds Ins. Co.		41262
	INSURER B : Zurich American Insurance Co.		16535
	INSURER C : Navigators Insurance Company		42307
	INSURER D :		
	INSURER E :		

COVERAGES **CERTIFICATE NUMBER:** 2134438041 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	GLO239471205	3/1/2024	3/1/2025	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SOI <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BAP239471305	3/1/2024	3/1/2025	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	Y	HO24EXCZ02Z86IV	3/1/2024	3/1/2025	EACH OCCURRENCE	\$ 10,000,000
							AGGREGATE	\$ 10,000,000
							Products-Comp Ops Agg	\$ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WC239471105	3/1/2024	3/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	Contractors Equipment			8J91916A	3/1/2024	3/1/2025	Leased/Rented Deductible	\$750,000 \$2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Excess Liability is follow form of underlying.

Project: CSP 24-032 S. Union Ave Improvements

CERTIFICATE HOLDER City of New Braunfels New Braunfels Utilities (NBU) 550 Landa St. New Braunfels TX 78130	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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ZURICH[®]

Additional Insured – Automatic – Owners, Lessees Or Contractors

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. GLO 2394712-05

Effective Date: 03/01/2024

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a. The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or
- b. The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

- (1) Your ongoing operations, with respect to Paragraph 1.a. above; or
 - (2) "Your work", with respect to Paragraph 1.b. above,
- which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 1., insurance afforded to such additional insured:

- (a) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (b) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a. The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or
- b. The ISO CG 20 37 (07/04 edition);

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf;

in the performance of:

- (a) Your ongoing operations, with respect to Paragraph 2.a. above; or
- (b) "Your work" and included in the "products-completed operations hazard", with respect to Paragraph 2.b. above;

which is the subject of the written contract or written agreement;

However, solely with respect to this Paragraph 2., insurance afforded to such additional insured:

- (i) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (ii) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

3. If neither Paragraph 1. nor Paragraph 2. above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a. Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b. With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 3., insurance afforded to such additional insured:

- (a) Only applies to the extent permitted by law;
- (b) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and
- (c) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.

4. If neither Paragraph 1. nor Paragraph 2. above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a. Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b. With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 4., insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;
- (3) Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

- B. Solely with respect to the insurance afforded to any additional insured referenced in Section A. of this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- C. Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section IV – **Commercial General Liability Conditions**:

The additional insured must see to it that:

- (1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
- (2) We receive written notice of a claim or "suit" as soon as practicable; and
- (3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

- D. Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section IV – **Commercial General Liability Conditions**:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the **Other Insurance** Condition under Section IV – **Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

- E. This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

- F. Solely with respect to the insurance afforded to an additional insured under Paragraph A.3. or Paragraph A.4. of this endorsement, the following is added to Section III – **Limits Of Insurance**:

Additional Insured – Automatic – Owners, Lessees Or Contractors Limit

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

1. Required by the written contract or written agreement referenced in Section A. of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations,
whichever is less.

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

All other terms, conditions, provisions and exclusions of this policy remain the same.

Other Insurance Amendment – Primary And Non-Contributory



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 2394712-05	03/01/2024	03/01/2025		14228000	INCL	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: E-Z Bel Construction LLC

Address (including ZIP Code): 203 Recoleta, San Antonio, TX 78216

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

1. The following paragraph is added to the Other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

This insurance is primary insurance to and will not seek contribution from any other insurance available to an additional insured under this policy provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by a written contract or written agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the Other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

All other terms and conditions of this policy remain unchanged.

Waiver Of Subrogation (Blanket) Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
GLO 2394712-05	03/01/2024	03/01/2025		14228000	\$ INCL	\$

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us Condition**:

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.



Blanket Notification to Others of Cancellation or Non-Renewal

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.	
Policy No. GLO 2394712-05	Effective Date: 03/01/2024

This endorsement applies to insurance provided under the:

Commercial General Liability Coverage Part

- A. If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contact or written agreement to provide such notification. Such list:
 - 1. Must be provided to us prior to cancellation or non-renewal;
 - 2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
 - 3. Must be in an electronic format that is acceptable to us.
- B. Our notification as described in Paragraph A. of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
 - 1. Within 10 days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - 2. At least 30 days prior to the effective date of:
 - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - b. Non-renewal, but not including conditional notice of renewal,
 unless a greater number of days is shown in the Schedule of this endorsement for the mailing or delivering of such notification with respect to Paragraph B.1. or Paragraph B.2. above.
- C. Our mailing or delivery of notification described in Paragraphs A. and B. of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - 1. Extend the Coverage Part cancellation or non-renewal date;
 - 2. Negate the cancellation or non-renewal; or
 - 3. Provide any additional insurance that would not have been provided in the absence of this endorsement.

POLICY NUMBER: BAP 2394713-05

COMMERCIAL AUTO
CA 20 48 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

- AUTO DEALERS COVERAGE FORM
- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<p>Named Insured: E-Z BEL CONSTRUCTION, LLC</p> <p>Endorsement Effective Date:</p>
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SCHEDULE

<p>Name Of Person(s) Or Organization(s): ANY PERSON OR ORGANIZATION TO WHOM OR WHICH YOU ARE REQUIRED TO PROVIDE ADDITIONAL INSURED STATUS OR ADDITIONAL INSURED STATUS ON A PRIMARY, NON-CONTRIBUTORY BASIS, IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT EXECUTED PRIOR TO LOSS, EXCEPT WHERE SUCH CONTRACT OR AGREEMENT IS PROHIBITED BY LAW</p>

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

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

- AUTO DEALERS COVERAGE FORM
- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: E-Z BEL CONSTRUCTION, LLC Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s): ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY

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

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.



Blanket Notification to Others of Cancellation or Non-Renewal

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
BAP 2394713-05	03/01/2024	03/01/2025	3/01/2021	14228000	INCL	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial Automobile Coverage Part

- A.** If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contact or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
1. Must be provided to us prior to cancellation or non-renewal;
 2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
 3. Must be in an electronic format that is acceptable to us.
- B.** Our notification as described in Paragraph **A.** of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
1. Within seven days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 2. At least 30 days prior to the effective date of:
 - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - b. Non-renewal, but not including conditional notice of renewal.
- C.** Our mailing or delivery of notification described in Paragraphs **A.** and **B.** of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
1. Extend the Coverage Part cancellation or non-renewal date;
 2. Negate the cancellation or non-renewal; or
 3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D.** We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs **A.** and **B.** of this endorsement.

All other terms and conditions of this policy remain unchanged.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 42 03 04 B
(Ed. 6-14)

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

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

The premium for this endorsement is shown in the Schedule.

Schedule

- 1. () Specific Waiver

Name of person or organization:

- (X) Blanket Waiver

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

- 2. Operations: All operations of the Named Insured, where the written contract to provide this waiver is executed prior the accident or loss, and the waiver provided under this policy is for work performed by the Named Insured for that person and/or organization.

- 3. Premium:

The premium charge for this endorsement shall be 0% percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

- 4. Advance Premium: INCL

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

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

Endorsement Effective 03/01/2024

Policy No. WC 2394711 - 05

Endorsement No.

Insured E-Z Bel Construction, LLC

Premium

Insurance Company Zurich American Insurance Company

Countersigned by _____

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION OR NONRENEWAL ENDORSEMENT

This endorsement adds the following to Part Six of the policy.

**PART SIX
CONDITIONS**

Blanket Notification to Others of Cancellation or Nonrenewal

1. If we cancel or non-renew this policy by written notice to you, we will mail or deliver notification that such policy has been cancelled or non-renewed to each person or organization shown in a list provided to us by you if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to you. Such list:
 - a. Must be provided to us prior to cancellation or non-renewal;
 - b. Must contain the names and addresses of only the persons or organizations requiring notification that such policy has been cancelled or non-renewed; and
 - c. Must be in an electronic format that is acceptable to us.
2. Our notification as described in Paragraph 1. above will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to you. We will mail or deliver such notification to each person or organization shown in the list:
 - a. Within seven days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - b. At least 30 days prior to the effective date of:
 - (1) Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - (2) Non-renewal, but not including conditional notice of renewal.
3. Our mailing or delivery of notification described in Paragraphs 1. and 2. above is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - a. Extend the policy cancellation or non-renewal date;
 - b. Negate the cancellation or non-renewal; or
 - c. Provide any additional insurance that would not have been provided in the absence of this endorsement.
4. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs 1. and 2. above.

All other terms and conditions of this policy remain unchanged.

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

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

Endorsement Effective 03/01/2024
Insured E-Z Bel Construction, LLC

Policy No. WC 2394711

Endorsement No.
Premium \$

Insurance Company Zurich American Insurance Company

Commercial Excess Liability Coverage Part

Various provisions of this policy restrict coverage. Read the entire policy carefully to determine your rights, duties and what is and is not covered.

Throughout the policy the words "you" and "your" refer to the Named Insured. The words "we," "us" and "our" refer to the company providing this insurance. The word "insured" means any other person or organization qualifying as such under SECTION II – WHO IS AN INSURED.

Other words and phrases that appear in quotations in this policy have special meanings. Refer to SECTION V - DEFINITIONS.

SECTION I – COVERAGE

1. Insuring Agreement

A. Excess Uability

1. We will pay on behalf of the insured and in excess of "underlying limits" those sums the insured becomes legally obligated to pay as damages for "loss" to which this insurance applies. This insurance applies only if:
 - a. the "loss" is caused by an "event" that takes place in the coverage territory;
 - b. the "loss" occurs during the "policy period;" and
 - c. the "controlling underlying insurance" applies to the "loss."
2. If an aggregate limit of "controlling underlying insurance" is exhausted by the payment of judgments or settlements to which this insurance applies, or would have applied but for the amount of the damages, this insurance will apply in place of the "controlling underlying insurance" until we have paid our applicable Limits of Insurance.
3. When paragraph 2. above applies, ending the "controlling underlying insurance" obligations to investigate and settle claims or defend suits against the insured, we have the right and duty to investigate claims and defend suits which seek damages to which this insurance applies. Our right and duty to defend end when we have paid our applicable Limits of Insurance.
4. When paragraph 2. above does not apply, we have the right, but not the duty, to participate in the investigation or settlement of any claim or the defense of any suit against any insured.
5. We have the right at our discretion, to settle any claim to which this insurance applies.
6. As respects paragraphs 3. and 4. above, "defense expenses" we incur in the investigation of any claim or defense of any suit will be paid in addition to the Limits of Insurance except when such costs reduce the limits of "controlling underlying insurance," in which case they will reduce our Limits of Insurance.
7. The amount we pay is limited. See SECTION III – LIMITS OF INSURANCE.

Navigators Insurance Company

2. Exclusions

The EXCLUSIONS sections of the "controlling underlying insurance" are made part of this policy. If an inconsistency or contradiction exists between an Exclusion of this policy and an Exclusion of the "controlling underlying insurance" the Exclusion of this policy will apply.

However, in no case will coverage be excluded by the "controlling underlying insurance" and not excluded by this policy.

This insurance does not apply to any liability:

1. to which "controlling underlying insurance" does not apply;
2. for which coverage is provided by "controlling underlying insurance" at limits less than the limits of insurance applicable to other coverage provided by the "controlling underlying insurance" and less than "underlying limits;"
3. for "loss" which commenced prior to this "policy period," whether or not such "loss" continues, progresses, changes or resumes during this "policy period;"
4. for damage to property you own, rent or occupy, including any costs or expenses incurred by you or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including the prevention of injury to a person or damage to another's property;
5. for damage to personal property in the care, custody or control of any insured;
6. arising out of any "aircraft products;"
7. arising out of the actual, alleged, suspected or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of "asbestos;"
8. arising out of the actual, alleged, suspected or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of "fungi" or bacteria;
9. arising out of the actual, alleged, suspected or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of "silica" or "silica related dust;"
10. arising out of any "employment practices" of any insured;
11. arising out of:
 - a. war, including undeclared or civil war;
 - b. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;
12. imposed under:
 - a. an uninsured or underinsured motorist, uninsured or underinsured boater, Medical Payments, Personal Injury Protection, No-Fault or any similar law;
 - b. a workers compensation, disability benefits, unemployment compensation or any similar law;
 - c. the Employee Retirement Income Security Act of 1974, any amendments thereto or any similar law.

Navigators Insurance Company

SECTION II – WHO IS AN INSURED

The WHO IS AN INSURED section of the "controlling underlying insurance" is made part of this policy. Any person or organization that is an insured in "controlling underlying insurance" is an insured in this policy to the same extent.

SECTION III – LIMITS OF INSURANCE

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of insureds, claims made or suits brought, or persons or organizations making claims or bringing suits.

- 1. The General Aggregate Limit is the most we will pay for the sum of all damages to which this insurance applies, except:
 - a. damages because of bodily injury or property damage included within any applicable products-completed operations hazard; or
 - b. damages arising out of the ownership, operation, maintenance or use of an automobile;
- 2. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all damages included within any applicable products-completed operations hazard;
- 3. Subject to paragraphs 1. and 2. above, the Each Event Limit is the most we will pay for all damages that arise out of any one "event."

SECTION IV – CONDITIONS

The CONDITIONS sections of the "controlling underlying insurance" are made part of this policy. If an inconsistency or contradiction exists between the Conditions of this policy and the Conditions of the "controlling underlying insurance," the Conditions of this policy will apply.

- 1. Appeals

At our discretion we may appeal any judgment which would result in a payment under this policy. When we do appeal, we will pay all costs associated with the appeal in addition to the Limits of Insurance. Any such appeal will not increase our Limits of Insurance.
- 2. Bankruptcy or Insolvency

Bankruptcy or insolvency of the insured or the insured's estate will not relieve us of our obligations under this policy. Bankruptcy or insolvency of any company providing "controlling underlying insurance" will not reduce the "underlying limits" or increase our obligations under this policy. We will not be required to drop down or replace "controlling underlying insurance."
- 3. Cancellation
 - a. The first Named Insured may cancel this policy at any time by providing us advanced written notice of the cancellation date.
 - b. We may cancel this policy at any time by providing the first Named Insured written notice of cancellation:
 - i. at least 10 days in advance if we cancel for non-payment of premium; or
 - ii. at least 30 days in advance if we cancel for any other reason:

Navigators Insurance Company

- c. If the "controlling underlying insurance" is cancelled for any reason, this policy is also cancelled. Reinstatement of the "controlling underlying insurance" does not reinstate this policy unless reinstatement is endorsed hereon.

Return premium, if any, will be calculated per Condition 11. Premium. Proof of mailing will be proof of notice.

4. Non-Renewal

- a. We are not obligated to renew this policy. However, should we decide not to renew, we will provide the first Named Insured written notice of our decision at least 30 days prior to the expiration date shown in the Declarations.
- b. We will not restrict the terms or increase premium of this policy at renewal unless we have given the first Named Insured at least 30 days advanced notice of any such changes. However, no notice will be provided or required if a restriction in this policy results from a restriction applicable to "controlling underlying insurance."
- c. The first Named Insured may non-renew this policy by:
 - i. providing advance written notice to us;
 - ii. rejecting our offer to renew; or
 - iii. failing to reply to our offer to renew.

Proof of mailing will be proof of notice.

5. Changes

This policy contains all of the agreements between you and us. This policy may only be changed by endorsements we issue.

6. Duties When There is an "Event," Claim or Suit

- a. You must see to it that we and any other insurers who could provide coverage are notified as soon as practicable of any "event" which may be reasonably expected to result in a claim under this policy. To the extent possible, notice should include:
 - i. how, when and where the "event" took place;
 - ii. the names and addresses of any injured persons and witnesses; and
 - iii. the nature and location of any injury or damage arising out of the "event."
- b. If a claim is made or suit is brought against any insured which may be reasonably expected to result in a claim under this policy, you must:
 - i. immediately record the specifics of the claim or suit and the date received; and
 - ii. notify us, and any other insurers who could provide coverage, as soon as practicable.
- c. You and any other involved insured must:
 - i. immediately send us, and any other insurers who could provide coverage, copies of any demands, notices, summonses or legal papers received in connection with a claim or suit which may be reasonably expected to result in a claim under this policy;
 - ii. authorize us to obtain records and other information;
 - iii. cooperate with us in the investigation or settlement of the claim, issues relating to coverage under this policy or defense against the suit; and
 - iv. assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of the injury or damage to which this insurance may apply.

Navigators Insurance Company

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense, other than first aid, without our consent. Notice to us may be sent to our address shown in the Declarations.
7. **Legal Action Against Us**
No person or organization has a right under this insurance:
- to join us as a party or otherwise bring us into a suit asking for damages from an insured; or
 - to sue us on this insurance unless all of its terms have been fully complied with.
8. **Maintenance of Controlling Underlying Insurance**
During the "policy period" you must maintain "controlling underlying insurance" with "underlying limits" at least equal to the amounts shown in the Declarations. The "underlying limits" must be unimpaired at the beginning of this "policy period." If you fail to maintain the "controlling underlying insurance" this policy will be invalid. If you fail to maintain "underlying limits," we will only be liable to the extent we would have been liable had you maintained the "underlying limits." Reduction of "underlying limits" by the payment of judgments or settlements for "loss" to which this insurance applies, or would have applied but for the amount of the damages, will not be considered a failure to maintain "underlying limits."
9. **Other Insurance**
This insurance is excess over any insurance available to the insured except insurance purchased specifically to apply in excess of this policy.
10. **Payment of Damages**
When the amount of damages payable under this policy has been determined by final judgment or a written settlement agreement between the claimant and us, we will pay that amount, up to our applicable Limits of Insurance, after the "controlling underlying insurance" or the insured has paid the full amount of the "underlying limits."
11. **Premium**
The Premium shown in the Declarations is the premium for the coverage we provide for the "policy period." The first Named Insured is responsible for the payment of all premiums under this policy. If this policy is cancelled prior to its expiration date return premium will be calculated as follows:
- if cancelled by us:
$$[{\text{Premium}} - {\text{Minimum Earned Premium}}] \times {\text{Pro Rata factor}}$$
 - if cancelled by you:
$$[{\text{Premium}} - {\text{Minimum Earned Premium}}] \times [{\text{Pro Rata factor}} \times (.90)]$$
12. **Separation of Insureds**
Except with respect to the Limits of Insurance and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:
- as if each Named Insured were the only Named Insured; and
 - separately to each insured against whom claim is made or suit is brought.
13. **Transfer of Rights of Recovery Against Others**
If an insured has rights to recover all or part of any payment we have made under this insurance, the insured must preserve those rights and, at our request, pursue or transfer those rights to us. The insured must do nothing after an "event" to impair them.

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14. Reformation of Underlying

If the "controlling underlying insurance" is reformed after an "event" to provide coverage for a "loss," the terms of such reformation do not apply to this policy.

15. When we Defend

When we have a duty to defend an insured, the insured will cooperate with us in the transfer of the defense to counsel of our choosing. If the law of the governing jurisdiction permits an insured to select their own counsel to be paid for by us, we shall only be liable for the reasonable and necessary defense costs of one law firm per insured at rates customarily paid by us for the defense of similar claims in the jurisdiction where the claim is pending.

16. Claims outside the U.S.A, it's Territories, Possessions or Canada

When we have the duty to defend an insured and are prevented by law or otherwise from doing so, we will reimburse the insured for any reasonable and necessary expenses incurred in the defense of a suit to which this insurance applies.

If the Insured becomes legally obligated to pay damages to which this insurance applies and we are prevented by law from paying such damages on behalf of the insured, we will reimburse the insured, in U.S currency at the prevailing exchange rate at the time the damages were paid, for such damages.

SECTION V – DEFINITIONS

The DEFINITIONS sections of the "controlling underlying insurance" are made part of this policy, and apply to words or phrases used in this policy provided always that words or phrases in quotations in this policy will have the meaning given them in this policy.

"Aircraft products" means:

- a. an aircraft;
- b. ground control or support equipment; or
- c. any article, component or device made, sold, licensed, handled or distributed by any insured that is used to achieve, control or maintain flight or landing of an aircraft.

"Asbestos" means the mineral in any form.

"Controlling underlying insurance" means the policy listed in the Schedule of Underlying Insurance shown in the Declarations, or its renewal or replacement, which applies to the "loss," or would have applied but for:

- a. an exclusion in that policy; or
- b. the exhaustion or erosion of an aggregate limit of insurance;

If more than one policy is listed in the Schedule, the "controlling underlying insurance" is the policy which applies to the "loss" or would have applied but for the reasons a. or b. listed above.

"Defense expenses" means expenses we incur to investigate a claim or defend a suit. Defense expenses include interest which accrues on our portion of a judgment, after entry of that judgment and after the insured or any underlying insurer has paid the full amount of their portion of the judgment but before we have paid, offered to pay or deposited in the court the part of the judgment that is within our applicable Limits of Insurance.

"Employment practices" means:

Navigators Insurance Company

- a. dismissal, discharge or termination of employment, whether actual, constructive or retaliatory;
- b. failure or refusal to hire or promote;
- c. discipline, demotion, coercion or retaliatory treatment;
- d. failure to grant tenure;
- e. negligent employment evaluation;
- f. sexual or other workplace harassment, including quid pro quo and hostile work environment;
- g. employment discrimination;
- h. invasion of privacy, violation of employment related civil rights, employment related libel, slander or defamation;
- i. creating or enforcing or failing to create or enforce employment related policies or procedures; or
- j. actual or alleged violations of the Family and Medical Leave Act of 1993 or its amendments.

"Event" means an accident, incident, occurrence, offense, wrongful act or other "loss" causing "event" defined by and to which the "controlling underlying insurance" applies.

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi. But "fungi" does not include mushrooms cultivated for human consumption.

"Loss" means bodily injury, property damage, personal and advertising injury or other loss defined by and to which the "controlling underlying insurance" applies.

"Policy period" means the period of time between the effective date shown in the Declarations and the earlier of the expiration date shown in the Declarations or the expiration date shown in an endorsement to this policy.

"Silica" means silicon dioxide, occurring in crystalline, amorphous or impure forms, silica particles, silica dust or silica compounds.

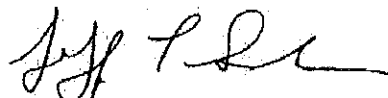
"Silica related dust" means a mixture or combination of silica and other dust particles.

"Underlying limits" means the amounts shown in the Declarations as the minimum limits of insurance to be provided by "controlling underlying insurance."

In Witness Whereof, the issuing Company has caused this policy to be signed officially below, and countersigned on the Declarations page by a duly authorized representative of said Company.



Stanley A. Galanski
President



Jeff L. Saunders
Vice President

Navigators Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF CONDITIONS
OTHER INSURANCE
PRIMARY AND NON-CONTRIBUTING**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

SCHEDULE

When required by written contract executed before the "loss."

- A. Section IV - Conditions, 9. Other Insurance is deleted and replaced by the following:
 - 9. This insurance is excess over any other insurance available to the insured except:
 - a. insurance that is purchased specifically to apply in excess of this policy; or
 - b. insurance available to the person or organization shown in the Schedule of this endorsement as an additional insured on the "controlling underlying insurance."
- B. When this insurance applies on a primary and non-contributing basis, the Limits of Insurance available for the additional insured will be the lesser of:
 - 1. the amounts shown in item 3 of the Declarations of this policy; or
 - 2. the amount of insurance you are required to provide the additional insured in the written contract or agreement.

All other terms of the policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT - CANCELLATION CONDITION
NOTICE OF CANCELLATION TO OTHERS**

SECTION IV - CONDITIONS, 3. b. ii. is deleted and replaced by the following:

- ii. at least 30 days in advance if we cancel for any other reason.

Notice of Cancellation will also be sent to:

Per list on file w/ broker.

All other terms of the policy remain unchanged.

Exhibit C – Contractor’s Bid Response Form

COST PROPOSAL FORM

PROPOSAL FORM

OF PROPOSER: E-Z Bel Constrction, LLC

The undersigned proposer does hereby declare and stipulate that this proposal is made in good faith, without collusion or connection with any other person or persons proposing for the same work, and that it is made in pursuance of and subject to all the terms and conditions of the advertisements, proposal requirements, the proposed construction contract, and the contract documents, including the plans pertaining to the work to be done, all of which have been examined by the undersigned. The undersigned hereby declares that he has visited the site, has had sufficient time to make all tests and investigations to arrive at an intelligent estimate of the cost of doing the work, and has carefully examined the plans, specifications, and contract documents relating to the work covered by his proposal, and that he agrees to do the work, and that no representations made by the Owner are in any sense a warranty, but are mere estimates for guidance of the contractor.

The undersigned further agrees that he will provide all necessary tools and apparatus, do all work, furnish all materials, and do everything required to carry out the work covered by this proposal, in strict accordance with the contract documents, and the requirements pertaining thereto, for the sum of sums set forth.

ADDENDA: The undersigned hereby acknowledges receipt of the following addenda to the Drawings and Specifications, all of the provisions and requirements of which addenda have been taken into consideration in the preparation of this Proposal.

Addendum No. 1	Date	July 12th, 2024	RH
Addendum No. 2	Date	July 19th, 2024	RH
Addendum No. 3	Date	July 22nd, 2024	RH
Addendum No. 4	Date		

PROPOSAL GUARANTY: A Bid Guaranty must be enclosed with this Proposal in the amount of not less than five percent (5%) of the total Bid. Following the Bid opening, submitted Bids may not be withdrawn for a period of (60) Calendar Days. Award of Contract will occur within this period, unless mutually agreed between the parties. The Bid guaranty may become the property of the OWNER, or the OWNER may pursue any other action allowed by law, if:

- Respondent withdraws a submitted Bid within the period stated above;
- Respondent fails to submit required post Bid information within the bid guaranty period, or any mutually agreed extension of that period; or,
- Respondent fails to execute the Contract and furnish the prescribed documentation (bonds, insurance, etc.) needed to complete execution of the Contract within five (5) Working Days after notice of award, or any mutually agreed extension of that period.

TIME OF COMPLETION: The undersigned Bidder agrees to commence work on the date specified in the written "Notice to Proceed" to be issued by the OWNER and to substantially complete construction of the improvements, as required by the Project Manual, Drawings and Addenda for the Work within 270 working days. The Bidder further agrees to reach Final Completion within 300 working days after Substantial Completion as required by the Project Manual, Drawings and Addenda for the work. The Bidder further agrees that should the Bidder fail to substantially complete the Work or to complete the Work within the number of days indicated in the Bid or as subsequently adjusted, Bidder shall pay the liquidated damages for each consecutive day thereafter as provided in the Contract; unless the OWNER elects to pursue any other action allowed by law.

Proposer shall indicate if they accept the specified construction durations or may show below a shorter duration period:

210 Calendar Days

LIQUIDATED DAMAGES: The Bidder understands and agrees that the timely completion of the described Work is of the essence. The Bidder and OWNER further agree that the OWNER's actual damages for delay caused by failure to timely complete the Project are difficult, if not impossible to measure. However, with respect to the additional administrative and consultant costs to be incurred by OWNER, the reasonable estimate of such damages has been calculated and agreed to by OWNER and Bidder. Therefore, the Bidder and the OWNER agree that for each and every Working Day the Work or any portion thereof, remains incomplete after the Final Completion date as established by the above paragraph, "Time of Completion", payment will be due to the Owner in the amount of twelve hundred dollars (\$1285) per Working Day as liquidated damages, not as a penalty, but for delay damages to the OWNER. Such amount shall be deducted by the OWNER from any Contract payment due. In the event of a default or breach by the CONTRACTOR and demand is made upon the surety to complete the project, in accordance with the Contract Documents, the surety shall be

liable for liquidated damages pursuant to the Contract Documents in the same manner as the CONTRACTOR would have been.

OWNER reserves the right to reject any or all Bids and to waive any minor informality in any Bid or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Bids).

- Notes:**
- 1 ALL MATERIALS AND CONSTRUCTION FOR THE ROADWAY ITEMS SHALL CONFORM TO THE TXDOT STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAYS, STREETS AND BRIDGES 2014, AND THE CITY OF NEW BRAUNFELS REQUIREMENTS.
 - ALL MATERIALS AND CONSTRUCTION FOR THE WATER IMPROVEMENTS SHALL CONFORM TO THE LATEST NEW BRAUNFELS UTILITIES WATER CONNECTION POLICY.
 - 3 NO EXTRA PAYMENT SHALL BE MADE FOR WORK CALLED FOR ON PLANS, OR WORK REQUIRED TO CONSTRUCT PROPOSED IMPROVEMENTS, BUT NOT INCLUDED ON THE BID FORM. THIS WORK WILL BE REQUIRED AND SHALL BE INCLUDED UNDER THE PAY ITEM TO WHICH IT RELATES.

CITY - ROADWAY IMPROVEMENTS PROPOSAL - S UNION AVE IMPROVEMENTS

The City only will accept bid pricing to the hundredths. Any pricing extended out to three decimal points will be truncated to two decimal points in the City's favor.

No.	TXDOT Spec No.	Description	Unit	Estimated Quantity	Unit Price	Total
1	100 6001	PREPARING ROW	STA	23.62	\$2,750.00	\$64,955.00
2	104 6015	REMOVING CONC (SIDEWALK OR RAMP)	SY	488.00	\$10.00	\$4,880.00
3	104 6017	REMOVING (DRIVEWAY)	SY	495.00	\$10.00	\$4,950.00
4	104 6021	REMOVING CONC (CURB)	LF	493.00	\$4.00	\$1,972.00
5	160 6003	FURNISHING AND PLACING TOPSOIL (4")	SY	117.00	\$11.00	\$1,287.00
6	162 6002	BLOCK SODDING (BERMUDA OR ST AUGUSTINE)	SY	117.00	\$10.00	\$1,170.00
7	168 6001	VEGETATIVE WATERING	MG	2.92	\$610.00	\$1,781.20
8	316 6015	ASPH (AC-15P)	GAL	3,450.00	\$5.00	\$17,250.00
9	316 6022	ASPH (CRS-2)	GAL	3,910.00	\$5.00	\$19,550.00
10	316 6175	AGGR (TY-B GR-4 SAC-B)	CY	91.00	\$240.00	\$21,840.00
11	351 6002	FLEXIBLE PAVEMENT STRUCTURE REPAIR(6")	SY	6,390.00	\$45.00	\$287,550.00
12	354 6048	PLANE ASPH CONC PAV (3")	SY	11,494.00	\$5.20	\$59,768.80
13	416 6031	DRILL SHAFT (TRF SIG POLE) (30 IN)	LF	48.00	\$419.00	\$20,112.00
14	416 6032	DRILL SHAFT (TRF SIG POLE) (36 IN)	LF	15.00	\$398.00	\$5,970.00
15	450 6048	RAIL (HANDRAIL) (TY B)	LF	5.00	\$200.00	\$1,000.00
16	479 6004	ADJUSTING MANHOLES (SANITARY)	EA	14.00	\$1,400.00	\$19,600.00
17	479 6005	ADJUSTING MANHOLES (WATER VALVE BOX)	EA	9.00	\$500.00	\$4,500.00
18	479 6008	ADJUSTING MANHOLES (WATER METER)	EA	5.00	\$950.00	\$4,750.00
19	479 6010	ADJUSTING MANHOLES (TELEPHONE BOX)	EA	2.00	\$400.00	\$800.00
20	500 6001	MOBILIZATION	LS	1.00	\$100,000.00	\$100,000.00
21	502 6001	BARRICADES, SIGN AND TRAFFIC HANDLING	MO	6.00	\$418.00	\$2,508.00
22	506 6035	SANDBAGS FOR EROSION CONTROL	EA	16.00	\$10.50	\$168.00
23	506 6040	BIODEG EROSN CONT LOGS (INSTR) (8")	LF	45.00	\$13.00	\$585.00
24	506 6043	BIODEG EROSN CONT LOGS (REMOVE)	LF	45.00	\$2.00	\$90.00
25	529 6002	CONC CURB	LF	875.00	\$23.00	\$20,125.00
26	530 6004	DRIVEWAYS (CONC)	SY	366.00	\$85.00	\$31,110.00
27	530 6005	DRIVEWAYS (ACP)	SY	68.00	\$35.00	\$2,380.00
28	531 6001	CONC SIDEWALKS (4")	SY	917.00	\$85.00	\$77,945.00
29	531 6005	PARALLEL CURB RAMP	EA	3.00	\$3,000.00	\$9,000.00
30	531 6010	DIRECTIONAL CURB RAMP	EA	18.00	\$1,550.00	\$27,900.00
31	618 6046	CONDT (PVC) (SCH 80) (2")	LF	130.00	\$30.00	\$3,900.00
32	618 6053	CONDT (PVC) (SCH 80) (3")	LF	120.00	\$30.00	\$3,600.00
33	618 6054	CONDT (PVC) (SCH 80) (3") (BORE)	LF	590.00	\$42.00	\$24,780.00

34	618 6058	CONDT (PVC) (SCH 80) (4")	LF	5.00	\$35.00	\$175.00
35	620 6009	ELEC CONDR (NO.6) BARE	LF	1,330.00	\$3.00	\$3,990.00
36	620 6010	ELEC CONDR (NO.6) INSULATED	LF	60.00	\$3.00	\$180.00
37	621 6002	TRAY CABLE (3 CONDR) (12 AWG)	LF	660.00	\$3.00	\$1,980.00
38	624 6010	GROUND BOX TY D (162922)W/APRON	EA	9.00	\$1,726.00	\$15,534.00
39	628 6115	ELC SRV TY D 120/240 060(NS)AL(E)PS(U)	EA	1.00	\$7,991.00	\$7,991.00
40	644 6068	RELOCATE SM RD SN	EA	11.00	\$450.00	\$4,950.00
41	662 6004	WK ZN PAV MRK NON-REMOV (W) 4" (SLD)	LF	631.00	\$1.00	\$631.00
42	662 6012	WK ZN PAV MRK NON-REMOV (W) 8" (SLD)	LF	1,443.00	\$2.25	\$3,246.75
43	662 6016	WK ZN PAV MRK NON-REMOV (W) 24" (SLD)	LF	873.00	\$12.50	\$10,912.50
44	662 6034	WK ZN PAV MRK NON-REMOV (Y) 4" (SLD)	LF	4,920.00	\$1.00	\$4,920.00
45	662 6109	WK ZN PAV MRK SHT TERM (TAB)TY W	EA	31.00	\$5.00	\$155.00
46	662 6111	WK ZN PAV MRK SHT TERM (TAB)TY Y-2	EA	240.00	\$5.00	\$1,200.00
47	666 6012	REFL PAV MRK TY I (W) 4" (SLD) (100 MIL)	LF	631.00	\$1.00	\$631.00
48	666 6036	REFL PAV MRK TY I (W) 8" (SLD) (100 MIL)	LF	1,443.00	\$2.25	\$3,246.75
49	666 6048	REFL PAV MRK TY I (W) 24" (SLD) (100 MIL)	LF	873.00	\$12.50	\$10,912.50
50	666 6054	REFL PAV MRK TY I (W) (ARROW) (100 MIL)	EA	21.00	\$255.00	\$5,355.00
51	666 6057	REFL PAV MRK TY I (W) (DBL ARROW) (100 MIL)	EA	9.00	\$375.00	\$3,375.00
52	666 6099	REF PAV MRK TY I (W)18" (YLD TRI) (100 MIL)	EA	8.00	\$85.00	\$680.00
53	666 6126	REFL PAV MRK TY I (Y) 4" (SLD) (100 MIL)	LF	4,920.00	\$1.00	\$4,920.00
54	666 6147	REFL PAV MRK TY I (Y) 24" (SLD) (100 MIL)	LF	50.00	\$25.00	\$1,250.00
55	666 6156	REFL PAV MRK TY I (Y) (MED NOSE) (100MIL)	EA	2.00	\$1,250.00	\$2,500.00
56	666 6170	REFL PAV MRK TY II (W) 4" (SLD)	LF	631.00	\$1.00	\$631.00
57	666 6178	REFL PAV MRK TY II (W) 8" (SLD)	LF	1,443.00	\$1.50	\$2,164.50
58	666 6182	REFL PAV MRK TY II (W) 24" (SLD)	LF	873.00	\$8.00	\$6,984.00
59	666 6184	REFL PAV MRK TY II (W) (ARROW)	EA	21.00	\$125.00	\$2,625.00
60	666 6185	REFL PAV MRK TY II (W) (DBL ARROW)	EA	9.00	\$165.00	\$1,485.00
61	666 6198	REFL PAV MRK TY II (W) 18" (YLD TRI)	EA	8.00	\$50.00	\$400.00
62	666 6207	REFL PAV MRK TY II (Y) 4" (SLD)	LF	4,920.00	\$1.00	\$4,920.00
63	666 6214	REFL PAV MRK TY II (Y) 24" (SLD)	LF	50.00	\$8.00	\$400.00
64	666 6217	REFL PAV MRK TY II (Y) (MED NOSE)	EA	2.00	\$775.00	\$1,550.00
65	680 6003	INSTALL HWY TRF SIG (SYSTEM)	EA	2.00	\$54,134.00	\$108,268.00
66	682 6001	VEH SIG SEC (12")LED(GRN)	EA	14.00	\$355.00	\$4,970.00
67	682 6002	VEH SIG SEC (12")LED(GRN ARW)	EA	4.00	\$355.00	\$1,420.00
68	682 6003	VEH SIG SEC (12")LED(YEL)	EA	14.00	\$355.00	\$4,970.00
69	682 6004	VEH SIG SEC (12")LED(YEL ARW)	EA	8.00	\$355.00	\$2,840.00

70	682 6005	VEH SIG SEC (12")LED(RE D)	EA	14.00	\$355.00	\$4,970.00
	682 6006	VEH SIG SEC (12")LED(RE D ARW)	EA	4.00	\$355.00	\$1,420.00
72	682 6018	PED SIG SEC (LED)(COUNTDOWN)	EA	10.00	\$815.00	\$8,150.00
73	682 6054	BACKPLATE W/REF BRDR(3 SEC)(VENT)ALUM	EA	14.00	\$208.00	\$2,912.00
74	682 6055	BACKPLATE W/REF BRDR(4 SEC)(VENT)ALUM	EA	4.00	\$312.00	\$1,248.00
75	684 6030	TRF SIG CBL (TY A)(14 AWG)(4 CONDR)	LF	1,930.00	\$2.00	\$3,860.00
76	684 6033	TRF SIG CBL (TY A)(14 AWG)(7 CONDR)	LF	1,940.00	\$3.00	\$5,820.00
77	684 6080	TRF SIG CBL (TY C)(14 AWG)(2 CONDR)	LF	1,930.00	\$2.00	\$3,860.00
78	686 6029	INS TRF SIG PL AM (S)1 ARM(28')	EA	1.00	\$15,558.00	\$15,558.00
79	686 6035	INS TRF SIG PL AM(S)1 ARM(32')LUM	EA	3.00	\$19,646.00	\$58,938.00
80	686 6157	INS TRF SIG PL AM(S)2 ARM(44-28')	EA	1.00	\$23,093.00	\$23,093.00
81	687 6001	PED POLE ASSEMBLY	EA	7.00	\$1,973.00	\$13,811.00
82	688 6001	PED DETECT PUSH BUTTON (APS)	EA	10.00	\$1,171.00	\$11,710.00
83	688 6003	PED DETECTOR CONTROLLER UNIT	EA	2.00	\$6,902.00	\$13,804.00
84	3076 6031	D-GR HMA(SQ) TY-C PG 76-22	TON	1,985.00	\$135.00	\$267,975.00
85	6058 6001	BBU SYSTEM (EXTERNAL BATT CABINET)	EA	2.00	\$12,808.00	\$25,616.00
86	6292 6001	RVDS(PRESENCE DETECTION ONLY)	EA	7.00	\$8,213.00	\$57,491.00
CITY TOTAL						\$ 1,600,376.00

S. UNION AVE WATER LINE IMPROVEMENTS

No.	Spec No.	Description	Unit	Estimated Quantity	Unit Price	Total
1	TXDOT 560	Erosion and Sedimentation Controls	LS	1	\$1,000.00	\$1,000.00
2	MUTCD	Traffic Control	MONTHS	2	\$6,300.00	\$12,600.00
3	121.7	Trench Safety Systems (all depths)	LF	1967	\$0.01	\$19.67
4	CNB ST-013	Concrete Curb and Gutter	LF	133	\$37.00	\$4,921.00
5	CNB ST-018	Concrete Sidewalk	SY	54	\$125.00	\$6,750.00
6	TXDOT 340	Mill and Overlay	SY	447	\$40.00	\$17,880.00
7	TXDOT 164	Seed	SY	60	\$13.50	\$810.00
8	510.7	Ductile Iron Fittings 4 inch through 24 inch	TON	4	\$23,000.00	\$92,000.00
9	510.7	Pipe, 4-inch Dia. PVC C-900 (all depths), including Excavation and Backfill	LF	100	\$140.00	\$14,000.00
10	510.7	Pipe, 8-inch Dia. PVC C-900 (all depths), including Excavation and Backfill	LF	1700	\$180.00	\$306,000.00
11	510.7	Pipe, 6-inch Dia. PVC C-900 (all depths), including Excavation and Backfill	LF	140	\$200.00	\$28,000.00
12	510.7	Pipe, 12-inch Dia. PVC C-900 (all depths), including Excavation and Backfill	LF	80	\$270.00	\$21,600.00
13	510.7	Pipe, 2-inch Dia. PVC Schedule 80 (all depths), including Excavation and Backfill	LF	10	\$168.00	\$1,680.00
14	510.7	Pipe, 6-inch Dia. DI (all depths), including Excavation and Backfill	LF	80	\$180.00	\$14,400.00
15	505.6	24-inch Dia. Steel Encasement Pipe	LF	20	\$1,875.00	\$37,500.00
16	511.1	Valves, Gate, 4-inch Diameter	EA	2	\$2,200.00	\$4,400.00
17	511.1	Valves, Gate, 6-inch Diameter	EA	4	\$2,500.00	\$10,000.00
18	511.1	Valves, Gate, 8-inch Diameter	EA	9	\$3,000.00	\$27,000.00
19	511.1	Valves, Gate, 12-inch Diameter	EA	3	\$6,000.00	\$18,000.00
20	510	Water Service Lateral Reconnection - Long Side	EA	7	\$4,000.00	\$28,000.00
21	510	Water Service Lateral Reconnection - Short Side	EA	15	\$1,750.00	\$26,250.00
22	511.1	Fire Hydrants	EA	6	\$10,000.00	\$60,000.00
23	505.6	Concrete Encasement for 8-inch Dia. Pipe	LF	140	\$35.00	\$4,900.00
24	510.7	Wet Connections, 8-inch Dia. x 2-inch Dia.	EA	1	\$4,500.00	\$4,500.00
25	510.7	Wet Connections, 8-inch Dia. x 4-inch Dia.	EA	2	\$4,500.00	\$9,000.00
26	510.7	Wet Connections, 8-inch Dia. x 6-inch Dia.	EA	5	\$4,500.00	\$22,500.00
27	510.7	Wet Connections, 8-inch Dia. x 6-inch Dia. (AC Water Line)	EA	1	\$4,500.00	\$4,500.00
28	510.7	Wet Connections, 8-inch Dia. x 8-inch Dia.	EA	3	\$4,500.00	\$13,500.00
29	510.7	Wet Connections, 12-inch Dia x 12-inch Dia.	EA	1	\$4,750.00	\$4,750.00
30	510	Line Stop Valve (6")	EA	2	\$9,000.00	\$18,000.00
31	510	Line Stop Valve (8")	EA	2	\$9,000.00	\$18,000.00
32	510.7	Abandon and Grout Fill, 4, 6, 8, 12-inch Dia. Water Main	CY	23	\$700.00	\$16,100.00
NBU WATERLINE TOTAL						\$ 848,560.67

TOTAL PROPOSALS - BOTH CITY AND NBU	\$2,448,936.67
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Company Name: E-Z Bel Construction, LLC

Proposers Name: Randy Hood, Chief Operating Officer

Signed By: 
 (Authorized Representative)



Meeting Date: September 26, 2024 **Agenda Type:** Action Items

From: Michael G. Short, P.E. **Reviewed by:** Michael G. Short, P.E.
 Director of Water Services Director of Water Services and
 and Compliance Compliance

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Second 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 Amended and Restated Utility Construction Cost Sharing Agreement Dated December 14, 2023, Among the Same Parties

BACKGROUND

On January 27, 2022, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Utility Construction Cost Sharing Agreement (the “Agreement”) with Southstar at Mayfair, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC (collectively, the “Developer”) to define the responsibilities of both NBU and the Developer regarding new development construction.

On May 23, 2023, NBU approved a First Amendment to the Utility Construction Cost Sharing Agreement (the “First Amendment”). The First Amendment allowed for a change in the phasing of a required Interim Waste Water Treatment Facility (“IWWTF”) to be constructed by the Developer including; (i) combining the initial Phase 1 and Phase 2 construction efforts of the IWWTF; and (ii) retitling Phase 3 of the IWWTF to be Phase 2.

On December 14, 2023, NBU approved a First Amended and Restated Utility Construction Cost Sharing Agreement (the “First Restated”). The First Restated contained several significant modifications to include, but not limited to; (i) changing Phase 1 and Phase 2 IWWTF as described in First Amendment; (ii) establishing the payment of fixed Sewerage Development Fee by the Developer for each LUE associated with each recorded platted lot based on the difference between the anticipated pro rata cost of both the McKenzie WWTP Expansion and the McKenzie Interceptor Upgrades and the anticipated collection of wastewater impact fees for the remaining 4,949.18 LUEs associated with the not yet platted lots or with any transferred un-platted land; (iii) removing impact fee rebates for any wastewater contributions; (iv) bifurcating the 16-Inch IH 35 Crossing improvements into the 16-Inch IH 35 Crossing

Short Segment and the 16-Inch IH 35 Crossing Long Segment; (v) adjusting the milestone dates, resequencing of projects, and adjusting the LUEs associated with the individual projects to reflect the Developer’s needs; (vi) and revising Exhibits F, L, U, and V as needed.

Starting on April 11, 2024, and over weeks, the Developer made several requests from NBU to consider modifications to the First Restated. The requested modifications included; (i) changing the timing of bonding to be required before a plat approval and not prior to plan approval to better align with the requirements from the City of New Braunfels; (ii) better defining “developer new infrastructure” to exclude internal subdivision work; (iii) changing the milestones to allow for the required construction of Phase 2 IWWTF to be based on actual flows as opposed to LUEs; (iv) changing the conservation requirements to allow for standalone covenants for commercial properties as opposed to establishing a Property Owner’s Association.

The Second Amended and Restated Cost Sharing Agreement (Second Restated) contains several modifications to include, but not limited to; (i) better defining “developer new infrastructure” to exclude internal subdivision work; (ii) changing the milestones to allow for the required construction of Phase 2 IWWTF to be based on actual flows; (iii) changing the conservation requirements to allow for standalone covenants for commercial properties; extending the milestone dates for the McKenzie Interceptor Main to July 14, 2027, and extending the McKenzie Wastewater Treatment Plant to January 27, 2028, both a full year from the original Agreement.

Staff recommends approval of the Second Restated, providing clarification to “developer new infrastructure” to simplify bonding and submittals, revising the timing needed for the Phase 2 IWWTF, eliminating the need for a POA on commercial properties, and allowing more time for NBU to complete improvements. This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved.

FINANCIAL IMPACT

The financial impact of the Second Amended and Restated Cost Sharing Agreement, when compared to the First Amended and Restated Agreement is not significant. The Second Amended and Restated Cost Sharing Agreement does not change any financial terms found within the Agreement.

LINK TO STRATEGIC PLAN

Customers and Community

Financial Excellence

Stewardship

EXHIBITS

1. Second Amended and Restated Utility Construction Cost Sharing (without all Exhibits)
2. Revised Exhibit F and V

After Recording, Please Return To:
The Chapman Firm, PLLC
3410 Far West Blvd, Ste 210
Austin, Texas 78731
Attention: Erik G. Moskowitz

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF COMAL §

**SECOND AMENDED AND RESTATED UTILITY CONSTRUCTION
COST SHARING AGREEMENT
SOUTHSTAR AT MAYFAIR, LLC**

This Second Amended and Restated Utility Construction Cost Sharing Agreement (this “**Agreement**”) is entered into to be effective as of _____ 2024 (the “**Second Amended Effective Date**”), by and among New Braunfels Utilities (“**NBU**”), charged with exclusive management and control of the water and wastewater systems of the City of New Braunfels, Texas (the “**City**”), Southstar at Mayfair, LLC, a Texas limited liability company (the “**Developer**”), MNB Real Estate Investments, LLC, a Texas limited liability company (“**MNB**”), Southstar at Mayfair Developer, LLC, a Texas limited liability company (“**Southstar at Mayfair Developer**”), and Beaverhead NB, LLC, a Texas limited liability company (“**Beaverhead**” and together with NBU, Developer, MNB, and Southstar at Mayfair Developer, collectively the “**Parties**,” and each a “**Party**”).

WITNESSETH:

WHEREAS, the Parties entered into that certain Utility Construction Cost Sharing Agreement with an effective date of February 8, 2022 (the “**Original Effective Date**”), recorded in the Land Records of Comal County, Texas on February 10, 2022, as Document No. 202206006599 (the “**Original Agreement**”) to set forth the conditions under which NBU would supply domestic water service and wastewater service to the Property (hereinafter defined);

WHEREAS, the Parties entered into that certain First Amendment to Utility Construction Cost Sharing Agreement dated as of May 30, 2023, recorded in the Land Records of Comal County, Texas on May 31, 2023, as Document No. 202306016603 (the “**First Amended Agreement**”) to modify that the design, permitting, and construction of the IWWTF (hereinafter defined) would occur in two (2) phases;

WHEREAS, the Parties entered into that certain Amended and Restated Utility Cost Sharing Agreement with an effective date of December 14, 2023, recorded in the Land Records of Comal County, Texas on January 30, 2024, as Document No. 202406002727 (the “**First Restated Agreement**”) to modify the Developer’s pro rata share of costs for certain infrastructure, update certain infrastructure completion deadlines, and incorporate the First Amended Agreement modifications;

WHEREAS, the Parties now desire to enter into this Agreement in order to amend and restate in its entirety the First Restated Agreement to further modify certain infrastructure completion deadlines, modify the Developer’s bonding requirements for certain infrastructure, and update the Developer’s water conservation restriction obligations for commercial and multi-family lots;

WHEREAS, as of the Original Effective Date, MNB, Southstar at Mayfair Developer, and Beaverhead (the “**Landowners**”) owned approximately 1,888 acres of real property located in Comal County, Texas (the “**County**”) within the extraterritorial jurisdiction of the City and within the geographical boundaries of the Comal County Water Improvement Districts Nos. 3, 3A and 3B (collectively, the “**District**”), as such real property is more particularly described on Exhibit “A” attached hereto and made a part hereof (the “**Property**” or the “**Mayfair Development**”);

WHEREAS, as of the Original Effective Date, the Southstar at Mayfair Investments West, LLC, a Texas limited liability company (“**Southstar at Mayfair Investments West**”) owned approximately 96.044 acres on the northwest side of the Property, as more particularly described on Exhibit “A-1” attached hereto and made a part hereof (the “**Excluded Property**”), and the Developer and Southstar at Mayfair Investments West acknowledged and agreed that (i) NBU is not, and shall not be deemed to be, responsible for providing water or wastewater services to any portion of the Excluded Property; (ii) if NBU, in its sole discretion, ever agrees to provide such services, the provision of any such services would be governed by a separate signed written agreement between NBU and the then-owner of the Excluded Property and would be subject to various terms, provisions and requirements (which would be subject to NBU’s approval in its sole discretion), including, without limitation, that the then-owner of the Excluded Property would be required to install, or cause to be installed, any necessary new or upgraded infrastructure across the Property to enable any such service to be potentially feasible; and (iii) NBU is not, and shall not be deemed to be, obligated to enter into, or to entertain entering into, any such agreement;

WHEREAS, the Property is located outside NBU’s Certificate of Convenience and Necessity (“**CCN**”) for water service and wastewater service;

WHEREAS, the Developer submitted a master framework plan for the Mayfair Development to the City on June 28, 2021 (the “**Master Framework Plan**”), set forth on Exhibit “B” attached hereto and made a part hereof, pursuant to which the Developer seeks to develop a mixed-use development on the Property (the “**Project**”) with such proposed uses more particularly described on Exhibit “C” attached hereto and made a part hereof;

WHEREAS, the Developer estimates that the Project at completion will require a total of 5,800 LUEs of water service and 5,800 LUEs of wastewater service and will have an estimated 5,500 single family residential units (such estimates, the “**Maximum LUEs**”);

WHEREAS, the Developer is a party to that certain Development Agreement by and between the City and the Developer, as successor by assignment to Southstar at Mayfair, LP, a Delaware limited partnership (the “**Development Agreement**”) authorizing the Project in accordance with the Master Framework Plan, as may be amended from time to time under the terms of the Development Agreement; and, pursuant to the Development Agreement, the City has required the Developer enter into this Agreement for domestic water service and wastewater service;

WHEREAS, the Developer has requested that NBU supply the Property with domestic water service and wastewater service in accordance with the terms of this Agreement even though the Property is not located within NBU’s water or wastewater CCN and NBU has no obligation to serve the Property with water;

WHEREAS, the Developer acknowledges that NBU may contract to supply water and wastewater service to the Property pursuant to this Agreement, but will not be obligated to do so unless the Developer complies with its obligations described in this Agreement;

WHEREAS, the Developer acknowledges that NBU supplying water and wastewater service for the Property and charging a Water Development Fee, a Sewerage Development Fee, and impact fees as provided herein results in a benefit to the Developer;

WHEREAS, the Developer filed a service extension application dated November 2, 2021, (the “**Application**”) pursuant to Section 1.03(D) of NBU’s Water-Wastewater Extension Policy (as may be amended from time to time, the “**Extension Policy**”) for potable water and wastewater service for the Property, which Application requests cost participation by NBU for oversizing water or wastewater lines pursuant to the Extension Policy and for reimbursement of capital recovery fees pursuant to NBU’s Impact Fee Policy (Capital Recovery Policy) (as may be amended from time to time, the “**Capital Recovery Policy**” and collectively with the Extension Policy, the “**NBU Policy**”) (the terms ‘capital recovery fees’ and ‘impact fees’ are used interchangeably in this Agreement, both having the meaning ascribed to capital recovery fees in the Capital Recovery Policy);

WHEREAS, as provided in Section 2.04 of the Extension Policy and Section 2.08 of the Capital Recovery Policy, a written contract is required between the Developer and NBU with respect to the subject matter of this Agreement;

WHEREAS, as required pursuant to Section 2.02 of the Extension Policy, the Developer must provide a signed and sealed water and wastewater engineering design report/study (the “**Engineering Study**”) setting forth engineering cost estimates to be used in determining the appropriate amount of cost reimbursement to the Developer for oversizing costs hereunder, all of which must be agreed upon in writing by the Developer and NBU;

WHEREAS, the amount of reimbursement of capital recovery fees shall be determined as required pursuant to Section 2.08C of the Capital Recovery Policy and, in no event, shall exceed, as allowed by Section 2.08C of the Capital Recovery Policy, the total amount of capital recovery fees due from new developments utilizing the water or wastewater facility;

WHEREAS, NBU will be responsible for constructing (i) the offsite waterline connection from the Project to the NBU service system and the offsite water infrastructure as more particularly

set forth in Sections 4.1(a)(ii)(A), 4.1(a)(ii)(C), 4.1(a)(ii)(E), and 4.1(a)(ii)(F) hereof (collectively, the “**NBU Offsite Water Infrastructure**”); and (ii) the offsite wastewater infrastructure as more particularly set forth in Sections 4.4(h)(ii)(B) and 4.4(h)(ii)(D) hereof (the “**NBU Offsite Wastewater Infrastructure**”);

WHEREAS, the Application provides for an interim wastewater solution for preliminary development within the Project (the “**IWWTF**”), which Developer shall fund and construct, at its sole cost and expense as set forth in Section 4.4;

WHEREAS, the Developer will be responsible for constructing, at its sole cost and expense, the following (together with any changes to the scope thereof as may be made as a result of changed circumstances and a signed written agreement of the Parties (subject to approval by NBU in its sole discretion)), which are collectively referred to herein as the “**Developer New Infrastructure**”: (i) all internal water and wastewater infrastructure necessary for providing service to the Project as more particularly set forth in Sections 4.1(a)(i), 4.4(a), and 4.4(h)(i) hereof (the “**Internal Water Infrastructure**,” the **IWWTF**, and the “**Internal Wastewater Infrastructure**,” respectively); (ii) the offsite wastewater infrastructure from the Project to the NBU McKenzie Interceptor Main as more particularly set forth on Exhibit “H” attached hereto and made a part hereof (the “**Developer Offsite Wastewater Infrastructure**” and together with the NBU Offsite Wastewater Infrastructure, the “**Offsite Wastewater Infrastructure**”); (iii) the 16-Inch IH 35 Crossing; (iv) the 16/20-Inch Kohlenberg Eastern Connection Water Line (together with the NBU Offsite Water Infrastructure and the 16-Inch IH 35 Crossing, collectively, the “**Offsite Water Infrastructure**”); and (v) all other Bonded Items;

WHEREAS, the Developer will be responsible for constructing, at its sole cost and expense, other internal water and wastewater distribution and conveyance infrastructure in support of the Project, such as multiple 8-inch and larger water mains, in accordance with NBU’s policies and the proposed Engineering Study;

WHEREAS, the Offsite Wastewater Infrastructure and the Offsite Water Infrastructure are collectively referred to as the “**Offsite Infrastructure**”;

WHEREAS, the Internal Wastewater Infrastructure, the Internal Water Infrastructure, the Offsite Infrastructure, the IWWTF, and all other infrastructure contemplated by this Agreement together with any changes to the scope thereof as may be made as a result of changed circumstances and a signed written agreement of the Parties (subject to approval by NBU in its sole discretion) are collectively referred to as the “**New Infrastructure**”;

WHEREAS, with respect to reimbursement of oversizing costs, the CEO (as hereinafter defined) pursuant to Section 2.05 of the Extension Policy has determined that: (i) the 16/20-Inch Kohlenberg Eastern Connection Water Line connection is anticipated to be included on the future impact fee capital improvements plan for that category of capital improvement (the “**Oversizing Infrastructure**”); (ii) the proposed Oversizing Infrastructure, if built as designed, complies with the generally accepted engineering practices and other planning criteria of NBU and the final design and routing will comply with the NBU Policy and the NBU Water/Sewer Connection Policy Manual if built as designed; (iii) the Engineering Study fairly apportions the improvement among prospective

users of the Oversizing Infrastructure; (iv) the proposed Oversizing Infrastructure is a reasonable extension and addition to NBU’s water and wastewater systems; and (v) funds for participation in the Oversizing or Developer Constructed Rebate-Eligible Infrastructure Hard Construction Costs (as hereinafter defined) will be available to meet the proposed payment schedule;

WHEREAS, with respect to reimbursement of capital improvement fees, the CEO has determined, pursuant to Section 2.08 of the Capital Recovery Policy, that the portion of the New Infrastructure more particularly set forth on Exhibit “L” attached hereto and made a part hereof has been designated on the capital improvement plan (the “**Rebate-Eligible Infrastructure**”);

WHEREAS, after considering the factors set forth in the NBU Policy, the Board of Trustees of NBU finds that it is appropriate to enter into this Agreement and to reimburse the Developer for (i) utility facility oversizing in excess of the Developer Oversizing Responsibility identified in this Agreement in accordance with the terms of the Extension Policy and (ii) capital recovery fees identified in this Agreement in accordance with the Capital Recovery Policy;

WHEREAS, this Agreement is authorized by and the Parties fully intend for it to be in compliance with all Applicable Laws (as hereinafter defined), including without limitation those of the City, NBU, the County, and the State, with respect to the subject matter of this Agreement; and

WHEREAS, the Parties are entering into this Agreement for the purpose of setting forth their respective obligations with respect to the matters set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 **Defined Terms**. Wherever used in this Agreement, the following terms shall have the meanings ascribed to them below:

- (a) “**16-Inch IH 35 Crossing**” has the meaning ascribed to it in Section 4.1(a)(i)(A) and is further described in Exhibit “H” attached hereto and incorporated herein for all purposes.
- (b) “**16-Inch IH 35 Crossing Short Segment**” has the meaning ascribed to it in Section 4.1(a)(ii)(B).
- (c) “**16-Inch IH 35 Crossing Long Segment**” has the meaning ascribed to it in Section 4.1(a)(ii)(B).
- (d) “**16/20-Inch Kohlenberg Eastern Connection Water Line**” has the meaning ascribed to it in Section 4.1(a)(i)(B) and is further described on Exhibit “H” attached hereto and incorporated herein for all purposes.

- (e) “**Acceptance Date**” means the date of the Acceptance Letter.
- (f) “**Acceptance Letter**” has the meaning ascribed to it in Section 7.2(a).
- (g) “**Act**” has the meaning ascribed to it in Section 5.11(a).
- (h) “**Agreement**” has the meaning ascribed to it in the preamble.
- (i) “**Amended Effective Date**” has the meaning ascribed to it in the preamble.
- (j) “**Applicable Laws**” means any and all applicable present and future judicial decisions, statutes, laws, rulings, rules, regulations, orders, writs, injunctions, decrees, permits, policies, certificates, or ordinances of any Governmental Authority.
- (k) “**Application**” has the meaning ascribed to it in the recitals.
- (l) “**Bank**” has the meaning ascribed to it in Section 5.11(b).
- (m) “**Beaverhead**” has the meaning ascribed to it in the preamble.
- (n) “**Bonded Items**” means the Oversizing Infrastructure, the 16-Inch IH 35 Crossing, the 16/20-Inch Kohlenberg Eastern Connection Water Line, the IWWTF and its decommissioning, and the McKenzie Interceptor Main Connection Work.
- (o) “**Build-Out**” means, as described in the Development Agreement, the permanent completion of all sales and development activities relating to the Project by the Developer.
- (p) “**Calendar Year**” means January 1 through December 31 of a given year.
- (q) “**Capital Recovery Policy**” has the meaning ascribed to it in the recitals.
- (r) “**CEO**” means the Chief Executive Officer of NBU.
- (s) “**CCN**” has the meaning ascribed to it in the recitals.
- (t) “**Certification Affidavit**” means a Certification Affidavit Regarding Annual Report in the form set forth on Exhibit “D” attached hereto and incorporated herein for all purposes.
- (u) “**City**” has the meaning ascribed to it in the preamble.
- (v) “**City Parties**” means the City, and its officials, officers, agents, consultants, employees, attorneys, and representatives, in both their public and private capacities.

- (w) “**Conrads (Goodwin Lane) EST**” is described on Exhibit “R” attached hereto and incorporated herein for all purposes.
- (x) “**Construction Contract**” has the meaning ascribed to it in Section 5.6(a).
- (y) “**County**” has the meaning ascribed to it in the recitals.
- (z) “**Default Rate**” has the meaning ascribed to it in Section 9.3.
- (aa) “**Developer**” has the meaning ascribed to it in the preamble.
- (bb) “**Developer Constructed Rebate-Eligible Infrastructure**” means the Rebate-Eligible Infrastructure constructed by the Developer.
- (cc) “**Developer Fiscal Security**” has the meaning ascribed to it in Section 5.10.
- (dd) “**Developer Fiscal Security Item**” or “**Developer Fiscal Security Items**” has the meaning ascribed to it in Section 5.10. NBU, in its sole discretion, may choose to perform the Work on the Developer Fiscal Security Items itself or to engage a third party to complete some or all of such Work.
- (ee) “**Developer New Infrastructure**” has the meaning ascribed to it in the recitals.
- (ff) “**Developer New Infrastructure Property**” has the meaning ascribed to it in Section 7.1(c).
- (gg) “**Developer Offsite Wastewater Infrastructure**” has the meaning ascribed to it in the recitals.
- (hh) “**Developer Oversizing Responsibility**” has the meaning ascribed to it in Section 4.5.
- (ii) “**Developer Parties**” means the Developer and its officers, agents, engineers, consultants, employees, and representatives.
- (jj) “**Developer Reimbursement Amount**” has the meaning ascribed to it in Section 8.2.
- (kk) “**Developer Reimbursement Conditions**” has the meaning ascribed to it in Section 8.2.
- (ll) “**Developer’s Completion Packet**” has the meaning ascribed to it in Section 7.1.
- (mm) “**Developer’s Conrads (Goodwin Lane) EST Share**” has the meaning ascribed to it in Section 4.1(a)(ii)(E).

- (nn) “**Developer’s FM 306 Pump Station Share**” has the meaning ascribed to it in Section 4.1(a)(ii)(A).
- (oo) “**Developer’s Goodwin Lane Water Line Share**” has the meaning ascribed to it in Section 4.1(a)(ii)(C).
- (pp) “**Developer’s Goodwin Lane Water Line and EST Share**” has the meaning ascribed to it in Section 4.1(a)(ii)(E).
- (qq) “**Developer’s Notice of Completion**” has the meaning ascribed to it in Section 7.1.
- (rr) “**Development Agreement**” has the meaning ascribed to it in the recitals.
- (ss) “**Development Fees**” has the meaning ascribed to it in Section 8.4.
- (tt) “**Dispute Notice**” has the meaning ascribed to it in Section 9.7.
- (uu) “**District**” has the meaning ascribed to it in the recitals.
- (vv) “**Easement Estates**” means those certain construction and/or permanent easements to be granted to NBU as more particularly set forth on Exhibit “M” attached hereto and made a part hereof, which exhibit sets forth the Party responsible for the costs and expenses associated in securing each such Easement Estate.
- (ww) “**Engineering Study**” has the meaning ascribed to it in the recitals.
- (xx) “**Escalating Notice**” has the meaning ascribed to it in Section 9.7.
- (yy) “**EST**” means elevated storage tank.
- (zz) “**Event of Bankruptcy or Insolvency**” means the dissolution or termination of the Developer’s existence as a going business, the Developer’s insolvency, appointment of receiver for any significant part of the Developer’s property with such appointment not being terminated within ninety (90) calendar days after such appointment is initially made, any general assignment for the benefit of the Developer’s creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Developer with such proceeding not being dismissed within ninety (90) calendar days after the filing thereof.
- (aaa) “**Event of Default**” has the meaning ascribed to it in Section 9.1.
- (bbb) “**Excluded Property**” has the meaning ascribed to it in the recitals.
- (ccc) “**Expiration Date**” has the meaning ascribed to it in Section 2.3.

- (ddd) “**Extension Policy**” has the meaning ascribed to it in the recitals.
- (eee) “**First Amended Agreement**” has the meaning ascribed to it in the recitals.
- (fff) “**First Restated Agreement**” has the meaning ascribed to it in the recitals.
- (ggg) “**Fire Flow**” means water required for firefighting purposes as defined in the City’s Code of Ordinance.
- (hhh) “**FM 306 Pump Station and Discharge Line**” is described on Exhibit “O” attached hereto and incorporated herein for all purposes.
- (iii) “**FM 1101 Pump Station and Discharge Line**” is described on Exhibit “P” attached hereto and incorporated herein for all purposes.
- (jjj) “**Force Majeure**” means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, acts or orders of any kind of the government of the United States of America, or of any state or locality thereof, or any civil or military authority, insurrections, riots, pandemics, epidemics, landslides, earthquakes, floods, restraining of government and people, acts of civil disturbances, explosions, or nuclear accidents.
- (kkk) “**Goodwin Lane EST**” now referred to as “**Conrads (Goodwin Lane) EST**” is described on Exhibit “R” attached hereto and incorporated herein for all purposes.
- (lll) “**Goodwin Lane Water Line**” is described on Exhibit “Q” attached hereto and incorporated herein for all purposes.
- (mmm) “**Governmental Authority**” means any and all federal, state, county, district, municipal, city, or otherwise governmental or quasi-governmental unit and any and all applicable courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any such governmental unit or quasi-governmental units. For the avoidance of doubt, for purposes of this definition, NBU is a Governmental Authority.
- (nnn) “**HOAs**” has the meaning ascribed to it in Section 5.7.
- (ooo) “**Indemnified Parties**” has the meaning ascribed to it in Section 10.1.
- (ppp) “**Initial Required Bonded Work**” has the meaning ascribed to it in Section 5.9.
- (qqq) “**Internal Wastewater Infrastructure**” has the meaning ascribed to it in the recitals.
- (rrr) “**Internal Water Infrastructure**” has the meaning ascribed to it in the recitals.

- (sss) “**IWWTF**” is the interim wastewater treatment facility as described in the recitals and further in Section 4.4.
- (ttt) “**Landowners**” has the meaning ascribed to it in the recitals.
- (uuu) “**LUE**” means a living unit equivalent, which equals an average daily demand or flow of water or wastewater, as applicable, with each LUE of water equal to an average daily demand of 425 gallons and with each LUE of wastewater equal to an average daily wastewater flow of 230 gallons.
- (vvv) “**Master Framework Plan**” has the meaning ascribed to it in the recitals.
- (www) “**Maximum LUEs**” has the meaning ascribed to it in the recitals.
- (xxx) “**McKenzie Interceptor Main Connection Work**” has the meaning ascribed to it in Section 4.4(f).
- (yyy) “**McKenzie WWTP**” has the meaning ascribed to it in Section 4.4(a).
- (zzz) “**McKenzie WWTP Expansion**” is described on Exhibit “T” attached hereto and incorporated herein for all purposes.
- (aaaa) “**Milestone Dates**” has the meaning ascribed to it in Section 5.3.
- (bbbb) “**Milestones**” has the meaning ascribed to it in Section 5.3.
- (cccc) “**MNB**” has the meaning ascribed to it in the preamble.
- (dddd) “**NBU**” has the meaning ascribed to it in the preamble.
- (eeee) “**NBU Event of Default**” has the meaning ascribed to it in Section 9.6.
- (ffff) “**NBU McKenzie Interceptor Main**” is described on Exhibit “S” attached hereto and incorporated herein for all purposes.
- (gggg) “**NBU Offsite Wastewater Infrastructure**” has the meaning ascribed to it in the recitals.
- (hhhh) “**NBU Offsite Water Infrastructure**” has the meaning ascribed to it in the recitals.
- (iiii) “**NBU Policy**” has the meaning ascribed to it in the recitals.
- (jjjj) “**NBU’s Construction Standards**” has the meaning ascribed to it in Section 5.4(a).
- (kkkk) “**NBU Standard Size**” has the meaning ascribed to it in the Extension Policy.

- (llll) “**NBU’s Non-Acceptance Notice**” has the meaning ascribed to it in Section 7.3.
- (mmmm) “**New Infrastructure**” has the meaning ascribed to it in the recitals.
- (nnnn) “**Offsite Infrastructure**” has the meaning ascribed to it in the recitals.
- (oooo) “**Offsite Wastewater Infrastructure**” has the meaning ascribed to it in the recitals.
- (pppp) “**Offsite Water Infrastructure**” has the meaning ascribed to it in the recitals.
- (qqqq) “**Original Agreement**” has the meaning ascribed to it the recitals.
- (rrrr) “**Original Effective Date**” has the meaning ascribed to it in the recitals.
- (ssss) “**Outside Date**” has the meaning ascribed to it in Section 8.2.
- (tttt) “**Oversizing Infrastructure**” has the meaning ascribed to it in the recitals.
- (uuuu) “**Oversizing or Developer Constructed Rebate-Eligible Infrastructure Hard Construction Costs**” means actual, out-of-pocket construction costs incurred by the Developer that are attributable solely to the construction of the Oversizing Infrastructure or Developer Constructed Rebate-Eligible Infrastructure excluding all Oversizing or Developer Constructed Rebate-Eligible Infrastructure Soft Construction Costs.
- (vvvv) “**Oversizing or Developer Constructed Rebate-Eligible Soft Construction Costs**” means all soft cost items actually incurred by the Developer in connection with the construction of the of Oversizing Infrastructure or Developer Constructed Rebate-Eligible Infrastructure, including, without limitation, costs in connection with engineering, design, site acquisition, permits, inspections, consultants, studies, regulatory related fees, bonds, easements, and any other form of fiscal security, accounting fees and services, project management costs, attorneys’ fees, and financial costs including but not limited to construction period interest and loan fees.
- (wwww) “**Parties**” has the meaning ascribed to it in the preamble.
- (xxxx) “**Party**” has the meaning ascribed to it in the preamble.
- (yyyy) “**Plans and Specifications**” has the meaning ascribed to it in Section 5.4(a).
- (zzzz) “**Potable Water**” means all water distributed by NBU which meets the applicable State, local and federal standards for human consumption or which may be used in the preparation of foods or beverages, specifically including, by

way of example and not in limitation, the rules of TCEQ set out in 30 Texas Administrative Code Section 290.

- (aaaaa) “**Project**” has the meaning ascribed to it in the recitals.
- (bbbbb) “**Project Schedule**” means the chart set forth on Exhibit “E” which details the key events related to the Work to be performed by the Developer under this Agreement, along with respective dates.
- (ccccc) “**Property**” has the meaning ascribed to it in the recitals.
- (ddddd) “**Rebate-Eligible Infrastructure**” has the meaning ascribed to it in the recitals.
- (eeeee) “**Reimbursement Agreement**” means the Reimbursement Agreement dated July 27, 2020, between NBU and the Developer in which the Developer agrees to pay for a portion of NBU’s legal fees and expenses incurred in connection with negotiating this Agreement.
- (fffff) “**Sequencing Schedule**” has the meaning ascribed to it in Section 6.6(d).
- (ggggg) “**Sewerage Development Fee**” has the meaning ascribed to it in Section 8.4.
- (hhhhh) “**Southstar at Mayfair Developer West**” has the meaning ascribed to it in the recitals.
- (iiiiii) “**Southstar at Mayfair Developer**” has the meaning ascribed to it in the preamble.
- (jjjjj) “**Standalone Restrictions**” has the meaning ascribed to it in Section 5.7.
- (kkkkk) “**State**” means the State of Texas.
- (lllll) “**Substantial Completion**” means the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of a professional engineer licensed by the State, the Work (or a specified part thereof) is sufficiently complete, in accordance with the underlying Construction Contract or construction contract and with this Agreement, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.
- (mmmmm) “**TCEQ**” means the Texas Commission on Environmental Quality.
- (nnnnn) “**Term**” has the meaning ascribed to it in Section 2.3.
- (ooooo) “**Total Annual Rebate**” has the meaning ascribed to it in Section 8.3(d).

- (ppppp) “**Total Rebate Payment**” has the meaning ascribed to it in Section 8.3(c)
- (qqqqq) “**Unforeseen Condition**” means an unanticipated field condition, regulatory requirement, or similar contingency, including Force Majeure, which the Developer reasonably believes may require a revision to the Project Schedule.
- (rrrrr) “**Water Development Fee**” has the meaning ascribed to it in Section 8.4.
- (sssss) “**Work**” means any of the labor, materials, equipment, administration, and other similar efforts and items necessary or beneficial for the completion of the Project and the construction of the New Infrastructure.

ARTICLE II

GENERAL PROVISIONS

2.1 **Recitals.** The recitals to this Agreement are incorporated herein for all purposes as matters of contract and not mere recitals.

2.2 **Purpose.** The purpose of this Agreement is to protect the health, safety and general welfare of the community and to limit the harmful effects of substandard subdivisions; to facilitate the Developer’s construction of the Project; and to protect the City and NBU from bearing any unnecessary expense of constructing or completing the New Infrastructure.

2.3 **Term.** The term of this Agreement (the “**Term**”) shall begin on the Original Effective Date and shall terminate on a date that is fifteen (15) years after the Original Effective Date (the “**Expiration Date**”); *provided*, however, that if the final Build-Out has not occurred prior to the Expiration Date, the Term may be extended for an additional five (5) years on mutual agreement of the Parties as evidenced by a fully executed, notarized, and duly recorded amendment to this Agreement.

ARTICLE III

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE DEVELOPER AND NBU; DISCLAIMER

3.1 **Representations and Warranties of the Developer and the Landowners.** The Developer (and, with respect to representations, warranties and covenants about the Landowners and the Property, the Landowners) hereby makes the following representations, warranties, and covenants to NBU as of the Original Effective Date and throughout the Term of this Agreement as if being remade throughout such Term:

(a) **Existence.** The Developer is and for the term of this Agreement will continue to be a limited liability company duly created and validly existing under the laws of the State of Texas and is and for the term of this Agreement will continue to be authorized to transact business in the State. The Developer has all requisite power and authority to enter into this

Agreement. Each Landowner is and for the term of this Agreement will continue to be a limited liability company duly created and validly existing under the laws of the State of Texas and is and for the term of this Agreement will continue to be authorized to transact business in the State. The Landowners have all requisite power and authority to enter into this Agreement.

(b) Authorization. The execution, delivery, and performance by the Developer of this Agreement have been duly authorized by all necessary action and will not violate the organizational documents of the Developer or result in the breach of or constitute a default under any loan or credit agreement, or other agreement to which the Developer is a party or by which the Developer or its assets may be bound or affected. The execution of this Agreement by the Developer does not require any consent or approval that has not been obtained, including without limitation the consent or approval of any Governmental Authority. The execution, delivery, and performance by each Landowner of this Agreement have been duly authorized by all necessary action and will not violate the organizational documents of the respective Landowner or result in the breach of or constitute a default under any loan or credit agreement, or other agreement to which a Landowner is a party or by which such Landowner or its assets may be found or affected. The execution of this Agreement by the Landowners does not require any consent or approval that has not been obtained, including without limitation the consent or approval of any Governmental Authority.

(c) Enforceable Obligations. This Agreement, all documents executed by the Developer pursuant hereto, and all obligations of the Developer hereunder and thereunder are enforceable against the Developer in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditor's rights generally, and by general equity principles. This Agreement, all documents executed by the Landowners pursuant hereto, and all obligations of the Landowners hereunder and thereunder are enforceable against the Landowners in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditor's rights generally, and by general equity principles.

(d) No Legal Bar. The execution and delivery of this Agreement and the performance of its obligations hereunder by the Developer will not conflict with any provision of any Applicable Law to which any of the Developer, the Property, or the Project is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions, or provisions of any agreement or instrument to which the Developer is a party or by which the Developer, the Property, or the Project is bound or any order or decree applicable to the Developer, the Property, or the Project. The execution and delivery of this Agreement and the performance of its obligations hereunder by the Landowners will not conflict with any provision of any Applicable Law to which any of the Landowners, the Property, or the Project is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions, or provisions of any agreement or instrument to which the a Landowner is a party or by which a Landowner, the Property, or the Project is bound or any order or decree applicable to the Landowners, the Property, or the Project.

(e) Ownership. Landowners have acquired the Property and have not conveyed, assigned, transferred, mortgaged, or hypothecated (or entered into any agreement or understanding to convey, assign, transfer, whether orally or in writing, except as permitted under Section 3.2(b)) all or any portion of this right to any other person or entity.

(f) Litigation. There are no legal actions or proceedings pending or, to the knowledge of the Developer, threatened against the Developer or with respect to the Property or the Project. There are no legal actions or proceedings pending or, to the knowledge of the Landowners, threatened against the Landowners or with respect to the Property or the Project.

(g) Documents. All documents made available by the Developer or its representatives to NBU or the City including without limitation documents relating to the Developer, the Project, or the Property are true and correct and are complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein; provided, however that the schedules and timelines are projections only, which the Developer believes to be reasonable, and in no way guarantees of performance. All documents made available by Landowners or their representatives to NBU or the City including without limitation documents relating to the Landowners, the Project, or the Property are true and correct and are complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein; provided, however, that the schedules and timelines are projects only, which the Landowners believe to be reasonable, and in no way guarantees of performance.

(h) Knowledge. The Developer has no knowledge of any facts or circumstances which currently evidence, or with the passage of time or giving of notice or both, would evidence, that any of the representations made by the Developer under this Agreement are in any way inaccurate, incomplete, or misleading. The Landowners have no knowledge of any facts or circumstances which currently evidence, or with the passage of time or giving of notice or both, would evidence, that any of the representations made by the Landowners under this Agreement are in any way inaccurate, incomplete, or misleading.

(i) Construction Standards. The Developer New Infrastructure has been and will be designed and constructed in all respects in compliance with NBU's Construction Standards and all Applicable Laws.

(j) Project Schedule. The Project Schedule and the Milestone Dates accurately reflect the projected schedule for the anticipated development and construction of the Project and have been created based on commercially reasonable parameters with input from appropriate and skilled professionals and consultants.

3.2 Continuing Covenants of the Developer.

(a) Annual Certification Affidavit. The Developer shall provide to NBU no later than thirty (30) days following the end of each Calendar Year during the Term an annual Certification Affidavit, pursuant to which the Developer shall certify that the Developer's representations and warranties in this Agreement are true and correct as of the date of such annual Certification Affidavit and the Developer shall remake the Developer's representations and warranties made in this Agreement as of the date of such annual Certification Affidavit. The

Certification Affidavit shall also include (i) a summary of the progress of the design, permitting and construction of the IWWTF, the construction of the Developer New Infrastructure, and the Project; (ii) a summary of and a copy of any liens or claims related to the Work with respect to the Developer New Infrastructure, together with the Developer's plan for resolving the same; (iii) a summary of the progress of the Developer New Infrastructure as it relates to the projected schedule of LUEs for the phases of construction set forth on Exhibit "F" attached hereto and made a part hereof, including without limitation a projection of the portions of the Project expected to be connected to the NBU water and wastewater systems (which projections cannot exceed at any time the number of LUEs projected to be available at such time pursuant to the terms of this Agreement, including, without limitation, Article IV hereof), and the associated estimated number of LUEs related thereto, within the year following such projection; and (iv) any other information that NBU may reasonably require. Failure of the Developer to comply with this Section shall be considered an Event of Default under Section 9.1(j) of this Agreement. Notwithstanding anything in this Agreement to the contrary, NBU shall have no obligation whatsoever to pay to the Developer the Developer Reimbursement Amount under this Agreement unless the complete annual Certification Affidavits (in form and substance satisfactory to NBU) and the quarterly reports required by Section 5.6(b) of this Agreement (in form and substance satisfactory to NBU) have been properly and timely submitted to NBU.

(b) Assignment; Ownership. The Developer and Landowners hereby covenant that neither the Developer nor any Landowner shall convey, assign, or transfer all or any portion of its current or future interest in the Property to any other person or entity without the prior written consent of NBU, unless the following conditions have been met:

- (i) Promptly upon entering into any agreement to convey, assign, or transfer any portion of the Property, Developer and each applicable Landowner has provided NBU with written notice thereof; and
- (ii) Developer and each applicable Landowner shall have provided the written notice set forth on Exhibit "U," and the purchase agreement and deed(s) related thereto each contain an express acknowledgment of this Agreement, the Developer's obligations hereunder, and notice that, if Developer does not comply with the terms set forth herein, such transferee has assumed the risk that water and/or wastewater service may not be available on the Property.

If the Developer or any Landowner conveys, assigns, or transfers any portion of the Property, the Developer shall remain obligated to complete its requirements under this Agreement.

NBU's approval of a plat does not constitute prior written approval to convey, assign, or transfer any interest in the Property pursuant to this Section 3.2.

(c) Financial Updates. On February 15, May 15, August 15, and November 15 of each year, Developer shall provide NBU copies of the Developer's financial reports for the immediately preceding calendar quarter, which shall include, at a minimum: a balance sheet, a statement of cash flow, and a schedule of distributions, and all such financial reports shall be in the

same form and substance as provided to Developer's equity holders. At NBU's request, Developer shall participate in monthly finance meetings during the term of this Agreement.

(d) Fees and Expenses. On or before the execution of the Agreement, Developer shall have paid to NBU the following fees and expenses (i) fifty percent (50%) of all of the legal fees incurred by NBU relating to the negotiation, drafting, and execution of the Agreement (whether or not covered by the Reimbursement Agreement described in Section 11.1) and (ii) one hundred percent (100%) of all fees incurred by NBU related to certificates and evidence verifying entity formation, existence, and good standing (whether or not covered by the Reimbursement Agreement described in Section 11.1).

3.3 **Representations and Warranties of NBU**. NBU hereby makes the following representations, warranties, and covenants to the Developer as of the Original Effective Date.

(a) Existence. NBU is a municipally owned utility that the City created pursuant to the City Charter and the laws of the State of Texas. NBU has all requisite power and authority to enter into this Agreement.

(b) Authorization. The execution, delivery, and performance by NBU of this Agreement have been duly authorized by its governing body.

(c) Litigation. NBU has not been served with any legal actions or proceedings with respect to this Agreement.

3.4 **Disclaimer**. **THE PARTIES EACH ACKNOWLEDGE THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED WITHIN THIS AGREEMENT, NEITHER PARTY NOR ANY CITY PARTY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE SUBJECT MATTER OF THIS AGREEMENT.**

ARTICLE IV

WATER AND WASTEWATER SERVICE

4.1 **Water Service**.

(a) The Developer projects the Property will require a total of 5,800 LUEs of water service for the Build-Out of the Property. Subject to the Developer's satisfaction of its obligations under this Agreement, NBU agrees to offer water service up to the amount of such projection to customers within the Property, subject to NBU's typical water fees and terms of use applicable to end users of NBU's water; provided that NBU shall never be obligated to provide water service in excess of 5,800 LUEs. NBU shall make such service available at such time as the New Infrastructure, or a specific phase of the New Infrastructure as identified herein, is completed according to the terms of this Agreement and the NBU Policy in effect at that time, and accepted by NBU. The projected number of LUEs of water service for each phase of the Project is set forth on Exhibit "F" hereof and the actual number of LUEs of water service shall not exceed such projections. The number and location of the points of connection between water facilities owned

by NBU and the Developer New Infrastructure shall be agreed upon by NBU and the Developer in writing and shall be included in the Engineering Study. All references in this Agreement to “water” shall be deemed to refer to Potable Water unless the water is expressly referred to as nonpotable water. The New Infrastructure necessary for Potable Water service for the Project includes the following:

(i) The Internal Water Infrastructure, which includes:

A. An estimated 4,000 linear feet of 16-inch water main from the Kohlenberg Standpipe crossing on IH 35 to the existing 12-inch main along Conrads Lane (the “**16-Inch IH 35 Crossing**” as further described in Section 4.1(a)(ii)(B) and depicted on Exhibit “H”) to be constructed by Developer.

B. An estimated 24,000 linear feet of 16-inch water main and 24-inch water main generally extending from Kohlenberg Road / FM 1101 across IH 35 to Hunter Road near the Country Hills Pump Station (“**16/20-Inch Kohlenberg Eastern Connection Water Line**”) to be constructed by Developer.

(ii) The Offsite Water Infrastructure, which includes:

A. The FM 306 Pump Station and Discharge Line to be constructed by NBU. Upon Substantial Completion of the FM 306 Pump Station and Discharge Line by NBU, and upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU will have access to an initial 500 LUEs of water for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the FM 306 Pump Station and Discharge Line on or before July 31, 2023, provided the Developer timely pays to NBU the Developer’s eighty-nine percent (89%) pro rata share of the total estimated cost of design, construction management, and construction of the FM 306 Pump Station and Discharge Line (the “**Developer’s FM 306 Pump Station Share**”) in accordance with Section 8.5 of this Agreement.

B. The 16-Inch IH 35 Crossing to be constructed by the Developer in two parts: a line from Conrads Lane to Kohlenberg Road crossing IH-35 (the “**16-Inch IH 35 Crossing Short Segment**”) as described in this Section 4.1(a)(ii)(B); and a line from IH-35 to the Kohlenberg Elevated Storage Tank (the “**16-Inch IH 35 Crossing Long Segment**”) as described in Section 4.1(a)(ii)(D) (and together with the 16-Inch IH 35 Crossing Short Segment, the 16-Inch IH 35 Crossing as depicted on Exhibit H). Upon Substantial Completion of the 16-Inch IH 35 Crossing Short Segment by the Developer in accordance with this Agreement, upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), and upon

satisfaction of the conditions set forth in Sections 4.1(a)(ii)(A) above, NBU will have access to an additional 357 LUEs of water for a total of 857 LUEs of water for the Project on or before November 30, 2023, but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

C. The Goodwin Lane Water Line to be constructed by NBU. Upon Substantial Completion of the FM 306 Pump Station and Discharge Line in accordance with Section 4.1(a)(ii)(A), upon completion of the 16-Inch IH 35 Crossing Short Segment in accordance with Section 4.1(a)(ii)(B), upon completion of the Goodwin Lane Water Line by NBU, and upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU will have access to an additional 0 LUEs of water for a total of 857 LUEs of water for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the Goodwin Lane Water Line on or before July 31, 2024, provided the Developer timely pays to NBU the Developer's fifty-two percent (52%) pro rata share of the total estimated cost of design, property acquisition, construction management, and construction of the Goodwin Lane Water Line (the "**Developer's Goodwin Lane Water Line Share**") in accordance with Section 8.5 of this Agreement.

D. The 16-Inch IH 35 Crossing Long Segment to be constructed by the Developer. Upon Substantial Completion of the 16-Inch IH 35 Crossing Long Segment by the Developer in accordance with this Agreement, upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule) and upon satisfaction of the conditions set forth in Sections 4.1(a)(ii)(A), (B), and (C) above, NBU will have access to an additional 643 LUEs of water for a total of 1,500 LUEs of water for the Project on or before July 31, 2025, but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

E. The Conrads (Goodwin Lane) EST to be constructed by NBU. Upon Substantial Completion of the FM 306 Pump Station and Discharge Line in accordance with Section 4.1(a)(ii)(A) above, upon completion of the Goodwin Lane Water Line in accordance with Section 4.1(a)(ii)(C) above, upon completion of the Conrads (Goodwin Lane) EST by NBU, and upon satisfaction of the conditions set forth in Sections 4.1(a)(ii)(B) and (D) above, NBU will have access to an additional 1,500 LUEs of water for a total of 3,000 LUEs of water for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the Conrads (Goodwin Lane) EST on or before July 31, 2025, provided the Developer timely pays to NBU the Developer's fifty-eight percent (58%) pro rata share of the

total estimated cost of design, property acquisition, construction management, and construction of the Conrads (Goodwin Lane) EST (the “**Developer’s Conrads (Goodwin Lane) EST Share**” and, together with the Developer’s Goodwin Lane Water Line Share, the “**Developer’s Goodwin Lane Water Line and EST Share**”) in accordance with Section 8.5 of this Agreement.

F. The FM 1101 Pump Station and Discharge Line to be constructed by NBU. Upon Substantial Completion of the FM 1101 Pump Station and Discharge Line by NBU, upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), and upon satisfaction of the conditions set forth in Sections 4.1(a)(ii)(A), (B), (C), (D), and (E), NBU will have access to an additional 1,500 LUEs of water for a total of 4,500 LUEs for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the FM 1101 Pump Station and Discharge Line on or before July 31, 2028.

G. The 16/20-Inch Kohlenberg Eastern Connection Water Line to be constructed by the Developer. Upon Substantial Completion of the 16/20-Inch Goodwin to Kohlenberg Eastern Connection Water Line, upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), and upon satisfaction of the conditions set forth in Sections 4.1(a)(ii)(A), (B), (C), (D), (E), and (F), NBU will have access to an additional 1,300 LUEs of water for a total of the full Build-Out capacity of 5,800 LUEs of water for the Project on or before July 31, 2030, but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

(b) Subject to the Developer completing its obligations under this Agreement, NBU projects that sufficient water capacity exists or will be available to provide the projected LUEs of water to serve the Property as specified in Exhibit “F”; provided, however, that nothing set forth in this Agreement is, or shall be deemed to be, a reservation of LUEs of water for the Property.

(c) FOR THE AVOIDANCE OF DOUBT, UNDER NO CIRCUMSTANCES SHALL ANY WATER CONNECTIONS BE CONSTRUCTED UNTIL THE APPLICABLE PHASE OF THE IWWTF (AND THE OTHER APPLICABLE WASTEWATER INFRASTRUCTURE) BECOMES OPERATIONAL AND IS SUFFICIENT TO TREAT THE WASTEWATER GENERATED BY SUCH WATER CONNECTIONS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. THERE MUST BE AN EQUIVALENT LUE OF WASTEWATER CAPACITY AVAILABLE UNDER THE TERMS OF THIS AGREEMENT FOR EVERY WATER LUE THAT IS CONNECTED PURSUANT TO THE TERMS OF THIS AGREEMENT.

4.2 **Fire Flow.** NBU shall deliver water service to points of connection agreed upon by the Parties with sufficient quantity as described in the Engineering Study to meet Fire Flow

requirements of Applicable Law and consistent with standards for NBU service in effect at the time of connection.

4.3 **Capacity Requirement for Potable Water Main System.** NBU will require the Developer to construct a Potable Water system within the Property located within the Kohlenberg Pressure Zone to provide additional pass through flow capacity of 2,500 gallons per minute, or the equivalent of a 16-inch water main, from the intersection of Kohlenberg Road and future Street B to Hunter Road/FM 1102 and future Street A, as identified and described on Exhibit “H” hereto. The final alignment and water main sizes to convey the additional flow capacity will be coordinated with the Developer in writing and shall be included in the Engineering Study.

4.4 **Wastewater Service.** The Developer projects the Property will require a total of 5,800 LUEs of wastewater collection, treatment, and disposal service for the ultimate build out of the Property. Subject to the Developer’s satisfaction of its obligations under this Agreement, NBU agrees to offer wastewater service to customers within the Property, subject to NBU’s typical wastewater fees and terms of use applicable to end users of NBU’s wastewater services. NBU shall provide such service at such time as the New Infrastructure, or a specific phase of the New Infrastructure, is completed according to the terms of this Agreement and the NBU Policy in effect at that time, and accepted by NBU. The projected number of LUEs of wastewater service for each phase of the Project is set forth on Exhibit “F” hereof.

(a) **Interim Waste Water Treatment Facility (“IWWTF”).** The Parties acknowledge and agree that all wastewater from the Project shall ultimately be conveyed from the Project to NBU’s McKenzie Wastewater Treatment Plant (the “**McKenzie WWTP**”) through the NBU McKenzie Interceptor Main. As of the Original Effective Date, the NBU McKenzie Interceptor Main did not have the capacity for conveyance of the wastewater generated by the Project at Build-Out. The Parties agree that an IWWTF will be designed, permitted and constructed by Developer at its sole cost and expense to serve up to 1,500 LUEs of the Project on an interim basis. The IWWTF will be constructed and operated by the Developer on the Property.

(i) **Design, Permitting, Construction and Operation.** The IWWTF will be designed, permitted, constructed, and operated by the Developer, at the Developer’s sole cost and expense, pursuant to the Mayfair Master Planned Community Temporary Wastewater Treatment Plan approved in writing by NBU staff and attached hereto as part of Exhibit “I.” It is anticipated that the IWWTF will be constructed in two (2) phases, with ninety (90) days written notice provided by the Developer to NBU prior to initiation of construction of each phase. The design, permitting, construction, and operation of the IWWTF are subject to the following requirements:

A. The IWWTF will be designed in accordance with the then-current Chapter 217, Texas Administrative Code, Design Criteria for Domestic Wastewater Systems, or its successor, and the drawings, specifications, and the engineering report shall be signed and sealed by a professional engineer licensed to practice in the State of Texas. The IWWTF will have an ultimate treatment and discharge capacity of approximately 300,000 gallons per day, or the TCEQ’s treatment and discharge criteria for 1,500 LUEs, whichever is greater.

B. Developer shall construct the IWWTF in accordance with the design, engineering, and permitting requirements of TCEQ and any other regulating authorities.

(a) Construction of the IWWTF shall not commence before (i) all permitting and construction authorizations are obtained by the Developer from TCEQ and any other regulating authorities and (ii) NBU staff has approved the commencement of construction;

(b) Construction of Phase I (for treatment of a maximum of 857 total LUEs of wastewater) of the IWWTF is anticipated to take six (6) months. While Phase I of the IWWTF is under construction, no water or wastewater connections will be constructed on the Property. After completion of Phase I of the IWWTF, 857 LUEs of wastewater will be available to the Project, but NBU will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. No additional water or wastewater connections will be constructed until Phase II of the IWWTF is completed.

(c) Construction of Phase II (for treatment of a maximum of 1,500 total LUEs of wastewater) of the IWWTF will begin when inflow to the IWWTF for three (3) consecutive months has reached seventy-five percent (75%) of Phase I design capacity. Upon Developer posting fiscal security for Phase II of the IWWTF pursuant to Section 5.9 and beginning design, an additional 643 LUEs of wastewater (for a total of 1,500 LUEs of wastewater inflow) will be available to the Project, but NBU will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

(ii) Cost. Developer shall pay all of the costs associated with preliminary design, permitting, detailed design, construction, operation and maintenance, and decommissioning of the IWWTF. In addition, Developer shall pay all costs associated with the McKenzie Interceptor Main Connection Work.

(b) Operations & Maintenance. The IWWTF shall be owned and operated by the Developer at no cost to NBU. The IWWTF will be operated and maintained in a professional manner using business practices similar to NBU and other Texas municipalities and the IWWTF shall be operated and maintained under the rules and regulations of TCEQ and any other regulating authority. If Developer decides to use a private operating company for operation and maintenance of the IWWTF, such company must have at least five (5) years of successful experience with similar-sized wastewater treatment plants in the state of Texas and be approved by NBU staff. The Developer shall provide to NBU in a format acceptable to NBU copies of all monthly reports to TCEQ and any other regulating authorities.

(i) If Developer uses a private operating company for operation and maintenance of the IWWTF, the operation and maintenance of the IWWTF shall be subject to the following requirements:

A. Developer shall ensure that NBU is listed as a noticed party on all agreements with the operating company such that NBU shall receive copies of all notices issued by the operator to Developer under any such agreements.

B. Developer shall ensure that NBU is a conditional assignee of Developer's obligations under any agreement with the operating company. Should Developer be deemed in default of any agreement with the operating company, NBU shall have the right, at its sole discretion, but not the obligation, to cure Developer's default and be assigned Developer's obligations under such agreement with the operating company. In the event NBU exercises such right, Developer shall reimburse and indemnify NBU for all costs, expenses, and fees incurred to operate and maintain the IWWTF through its decommissioning.

C. The Developer shall ensure that NBU receives notice when inflow to the IWWTF for three (3) consecutive months has reached seventy-five percent (75%) of Phase I design capacity such that Phase II design and construction must begin. Beginning upon Phase II construction completion, the Developer shall ensure that NBU receives notice when inflow to the IWWTF for three (3) consecutive months has reached seventy-five percent (75%) of Phase II design capacity.

(c) Treatment Levels. The treatment requirements and discharge parameters for the IWWTF, as provided in Exhibit "I" for design and permitting purposes shall meet the treatment requirements and discharge parameters required by TCEQ for wastewater treatment plants discharging effluent at the proposed IWWTF site. The operation of the IWWTF must meet or exceed the treatment requirements and discharge parameters documented in the permits issued by TCEQ and any other regulating authority.

(d) Connections. No water or wastewater connections will be constructed on the Property until each phase of the IWWTF is operational and sufficient to treat the wastewater generated by those connections. Upon completion of the McKenzie Interceptor Main and the McKenzie WWTP, all wastewater from the Project will be conveyed through mains provided by the Developer to the McKenzie Interceptor (i.e., under no circumstances shall permanent "pump and haul" be allowed).

(e) Flow Levels. The anticipated raw wastewater influent and treated wastewater effluent parameters are provided in Exhibit "I."

(f) NBU McKenzie Interceptor Main Improvements. NBU shall initiate design, permitting and construction of the NBU McKenzie Interceptor Main improvements upon or sooner than the earliest of the following:

- (i) Inflow to the IWWTF for three (3) consecutive months has reached seventy-five percent (75%) of Phase II design capacity; or
- (ii) December 31, 2028.

Upon NBU's Substantial Completion of the improvements to the McKenzie Interceptor Main, all wastewater from the Project will be diverted by the Developer, at the Developer's sole cost and expense, to the McKenzie Interceptor Main (such Work referred to as the "**McKenzie Interceptor Main Connection Work**"), and the IWWTF will cease operation and be decommissioned by the Developer; provided, however, that the ultimate responsibility hereunder to ensure such decommissioning shall fall upon the Developer.

(g) Decommissioning of the IWWTF. Within forty-five (45) days of diverting the influent from the Project to the NBU McKenzie Interceptor Main, the Developer shall submit to TCEQ a “Clean Closure Plan” and any other documents required of TCEQ, and initiate the process for decommissioning the IWWTF and canceling the related TCEQ permit. It is anticipated that the lift station shall be abandoned in place. In connection therewith, at the Developer’s sole cost and expense, the lift station shall be sealed in accordance with regulatory requirements, Applicable Laws, and professional business practice; all chemicals and chemical containers shall be removed from the site and disposed of in accordance with all regulatory requirements and Applicable Laws; and buildings and modular treatment components shall be emptied and removed from the site. The Developer will comply with all of the requirements of TCEQ and other regulatory authorities and all Applicable Laws. The site shall be reclaimed in accordance with the requirements of TCEQ and other regulatory agencies and Applicable Laws.

(h) Permanent Wastewater Service. The number and location of the points of connection between wastewater facilities owned by NBU and the Developer New Infrastructure shall be agreed upon by NBU and the Developer in writing and shall be included in the Engineering Study. The New Infrastructure necessary for wastewater service for the Project includes the following:

(i) The Internal Wastewater Infrastructure:

A. Except during the period the IWWTF is providing interim wastewater treatment service as discussed above, all wastewater flow generated on the Property will be served by the NBU wastewater collection and treatment systems. The Engineering Study reflects the preliminary alignments and locations of the proposed gravity mains, lift stations, and force mains required to provide wastewater service to the Property.

B. The preliminary sizing of the Internal Wastewater Infrastructure reflected in the Engineering Study was designed to provide service to the Project only. NBU reserves the right to require, at the sole cost and expense of the Developer, extension of proposed gravity wastewater mains within the Property in accordance with the NBU Policy in effect to support future developments north of the Property.

(ii) The Offsite Wastewater Infrastructure, which includes:

A. The Developer Offsite Wastewater Infrastructure to be constructed by the Developer. Upon Substantial Completion of the NBU McKenzie Interceptor Main, all wastewater from the Project will be conveyed to the NBU McKenzie Interceptor Main through the McKenzie Interceptor Main Connection Work constructed by the Developer. The IWWTF will be decommissioned by the Developer as part of the McKenzie Interceptor Main Connection Work.

B. The NBU McKenzie Interceptor Main to be constructed by NBU. Upon Substantial Completion by NBU of the NBU McKenzie Interceptor Main and upon completion by the Developer of the Internal Wastewater Infrastructure as required of the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the

Project Schedule), NBU will have access to an additional 0 LUEs of wastewater for a total of 1,500 LUEs of wastewater for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the NBU McKenzie Interceptor Main on or before January 14, 2027.

C. The McKenzie Interceptor Main Connection Work to be constructed by the Developer. Upon Substantial Completion by the Developer of the McKenzie Interceptor Main Connection Work, and upon completion by NBU of the NBU McKenzie Interceptor Main, and upon completion by the Developer of the Internal Wastewater Infrastructure as required of the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU will have access an additional 500 LUEs of wastewater for a total of 2,000 LUEs of wastewater for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. Developer agrees to Substantially Complete construction of the McKenzie Interceptor Main Connection Work on or before July 27, 2027.

D. The McKenzie WWTP Expansion to be constructed by NBU. Upon Substantial Completion of the McKenzie WWTP Expansion by NBU and upon completion by the Developer of the Developer Offsite Wastewater Infrastructure and the Internal Wastewater Infrastructure required by the Developer under and in accordance with this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule) and the completion of the conditions set forth in Section 4.4, NBU will have access to an additional 3,800 LUEs of wastewater for a total full Build-Out capacity of 5,800 LUEs of wastewater for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the McKenzie WWTP Expansion on or before July 27, 2027.

(i) Responsibility for Construction. As more fully described in Article V below, the Developer shall be responsible for the construction of the Internal Infrastructure necessary to provide wastewater service meeting the requirements mandated by Applicable Law. Nothing set forth in this Agreement is, or shall be deemed to be, a reservation of LUEs of wastewater capacity for the Property. In the event the Developer fails to complete the IWWTF, NBU shall have the right, but not the obligation, to take over the obligations of the Developer relating to the construction and management of the IWWTF, at the Developer's sole cost and expense.

4.5 **Oversizing.** The Developer shall construct the portions of the New Infrastructure to be oversized as set forth on Exhibit "G" attached hereto and made a part hereof. NBU shall have the right to require additional oversizing of the Offsite Infrastructure beyond what is specified

on Exhibit “G” by providing the Developer with reasonable advance written notice of such additional oversizing requirements. Per Section 2.01 of the Extension Policy, the Developer may apply, pursuant to the terms of this Agreement, for reimbursement of the cost of oversizing water or wastewater lines in excess of one size larger than the NBU Standard Size required to serve the Property; provided, however, that the initial oversizing of one size larger than the NBU Standard Size required to serve the Property shall be constructed by the Developer at its sole cost and expense (referred to the “**Developer Oversizing Responsibility**”). The Developer may not seek reimbursement for the costs of the Developer Oversizing Responsibility under this Agreement.

4.6 **Water and Wastewater Construction and Release.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NBU WILL NOT CONSTRUCT A WATER OR WASTEWATER SERVICE CONNECTION UNDER THIS AGREEMENT, AS APPLICABLE, UNLESS THERE IS A ONE-TO-ONE RATIO OF WATER AND WASTEWATER CAPACITY AVAILABLE AS DESIGNATED IN THE SEQUENCING SCHEDULE.

ARTICLE V

THE DEVELOPER’S RESPONSIBILITIES

5.1 **Minimum Term of Operation.** The Developer shall construct and operate the New Infrastructure and the Oversizing Infrastructure in accordance with the terms of this Agreement at least until the Expiration Date.

5.2 **Construction Obligations of the Developer.** The Developer shall construct the Developer New Infrastructure, all as more particularly set forth on Exhibit “H” attached hereto and made a part hereof and such Developer New Infrastructure shall be constructed in a good and workmanlike manner in accordance with Applicable Laws, the Engineering Study, the Plans and Specifications, the Policies, NBU’s Construction Standards, and this Agreement, unless otherwise agreed in a signed writing by the Developer and NBU. The Developer shall be solely responsible for funding the acquisition and construction of the Developer New Infrastructure. No individual water wells, onsite standalone water systems (excluding rainwater capture and storage systems), or onsite wastewater treatment plants (i.e., package plants), other than the IWWTF, shall be permitted at any time on any part of the Property, and these restrictions shall survive the termination of this Agreement.

5.3 **Milestones.** Subject to the Sequencing Schedule, the Parties agree that the release of LUEs for water and wastewater will be subject to certain development and funding milestones (which remain subject to change and amendment upon the written approval of the Parties with NBU’s approval of any such changes to be made in NBU’s sole discretion) within the timelines described in this Agreement and outlined below (each a “**Milestone**” and, collectively, the “**Milestones**”), and the Developer covenants and agrees to achieve the Milestones for which it is the responsible Party on or before the Milestone dates (each a “**Milestone Date**”) set forth below; provided, however, all NBU Milestones are subject to the Developer meeting its obligations, specified in this Agreement, including, but not limited to Article IV, Section 5.9, Section 5.10, and Section 8.5.

	Milestone Dates	Infrastructure Required	Responsible Party for Construction	Additional Allowable LUEs	Cumulative Total LUEs	Developer Funding Requirement
Water	July 31, 2023	FM 306 Pump Station and Discharge Line	NBU	500	500	Eighty-nine percent (89%) of the FM 306 Pump Station and Discharge Line
	November 30, 2023	16-Inch IH 35 Crossing Short Segment	Developer	357	857	One hundred percent (100%) of the 16-Inch IH 35 Crossing
	July 31, 2024	Goodwin Lane Water Line	NBU	0	857	Fifty-two (52%) percent of the Goodwin Lane Water Line
	July 31, 2025	16-Inch IH 35 Crossing Long Segment	Developer	643	1,500	One hundred percent (100%) of the 16-Inch IH 35 Crossing
	July 31, 2025	Conrads (Goodwin Lane) EST	NBU	1,500	3,000	Fifty-eight percent (58%) of the Conrads (Goodwin Lane) EST
	July 31, 2028	FM 1101 Pump Station and Discharge Line	NBU	1,500	4,500	0% of the FM 1101 Pump Station and Discharge Line
	July 31, 2030	16/20-Inch Kohlenberg Eastern Connection Water Line	Developer	1,300	5,800	One hundred percent (100%) of the 16/20-Inch Kohlenberg Eastern Connection Line
Wastewater	April 17, 2024	Interim Wastewater Treatment Facility Phase I	Developer	857	857	One hundred percent (100%) of the IWWTF Phase I
	July 31, 2025	Interim Wastewater Treatment Facility Phase II	Developer	643	1,500	One hundred percent (100%) of the IWWTF Phase II
	January 14, 2027	McKenzie Interceptor Main	NBU	0	1,500	Fixed Amount of \$10,812,401 via Sewerage Development Fee per Section 8.4*
	July 27, 2027	McKenzie Interceptor Main Connection Work	Developer	500	2,000	One hundred percent (100%) of McKenzie Interceptor Main Connection Work
	July 27, 2027	McKenzie WWTP Expansion	NBU	3,800	5,800	Fixed Amount of \$22,280,652 via Sewerage Development Fee per Section 8.4*
	July 27, 2027	Decommissioning of the IWWTF	Developer	N/A	N/A	One hundred percent (100%) of the decommissioning of the IWWTF

** Developer funding requirement from Sewerage Development Fee shall be paid as described in Section 8.4. The full funding may not be achieved by the Milestone Date.*

The additional allowable LUEs and cumulative total LUEs specified in the chart above may be available on the Milestone Dates but NBU will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

5.4 **Design.**

(a) The Developer shall utilize professional engineers licensed by the State to prepare any required permit applications, the design and construction drawings, plans, and specifications for the Developer New Infrastructure (collectively, the “**Plans and Specifications**”), which Plans and Specifications shall be subject to review and approval by NBU; provided, however, that any approval of the Plans and Specifications shall be subject to Section 6.4 of this Agreement. The Developer shall coordinate with NBU with respect to the location and alignment of the Developer New Infrastructure, and such location and alignment shall be subject to approval by NBU staff. Except as expressly provided in this Agreement or as otherwise expressly agreed in a signed writing by NBU, the Developer New Infrastructure shall be designed and constructed in conformance with NBU’s design criteria and construction standards and specifications for utility construction, including without limitation, environmental protection requirements and NBU’s Water Systems Connection and Construction Policy (collectively, “**NBU’s Construction Standards**”).

(b) Following an Event of Default and upon the request of NBU, the Developer shall assign all of the Developer’s Plans and Specifications to NBU.

(c) The Developer has provided to NBU a copy of the required Engineering Study, a copy of which is attached hereto as Exhibit “I” and made a part hereof, which Engineering Study is acceptable for purposes of satisfying Section 2.02 of the Extension Policy.

5.5 **Bidding Process.** For all projects that will be oversized by NBU or that will receive rebates towards Capital Recovery Fees (Impact Fees), the Developer shall solicit and publish invitations for competitive bids and shall cooperate with NBU to ensure that such bid solicitations are in accordance with NBU’s standard bidding procedures, NBU’s standard procurement procedures, and all Applicable Laws. The bid solicitations shall be structured to ascertain the cost of the Oversizing Infrastructure that is attributable solely to the construction of oversized water and wastewater facilities which are larger than necessary to serve the Property as determined by NBU to allow for the calculation of the Developer Reimbursement Amount. Bid solicitation may not commence until NBU has authorized the Developer to commence the bid solicitation in writing. After the bid solicitation, the Developer shall provide to NBU in writing the estimated total costs for the Oversizing Infrastructure and Impact Fee eligible infrastructure to be included in the applicable construction contract together with any such other information reasonably requested by NBU.

5.6 **Construction.**

(a) **Construction Contracts.** Upon receipt of authorization in writing from NBU staff, the Developer shall enter into one or more construction contracts (collectively, the “**Construction Contract**”) for the construction of the Developer New Infrastructure in accordance

with Applicable Laws, the Engineering Study, the approved Plans and Specifications, the Policies, NBU's Construction Standards, and this Agreement (including without limitation, the Project Schedule), unless otherwise agreed in a signed writing by the Developer and NBU. Promptly upon execution of a Construction Contract, the Developer shall deliver a copy of such Construction Contract to NBU.

(b) Oversight. The Developer shall be responsible for monitoring the construction of the Developer New Infrastructure to ensure that it is constructed in strict compliance with all provisions set forth herein. NBU shall be invited to participate in monthly progress meetings regarding the Project and the Developer New Infrastructure; provided, however, NBU shall not be required to attend any such monthly progress meetings. The Developer shall cause the Project to be completed in accordance with the Plans and Specifications, the Construction Contract, and the Project Schedule as shall be revised each year and which revisions shall be subject to written approval by NBU staff, in its sole discretion. No later than fifteen (15) days following each quarter end during each Calendar Year throughout the Term, the Developer shall deliver to NBU: (i) the Project Schedule, with any delays noted and explained, and a detailed description of the progress of the Work with respect to the Developer New Infrastructure; (ii) details regarding any Unforeseen Condition affecting the Developer New Infrastructure or the Project; (iii) copies of any executed change orders to the Construction Contract with respect to the Oversizing Infrastructure, subject to Section 5.6(c) hereof; and (iv) a summary of and copies and details of any liens or claims related to the Work with respect to the Developer New Infrastructure or the Project, together with the Developer's plan to remedy the same (provided, however, that in connection with the fourth quarter report, Section 5.6(b)(iv) need not be included so long as such information is properly included in the timely submitted annual Certification Affidavit covering that calendar quarter).

(c) Change Orders. The Developer shall deliver to Adam Willard, P.E., Chief Engineer of Water Services at 355 FM 306, New Braunfels, Texas 78130, awillard@nbutexas.com, (830) 608-8943 with NBU, or his designee, for NBU's review of any proposed change order to a Construction Contract with respect to the Oversizing Infrastructure or Developer Constructed Rebate-Eligible Infrastructure. Within ten (10) business days of receipt of such proposed change order, NBU shall deliver to the Developer a written notice of its approval (not to be unreasonably withheld, conditioned or delayed) or denial of such proposed change order. If NBU denies a proposed change order pursuant to this Section 5.6(c), NBU shall include in its written notice to the Developer the reason(s) for such denial. If NBU fails to respond within such ten (10) business day period, such proposed change order shall be deemed to have been denied and, upon Developer's written request therefore, NBU shall promptly either approve the change order or provide to Developer the reason(s) for denial.

(d) Access; Site Visits. Each of the NBU Parties and the City Parties shall have access at all reasonable times to the Property to inspect the construction of the Developer New Infrastructure. The Developer shall provide reasonable advance written notice to NBU of and an opportunity to participate in any inspection and walk-through related to the Developer New Infrastructure, including without limitation, the right to participate in the final inspections and development of final punch lists related to the Construction Contract.

(e) **Contractor Bonds and Insurance.** The Developer shall require all contractors in connection with any Construction Contract to obtain and maintain insurance coverage and payment and performance bonds satisfactory in form, substance, and amount to NBU in all respects. Further, all such insurance and bonds shall fully comply with all Applicable Laws and shall not permit any settlement thereunder without the prior written approval of NBU. NBU shall be named on all such insurance and bonds as an additional insured or loss payee (as applicable), except for workers' compensation insurance. The Developer may not settle any claim under any such insurance or bond without the prior written approval of NBU.

5.7 **Conservation Restrictions.** Prior to connecting any LUEs of water or wastewater capacity, the Developer shall create a homeowners association or property owners association in connection with single-family residential lots to be developed into residential subdivisions (collectively "**HOAs**") within the Project, and shall enter into written agreements or recorded declarations with multi-family and commercial developers/owners (collectively, the "**Standalone Restrictions**"); such HOAs and Standalone Restrictions shall at all times cover all portions of the Project that have received LUEs of water or wastewater capacity. During the period in which the Developer controls an HOA and during the term of any Standalone Restriction, the Developer shall cause such HOA or commercial or multifamily property owner to create and record (and to not remove or permit to be removed) water conservation restrictions (which restrictions shall be subject to advance specific written approval by NBU staff and which restrictions shall include prohibitions against changes thereto without the prior consent of NBU) which are binding (collectively) upon the owners of all portions of the Property. Such restrictions are more particularly set forth on Exhibit "N" attached hereto and made a part hereof. It is a condition precedent to NBU's obligations under this Agreement to provide water service to the Project that the Developer shall have implemented binding restrictions requiring and shall have caused to be installed at all residential and commercial buildings at the Project WaterSense Products meeting the then current U.S. Environmental Protection Agency criteria and specifications, including without limitation, with respect to residential toilets, commercial toilets, showerheads, bathroom faucets, urinals, irrigation controllers, and spay sprinkler bodies as more particularly set forth on Exhibit "N" attached hereto and made a part hereof. The provisions set forth in this Section constitute a material inducement to NBU agreeing to the terms hereof, and but for these provisions, NBU would not have agreed to enter into this Agreement.

5.8 **Developer Warranty.** The Developer shall warrant the Developer New Infrastructure for a period of two (2) years following the Acceptance Date.

5.9 **Developer Performance Bond.** The Developer shall provide fiscal security, including a performance bond in favor of NBU issued by a surety acceptable to NBU staff in its sole discretion (the "**Bond**"), to be approved in form and substance by NBU staff in its sole discretion, in an amount equal to the cost of constructing the Bonded Items, as agreed to by the Developer and NBU; provided, however, that the Developer must deliver a performance bond that secures the entirety of the Initial Required Bonded Work as described in the last sentence in this paragraph. The Developer shall deliver such Bonds as approved by NBU to NBU no later than the earlier of (i) ten (10) business days before the date that any plans are approved for any portion of the Bonded Items or (ii) the approval of a plat in accordance with Section 6.6. Notwithstanding anything herein to the contrary (and in no way limiting any other requirements of this Agreement),

the Developer must deliver the Bond (as approved by NBU staff) to NBU for both (i) the entire IWWTF (Phases I and II combined) and (ii) the entire McKenzie Interceptor Main Connection Work (the “**Initial Required Bonded Work**”) no later than the earlier of (i) ten (10) business days before the date that any plans are approved for any portion of the Work contemplated by this Agreement or (ii) the approval of a plat in accordance with Section 6.6. All other water and wastewater conveyance infrastructure to be constructed by Developer in support of the Project not otherwise expressly listed as a Bonded Item shall be bonded by the Developer pursuant to the City of New Braunfels Code of Ordinances §118-38, if applicable.

If the Developer is not in default under this Agreement with respect to a specific portion of the Project, NBU shall release the Bond on the Acceptance Date for that specific portion of the Project. If at any time before completion of all of the Bonded Items (i) an updated cost estimate for the Bonded Items exceeds, or is expected to exceed, the amount of the Bond, (ii) it becomes necessary, in the sole discretion of NBU, to repair or replace any of the completed Bonded Items, or (iii) if a change in the scope of Work is necessitated due to changed circumstances and approved by NBU, in its sole discretion, the Developer shall deliver to NBU a new or replacement Bond, subject to approval in form and substance by NBU staff in its sole discretion, reflecting such increased amount relating to any of the foregoing events within five (5) business days of the earlier of the date the Developer becomes aware of such increased estimate relating to any of the foregoing events or written demand therefor from NBU.

If an Event of Default occurs under this Agreement whereby applicable notice and cure periods have passed and NBU, in its sole discretion, determines that the Developer is unable to complete the Bonded Items, NBU shall have the right to make a claim on the Bond to complete some or all of the Bonded Items, including without limitation, to pay for or to reimburse NBU for the costs to complete the Bonded Items or to correct errors or deficiencies in the already completed Work with respect to the Bonded Items. NBU, in its sole discretion, may choose to perform the Work on the Bonded Items itself or to engage a third party to complete some or all of such Work. Notwithstanding the foregoing or anything in this Agreement to the contrary, NBU shall have no obligation whatsoever to complete any of the Work on the Bonded Items following a Developer Event of Default.

5.10 **Developer Fiscal Security.** The Developer shall provide fiscal security issued in form and substance acceptable to NBU in its sole discretion, including a letter of credit or a cash payment, for the following: (i) 89% of the total cost of design, construction management, and constructing the FM 306 Pump Station and Discharge Line, (ii) 58% of the total cost of design, property acquisition, construction management and constructing the Conrads (Goodwin Lane) EST and 52% of the total cost of design, property acquisition, construction management, and constructing the Goodwin Lane Water Line (the “**Developer Fiscal Security**” and each of (i) and (ii) a “**Developer Fiscal Security Item**” and collectively the “**Developer Fiscal Security Items**”), irrevocably and unconditionally securing the Developer’s obligations to NBU relating to the Developer Fiscal Security Items up to the face value of the Developer Fiscal Security.

For all projects, excluding the FM 306 Pump Station and Discharge Line, the Developer shall deliver the Developer Fiscal Security as approved by NBU as to form and substance, in its sole discretion, to NBU no later than the earlier of (i) ten (10) business days from the award of a bid for

the applicable Developer Fiscal Security Item (and the Parties agree that any award of a bid shall be expressly contingent upon the Developer delivering the Developer Fiscal Security by such deadline) or (ii) when a plat is submitted for approval in accordance with Section 6.6.

If Developer is not in default under this Agreement with respect to a specific portion of the Project, NBU shall release the Developer Fiscal Security, if such Developer Fiscal Security is in a form other than cash, on the date of payment of Developer's pro rata share of the construction costs, property acquisition costs, design costs, and construction management costs pursuant to Section 8.5. If Developer is not in default under this Agreement with respect to a specific portion of the Project, and the applicable Developer Fiscal Security is in the form of cash, such Developer Fiscal Security shall be applied to Developer's pro rata share of the construction costs, property acquisition costs, design costs, and construction management costs as such payments become due pursuant to Section 8.5.

If at any time before completion of any of the Developer Fiscal Security Items (i) an updated cost estimate for the Developer Fiscal Security Items exceeds, or is expected to exceed, the amount of the Developer Fiscal Security, (ii) it becomes necessary, in the sole discretion of NBU, to repair or replace any of the completed Developer Fiscal Security Items, or (iii) if a change in the scope of Work is necessitated due to changed circumstances and approved by NBU, in its sole discretion, the Developer shall deliver to NBU a new or replacement Developer Fiscal Security, subject to approval in form and substance by NBU in its sole discretion, reflecting such increased amount relating to any of the foregoing events within five (5) business days of written demand therefor from NBU.

Any Developer Fiscal Security issued by Developer shall not place any lien or encumbrance on, or otherwise have any interest in or recourse to, the New Infrastructure. NBU shall be entitled to draw on or file a claim under the Developer Fiscal Security, as applicable, for any costs, obligations, or damages relating to the Developer Fiscal Security Items owed by Developer to NBU under this Agreement.

If an Event of Default occurs under this Agreement, NBU shall have the right to draw on the Developer Fiscal Security to complete some or all of the Developer Fiscal Security Items, including, without limitation, to pay for or to reimburse NBU for the costs to complete the Developer Fiscal Security Items or to correct errors or deficiencies in the already completed Work with respect to the Developer Fiscal Security Items. Notwithstanding the foregoing or anything in this Agreement to the contrary, NBU shall have no obligation whatsoever to complete any of the Work on the Developer Fiscal Security Items following a Developer Event of Default.

5.11 **No Employment of Undocumented Workers.** The Developer and each Landowner certifies and agrees as follows:

(a) the Developer and each Landowner certifies that its operations within the County and the State will not knowingly employ an undocumented worker, as defined in Chapter 2264 of the Texas Government Code (as amended, the "**Act**"); and

(b) pursuant to the Act, if the Developer or a Landowner is convicted of a violation under 8 U.S.C. Section 1324a(f) with respect to its operations in the County or the State, after receiving all or any portion of a "public subsidy" (as defined in the Act), if it is determined

that any public subsidy is authorized and was provided pursuant to this Agreement, the Developer or Landowner, as applicable, shall (x) promptly give NBU written notice of such violation, and (y) repay to NBU any amounts paid by NBU to the Developer hereunder, at the rate of the prime rate of interest per annum of NBU's depository bank (the "**Bank**") in effect on the date the Developer or such Landowner is convicted of the violation. Such repayment shall be made not later than the one hundred twentieth (120th) calendar day after the date the Developer or the Landowner is convicted of the violation.

ARTICLE VI

UTILITY SERVICES

6.1 **Operation and Maintenance.** The Parties agree that from and after the Acceptance Date of the Developer New Infrastructure, NBU will operate and maintain the Developer New Infrastructure (excluding the IWWTF and any portions of the Internal Water Infrastructure, and the Internal Wastewater Infrastructure located on the Developer's or other end user's side of retail water meters and retail wastewater connections) and will provide water and wastewater service to customers within the Property subject to the conditions stated in this Agreement and according to Applicable Laws.

6.2 **No Reservation of Capacity.** Notwithstanding the foregoing or anything in this Agreement to the contrary, nothing in this Agreement shall mean, or be deemed to mean, that NBU has reserved any LUEs of water or wastewater capacity for the Developer, any Landowner, or the Property. In no event shall NBU be required to provide the Project with LUEs of water and wastewater in excess of the Maximum LUEs defined in this Agreement.

6.3 **No Guarantees; No Rights.** Notwithstanding final acceptance pursuant to an Acceptance Letter by NBU of the Developer New Infrastructure:

(a) This Agreement does not exempt the Developer, the Landowners or their successors and assigns, from the requirements of any Applicable Law applicable to development or other activities within the Property;

(b) This Agreement does not guarantee approval of any final plat of the Project and any final plat will be subject to the Developer and each Landowner complying with its obligations under this Agreement, the City Code of Ordinances, NBU policies, and any relevant federal, state, or local laws;

(c) The Agreement does not guarantee the approval of any other applications or permits related to the Project;

(d) This Agreement does not, and shall not be deemed to, create or confer upon the Developer, the Landowners or their successors or assigns, or on any future owner of any portion of the Property, any ownership rights in the NBU water or wastewater systems, including without limitation, in the Developer New Infrastructure after final acceptance of such Developer New Infrastructure by NBU;

(e) This Agreement does not, and shall not be deemed to, create or confer upon the Developer, the Landowners or their successors or assigns, or on any future owner of any portion of the Property, any preferential rights to capacity in the NBU water or wastewater systems, including without limitation, in the Developer New Infrastructure.

6.4 **Effect of Approval**. Notwithstanding anything contained in this Agreement to the contrary, approval by NBU, an NBU Party, the City, or any City Party of the Plans and Specifications, a Construction Contract, any change order to a Construction Contract, this Agreement, or any other item related to this Agreement or submitted to NBU, an NBU Party, or a City Party in connection with this Agreement, the Project, or the Property:

(a) is not, and shall not be deemed to be, any representation, warranty, or agreement by NBU that such Plans and Specifications, Construction Contract, change orders, or other items are true, correct, complete, or sufficient or that such Plans and Specifications, Construction Contract, change order, or other item satisfies Applicable Laws;

(b) shall not waive or relieve the Developer or Landowners from strictly complying with all Applicable Laws with respect to the Plans and Specifications, Construction Contract, change orders to the Construction Contract, the Work, the Developer New Infrastructure, the Project, the Property, such other items related to this Agreement, and this Agreement, including without limitation, Applicable Laws of TCEQ;

(c) does not modify any Applicable Law;

(d) is not, and shall not be deemed to, constitute a release of the responsibility and liability of the Developer Parties for the accuracy, completeness, suitability, and competency of such item being approved;

(e) does not shift or impose any responsibility or liability on or to NBU for any defect therein; and

(f) only signifies NBU's general approval of the general design concept of the Developer New Infrastructure described therein.

6.5 **CCN**. The Developer and the Landowners acknowledge that no portion of the Property is located in the CCN for water service or wastewater service of any utility provider and, as a result, NBU has no obligation to serve the Property with water or provide wastewater service. The Developer and the Landowners further acknowledge that, by entering into this Agreement, NBU is not obligated to supply water and wastewater service to the Property unless the Developer and each Landowner complies with its obligations described in this Agreement. Subject to the terms of this Agreement, the Developer agrees that NBU has the first right to provide retail water and wastewater service to all parts of the Property. In the event NBU seeks to include the Property or portions thereof within its water CCN or its wastewater CCN on file with the Texas Public Utility Commission, the Developer and each Landowner agrees to support such extension and upon NBU's reasonable request, shall execute and deliver such documentation related to the same as NBU shall deem necessary or desirable. Additionally, in the event a third party seeks to include the Property or portions thereof within a water CCN or wastewater CCN, the Developer and the

Landowners will oppose such third-party application and upon NBU's reasonable request, shall execute and deliver such documentation related to the same as NBU shall deem necessary or desirable.

6.6 **Plats; Building Permits; Notice to Buyers.** If the Developer provides fiscal security (including a letter of credit, a bond, or a cash payment pursuant to Section 5.9 and/or Section 5.10) for all onsite and offsite infrastructure required by this Agreement, whether constructed by Developer or, if constructed by NBU subject to Developer's payment of its financial contribution, NBU staff shall approve (which approval shall be an approval with conditions) a final plat, provided that the following conditions are met:

- (a) Developer and Landowners are not in default under this Agreement;
- (b) The plat complies with Chapter 212 of the Texas Local Government Code, the City's Code of Ordinances, NBU policies, including the NBU Water Connection Policy, and any relevant federal, state, or local law;
- (c) The plat is expressly subject to the terms of this Agreement, and includes conditional language indicating that NBU will only serve water or wastewater if the Developer and Landowners comply with their obligations under this Agreement; and
- (d) The plat must not exceed the number of LUEs allowable for each related Milestone Date under the sequencing schedule set forth on Exhibit "V" attached hereto and incorporated herein for all purposes, as such schedule may be reviewed and updated by Developer and NBU staff on a semi-annual basis (the "**Sequencing Schedule**") unless otherwise agreed to in writing by NBU.

Any plat that is not submitted in accordance with the Sequencing Schedule, or that exceeds the cumulative maximum allowable LUEs specified in the Sequencing Schedule at the time of submittal, will be rejected due to a lack of capacity or any other permissible reason allowed under Texas law unless otherwise agreed to in writing by NBU.

The Developer shall also be required to provide a written disclosure substantially in the form set forth on Exhibit "U" attached hereto and made a part hereof to all potential buyers of property within the Project advising such potential buyers that such buyer is buying such property at its own risk and that the availability of water and sewer service is expressly conditioned upon the Developer complying with the terms of this Agreement.

The fiscal security required under this Agreement is separate and apart from the fiscal security required by the City pursuant to Chapter 118 of the City's Code of Ordinances.

ARTICLE VII

ACCEPTANCE OF THE DEVELOPER NEW INFRASTRUCTURE

7.1 **NBU's Acceptance of the Developer New Infrastructure**. When the Developer New Infrastructure is capable of delivering the utility services contemplated hereunder, the Developer shall send written notice to NBU that the Developer desires and is ready for NBU to accept the Developer New Infrastructure or a portion thereof as described in Section 7.4 (the "**Developer's Notice of Completion**"). Prior to NBU's acceptance of the Developer New Infrastructure, the Developer shall satisfy each of the requirements set forth below and shall deliver each of the documents set forth below (collectively, the "**Developer's Completion Packet**"), each in form and substance acceptable to NBU in its sole discretion (any of which requirements may be waived by NBU in its sole discretion, if permitted by Applicable Laws, with such waiver effective only if set forth in a written instrument signed by NBU):

(a) provide an opportunity to NBU to inspect the Developer New Infrastructure for compliance with NBU Construction Standards (NBU may provide, in its sole and absolute discretion, confirmation that the Developer New Infrastructure complies with NBU Construction Standards);

(b) a signed and notarized certification from the Developer that all of the Developer New Infrastructure has been constructed in accordance with, and that all of the Developer New Infrastructure strictly complies with, this Agreement and with all Applicable Laws, including without limitation, those of the City, NBU, the State, and the U.S. Environmental Protection Agency; together with a signed and notarized certification (in form and substance acceptable to NBU) for the benefit of NBU from a third-party engineer duly licensed and in good standing under the laws of the State that all of the Developer New Infrastructure has been built in accordance with the Plans and Specifications;

(c) Counterparts executed by the Landowners and, where applicable, the Developer, of the following transfer documents, as applicable, for the conveyance of the fee simple title or easement estate, as applicable, for the real property on which the Developer New Infrastructure is located (the "**Developer New Infrastructure Property**") at no cost to NBU, and the Developer and Landowners shall ensure that NBU has sufficient access rights to each piece of Developer New Infrastructure Property conveyed to NBU:

(i) special warranty deed(s) substantially in the form set forth on Exhibit "J" attached hereto and made a part hereof, with respect to the conveyance of fee simple title;

(ii) bills of sale, with respect to the conveyance of fee simple title;

(iii) easement agreement(s) substantially in the form set forth on Exhibit "K" attached hereto and made a part hereof, with respect to the conveyance of Easement Estates; provided, however, that any construction Easement Estate shown on Exhibit "M" as a Developer requirement that is needed by NBU in connection with the construction of any portion of the New Infrastructure for which NBU is responsible for constructing, shall be delivered to NBU

substantially in the form of Exhibit “K” free and clear of all liens and encumbrances, except as may be approved by NBU staff in its sole discretion, at no cost or expense to NBU and no later than the dates set forth on the Milestone schedule in Section 5.3; and

(iv) such other instruments of transfer as may be deemed reasonably necessary or desirable by NBU;

(d) at the sole cost and expense of the Developer, an owner’s title policy in favor of NBU on the standard form available in the State from a title company acceptable to NBU staff with respect to the Developer New Infrastructure Property, evidencing that the Developer or the Landowner, as applicable, owns the Developer New Infrastructure Property and that the Developer New Infrastructure Property is free and clear of all liens and encumbrances, except as may be approved by NBU in its sole discretion, with the Developer acknowledging and agreeing that the existence of any such liens or encumbrances on any portion of the Developer New Infrastructure Property shall be a material Event of Default hereunder and shall expressly negate NBU’s reimbursement obligations under Section 8.2 of this Agreement;

(e) final, unconditional lien waiver affidavits, in the statutory forms, evidencing payment in full and waiver and release of all liens, from every contractor and subcontractor in connection with any Construction Contract related to any portion of the Work performed with respect to the Developer New Infrastructure; and

(f) assignments to NBU of all warranties, guarantees, and other assurances of performance with respect to the Developer New Infrastructure or any Work related thereto, executed by the Developer, the Landowners, if applicable, and all necessary third parties;

(g) all Plans and Specifications (including but not limited to final, as-built versions signed and sealed by a professional engineer licensed in the state of Texas), record drawings, project manuals, equipment manuals, operation and maintenance manuals, all Construction Contracts together with all applicable change orders, and all other documentation related to the Developer New Infrastructure;

(h) a signed reaffirmation and remaking of the indemnity obligations and release agreements set forth in Sections 10.1 and 10.2 to be effective as of the date remade;

(i) no Event of Default, or event that but for the passage of time or giving of notice or both, shall exist under this Agreement; and

(j) such additional evidence, documentation, agreements, and information as NBU shall reasonably request.

7.2 **Final Acceptance.**

(a) Upon the Developer’s satisfaction of all of the requirements set forth in Section 7.1 and NBU staff approval, NBU shall deliver to the Developer a letter of final acceptance of the Developer New Infrastructure or a portion thereof (the “**Acceptance Letter**”).

(b) The Developer and the Landowners acknowledge and agree that upon the Acceptance Date, all the Property accepted shall be subject to enforcement of all Applicable Laws of NBU and the City, including without limitation, utility ordinances of the City and policies of NBU, including without limitation, water conservation ordinances and the NBU Drought Management Plan, as may be amended from time to time.

(c) Within forty-five (45) days of the Acceptance Date, the Developer shall submit to NBU a signed and certified written report of the total costs of the Developer New Infrastructure, together with supporting documentation. Further, the Developer shall deliver to NBU within ten (10) business days of request any additional documentation or supporting information as reasonably requested by NBU.

7.3 **No Acceptance.** In the event that NBU does not accept the Developer New Infrastructure pursuant to this Article VII, NBU shall deliver to the Developer, within forty-five (45) days of receipt of the Developer's Notice of Completion and a complete Developer's Completion Packet, written notice that NBU does not accept the Developer New Infrastructure, which such notice shall include the reasons for such non-acceptance ("**NBU's Non-Acceptance Notice**"). If the Developer disagrees with NBU's non-acceptance of the Developer New Infrastructure and if the Developer does not then address the reasons of non-acceptance by correcting the defects in the Developer New Infrastructure to NBU's satisfaction, before the Developer may pursue any other remedy that may be available to it pursuant to this Agreement and Applicable Law, the Developer, at the Developer's sole cost and expense, can require NBU to select a third-party engineer duly licensed and in good standing under the laws of the State to inspect the Developer New Infrastructure and the Developer's Completion Packet and to provide a signed written opinion as to whether NBU's non-acceptance is commercially reasonable. If such engineer determines that NBU's non-acceptance of the Developer New Infrastructure is commercially reasonable with respect to any of the reasons enumerated in NBU's Non-Acceptance Notice, then the Developer shall immediately address such reasons of non-acceptance by correcting the defects in the Developer New Infrastructure to NBU's satisfaction. If such engineer determines that NBU's non-acceptance of the Developer New Infrastructure is not commercially reasonable and does not comply with this Agreement, then NBU shall revise its NBU Non-Acceptance Notice to incorporate feedback from the written opinion from such third-party engineer.

7.4 **Phased Acceptance.** With NBU's written approval, the Developer may choose to phase the acceptance process by submitting the required documentation (as outlined in this Article VII) for the specific infrastructure applicable to a specific plat or to a specific Milestone.

7.5 **IWWTF.** The Parties acknowledge and agree that any provisions in this Agreement with respect to the IWWTF (including, without limitation, Section 4.4 and Section 6.1) shall in all events control over this Article VII with respect to the IWWTF.

ARTICLE VIII

CONSTRUCTION COSTS AND FEES

8.1 **Construction and Costs.** The Developer shall pay all construction costs, property acquisition costs, design costs, and construction management costs incurred in connection with the Developer New Infrastructure, the Developer's FM 306 Pump Station Share, the Developer's Goodwin Lane Water Line and EST Share, the 16/20-Inch Kohlenberg Eastern Connection Water Line, the IWWTF, the 16-Inch IH 35 Crossing, and the decommissioning of the IWWTF.

8.2 **Developer Reimbursement Amount.** Subject to compliance with the Developer Reimbursement Conditions in this Section, the Developer may seek reimbursement by NBU for construction costs incurred by the Developer in accordance with this Agreement in an amount equal to the Oversizing or Developer Constructed Rebate-Eligible Infrastructure Hard Construction Costs, in excess of the Developer Oversizing Responsibility, attributable solely to the construction of oversized water and wastewater facilities that are larger than necessary to serve the Property as determined by NBU (the "**Developer Reimbursement Amount**"). No later than thirty (30) days after the Acceptance Date (the "**Outside Date**"), the Developer shall have submitted to NBU a formal written request for the Developer Reimbursement Amount and shall have satisfied all Developer Reimbursement Conditions (which Developer Reimbursement Amount shall be payable by the later of sixty (60) days after the Acceptance Date or the next September 1, subject to the Developer's satisfaction of all of the following conditions (the "**Developer Reimbursement Conditions**")):

(a) the Developer shall have fully complied with all terms and conditions set forth in this Agreement;

(b) the Developer shall have fully complied with all terms and conditions set forth in Section 2.06 of the Extension Policy;

(c) no Event of Default, or event that but for the passage of time or giving of notice would constitute an Event of Default, under this Agreement shall have occurred;

(d) all Oversizing and Developer Constructed Rebate-Eligible Infrastructure Hard Construction Costs shall have been in accordance with and authorized by the terms of this Agreement, Applicable Laws, and the NBU Policy;

(e) in no event shall the Developer Reimbursement Amount include any amounts incurred in connection with the Work commenced pursuant to a change order prior to NBU staff's approval of such change order in accordance with the terms of Section 5.6(c) hereof; and

(f) in no event shall the Developer Reimbursement Amount include the actual costs to build or install any portion of the New Infrastructure other than the Oversizing Infrastructure or to build or install any other facilities necessary to provide water and wastewater service to the Property pursuant to the minimum requirements of the NBU Policy.

8.3 **Impact Fees.**

(a) Pursuant to Chapter 395 of the Act, the City has enacted an impact fee ordinance to impose water and wastewater capital recovery fees against new development in the NBU service area to generate revenue for funding or recouping costs of capital improvements or facility expansion necessitated by or attributable to new development. The ordinance authorizes the Board of Trustees of NBU to adopt the Capital Recovery Policy for assessment of impact fees and to amend such policy from time to time.

(b) The Developer acknowledges and agrees that capital recovery fees will be assessed against the Property pursuant to the provisions of Section 2.05 of the Capital Recovery Policy. Such fees shall be due and payable per lot based on the final plat recordation and shall be collected on a lot by lot basis at the time a meter is requested. The Developer may seek a rebate of capital recovery fees in accordance with Section 2.08 C. of the Capital Recovery Policy for the Rebate-Eligible Infrastructure.

(c) Provided that the Developer has complied with the terms and conditions of this Agreement, and provided further that the Acceptance Date has occurred and the Developer New Infrastructure has been accepted by NBU, the maximum total allowable rebate (the “**Total Rebate Payment**”) shall be in accordance with the Capital Recovery Policy and shall be paid by NBU to the Developer in annual payments for no more than fifteen (15) years beginning on October 1 of the year following the Acceptance Date and on October 1 of each subsequent year until NBU no longer collects capital recovery fees under this Agreement. Nothing herein shall be construed to require NBU to make rebates of impact fees except as required under the Capital Recovery Policy applied equally to all other customers; and only the impact fees paid per lot based on the final plat recordation for lots located within the Property will be used for rebates or credits to Developer up to the Total Rebate Payment (and, for the avoidance of doubt, the foregoing in no way limits the use of those impact fees collected to be used solely for rebate payments).

(d) The amount of each annual rebate payment will be the amount of the impact fees collected for meters set during the fiscal year in accordance with the Capital Recovery Policy for the prior fiscal year period (the “**Total Annual Rebate**”). NBU will not be obligated to pay interest on the rebate. In no event will the Total Annual Rebate paid to the Developer exceed that Total Rebate Payment authorized by the Capital Recovery Policy. The Developer agrees to provide all information and documents reasonably required by NBU for proper processing and for accurate accounting and documentation of actual project costs.

(e) The obligations of NBU under this Agreement to make rebate payments in any fiscal year constitute a current expense for that fiscal year payable solely from the revenues from the Property deposited into a capital recovery fee account pursuant to the Capital Recovery Policy for that fiscal year. If no water or wastewater impact fees are collected from the Property for any fiscal year, no rebate payments are due for that year.

8.4 **Development Fees.** The Developer acknowledges and agrees to pay to NBU a Water Development Fee and a Sewerage Development Fee. The Water Development Fee is set at \$5,948.80 per water LUE for all water LUEs in each phase of the Project (the “**Water**”

Development Fee”). The Sewerage Development Fee is set at \$6,686.57 per wastewater LUE for all wastewater LUEs in each phase of the Project (the “**Sewerage Development Fee**”). The Sewerage Development Fee has been calculated as the quotient of: (i) the sum of the Developer contributions for the McKenzie Interceptor Main and McKenzie WWTP Expansion (\$33,093,053) divided by (ii) 4,949.18 LUEs (5,800 total expected LUEs less the 850.82 approved as of the Amended Effective Date). The Water Development Fee and the Sewerage Development Fee are collectively referred to as the “**Development Fees**.” The Development Fees are to be paid for each lot expected in a tract sold by metes and bounds and for each lot submitted as part of a plat within each phase. The Development Fees are to be paid: (i) ten (10) business days prior to plat recordation; or (ii) immediately upon the sale, conveyance, or transfer by Developer of any unplatted tract of land by metes and bounds, such Development Fees to be calculated and included in a HUD/Closing Statement by the Developer for the benefit of NBU and such HUD/Closing Statement to be provided to NBU at least seventy-two (72) hours prior to closing on such sale, conveyance, or transfer. The project phasing shall be in accordance with the projected schedule set forth on Exhibit “F.” Any deed for the sale, conveyance, or transfer of unplatted land must include the maximum number of LUEs the tract shall contain for water and wastewater. NBU shall have no obligation to support more LUEs than: (i) are listed in any deed for unplatted land, (ii) are shown on any plat, or (iii) those for which Development Fees have been paid in connection with a deed or plat. The Development Fees are in addition to any impact fees payable to NBU and in addition to charges for water use and consumption, all of which will be assessed and charged as provided in the ordinances of the City. The Water Development Fee may be adjusted at any time and from time to time by NBU. If NBU desires to adjust the Water Development Fee charged under this Agreement, NBU shall give written notice to the Developer at least one hundred eighty (180) days prior to the first day on which the adjustment is to be effective. The adjusted Water Development Fee will then be applied to all subsequent water LUEs within each phase of the remaining project. The total of all adjustments to the Water Development Fee within any one-year period shall be no more than four percent (4%) annually. The Developer acknowledges that the Development Fees payable under this Agreement are fair and reasonable and were negotiated between NBU and the Developer.

8.5 Pro rata Share of Construction Expenses. The Developer acknowledges and agrees to pay its pro rata share of the construction costs, property acquisition costs, design costs, and construction management costs for the portions of the New Infrastructure equal to the Developer’s (i) Goodwin Lane Water Line Share and (ii) Conrads (Goodwin Lane) EST Share, with each such pro rata share being due and payable within forty-five (45) days from the date upon which the Board of Trustees of NBU approves a construction contract with respect to the underlying work applicable to such pro rata share, subject to reconciliation of any increased costs within five (5) business days from the date when actual costs are determined upon contract approval and subject to further reconciliation of any increased costs within five (5) business days from the date when actual costs are determined thereafter. These pro rata shares are in addition to any Water Development Fee, Sewerage Development Fee, and impact fees payable to NBU and in addition to charges for water use and consumption, which will be assessed and charged as provided in the ordinances of the City. The Developer acknowledges that the pro rata shares described in this Section 8.5 and set forth on the Milestone schedule in Section 5.3 and payable under this Agreement are fair and reasonable and were negotiated between NBU and the Developer.

Developer and NBU acknowledge that, prior to the Original Effective Date, NBU has begun work on the FM 306 Pump Station and Discharge Line and that such construction contract has been approved by the Board of Trustees of NBU. The Developer acknowledges and agrees to pay its pro rata share of the total estimated costs of design, construction management, and construction costs of the portion of the New Infrastructure equal to the Developer's FM 306 Pump Station Share. The Developer shall pay the FM 306 Pump Station Share by the later of thirty (30) days from NBU's execution of the Original Agreement or thirty (30) days from the City's execution of the Development Agreement; provided, however, the date of payment shall in no case be later than July 31, 2022. The Developer's FM 306 Pump Station Share shall also be subject to reconciliation of any increased costs within five (5) business days from the date when actual costs are determined.

8.6 **No General Obligation.** NBU's obligations to make payments under Section 8.2 and Section 8.3 do not constitute a general obligation or indebtedness of the City or NBU for which the City is obligated to levy or pledge any form of taxation.

8.7 **No Interest on Amounts Owed by NBU.** In no event shall interest be due on any amount owed by NBU under this Agreement, including without limitation, on any unpaid amount of the Developer Reimbursement Amount.

ARTICLE IX

EVENTS OF DEFAULT; TERMINATION; NBU RIGHTS AND REMEDIES

9.1 **Events of Default.** An "**Event of Default**" shall mean, including without limitation, the occurrence of one or more of the following:

(a) the Developer fails to commence, diligently pursue, or complete the design, permitting or construction of any portion of the Developer New Infrastructure in accordance with this Agreement;

(b) the Developer fails to post the Bond or provide the Developer Fiscal Security by the date required in Section 5.9 or Section 5.10 of this Agreement or to increase the amount of the Bond or the Developer Fiscal Security when requested to do so by NBU in accordance with this Agreement;

(c) the Property or a portion of the Property is transferred or conveyed through foreclosure or an assignment or conveyance in lieu of foreclosure;

(d) any actual or beneficial interest in the Property or the Project is ever transferred, conveyed, or assigned, in whole or in part, by the Developer or the Landowners in contravention or violation of the terms of this Agreement;

(e) the Developer fails to submit a request for reimbursement and all documentation required by Section 8.2 by the Outside Date;

(f) the Developer fails to satisfy a Milestone by the applicable Milestone Date (as the same may be modified in accordance with Section 5.3) under this Agreement;

- (g) the Developer or a Landowner suffers an Event of Bankruptcy or Insolvency;
- (h) any event described in this Agreement as an Event of Default occurs;
- (i) the Developer fails to make a payment required under this Agreement, including, without limitation, any Developer share of the infrastructure described in Section 5.3;
- (j) if the Developer uses a private operating company for operation and maintenance of the IWWTF, the Developer is deemed to be in default of any agreement with such operating company;
- (k) the Developer or a Landowner breaches any other monetary term, condition, or obligation under this Agreement;
- (l) any representation or warranty under this Agreement is or becomes false or misleading; or
- (m) the Developer or a Landowner breaches any other non-monetary term, condition, or obligation under this Agreement and such breach is not cured within forty-five (45) calendar days after written notice thereof, or, if such breach is not susceptible to cure through the exercise of commercially reasonable efforts within forty-five (45) calendar days, such period of time thereafter as the Developer, or the Landowner, as applicable, diligently pursues the cure thereof, but in any event if such breach is not cured within a cumulative sixty (60) calendar days after written notice thereof (after the passage of such applicable time if the breach has not been cured, it shall be considered an Event of Default under this Agreement).

9.2 **Termination.** Subject to Section 11.14, this Agreement shall terminate upon the occurrence of any one or more of the following:

- (a) the Expiration Date;
- (b) the execution by all Parties of a written agreement terminating this Agreement;
- (c) at the option of NBU, an Event of Default by the Developer or any Landowner occurs under this Agreement and is not timely cured pursuant to this Agreement according to the cure periods, if any, set forth in this Agreement; or
- (d) if any subsequent federal or state legislation or any decision by a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable; provided, however, if the Developer receives notice of such legislation or court decision and provides notice to NBU within ten (10) days of such notice that it will pursue a remedy or determination such as a declaratory judgment establishing that the conditions of the preceding clause have not been met, this Agreement may not be terminated for the reason set forth in this Section during any period that the Developer is diligently pursuing such remedy or determination until a final, non-appealable determination establishes that the conditions of the preceding clause

have been met, instead during the pendency of such pursuit of a final, non-appealable determination, NBU may place the Agreement with respect to such Party's respective obligations into a standstill period during which NBU shall not be required to take further actions under the Agreement (including without limitation, the payment of any sums of money to the Developer) until the final, non-appealable determination has been rendered.

9.3 **Repayment of Expenses.** If this Agreement is terminated prior to the Expiration Date for a reason other than a material default by NBU, or, at NBU's option if an Event of Default occurs and this Agreement is not terminated, then (i) the Developer shall immediately upon demand pay to NBU an amount equal to all costs and expenses that have been incurred by NBU in any way related to this Agreement and that will be incurred by NBU to complete the New Infrastructure in accordance with this Agreement, including without limitation costs and expenses related to design construction, repair, replacement and remediation of any portion of the New Infrastructure and reasonable attorneys' fees for in house and external counsel, for all periods preceding the date of such termination, plus interest at the lesser of ten percent (10%) per annum or the maximum rate permitted by applicable law (the "**Default Rate**"), from the date of demand until the date that the demand is fully repaid to NBU; and (ii) in addition to NBU's other rights to make claims against any Bond or Developer Fiscal Security, as applicable, pursuant to this Agreement, NBU shall have the right to make a claim against any Bond or Developer Fiscal Security as applicable, to pay for the completion of the Bonded Items or Developer Fiscal Security Items, as applicable. This remedy shall not be exclusive of the other rights and remedies of NBU under this Agreement.

9.4 **Other Remedies.** If an Event of Default by the Developer or a Landowner occurs under this Agreement, NBU shall have the right to exercise any and all rights and remedies available to it at law, in equity, or by statute.

9.5 **Non-Waiver of Rights and Remedies.** No right or remedy herein conferred upon or reserved to NBU is intended to be exclusive of any other available rights or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right or remedy given under this Agreement or now or hereafter existing at law, in equity, or by statute.

9.6 **Event of Default by NBU.** NBU will be in default under this Agreement if NBU fails to reimburse the Developer or credit the Developer as required by this Agreement if, and only if, the Developer has satisfied all of its obligations under this Agreement (an "**NBU Event of Default**"). NBU shall have thirty (30) calendar days from the date NBU receives written notice from the Developer of an NBU Event of Default to cure such NBU Event of Default. If NBU fails to cure an NBU Event of Default within such thirty (30) days, the Developer shall be entitled to seek an injunction and/or a writ of mandamus from a court of competent jurisdiction compelling and requiring NBU to cure the NBU Event of Default. NBU shall not be liable to the Developer for monetary damages. NBU shall have no liability to the Developer except as expressly set forth in this Agreement.

9.7 **Conflict Resolution.** If a dispute related to this Agreement arises, either Party may provide the other Party with written notice of such dispute (such notice, a "**Dispute Notice**"). Within fifteen (15) business days of receipt of such Dispute Notice, the Parties agree to meet and

discuss a potential resolution to such dispute. Such meeting shall include, at a minimum, the Chief Operations Officer of NBU and the equivalent position of the Developer. If the Parties are unable to resolve the dispute at such meeting, either Party may provide the other Party with written notice requiring a second meeting to attempt to resolve the dispute (such notice, the “**Escalating Notice**”). Within fifteen (15) business days of receipt of such Escalating Notice, the Parties agree to meet and discuss a potential resolution to such dispute. Such meeting shall include, at a minimum, the Chief Executive Officer of NBU and the equivalent position of the Developer. In the event of an emergency situation or if NBU believes it will be negatively impacted by following the conflicts resolution process in this Section 9.7, NBU shall have the right to pursuant any rights and remedies available to NBU under this Agreement in lieu of following this conflicts resolution process.

ARTICLE X

INDEMNIFICATION, ATTORNEYS’ FEES, AND OTHER REMEDIES

10.1 Developer’s and Landowners’ Indemnification. THE DEVELOPER AND LANDOWNERS COVENANT AND AGREE TO FULLY INDEMNIFY AND HOLD HARMLESS THE NBU PARTIES AND THE CITY PARTIES (COLLECTIVELY, THE “INDEMNIFIED PARTIES”), INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST (COLLECTIVELY THE FOLLOWING ARE REFERRED TO AS THE “DESCRIBED CLAIMS”) ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITIES, AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE INDEMNIFIED PARTIES, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO THE DEVELOPER’S OR ANY LANDOWNER’S ACTIVITIES UNDER THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, ANY DEFECT, DEFICIENCY, OR NEGLIGENCE IN THE PLANS AND SPECIFICATIONS OF THE DEVELOPER NEW INFRASTRUCTURE, ANY DEFECT, DEFICIENCY, OR NEGLIGENCE IN THE DESIGN OF THE DEVELOPER NEW INFRASTRUCTURE, OR ANY ISSUES WHATSOEVER RELATED TO THE CONSTRUCTION OF THE DEVELOPER NEW INFRASTRUCTURE), INCLUDING ANY ACTS OR OMISSIONS OF THE DEVELOPER OR ANY LANDOWNER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR, OR SUBCONTRACTOR OF THE DEVELOPER OR ANY LANDOWNER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES, WHILE IN THE EXERCISE OR PERFORMANCE OF THEIR RIGHTS OR DUTIES UNDER THIS AGREEMENT, BUT EXCLUDING CLAIMS RELATED TO NBU’S AUTHORITY TO ENTER INTO THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO NBU UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE INDEMNIFIED PARTIES AND NOT INTENDED TO CREATE OR

GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE DEVELOPER AND LANDOWNERS SHALL PROMPTLY ADVISE NBU IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE INDEMNIFIED PARTIES OR THE DEVELOPER OR A LANDOWNER AND RELATED TO OR ARISING OUT OF THE DEVELOPER'S OR A LANDOWNER'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE DEVELOPER'S COST. THE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE DEVELOPER OR LANDOWNERS OF ANY OF THEIR OBLIGATIONS UNDER THIS PARAGRAPH. THE DEVELOPER AND LANDOWNERS FURTHER AGREE TO DEFEND, AT THEIR OWN EXPENSE AND ON BEHALF OF THE INDEMNIFIED PARTIES AND IN THE NAME OF THE APPLICABLE INDEMNIFIED PARTY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE INDEMNIFIED PARTIES IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. THE DEVELOPER'S AND LANDOWNERS' OBLIGATIONS UNDER THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10.2 **The Developer's and the Landowners' Release.** FURTHER, THE DEVELOPER AND EACH LANDOWNER FULLY AND COMPLETELY RELEASE, WAIVE AND FOREVER DISCHARGE THE INDEMNIFIED PARTIES FROM ANY AND ALL EXISTING DESCRIBED CLAIMS.

10.3 **Independent Operator.** It is expressly understood and agreed that the Developer and each Landowner is and shall be deemed to be an independent operator responsible to NBU for its own respective acts or omissions and that NBU shall in no way be responsible therefore.

10.4 **Attorneys' Fees and Expenses.** Should litigation against any Party be required to enforce the terms of this Agreement, the prevailing Party will be entitled to recover from the opposing Party its costs and expenses and reasonable attorneys' fees.

10.5 **Waiver of Consequential Damages.** The Developer and each Landowner waive all present and future claims for consequential, incidental, or special losses or damages against any NBU Party or any City Party, including but not limited to, loss of profits or revenue, loss of opportunity or use, loss of business or business reputation, or like items of loss or damage, and such waiver shall survive any termination of this Agreement.

10.6 **No Waiver of Municipality Defenses or Immunities.** Nothing in this Agreement will waive the defenses or immunities under Section 101.001 *et seq.* of the Texas Civil Practice & Remedies Code or any other applicable statutory or common law defense or immunity available to municipalities.

ARTICLE XI

MISCELLANEOUS

11.1 **Cost Reimbursement.** As described in the Reimbursement Agreement, the Developer will pay NBU to compensate NBU for attorneys' fees, consultant fees and other costs incurred or to be incurred in connection with this Agreement.

11.2 **Binding Agreement; Assignment.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned by the Developer or any Landowner, in whole or in part, without the prior written consent of NBU. Any assignment shall not relieve the Developer or any Landowner of its obligations to NBU under this Agreement, unless the NBU governing body approves the assignment in writing and executes a written release of the Developer or the respective Landowner from the obligations imposed by this Agreement. NBU may assign its rights and obligations under this Agreement and shall give written notice of any such assignment to the Developer, provided that failure to provide such notice shall not invalidate the effectiveness of such an assignment.

11.3 **District Obligations.** In a signed written document acceptable in form and substance to NBU, the District must acknowledge and agree to the terms of this Agreement and any District obligations hereunder within sixty (60) days of the District's creation. Such acknowledgement must include an acknowledgement by the District that nothing in this Agreement creates any right for the District to pursue any remedies against NBU and that the District's sole remedies with respect to this Agreement shall be solely against the Developer.

11.4 **Texas Public Information Act.** If NBU receives a Texas Public Information Act request from a third party requesting information that has been submitted to NBU by the Developer in connection with this Agreement, NBU shall timely provide a copy of such request to the Developer in accordance with the provisions of the Texas Public Information Act so that the Developer may take such actions, if any, as the Developer deems necessary to object to the release of such information in accordance with the provisions of the Texas Public Information Act.

11.5 **Limitation on Liability.** It is understood and agreed among the Parties that each of the Parties in satisfying the conditions of this Agreement has acted independently and assumes no responsibilities or liabilities to third parties in connection with these actions.

11.6 **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to, and shall not be deemed to, create a partnership or joint venture among the Parties.

11.7 **Notices.** Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) business days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below; (ii) on the next business day if sent on a business day by a nationally recognized overnight courier; or (iii) on the day actually received if sent by courier or otherwise hand delivered. Either Party may change its address(es) for notice to another address(es) within the continental United States by providing ten (10) business days advance written notice thereof to the other Party.

The Developer, MNB Real Estate
Investments, Southstar at Mayfair Developer,
or Beaverhead:

Southstar at Mayfair, LLC
1118 Vintage Way
New Braunfels, TX 78132
Attn: Thad Rutherford, President

With a copy to:

Bracewell LLP
300 Convent, Suite 2700
San Antonio, Texas 78205
Attn: Blakely L. Fernandez

NBU:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130
Attn: Chief Operations Officer

With a copy to:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130
Attn: General Counsel

and to:

The Chapman Firm, PLLC
3410 Far West Blvd, Ste 210
Austin, TX 78731
Attn: Erik G. Moskowitz

11.8 **Conflict**. If there is any conflict between this Agreement and another document, the terms of this Agreement shall control.

11.9 **Governing Law**. This Agreement shall be governed by the laws of the State, and venue for any action concerning this Agreement shall be exclusively in the State District Court of Comal County, Texas. The Parties agree to submit to the jurisdiction of said court.

11.10 **Force Majeure**. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance by any Party of any covenant or obligation hereunder is delayed as a result of Force Majeure, the time for such performance may be extended as provided below by the amount of time of such delay. The Party claiming delay of performance as a result of a Force Majeure event shall deliver written notice of the commencement of such delay not later than fourteen (14) calendar days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the affected Party or Parties of delay caused by a

Force Majeure event, the claiming Party shall not be entitled to extend the time for performance as provided herein until such notice has been provided.

11.11 **Amendment.** This Agreement may only be amended by a written agreement executed by the Parties and approved by the NBU Board of Trustees. Any amendment to the Master Framework Plan or related engineering studies must be reviewed and approved by NBU in its sole discretion and shall only be effective upon the full execution, notarization, and recordation of an amendment to this Agreement incorporating the same.

11.12 **Legal Construction.** Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate NBU's authority under Applicable Laws or any Applicable Laws to which NBU, the Developer, or any Landowner is bound. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable to the extent that it does not deprive the Parties of the benefit of the bargain and only to the extent permissible by law.

11.13 **Captions.** All descriptive headings and captions herein are inserted for convenience only and shall not be considered in interpreting or construing this Agreement.

11.14 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination of this Agreement.

11.15 **Recitals; Exhibits.** Any recitals in this Agreement are represented by the Parties hereto to be accurate, constitute a part of the Parties' substantive agreement, and are fully incorporated herein as matters of contract and not mere recitals. Further, any exhibits to this Agreement are incorporated herein as matters of contract and not mere exhibits.

11.16 **Time.** Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public federal or Texas state holiday, the date for performance will be the next following regular business day.

11.17 **No Implied Waiver.** The failure of a Party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other Parties hereto, but the obligation of such other Parties with respect to such future performance shall continue in full force and effect.

11.18 **Right to Audit.** NBU shall have the right, at any time during the Term of this Agreement, upon advance written notice to the Developer to audit the records of the Developer and each Landowner related to the Developer's and each Landowner's performance and obligations under this Agreement and related to the information submitted to NBU on the annual

reports required by Section 3.2(a) and the quarterly reports required by Section 5.6(b). The Developer and each Landowner shall cooperate fully with NBU in connection with any such audit and shall promptly make all relevant documentation available to NBU, at no cost or expense to NBU.

11.19 **Governmental Immunity**. NBU does not waive or relinquish any immunity or defense on behalf of itself or any NBU Party or City Party as a result of the execution of this Agreement and the performance of the covenants and actions contained herein.

11.20 **Counterparts**. This Agreement may be executed in multiple counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

11.21 **Recording**. This Agreement shall be recorded, at the Developer's sole cost and expense, in the real property records of Comal County, Texas.

11.22 **Entire Agreement**. This Agreement constitutes the entire agreement among the Parties and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof. There have been and are no agreements, covenants, representations, or warranties among the Parties as to the subject matter hereof other than those expressly stated or provided for herein. Each Party has had the opportunity to be represented by counsel of its choice in the negotiation of this Agreement.

11.23 **Exhibits**. The following exhibits are attached hereto and incorporated herein for all purposes.

Exhibit "A" Legal Description of the Property

Exhibit "A-1" Legal Description of the Excluded Property

Exhibit "B" Master Framework Plan

Exhibit "C" Land Use

Exhibit "D" Certification Affidavit

Exhibit "E" Project Schedule

Exhibit "F" Projected LUEs Schedule

Exhibit "G" Oversizing Specifications

Exhibit "H" Developer New Infrastructure

Exhibit "I" Water & Wastewater Engineering Design Report and the Mayfair Master Planned Community Temporary Wastewater Treatment Plan

Exhibit "J" Form of Special Warranty Deed

<u>Exhibit “K”</u>	Form of Easement Agreement
<u>Exhibit “L”</u>	Rebate-Eligible Infrastructure
<u>Exhibit “M”</u>	Easement Estates
<u>Exhibit “N”</u>	Conservation Restrictions
<u>Exhibit “O”</u>	FM 306 Pump Station and Discharge Line
<u>Exhibit “P”</u>	FM 1101 Pump Station and Discharge Line
<u>Exhibit “Q”</u>	Goodwin Lane Water Line
<u>Exhibit “R”</u>	Conrads (Goodwin Lane) EST
<u>Exhibit “S”</u>	NBU McKenzie Interceptor Main
<u>Exhibit “T”</u>	McKenzie WWTP Expansion
<u>Exhibit “U”</u>	Form of Disclosure
<u>Exhibit “V”</u>	Sequencing Schedule

[Signatures and acknowledgments on the following pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates of the acknowledgments to be effective as of the Amended Effective Date.

NBU:

NEW BRAUNFELS UTILITIES

By: _____

Name: Ryan Kelso

Title: Chief Executive Officer

THE STATE OF TEXAS §

§

COUNTY OF COMAL §

This instrument was acknowledged before me on the ____ day of _____ 2024, by Ryan Kelso, the Chief Executive Officer of New Braunfels Utilities on behalf of said entity.

[Seal]

Notary Public in and for the State of Texas

[Signatures and acknowledgments continue on the following pages]

The Developer:

SOUTHSTAR AT MAYFAIR, LLC,
a Texas limited liability company

By: _____
Name: Thad Rutherford
Title: President

THE STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, the _____ of Southstar at Mayfair, LLC, a Texas limited liability company, on behalf of said limited liability company.

[Seal]

Notary

Public in and for the State of _____

MNB REAL ESTATE INVESTMENTS, LLC

MNB REAL ESTATE INVESTMENTS, LLC,
a Texas limited liability company

By: _____
Name:
Title:

THE STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, the _____ of MNB Real Estate Investments, LLC, a Texas limited liability company, on behalf of said limited liability company.

[Seal]

Notary Public in and for the State of _____

Southstar at Mayfair Investments West joins hereby joins in the execution of this Agreement for the sole purpose of making the representations regarding the Excluded Property contained in the recitals.

SOUTHSTAR AT MAYFAIR INVESTMENTS WEST

SOUTHSTAR AT MAYFAIR INVESTMENTS WEST, LLC,
a Texas limited liability company

By: _____
Name:
Title:

THE STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, the _____ of Southstar at Mayfair Investments West, LLC, a Texas limited liability company, on behalf of said limited liability company.

[Seal]

Notary Public in and for the State of _____

Exhibit "A"

Legal Description of the Property

[see attached]

Exhibit "A-1"

Legal Description of the Excluded Property

[see attached]

Exhibit “B”

Master Framework Plan

[see attached]

Exhibit “C”

Land Use Summary

MAYFAIR LAND USE SCHEDULE	
LAND USE	ACREAGE
Residential	
Mixed Density Residential	882.26 Ac.
Mixed Use	123.42 Ac.
Non-Residential	
Neighborhood Commercial	16.68 Ac.
Flex Commercial	53.19 Ac.
Light Industrial	160.40 Ac.
Civic / Parkland	
Middle / High School	117.27 Ac.
Elementary School	36.00 Ac.
Recreation Center	12.52 Ac.
Fire Station	2.52 Ac.
Transformer Station	9.20 Ac.
Temporary WWTP	2.80 Ac.
Community Parks	120.49 Ac.
Greenbelt/Conservation Parks /Trails	135.49 Ac.
Natural Area/Easement	76.91 Ac.
Major ROW	138.85 Ac.
TOTAL	1888.00 Ac

Exhibit “D”

Form of Certification Affidavit

**CERTIFICATION AFFIDAVIT
REGARDING ANNUAL REPORT**

This CERTIFICATION AFFIDAVIT REGARDING ANNUAL REPORT (the “**Affidavit**”) is made as of the date of the acknowledgment below by _____ (the “**Affiant**”), in his or her role as the _____ of Southstar at Mayfair, LLC, a Texas limited liability company (the “**Developer**”), for reliance upon by New Braunfels Utilities (“**NBU**”), charged with exclusive management and control of the water system of the City of New Braunfels, Texas, in connection with the Utility Construction Cost Sharing Agreement dated effective as of _____, 202__ by and between the Developer and NBU (the “**Agreement**”), and the expenditure of public funds for providing certain utility services as contemplated in the Agreement. Capitalized terms used but not defined herein have the meanings ascribed to them in the Agreement. Affiant hereby swears under oath, for the benefit of NBU as to the following:

1. Affiant has personal knowledge of the matters set forth in this Affidavit, and the facts stated herein are true and correct.
2. Affiant certifies that the summary of the progress of the development and construction of the Project and of the Developer New Infrastructure attached hereto as Exhibit “A” and incorporated herein for all purposes, is true, accurate, and complete.
3. Affiant certifies that there are no liens or Claims affecting Work with respect to the Developer New Infrastructure or the Developer New Infrastructure [Note: If any, describe and include a plan for remediation of the same].
4. Affiant certifies that a summary of the progress of the Developer New Infrastructure as it relates to the projected schedule of LUEs for the phases of construction set forth on Exhibit “F” of the Agreement, and the Developer’s current projections of the portions of the Project expected to be connected to the NBU water or wastewater systems, and the associated estimated number of LUEs related thereto, within the 20[___] Calendar Year, are set forth on Exhibit “B” attached hereto and incorporated herein for all purposes.
5. Affiant certifies that the representations and warranties of the Developer contained within the Agreement remain true and correct as of the date of this Affidavit, and Affiant remakes those representations and warranties on behalf of the Developer as of the date hereof.
6. Affiant understands that this Affidavit is being relied upon by NBU in connection with the Agreement, the expenditure of public funds, and providing certain utility services.
7. Affiant has the authority to sign this Affidavit on behalf of the Developer.

Exhibit “D,” Page 1

[remainder of page intentionally left blank]

Exhibit “E”*

Project Schedule

[see attached page]

* Total LUEs will be released as described in Exhibit “F”

Exhibit “F”

Projected LUEs Schedule

[see attached]

Exhibit "G"

Oversizing Specifications

[see attached]

Exhibit “H”

Developer New Infrastructure

[*see attached*]

Exhibit "I"

Engineer's Report

[*see attached*]

Exhibit "I," Page 1

Exhibit “J”

Form of Special Warranty Deed

[see attached]

After Recording, Please Return to:
New Braunfels Utilities
263 E. Main Plaza
New Braunfels, Texas 78130
Attn: General Counsel

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF COMAL §

THIS SPECIAL WARRANTY DEED ("**Deed**") is made to be effective as of the ___ day of _____, 20[___] (the "**Effective Date**") by [_____, a _____] ("**Grantor**"), whose mailing address is 1118 Vintage Way New Braunfels, TX 78132, to New Braunfels Utilities ("**Grantee**"), whose mailing address is 263 E. Main Plaza, New Braunfels, Texas 78130.

For and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, paid to Grantor by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY unto Grantee, subject to the Permitted Exceptions (as defined hereinafter), (i) that certain tract of land (the "**Land**") located and situated in the County of Comal, Texas, more particularly described in Exhibit A attached hereto and incorporated herein by reference for all purposes; (ii) any and all improvements, structures and fixtures located thereon, [**including, but not limited to, the _____ located thereon,**] and all other structures, systems, parking lots, fixtures, and utilities associated with, and utilized in, the ownership and operation thereof; (iii) all water and mineral rights owned by or leased to Grantor with respect to the Land; (iv) all rights and appurtenances appertaining thereto; and (v) any and all of Grantor's right, title and interest in and to any easements, rights of way, alleys, drainage facilities, utility facilities, licenses, interests and rights appertaining to the aforementioned Land, and any land lying in any adjacent roads, streets and alleys adjoining or abutting the aforesaid tract, if any, (collectively, the "**Property**").

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself and its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its

successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

This Deed is made and given by Grantor, and is accepted by Grantee, subject to the matters set forth in Exhibit B attached hereto and incorporated herein by reference for all purposes (the “**Permitted Exceptions**”), but only to the extent that such Permitted Exceptions or any of them is still in effect relating to the Property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has duly executed this Deed as of the date of the acknowledgement below to be effective for all purposes as of the Effective Date.

[Signature Block]

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me on _____, 20[___] by _____, the _____ of _____, a _____ on behalf of said _____.

Name: _____
Notary Public, State of _____
My commission expires: _____

Exhibit A
to
Special Warranty Deed

Legal Description of the Land

Exhibit B
to
Special Warranty Deed

Permitted Exceptions¹

1. All taxes and assessments for the year 20[___], and subsequent years.

¹ The list of permitted exceptions will only include the items approved by NBU pursuant to Section 7.1(d) of the Agreement.

Exhibit “K”

Form of Easement Agreement

[see attached]

Easement #: _____

Exhibit “K,” Page 1

improvements, structures and appurtenances ancillary or related thereto (collectively, the “Facilities”). Grantor acknowledges that the Easement Purpose may be carried out by Grantee or its representatives, agents, contractors, and subcontractors, in Grantee’s sole discretion.

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is acknowledged.

Grant: Grantor, for the Consideration grants, sells, and conveys to Grantee, and its heirs, successors, and assigns, an easement over, under, upon and across the Easement Property for the Easement Purpose and for the benefit of Grantee and its heirs, successors, and assigns; to have and hold it to Grantee and its heirs, successors, and assigns, subject to the terms hereof. Grantor binds Grantor and Grantor’s heirs, successors, and assigns to warrant and forever defend all and singular the easements, rights and property interests herein conveyed to Grantee, and its heirs, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Such rights and easement shall run with the land and shall be binding upon Grantor and its heirs, successors, and assigns and shall bind and burden the Easement Property.

Reservation from Conveyance: Subject to the limitations hereinafter provided, Grantor reserves the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement by Grantee and its heirs, successors, and assigns for the Easement Purpose. Such reserved use specifically includes the right to construct surface materials over the Easement Property, provided that Grantor only uses asphalt, caliche or base material. If Grantor proposes to (i) use surfacing materials other than asphalt, caliche, or base material for parking and/or driveways or walkways over and across the Easement Property, (ii) change the level or grading of the surface of the Easement Property, (iii) plant trees on the Easement Property, and/or (iv) make any other improvements to the Easement Property, Grantor must obtain Grantee’s approval in the form of a signed written easement encroachment agreement prior to making such improvements.

Terms: The following terms apply to this easement:

1. *Character of Easement.* Subject to the reservation from conveyance, the easement is exclusive. No other utility provider may use the Easement Property without the prior written consent of Grantee or, as applicable, its heirs, successors, or assigns. Grantee, and its heirs, successors, and assigns, will also have rights of ingress and egress to and from said Easement Property, together with reasonable working space (if available) on, over, and across Grantor’s property adjacent to the Easement Property for the Easement Purpose. Grantee shall also have the right to remove from the Easement Property, all bushes, trees and parts thereof, any vegetation, and any structures or improvements that are within, under, over, protrude, bisect, encroach or overhang into the Easement Property and which, in the sole opinion of Grantee or its heirs, successors, or assigns, endanger or may interfere with the efficient, safe or proper operation, use and maintenance of the Facilities or any other use of the Easement Property for the Easement Purpose. Additionally, Grantee shall have the right to remove from the land immediately adjoining the Easement Property any bushes, trees and parts thereof, and vegetation that Grantee reasonably believes will interfere with the Easement Property and/or Grantee’s use thereof.
2. *Duration.* The duration of the easement is perpetual and irrevocable.

Easement #: _____

Exhibit “K,” Page 3

3. *Easement Facilities and Improvements.* All matters concerning the design, construction, installation, maintenance, replacement and removal of the Facilities are at the sole discretion of Grantee, or, as applicable, its heirs, successors, or assigns, subject to performance of its obligations under this Easement. All Facilities or other Grantee improvements constructed within, on or under the Easement Property will be and remain the property of Grantee or, as applicable, its heirs, successors, or assigns. In the event Grantor places surfacing materials or other permitted improvements over and across the Easement Property or portions thereof (the “Grantor Improvements”), Grantee or, as applicable, its heirs, successors, or assigns will use ordinary care to minimize damage to the Grantor Improvements in the event repair, replacement or maintenance of the Facilities is required. However, Grantee and/or its heirs, successors, or assigns will not be obligated to restore the Grantor Improvements to their condition prior to the time Grantee commenced work except to the extent the negligent acts or omissions of Grantee and/or its heirs, successors, or assigns caused the damage to the Grantor Improvements.
4. Grantee shall have the right, without the need for any consent by Grantor, or its heirs, successors, or assigns to transfer, convey and/or assign this Easement and its rights hereunder, in whole or in part.

[Signature and acknowledgment appear on the following pages]

Easement #: _____

Exhibit “K,” Page 4

IN WITNESS WHEREOF, the Grantor has executed this Easement as of the date of the acknowledgment to be effective as of the Effective Date.

GRANTOR:

By: _____
Name: _____
Title: _____

[Signature Page to New Braunfels Utilities Easement]

Easement #: _____

[acknowledgment for individual Grantor]

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20____, by _____ [name of individual].

[SEAL]

Notary Public, State of _____
My Commission Expires _____

[acknowledgment for Grantor signing on behalf of company/entity]

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20____, by _____ [name of individual], _____ [title or position held by individual], of _____ [name of company/entity], on behalf of same and in the capacity herein stated.

[SEAL]

Notary Public, State of _____
My Commission Expires _____

[Acknowledgment to New Braunfels Utilities Easement]

Easement #: _____

Exhibit A

Legal Description of Easement Property

Exhibit A

Easement #: _____

Exhibit B

Depiction of Easement Property

Exhibit “L”

Rebate-Eligible Infrastructure

[see attached]

Exhibit “M”

Easement Estates

[see attached]

Exhibit "N"

Conservation Restrictions

[see attached]

Exhibit "O"

FM 306 Pump Station and Discharge Line

[see attached]

Exhibit "P"

FM 1101 Pump Station and Discharge Line

[see attached]

Exhibit “Q”

Goodwin Lane Water Line

[see attached]

Exhibit “R”

Conrads (Goodwin Lane) EST

[see attached]

Exhibit "S"

NBU McKenzie Interceptor Main

[see attached]

Exhibit "T"

McKenzie WWTP Expansion

[see attached]

Exhibit “U”

Form of Disclosure

[see attached]

Exhibit “V”

Sequencing Schedule

[see attached]

Exhibit F: Project's LUE Schedule

Milestone Date	Water				Wastewater				Cumulative Maximum Allowable LUEs		
	Infrastructure Required	Estimated Date of Developer Contribution	Estimated Date of Final Completion	Additional LUEs	Total Water LUEs	Infrastructure Required	Estimated Date of Developer Contribution	Estimated Date of Final Completion		Additional LUEs	Total Wastewater LUEs
7/31/2023	FM 306 Pump Station and Discharge Line	4/7/2022	5/31/2024	500	500						0
11/30/2023	16-inch IH 35 Crossing (Short Segment) (See Notes)	NA	10/30/2023	357	857						0
4/17/2024						IWWTF - Phase I	N/A	4/17/2024	857	857	857
7/31/2024	Goodwin Lane Water Line	1/24/2023	5/31/2024	0	857						857
7/31/2025	16-inch IH 35 Crossing (Long Segment) (See Notes)	NA	7/30/2025	643	1500						857
7/31/2025						IWWTF - Phase II	N/A	5/31/2026	643	1500	1500
7/31/2025	Comrads (Goodwin Lane) EST	1/26/2024	5/30/2025	1500	3000						1500
1/14/2027						McKenzie Interceptor Upgrade	N/A	10/30/2026	0	1500	1500
7/27/2027						McKenzie Interceptor Main Connection Work	N/A	10/30/2026	500	2000	2000
7/27/2027						McKenzie WWTP Expansion	N/A	2/28/2027	3800	5800	3000
7/31/2028	FM 1101 Pump Station and Discharge Line	NA	7/31/2028	1500	4500						4500
7/31/2030	16/20-Inch Kohlenberg Eastern Connection Water Line	NA	7/31/2029	1300	5800						5800

Notes:

- 16-inch IH 35 Crossing is a part of the 16/20-Inch Kohlenberg Eastern Connection Water Line.
- 16-Inch IH 35 Crossing for convenience of construction has been divided into two phases the Short Segment and the Long Segment

Exhibit V: Sequencing Schedule

Milestone Date	Water Infrastructure Required	Wastewater Infrastructure Required	Cumulative Maximum Allowable LUEs	Proposed Plans (Plat Name/No. of LUEs Proposed)	Proposed Cumulative LUEs
7/31/2023	FM 306 Pump Station and Discharge Line		0	NA	0.0
11/30/2023	16-inch IH 35 Crossing (Short Segment)		0	Mayfair Parcel EA-2 (53.33 ¹ LUEs) Mayfair Parcel EA-3 (7.99 ¹ LUEs) Mayfair Parcel E8-3 (41 ¹ LUEs) Mayfair Parcel E-9S (137.5 ¹ LUEs) Mayfair Parcel E-8 (191 ¹ LUEs)	430.8
4/17/2024		IWWTF - Phase I	857	Mayfair Parcel E-6 Unit 1 (195 ¹ LUEs) Mayfair Parcel E-9MF (225 ¹ LUEs)	850.8
7/31/2024	Goodwin Lane Water Line		857	NA	850.8
7/31/2025	16-inch IH 35 Crossing (Long Segment)		857	NA	850.8
7/31/2025		IWWTF - Phase II	1500	Mayfair Guthrie Trail/Ford Trail/Ransom Drive (5 ² LUEs) Mayfair Parcel EA-2 (Additional 18.67 ² LUEs) Mayfair Parcel EA-3 (Additional 14.01 ² LUEs) Mayfair Parcel E8-3 (Additional 14 ² LUEs) Mayfair Parcel E-8 Unit 1 (Additional 70 ² LUEs) Mayfair Parcel E-6 (Additional 2 ² LUEs) Mayfair Parcel E-7 (140 ² LUEs) Mayfair Parcel E-15 (30 ² LUEs) Mayfair Parcel E-15 (Additional 5 ² LUEs) Mayfair Parcel E-8-2 (103 ² LUEs) Mayfair Parcel E-9N (184 ² LUEs) Mayfair Fairway Park (5 ² LUEs) Mayfair Parcel E - Ransom (30 ² LUEs)	1471.5
7/31/2025	Conrads (Goodwin Lane) EST	McKenzie Interceptor Upgrade	1500	NA	
1/14/2027		McKenzie Interceptor Main Connection Work	1500	NA	
7/27/2027			2000	TBD	
7/27/2027		McKenzie WWTP Expansion	3000	TBD	
7/31/2028	FM 1101 Pump Station and Discharge Line		4500	TBD	
7/31/2030	16/20-inch Kohlenberg Eastern Connection Water Line		5800	TBD	

Notes:

1. Subject to Schedule D Impact Fees, and Water Development Fee as applicable.
2. Subject to Schedule E Impact Fees, Water Development Fee and Sewerage Development Fee as applicable.



Meeting Date: September 26, 2024 **Agenda Type:** Presentation Items

From: Michael G. Short, P.E.
Director of Water Services
and Compliance **Reviewed by:** Michael G. Short, P.E.
Director of Water Services and
Compliance

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

RECOMMENDED ACTION: Presentation on the New Braunfels Utilities Aquifer Storage and Recovery Project



New Braunfels Utilities

Aquifer Storage and Recovery Update

September 26, 2024

Agenda

1. Background
2. Summary of Cycles 1 and 2 and Issues Encountered
3. Current Cycle 3 Status
4. Pending Improvements Overview
5. Future ASR Planned Improvements/Buildout



Mission

Strengthening our community by providing resilient essential services



Vision

Be a trusted community partner dedicated to excellence in service



Core Values

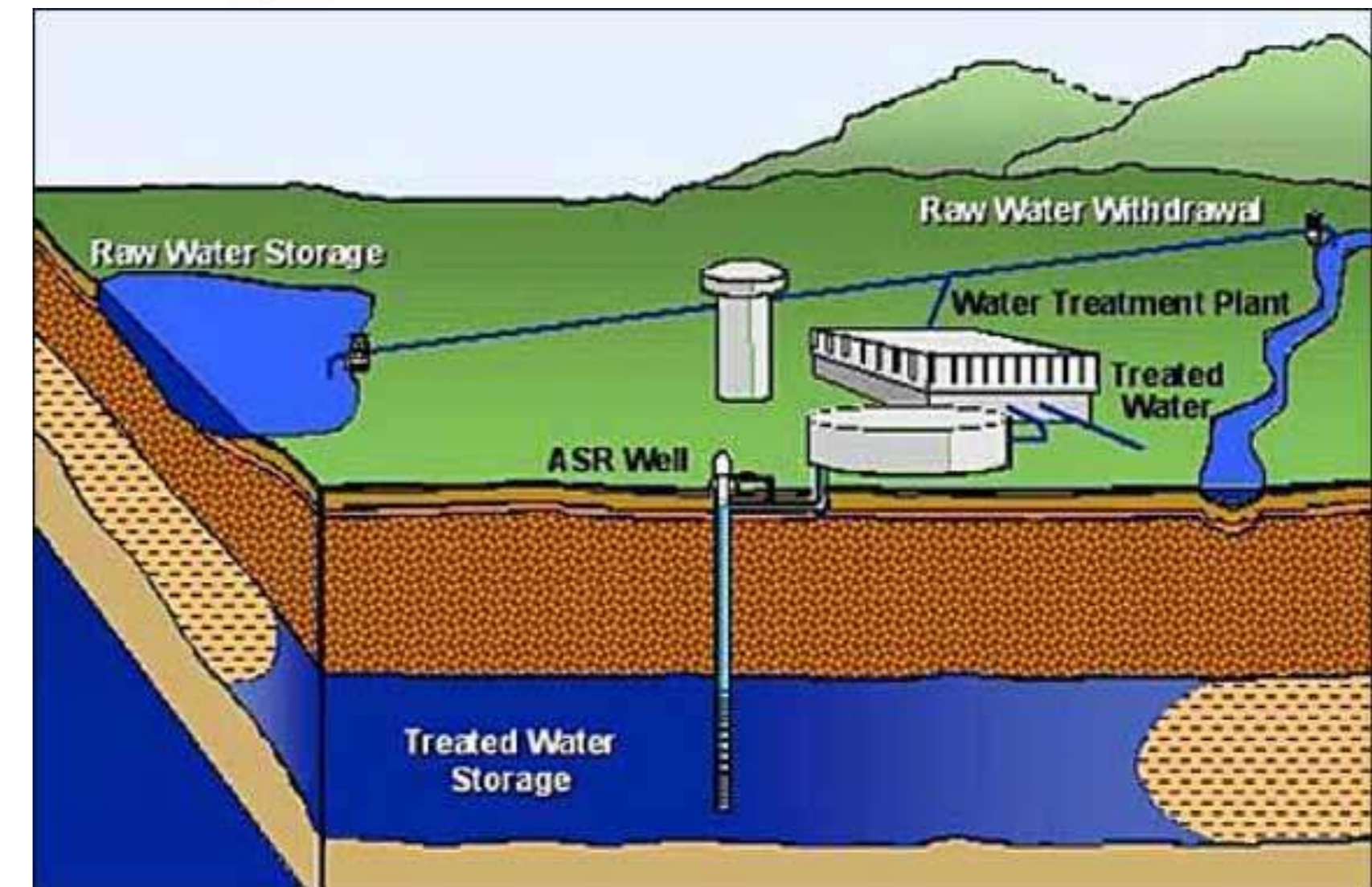
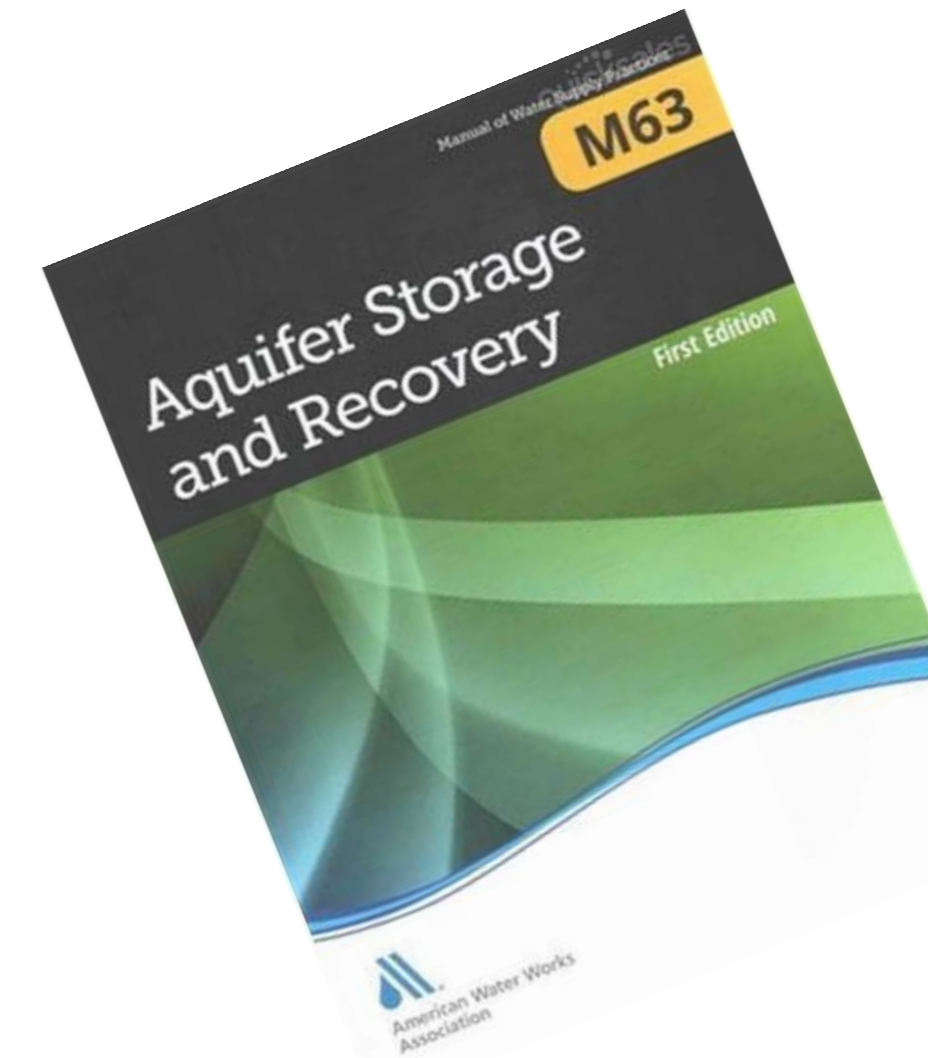
Safety, Team, Integrity, Culture, and Stewardship

Background

Aquifer Storage & Recovery (ASR) is:

“...the storage of water in a suitable aquifer ... during times when water is available, and recovery of that water ... during times when it is needed.”

David Pyne, P.E.
ASR Systems, LLC
Gainesville, FL



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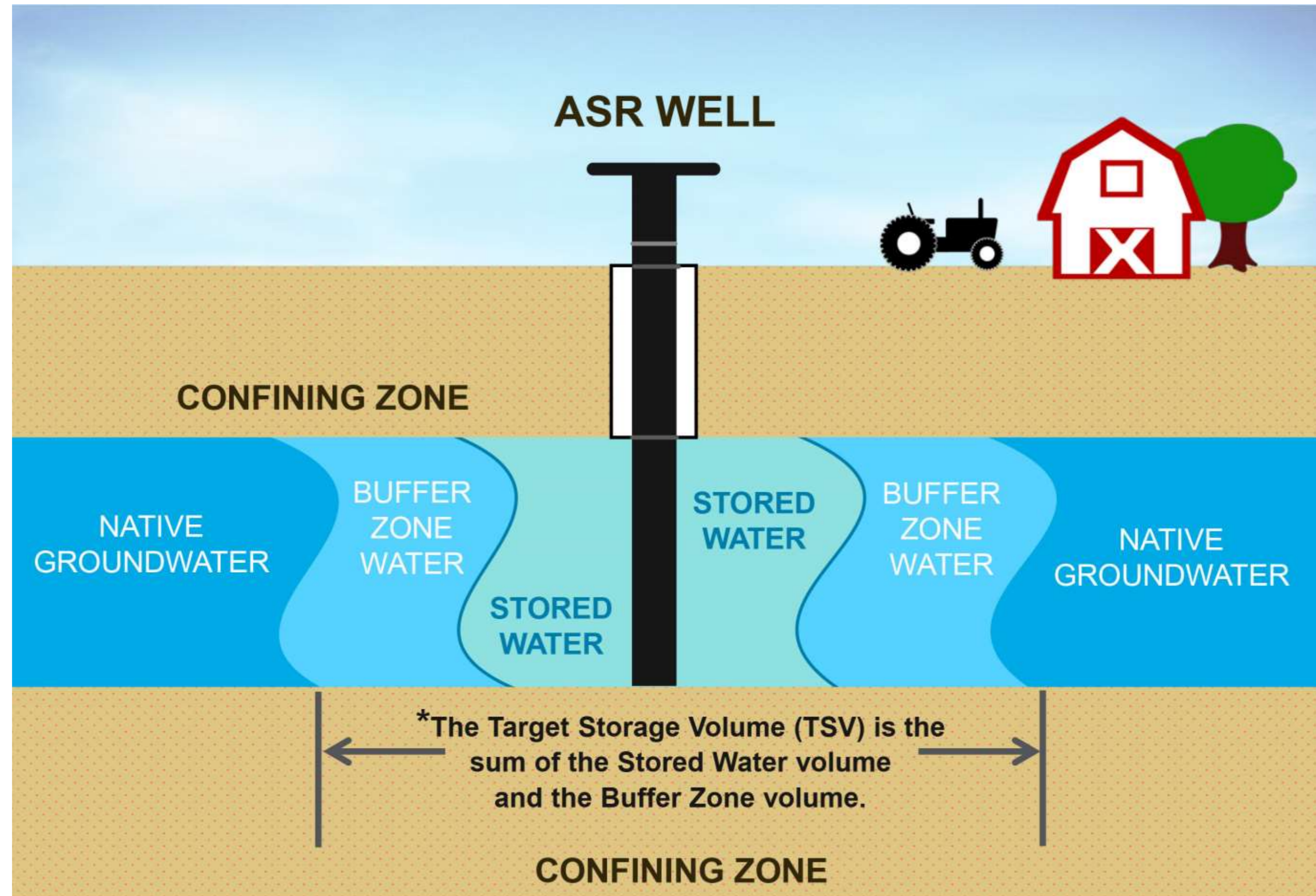
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ASR Concept and Terminology



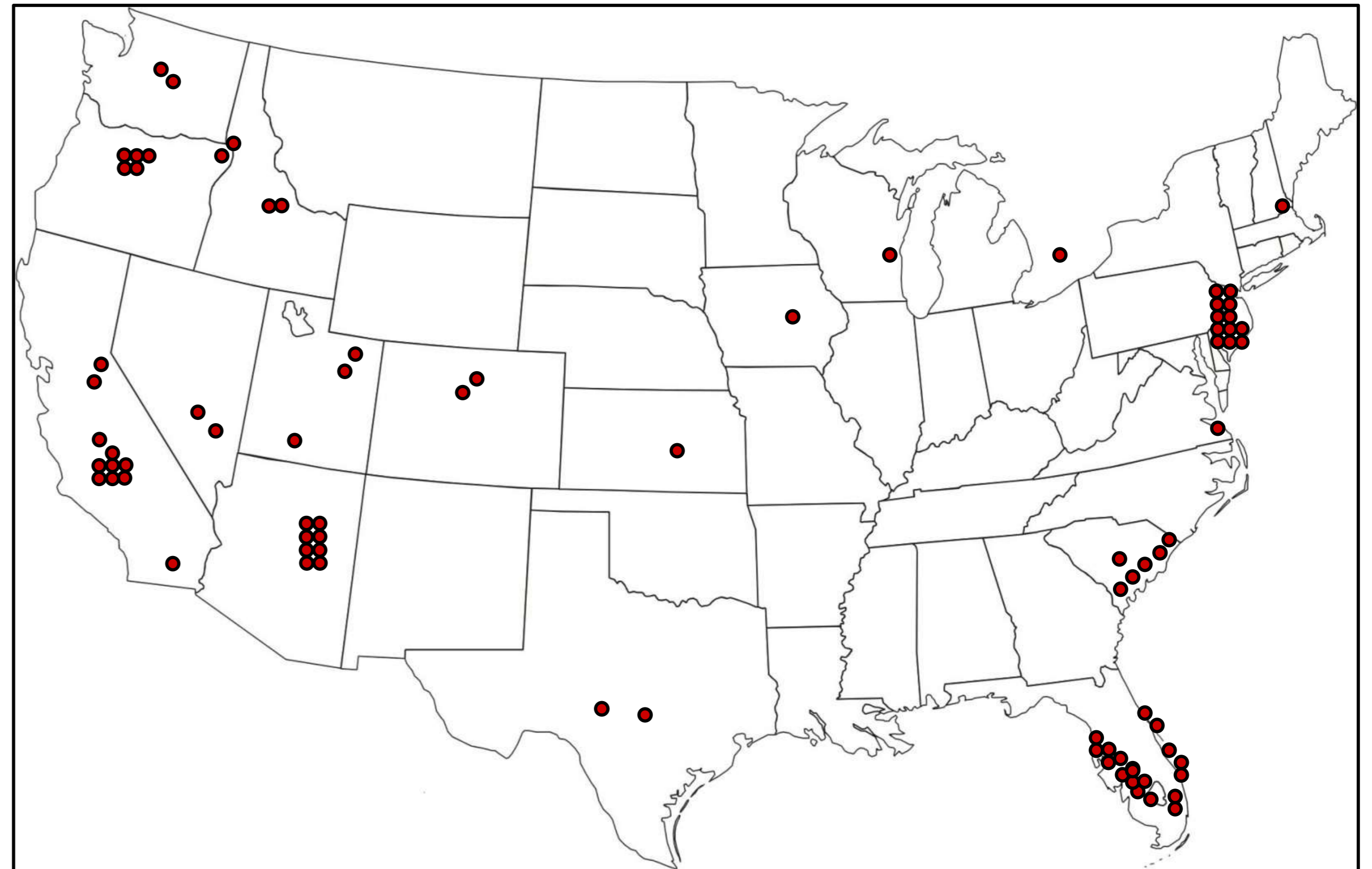
ASR Development in Texas

Three in operation:

- El Paso
- San Antonio
- Kerrville

Others in development:

- City of Victoria
- New Braunfels Utilities
- Guadalupe Blanco River Authority
- Buda



Why Was ASR Considered?

- Rapid growth in the NBU Service Territory
- Water Supply Availability/Curtailment
- Drought of Record and Max Day Demand
- System Reliability and Resiliency

<http://herald-zeitung.com> > community_alert

New Braunfels breaks 90000 in 2020 Census; Comal grows to ...

Aug 12, 2021 — Population figures for **New Braunfels** and Comal County jumped a significant 56.6% and 48.9%, respectively, over the last 10 years, ...

New Braunfels eyes 100,000 population milestone

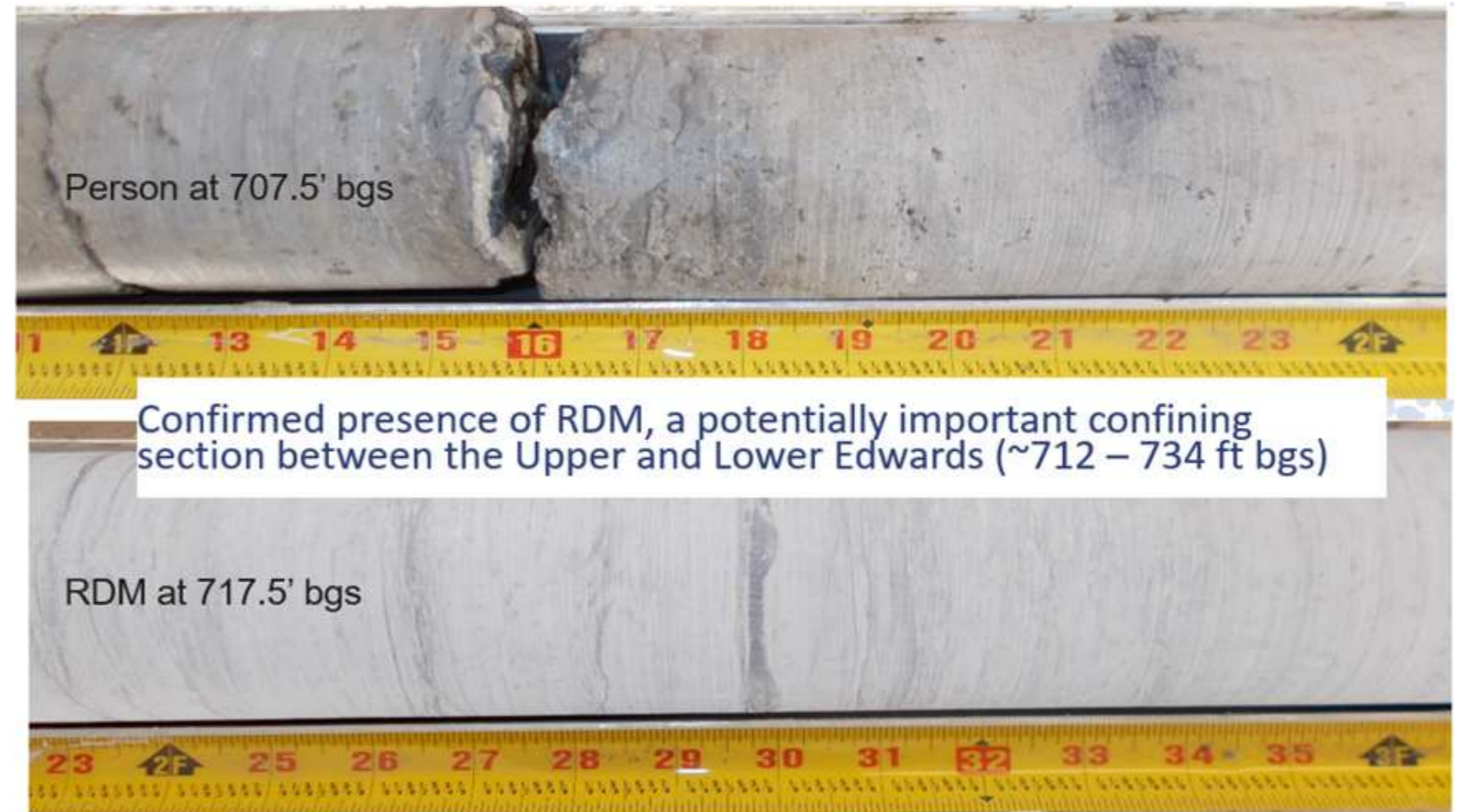
New Braunfels has issued more than 200 permits for new residential starts each in June, July and September

By Steve Knight | The Herald-Zeitung Oct 20, 2020 Updated Oct 21, 2020



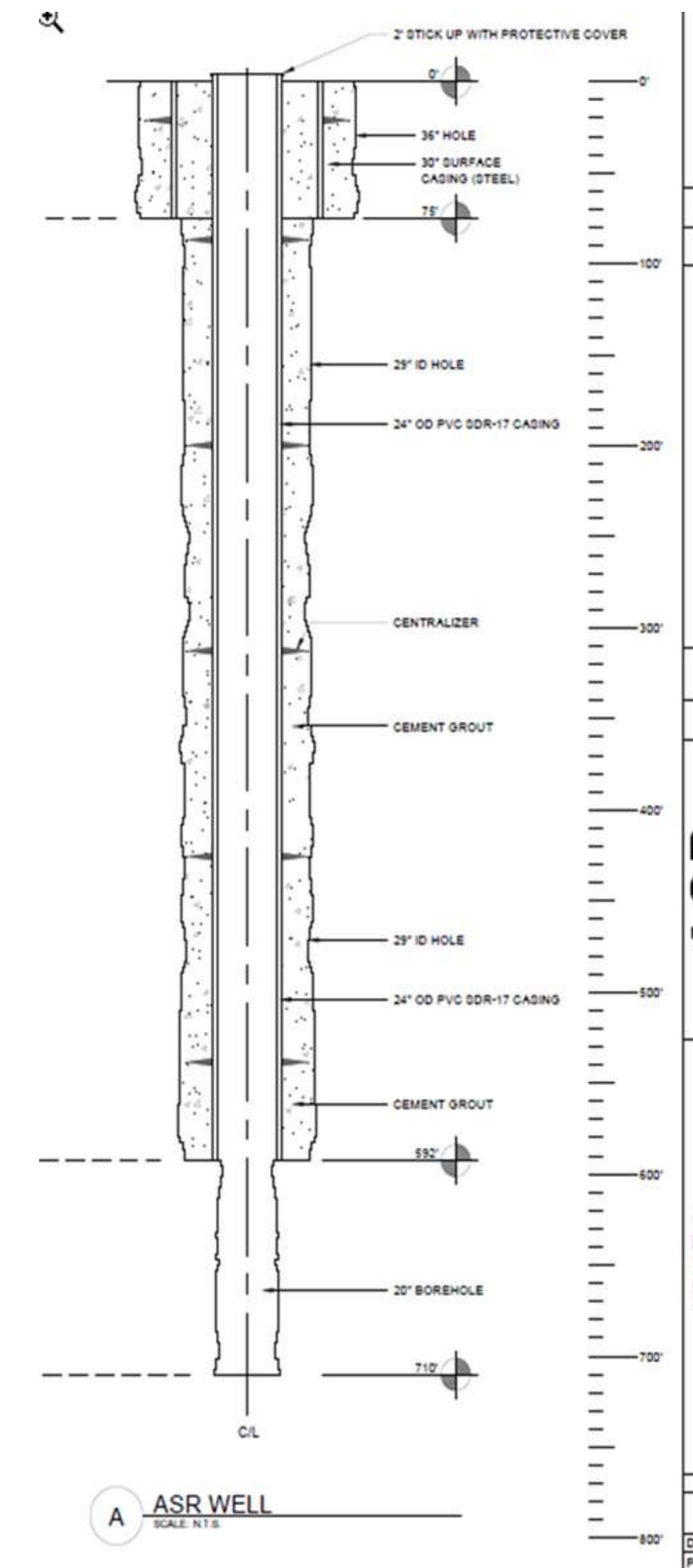
Background

- Arcadis engaged in 2011
- Preliminary Feasibility Report published with key findings and recommendations
 - Hydrogeology is conducive for ASR
 - 5,156 ac-ft of water needed to meet 2016 needs
 - Recharge rate of 4 mgd
 - Recovery rate of 9 mgd
- Intended to provide drinking water source during drought of record conditions
- Up to nine wells – 1 mgd recovery per well



Demonstration Project and Cycle Testing

- Demonstration Well completed and began injection in 2020
- Cycle 1 Recovery occurred between September 2021 and January 2022
- Warranty repairs and operational modifications were made to enhance recharge and recovery
- Cycle 2 Recovery occurred between November 3 and November 28, 2022



Status of Cycle 3 Testing

- Cycle 3 Recharge began on December 12, 2022
- As of July 17, 2023, 518 MG stored in the Upper Edwards; 89 MG stored in the Lower Edwards
- System was shut in due to extended drought conditions and water unavailability
- Have not returned to recharge mode as of this date

Pending Improvements

- Deepen the ASR-D1 well into the lower saline zone
 - Intent is to be able to get more water stored in the Lower Edwards
 - ASR-D1 will be a dual completion well capable of storing and recovering from either the Upper or Lower Edwards
- Cycle 3 Recovery anticipated to take place in Spring/Summer 2026 once sufficient water is stored in the Lower Edwards

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Future Planned Improvements

- ✓ Conceptual wellfield design is complete and additional aquifer modeling has been conducted
- ✓ An extension of our current experimental permit has been received
 - Full TCEQ Operating Permit
 - Additional monitoring well at Kohlenberg tank site
 - ASR Wellfield build-out
 - Can be phased or all at once
 - Instead of eight additional wells, likely only 3-4 will be needed
 - Additional Monitoring Wells

Tentative Schedule

- May 29, 2024 - Bid Opening for ASR-D1 well deepening contract
- August 29, 2024 –Award ASR-D1 well deepening contract
- Fall/Winter 2025 - Complete Cycle 3 Recharge
- Spring/Summer 2026 – Cycle 3 Recovery
- 2026 – Place ASR-D1 into operating mode
- FY 26 – Drill Kohlenberg monitoring well
- FY 27 – Begin Wellfield Expansion
- FY28/29 – Additional monitoring wells

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Questions?

