

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

The NBU Board of Trustees' meeting scheduled for May 28, 2020, at 1:00 p.m. will be held by video conference. Members of the public may join the meeting from a computer, tablet, or smartphone at <https://global.gotomeeting.com/join/326908077>. Members of the public may also participate in the video conference by telephone at +1 (866) 899-4679. The Access Code for the video conference link and dial-in telephone number is 326-908-077. Both the link and telephone number are free of charge. Members of the public will be allowed to participate during the Public Comment period and discuss any item on the Agenda. Public comment will not be allowed during any other part of the meeting unless approved by the Board President.

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

AGENDA

A. Pledge of Allegiance and Invocation – Board President John Harrell

B. Public Comment

C. Awards and Recognitions

1. 2020 TCEQ Texas Environmental Excellence Award
2. NBU Employee Recognitions

D. Items from the Chair

E. Items from Staff

1. CEO's Update
 - a. COVID Survey Results
2. Financial Update and Report with Quarterly Capital and Investment Reports

F. Consent Items for Action

1. Approve Minutes of the NBU Regular Board Meeting of April 30, 2020
2. Approve 2019 Fourth Quarter Charge-Off Accounts
3. Approve the Change Order Log from March 15, 2020, through April 15, 2020
4. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2019, through April 15, 2020

5. Authorize CEO to Negotiate and Execute Amendment #3 to the Professional Services Agreement with Moeller Ingalls, LLC, DBA Moeller & Associates for the North Kuehler 42" Interceptor Upgrade Project
6. Authorize CEO to Negotiate and Execute Professional Services Agreements with Terracon Consultants, Inc. and AmaTerra Environmental, Inc. for Cultural Services
7. Authorize CEO to Negotiate and Execute Professional Services Agreements with Cox McLain Environmental Consulting, Inc. and Freese and Nichols, Inc. for Environmental Services
8. Authorize CEO to Negotiate and Execute a Materials Agreement with Polydyne, Inc. for the Purchase of Water and Wastewater Treatment Chemicals
9. Authorize CEO to Negotiate and Execute a Materials Agreement with Brenntag Southwest, Inc. for the Purchase of Water and Wastewater Treatment Chemicals
10. Authorize CEO to Negotiate and Execute a Materials Agreement with Geo Specialty Chemicals, Inc. for the Purchase of Water and Wastewater Treatment Chemicals

G. Action Items

1. Authorize CEO to Negotiate and Execute AIA Standard Form of Agreement with Marmon Mok Architecture for the Design of the Proposed New Braunfels Utilities Headquarters Facility

H. Executive Session

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

1. Power Supply Resources – Competitive Matters
(Section 551.086 – Texas Government Code)
2. Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege; Real Property
(Section 551.071 and 551.072 – Texas Government Code)
 - a. Discussion Regarding the Lease, Value, Purchase, or Disposition of Real Property for Utility Purposes
3. Consultation with Attorney Regarding Pending or Contemplated Litigation and Other Matters Protected by Attorney Client Privilege
(Section 551.071 – Texas Government Code)
 - a. Discussion Regarding a Utility Construction Cost Sharing Agreement for the Copper Ridge Subdivision among NBU, Southerland Communities NB Land Properties, Ltd., and Southerland Copper Ridge, LLC
 - b. In the Supreme Court of the United States, *League of United Latin American Citizens (LULAC), et al, Petitioners v. Edwards Aquifer Authority, et al, Respondents* on Petition for Writ of Certiorari United States Court of Appeals for the Fifth Circuit

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

I. Reconvene into Open Session and Take Any Necessary Action Relating to the Executive Session as Described Above

J. Adjourn

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

CERTIFICATE OF POSTING

I, Ian Taylor, Secretary to the Board of Trustees, do hereby certify that this Notice of Meeting was posted at the City of New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas, and New Braunfels Utilities Main Office, 263 Main Plaza, New Braunfels, Texas, on the 21st day of May, 2020, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.



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



AWARDS AND RECOGNITIONS





ITEMS FROM THE CHAIR





ITEMS FROM STAFF





CEO's UPDATE





**FINANCIAL
UPDATE AND
REPORT WITH
QUARTERLY
CAPITAL AND
INVESTMENT
REPORTS**



To:
NBU Board of Trustees**From:**
Kimberly Huffman
Accounting Manager**Reviewed by:**
Dawn Schriewer
Chief Financial Officer**Submitted by:**
Dawn Schriewer
Chief Financial Officer**Approved by:**
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Review Financial Update and Report – April 2020

BACKGROUND

NBU's service territory experienced lower rainfall and higher temperatures during the month of April. For the month of April, the average temperature was 69.4 degrees, which was 0.6 of a degree greater than the historical average temperature of 68.8 degrees. Rainfall totaled 2.45 inches for the month of April, which was 0.45 of an inch less than the historical average rainfall of 2.9 inches.

For the month of April 2020, NBU recorded a change in net position after contributions CNPAC of \$2,344,000, which represents an increase of \$1,671,000 compared to the budgeted monthly CNPAC of \$673,000. Operating service revenues of \$11,330,000 were less than budget by \$540,000, or 5%, for the month of April. A \$195,000 decrease in electric revenue, \$185,000 decrease in water revenue, and a \$160,000 decrease in wastewater revenue, contributed to the overall decrease in service revenues. Other operating revenues of \$284,000 were less than budget by \$108,000 for the month of April. Purchased power costs were \$71,000 less than budget. A decrease in other operating expenses of \$468,000 resulted in total operating expenses to be \$539,000, or 5%, less than the budgeted amount of \$11,841,000. The net revenue and operating expense variances contributed to an unfavorable net operating income variance of \$109,000 from budget. Net non-operating items had a \$35,000 favorable variance compared to budget. Impact fees were greater than budget by \$424,000, services income was less than budget by \$187,000, capital participation fees were less than budget by \$170,000 and developer contributions were greater than budget by \$1,678,000. April 2020 YTD CNPAC was \$19,572,000, which was \$15,580,000 greater than the budgeted amount of \$3,992,000.

FINANCIAL IMPACT**Electric**

The Electric Line of Business reported total operating revenues of \$8,627,000, a \$266,000 decrease, or 3%, from the April budgeted amount of \$8,893,000. The net rate realized per kWh was \$0.0681, which was 1% less than the budgeted rate of \$0.0688. April kWh sales were 122.8 million kWh, a 1.5 million kWh decrease, or 1%, in comparison to the budgeted amount of 124.3 million kWh. Purchased power costs totaled \$5,921,000, which was \$71,000 less than the budgeted amount of \$5,992,000. Other operating expenses were less than budget by \$182,000. These items resulted in the Electric Line of Business reporting net operating income of \$689,000, which was \$13,000 less than the budgeted amount of \$702,000. Net non-operating items provided an unfavorable variance from budget of \$33,000. Services income was less than budget by \$122,000. The Electric Line of Business reported April 2020 CNPAC of \$182,000 and YTD CNPAC of \$5,657,000. These

amounts were \$168,000 less than and \$2,585,000 greater than their respective April 2020 MTD and April 2020 YTD budget amounts.

Water

The Water Line of Business reported total operating revenues of \$1,502,000, a \$207,000 decrease, or 12%, from the April budgeted amount of \$1,709,000. In April, water gallons sold of 273,950,000 was less than the budgeted amount of 320,228,000 (a 46,278,000 gallon variance from budget, or 14%). NBU's net realized price per 1,000 gallons in April was \$5.42, which was greater than the budgeted amount of \$5.21. Operating expenses for April were \$1,888,000, which was \$267,000 less than the budgeted amount of \$2,155,000. The net effect of lower revenues and lower operating expenses contributed to Water's net operating income of (\$386,000) being \$60,000 greater than the budgeted amount of (\$446,000). Net non-operating items provided a favorable variance of \$49,000 from budget. Impact fees of \$815,000 were greater than budget by \$279,000, and services income was less than budget by \$56,000. The Water Line of Business reported April 2020 CNPAC of \$290,000 and YTD CNPAC of \$7,899,000. These amounts were \$332,000 and \$8,972,000 greater than their respective April 2020 MTD and April 2020 YTD budget amounts.

Wastewater

The Wastewater Line of Business reported total operating revenues of \$1,485,000, a \$175,000 decrease, or 11%, from the April budgeted amount of \$1,660,000. Total operating expenses of \$1,476,000 were \$19,000 less than the budgeted amount of \$1,495,000. As a result, the Wastewater Line of Business reported net operating income of \$9,000, which was \$156,000 less than the budgeted amount of \$165,000. Net non-operating items provided a favorable variance of \$19,000 from budget. Impact fees were greater than budget by \$145,000, services income was less than budget by \$9,000, capital participation fees were less than budget by \$170,000, and developer contributions were greater than budget by \$1,678,000. The Wastewater Line of Business reported April 2020 CNPAC of \$1,872,000 and YTD CNPAC of \$6,016,000. These amounts were \$1,507,000 and \$4,023,000 greater than their respective April 2020 MTD and April 2020 YTD budget amounts.

LINK TO STRATEGIC PLAN

☒ **Maintain a Competitive Bond Rating**

EXHIBITS

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

NEW BRAUNFELS UTILITIES
OVERVIEW COMPARISON TO BUDGET & PRIOR FISCAL YEAR
APRIL 2020 YTD

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV
ELECTRIC					
Sales Volume (MWh)	Actual	1,250.4			
	Budget	1,236.0	14.5	1%	
	Prior Year	1,189.6	60.9	5%	
Revenues (\$M)	Actual	\$ 98.3			
	Budget	\$ 93.4	\$ 4.9	5%	
	Prior Year	\$ 78.9	\$ 19.4	25%	
Gross Margin (\$M)	Actual	\$ 25.6			
	Budget	\$ 26.4	\$ (0.8)	-3%	
	Prior Year	\$ 19.8	\$ 5.8	29%	
Operating Income (\$M)	Actual	\$ 9.1			
	Budget	\$ 6.2	\$ 2.8	45%	
	Prior Year	\$ 5.3	\$ 3.7	70%	
WATER					
Sales Volume (Million Gallons)	Actual	3.3			
	Budget	3.0	0.3	10%	
	Prior Year	2.7	0.6	21%	
Revenues (\$M)	Actual	\$ 15.7			
	Budget	\$ 14.9	\$ 0.8	5%	
	Prior Year	\$ 11.6	\$ 4.1	36%	
Gross Margin (\$M)	Actual	\$ 12.1			
	Budget	\$ 8.9	\$ 3.2	36%	
	Prior Year	\$ 9.8	\$ 2.3	23%	
Operating Income (\$M)	Actual	\$ (0.1)			
	Budget	\$ (4.7)	\$ 4.6	98%	
	Prior Year	\$ (0.6)	\$ 0.5	81%	
WASTEWATER					
Revenues (\$M)	Actual	\$ 13.3			
	Budget	\$ 13.9	\$ (0.6)	-4%	
	Prior Year	\$ 11.8	\$ 1.5	13%	
Operating Income (\$M)	Actual	\$ 1.3			
	Budget	\$ 0.2	\$ 1.1	*	
	Prior Year	\$ 0.8	\$ 0.5	58%	
COMBINED					
Operating Expenses (\$M)**	Actual	\$ 23.8			
	Budget	\$ 29.9	\$ (6.2)	-21%	
	Prior Year	\$ 20.4	\$ 3.4	17%	
Operating Income (\$M)	Actual	\$ 10.3			
	Budget	\$ 1.7	\$ 8.5	*	
	Prior Year	\$ 5.6	\$ 4.7	83%	
Change in Net Position Before Contributions (\$M)	Actual	\$ 2.0			
	Budget	\$ (8.2)	\$ 10.3	*	
	Prior Year	\$ (1.7)	\$ 3.8	*	
Impact Fees (\$M)	Actual	\$ 13.7			
	Budget	\$ 7.7	\$ 6.0	78%	
	Prior Year	\$ 5.9	\$ 7.7	*	
Change in Net Position After Contributions (\$M)	Actual	\$ 19.6			
	Budget	\$ 4.0	\$ 15.6	*	
	Prior Year	\$ 8.1	\$ 11.4	*	

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

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

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

NEW BRAUNFELS UTILITIES
Balance Sheet
April 30, 2020
Amounts Shown in Thousands

	April 30 2020	March 31 2020	Variance	% Change
ASSETS				
UTILITY PLANT				
Utility Plant in Service	\$ 735,922	\$ 732,738	\$ 3,185	0%
Less: Accumulated Depreciation	(265,929)	(264,006)	(1,923)	1%
Construction in Progress	137,073	132,983	4,091	3%
TOTAL UTILITY PLANT	\$ 607,067	\$ 601,714	\$ 5,353	1%
CURRENT & ACCRUED ASSETS				
Cash & Temporary Investments	\$ 22,558	\$ 9,739	\$ 12,818	132%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	8,889	8,561	328	4%
Accounts Receivable - Other	2,800	1,317	1,483	113%
Accrued Unbilled Revenue	9,724	9,652	71	1%
Inventory	2,679	2,846	(167)	-6%
Prepaid Expenses	12,830	12,686	143	1%
Accrued Interest Receivable	104	84	20	24%
TOTAL CURRENT & ACCRUED ASSETS	\$ 59,584	\$ 44,886	\$ 14,697	33%
RESTRICTED ASSETS & DEFERRED DEBITS				
Restricted Funds	\$ 39,388	\$ 49,782	\$ (10,395)	-21%
Designated Funds	27,303	30,899	(3,595)	-12%
Long-Term Investments	2,000	2,000	-	0%
Pension Deferred Outflows	9,660	10,004	(344)	-3%
Mid-Basin Regulatory Asset	755	706	49	7%
TOTAL RESTRICTED ASSETS & DEFERRED DEBITS	\$ 79,106	\$ 93,391	\$ (14,285)	-15%
TOTAL ASSETS	\$ 745,756	\$ 739,992	\$ 5,764	1%
LIABILITIES & NET POSITION				
BONDS PAYABLE				
Long-Term Debt	\$ 147,497	\$ 147,484	\$ 13	0%
Unamortized Bond Discount/Premium	4,542	4,592	(50)	-1%
TOTAL BONDS PAYABLE	\$ 152,039	\$ 152,076	\$ (37)	0%
CURRENT & ACCRUED LIABILITIES				
Accounts Payable	\$ 8,140	\$ 8,064	\$ 75	1%
Accrued Purchased Power	5,842	5,189	653	13%
Commercial Paper Payable	75,000	75,000	-	0%
Customer Deposits	7,318	7,312	6	0%
Accrued Payroll & Benefits (Including Compensated Absences)	2,762	2,774	(12)	0%
Accrued Interest Expense	2,023	1,494	529	35%
Current Portion of Long Term Debt	3,595	3,595	-	0%
Other Payables	1,105	1,126	(21)	-2%
TOTAL CURRENT & ACCRUED LIABILITIES	\$ 105,785	\$ 104,554	\$ 1,231	1%
NONCURRENT LIABILITIES & DEFERRED CREDITS				
Accumulated Provision for Pension	\$ 19,282	\$ 19,282	\$ -	0%
Pension & OPEB Deferred Inflows	192	192	-	0%
Power Cost Adjustments - Over-Recovered	11,855	10,591	1,264	12%
Other Deferred Credits	415	402	13	3%
TOTAL NONCURRENT LIABILITIES & DEFERRED CREDITS	\$ 31,744	\$ 30,466	\$ 1,277	4%
TOTAL LIABILITIES	\$ 289,568	\$ 287,096	\$ 2,472	1%
NET POSITION				
Reserve for Restricted Assets	\$ 33,737	\$ 43,766	\$ (10,029)	-23%
Reserve for Intergovernmental	7,873	7,956	(83)	-1%
Unrestricted Assets	227,825	215,369	12,456	6%
Contributed Capital	186,754	185,804	949	1%
TOTAL NET POSITION	\$ 456,188	\$ 452,895	\$ 3,293	1%
TOTAL LIABILITIES & NET POSITION	\$ 745,756	\$ 739,992	\$ 5,764	1%

NEW BRAUNFELS UTILITIES
Statement of Revenues & Expenses
For the Period Ending April 30, 2020
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
VOLUME/RATES								
Electric Sales kWh	122,766	124,303	(1,537)	-1%	1,250,432	1,235,976	14,456	1%
Electric Sales Rate Per kWh	\$ 0.0681	\$ 0.0688	\$ (0.0007)	-1%	\$ 0.0762	\$ 0.0731	\$ 0.0031	4%
Purchased kWh	125,714	129,942	(4,228)	-3%	1,271,443	1,254,811	16,632	1%
Purchased Rate per kWh	\$ 0.0471	\$ 0.0461	\$ 0.0010	2%	\$ 0.0572	\$ 0.0534	\$ 0.0038	7%
Gallons Sold	273,950	320,228	(46,278)	-14%	3,292,867	2,980,019	312,848	10%
Rate per Gallon Sold	\$ 5.42	\$ 5.21	\$ 0.21	4%	\$ 4.66	\$ 4.87	\$ (0.21)	-4%
OPERATING REVENUES								
SERVICE REVENUE								
Electric Service	\$ 8,361	\$ 8,556	\$ (195)	-2%	\$ 95,324	\$ 90,374	\$ 4,950	5%
Water Service	1,484	1,669	(185)	-11%	15,352	14,513	839	6%
Wastewater Service	1,485	1,645	(160)	-10%	13,212	13,752	(540)	-4%
TOTAL SERVICE REVENUE	\$ 11,330	\$ 11,870	\$ (540)	-5%	\$ 123,888	\$ 118,639	\$ 5,249	4%
OTHER OPERATING REVENUE								
Electric Other	\$ (1)	\$ 84	\$ (85)	*	\$ 591	\$ 757	\$ (166)	-22%
Water Other	11	32	(21)	-66%	259	285	(26)	-9%
Wastewater Other	-	15	(15)	-100%	105	134	(29)	-22%
Transmission System Revenue	227	221	6	3%	1,958	1,993	(35)	-2%
Electric Pole Attachments	40	32	8	25%	422	285	137	48%
Water Tower Antenna Lease	7	8	(1)	-13%	73	73	-	0%
TOTAL OTHER OPERATING REVENUE	\$ 284	\$ 392	\$ (108)	-28%	\$ 3,408	\$ 3,527	\$ (119)	-3%
TOTAL OPERATING REVENUE	\$ 11,614	\$ 12,262	\$ (648)	-5%	\$ 127,296	\$ 122,166	\$ 5,130	4%
OPERATING EXPENSES								
ELECTRIC								
Purchased Power	\$ 5,921	\$ 5,992	\$ (71)	-1%	\$ 72,708	\$ 67,041	\$ 5,667	8%
Electric O&M Expenses	659	902	(243)	-27%	5,274	8,474	(3,200)	-38%
Electric Depreciation & Amortization	815	777	38	5%	7,190	6,993	197	3%
Electric Support Services Allocated Operating Expenses	543	520	23	4%	4,055	4,653	(598)	-13%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 7,938	\$ 8,191	\$ (253)	-3%	\$ 89,227	\$ 87,161	\$ 2,066	2%
WATER								
Purchased Water	\$ 410	\$ 667	\$ (257)	-39%	\$ 3,629	\$ 6,006	\$ (2,377)	-40%
Water O&M Expenses	537	533	4	1%	4,355	4,914	(559)	-11%
Water Depreciation & Amortization	508	508	-	0%	4,455	4,572	(117)	-3%
Water Support Services Allocated Operating Expenses	433	447	(14)	-3%	3,355	4,095	(740)	-18%
TOTAL WATER OPERATING EXPENSE	\$ 1,888	\$ 2,155	\$ (267)	-12%	\$ 15,794	\$ 19,587	\$ (3,793)	-19%
WASTEWATER								
Wastewater O&M Expenses	\$ 527	\$ 489	\$ 38	8%	\$ 4,040	\$ 4,651	\$ (611)	-13%
Wastewater Depreciation & Amortization	599	655	(56)	-9%	5,277	5,896	(619)	-10%
Wastewater Support Services Allocated Operating Expenses	350	351	(1)	0%	2,680	3,142	(462)	-15%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 1,476	\$ 1,495	\$ (19)	-1%	\$ 11,997	\$ 13,689	\$ (1,692)	-12%
TOTAL OPERATING EXPENSES	\$ 11,302	\$ 11,841	\$ (539)	-5%	\$ 117,018	\$ 120,437	\$ (3,419)	-3%
NET OPERATING INCOME								
ELECTRIC	\$ 689	\$ 702	\$ (13)	-2%	\$ 9,068	\$ 6,248	\$ 2,820	45%
WATER	\$ (386)	\$ (446)	\$ 60	13%	\$ (110)	\$ (4,716)	\$ 4,606	-98%
WASTEWATER	\$ 9	\$ 165	\$ (156)	-95%	\$ 1,320	\$ 197	\$ 1,123	*
TOTAL NET OPERATING INCOME	\$ 312	\$ 421	\$ (109)	-26%	\$ 10,278	\$ 1,729	\$ 8,549	*
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 82	\$ 128	\$ (46)	-36%	\$ 1,665	\$ 1,153	\$ 512	44%
Intergovernmental Expense	(680)	(678)	(2)	0%	(6,104)	(6,102)	(2)	0%
Interest and Amortization Expense	(555)	(672)	117	-17%	(4,656)	(6,051)	1,395	-23%
Other	81	115	(34)	-30%	864	1,031	(167)	-16%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (1,072)	\$ (1,107)	\$ 35	3%	\$ (8,231)	\$ (9,969)	\$ 1,738	17%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (760)	\$ (686)	\$ (74)	-11%	\$ 2,047	\$ (8,240)	\$ 10,287	*
CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 1,276	\$ 852	\$ 424	50%	\$ 13,669	\$ 7,664	\$ 6,005	78%
Services	150	337	(187)	-55%	2,080	3,038	(958)	-32%
GBRA Capital Participation Fee	-	170	(170)	-100%	-	1,530	(1,530)	-100%
Developer Contributions	1,678	-	1,678	100%	1,776	-	1,776	100%
TOTAL CAPITAL CONTRIBUTIONS	\$ 3,104	\$ 1,359	\$ 1,745	*	\$ 17,525	\$ 12,232	\$ 5,293	43%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 2,344	\$ 673	\$ 1,671	*	\$ 19,572	\$ 3,992	\$ 15,580	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
ELECTRIC LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending April 30, 2020
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
ELECTRIC OPERATING REVENUES								
ELECTRIC SERVICE REVENUE								
Electric Service	\$ 8,361	\$ 8,556	\$ (195)	-2%	\$ 95,324	\$ 90,374	\$ 4,950	5%
TOTAL ELECTRIC SERVICE REVENUE	\$ 8,361	\$ 8,556	\$ (195)	-2%	\$ 95,324	\$ 90,374	\$ 4,950	5%
OTHER ELECTRIC OPERATING REVENUE								
Electric Other	\$ (1)	\$ 84	\$ (85)	*	\$ 591	\$ 757	\$ (166)	-22%
Transmission System Revenue	227	221	6	3%	1,958	1,993	(35)	-2%
Electric Pole Attachments	40	32	8	25%	422	285	137	48%
TOTAL OTHER ELECTRIC OPERATING REVENUE	\$ 266	\$ 337	\$ (71)	-21%	\$ 2,971	\$ 3,035	\$ (64)	-2%
TOTAL ELECTRIC OPERATING REVENUE	\$ 8,627	\$ 8,893	\$ (266)	-3%	\$ 98,295	\$ 93,409	\$ 4,886	5%
ELECTRIC OPERATING EXPENSES								
Purchased Power & Other Power Supply	\$ 5,921	\$ 5,992	\$ (71)	-1%	\$ 72,708	\$ 67,041	\$ 5,667	8%
Transmission & Distribution	592	802	(210)	-26%	4,616	7,230	(2,614)	-36%
Customer Service	33	58	(25)	-43%	374	833	(459)	-55%
Administrative & General	34	42	(8)	-19%	284	411	(127)	-31%
Depreciation & Amortization	815	777	38	5%	7,190	6,993	197	3%
Support Services Allocated Operating Expenses	543	520	23	4%	4,055	4,653	(598)	-13%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 7,938	\$ 8,191	\$ (253)	-3%	\$ 89,227	\$ 87,161	\$ 2,066	2%
ELECTRIC NET OPERATING INCOME	\$ 689	\$ 702	\$ (13)	-2%	\$ 9,068	\$ 6,248	\$ 2,820	45%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 36	\$ 56	\$ (20)	-36%	\$ 771	\$ 503	\$ 268	53%
Intergovernmental Expense	(573)	(569)	(4)	1%	(5,137)	(5,122)	(15)	0%
Interest and Amortization Expense	(102)	(121)	19	-16%	(878)	(1,093)	215	-20%
Other	56	84	(28)	-33%	486	754	(268)	-36%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (583)	\$ (550)	\$ (33)	-6%	\$ (4,758)	\$ (4,958)	\$ 200	4%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 106	\$ 152	\$ (46)	-30%	\$ 4,310	\$ 1,290	\$ 3,020	*
ELECTRIC CAPITAL CONTRIBUTIONS								
Services	\$ 76	\$ 198	\$ (122)	-62%	\$ 1,347	\$ 1,782	\$ (435)	-24%
TOTAL ELECTRIC CAPITAL CONTRIBUTIONS	\$ 76	\$ 198	\$ (122)	-62%	\$ 1,347	\$ 1,782	\$ (435)	-24%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 182	\$ 350	\$ (168)	-48%	\$ 5,657	\$ 3,072	\$ 2,585	84%

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending April 30, 2020
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
WATER OPERATING REVENUES								
WATER SERVICE REVENUE								
Water Service	\$ 1,484	\$ 1,669	\$ (185)	-11%	\$ 15,352	\$ 14,513	\$ 839	6%
TOTAL WATER SERVICE REVENUE	\$ 1,484	\$ 1,669	\$ (185)	-11%	\$ 15,352	\$ 14,513	\$ 839	6%
OTHER WATER OPERATING REVENUE								
Water Other	\$ 11	\$ 32	\$ (21)	-66%	\$ 259	\$ 285	\$ (26)	-9%
Water Tower Antenna Lease	7	8	(1)	-13%	73	73	-	0%
TOTAL OTHER WATER OPERATING REVENUE	\$ 18	\$ 40	\$ (22)	-55%	\$ 332	\$ 358	\$ (26)	-7%
TOTAL WATER OPERATING REVENUE	\$ 1,502	\$ 1,709	\$ (207)	-12%	\$ 15,684	\$ 14,871	\$ 813	5%
WATER OPERATING EXPENSES								
Purchased Water	\$ 410	\$ 667	\$ (257)	-39%	\$ 3,629	\$ 6,006	\$ (2,377)	-40%
Supply Source	18	4	14	*	82	56	26	46%
Transmission & Distribution	200	191	9	5%	1,620	1,862	(242)	-13%
Pumping	163	150	13	9%	1,280	1,329	(49)	-4%
Water Treatment	149	159	(10)	-6%	1,187	1,443	(256)	-18%
Customer Service	(1)	2	(3)	*	16	16	-	0%
Administrative & General	8	27	(19)	-70%	170	208	(38)	-18%
Depreciation & Amortization	508	508	-	0%	4,455	4,572	(117)	-3%
Support Services Allocated Operating Expenses	433	447	(14)	-3%	3,355	4,095	(740)	-18%
TOTAL WATER OPERATING EXPENSE	\$ 1,888	\$ 2,155	\$ (267)	-12%	\$ 15,794	\$ 19,587	\$ (3,793)	-19%
WATER NET OPERATING INCOME	\$ (386)	\$ (446)	\$ 60	13%	\$ (110)	\$ (4,716)	\$ 4,606	-98%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 23	\$ 36	\$ (13)	-36%	\$ 444	\$ 323	\$ 121	37%
Intergovernmental Expense	(53)	(55)	2	-4%	(479)	(491)	12	-2%
Interest and Amortization Expense	(205)	(258)	53	-21%	(1,712)	(2,319)	607	-26%
Other	22	15	7	47%	265	138	127	92%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (213)	\$ (262)	\$ 49	-19%	\$ (1,482)	\$ (2,349)	\$ 867	-37%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (599)	\$ (708)	\$ 109	15%	\$ (1,592)	\$ (7,065)	\$ 5,473	77%
WATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 815	\$ 536	\$ 279	52%	\$ 8,669	\$ 4,821	\$ 3,848	80%
Services	74	130	(56)	-43%	724	1,171	(447)	-38%
Developer Contributions	-	-	-	0%	98	-	98	100%
TOTAL WATER CAPITAL CONTRIBUTIONS	\$ 889	\$ 666	\$ 223	33%	\$ 9,491	\$ 5,992	\$ 3,499	58%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 290	\$ (42)	\$ 332	*	\$ 7,899	\$ (1,073)	\$ 8,972	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WASTEWATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending April 30, 2020
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
WASTEWATER OPERATING REVENUES								
WASTEWATER SERVICE REVENUE								
Wastewater Service	\$ 1,485	\$ 1,645	\$ (160)	-10%	\$ 13,212	\$ 13,752	\$ (540)	-4%
TOTAL WASTEWATER SERVICE REVENUE	\$ 1,485	\$ 1,645	\$ (160)	-10%	\$ 13,212	\$ 13,752	\$ (540)	-4%
OTHER WASTEWATER OPERATING REVENUE								
Wastewater Other	\$ -	\$ 15	\$ (15)	-100%	\$ 105	\$ 134	\$ (29)	-22%
TOTAL OTHER WASTEWATER OPERATING REVENUE	\$ -	\$ 15	\$ (15)	-100%	\$ 105	\$ 134	\$ (29)	-22%
TOTAL WASTEWATER OPERATING REVENUE	\$ 1,485	\$ 1,660	\$ (175)	-11%	\$ 13,317	\$ 13,886	\$ (569)	-4%
WASTEWATER OPERATING EXPENSES								
Transmission & Distribution	\$ 1	\$ -	\$ 1	100%	\$ 8	\$ -	\$ 8	100%
Wastewater Operations & Maintenance	490	479	11	2%	3,844	4,383	(539)	-12%
Customer Service	(1)	2	(3)	*	17	18	(1)	-6%
Administrative & General	37	8	29	*	171	250	(79)	-32%
Depreciation & Amortization	599	655	(56)	-9%	5,277	5,896	(619)	-10%
Support Services Allocated Operating Expenses	350	351	(1)	0%	2,680	3,142	(462)	-15%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 1,476	\$ 1,495	\$ (19)	-1%	\$ 11,997	\$ 13,689	\$ (1,692)	-12%
WASTEWATER NET OPERATING INCOME	\$ 9	\$ 165	\$ (156)	-95%	\$ 1,320	\$ 197	\$ 1,123	*
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 23	\$ 36	\$ (13)	-36%	\$ 450	\$ 327	\$ 123	38%
Intergovernmental Expense	(54)	(54)	-	0%	(488)	(489)	1	0%
Interest and Amortization Expense	(248)	(293)	45	-15%	(2,066)	(2,639)	573	-22%
Other	3	16	(13)	-81%	113	139	(26)	-19%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (276)	\$ (295)	\$ 19	-6%	\$ (1,991)	\$ (2,662)	\$ 671	-25%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (267)	\$ (130)	\$ (137)	*	\$ (670)	\$ (2,465)	\$ 1,794	73%
WASTEWATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 461	\$ 316	\$ 145	46%	\$ 5,000	\$ 2,843	\$ 2,157	76%
Services	-	9	(9)	-100%	9	85	(76)	-89%
GBRA Capital Participation Fee	-	170	(170)	-100%	-	1,530	(1,530)	-100%
Developer Contributions	1,678	-	1,678	100%	1,678	-	1,678	100%
TOTAL WASTEWATER CAPITAL CONTRIBUTIONS	\$ 2,139	\$ 495	\$ 1,644	*	\$ 6,687	\$ 4,458	\$ 2,229	50%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 1,872	\$ 365	\$ 1,507	*	\$ 6,016	\$ 1,993	\$ 4,023	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
Statement of Cash Flows
For the Period Ending April 30, 2020
Amounts Shown in Thousands

	MTD	YTD
NET POSITION BEFORE CONTRIBUTIONS	\$ (760)	\$ 2,047
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 1,922	\$ 16,922
Decrease (increase) in accounts receivable	(1,882)	848
Decrease (increase) in inventories	167	(464)
Decrease (increase) in other assets	4,205	29,211
Increase (decrease) in current liabilities	2,303	50,492
Increase (decrease) in other liabilities	1,277	1,615
Net Cash Flow from Operating Activities	\$ 7,232	\$ 100,670
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (7,275)	\$ (77,517)
Investments	13,990	2,041
Interest Receivable	(20)	6
Net Cash Flow from Investing Activities	\$ 6,695	\$ (75,470)
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (1,072)	\$ (8,231)
Increase (decrease) in long-term debt	(37)	(333)
Net Cash Flow from Financing Activities	\$ (1,109)	\$ (8,564)
Net Increase (Decrease) in Cash and Cash Equivalents	\$ 12,818	\$ 16,637

CAPITAL EQUIPMENT SUMMARY - FY 2020
YTD for the Period Ending April 30, 2020



Department	Capital Equipment Description	YTD Actual	FY 2020 Budget	Budget Remaining
ELECTRIC				
116	GPS Unit	22,890	24,000	1,110
117	Replace Unit 1122 (2005 Freightliner Aerial Unit Bucket Truck)	234,654	260,000	25,346
117	Replace Unit 1125 (2002 Freightliner Digger Derrick Truck)	-	250,000	250,000
117	Pothole Machine	-	95,000	95,000
117	Service Truck for Crew	-	60,000	60,000
117	Inspector Pickup 1/2 Ton 4X4	-	33,000	33,000
117	Replace Unit 1104 (2006 F-250 Diesel 4X4)	30,733	32,000	1,267
117	Pole Hauling Trailers	18,600	25,000	6,400
117	Pole Hauling Trailers	18,600	25,000	6,400
119	Replace Unit 1134 (2012 Ford F-550 4X4 Service Truck)	-	65,000	65,000
120	Replace Unit 438 (2008 Ford Explorer)	-	30,000	30,000
TOTAL ELECTRIC		\$ 325,477	\$ 899,000	\$ 573,523
WATER				
220	Valve Maintenance Trailer	-	30,000	30,000
220	F-150 Extended Cab Truck for PdM Staff	-	30,000	30,000
TOTAL WATER		\$ -	\$ 60,000	\$ 60,000
WASTEWATER				
320	Replace Unit 354 (2000 Ford F-150 Ext Cab Pickup)	-	30,000	30,000
320	Replace Unit 302 (1998 GMC 2500 Ext Cab Pickup)	-	30,000	30,000
320	Replace Unit 303 (1999 Chevrolet 2500 Ext Cab Pickup)	-	30,000	30,000
320	F-150 Extended Cab, 4WD for WW Supervisor	-	30,000	30,000
320	Small Utility Vehicle	-	10,000	10,000
TOTAL WASTEWATER		\$ -	\$ 130,000	\$ 130,000
SHARED WATER/WASTEWATER				
217/317	Replace Unit 217 (Vactor Combo Unit Truck)	535,906	600,000	64,094
217/317	Proposed New Cat Backhoe/Loader	-	110,000	110,000
217/317	Replace Unit 234 (2003 Freightliner FL80 Diesel Dump Truck)	-	105,000	105,000
217/317	Replace Unit 226 (2009 F-550 Service Truck)	-	65,000	65,000
217/317	Replace Unit 237(2001 Freightliner FL70 Crewcab Service Truck)	-	65,000	65,000
217/317	Proposed F-450 Service Truck	64,060	65,000	940
217/317	Replace Unit 223 (Chevrolet 2500 Crew Cab Pickup)	-	55,000	55,000
217/317	Proposed Line Locator Truck	-	50,000	50,000
217/317	Protective Shore Box	7,430	45,000	37,570
217/317	Off Road Vehicle	19,036	20,000	964
217/317	Electric Dump Trailer	37,356	7,500	(29,856)
TOTAL SHARED WATER/WASTEWATER		\$ 663,789	\$ 1,187,500	\$ 523,712
PURCHASING				
527	Replace Unit 539 (2000 Forklift)	-	45,000	45,000
527	Pallet Racks	-	10,000	10,000
TOTAL PURCHASING		\$ -	\$ 55,000	\$ 55,000
FLEET/FACILITIES				
528	Refurbish Main Office Elevator	-	80,000	80,000
528	Refurbish HVAC Systems at Main Office & Service Center	-	30,000	30,000
TOTAL FLEET/FACILITIES		\$ -	\$ 110,000	\$ 110,000
TECHNOLOGY				
531	Server Replacements	189,282	200,000	10,718
531	PC Replacements	36,382	150,000	113,618
531	Network Equipment Replacements	74,999	90,000	15,001
531	Copier and High-End Printer and Plotter Replacements	18,819	35,000	16,181
TOTAL TECHNOLOGY		\$ 319,481	\$ 475,000	\$ 155,519

TOTAL CAPITAL EQUIPMENT	\$ 1,308,746	\$ 2,916,500	\$ 1,607,754
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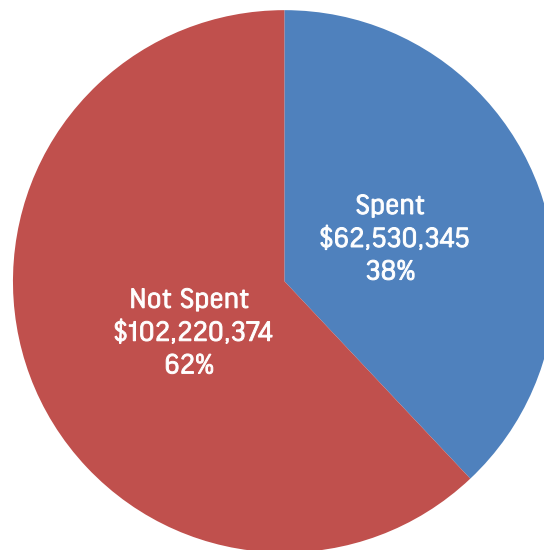
UNBUDGETED ITEMS:

WATER				
220	2019 Ram 3500 Crew Cab	69,734	-	(69,734)
TOTAL WATER		\$ 69,734	\$ -	\$ (69,734)
SHARED WATER/WASTEWATER				
217/317	2019 Ram 4500 Crew Cab	74,956	-	(74,956)
TOTAL SHARED WATER/WASTEWATER		\$ 74,956	\$ -	\$ (74,956)
TECHNOLOGY				
	Stretch Cluster and Backup Solution	983,540		(983,540)
TOTAL TECHNOLOGY		\$ 983,540	\$ -	\$ (983,540)
TOTAL UNBUDGETED CAPITAL EQUIPMENT		\$ 1,128,230	\$ -	\$ (1,128,230)

FY 2020 Capital Expenditure Summary As of April 30, 2020

75% of Year
Completed

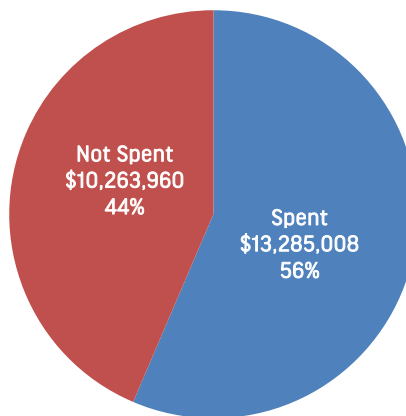
	<u>Spent</u>	<u>Not Spent</u>	<u>Total Budget</u>	<u>% of Total Budget Spent</u>
Electric	\$ 13,285,008	\$ 10,263,960	\$ 23,548,968	56%
Water	21,263,564	41,941,710	63,205,274	34%
Wastewater	23,769,804	33,862,043	57,631,847	41%
Support Services	4,211,969	16,152,661	20,364,630	21%
TOTAL	\$ 62,530,345	\$ 102,220,374	\$ 164,750,719	
	38%	62%	100%	



**Electric Line of Business
FY 2020 Capital Expenditure Summary
As of April 30, 2020**

75% of Year
Completed

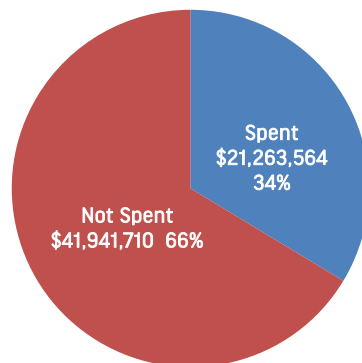
Project	¹ Total Spent YTD	² FY20 Project Budget	FY20 Budget Remaining	Project Life Total Budget	^(10/2) % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 3,833,874	\$ 4,483,585	\$ 649,711	\$ 4,483,585	86%	75%
Distribution Transformers	1,503,773	1,064,704	(439,069)	1,064,704	141%	75%
Electric Meters	795,237	910,913	115,676	910,913	87%	75%
Electric Aging Infrastructure	3,439,039	2,070,257	(1,368,782)	2,070,257	166%	75%
Electric Technology Upgrades	124,332	289,836	165,504	289,836	43%	50%
TxDOT Road Widening	69,994	414,437	344,443	2,857,617	17%	90%
Substation Security	-	82,810	82,810	82,810	0%	0%
System Technology Upgrades	69,181	465,808	396,627	465,808	15%	10%
Kerlick Tower	97	1,798,166	1,798,069	1,798,166	0%	0%
Three-Phase Extensions	248,232	260,261	12,029	1,217,925	95%	50%
Transmission Breaker Replacements	1,289,675	1,954,529	664,854	4,472,796	66%	80%
Loop 337 T2 & Feeder Exits	853,506	3,086,098	2,232,592	3,095,578	28%	45%
System Technology Upgrades - BDAP	544,896	873,501	328,605	873,501	62%	0%
Comal Substation T1 Replacement	157,553	1,285,874	1,128,321	1,285,874	12%	60%
Fiber Optic Extensions	-	339,386	339,386	339,386	0%	0%
Hortontown T2 (Power Transformer Replacement)	128,352	1,005,553	877,201	1,440,127	13%	15%
Hueco Springs Substation	-	887,253	887,253	887,253	0%	0%
Kohlenberg Substation	-	1,478,755	1,478,755	1,478,755	0%	0%
Sheriff's Posse to Marion, T-340 Upgrade	-	205,740	205,740	1,311,069	0%	5%
Pole Replacements	-	236,601	236,601	236,601	0%	0%
Sheriff's Posse T3 Addition	162,449	354,901	192,452	3,469,795	46%	10%
Total Budgeted Projects	\$ 13,220,190	\$ 23,548,968	\$ 10,328,778	\$ 34,132,356	56%	
Unbudgeted Projects:						
Morningside Rd OH Adjustment	\$ 79,158	\$ -	\$ (79,158)	\$ 2,637,896		
Weltner Rd Substation	(14,340)	-	14,340	4,727,711		
Total Unbudgeted Projects	\$ 64,818	\$ -	\$ (64,818)	\$ 7,365,607		
TOTAL	\$ 13,285,008	\$ 23,548,968	\$ 10,263,960	\$ 41,497,963	56%	



Water Line of Business
FY 2020 Capital Expenditure Summary
As of April 30, 2020

75% of Year
Completed

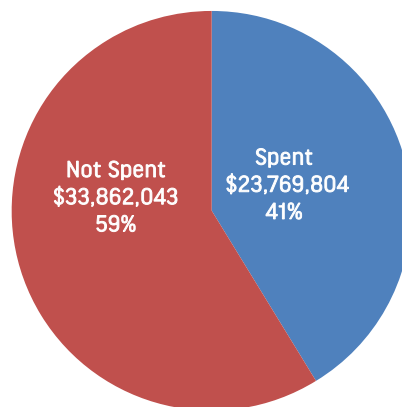
Project	¹ Total Spent YTD	² FY20 Project Budget	FY20 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 528,531	\$ 1,225,068	\$ 696,537	\$ 1,225,068	43%	75%
Water Meters	993,873	3,295,084	2,301,211	3,295,084	30%	75%
Water Technology Upgrades	32,315	184,061	151,746	184,061	18%	75%
Aging System Replacements	1,134,787	2,141,990	1,007,203	2,141,990	53%	75%
Alves Ln Improvements(CNB)	445,519	302,264	(143,255)	1,575,441	147%	98%
MSR Reconstruction(CNB)	537,647	1,592,337	1,054,690	3,699,561	34%	51%
Live Oak & Katy St Improvements(CNB)	315,882	359,128	43,246	634,670	88%	98%
ASR Feasibility Dev (IF)	3,615,556	4,937,463	1,321,907	9,692,771	73%	64%
Castell Ave Rehabilitation (CNB)	234,549	522,621	288,072	4,573,466	45%	4%
AC Pipe Replacement - Solms	189,246	1,131,409	942,163	1,318,841	17%	28%
Avery Park 30" Water Main	2,726,254	14,802,405	12,076,151	19,422,125	18%	19%
Well 4 Discharge Line	75,545	798,245	722,700	816,699	9%	6%
Bretzke Water Supply & Country Hills Ground Storage Tank	1,868,236	768,909	(1,099,327)	4,297,415	243%	96%
Copper Ridge Ground Storage Tank Oversize	16,904	397,189	380,285	442,126	4%	75%
12-Inch Waterline River Crossing Evaluation	11,640	641,753	630,113	975,486	2%	2%
San Antonio St Rehabilitation Phase 2 (CNB)	13,233	1,237,123	1,223,890	1,390,318	1%	11%
Replacement of Clarifier Drive #1 at SWTP	41,920	1,514,237	1,472,317	1,635,944	3%	27%
SWTP High Service Pump #4 & Water Line Connections	429,918	496,396	66,478	1,728,686	87%	91%
Water Plant Pump #5	3,221,133	4,966,405	1,745,272	7,185,929	65%	31%
Weltner Rd Ground Strg Tank & Pump Station-Ph 1	2,483,509	9,806,415	7,322,906	13,474,421	25%	33%
2.5 MG Bretzke EST and 24-inch Bretzke Waterline	691,578	1,941,227	1,249,649	11,050,676	36%	4%
I-35 Water Line (Downtown)	72,585	843,535	770,950	6,166,606	9%	1%
24-inch McQueeney Road Parallel Water Line (Downtown)	125,275	433,753	308,478	433,753	29%	17%
1.00MG Solms Ground Storage Tank and Flow Control Valve	4,406	1,017,563	1,013,157	3,129,361	0%	0%
Replacement of Clarifier Drive #2 at SWTP	80,259	218,252	137,993	218,252	37%	36%
30/24-inch SWTP Discharge Line (Downtown)	193,855	760,406	566,551	760,406	25%	11%
SWTP Expansion - Water Supply Facilities	185,337	2,802,290	2,616,953	34,738,613	7%	0%
Veramendi 1.5 MG EST & Flow Control Valve	11,177	2,488,842	2,477,665	4,286,872	0%	21%
Western Downtown to Morningside PZ Conversion	85,736	1,578,904	1,493,168	6,464,197	5%	0%
Total Budgeted Projects	\$ 20,366,405	\$ 63,205,274	\$ 42,838,869	\$ 146,958,838	32%	
Unbudgeted Projects:						
San Antonio St Rehabilitation (CNB)	\$ 237,909	\$ -	\$ (237,909)	\$ 942,699		
Old FM 306 Ground Storage Tank	28,724	-	(28,724)	3,324,076		
AC Pipe Replacement - Balcones	2,515	-	(2,515)	1,046,832		
Trinity Aquifer Well Field Treatment Addition	16,636	-	(16,636)	16,895,727		
TxDOT Loop 337 Widening-Water Adjustments	3,446	-	(3,446)	778,441		
Downtown to Morningside PZ Conversion	54,305	-	(54,305)	437,860		
Seguin Interconnect	255	-	(255)	317,267		
Grandview Pump Station Exp	103,214	-	(103,214)	-		
Green Valley Pump Station	431,109	-	(431,109)	-		
Infrastructure Replacement Package 3-W	14,641	-	(14,641)	-		
Oakbrook EST, FCV, 24" Ext	4,406	-	(4,406)	-		
Total Unbudgeted Projects	\$ 897,159	\$ -	\$ (897,159)	\$ 23,742,901		
TOTAL	\$ 21,263,564	\$ 63,205,274	\$ 41,941,710	\$ 170,701,739	34%	



**Wastewater Line of Business
FY 2020 Capital Expenditure Summary
As of April 30, 2020**

75% of Year
Completed

Project	¹ Total Spent YTD	² FY20 Project Budget	FY20 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 217,154	\$ 340,165	\$ 123,011	\$ 340,165	64%	75%
Aging System Replacements	518,691	2,133,635	1,614,944	2,133,635	24%	75%
Alves Ln Improvements(CNB)	310,473	463,315	152,842	1,309,034	67%	98%
Live Oak Ave&Katy St Improvements(CNB)	293,261	228,855	(64,406)	498,604	128%	98%
Castell Ave Rehabilitation (CNB)	71,412	157,760	86,348	2,270,188	45%	5%
Gruene W/W Treatment Plant Relocation & Expansion	17,143,205	25,190,926	8,047,721	67,952,481	68%	79%
MSR Reconstruction (CNB)	343,632	1,063,270	719,638	2,528,865	32%	53%
Wastewater Technology Upgrades	34,446	163,014	128,568	163,014	21%	75%
Manhole Rehabilitation	(112)	537,527	537,639	537,527	0%	42%
North Kuehler 42" Interceptor Upgrade	859,569	8,596,874	7,737,305	9,589,542	10%	19%
North & South Kuehler WWTP Expansion	913,605	3,356,389	2,442,784	51,510,173	27%	6%
North Kuehler WWTP Rehabilitation	30,548	108,026	77,478	3,487,890	28%	6%
North & South Kuehler WWTP Major Permit Amend	27,560	110,799	83,239	182,714	25%	51%
So. Kuehler Sanitary Interceptor SK-20 Relo/Expansion	19,027	75,168	56,141	1,733,640	25%	5%
South Kuehler 18/24" Interceptor Replacement	776,458	1,242,803	466,345	1,622,540	62%	67%
South Kuehler WWTP Rehabilitation	73,059	169,794	96,735	6,425,171	43%	6%
North Kuehler 30 and 33-inch Interceptor Upgrade	1,075,284	5,582,381	4,507,097	10,872,477	19%	10%
San Antonio St Rehabilitation Phase 2 (CNB)	15,941	1,208,135	1,192,194	1,353,557	1%	11%
Gruene Rd Sewer Main Rehabilitation Relocation	-	455,915	455,915	455,915	0%	0%
McKenzie WWTP Expansion	13,451	3,611,543	3,598,092	40,766,866	0%	0%
Rio Lift Station Expansion	429,338	1,273,097	843,759	3,772,088	34%	4%
Saengerhalle Lift Station Expansion & Force Main	147,777	363,678	215,901	2,303,445	41%	6%
Solms Lift Station Expansion	-	618,579	618,579	1,125,737	0%	0%
Veramendi S1-S6	-	580,199	580,199	580,199	0%	0%
Total Budgeted Projects	\$ 23,313,780	\$ 57,631,847	\$ 34,318,067	\$ 213,515,469	40%	
Unbudgeted Projects:						
San Antonio St Rehabilitation (CNB)	\$ 314,186	\$ -	\$ (314,186)	\$ 742,255		
Sam C. McKenzie Jr. Water Reclamation Facility	13,819	-	(13,819)	36,572,035		
Dove Crossing Sewer Upgrade	4,276	-	(4,276)	1,566,168		
TxDOT Loop 337 Widening - Sewer Adjustments	2,920	-	(2,920)	493,224		
Infrastructure Replacement Package 1-WW	62,775	-	(62,775)	-		
Infrastructure Replacement Package 3-WW	22,350	-	(22,350)	-		
Nautilus Off-Site Sewer Ext	35,698	-	(35,698)	-		
Total Unbudgeted Projects	\$ 456,024	\$ -	\$ (456,024)	\$ 39,373,682		
TOTAL	\$ 23,769,804	\$ 57,631,847	\$ 33,862,043	\$ 252,889,151	41%	



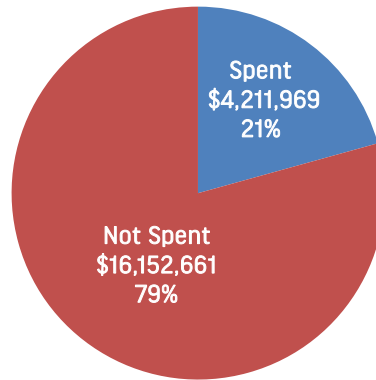
**Support Services Line of Business
FY 2020 Capital Expenditure Summary
As of April 30, 2020**

75% of Year
Completed

Project	¹ Total Spent YTD	² FY20 Project Budget	FY20 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
Headwaters at the Comal	\$ 125,204	\$ 266,254	\$ 141,050	\$ 25,930,686	47%	60%
Personnel Workstations	26,755	30,000	3,245	30,000	89%	30%
Cyber Security System	74,473	150,000	75,527	150,000	50%	0%
Email Service Replacement	-	20,000	20,000	20,000	0%	0%
Main Office & Service Center Remodel	6,890	150,000	143,110	316,087	5%	0%
Physical Security Systems	44,324	200,000	155,676	200,000	22%	90%
Software Replacement and Enhancements	-	125,000	125,000	125,000	0%	0%
CIS Online	-	73,500	73,500	75,000	0%	5%
NBU Additions and Remodel	3,752,689	17,356,376	13,603,687	43,743,428	22%	15%
EDRMS Software	171,742	165,000	(6,742)	165,066	104%	31%
Virtual Desktop Beta	-	450,000	450,000	640,000	0%	0%
Update Backup and Disaster Recovery	-	1,115,000	1,115,000	1,115,000	0%	0%
ISP Foot Print Increase	288	80,000	79,712	80,000	0%	0%
Upgrade or Replace all NBU Radios	7,378	8,500	1,122	208,500	87%	0%
Windows 10 Upgrade	-	175,000	175,000	175,000	0%	0%
Total Budgeted Projects	\$ 4,209,744	\$ 20,364,630	\$ 16,154,886	\$ 72,973,767	21%	

Unbudgeted Projects:

Facilities Master Planning & Programming	\$ 2,225	\$ -	\$ (2,225)	\$ 142,133		
Total	\$ 2,225	\$ -	\$ (2,225)	142,133		
Total	\$ 4,211,969	\$ 20,364,630	\$ 16,152,661	\$ 73,115,899	21%	



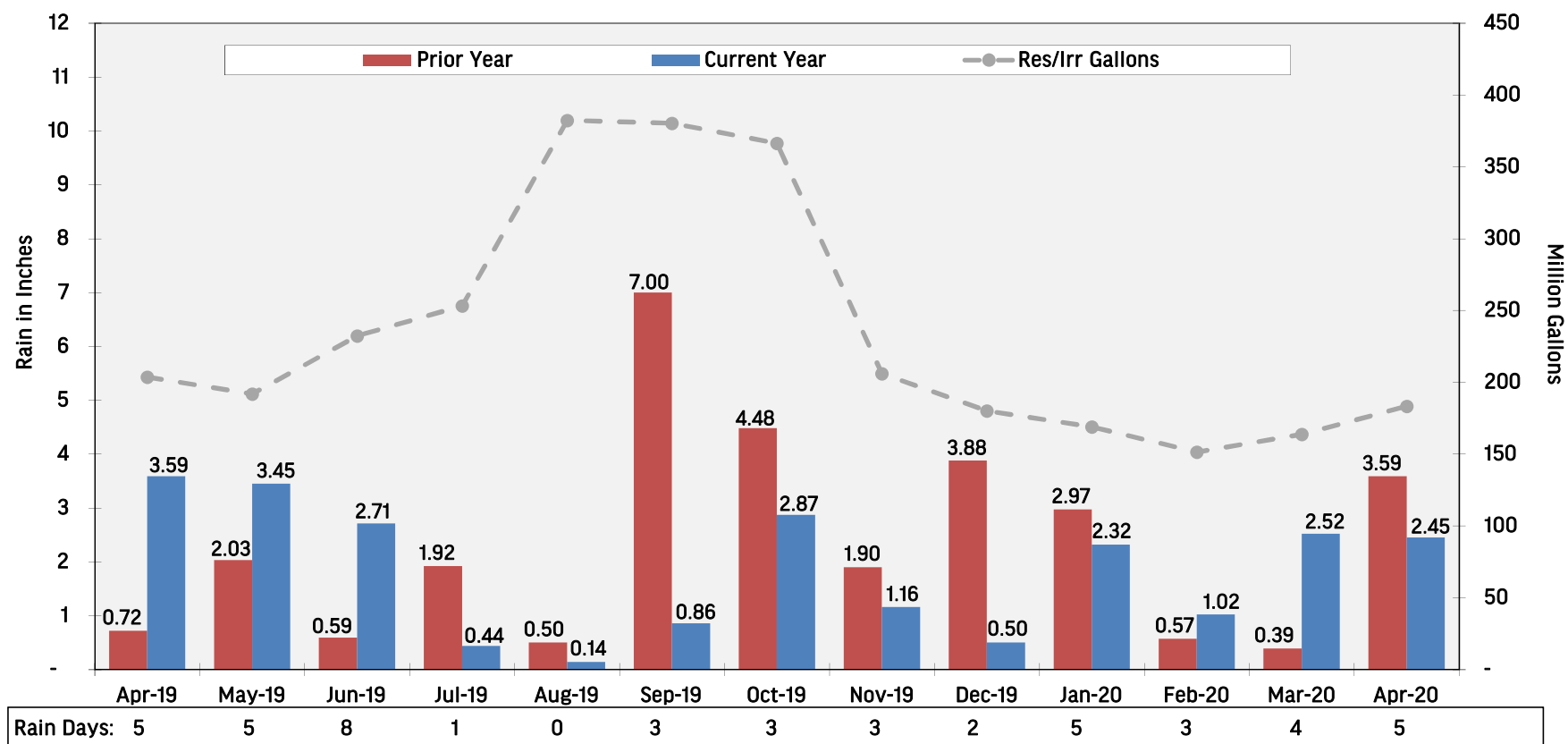
Electric Statistics are provided separately due to competitive matters.

WATER STATISTICS

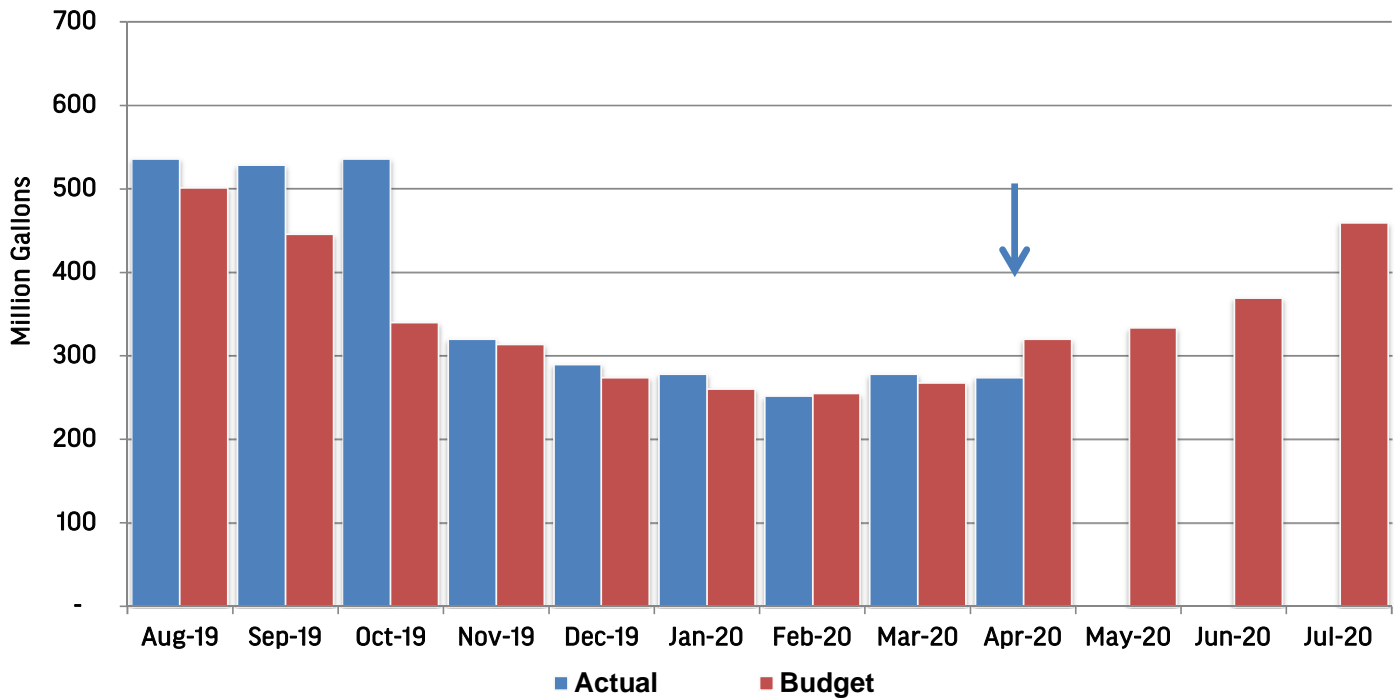
**NEW BRAUNFELS UTILITIES
WATER STATISTICS
HIGHLIGHTS OVERVIEW**

- April MTD rainfall was less than the prior year rainfall, totaling 2.45 inches for the month. The April rainfall total of 2.45 inches was 0.45 inches less than the historical average rainfall of 2.90 inches. For April 2020, there were 5 rain days during the month compared to 5 rain days in April 2019.
- April YTD rainfall totaled 13.84 inches compared to the prior year total of 25.28 inches, which was a decrease of 11.44 inches compared to prior year. For YTD, there have been 28 rain days compared to 41 rain days for prior year YTD.
- Average MTD consumption by residential water customer in March 2020 was **5,029 gallons** compared to **5,538 gallons** in March 2019, reflecting a decrease of 9.2%.
- Average YTD consumption by residential water customer through April 2020 was **58,250 gallons** compared to **49,982 gallons** for YTD through April 2019, reflecting an increase of 16.5%.
- Overall trend for fiscal year-to-date in total water sales volume is greater than the sales volume over the same period for the previous year with the change being 572.0 million gallons, or 21.0% (3,293 million gallons for FY 2020 YTD vs. 2,721 million gallons for FY 2019 YTD).
- Actual total water sales volume for year-to-date FY 2020 is 3,293 million gallons, which is 313.0 million more than the budgeted amount of 2,980 million gallons for the same time period.
 - The following shows the major contributors, by rate classification, towards the 313.0 million gallon change from budget:
 - Residential Domestic – increase of 129.1 million gallons (up 8.1% from budget)
 - Residential Irrigation – increase of 73.8 million gallons (up 19.5% from budget)
 - Commercial Irrigation – increase of 55.4 million gallons (up 32.3% from budget)
 - Small General Service – increase of 19.8 million gallons (up 3.4% from budget)
 - Other Sales – increase of 26.0 million gallons (up 147.2% from budget)
 - ReUse Water – increase of 9.8 million gallons (up 154.7% from budget)

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

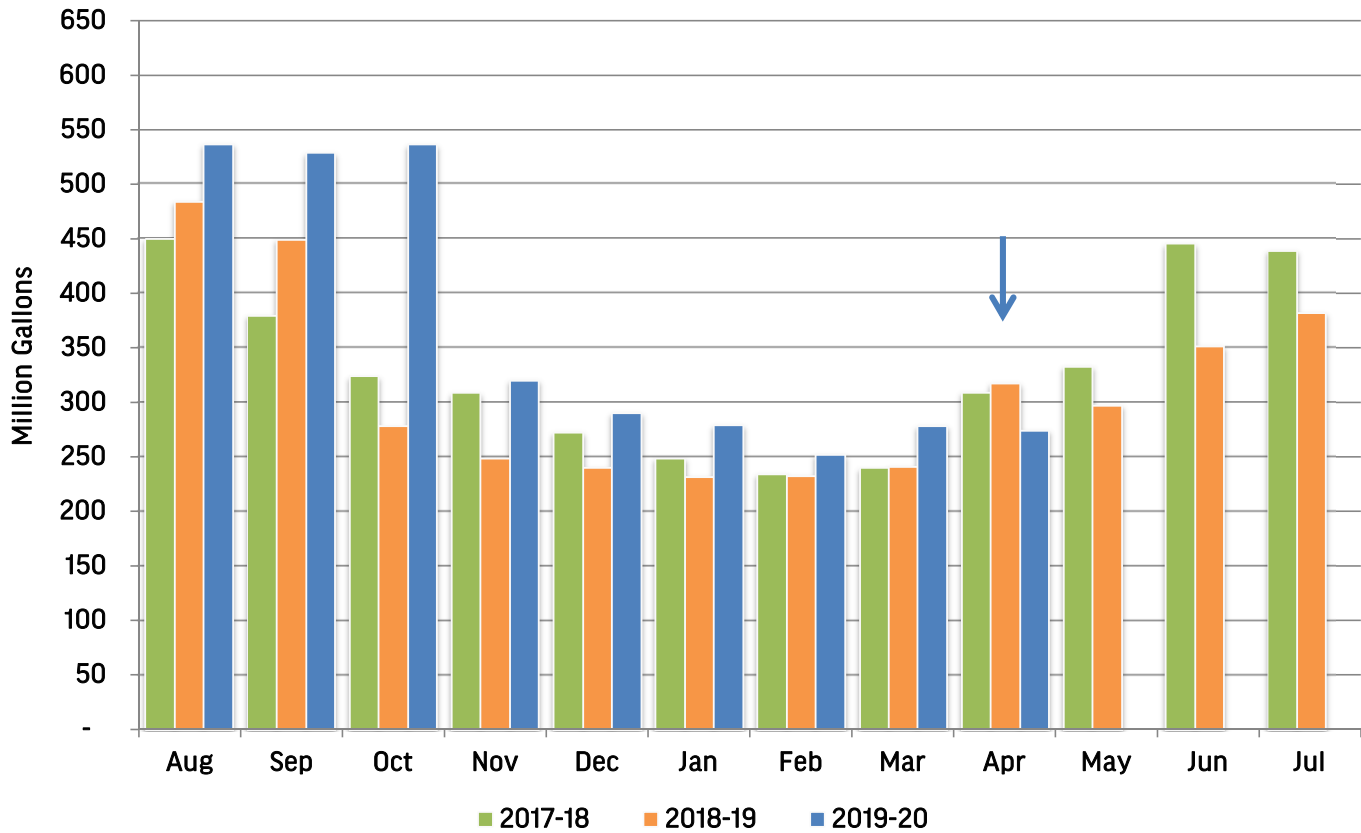


Water Sales Volumes (Million Gallons)
Fiscal Year 2020
Actual vs. Budget



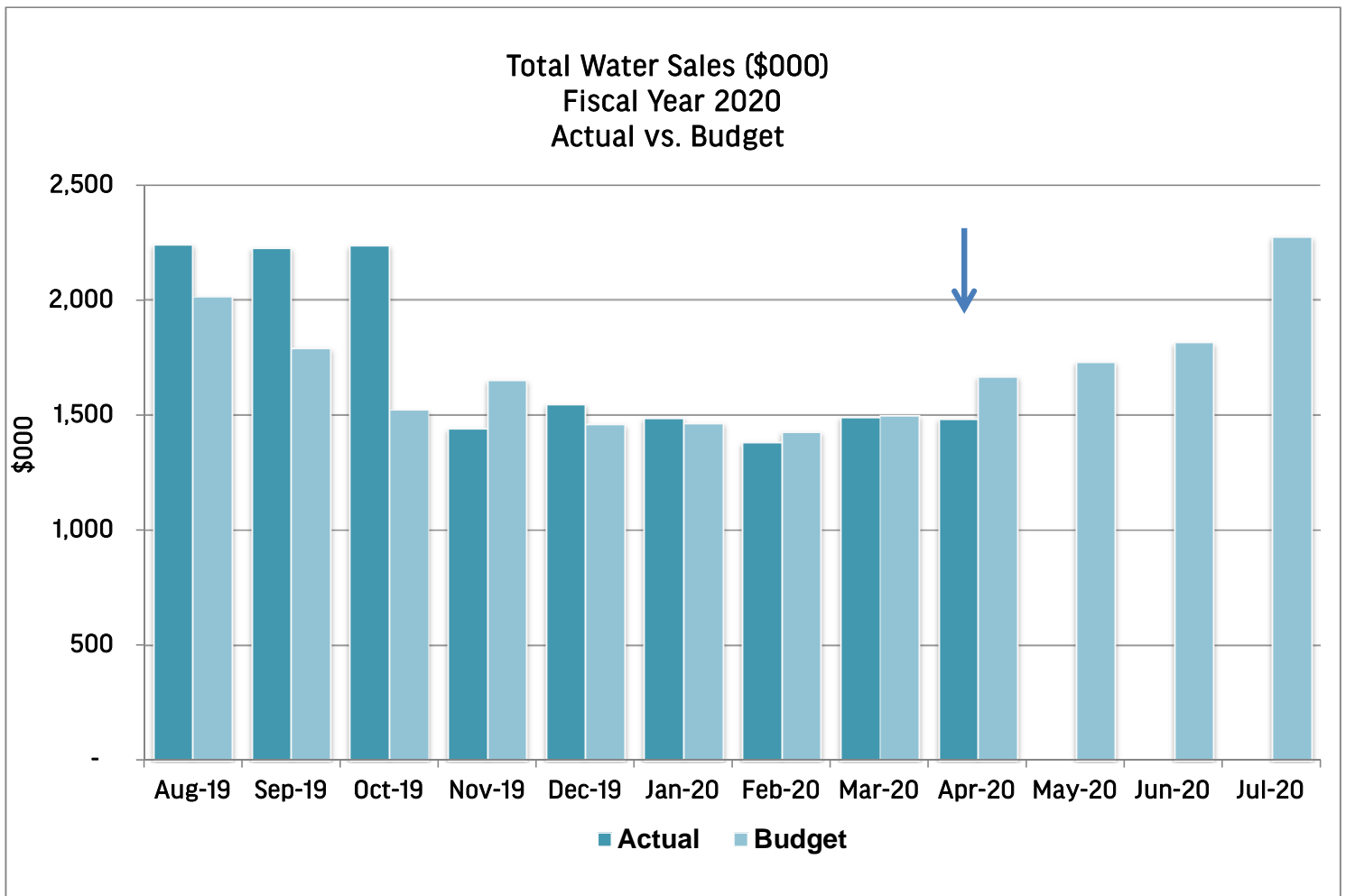
Month	Actual	Budget
Aug-19	536	501
Sep-19	528	446
Oct-19	536	340
Nov-19	320	314
Dec-19	290	274
Jan-20	279	261
Feb-20	252	255
Mar-20	278	268
Apr-20	274	320
May-20	-	334
Jun-20	-	369
Jul-20	-	460
TOTAL	3,293	4,143

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



Month	Water Sales Volumes (Million Gallons)		
	2017-18	2018-19	2019-20
Aug	449	483	536
Sep	379	449	528
Oct	324	278	536
Nov	308	249	320
Dec	272	240	290
Jan	249	232	279
Feb	234	233	252
Mar	240	240	278
Apr	309	317	274
May	333	297	-
Jun	445	351	-
Jul	439	382	-
TOTAL	3,981	3,751	3,293

Meter Count	FY 2018	% Change 2018-2019	FY 2019	% Change 2019-2020	FY 2020
Residential	28,088	4.24%	29,280	4.20%	30,509
Irrigation	7,440	14.65%	8,530	13.07%	9,645
Other	5,064	-45.06%	2,782	3.13%	2,869
TOTAL	40,592	0.00%	40,592	5.99%	43,023



Month	Total Water Sales (\$000)	
	Actual	Budget
Aug-19	\$ 2,242	\$ 2,015
Sep-19	\$ 2,227	\$ 1,793
Oct-19	\$ 2,240	\$ 1,524
Nov-19	\$ 1,442	\$ 1,652
Dec-19	\$ 1,549	\$ 1,462
Jan-20	\$ 1,489	\$ 1,468
Feb-20	\$ 1,384	\$ 1,429
Mar-20	\$ 1,493	\$ 1,501
Apr-20	\$ 1,484	\$ 1,669
May-20	\$ -	\$ 1,733
Jun-20	\$ -	\$ 1,817
Jul-20	\$ -	\$ 2,276
TOTAL	\$ 15,548	\$ 20,339

WATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Water Volume (Gallons)
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD	
										ACT	AVG
Residential											
Actuals	287,377,090	291,255,156	266,172,478	161,799,580	150,924,313	146,177,288	133,564,246	140,498,754	153,433,174	1,731,202,077	192,355,786
Budget	271,043,518	235,277,913	178,628,657	165,614,459	149,293,485	148,361,642	141,461,380	143,495,974	168,931,284	1,602,108,312	178,012,035
Prior Year	252,807,721	239,481,942	142,330,103	132,634,617	130,820,634	130,479,956	125,941,149	127,161,502	162,148,465	1,443,806,089	160,422,899
Multi-Unit 2-4											
Actuals	2,248,322	2,493,271	2,235,385	1,591,791	1,536,657	1,717,155	1,334,676	1,296,753	1,500,881	15,954,891	1,772,766
Budget	2,035,680	1,922,221	1,566,900	1,439,794	1,338,080	1,378,624	1,305,314	1,383,174	1,580,224	13,950,011	1,550,001
Prior Year	2,086,062	2,164,044	1,456,045	1,304,599	1,353,186	1,382,372	1,323,392	1,195,842	1,388,936	13,654,478	1,517,164
Multi-Unit 5+											
Actuals	23,827,921	23,170,884	24,569,252	20,736,432	22,418,922	22,010,703	20,468,274	21,534,406	23,156,347	201,893,141	22,432,571
Budget	23,941,232	25,605,167	23,351,274	22,568,662	21,641,595	22,132,308	22,388,326	21,200,835	22,151,972	204,981,369	22,775,708
Prior Year	21,962,343	24,334,085	24,039,783	22,305,861	20,415,797	20,097,672	22,127,757	18,982,047	20,838,117	195,103,462	21,678,162
Residential Irrigation											
Actuals	95,030,608	89,193,003	100,169,970	44,330,514	29,329,813	22,836,013	17,865,592	23,279,931	29,925,275	451,960,719	50,217,858
Budget	82,409,492	69,867,736	49,500,603	40,942,456	27,215,233	18,616,015	18,679,570	27,571,069	43,353,124	378,155,298	42,017,255
Prior Year	69,623,831	63,092,118	29,647,896	17,484,090	15,584,140	11,289,256	11,646,575	17,866,366	41,596,836	277,831,108	30,870,123
Commercial Irrigation											
Actuals	36,583,358	47,336,338	48,519,498	25,412,227	17,009,316	15,788,709	11,861,725	11,582,342	12,733,964	226,827,480	25,203,053
Budget	31,814,327	32,204,678	21,764,104	18,965,379	15,041,849	11,838,735	9,820,754	12,438,713	17,514,286	171,402,826	19,044,758
Prior Year	37,253,038	34,571,269	16,661,809	12,863,326	12,171,560	10,990,514	9,707,990	10,155,310	21,938,195	166,313,013	18,479,224
SGS											
Actuals	81,234,953	75,577,767	76,136,491	61,141,425	63,860,872	62,054,657	60,060,973	74,376,014	50,734,003	605,177,153	67,241,906
Budget	83,885,112	75,246,061	62,490,951	62,982,717	59,011,383	57,651,853	59,633,632	59,908,942	64,590,341	585,400,992	65,044,555
Prior Year	83,066,071	76,294,435	62,608,770	61,556,102	58,799,116	56,647,913	58,191,729	56,994,982	62,473,175	576,632,291	64,070,255
Other Sales											
Actuals	7,401,287	534,601	17,604,773	3,277,276	3,401,580	2,797,804	3,259,936	3,008,979	2,413,974	43,700,210	4,855,579
Budget	4,217,102	4,201,095	2,109,671	874,442	162,220	805,575	1,497,125	1,814,958	1,997,797	17,679,985	1,964,443
Prior Year	7,999,923	3,470,270	1,310,027	613,899	913,742	757,959	1,236,995	2,364,741	6,295,500	24,963,056	2,773,673
ReUse Water											
Actuals	2,418,200	(1,436,800)	377,829	1,644,807	1,508,606	5,535,253	3,498,337	2,553,091	52,494	16,151,817	1,794,646
Budget	2,045,600	1,968,271	600,938	634,700	442,163	235,575	84,025	219,800	109,350	6,340,421	704,491
Prior Year	8,610,000	5,660,700	-	-	100	-	2,505,400	5,778,400	228,100	22,782,700	2,531,411
Total Sales											
Actuals	536,121,739	528,124,220	535,785,676	319,934,052	289,990,079	278,917,582	251,913,759	278,130,270	273,950,112	3,292,867,488	365,874,165
Budget	501,392,063	446,293,142	340,013,096	314,022,608	274,146,007	261,020,328	254,870,127	268,033,466	320,228,378	2,980,019,215	331,113,246
Prior Year	483,408,988	449,068,863	278,054,433	248,762,494	240,058,275	231,645,642	232,680,987	240,499,190	316,907,324	2,721,086,197	302,342,911

NEW BRAUNFELS UTILITIES
Water Volume (Gallons) Variance
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD	
										ACT	AVG
Residential											
Actuals	287,377,090	291,255,156	266,172,478	161,799,580	150,924,313	146,177,288	133,564,246	140,498,754	153,433,174	1,731,202,077	192,355,786
Actual vs Budget	16,333,572	55,977,243	87,543,821	(3,814,878)	1,630,828	(2,184,355)	(7,897,135)	(2,997,220)	(15,498,110)	129,093,765	14,343,752
Actual vs Prior Year	34,569,369	51,773,214	123,842,375	29,164,963	20,103,679	15,697,332	7,623,097	13,337,252	(8,715,291)	287,395,988	31,932,888
Multi-Unit 2-4											
Actuals	2,248,322	2,493,271	2,235,385	1,591,791	1,536,657	1,717,155	1,334,676	1,296,753	1,500,881	15,954,891	1,772,766
Actual vs Budget	212,642	571,050	668,485	151,997	198,577	338,531	29,362	(86,421)	(79,343)	2,004,880	222,764
Actual vs Prior Year	162,260	329,227	779,340	287,192	183,471	334,783	11,284	100,911	111,945	2,300,413	255,601
Multi-Unit 5+											
Actuals	23,827,921	23,170,884	24,569,252	20,736,432	22,418,922	22,010,703	20,468,274	21,534,406	23,156,347	201,893,141	22,432,571
Actual vs Budget	(113,311)	(2,434,283)	1,217,978	(1,832,230)	777,327	(121,605)	(1,920,052)	333,571	1,004,375	(3,088,228)	(343,136)
Actual vs Prior Year	1,865,578	(1,163,201)	529,469	(1,569,429)	2,003,125	1,913,031	(1,659,483)	2,552,359	2,318,230	6,789,679	754,409
Residential Irrigation											
Actuals	95,030,608	89,193,003	100,169,970	44,330,514	29,329,813	22,836,013	17,865,592	23,279,931	29,925,275	451,960,719	50,217,858
Actual vs Budget	12,621,116	19,325,267	50,669,367	3,388,058	2,114,580	4,219,998	(813,978)	(4,291,138)	(13,427,849)	73,805,421	8,200,602
Actual vs Prior Year	25,406,777	26,100,885	70,522,074	26,846,424	13,745,673	11,546,757	6,219,017	5,413,565	(11,671,561)	174,129,611	19,347,735
Commercial Irrigation											
Actuals	36,583,358	47,336,338	48,519,498	25,412,227	17,009,316	15,788,709	11,861,725	11,582,342	12,733,964	226,827,480	25,203,053
Actual vs Budget	4,769,031	15,131,660	26,755,395	6,446,848	1,967,467	3,949,974	2,040,971	(856,371)	(4,780,322)	55,424,654	6,158,295
Actual vs Prior Year	(669,679)	12,765,069	31,857,689	12,548,901	4,837,756	4,798,195	2,153,735	1,427,032	(9,204,231)	60,514,467	6,723,830
SGS											
Actuals	81,234,953	75,577,767	76,136,491	61,141,425	63,860,872	62,054,657	60,060,973	74,376,014	50,734,003	605,177,153	67,241,906
Actual vs Budget	(2,650,159)	331,706	13,645,540	(1,841,292)	4,849,488	4,402,803	427,340	14,467,072	(13,856,338)	19,776,161	2,197,351
Actual vs Prior Year	(1,831,118)	(716,668)	13,527,721	(414,677)	5,061,755	5,406,744	1,869,244	17,381,032	(11,739,172)	28,544,862	3,171,651
Other Sales											
Actuals	7,401,287	534,601	17,604,773	3,277,276	3,401,580	2,797,804	3,259,936	3,008,979	2,413,974	43,700,210	4,855,579
Actual vs Budget	3,184,185	(3,666,494)	15,495,102	2,402,834	3,239,360	1,992,229	1,762,811	1,194,021	416,177	26,020,225	2,891,136
Actual vs Prior Year	(598,636)	(2,935,669)	16,294,746	2,663,377	2,487,838	2,039,845	2,022,941	644,238	(3,881,526)	18,737,154	2,081,906
ReUse Water											
Actuals	2,418,200	(1,436,800)	377,829	1,644,807	1,508,606	5,535,253	3,498,337	2,553,091	52,494	16,151,817	1,794,646
Actual vs Budget	372,600	(3,405,071)	(223,109)	1,010,107	1,066,444	5,299,678	3,414,312	2,333,291	(56,856)	9,811,396	1,090,155
Actual vs Prior Year	(6,191,800)	(7,097,500)	377,829	1,644,807	1,508,506	5,535,253	992,937	(3,225,309)	(175,606)	(6,630,883)	(736,765)
Total Sales											
Actuals	536,121,739	528,124,220	535,785,676	319,934,052	289,990,079	278,917,582	251,913,759	278,130,270	273,950,112	3,292,867,488	365,874,165
Actual vs Budget	34,729,676	81,831,079	195,772,580	5,911,444	15,844,071	17,897,253	(2,956,368)	10,096,804	(46,278,266)	312,848,273	34,760,919
Actual vs Prior Year	52,712,751	79,055,357	257,731,243	71,171,558	49,931,803	47,271,940	19,232,772	37,631,080	(42,957,212)	571,781,290	63,531,254

NEW BRAUNFELS UTILITIES
Water Revenue
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD	
										ACT	AVG
Residential											
Actuals	\$ 1,232,731	\$ 1,236,297	\$ 1,127,058	\$ 715,908	\$ 765,151	\$ 739,244	\$ 699,638	\$ 727,003	\$ 768,685	\$ 8,011,714	\$ 890,190
Budget	\$ 1,136,346	\$ 984,705	\$ 861,420	\$ 1,002,049	\$ 840,245	\$ 870,826	\$ 841,257	\$ 854,917	\$ 938,415	\$ 8,330,180	\$ 925,576
Prior Year	\$ 999,899	\$ 945,566	\$ 647,522	\$ 620,557	\$ 603,506	\$ 627,760	\$ 613,901	\$ 620,983	\$ 731,592	\$ 6,411,288	\$ 712,365
Multi-Unit 2-4											
Actuals	\$ 9,144	\$ 9,788	\$ 9,052	\$ 8,053	\$ 9,070	\$ 9,585	\$ 8,601	\$ 8,573	\$ 9,095	\$ 80,960	\$ 8,996
Budget	\$ 8,967	\$ 8,211	\$ 8,077	\$ 7,892	\$ 8,140	\$ 8,320	\$ 8,090	\$ 9,084	\$ 9,849	\$ 76,630	\$ 8,514
Prior Year	\$ 8,669	\$ 8,721	\$ 7,081	\$ 6,746	\$ 6,747	\$ 6,838	\$ 6,723	\$ 6,438	\$ 6,844	\$ 64,806	\$ 7,201
Multi-Unit 5+											
Actuals	\$ 95,006	\$ 93,662	\$ 98,124	\$ 100,674	\$ 130,977	\$ 129,698	\$ 126,246	\$ 129,990	\$ 133,581	\$ 1,037,959	\$ 115,329
Budget	\$ 102,438	\$ 104,950	\$ 95,331	\$ 95,480	\$ 109,556	\$ 114,414	\$ 112,310	\$ 112,580	\$ 120,934	\$ 967,994	\$ 107,555
Prior Year	\$ 88,651	\$ 94,094	\$ 92,587	\$ 89,027	\$ 84,714	\$ 85,161	\$ 90,986	\$ 82,622	\$ 87,195	\$ 795,036	\$ 88,337
Residential Irrigation											
Actuals	\$ 448,013	\$ 416,383	\$ 466,149	\$ 240,435	\$ 225,398	\$ 193,172	\$ 171,993	\$ 197,224	\$ 229,357	\$ 2,588,125	\$ 287,569
Budget	\$ 350,396	\$ 293,497	\$ 243,689	\$ 254,408	\$ 204,786	\$ 163,664	\$ 161,467	\$ 203,398	\$ 242,898	\$ 2,118,203	\$ 235,356
Prior Year	\$ 279,276	\$ 250,032	\$ 137,693	\$ 102,493	\$ 96,119	\$ 81,353	\$ 82,519	\$ 108,036	\$ 206,866	\$ 1,344,389	\$ 149,377
Commercial Irrigation											
Actuals	\$ 190,307	\$ 246,640	\$ 251,800	\$ 138,993	\$ 112,639	\$ 111,689	\$ 83,539	\$ 80,909	\$ 88,278	\$ 1,304,794	\$ 144,977
Budget	\$ 153,534	\$ 154,386	\$ 99,835	\$ 88,571	\$ 83,216	\$ 76,265	\$ 62,277	\$ 78,755	\$ 102,801	\$ 899,640	\$ 99,960
Prior Year	\$ 169,605	\$ 156,350	\$ 72,104	\$ 56,673	\$ 55,194	\$ 58,033	\$ 50,461	\$ 52,703	\$ 115,384	\$ 786,507	\$ 87,390
SGS											
Actuals	\$ 236,642	\$ 222,472	\$ 223,634	\$ 207,540	\$ 269,718	\$ 270,609	\$ 256,513	\$ 313,781	\$ 225,035	\$ 2,225,943	\$ 247,327
Budget	\$ 244,429	\$ 222,415	\$ 193,011	\$ 194,238	\$ 213,148	\$ 219,555	\$ 225,853	\$ 228,256	\$ 240,117	\$ 1,981,021	\$ 220,113
Prior Year	\$ 228,342	\$ 212,749	\$ 182,429	\$ 179,093	\$ 174,083	\$ 176,829	\$ 180,649	\$ 177,995	\$ 190,341	\$ 1,702,509	\$ 189,168
Other Sales											
Actuals	\$ 27,764	\$ 2,561	\$ 63,295	\$ 28,817	\$ 35,073	\$ 30,457	\$ 34,436	\$ 33,095	\$ 29,847	\$ 285,346	\$ 31,705
Budget	\$ 17,020	\$ 22,892	\$ 21,721	\$ 9,269	\$ 2,590	\$ 14,677	\$ 18,148	\$ 13,576	\$ 13,784	\$ 133,677	\$ 14,853
Prior Year	\$ 30,460	\$ 17,839	\$ 12,725	\$ 10,622	\$ 11,957	\$ 11,319	\$ 12,291	\$ 14,499	\$ 24,751	\$ 146,463	\$ 16,274
ReUse Water											
Actuals	\$ 1,950	\$ (810)	\$ 489	\$ 1,396	\$ 1,299	\$ 4,182	\$ 2,723	\$ 2,047	\$ 256	\$ 13,532	\$ 1,504
Budget	\$ 1,608	\$ 1,574	\$ 510	\$ 538	\$ 432	\$ 230	\$ 82	\$ 202	\$ 425	\$ 5,600	\$ 622
Prior Year	\$ 6,383	\$ 4,272	\$ 34	\$ 34	\$ 34	\$ 34	\$ 2,012	\$ 4,356	\$ 382	\$ 17,542	\$ 1,949
Total Sales											
Actuals	\$ 2,241,557	\$ 2,226,992	\$ 2,239,601	\$ 1,441,816	\$ 1,549,326	\$ 1,488,637	\$ 1,383,690	\$ 1,492,620	\$ 1,484,135	\$ 15,548,374	\$ 1,727,597
Budget	\$ 2,014,738	\$ 1,792,630	\$ 1,523,594	\$ 1,652,445	\$ 1,462,111	\$ 1,467,951	\$ 1,429,485	\$ 1,500,769	\$ 1,669,223	\$ 14,512,946	\$ 1,612,550
Prior Year	\$ 1,811,286	\$ 1,689,623	\$ 1,152,175	\$ 1,065,245	\$ 1,032,354	\$ 1,047,328	\$ 1,039,543	\$ 1,067,631	\$ 1,363,356	\$ 11,268,541	\$ 1,252,060

NEW BRAUNFELS UTILITIES
Water Revenue Variance
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD	
										ACT	AVG
Residential											
Actuals	\$ 1,232,731	\$ 1,236,297	\$ 1,127,058	\$ 715,908	\$ 765,151	\$ 739,244	\$ 699,638	\$ 727,003	\$ 768,685	\$ 8,011,714	\$ 890,190
Actual vs Budget	\$ 96,384	\$ 251,591	\$ 265,638	\$ (286,141)	\$ (75,094)	\$ (131,582)	\$ (141,619)	\$ (127,914)	\$ (169,730)	\$ (318,466)	\$ (35,385)
Actual vs Prior Year	\$ 232,832	\$ 290,730	\$ 479,536	\$ 95,350	\$ 161,645	\$ 111,484	\$ 85,737	\$ 106,019	\$ 37,093	\$ 1,600,427	\$ 177,825
Multi-Unit 2-4											
Actuals	\$ 9,144	\$ 9,788	\$ 9,052	\$ 8,053	\$ 9,070	\$ 9,585	\$ 8,601	\$ 8,573	\$ 9,095	\$ 80,960	\$ 8,996
Actual vs Budget	\$ 176	\$ 1,577	\$ 974	\$ 161	\$ 930	\$ 1,265	\$ 511	\$ (511)	\$ (754)	\$ 4,331	\$ 481
Actual vs Prior Year	\$ 474	\$ 1,067	\$ 1,971	\$ 1,307	\$ 2,323	\$ 2,747	\$ 1,878	\$ 2,135	\$ 2,251	\$ 16,154	\$ 1,795
Multi-Unit 5+											
Actuals	\$ 95,006	\$ 93,662	\$ 98,124	\$ 100,674	\$ 130,977	\$ 129,698	\$ 126,246	\$ 129,990	\$ 133,581	\$ 1,037,959	\$ 115,329
Actual vs Budget	\$ (7,431)	\$ (11,287)	\$ 2,792	\$ 5,194	\$ 21,421	\$ 15,284	\$ 13,936	\$ 17,410	\$ 12,647	\$ 69,965	\$ 7,774
Actual vs Prior Year	\$ 6,355	\$ (432)	\$ 5,537	\$ 11,647	\$ 46,263	\$ 44,537	\$ 35,260	\$ 47,369	\$ 46,387	\$ 242,923	\$ 26,991
Residential Irrigation											
Actuals	\$ 448,013	\$ 416,383	\$ 466,149	\$ 240,435	\$ 225,398	\$ 193,172	\$ 171,993	\$ 197,224	\$ 229,357	\$ 2,588,125	\$ 287,569
Actual vs Budget	\$ 97,617	\$ 122,886	\$ 222,461	\$ (13,973)	\$ 20,613	\$ 29,508	\$ 10,526	\$ (6,175)	\$ (13,542)	\$ 469,922	\$ 52,214
Actual vs Prior Year	\$ 168,737	\$ 166,351	\$ 328,456	\$ 137,942	\$ 129,279	\$ 111,819	\$ 89,474	\$ 89,187	\$ 22,490	\$ 1,243,736	\$ 138,193
Commercial Irrigation											
Actuals	\$ 190,307	\$ 246,640	\$ 251,800	\$ 138,993	\$ 112,639	\$ 111,689	\$ 83,539	\$ 80,909	\$ 88,278	\$ 1,304,794	\$ 144,977
Actual vs Budget	\$ 36,772	\$ 92,254	\$ 151,965	\$ 50,422	\$ 29,423	\$ 35,425	\$ 21,262	\$ 2,154	\$ (14,524)	\$ 405,154	\$ 45,017
Actual vs Prior Year	\$ 20,702	\$ 90,290	\$ 179,696	\$ 82,320	\$ 57,445	\$ 53,656	\$ 33,078	\$ 28,206	\$ (27,107)	\$ 518,287	\$ 57,587
SGS											
Actuals	\$ 236,642	\$ 222,472	\$ 223,634	\$ 207,540	\$ 269,718	\$ 270,609	\$ 256,513	\$ 313,781	\$ 225,035	\$ 2,225,943	\$ 247,327
Actual vs Budget	\$ (7,786)	\$ 57	\$ 30,623	\$ 13,302	\$ 56,571	\$ 51,054	\$ 30,659	\$ 85,525	\$ (15,082)	\$ 244,922	\$ 27,214
Actual vs Prior Year	\$ 8,301	\$ 9,723	\$ 41,204	\$ 28,447	\$ 95,636	\$ 93,780	\$ 75,863	\$ 135,786	\$ 34,694	\$ 523,434	\$ 58,159
Other Sales											
Actuals	\$ 27,764	\$ 2,561	\$ 63,295	\$ 28,817	\$ 35,073	\$ 30,457	\$ 34,436	\$ 33,095	\$ 29,847	\$ 285,346	\$ 31,705
Actual vs Budget	\$ 10,744	\$ (20,331)	\$ 41,574	\$ 19,548	\$ 32,484	\$ 15,780	\$ 16,288	\$ 19,519	\$ 16,064	\$ 151,669	\$ 16,852
Actual vs Prior Year	\$ (2,696)	\$ (15,278)	\$ 50,571	\$ 18,195	\$ 23,117	\$ 19,138	\$ 22,145	\$ 18,596	\$ 5,096	\$ 138,883	\$ 15,431
ReUse Water											
Actuals	\$ 1,950	\$ (810)	\$ 489	\$ 1,396	\$ 1,299	\$ 4,182	\$ 2,723	\$ 2,047	\$ 256	\$ 13,532	\$ 1,504
Actual vs Budget	\$ 342	\$ (2,385)	\$ (20)	\$ 858	\$ 867	\$ 3,952	\$ 2,641	\$ 1,844	\$ (168)	\$ 7,932	\$ 881
Actual vs Prior Year	\$ (4,433)	\$ (5,082)	\$ 455	\$ 1,362	\$ 1,264	\$ 4,148	\$ 711	\$ (2,309)	\$ (126)	\$ (4,010)	\$ (446)
Total Sales											
Actuals	\$ 2,241,557	\$ 2,226,992	\$ 2,239,601	\$ 1,441,816	\$ 1,549,326	\$ 1,488,637	\$ 1,383,690	\$ 1,492,620	\$ 1,484,135	\$ 15,548,374	\$ 1,727,597
Actual vs Budget	\$ 226,819	\$ 434,362	\$ 716,006	\$ (210,629)	\$ 87,215	\$ 20,686	\$ (45,795)	\$ (8,148)	\$ (185,088)	\$ 1,035,428	\$ 115,048
Actual vs Prior Year	\$ 430,271	\$ 537,369	\$ 1,087,425	\$ 376,572	\$ 516,972	\$ 441,309	\$ 344,147	\$ 424,989	\$ 120,778	\$ 4,279,833	\$ 475,537

NEW BRAUNFELS UTILITIES
Water Meters
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD AVG
Residential										
Actuals	29,555	28,674	29,705	29,822	29,952	30,062	30,170	30,372	30,509	29,869
Budget	29,551	29,649	29,747	29,846	29,945	30,044	30,144	30,244	30,344	29,946
Prior Year	28,583	28,659	28,812	28,836	28,921	29,017	29,099	29,197	29,280	28,934
Multi-Unit 2-4										
Actuals	198	199	198	202	200	201	202	203	203	201
Budget	196	196	196	196	196	196	196	196	196	196
Prior Year	198	199	198	198	198	197	197	197	197	198
Multi-Unit 5+										
Actuals	241	241	241	243	243	243	245	248	249	244
Budget	242	243	244	245	246	247	248	249	250	246
Prior Year	237	237	237	237	238	238	238	238	238	238
Residential Irrigation										
Actuals	8,077	7,614	8,205	8,297	8,411	8,497	8,576	8,751	8,861	8,365
Budget	8,113	8,235	8,358	8,483	8,610	8,739	8,870	9,003	9,138	8,617
Prior Year	7,169	7,265	7,386	7,432	7,497	7,584	7,662	7,718	7,786	7,500
Commercial Irrigation										
Actuals	747	735	757	765	772	775	775	776	784	765
Budget	758	762	766	770	774	778	782	786	790	774
Prior Year	733	733	735	731	738	741	741	742	744	738
SGS										
Actuals	2,284	2,281	2,294	2,301	2,314	2,317	2,314	2,320	2,319	2,305
Budget	2,293	2,299	2,305	2,311	2,317	2,323	2,329	2,335	2,341	2,317
Prior Year	2,253	2,253	2,260	2,257	2,264	2,270	2,272	2,272	2,271	2,264
Other Sales										
Actuals	76	12	91	88	94	88	91	95	97	81
Budget	80	80	80	80	80	80	80	80	80	80
Prior Year	86	81	94	83	89	87	88	78	75	85
ReUse Water										
Actuals	1	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1	1
Total Meters										
Actuals	41,179	39,757	41,492	41,719	41,987	42,184	42,374	42,766	43,023	41,831
Budget	41,234	41,465	41,697	41,932	42,169	42,408	42,650	42,894	43,140	42,177
Prior Year	39,260	39,428	39,723	39,775	39,946	40,135	40,298	40,443	40,592	39,956

New Meters	105	(1,422)	1,735	227	268	197	190	392	257	217
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New Meter Growth	0.3%	-3.5%	4.4%	0.5%	0.6%	0.5%	0.5%	0.9%	0.6%	0.5%
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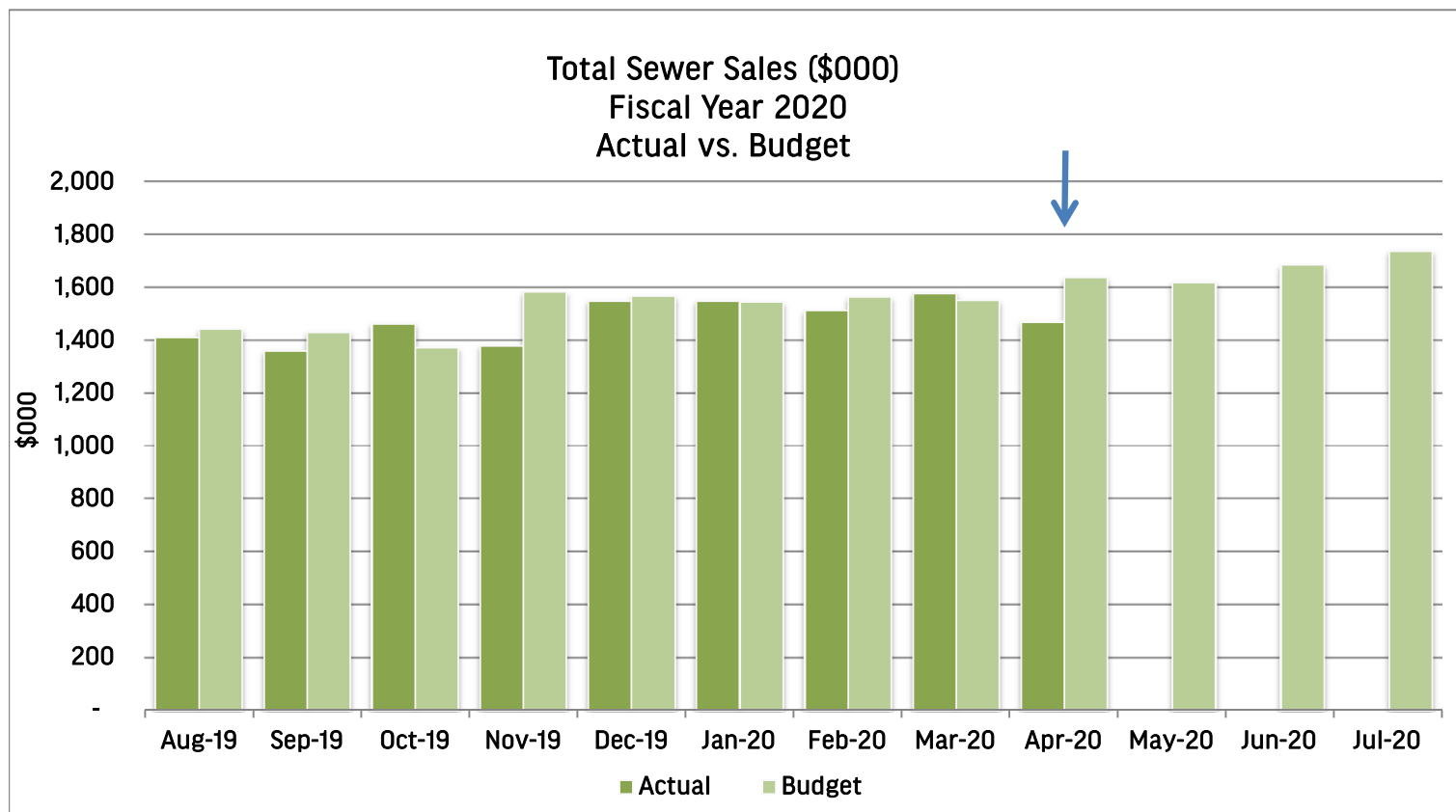
NEW BRAUNFELS UTILITIES
Water Volume per Meter (Gallons)
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD	
										ACT	AVG
Residential											
Actuals	9,723	10,157	8,961	5,426	5,039	4,863	4,427	4,626	5,029	58,250	6,472
Budget	9,172	7,935	6,005	5,549	4,986	4,938	4,693	4,745	5,567	53,590	5,954
Prior Year	8,845	8,356	4,940	4,600	4,523	4,497	4,328	4,355	5,538	49,982	5,554
Multi-Unit 2-4											
Actuals	11,355	12,529	11,290	7,880	7,683	8,543	6,607	6,388	7,394	79,669	8,852
Budget	10,386	9,807	7,994	7,346	6,827	7,034	6,660	7,057	8,062	71,174	7,908
Prior Year	10,536	10,875	7,354	6,589	6,834	7,017	6,718	6,070	7,050	69,043	7,671
Multi-Unit 5+											
Actuals	98,871	96,145	101,947	85,335	92,259	90,579	83,544	86,832	92,997	828,510	92,057
Budget	98,931	105,371	95,702	92,117	87,974	89,604	90,276	85,144	88,608	833,726	92,636
Prior Year	92,668	102,675	101,434	94,118	85,781	84,444	92,974	79,757	87,555	821,405	91,267
Residential Irrigation											
Actuals	11,766	11,714	12,208	5,343	3,487	2,688	2,083	2,660	3,377	55,327	6,147
Budget	10,158	8,484	5,923	4,826	3,161	2,130	2,106	3,062	4,744	44,595	4,955
Prior Year	9,712	8,684	4,014	2,353	2,079	1,489	1,520	2,315	5,343	37,508	4,168
Commercial Irrigation											
Actuals	48,974	64,403	64,094	33,219	22,033	20,373	15,305	14,926	16,242	299,569	33,285
Budget	41,971	42,263	28,413	24,630	19,434	15,217	12,559	15,825	22,170	222,482	24,720
Prior Year	50,823	47,164	22,669	17,597	16,493	14,832	13,101	13,686	29,487	225,852	25,095
SGS											
Actuals	35,567	33,134	33,189	26,572	27,598	26,782	25,955	32,059	21,878	262,733	29,193
Budget	36,583	32,730	27,111	27,253	25,469	24,818	25,605	25,657	27,591	252,817	28,091
Prior Year	36,869	33,863	27,703	27,273	25,971	24,955	25,613	25,086	27,509	254,843	28,316
Other Sales											
Actuals	97,385	44,550	193,459	37,242	36,187	31,793	35,823	31,673	24,886	533,000	59,222
Budget	52,714	52,514	26,371	10,931	2,028	10,070	18,714	22,687	24,972	221,000	24,556
Prior Year	93,022	42,843	13,936	7,396	10,267	8,712	14,057	30,317	83,940	304,491	33,832
ReUse Water											
Actuals	2,418,200	(1,436,800)	377,829	1,644,807	1,508,606	5,535,253	3,498,337	2,553,091	52,494	16,151,817	1,794,646
Budget	2,045,600	1,968,271	600,938	634,700	442,163	235,575	84,025	219,800	109,350	6,340,421	704,491
Prior Year	8,610,000	5,660,700	-	-	100	-	2,505,400	5,778,400	228,100	22,782,700	2,531,411

NEW BRAUNFELS UTILITIES
Water Rates (per Gallon)
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD AVG
Residential										
Actuals	\$ 0.0043	\$ 0.0042	\$ 0.0042	\$ 0.0044	\$ 0.0051	\$ 0.0051	\$ 0.0052	\$ 0.0052	\$ 0.0050	\$ 0.0047
Budget	\$ 0.0042	\$ 0.0042	\$ 0.0048	\$ 0.0061	\$ 0.0056	\$ 0.0059	\$ 0.0059	\$ 0.0060	\$ 0.0056	\$ 0.0054
Prior Year	\$ 0.0040	\$ 0.0039	\$ 0.0045	\$ 0.0047	\$ 0.0046	\$ 0.0048	\$ 0.0049	\$ 0.0049	\$ 0.0045	\$ 0.0045
Multi-Unit 2-4										
Actuals	\$ 0.0041	\$ 0.0039	\$ 0.0040	\$ 0.0051	\$ 0.0059	\$ 0.0056	\$ 0.0064	\$ 0.0066	\$ 0.0061	\$ 0.0053
Budget	\$ 0.0044	\$ 0.0043	\$ 0.0052	\$ 0.0055	\$ 0.0061	\$ 0.0060	\$ 0.0062	\$ 0.0066	\$ 0.0062	\$ 0.0056
Prior Year	\$ 0.0042	\$ 0.0040	\$ 0.0049	\$ 0.0052	\$ 0.0050	\$ 0.0049	\$ 0.0051	\$ 0.0054	\$ 0.0049	\$ 0.0048
Multi-Unit 5+										
Actuals	\$ 0.0040	\$ 0.0040	\$ 0.0040	\$ 0.0049	\$ 0.0058	\$ 0.0059	\$ 0.0062	\$ 0.0060	\$ 0.0058	\$ 0.0052
Budget	\$ 0.0043	\$ 0.0041	\$ 0.0041	\$ 0.0042	\$ 0.0051	\$ 0.0052	\$ 0.0050	\$ 0.0053	\$ 0.0055	\$ 0.0047
Prior Year	\$ 0.0040	\$ 0.0039	\$ 0.0039	\$ 0.0040	\$ 0.0041	\$ 0.0042	\$ 0.0041	\$ 0.0044	\$ 0.0042	\$ 0.0041
Residential Irrigation										
Actuals	\$ 0.0047	\$ 0.0047	\$ 0.0047	\$ 0.0054	\$ 0.0077	\$ 0.0085	\$ 0.0096	\$ 0.0085	\$ 0.0077	\$ 0.0068
Budget	\$ 0.0043	\$ 0.0042	\$ 0.0049	\$ 0.0062	\$ 0.0075	\$ 0.0088	\$ 0.0086	\$ 0.0074	\$ 0.0056	\$ 0.0064
Prior Year	\$ 0.0040	\$ 0.0040	\$ 0.0046	\$ 0.0059	\$ 0.0062	\$ 0.0072	\$ 0.0071	\$ 0.0060	\$ 0.0050	\$ 0.0056
Commercial Irrigation										
Actuals	\$ 0.0052	\$ 0.0052	\$ 0.0052	\$ 0.0055	\$ 0.0066	\$ 0.0071	\$ 0.0070	\$ 0.0070	\$ 0.0069	\$ 0.0062
Budget	\$ 0.0048	\$ 0.0048	\$ 0.0046	\$ 0.0047	\$ 0.0055	\$ 0.0064	\$ 0.0063	\$ 0.0063	\$ 0.0059	\$ 0.0055
Prior Year	\$ 0.0046	\$ 0.0045	\$ 0.0043	\$ 0.0044	\$ 0.0045	\$ 0.0053	\$ 0.0052	\$ 0.0052	\$ 0.0053	\$ 0.0048
SGS										
Actuals	\$ 0.0029	\$ 0.0029	\$ 0.0029	\$ 0.0034	\$ 0.0042	\$ 0.0044	\$ 0.0043	\$ 0.0042	\$ 0.0044	\$ 0.0037
Budget	\$ 0.0029	\$ 0.0030	\$ 0.0031	\$ 0.0031	\$ 0.0036	\$ 0.0038	\$ 0.0038	\$ 0.0038	\$ 0.0037	\$ 0.0034
Prior Year	\$ 0.0027	\$ 0.0028	\$ 0.0029	\$ 0.0029	\$ 0.0030	\$ 0.0031	\$ 0.0031	\$ 0.0031	\$ 0.0030	\$ 0.0030
Other Sales										
Actuals	\$ 0.0038	\$ 0.0048	\$ 0.0036	\$ 0.0088	\$ 0.0103	\$ 0.0109	\$ 0.0106	\$ 0.0110	\$ 0.0124	\$ 0.0085
Budget	\$ 0.0040	\$ 0.0054	\$ 0.0103	\$ 0.0106	\$ 0.0160	\$ 0.0182	\$ 0.0121	\$ 0.0075	\$ 0.0069	\$ 0.0101
Prior Year	\$ 0.0038	\$ 0.0051	\$ 0.0097	\$ 0.0173	\$ 0.0131	\$ 0.0149	\$ 0.0099	\$ 0.0061	\$ 0.0039	\$ 0.0093
ReUse Water										
Actuals	\$ 0.0008	\$ 0.0006	\$ 0.0013	\$ 0.0008	\$ 0.0009	\$ 0.0008	\$ 0.0008	\$ 0.0008	\$ 0.0049	\$ 0.0013
Budget	\$ 0.0008	\$ 0.0008	\$ 0.0008	\$ 0.0008	\$ 0.0010	\$ 0.0010	\$ 0.0010	\$ 0.0009	\$ 0.0039	\$ 0.0012
Prior Year	\$ 0.0007	\$ 0.0008	\$ -	\$ -	\$ 0.3439	\$ -	\$ 0.0008	\$ 0.0008	\$ 0.0017	\$ 0.0387

WASTEWATER STATISTICS



Month	Total Sewer Sales (\$000)	
	Actual	Budget
Aug-19	\$ 1,412	\$ 1,442
Sep-19	\$ 1,362	\$ 1,433
Oct-19	\$ 1,464	\$ 1,373
Nov-19	\$ 1,381	\$ 1,583
Dec-19	\$ 1,550	\$ 1,568
Jan-20	\$ 1,549	\$ 1,546
Feb-20	\$ 1,513	\$ 1,565
Mar-20	\$ 1,578	\$ 1,552
Apr-20	\$ 1,471	\$ 1,638
May-20	\$ -	\$ 1,621
Jun-20	\$ -	\$ 1,686
Jul-20	\$ -	\$ 1,739
TOTAL	\$ 13,279	\$ 18,746

Customer Count	FY 2018	% Change 2018-2019	FY 2019	% Change 2019-2020	FY 2020
Residential	25,011	4.41%	26,115	4.41%	27,267
Other	2,397	1.59%	2,435	2.14%	2,487
TOTAL	27,408	4.17%	28,550	4.22%	29,754

WASTEWATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Sewer Revenue
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD	
										ACT	AVG
Residential											
Actuals	\$ 779,479	\$ 747,562	\$ 824,138	\$ 797,987	\$ 892,353	\$ 896,216	\$ 890,728	\$ 893,434	\$ 899,809	\$ 7,621,706	\$ 846,856
Budget	\$ 795,770	\$ 807,474	\$ 791,035	\$ 920,879	\$ 922,000	\$ 912,723	\$ 917,644	\$ 907,635	\$ 950,275	\$ 7,925,435	\$ 880,604
Prior Year	\$ 767,014	\$ 781,002	\$ 752,163	\$ 761,955	\$ 751,458	\$ 750,947	\$ 748,736	\$ 735,441	\$ 758,052	\$ 6,806,767	\$ 756,307
Multi-Unit 2-4											
Actuals	\$ 7,539	\$ 7,534	\$ 7,770	\$ 7,897	\$ 8,802	\$ 8,846	\$ 8,660	\$ 8,612	\$ 8,658	\$ 74,317	\$ 8,257
Budget	\$ 7,798	\$ 7,826	\$ 7,753	\$ 8,952	\$ 8,972	\$ 8,834	\$ 8,879	\$ 8,641	\$ 9,075	\$ 76,729	\$ 8,525
Prior Year	\$ 7,777	\$ 7,785	\$ 7,606	\$ 7,583	\$ 7,518	\$ 7,515	\$ 7,512	\$ 7,400	\$ 7,470	\$ 68,164	\$ 7,574
Multi-Unit 5+											
Actuals	\$ 184,353	\$ 181,385	\$ 189,109	\$ 180,591	\$ 210,363	\$ 208,625	\$ 191,515	\$ 206,672	\$ 207,784	\$ 1,760,397	\$ 195,600
Budget	\$ 183,278	\$ 191,986	\$ 182,180	\$ 206,810	\$ 207,284	\$ 206,416	\$ 210,272	\$ 202,615	\$ 214,838	\$ 1,805,677	\$ 200,631
Prior Year	\$ 173,720	\$ 184,485	\$ 166,764	\$ 171,046	\$ 168,525	\$ 165,631	\$ 175,105	\$ 161,432	\$ 170,391	\$ 1,537,100	\$ 170,789
SGS											
Actuals	\$ 438,893	\$ 423,789	\$ 441,872	\$ 393,047	\$ 437,433	\$ 434,132	\$ 420,540	\$ 468,589	\$ 353,486	\$ 3,811,780	\$ 423,531
Budget	\$ 454,471	\$ 424,150	\$ 390,533	\$ 445,230	\$ 428,407	\$ 417,035	\$ 426,279	\$ 431,637	\$ 462,677	\$ 3,880,421	\$ 431,158
Prior Year	\$ 431,385	\$ 416,115	\$ 363,569	\$ 366,981	\$ 352,227	\$ 357,619	\$ 352,968	\$ 345,182	\$ 378,100	\$ 3,364,145	\$ 373,794
Schertz Sewer											
Actuals	\$ 1,372	\$ 1,328	\$ 1,295	\$ 1,248	\$ 1,093	\$ 1,171	\$ 1,416	\$ 1,086	\$ 1,275	\$ 11,284	\$ 1,254
Budget	\$ 1,068	\$ 1,163	\$ 1,153	\$ 1,495	\$ 1,414	\$ 1,334	\$ 1,453	\$ 1,175	\$ 1,368	\$ 11,623	\$ 1,291
Prior Year	\$ 1,056	\$ 1,280	\$ 1,090	\$ 1,278	\$ 1,193	\$ 1,126	\$ 1,341	\$ 1,114	\$ 1,214	\$ 10,692	\$ 1,188
Total Sales											
Actuals	\$ 1,411,637	\$ 1,361,598	\$ 1,464,184	\$ 1,380,770	\$ 1,550,044	\$ 1,548,991	\$ 1,512,859	\$ 1,578,392	\$ 1,471,012	\$ 13,279,485	\$ 1,475,498
Budget	\$ 1,442,385	\$ 1,432,598	\$ 1,372,655	\$ 1,583,366	\$ 1,568,076	\$ 1,546,342	\$ 1,564,527	\$ 1,551,703	\$ 1,638,233	\$ 13,699,885	\$ 1,522,209
Prior Year	\$ 1,380,953	\$ 1,390,666	\$ 1,291,191	\$ 1,308,842	\$ 1,280,921	\$ 1,282,837	\$ 1,285,662	\$ 1,250,568	\$ 1,315,227	\$ 11,786,868	\$ 1,309,652

NEW BRAUNFELS UTILITIES
Sewer Revenue Variance
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD	
										ACT	AVG
Residential											
Actuals	\$ 779,479	\$ 747,562	\$ 824,138	\$ 797,987	\$ 892,353	\$ 896,216	\$ 890,728	\$ 893,434	\$ 899,809	\$ 7,621,706	\$ 846,856
Actual vs Budget	\$ (16,291)	\$ (59,912)	\$ 33,103	\$ (122,892)	\$ (29,647)	\$ (16,507)	\$ (26,917)	\$ (14,201)	\$ (50,466)	\$ (303,729)	\$ (33,748)
Actual vs Prior Year	\$ 12,466	\$ (33,440)	\$ 71,975	\$ 36,033	\$ 140,895	\$ 145,270	\$ 141,992	\$ 157,993	\$ 141,757	\$ 814,939	\$ 90,549
Multi-Unit 2-4											
Actuals	\$ 7,539	\$ 7,534	\$ 7,770	\$ 7,897	\$ 8,802	\$ 8,846	\$ 8,660	\$ 8,612	\$ 8,658	\$ 74,317	\$ 8,257
Actual vs Budget	\$ (259)	\$ (292)	\$ 17	\$ (1,055)	\$ (170)	\$ 12	\$ (219)	\$ (29)	\$ (417)	\$ (2,412)	\$ (268)
Actual vs Prior Year	\$ (238)	\$ (251)	\$ 165	\$ 314	\$ 1,284	\$ 1,332	\$ 1,149	\$ 1,212	\$ 1,188	\$ 6,154	\$ 684
Multi-Unit 5+											
Actuals	\$ 184,353	\$ 181,385	\$ 189,109	\$ 180,591	\$ 210,363	\$ 208,625	\$ 191,515	\$ 206,672	\$ 207,784	\$ 1,760,397	\$ 195,600
Actual vs Budget	\$ 1,075	\$ (10,600)	\$ 6,930	\$ (26,219)	\$ 3,079	\$ 2,209	\$ (18,756)	\$ 4,057	\$ (7,054)	\$ (45,280)	\$ (5,031)
Actual vs Prior Year	\$ 10,633	\$ (3,100)	\$ 22,345	\$ 9,544	\$ 41,837	\$ 42,994	\$ 16,410	\$ 45,240	\$ 37,394	\$ 223,297	\$ 24,811
SGS											
Actuals	\$ 438,893	\$ 423,789	\$ 441,872	\$ 393,047	\$ 437,433	\$ 434,132	\$ 420,540	\$ 468,589	\$ 353,486	\$ 3,811,780	\$ 423,531
Actual vs Budget	\$ (15,578)	\$ (361)	\$ 51,338	\$ (52,184)	\$ 9,026	\$ 17,097	\$ (5,740)	\$ 36,952	\$ (109,191)	\$ (68,640)	\$ (7,627)
Actual vs Prior Year	\$ 7,508	\$ 7,674	\$ 78,302	\$ 26,066	\$ 85,207	\$ 76,513	\$ 67,572	\$ 123,407	\$ (24,614)	\$ 447,635	\$ 49,737
Schertz Sewer											
Actuals	\$ 1,372	\$ 1,328	\$ 1,295	\$ 1,248	\$ 1,093	\$ 1,171	\$ 1,416	\$ 1,086	\$ 1,275	\$ 11,284	\$ 1,254
Actual vs Budget	\$ 304	\$ 165	\$ 142	\$ (247)	\$ (321)	\$ (163)	\$ (37)	\$ (89)	\$ (93)	\$ (338)	\$ (38)
Actual vs Prior Year	\$ 316	\$ 49	\$ 206	\$ (30)	\$ (100)	\$ 45	\$ 75	\$ (27)	\$ 60	\$ 593	\$ 66
Total Sales											
Actuals	\$ 1,411,637	\$ 1,361,598	\$ 1,464,184	\$ 1,380,770	\$ 1,550,044	\$ 1,548,991	\$ 1,512,859	\$ 1,578,392	\$ 1,471,012	\$ 13,279,485	\$ 1,475,498
Actual vs Budget	\$ (30,748)	\$ (71,000)	\$ 91,529	\$ (202,596)	\$ (18,032)	\$ 2,649	\$ (51,669)	\$ 26,689	\$ (167,222)	\$ (420,399)	\$ (46,711)
Actual vs Prior Year	\$ 30,684	\$ (29,068)	\$ 172,993	\$ 71,927	\$ 269,123	\$ 266,153	\$ 227,196	\$ 327,824	\$ 155,785	\$ 1,492,618	\$ 165,846

NEW BRAUNFELS UTILITIES

Sewer Customers

For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD AVG
Residential										
Actuals	26,371	25,486	26,507	26,609	26,726	26,830	26,941	27,137	27,267	26,653
Budget	26,345	26,427	26,509	26,592	26,674	26,757	26,841	26,924	27,008	26,675
Prior Year	25,468	25,535	25,686	25,704	25,783	25,872	25,945	26,035	26,115	25,794
Multi-Unit 2-4										
Actuals	162	163	162	166	165	165	166	167	167	165
Budget	161	161	161	161	161	161	161	161	161	161
Prior Year	161	161	161	161	161	160	161	161	161	161
Multi-Unit 5+										
Actuals	240	240	240	242	242	242	243	246	246	242
Budget	242	244	245	247	248	250	251	253	254	248
Prior Year	236	236	236	236	237	237	237	237	237	237
SGS										
Actuals	2,043	2,041	2,050	2,057	2,068	2,071	2,068	2,073	2,073	2,060
Budget	2,060	2,065	2,071	2,077	2,083	2,089	2,094	2,100	2,106	2,083
Prior Year	2,021	2,021	2,026	2,024	2,032	2,036	2,035	2,038	2,036	2,030
Schertz Sewer										
Actuals	1	1	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1	1	1
Total Accounts										
Actuals	28,817	27,931	28,960	29,075	29,202	29,309	29,419	29,624	29,754	29,121
Budget	28,809	28,898	28,988	29,077	29,167	29,258	29,348	29,439	29,530	29,168
Prior Year	27,887	27,954	28,110	28,126	28,214	28,306	28,379	28,472	28,550	28,222

New Customers	42	(886)	1,029	115	127	107	110	205	130	109
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NEW BRAUNFELS UTILITIES
Sewer Rates (per Customer)
For Month Ending April 30, 2020

DESCRIPTION	2019 AUG	2019 SEP	2019 OCT	2019 NOV	2019 DEC	2020 JAN	2020 FEB	2020 MAR	2020 APR	FY 2020 YTD AVG
Residential										
Actuals	\$ 29.56	\$ 29.33	\$ 31.09	\$ 29.99	\$ 33.39	\$ 33.40	\$ 33.06	\$ 32.92	\$ 33.00	\$ 31.75
Budget	\$ 30.21	\$ 30.56	\$ 29.84	\$ 34.63	\$ 34.57	\$ 34.11	\$ 34.19	\$ 33.71	\$ 35.18	\$ 33.00
Prior Year	\$ 30.12	\$ 30.59	\$ 29.28	\$ 29.64	\$ 29.15	\$ 29.03	\$ 28.86	\$ 28.25	\$ 29.03	\$ 29.33
Multi-Unit 2-4										
Actuals	\$ 46.54	\$ 46.22	\$ 47.96	\$ 47.57	\$ 53.35	\$ 53.61	\$ 52.17	\$ 51.57	\$ 51.84	\$ 50.09
Budget	\$ 48.43	\$ 48.61	\$ 48.16	\$ 55.60	\$ 55.72	\$ 54.87	\$ 55.15	\$ 53.67	\$ 56.37	\$ 52.95
Prior Year	\$ 48.31	\$ 48.35	\$ 47.24	\$ 47.10	\$ 46.69	\$ 46.97	\$ 46.66	\$ 45.96	\$ 46.40	\$ 47.07
Multi-Unit 5+										
Actuals	\$ 768.14	\$ 755.77	\$ 787.96	\$ 746.24	\$ 869.27	\$ 862.09	\$ 788.13	\$ 840.13	\$ 844.65	\$ 806.93
Budget	\$ 756.06	\$ 787.37	\$ 742.80	\$ 838.32	\$ 835.34	\$ 827.00	\$ 837.55	\$ 802.35	\$ 845.80	\$ 808.07
Prior Year	\$ 736.10	\$ 781.72	\$ 706.63	\$ 724.77	\$ 711.08	\$ 698.87	\$ 738.84	\$ 681.15	\$ 718.95	\$ 722.01
SGS										
Actuals	\$ 214.83	\$ 207.64	\$ 215.55	\$ 191.08	\$ 211.52	\$ 209.62	\$ 203.36	\$ 226.04	\$ 170.52	\$ 205.57
Budget	\$ 220.65	\$ 205.35	\$ 188.55	\$ 214.36	\$ 205.69	\$ 199.67	\$ 203.53	\$ 205.51	\$ 219.68	\$ 207.00
Prior Year	\$ 213.45	\$ 205.90	\$ 179.45	\$ 181.31	\$ 173.34	\$ 175.65	\$ 173.45	\$ 169.37	\$ 185.71	\$ 184.18
Schertz Sewer										
Actuals	\$ 1,372.23	\$ 1,328.28	\$ 1,295.01	\$ 1,247.91	\$ 1,093.04	\$ 1,171.05	\$ 1,415.78	\$ 1,086.40	\$ 1,274.73	\$ 1,253.83
Budget	\$ 1,068.02	\$ 1,163.37	\$ 1,152.92	\$ 1,494.69	\$ 1,413.84	\$ 1,333.95	\$ 1,452.54	\$ 1,175.35	\$ 1,367.94	\$ 1,291.40
Prior Year	\$ 1,055.89	\$ 1,279.65	\$ 1,089.51	\$ 1,278.16	\$ 1,192.99	\$ 1,126.05	\$ 1,341.12	\$ 1,113.80	\$ 1,214.47	\$ 1,187.96

New Braunfels Utilities
Quarterly Investment Report
01/31/2020 to 04/30/2020

Investment Balances and Activity

As required by the Public Funds Investment Act and the New Braunfels Utilities Investment Policy, the Investment Officers of NBU hereby submit this quarterly report of investment activity for the quarter ended April 30, 2020. Statement No. 31 of the Governmental Accounting Standards Board, effective for reporting periods beginning after June 15, 1997, mandates fair value accounting on investments held by public entities. Attached is the NBU Investment Portfolio beginning January 31, 2020 and ending April 30, 2020. 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 \$23,411,321.66 in demand deposits at April 30, 2020) for the beginning and end of the reporting period are as follows:

	<u>Fair Value</u>
01/31/2020	\$59,500,914.83
04/30/2020	\$80,101,432.15

NBU had additions to the Pooled Fund Groups of \$58,523,277.17 and withdrawals totaling \$37,922,759.85.

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

	<u>Fair Value</u>
01/31/2020	\$9,604,100.00
04/30/2020	\$12,050,194.00

NBU had additions to the Separately Invested Assets of \$2,022,031.25 and withdrawals of \$0 due to maturities. The change in fair value due to amortization of premium and discount and mark to market changes from January 31, 2020 to April 30, 2020 was an increase of \$424,062.75.

The fair values of the entire portfolio for the beginning and end of the reporting period for the quarter ended April 30, 2020 are as follows:

	<u>Fair Value</u>
01/31/2020	\$69,105,014.83
04/30/2020	\$92,151,626.15

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

New Braunfels Utilities
Quarterly Investment Report
01/31/2020 to 04/30/2020

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 February 27, 2020. Investments in each security type are within the allowable range established by the Investment Policy. The investment portfolio's weighted-average maturity of 14 days and weighted-average maturity to first call date of 14 days are within the 450 days and 300 days limit, respectively, stated in the NBU Investment Policy. Please note that the WAM and WAMC do not include the investment in the Community Assistance Fund, which was specifically authorized in the Investment Policy to permit investments up to ten years.

NBU is also required to maintain daily liquid funds of at least 30 days of budgeted operating expenses. At April 30, 2020, NBU had daily liquid funds of 176 days. Pooled investments are in no load money market mutual funds and eligible specified investment pools that are continuously rated AAA or higher by at least one nationally recognized rating agency and that have a dollar-weighted average stated maturity of 90 days or less. These same investments maintain a stable net asset value of \$1 for each share.

NBU has obtained collateral reports at quarter-end from third party custodians that confirm the collateral securities in NBU's name are at least equal to or greater than the required amount of uninsured balances as of April, 30 2020.

NBU Investment Officers:


Finance Manager


Chief Financial Officer



NBU Investments
 GASB 31 Compliance Detail
 Sorted by Fund - Fund
 February 1, 2020 - April 30, 2020

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
SEPARATELY INVESTED ASSETS									
Fund: Unrestricted Long-term									
CR0632YS2	10834	111HS	6/18/2020	2,000,000.00	-	-	-	-	2,000,000.00
			Subtotal	2,000,000.00	-	-	-	-	2,000,000.00
Fund: Special Funds- R & D									
CR0842YS2	10838	116HS	8/20/2020	2,000,000.00	-	-	-	-	2,000,000.00
			Subtotal	2,000,000.00	-	-	-	-	2,000,000.00
Fund: Special Funds- Community Assistance									
912828YS3	10853	117F	11/15/2029	5,104,100.00	-	-	-	424,610.00	5,528,710.00
			Subtotal	5,104,100.00	-	-	-	424,610.00	5,528,710.00
Fund: Consumer Deposit									
			Subtotal	-	-	-	-	-	-



NBU Investments
 GASB 31 Compliance Detail
 Sorted by Fund - Fund
 February 1, 2020 - April 30, 2020

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: Reserve Fund									
912828N48	10854	170F	12/31/2020	-	2,022,031.25	-	-	(547.25)	2,021,484.00
CR1142YS1	10843	170HS	11/19/2020	500,000.00	-	-	-	-	500,000.00
Subtotal				500,000.00	2,022,031.25	-	-	(547.25)	2,521,484.00
Fund: Power Supply Fund									
Subtotal				-	-	-	-	-	-
Total				9,604,100.00	2,022,031.25	-	-	424,062.75	12,050,194.00
								Change due to amortization of premium/discount	(3,471.36)
								Change due to mark to market	427,534.11
								Total	424,062.75



NBU Investments
GASB 31 Compliance Detail
Sorted by Fund - Fund
February 1, 2020 - April 30, 2020

	Investment #	Fund	Beginning Invested Value	Purchase of Principal	Addition to Principal	Redemption of Principal	Change in Market Value	Ending Invested Value
FEDERALLY INSURED CASH ACCOUNT, POOLED, AND MONEY MARKET FUND GROUPS								
Coastal Securities - Temp Cash	SYS10539	10539	110C	-	-	-	-	-
Frost Bank	SYS10809	10809	110FGF	4,750,496.39	-	22,088,380.76	3,427,555.49	23,411,321.66
JP Morgan Chase DDA	SYS10292-2	10500	110J	-	-	-	-	-
Hilltop Securities -Temp Cash	SYS10566	10566	110HS	-	-	-	-	-
StoneCastle- Community Assitance	SYS10779	10779	117SC	41,492.05	-	95.95	-	41,588.00
StoneCastle- Power Supply	SYS10761	10761	120SC	-	-	-	-	-
Texas Daily- I&P 2004	SYS10543	10544	163	217,847.31	-	92,763.15	-	310,610.46
Texas Daily- I&P 2009	SYS10543	10546	164	-	-	-	-	-
Texas Daily- I&P 2009A	SYS10543	10548	165	-	-	-	-	-
Texas Daily- I&P 2012	SYS10706	10706	166	488,390.03	-	349,455.34	-	837,845.37
Texas Daily- I&P 2015	SYS10763	10763	167	221,983.04	-	308,679.87	-	530,662.91
Texas Daily- I&P 2016	SYS10788	10788	168	646,712.24	-	739,801.28	-	1,386,513.52
Texas Daily- I&P 2018	SYS10831	10831	169	1,062,563.97	-	854,958.28	-	1,917,522.25
Texas Daily- Temp-Cash	SYS10244	10244	110D	3,693.27	-	10.88	-	3,704.15
Texpool-Bond 18	SYS10827	10827	190	-	-	-	-	-
Texpool- Bond 16	SYS10789	10789	189	-	-	-	-	-
Texpool- Central Facilities-S	SYS10225	10225	183F	440.60	-	1.02	-	441.62
Texpool- Central Facilities-W	SYS10224	10224	182F	10.98	-	0.02	-	11.00
Texpool- Consumer Deposit	SYS10572	10572	119T	7,286,905.02	-	18,159.19	-	7,305,064.21
Texpool- Contingency Systems	SYS10572	10573	114F	11,599,426.07	-	28,906.21	-	11,628,332.28
Texpool- Impact Fees S	SYS10221	10221	185F	155.85	-	1,727,070.65	1,727,208.41	18.09
Texpool- Impact Fees S - B	SYS10772	10772	185F-B	-	-	-	-	-
Texpool- Impact Fees S - C	SYS10804	10804	185F-C	-	-	-	-	-
Texpool- Impact Fees W	SYS10090	10090	184F	605,674.88	-	3,109,089.84	3,190,177.03	524,587.69
Texpool- Impact Fees W - B	SYS10771	10771	184F-B	-	-	-	-	-
Texpool- Impact Fees W - C	SYS10803	10803	184F-C	-	-	-	-	-
Texpool- Power Supply Fund	SYS10759	10759	120	-	-	-	-	-
Texpool-R&D	SYS10147	10147	116	-	-	-	-	-
Texpool-Reserve	SYS10701	10701	170	6,055,615.91	-	230,865.76	2,028,665.87	4,257,815.80
Texpool- Temp-Cash	SYS10149	10149	110T	45,567.60	-	113.58	-	45,681.18
Texpool- Commercial Paper Series A		10845	191	17,288,518.67	-	27,954.66	17,315,220.86	1,252.47
Texpool- Commercial Paper Series B		10846	192	253,371.37	-	24,759,655.36	5,219,320.73	19,793,706.00
Texpool-WRDF	SYS10089	10089	115F	-	-	-	-	-
Texpool- Power Stabilization Fund	SYS10849	10849	195	8,932,049.58	-	4,187,315.37	5,014,611.46	8,104,753.49
TexStar- Temp-Cash	SYS10095	10095	110S	-	-	-	-	-
	Total		59,500,914.83	-	58,523,277.17	37,922,759.85	-	80,101,432.15
	Portfolio Total		69,105,014.83	2,022,031.25	58,523,277.17	37,922,759.85	424,062.75	92,151,626.15

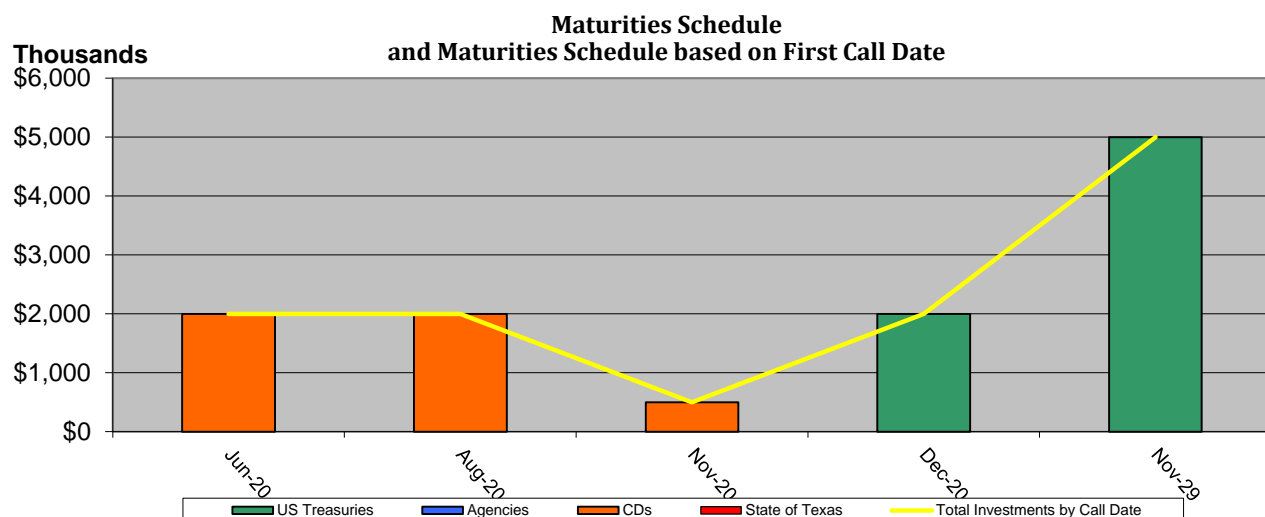


	Ending Invested Value	Percentage of Portfolio	Weighted Average Maturity (in days)	Weighted Average Days to Call
Daily Liquidity Funds				
Money Markets	\$ -	0.0%	1	1
Pooled Funds	56,648,522	61.5%	1	1
Total Money Markets & Pooled	\$ 56,648,522	61.5%	1	1
Federally Insured Cash Account	\$ 41,588	0.0%	1	1
Demand Deposits	23,411,322	25.4%	1	1
Daily Liquidity Funds Total	\$ 80,101,432	86.9%	1	1
U.S. Agencies	\$ -	0.0%	0	0
U.S. Treasuries *	7,550,194	8.2%	66	66
Certificates of Deposit	4,500,000	4.9%	94	94
Obligations of The State of Texas, Agencies & Instrumentalities	-	0.0%	0	0
Total Invested Funds	\$ 92,151,626	100.0%	14	14
			Max = 450	Max = 300

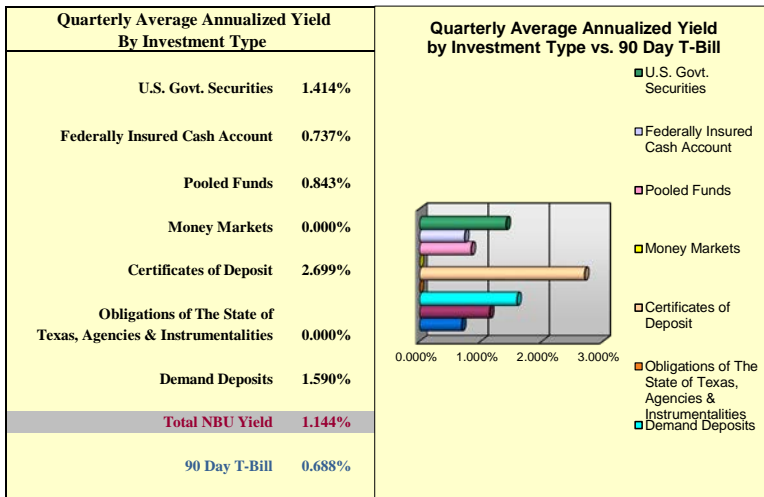
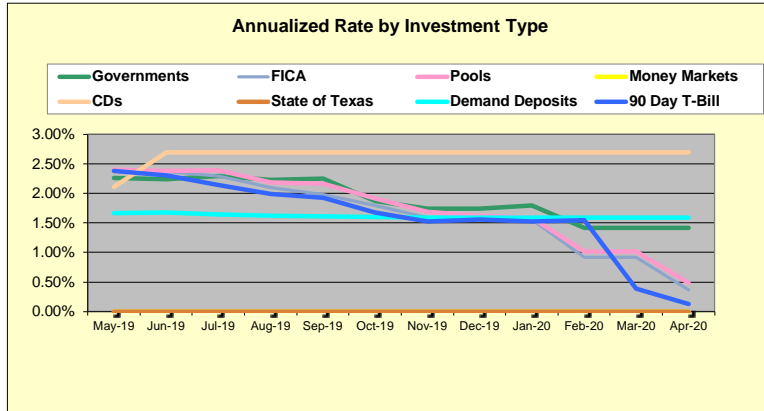
* WAM and WAM to Call exclude a \$5 Million investment in the Community Assistance Fund having a remaining maturity of 10.0 years.

Liquidity Requirement

Total Daily Liquid Funds	\$ 80,101,433
Average Monthly Operating Expense (FY 2020 Budgeted Operating Expenses ÷ 12)	\$ 13,624,358
Operating Expense Liquidity Coverage Ratio	6
Number of Days Coverage of Operating Expenses	176
Min = 30	

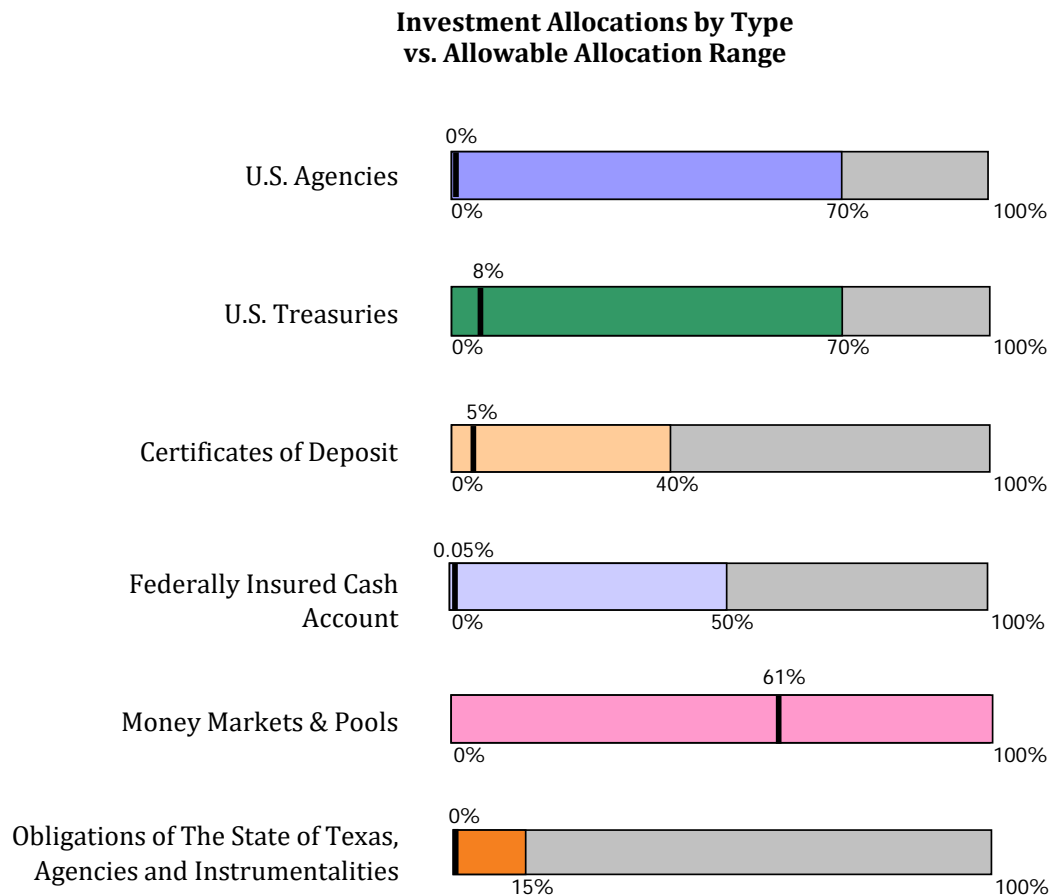
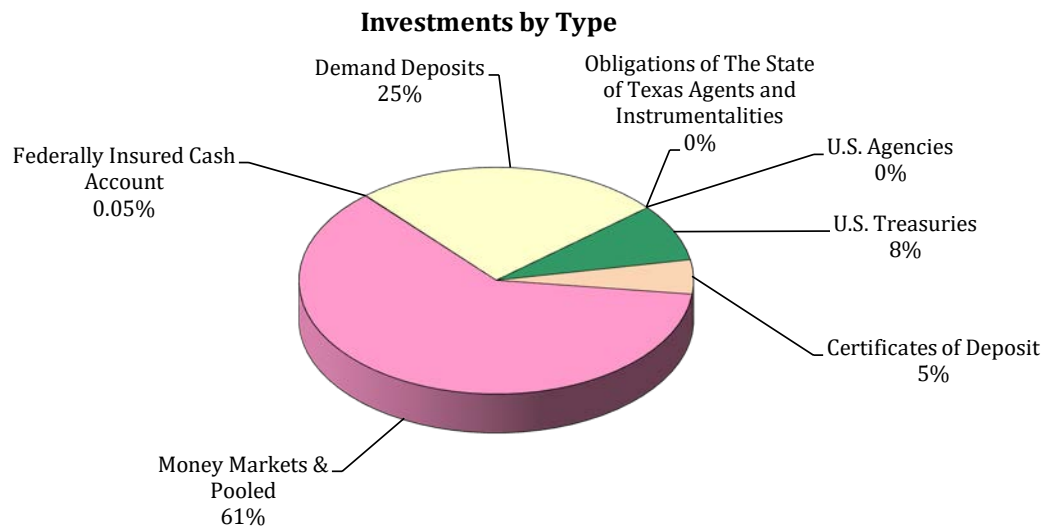


* U.S Treasury Securities includes a \$5 Million 10 year Community Assistance investment with a WAM of 3,576 days as an approved exception to the investment policy.




Rolling Four Quarter Annualized Yield By Investment Type For The Fiscal Quarter Ended		
	4/30/2020	Rolling Four Quarter Average
U.S. Govt. Securities*	1.414%	1.888%
Federally Insured Cash Account	0.737%	1.660%
Pooled Funds	0.843%	1.739%
Money Markets	0.000%	0.000%
Certificates of Deposit	2.699%	2.650%
Obligations of The State of Texas, Agencies & Instrumentalities	0.000%	0.000%
Demand Deposits	1.590%	1.612%
Total NBU Yield	1.144%	1.808%
90 Day T-Bill	0.688%	1.591%


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



Note: Colored area in bar represents allowable allocation range



CONSENT ITEMS FOR ACTION



To:
NBU Board of Trustees

From:
Rocio Gallegos
Executive Assistant to the CEO

Reviewed by:
Rocio Gallegos
Executive Assistant to the CEO

Submitted by:
Rocio Gallegos
Executive Assistant to the CEO

Approved by:
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Approve Minutes of the NBU Regular Board Meeting of April 30, 2020

EXHIBITS

1. NBU Regular Board Meeting Minutes of April 30, 2020

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

**1:00 P.M.
THURSDAY, APRIL 30, 2020
GOTOMEETING - TELECONFERENCE**

Board President John Harrell opened the meeting at 1:00 pm. A quorum of the NBU Board was present.

PRESENT

Board President John Harrell, Board Vice President Judith Dykes-Hoffmann, Board Trustee Bob Gray, Board Trustee Atanacio Campos, and Mayor Barron Casteel

ABSENT

None

NBU PERSONNEL

Ian Taylor, Ryan Kelso, Dawn Schriewer, Connie Lock, Melissa Krause, Robin Britton, David Hubbard, Janice Jessen, Adriana Sanchez, Greg Brown, Rocio Gallegos, Stephanie Guerra-Hill, Tim Brown, Andrew Cummings, Ashley Schriewer, Billy Shearer, Brent Lundmark, Carlos Salas, Darren Bantis, Beth Perez, Gregory Thomas, Gretchen Reuwer, Jason Theurer, John Warren, Justin Green, Katherine DuBose, Kimberly Huffman, Laura Rivers, Mike Short, Nancy Pappas, Pam Quidley, Rebekah Crouch, Shawn Schorn, and Taylor Cano

NBU CONSULTANTS

Erik Moskowitz of The Chapman Firm

A. PLEDGE AND INVOCATION

Mayor Barron Casteel led the pledge of allegiance and offered the invocation.

B. PUBLIC COMMENTS

None

C. ITEMS FROM THE CHAIR

Board Trustee Atanacio Campos and Board President John Harrell offered comments to Mayor Barron Casteel and thanked him for his service.

1. RECOGNITION OF MAYOR BARRON CASTEEL

CEO Ian Taylor recognized Mayor Barron Casteel for his six years of service to New Braunfels Utilities, the City of New Braunfels, and Comal County. CEO Taylor read a resolution recognizing Mayor Casteel and presented him with a plaque made by NBU employees.

2. REPORT FROM AUDIT COMMITTEE

Board Trustee Bob Gray informed the board that on January 30, 2020, the NBU Board Audit Committee met to discuss five proposals received in response to the Request for Qualifications (RFQs) for audit services. Attendees included: John Harrell, Bob Gray, Ian Taylor, Dawn Schriewer, Katherine DuBose, and Josie Smith. After review and discussion of the proposals received and the criteria that was utilized to select the finalists, the Audit Committee selected Moss Adams LLP to review and audit NBU's financial statements for fiscal year 2020, with four optional one-year extensions subject to mutual consent.

D. ITEMS FROM THE STAFF

1. CEO'S REPORT

a. NBU COVID-19 Priorities

- Safety
- Continuity of operations
- Employee mental health and wellness
- NBU financial health

CEO Ian Taylor briefed the NBU Board of Trustees on the priorities for New Braunfels Utilities during the COVID-19 pandemic. Robin Britton, Ryan Kelso, David Hubbard, and Beth Perez, provided an overview of safety, continuity of operations, and employee mental health and wellness, respectively. The NBU financial health was presented under Presentation Item #2.

2. FINANCIAL UPDATE AND REPORT

NBU Accounting Manager Katherine DuBose provided an update on the financial status of NBU. Ms. DuBose reviewed the financial and statistical reports for March 2020.

E. CONSENT ITEMS FOR ACTION

Board Trustee Bob Gray made a motion and Board Trustee Atanacio Campos seconded the motion to approve the Consent Items for Action as follows: #1, #2, #3, #4, #5, #7, #8, #9, and #10. The vote was unanimous. Consent Item #6 was tabled and will not be considered for action.

1. Approve Minutes of the NBU Regular Board Meeting of March 26, 2020
2. Approve the Change Order Log from February 15, 2020, through March 15, 2020
3. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2019, through March 15, 2020
4. Authorize CEO to Negotiate and Execute an Engagement Letter with Moss Adams LLP for Audit Services
5. Authorize CEO to Negotiate and Execute a Contract with Virginia Transformer Corporation for the Purchase of Two Substation Power Transformers
6. Authorize CEO to Negotiate and Execute a Construction Contract Agreement with Qro-Mex Construction Company, Inc. for the Construction of the AC Pipe Replacement – Solms Project

7. Authorize CEO to Negotiate and Execute a Short-Term Water Supply Contract with Green Valley Special Utility District
8. Authorize CEO to Negotiate and Execute a Professional Services Agreement with Elk Ridge Construction, LLC for Grounds Maintenance
9. Authorize CEO to Negotiate and Execute a Cooperative Agreement with SHI Government Solutions for the Procurement of a Microsoft Enterprise-Licensing Agreement
10. Authorize CEO to Negotiate and Execute a Second Amendment to Professional Services Agreement with Freese and Nichols, Inc. for the North Kuehler 30-inch and 33-inch Interceptor Upgrade Project

F. PRESENTATION ITEMS

1. **Presentation and Update on the State of the New Braunfels Utilities Water System**
Mike Short provided an update on the state of the New Braunfels Utilities water system.
2. **Presentation and Update on New Braunfels Utilities' Financial Status Regarding COVID-19**

Dawn Schriewer briefed the NBU Board on the financial status during the COVID-19 pandemic.

G. EXECUTIVE SESSION

Board President John Harrell recessed the Open Session at 2:19 pm and announced that the Board would go into an Executive Session Meeting. The Executive Session included Competitive Matters regarding Power Supply and Resource Strategies, Attorney Client Privilege Consultation and Contemplated Litigation, and Real Property. The Executive Session was opened at 2:29 pm and closed at 4:10 pm.

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

The Regular Session resumed at 4:11 pm. There was no further business and Board President John Harrell adjourned the Board Meeting at 4:12 pm.

Attest:

John Harrell, President
Approved

Ian Taylor, Secretary of the Board
Chief Executive Officer

Date Approved: May 28, 2020

To:
NBU Board of Trustees

Reviewed by:
Dawn Schriewer
Chief Financial Officer

From:
Paula Molina
Customer Service Assistant Manager

Submitted by:
Dawn Schriewer
Chief Financial Officer

Approved by:
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Approve 2019 Fourth Quarter Charge-Off Accounts

BACKGROUND

Charge-offs for the fourth quarter of calendar year 2019 (October, November, December) netted \$59,280.25 for NBU accounts that have unpaid balances. NBU applied \$39,575.39 in customer deposits to the delinquent account balance of \$98,855.64, which reduced the total unpaid balance by 40%. Residential customers accounted for 98% of the number of charge-off accounts.

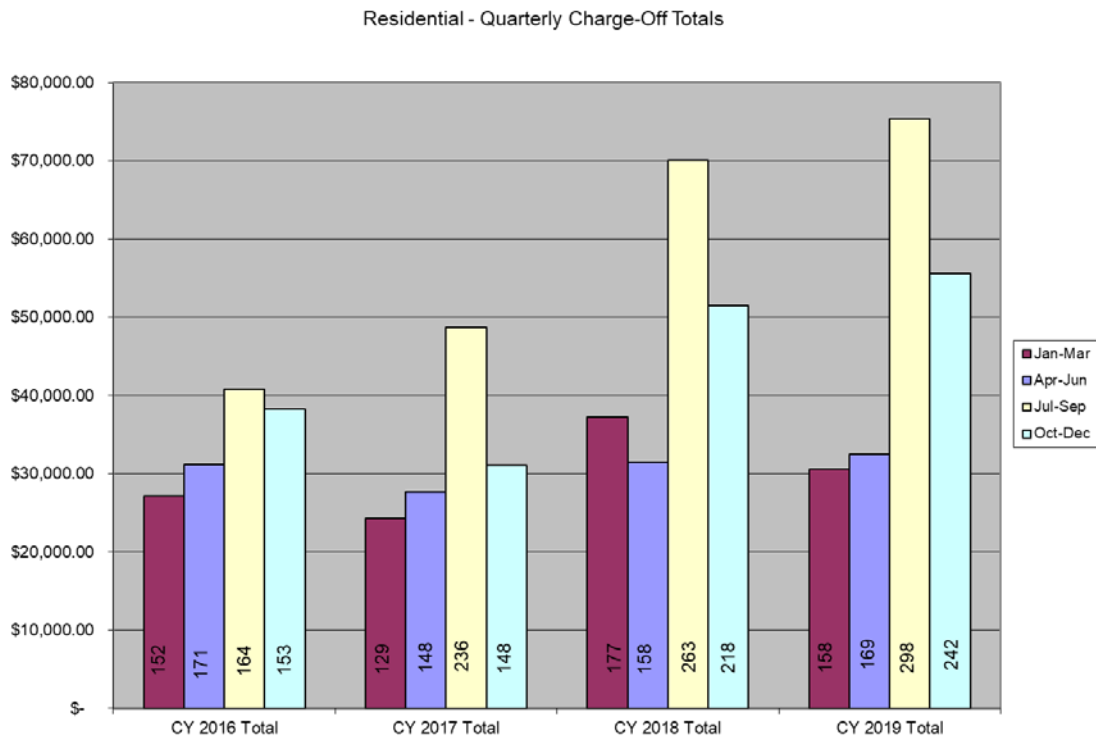
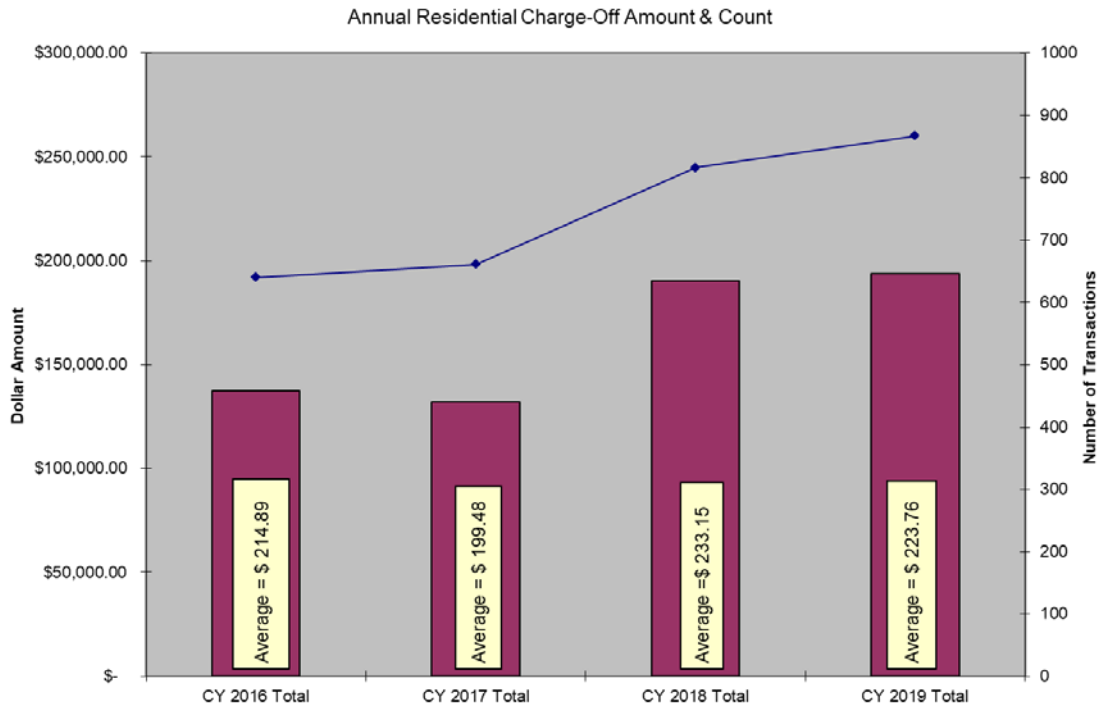
The accounts that included insufficient funds, due to returned checks and failed auto-draft payments, totaled \$4,066.98.

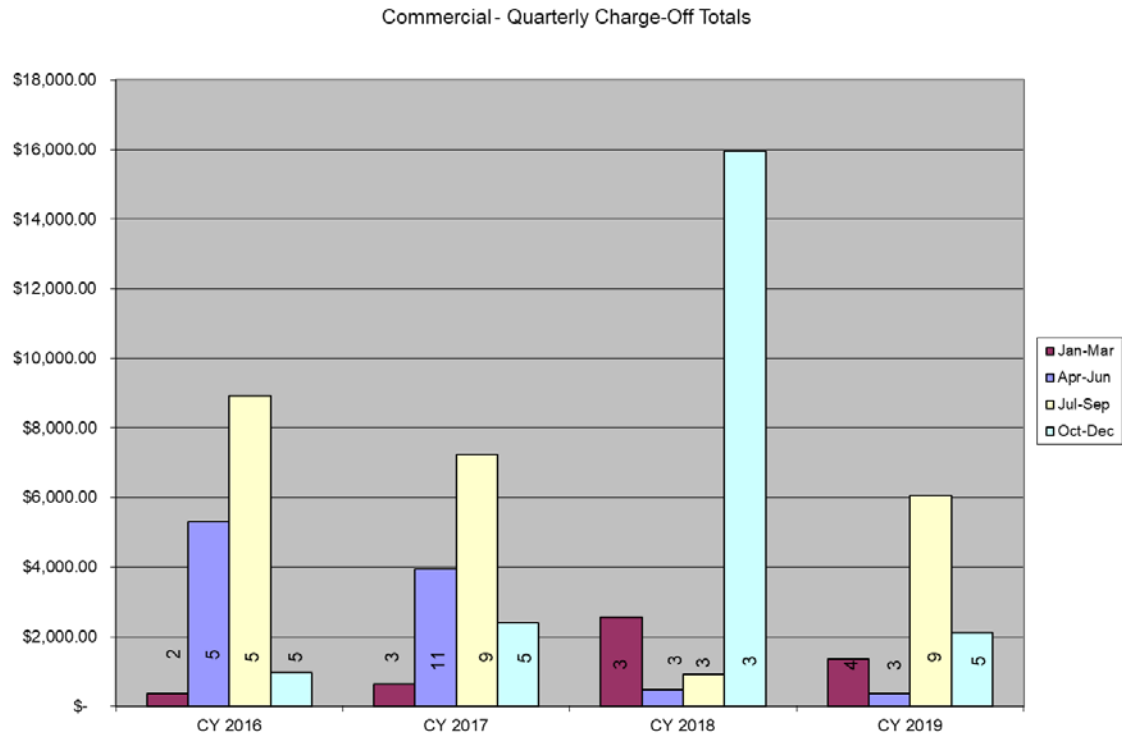
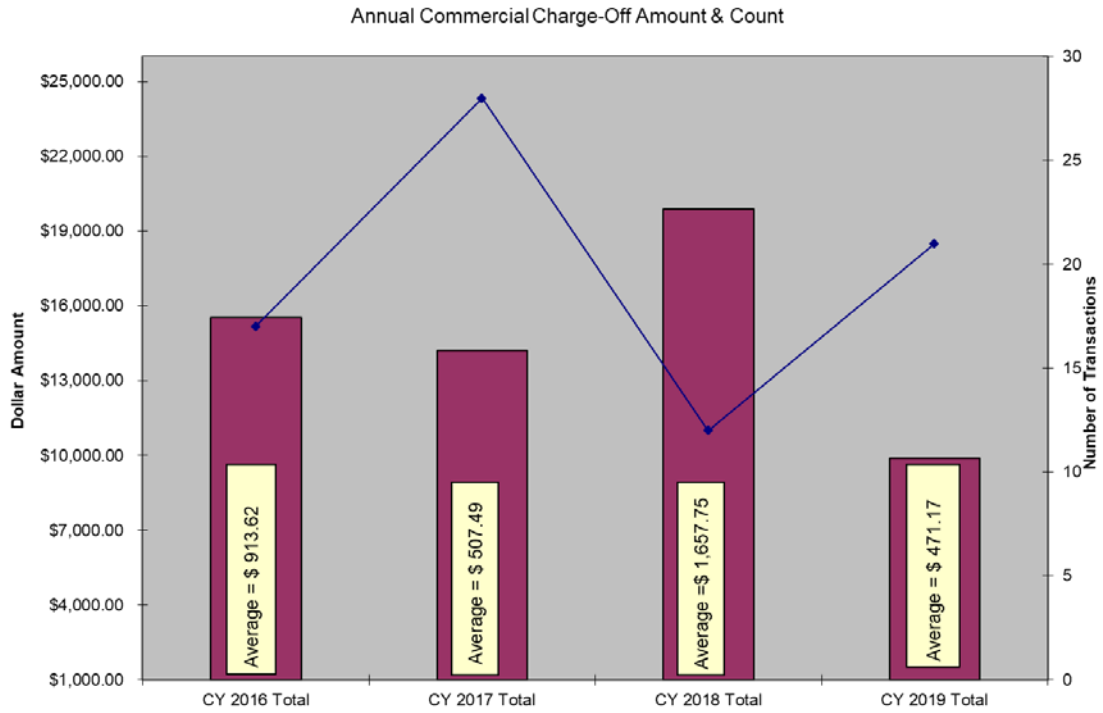
When compared to total revenue billings for the same quarter, the charge-off balance amounts to just over 1/10th of one percent. For every \$100 billed to our customers, we received \$99.83.

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

Credit Rating	Number of Active Customers	Number of Charge-off Customers	Percentage of Charge-off Customers
A	42,148	40	0.10%
B	7,266	88	0.20%
C	1,166	120	10.0%
D	0	0	0.00%
Auto-Draft	7,807	8	0.13%

MEETING DATE: May 28, 2020
AGENDA TYPE: Consent Items for Action
AGENDA ITEM NO.: F.2





MEETING DATE: May 28, 2020
AGENDA TYPE: Consent Items for Action
AGENDA ITEM NO.: F.2

FINANCIAL IMPACT

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

LINK TO STRATEGIC PLAN

☒ **Maintain a Competitive Bond Rating**

EXHIBITS

1. Charge-off Summary

**Charge Off Summary
May 2020**

<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	\$90,404.58	\$34,812.78	\$55,591.80	0.159%
Commercial	\$6,867.74	\$4,762.61	\$2,105.13	0.006%
Miscellaneous	\$1,583.32	\$0.00	\$1,583.32	0.005%
Bankruptcy	\$0.00	\$0.00	\$0.00	0.000%
Total	\$98,855.64	\$39,575.39	\$59,280.25	0.170%

Historical Charge-Off Information

	2019			2018			2017		
	<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	\$34,570.84	167	\$207.01	\$39,749.49	180	\$220.83	\$25,206.03	134	\$188.10
2nd Qtr	\$32,851.40	172	\$191.00	\$31,959.81	161	\$198.51	\$31,651.70	159	\$199.07
3rd Qtr	\$81,959.56	312	\$262.69	\$70,948.47	266	\$266.72	\$55,017.18	246	\$223.65
4th Qtr	\$59,280.23	248	\$239.03	\$67,486.39	221	\$305.37	\$33,476.07	153	\$218.80

To:
NBU Board of Trustees**From:**
Tony Meister
Purchasing Manager**Reviewed by:**
David Hubbard
Director of Energy Markets and Customer Solutions**Submitted by:**
Janice Jessen
Executive Director of Strategy and People**Approved by:**
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Approve the Change Order Log from March 15, 2020, through April 15, 2020

BACKGROUND

The Board of Trustees approved the NBU Purchasing Policy on October 31, 2019. The Purchasing Policy defines the process for obtaining approval of change orders. In addition to the individual approval by the Board of Trustees for change orders greater than \$50,000.00, the policy further states, "Each department manager will keep a log of all change orders and forward that log on a monthly basis to the Purchasing Manager before each Board of Trustees' meeting. The Purchasing Manager will prepare a consent agenda item to request approval of those change orders at the next Board of Trustees' meeting."

Listed below are the change orders submitted to the Purchasing Manager for the period of March 15, 2020, through April 15, 2020.

FINANCIAL IMPACT

Change orders less than \$50,000.00:

- Bretzke Water Supply and Country Hills Ground Storage Tank - Valve Enclosure & Credit for Removing RCP Sample Tap on Temporary Tank, Black Castle Construction, Change Order No. 4, Cost Increase of \$5,336.00.
- Gruene WWTP Relocation & Expansion - Sleepy Hollow Scope Credits for Trench Repair, R&R Concrete Driveway and Base Material, Atlas Construction, Change Order No. 8, Cost Decrease of \$2,530.00.

Change orders more than \$50,000.00:

- No change orders submitted for this reporting period.

LINK TO STRATEGIC PLAN

- ☒ **Recognized as a Trusted Community Partner Dedicated to Excellence in Service**
- ☒ **Maintain Organizational Reliability and Resiliency**
- ☒ **Be a Responsible Steward of Natural Resources**

EXHIBITS

None

To:
NBU Board of Trustees**From:**
Tony Meister
Purchasing Manager**Reviewed by:**
David Hubbard
Director of Energy Markets and Customer Solutions**Submitted by:**
Janice Jessen
Executive Director of Strategy and People**Approved by:**
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Approve the Reports for Water and Electric Engineering Contracts from August 1, 2019, through April 15, 2020

BACKGROUND

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

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

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

Exhibits attached to this agenda item are the Professional Engineering report(s) submitted to the Purchasing Manager for the period of August 1, 2019, through April 15, 2020.

FINANCIAL IMPACT

None

MEETING DATE: May 28, 2020
AGENDA TYPE: Consent Items for Action
AGENDA ITEM NO.: F.4

LINK TO STRATEGIC PLAN

- ☒ **Recognized as a Trusted Community Partner Dedicated to Excellence in Service**
- ☒ **Maintain Organizational Reliability and Resiliency**
- ☒ **Provide a Safe and Secure Environment**

EXHIBITS

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

Exhibit A - Report for Water Engineering Contracts April 2020

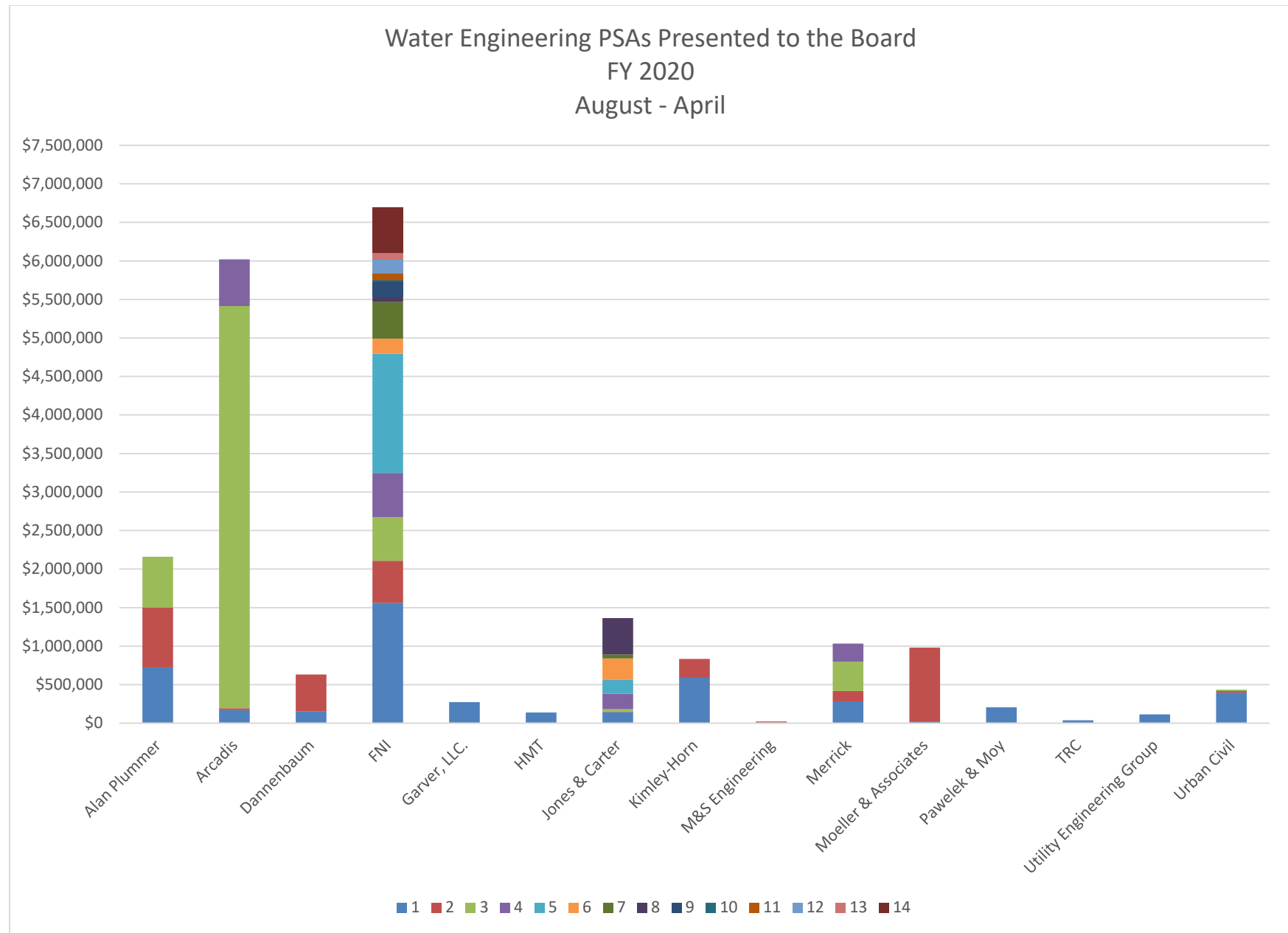


Exhibit A - Report for Water Engineering Contracts April 2020

Vendor	Legend	Project Name	Value	Date Presented to Board
Alan Plummer	1	McQueeney Rd Parrallel Water Line	\$724,029.00	10/31/2019
	2	Downtown SWTP Discharge Line	\$773,889.00	10/31/2019
	3	North Kuehler 30 and 33-inch Interceptor Upgrade	\$662,983.00	1/30/2020
		Total	\$2,160,901.00	
Arcadis	1	SWTP Expansion - Water Supply Facilities	\$167,862.00	
	2	WRP - MSA Task Order No. 18 - Blending Study	\$27,000.00	
	3	SWTP Expansion - Water Supply Facilities	\$5,219,800.00	1/30/2020
	4	Edwards Well	\$606,100.00	3/26/2020
		Total	\$6,020,762.00	
Dannenbaum	1	Saengerhalle LS Prelim Design	\$150,384.25	
	2	Saengerhalle Lift Station Expansion & Force Main	\$482,020.99	3/26/2020
		Total	\$632,405.24	
FNI	1	Staff Augmentation	\$1,562,929.00	8/29/2019
	2	Rio Lift Station Expansion	\$546,868.00	8/29/2019
	3	Castell West	\$562,710.00	9/26/2019
	4	W/WW Model Update	\$575,000.00	9/26/2019
	5	N. Kuehler 30/33"	\$1,548,384.00	10/31/2019
	6	Risk and Resiliency Plan	\$195,920.00	10/31/2019
	7	Grandview Pump Station Improvements	\$473,835.00	
	8	North Hickory Sewer Project	\$69,874.00	
	9	SWTP Pump #4	\$192,905.00	
	10	Water Plant Pump #5	\$22,318.00	
	11	SCADA PLC Changeout Study	\$87,505.00	
	12	Veramendi 1.5 MG EST & Flow Control Valve	\$175,277.00	
	13	Gruene Rd Sewer Main Rehabilitation/Relocation	\$91,266.00	

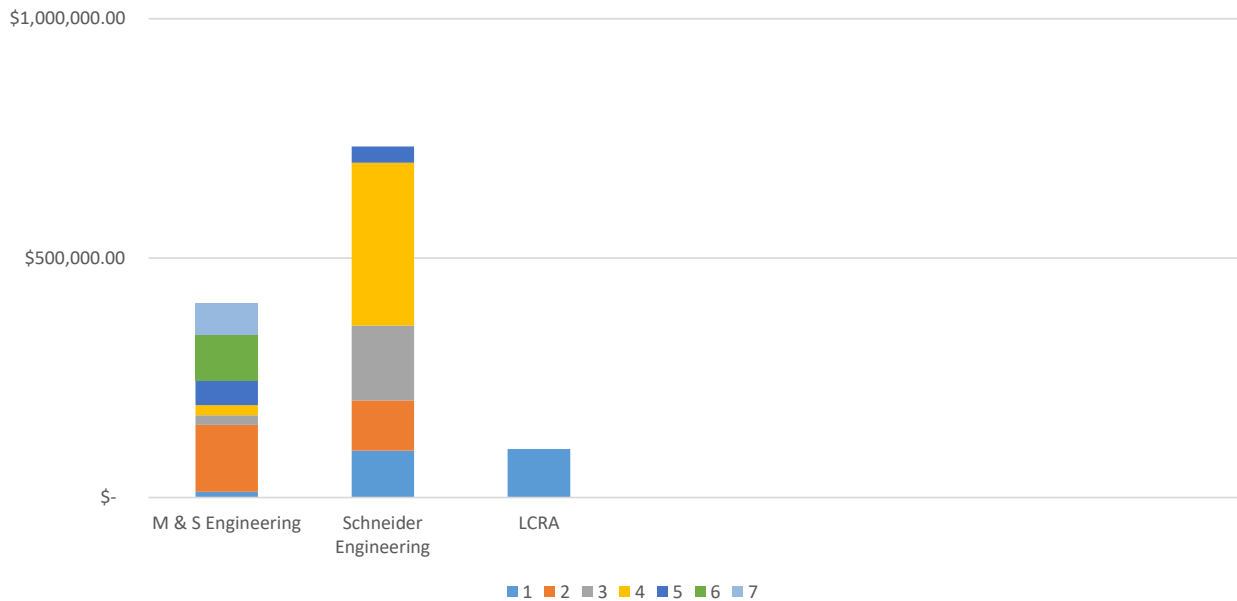
Exhibit A - Report for Water Engineering Contracts April 2020

	14	Oakbrook EST, FCV, 24" Ext	\$590,142.00	2/27/2020
			\$6,694,933.00	
Garver, LLC.	1	Nautilus Off-site Sewer Extension	\$274,513.00	
		Total	\$274,513.00	
HMT	1	Sewer Replacement	\$139,200.00	
		Total	\$139,200.00	
Jones & Carter	1	Kuehler Expansion	\$145,000.00	10/31/2019
	2	SWTP Clarifier Inspections	\$10,000.00	
	3	North Kuehler TPDES Permit Renewal	\$25,000.00	
	4	SWTP Clarifier Drive #1	\$200,000.00	
	5	SWTP Clarifier Drive #2 Replacement	\$180,000.00	
	6	McKenzie WWTP Expansion	\$279,000.00	
	7	North & South Kuehler Wastewater Treatment Plant Expansion	\$279,000.00	
	8	McKenzie WRF Expansion	\$472,000.00	3/26/2020
		Total	\$1,590,000.00	
Kimley-Horn	1	IH-35 24-Inch Downtown Waterline	\$589,000.00	10/31/2019
	2	NBU Contracting Support	\$246,000.00	
		Total	\$835,000.00	
M&S Engineering	1	Alves Ln Improvements (CNB)	\$6,500.00	
	2	Lake Front Avenue	\$15,000.00	
		Total	\$21,500.00	
Merrick	1	Green Valley Pump Station	\$282,425.36	9/26/2019
	2	Hydraulic Model	\$133,680.00	9/26/2019
	3	Solms Lift Station	\$379,699.60	10/31/2019
	4	Solms Pump Station & GST	\$235,783.60	10/31/2019
		Total	\$1,031,588.56	
Moeller & Associates	1	N. Kuehler 42"	\$17,300.00	10/31/2019
	2	Western Downtown to Morningside	\$964,165.00	10/31/2019
		Total	\$981,465.00	
Pawelek & Moy	1	Well 4 Discharge Line	\$206,695.00	

Exhibit A - Report for Water Engineering Contracts April 2020

		Total	\$206,695.00	
TRC	1	Gruene WWTP Relocation & Expansion	\$36,789.00	1/30/2020
		Total	\$36,789.00	
Utility Engineering Group	1	Aging Infrastructure	\$113,425.00	
		Total	\$113,425.00	
Urban Civil	1	Castell East	\$395,300.00	9/26/2019
	2	San Antonio St Rehab Redesign	\$23,500.00	
	3	San Antonio Street Rehab. Amendment	\$15,500.00	12/12/2019
		Total	\$434,300.00	

Electric Engineering Contracts Presented to the Board
FY 2020
August - December



Vendor	Legend	Project Name	Value
M & S Engineering	1	Weltner Farms Revision 1 & 2	\$ 11,985.00
	2	3Ph OH Loop 337 to FM 1863	\$ 139,985.00
	3	3Ph OH copper Replacement Bell Fredericksberg	\$ 19,895.00
	4	Single Ph OH Copper replacement Ohio, Louisiana, Oakwood	\$ 20,880.00
	5	Loop 337 T2 Sub Feeder	\$ 51,500.00
	6	Aging Infrastructure Replacement Post Rd Anhalt Gruene Rd	\$ 95,895.00
	7	Vintage Oaks Unit 27, 28, 29,	\$ 66,985.00
		Total	\$ 407,125.00
Schneider Engineering	1	Hortontown T2 Power Transformer replacement	\$ 98,000.00
	2	Comal Substation T1 Replacement	\$ 105,000.00
	3	Loop 337 T2 Feeder	\$ 156,000.00
	4	Sheriff's Posse Sub Ring Bus Conversion T3 Addition	\$ 340,000.00
	5	Regulatory Tracking & Compliance Support Services	\$ 34,200.00
		Total	\$ 733,200.00
LCRA		Sheriffs Posse to Marion T340 Upgrade	\$ 101,000.00
		Total	\$ 101,000.00

To:
NBU Board of Trustees**From:**
Shawn Schorn, P.E.
Chief Engineer of Water Services**Reviewed by:**
Michael Short, P.E.
Director of Water Services**Submitted by:**
Ryan Kelso
Chief Operations Officer**Approved by:**
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Authorize CEO to Negotiate and Execute Amendment #3 to the Professional Services Agreement with Moeller Ingalls, LLC, DBA Moeller & Associates for the North Kuehler 42" Interceptor Upgrade Project

BACKGROUND

On September 6, 2016, New Braunfels Utilities ("NBU") executed a Professional Services Agreement (the "Agreement") with Moeller Ingalls, LLC, DBA Moeller & Associates ("M&A") for professional engineering services for the North Kuehler 42-inch Interceptor Upgrade project (formerly known as the NBU 36-inch Sewer Interceptor Project) (the "Project"). On February 7, 2019, NBU executed Amendment #1 to the Agreement ("Amendment #1"), which included additional metes and bounds descriptions to all temporary construction easements, added title research, and adjusted permanent easement parcel total. On October 31, 2019, the NBU Board of Trustees approved Amendment #2 to the Agreement ("Amendment #2"), which included a cultural resources survey and associated reporting to the Texas Historical Commission.

NBU staff requests that the Board of Trustees approve Amendment #3 to the Agreement ("Amendment #3"), which includes (i) the separation of the cultural resources survey into two separate phases; (ii) a revision to the design to account for upstream alignment modifications to accommodate the concurrent NBU North Kuehler 30 and 33-inch Interceptor Upgrade Project; (iii) the addition of micro-tunneling; and (vi) an expansion of the construction administration scope to account for the micro tunneling operations. These requests required additional services by M&A and are beyond the scope of the Agreement.

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

FINANCIAL IMPACT

The total amount for Amendment #3 is \$95,198. The total contract amount for the Professional Services Agreement, Amendment #1, Amendment #2, and Amendment #3 with M&A for the Project is \$741,293. The Project is budgeted within the fiscal year 2016 through fiscal year 2021 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

- ☒ **Maintain Organizational Reliability and Resiliency**
- ☒ **Provide a Safe and Secure Environment**

MEETING DATE: May 28, 2020

AGENDA TYPE: Consent Items for Action

AGENDA ITEM NO.: F.5

EXHIBITS

1. Professional Services Agreement Amendment#3 with Moeller and Associates

Client: New Braunfels Utilities P.O. Box 310289 New Braunfels, Texas 78131-0289 Att: Ian Taylor, CEO	Project No.: 3-C17NK36 (sewer) Phase/Task/Dept. No.: Date: April 1, 2020		
This Amendment No. 3 (the "Amendment") is in accordance with the provisions outlined in the Proposal and Scope for Professional Engineering Services between Moeller Ingalls, LLC, DBA Moeller & Associates (M&A) and New Braunfels Utilities (Client) executed on September 6, 2016 (the "Agreement").			
Project Description: North Kuehler 42-inch Sewer Interceptor Upgrade (formerly known as the NBU 36-inch Sewer Interceptor Project)			
Description of Services: The Professional shall provide the services summarized below and further described in Exhibit A to this Amendment (the "Services"). <ol style="list-style-type: none"> 1. Conduct a cultural resources survey scope in separate phases (Phase 1 and Phase 2). 2. Revise the design to account for upstream alignment modifications required to accommodate the project being designed by others upstream of this project. 3. Revise the design to include the addition of microtunneling adjacent to the Hawthorne Riverside apartments. 4. Expand the construction administration scope to account for the microtunneling operations during construction. 			
Compensation shall be as follows: The compensation for the Services shall not exceed \$95,198.00 as described in Exhibit B.			
	<table border="1"> <tr> <td>Amount of this Authorization</td> <td>\$95,198.00</td> </tr> </table>	Amount of this Authorization	\$95,198.00
Amount of this Authorization	\$95,198.00		
Schedule shall be as follows: The Services shall be completed by July 31, 2021.			

The above described services shall proceed upon return of this Agreement. Services will be billed as they are done. All other provisions, terms, and conditions of the agreement for services which are not expressly amended shall remain in full force and effect.

☒ This Authorization will serve as notice to proceed.

Moeller Ingalls, LLC DBA Moeller & Associates (M&A)

New Braunfels Utilities (Client)

BY: 
 Jeff Moeller, P.E.
 Print or Type Name

BY: _____

 Print or Type Name

TITLE: President, Moeller Ingalls, LLC

TITLE: _____

DATE: 4/22/2020

DATE: _____

EXHIBIT A SCOPE OF SERVICES

NBU (the "Client") requires cultural resource and reporting services, additional design revisions, and construction administration services for the North Kuehler 42-inch Sewer Interceptor Upgrade Project (formerly known as the NBU 36-inch Sewer Interceptor Project) (the "Project").

Moeller & Associates ("M&A") and its subconsultant SWCA Environmental Consultants ("SWCA") (collectively, the "Professional") shall provide all labor, material, and equipment necessary to provide cultural resource and reporting services as described in Item 1 of this Exhibit. M&A shall provide all labor, material, and equipment necessary to provide additional design revisions and construction administration services as described in Items 2, 3, and 4 of this Exhibit. Together Items 1, 2, 3, and 4 are herein referred to as the "Services."

Item 1 – Revised Cultural Resources Survey Services

The cultural resource services include a survey and the associated reporting for the Project. The Project is 1.5 mile long project that begins near the intersection of Madrid Drive and Rio Drive, progresses southwest along Rio Drive to the intersection of Rio Drive and Santiago Drive, extending northwest along Santiago Drive, crosses Interstate Highway ("IH")-35 and Business IH-35 and continues upstream along the eastside of the Guadalupe River to the apparent intersection of the Guadalupe River and Rusk Street in New Braunfels, Texas (the "Project Area"). The cultural resource services survey shall include two phases of work. The two phased approach will allow the Services to coordinate with easement acquisitions.

The Professional shall complete the following tasks in two phases: 1) Phase 1 shall include the Texas Historical Commission's ("THC") Antiquities Permit application, a field reconnaissance and intensive pedestrian survey of 6,000 feet of the Project's alignment, and the preparation of an interim report for review by the THC; and 2) Phase 2 shall include the intensive survey of five (5) parcels (2,000 feet of the Project's alignment) not covered in Phase 1, the preparation of a report of investigations, and the completion of all the THC's Antiquities Permit obligations.

PHASE 1

ANTIQUITIES PERMIT APPLICATION

The Professional previously completed a thorough constraints analysis of the Project area in 2018, which included a review of all background literatures and files regarding archaeological sites and potential. The Professional shall update this review and incorporate the results of the analysis in the THC's Antiquities Permit application. Due to the Project's location being owned and controlled by a political subdivision of the State of Texas, an archaeological field investigation will require an Antiquities Permit in compliance with the THC's Antiquities Code of Texas. The Professional shall prepare the Antiquities Permit application and submit it to NBU for review and signatures. The application shall describe the (i) Project's area, (ii) the results of the background review, (iii) and the proposed level of investigations for the archaeological work. Once complete, the Professional shall

submit the Antiquities Permit application with all of the Project documentation to the THC. Also, as part of this task, the Professional shall orchestrate the logistics for completion of the fieldwork and establish project management protocols.

CULTURAL RESOURCES SURVEY

The Professional shall conduct a cultural resource survey of a 6,000-ft section of the overall 1.5-mile long Project area to determine the nature, extent, and, if possible, the potential significance of any cultural resources located within the Project's Area. The survey shall meet the THC's minimum survey standards, which requires a minimum of sixteen (16) shovel tests or one (1) to two (2) mechanical trenches per linear mile (100-foot-wide survey corridor). Phase 1 will require a combination of shovel tests on sections to the south of IH-35, and mechanical trenches along terraces north of IH-35.

In Phase 1, the Professional shall excavate fifteen (15) to twenty (20) shovel/auger tests depending upon the levels of disturbances and archaeological potential. Shovel tests will be excavated in twenty (20)-centimeter arbitrary levels to 3.3 feet in depth or to culturally sterile deposits, whichever comes first. The matrix will be screened through ¼-inch mesh. An auger probe will then be placed at the bottom of select excavated shovel tests and excavated to a maximum depth of 6.6 feet, if necessary. The Professional shall backfill all shovel test holes.

Additionally, due to large portions of the Project lying within the Guadalupe River floodplain, the Professional shall perform deep mechanical testing (i.e., backhoe trenching) that is necessary to test for the presence of more deeply buried cultural materials. Trench placement shall be determined by the level of disturbance within the Project's Area, the location of buried utilities, the location of any previously impacted areas, encountered deposits, and the preservation potential for archaeological sites. The Professional shall perform backhoe trenches excavation to a depth sufficient to determine the presence/absence of buried cultural materials and allow the complete recording of all features and geomorphic information to depths of Project impacts.

In Phase 1, the Professional shall excavate three (3) to four (4) backhoe trenches along the Project Area. The Professional shall trench 4.9–6.6 feet deep, twenty (20) to twenty-six (26) feet long and 4.9 feet wide. All trenching shall be monitored by a competent archaeologist while excavations are underway. The Professional shall record stratigraphic profile drawings for each trench. The Professional shall map and photograph all features encountered during trenching and all Occupational Safety and Health Standards ("OSHA") safety protocols shall be utilized in the trenches and excavations. The excavations shall be backfilled and leveled upon completion of recording. The Professional shall complete both the shovel/auger testing and backhoe trenching for Phase 1 two (2) weeks after issuance of the THC's Antiquities Permit.

The Professional shall (i) define and record any discovered archaeological sites in accordance with standard federal and state requirements, (ii) photo-document any existing standing structures within the Project Area, (iii) map recorded sites in detail with a Trimble Global Positioning System ("GPS") unit, and (iv) plot on United States Geological Survey ("USGS") 7.5-minute topographic maps and appropriate Project maps for planning purposes. The Professional is proposing a non-collection

survey where artifacts shall be tabulated, analyzed, and documented in the field, but not collected. Temporally diagnostic artifacts will be described in detail and photographed in the field, then reburied. Only especially rare artifacts or discoveries shall be collected. This policy will minimize curation costs once the fieldwork is concluded.

As part of the preparation for the backhoe trench excavations, the Professional shall perform a one (1)-day reconnaissance of the Project's area with a geomorphologist, to confirm exact trench numbers, locations, and coverage, as well as discuss the proposed work with NBU and landowners to delineate safe and clear working areas in specific land parcels.

REPORTING

Upon completion of the Phase 1 field survey, the Professional shall prepare an interim report of the survey findings in accordance with the Council of Texas Archaeologists and the THC standards. The report shall document (i) previous investigations in the area, (ii) background cultural settings, (iii) the methodology used in the investigations, (iv) the presence and condition of any previously recorded sites revealed in the records review, (v) the general nature and extent of cultural resources encountered during the archaeological surveys, (vi) recommendations on the need for any further work, and (vii) the potential significance of the cultural resources in regards to future development and eligibility as State Antiquities Landmarks.

The Professional shall submit a draft digital copy of the survey findings to NBU for review and comment. Once this has been accomplished, any appropriate edits requested by NBU shall be made and a final draft interim report shall be submitted to the THC for review and concurrence. The Professional shall request clearance of the Phase 1 parcels by THC in lieu of completion of the remainder of the overall Project.

PHASE 2

CULTURAL RESOURCES SURVEY

The Professional shall conduct a cultural resource survey of the remainder of the overall 1.5-mile long Project Area, roughly five (5) parcels equaling 2000-ft of alignment. The Professional shall conduct work per the protocols and methods described for Phase 1 above. In Phase 2, the Professional shall excavate five (5) to six (6) backhoe trenches to a depth sufficient to determine the presence/absence of buried cultural materials and allow the complete recording of all features and geomorphic information to depths of Project impacts. As with Phase 1, the Professional shall define and record any discovered archaeological sites in accordance with standard federal and state requirements. The Professional shall photo-document any existing standing structures within the Project area and shall utilize all OSHA safety protocols in the trenches and excavations. The Professional shall map in detail all recorded with a Trimble GPS unit and plotted on USGS 7.5-minute topographic maps and appropriate Project maps for planning purposes.

REPORTING

Upon completion of the Phase 2 field survey, the Professional shall prepare an interim report of the survey findings in accordance with Council of Texas Archaeologists and THC standards. The report shall (i) document the general nature and extent of cultural resources encountered during the archaeological survey, (ii) recommendations on the need for any further work, and (iii) the potential significance of the cultural resources in regards to future development and eligibility as State Antiquities Landmarks.

The Professional shall submit a draft digital copy of the survey findings to NBU for review and comment. Once this has been accomplished, any appropriate edits requested by NBU shall be made and a final draft interim report shall be submitted to the THC for review and concurrence. Once the THC has reviewed the document (up to 30-day review period) and provided the results of the review to the Professional, all revisions requested by THC shall be incorporated into the final report. The final report shall include the results of both Phase 1 and Phase 2. The Professional shall submit the final report to NBU and the THC. As part of completing the THC's Antiquities Permit requirements, the Professional shall (i) furnish two (2) electronic copies of the final report on a tagged PDF formatted CD to the THC, (ii) complete an Abstracts in Texas Contract Archeology Summary form and abstract text on-line, and (iii) furnish nine (9) hard copies of the report (without site information) to university-based libraries and archaeological research facilities around the State of Texas.

SCHEDULE

The Professional shall complete the services in accordance with the below referenced schedule. The official notice to proceed ("NTP date") is the following business day after the execution of this Amendment.

- The Antiquities Permit application submitted to THC for review within 1.5 weeks of the NTP date.
- The fieldwork for Phase 1 will commence within two (2) weeks of acquiring the Antiquities Permit from THC.
- The Phase 1 draft interim report shall be submitted to NBU within 2.5 weeks of fieldwork completion.
- The Phase 1 draft interim report shall be submitted to THC for review within five (5) days of receiving comments from NBU.
- After the review of the draft interim report by THC (that can take up to thirty (30) days), THC will send a determination letter to the Professional. Upon receipt of the determination letter, the Professional shall forward the letter to NBU.
- Phase 2 schedule shall be determined by the easement acquisition progress.

ASSUMPTIONS

The above proposal and tasks are based on the assumptions described herein.

- Access to the subject properties is open and entry will be freely provided by NBU or M&A. The Professional has not budgeted for extensive landowner coordination.

- The Professional has assumed a total Project length of 1.5 miles and a corridor width of 100 feet. Additions or changes may require a change order.
- The survey shall be completed by a team of three archaeologists in two (2), one (1)-day mobilizations. If factors outside of the Professional's control, including land access restrictions, inclement weather, or unsafe project conditions, affect the Project schedule and number of necessary mobilizations, additional funds and a change order will be needed.
- Permit completion is budgeted for Phase 2. Should Phase 2 not occur, additional funds will be needed to complete the permit requirements for Phase 1 only.
- The Professional assumes that one (1) archaeological site will be identified during the survey. If additional sites are encountered, the Professional shall contact NBU to discuss a change order.
- As proposed the cultural resources scope of work may not meet the requirements of Section 106 of the National Historic Preservation Act ("NHPA"). If NHPA compliance is required (e.g., U. S. Army Corps of Engineers), the Professional shall work with NBU to develop a scope of work and change order to satisfy Section 106 compliance.

Item 2 – Design Revisions for upstream portion of the Project

The final design shall be modified to account for an upstream sewer project which required modifications to the plans to account for the revised alignments. The required design modifications are summarized and described herein.

- M&A shall revise final design plans to adjust the sewer alignment and manhole locations to accommodate the latest design information for the upstream sewer tie-in for the 30"/30" North Kuehler Interceptor project.
- M&A shall revise eight (8) plan sheets, revise quantities and bid form, and coordination time with NBU and Freese & Nichols, Inc. ("FNI").
- M&A assumes no new easements will be needed or existing easements modified.

Item 3 – Design Revisions to add microtunneling to a portion of the Project

The final design shall be modified to account for approximately 800 feet of the proposed interceptor to be installed via microtunneling (trenchless). Due to the unique engineering expertise required for microtunneling, M&A shall coordinate with FNI to assist with the microtunneling engineering design. The required design modifications are summarized and described herein.

- M&A shall develop construction specifications for installing the pipe via microtunneling.
- M&A shall perform jacking force calculations for the pipe.
- M&A shall review geological and hydrology information to determine appropriate shaft size and appropriate construction methodologies.
- M&A shall design review to determine if casing is needed due to soil conditions and jacking forces.
- M&A shall design review of different casing types taking into account jacking forces, soil strata and vertical alignment accuracy.

- M&A shall determine the need, location and number of interjack stations.
- M&A shall determine the need, location and number of shafts required.
- M&A shall revise the plans to include the necessary design information for microtunneling.
- M&A shall add details and notes to the plans for microtunneling.
- M&A shall update the project quantities and pay items.

Item 4 – Revision to the Construction Administration scope to account for microtunneling operations

Due to the changes noted in Item 3 above, the construction administration scope is modified to account for the microtunneling installation. The items described herein shall be added to the construction administration scope of work.

- M&A shall review contractor microtunneling work plan and submittals related to microtunneling. This includes up to 160 hours of review time.
- M&A shall perform up to four (4) additional site visits during the microtunneling installation.
- M&A shall review jacking force calculations prepared by the contractor
- M&A shall review ground movement values if requested by the contractor or if threshold values are met.

**EXHIBIT B
COMPENSATION**

NBU shall pay M&A for the Services rendered under this Amendment not to exceed \$95,198.

Revised Task		Current Contract Amount	Amendment Amount	Revised Amount
1	Cultural Resources Study (Archeological Study)	\$17,300	\$4,813	\$22,113
2	Revisions to upstream sewer alignment (Design)		\$3,805	
3	Microtunneling design (Design)		\$30,070	
2 and 3	Design change for 2-3 above (Design)	\$234,200	\$33,875	\$268,075
4	Microtunneling Construction Admin (Constr Admin)	\$69,000	\$56,510	\$125,510
Totals		\$320,500	\$95,198	\$415,698

To:
NBU Board of Trustees**From:**
Shawn Schorn, P.E.
Chief Engineer of Water Services**Reviewed by:**
Michael Short, P.E.
Director of Water Services**Submitted by:**
Ryan Kelso
Chief Operations Officer**Approved by:**
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Authorize CEO to Negotiate and Execute Professional Services Agreements with Terracon Consultants, Inc. and AmaTerra Environmental, Inc. for Cultural Services

BACKGROUND

New Braunfels Utilities (“NBU”) issued a request for proposals (“RFP”) for environmental and cultural services for water and wastewater capital improvement plan projects to meet Texas Historical Commission (“THC”) and project requirements (the “Project”).

The Project will be an on-call agreement that includes THC coordination, archeological surveying/test services, archeological assessments, THC antiquities permit coordination, mitigation excavation services, and reporting to THC as required per project site (the “Services”). NBU and the Professional will execute subsequent work authorizations that will detail the work for each project.

NBU received six (6) proposals on February 6, 2020, for the Project during the public bidding process. The Project team evaluated the proposals and determined that Terracon Consultants, Inc. (“Terracon”) and AmaTerra Environmental, Inc. (“AmaTerra”) are the respondents whose proposals for the Project are the most advantageous to NBU considering the relative importance of price and the evaluation criteria in the RFP.

NBU staff requests that the Board of Trustees approve a Professional Services Agreements with each of Terracon and AmaTerra for the Project (each an “Agreement”).

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

FINANCIAL IMPACT

The total contract amount for each Agreement is \$166,667 per year and \$500,000 for the three (3) year duration of the Agreement. The Project is budgeted within the fiscal year 2021 through fiscal year 2023 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

- ☒ **Recognized as a Trusted Community Partner Dedicated to Excellence in Service**
- ☒ **Provide a Safe and Secure Environment**
- ☒ **Be a Responsible Steward of Natural Resources**

MEETING DATE: May 28, 2020

AGENDA TYPE: Consent Items for Action

AGENDA ITEM NO.: F.6

EXHIBITS

1. Professional Services Agreement with Terracon Consultants, Inc.
2. Professional Services Agreement with AmaTerra Environmental, Inc.

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **TERRACON CONSULTANTS, INC.**, a Delaware corporation authorized to transact business in the State of Texas (the “Professional”).

Section 1. Term of Agreement. This Agreement will be effective on the latest date subscribed below, and will remain in full force and effect for a period of one (1) year from June 15, 2020, to June 14, 2021 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for two (2) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 14, 2023.

Section 2. Scope of Services.

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

Section 3. Compensation.

- (A) Amount. The Professional shall be paid the amount set forth in Exhibit B as described herein.
- (B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended, work performed in sufficient detail to justify payment, and a copy of the Work Authorization form. In the event any uncontested portions of any invoice are

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

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

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

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

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

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

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

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

Section 8. 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 AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE 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 ("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- 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 officers, directors, officials and employees as an Additional Insured as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Professional

shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to commencing any the Services under this Agreement, the Professional shall provide NBU with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Professional's insurance provider(s) as evidence that policies are in place with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and declaration page(s) to NBU thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement will be identified by referencing the RFP number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property

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

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

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

Section 11. Termination.

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

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

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

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

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

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

Section 12. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

(M) Offset.

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

from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.

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

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

If to NBU:

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

With copy to:

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

If to the Professional:

Chuck A. Gregory
Terracon Consultants, Inc.
6911 Blanco Road
San Antonio, TX 78216

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

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it

being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

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

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

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

Section 16. Information Technology

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

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

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised, the Professional shall notify NBU immediately. **THE PROFESSIONAL SHALL INDEMNIFY 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. Additional Representations. The Professional hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The Professional further declares

that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.

Section 18. Texas Public Information Act Requests. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in section 12(P).

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

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 20____.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

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

By:  _____ 4-16-2020
Name: Chuck A. Gregory
Title: Vice President/Regional Manager

Exhibit A

Services

BACKGROUND

NBU has developed a five-year Water and Wastewater Capital Improvement Plan (“CIP”), which includes approximately 65 water and wastewater infrastructure projects with budgets over \$411 million. As the CIP projects continue to develop and are implemented, NBU requires cultural services to satisfy both the project and Texas Historical Commissions (“THC”) requirements for the design and construction phases of the CIP projects.

SCOPE OF SERVICES

This Agreement is an on-call agreement for cultural resources services specified in this Exhibit. The Professional shall provide all labor, equipment, materials and transportation necessary to complete the Services specified herein and more specifically articulated per project in Exhibit D to this Agreement.

The Cultural Resource Services include the following tasks:

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

The Professional shall submit a proposed service plan and quote for each project that NBU requests to be performed under this Agreement. NBU will either approve or disapprove each

proposed service plan. NBU's approval shall be evidenced by a finalized Work Authorization executed by both parties, attached as Exhibit D to this Agreement. The specific requirements as to location, conditions, procedures, timeframe for completion, and associated services pertaining to an assigned project shall be agreed to between NBU and the Professional in such individual Work Authorization form.

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

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

Exhibit B

Compensation

The Professional shall perform the Services described in Exhibit A for a particular project outlined in each NBU Work Authorization, attached as Exhibit D, and in accordance with the Professional's Fee Schedule below; however, the compensation for all Services included in this Agreement shall not exceed \$166,666, per year and \$500,000, for the duration of the Agreement.

Fee Schedule:

Service/Job Description	Total Hourly Rate
Principal	\$175.00
Quality Assurance/Quality Control Manager	\$175.00
Senior Archeologist	\$135.00
Principle Investigator	\$120.00
Architectural Historian	\$105.00
Senior Archaeologist	\$90.00
Project Archaeologist	\$80.00
Staff Archaeologist (Crew Chief)	\$75.00
Archaeologist Technician II	\$65.00
Archaeologist Technician I	\$55.00
GIS Technician	\$85.00
Administrative Assistant	\$65.00
Other Direct Costs (per day unless otherwise specified)	
Field Vehicle	\$60.00
GPS (sub meter)	\$35.00
GPS (sub-foot)	\$70.00
All-Terrain Vehicle	\$200.00
Trenching (one trackhoe)	\$1,1750.00
Curation Fee (per item)	\$100.00

Note: Rates are total costs.

Exhibit C
Evidence of Insurance

C-1

Exhibit D

Work Authorization



Work Authorization No. _____

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

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

☐ This Work Authorization will serve as notice to proceed.

PROFESSIONAL:

NEW BRAUNFELS UTILITIES:

BY: _____

BY: _____

Print or Type Name

Print or Type Name

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **AMATERRA ENVIRONMENTAL, INC.**, a Texas corporation (the “Professional”).

Section 1. Term of Agreement. This Agreement will be effective on the latest date subscribed below, and will remain in full force and effect for a period of one (1) year from June 15, 2020, to June 14, 2021 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for two (2) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 14, 2023.

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

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

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

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

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

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

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

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

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

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

Section 8. 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 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- or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

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

shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to commencing any the Services under this Agreement, the Professional shall provide NBU with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Professional's insurance provider(s) as evidence that policies are in place with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and declaration page(s) to NBU thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement will be identified by referencing the RFP number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property

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

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

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

Section 11. Termination.

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

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

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

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

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

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

Section 12. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

(M) Offset.

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

from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.

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

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

If to NBU:

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

With copy to:

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

If to the Professional:

Jill Madden
AmaTerra Environmental, Inc.
11842 Rim Rock Trail
Austin, TX 78737

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

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it

being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

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

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

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

Section 16. Information Technology

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

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

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised, the Professional shall notify NBU immediately. **THE PROFESSIONAL SHALL INDEMNIFY 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. Additional Representations. The Professional hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The Professional further declares

that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.

Section 18. Texas Public Information Act Requests. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU’s audit rights in section 12(P).

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

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 20____.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

PROFESSIONAL:
AMATERRA ENVIRONMENTAL, INC.,
a Texas corporation


By: 
Name: Jill Madden
Title: President

Exhibit A

Services

BACKGROUND

NBU has developed a five-year Water and Wastewater Capital Improvement Plan (“CIP”), which includes approximately 65 water and wastewater infrastructure projects with combined budgets over \$411 million. As the CIP projects continue to develop and are implemented, NBU requires cultural services to satisfy both the project and Texas Historical Commissions (“THC”) requirements for the design and construction phases of the CIP projects.

SCOPE OF SERVICES

This Agreement is an on-call agreement for cultural resources services specified in this Exhibit. The Professional shall provide all labor, equipment, materials and transportation necessary to complete the Services specified herein and more specifically articulated per project in Exhibit D to this Agreement.

The Cultural Resource Services include the following tasks:

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

The Professional shall submit a proposed service plan and quote for each project that NBU requests to be performed under this Agreement. NBU will either approve or disapprove each proposed service plan. NBU’s approval shall be evidenced by a finalized Work Authorization

executed by both parties, attached as Exhibit D to this Agreement. The specific requirements as to location, conditions, procedures, timeframe for completion, and associated services pertaining to an assigned project shall be agreed to between NBU and the Professional in such individual Work Authorization form.

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

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

Exhibit B

Compensation

The Professional shall perform the Services described in Exhibit A for a particular project outlined in each NBU Work Authorization, attached as Exhibit D, and in accordance with the Professional's Fee Schedule below; however, the compensation for all Services included in this Agreement shall not exceed \$166,666, per year and \$500,000, for the duration of the Agreement.

Fee Schedule:

<u>Service/Job Description</u>	<u>Base Rate</u>	<u>Overhead + Fee</u>	<u>Total Rate</u>
Principal	\$73.69	\$153.70	\$227.39
Program Manager	\$46.55	\$97.09	\$143.64
Project Manager	\$44.75	\$93.34	\$138.09
Sr. Historical Architect	\$45.17	\$94.34	\$139.39
Architect Historian/Historian III	\$37.57	\$78.36	\$115.93
Architect Historian/Historian II	\$28.19	\$58.80	\$86.99
Architect Historian/Historian I	\$21.46	\$44.76	\$66.22
Archaeologist VI/Sr. Principal Investigator	\$41.51	\$86.58	\$128.09
Archaeologist V/Principal Investigator	\$29.52	\$61.57	\$91.09
Archaeologist IV/Project Archaeologist/Lab Director	\$28.86	\$60.20	\$89.06
Archaeologist III/Field Director	\$27.38	\$57.11	\$84.49
Archaeologist II/Crew Chief	\$24.43	\$50.96	\$75.39
Archaeologist I/Technician	\$21.18	\$44.18	\$65.36
GIS Specialist	\$34.56	\$72.09	\$106.65
GIS Technician	\$22.22	\$46.35	\$68.57
Admin/Document Production Supervisor	\$27.16	\$56.65	\$83.81
Editor	\$23.42	\$48.85	\$72.27
Clerical	\$17.63	\$36.77	\$54.40

Any additional costs incurred under this Agreement are to be included in the calculation of the not to exceed amounts specified in this Exhibit. The additional costs below are included for informational purposes only. The Professional shall obtain written approval from NBU prior to incurring any additional costs.

Additional Costs (itemized with pricing):

Item	Cost
Lodging/Hotel	Current State Rate
Lodging& Associated Fees	\$50/day
Meals	Current State Rate
Mileage	Current State Rate
Rental Car	\$75/day
Rental Car Fuel	Current price/gallon
Photocopies Black/White	\$.10/page
Photocopies Color	\$1.00/page
Report Printing, Binding, Tabbing	\$90/each
Backhoe Rental	\$1,800/day
GPS Unit	\$50/day
Curation (Drawer & TX Archaeological Research Lab for artifacts & report)	\$3,640/drawer
TARL Site Fees	\$96/each
Total Data Search (TDS) Rental	\$95/day
Expendable Supplies	\$200/project

Exhibit C

Evidence of Insurance

Exhibit D

Work Authorization



Work Authorization No. _____

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

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

☐ This Work Authorization will serve as notice to proceed.

PROFESSIONAL:

NEW BRAUNFELS UTILITIES:

BY: _____

BY: _____

Print or Type Name

Print or Type Name

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

To:
NBU Board of Trustees

From:
Shawn Schorn, P.E.
Chief Engineer of Water Services

Reviewed by:
Michael Short, P.E.
Director of Water Services

Submitted by:
Ryan Kelso
Chief Operations Officer

Approved by:
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Authorize CEO to Negotiate and Execute Professional Services Agreements with Cox McLain Environmental Consulting, Inc. and Freese and Nichols, Inc. for Environmental Services

BACKGROUND

New Braunfels Utilities (“NBU”) issued a request for proposals (“RFP”) for environmental and cultural services for water and wastewater capital improvement plan projects to meet environmental protection requirements (the “Project”).

The Project will be an on-call agreement that includes environmental assessments, impact statements, routing studies, National Environmental Policy Act compliance reviews, endangered species reviews, coordination of US Army Corps of Engineers, Texas Water Development Board Environmental permitting, and coordination with applicable federal, state, and local regulatory agencies (the Services”). NBU and the Professional will execute subsequent work authorizations that will detail the work for each project.

NBU received ten (10) proposals on February 6, 2020, for the Project during the public bidding process. The project team evaluated the proposals and determined that Cox McLain Environmental Consulting, Inc. (“Cox McLain”) and Freese and Nichols, Inc. (“FNI”) are the respondents whose proposals for the Project are the most advantageous to NBU considering the relative importance of price and the evaluation criteria in the RFP.

NBU staff requests that the Board of Trustees approve a Professional Services Agreements with each of Cox McLain and FNI for the Project (each an “Agreement”).

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

FINANCIAL IMPACT

The total contract amount for each Agreement is \$166,667 per year and \$500,000 for the three (3) year duration of the Agreement. The Project is budgeted within the fiscal year 2021 through fiscal year 2023 NBU Board approved Capital Improvements Projects Budget.

MEETING DATE: May 28, 2020
AGENDA TYPE: Consent Items for Action
AGENDA ITEM NO.: F.7

LINK TO STRATEGIC PLAN

- ☒ **Recognized as a Trusted Community Partner Dedicated to Excellence in Service**
- ☒ **Provide a Safe and Secure Environment**
- ☒ **Be a Responsible Steward of Natural Resources**

EXHIBITS

1. Professional Services Agreement with Cox McLain Environmental Consulting, Inc.
2. Professional Services Agreement with Freese and Nichols, Inc.

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **COX MCLAIN ENVIRONMENTAL CONSULTING, INC.**, a Texas corporation (the “Professional”).

Section 1. Term of Agreement. This Agreement will be effective on the latest date subscribed below, and will remain in full force and effect for a period of one (1) year from June 15, 2020, to June 14, 2021 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for two (2) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 14, 2023.

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

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

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

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

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

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

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

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

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

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

Section 8. 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 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- or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

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

shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to commencing any the Services under this Agreement, the Professional shall provide NBU with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Professional's insurance provider(s) as evidence that policies are in place with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and declaration page(s) to NBU thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement will be identified by referencing the RFP number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property

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

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

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

Section 11. Termination.

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

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

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

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

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

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

Section 12. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

(M) Offset.

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

from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.

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

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

If to NBU:

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

With copy to:

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

If to the Professional:

Larry Cox
Cox McLain Environmental Consulting, Inc.
8401 Shoal Creek Blvd, Ste 100
Austin, TX 78757

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

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it

being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

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

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

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

Section 16. Information Technology

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

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

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised, the Professional shall notify NBU immediately. **THE PROFESSIONAL SHALL INDEMNIFY 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. Additional Representations. The Professional hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The Professional further declares

that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.

Section 18. Texas Public Information Act Requests. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU’s audit rights in section 12(P).

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

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 20____.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

PROFESSIONAL:
COX McLAIN ENVIRONMENTAL CONSULTING, INC.,
a Texas corporation

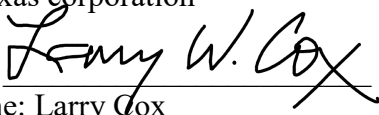
By: 
Name: Larry Cox
Title: Principal

Exhibit A

Services

BACKGROUND

NBU has developed a five-year Water and Wastewater Capital Improvement Plan (“CIP”), which includes approximately 65 water and wastewater infrastructure projects with combined budgets of over \$411 million. As the CIP projects continue to develop and are implemented, NBU requires environmental consulting services to satisfy both the project and Texas Historical Commissions (“THC”) requirements for the design and construction phases of the CIP projects.

SCOPE OF SERVICES

This Agreement is an on-call agreement for environmental consulting services specified in this Exhibit. The Professional shall provide all labor, equipment, materials and transportation necessary to complete the Services specified herein and more specifically articulated per project in Exhibit D to this Agreement.

The environmental consulting services include environmental assessments, impact statements, and routing studies. To perform the environmental consulting services, the Professional shall:

1. perform environmental constraints level analysis;
2. perform environmental site assessments and remediation services;
3. conduct environmental specifications for construction projects;
4. conduct National Environmental Policy Act (“NEPA”) compliance and general conformity reviews of capital development projects;
5. review technical documents and reports;
6. conduct endangered species reviews;
7. assist with US Army Corps of Engineers Section 404 Permitting;
8. complete Texas Water Development Board (“TWDB”) Environmental Permitting in accordance with requirements;
9. coordinate with floodplain administrators, as necessary;
10. coordinate with applicable federal and state regulatory agencies, including the Texas Parks and Wildlife Department, United States Corps of Engineers, THC, United States Fish and Wildlife Service; and
11. conduct environmental surveys during construction for potentially impacted species as dictated by TWDB environmental determination.

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

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

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

Exhibit B

Compensation

The Professional shall perform the Services described in Exhibit A for a particular project outlined in each NBU Work Authorization, attached as Exhibit D, and in accordance with the Professional's Fee Schedule below; however, the compensation for all Services included in this Agreement shall not exceed \$166,666, per year and \$500,000, for the duration of the Agreement.

Fee Schedule

<u>Service/Job Descriptions</u>	<u>Direct Rate</u>	<u>Overhead Rate</u>	<u>Total Rate</u>
Principal/Sr. Project Manager (20+ years experience)	\$57.00	\$85.50	\$159.60
Sr. Environmental Scientist II (supervisory staff/10+ years experience)	\$51.00	\$76.50	\$142.80
Sr. Environmental Scientist I (senior staff/7+ years experience)	\$44.00	\$66.00	\$123.20
Environmental Professional II (senior subject matter expert-PWS/PI/historic/PC/5+ years experience)	\$40.00	\$60.00	\$112.00
Environmental Staff III (envl. Staff/ 5+ years experience)	\$30.00	\$45.00	\$84.00
Environmental Staff II (envl./3-5 years experience)	\$27.00	\$40.50	\$75.60
Environmental Staff I (envl. Staff/0-3 years experience)	\$24.00	\$36.00	\$67.20
Environmental Tech II (field tech/3+ years experience)	\$20.00	\$30.00	\$56.00
Environmental Tech I (field tech/+ years)	\$18.50	\$27.75	\$51.80
Admin/Clerical	\$18.00	\$27.00	\$50.40

Any additional costs incurred under this Agreement are to be included in the calculation of the not to exceed amounts specified in this Exhibit. The additional costs below are included for informational purposes only. The Professional shall obtain written approval from NBU prior to incurring any additional costs.

Additional Costs: (Itemized with pricing):

Direct Costs

<u>Item</u>	<u>Cost</u>	<u>Unit</u>
Airfare (at cost)	\$450.00	Roundtrip
Rental Vehicle (at cost)	\$85.00	Day
Mileage (IRS rate)	\$0.575	Per mile
Hotel (at cost)	GSA Rate	Day
Per Diem/M&IE	GSA Rate	Day
Federal Express (at cost)	\$17.50	Letter Envelope
Reproduction	\$0.15	Page (B/W)
Color	\$1.50	Page
Maps/E-size plots	\$7.50	Each
Specialty sub consultants (at cost)	Varies	

Exhibit C

Evidence of Insurance

Exhibit D

Work Authorization



Work Authorization No. _____

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

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

☐ This Work Authorization will serve as notice to proceed.

PROFESSIONAL:

NEW BRAUNFELS UTILITIES:

BY: _____

BY: _____

Print or Type Name

Print or Type Name

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **FREESE & NICHOLS, INC.**, a Texas corporation (the “Professional”).

Section 1. Term of Agreement. This Agreement will be effective on the latest date subscribed below, and will remain in full force and effect for a period of one (1) year from June 15, 2020, to June 14, 2021 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for two (2) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond June 14, 2023.

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

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

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

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

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

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

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

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

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

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

Section 8. 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 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- or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

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

shall be solely responsible for any such deductible or self-insured retention amount.

- ix. Use of Subcontractors. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to commencing any the Services under this Agreement, the Professional shall provide NBU with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Professional's insurance provider(s) as evidence that policies are in place with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and declaration page(s) to NBU thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement will be identified by referencing the RFP number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property

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

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

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

Section 11. Termination.

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

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

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

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

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

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

Section 12. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

(M) Offset.

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

from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.

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

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

If to NBU:

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

With copy to:

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

If to the Professional:

Robert Chambers
Freese & Nichols, Inc.
10431 Morado Circle, Suite 300
Austin, TX 78759

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

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

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

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

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

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

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

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

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

(W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it

being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

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

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

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

Section 16. Information Technology

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

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

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

(D) Compromised Security. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised, the Professional shall notify NBU immediately. **THE PROFESSIONAL SHALL INDEMNIFY 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. Additional Representations. The Professional hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The Professional further declares

that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.

Section 18. Texas Public Information Act Requests. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU’s audit rights in section 12(P).

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

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

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

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

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 20____.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

PROFESSIONAL:

FREESE & NICHOLS, INC.,
a Texas corporation

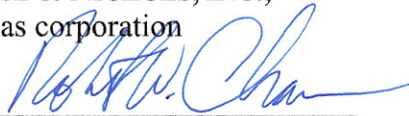
By:  _____
Name: Robert Chambers
Title: Vice President/Principal

Exhibit A

Services

BACKGROUND

NBU has developed a five-year Water and Wastewater Capital Improvement Plan (“CIP”), which includes approximately 65 water and wastewater infrastructure projects with combined budgets of over \$411 million. As the CIP projects continue to develop and are implemented, NBU requires environmental consulting services to satisfy both the project and Texas Historical Commissions (“THC”) requirements for the design and construction phases of the CIP projects.

SCOPE OF SERVICES

This Agreement is an on-call agreement for environmental consulting services specified in this Exhibit. The Professional shall provide all labor, equipment, materials and transportation necessary to complete the Services specified herein and more specifically articulated per project in Exhibit D to this Agreement.

The environmental consulting services include environmental assessments, impact statements and routing studies. To perform the environmental consulting services, the Professional shall:

1. perform environmental constraints level analysis;
2. perform environmental site assessments and remediation services;
3. conduct environmental specifications for construction projects;
4. conduct National Environmental Policy Act (“NEPA”) compliance and general conformity reviews of capital development projects;
5. review technical documents and reports;
6. conduct endangered species reviews;
7. assist with US Army Corps of Engineers Section 404 Permitting;
8. complete Texas Water Development Board (“TWDB”) Environmental Permitting in accordance with requirements;
9. coordinate with floodplain administrators, as necessary;
10. coordinate with applicable federal and state regulatory agencies, including the Texas Parks and Wildlife Department, United States Corps of Engineers, THC, United States Fish and Wildlife Service; and
11. conduct environmental surveys during construction for potentially impacted species as dictated by TWDB environmental determination.

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

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

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

Exhibit B

Compensation

The Professional shall perform the Services described in Exhibit A for a particular project outlined in each NBU Work Authorization attached as Exhibit D, and in accordance with the Professional's Fee Schedule below; however, the compensation for all Services included in this Agreement shall not exceed \$166,666, per year and \$500,000, for the duration of the Agreement.

Fee Schedule

<u>Service/Job Descriptions</u>	<u>Direct Rate</u>	<u>Overhead Rate</u>	<u>Total Rate</u>
Project Manager	N/A	N/A	\$177.00
Senior Advisor	N/A	N/A	\$175.00
Principal in Charge	N/A	N/A	\$250.00
Environmental Scientist I	N/A	N/A	\$77.40
Environmental Scientist II	N/A	N/A	\$86.00
Environmental Scientist III	N/A	N/A	\$95.00
Environmental Scientist IV	N/A	N/A	\$131.00
Environmental Scientist V	N/A	N/A	\$148.00
Environmental Scientist VI	N/A	N/A	\$175.00
Environmental Scientist VII	N/A	N/A	\$185.00
Environmental Scientist VIII	N/A	N/A	\$190.00
Hydrologist III	N/A	N/A	\$114.00
Hydrologist V	N/A	N/A	\$137.00
Hydrologist VI	N/A	N/A	\$158.00
GIS Analyst I	N/A	N/A	\$68.00
GIS Analyst II	N/A	N/A	\$75.00
GIS Analyst III	N/A	N/A	\$83.00
GIS Analyst IV	N/A	N/A	\$109.00
GIS Analyst V	N/A	N/A	\$127.00
Corporate Admin Specialist	N/A	N/A	\$52.00
Corporate Admin Support	N/A	N/A	\$43.00
Intern	N/A	N/A	\$52.00

Note: Rates are total costs.

Any additional costs incurred under this Agreement are to be included in the calculation of the not to exceed amounts specified in this Exhibit. The additional costs below are included for informational purposes only. The Professional shall obtain written approval from NBU prior to incurring any additional costs.

Specified rates for labor are fully burdened costs for services of staff positions shown below, including all costs of administration (including invoicing), overhead, profit, office management, facilities, equipment, utilities, office supplies, and all direct and indirect costs associated with performance of the position's duties.

Additional Costs: (Itemized with pricing)

Miscellaneous Supply Costs		
Miscellaneous Field Equipment	At Cost	Per work authorization
GPS Rental	At Cost	Per work authorization
Testing Supplies	At Cost	Per work authorization
Laboratory Analysis	At Cost	Per work authorization
Overnight Delivery	At Cost	Per work authorization
Travel		
Lodging for overnight travel (rate not to exceed State per day rate for lodging, excluding taxes)	Current State rate	Per night
Meals for overnight travel (rate not to exceed State per day rate for meals)	Current State rate	Per day
Vehicle Mileage	Current State rate	Per mile
Airfare (standard coach fare)	At Cost	Per flight
Rental Car	At Cost	Per day/per week
Pickup Truck/Van Rental	At Cost	Per day/per week
Note: All other costs will be negotiated during work authorization development.		

Exhibit C

Evidence of Insurance

Exhibit D

Work Authorization



Work Authorization No. _____

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

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

☐ This Work Authorization will serve as notice to proceed.

PROFESSIONAL:

NEW BRAUNFELS UTILITIES:

BY: _____

BY: _____

Print or Type Name

Print or Type Name

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

To:
NBU Board of Trustees

From:
Brent Lundmark
Water Treatment and Compliance Manager

Reviewed by:
Michael Short, P.E.
Director of Water Services

Submitted by:
Ryan Kelso
Chief Operations Officer

Approved by:
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Authorize CEO to Negotiate and Execute a Materials Agreement with Polydyne, Inc. for the Purchase of Water and Wastewater Treatment Chemicals

BACKGROUND

New Braunfels Utilities (“NBU”) issued a request for bids (“RFB”) for the purchase and delivery of select water and wastewater treatment chemicals to NBU facilities. The RFB allows NBU to award a Materials Agreement to one or more respondents for select water and wastewater treatment chemicals.

On March 3, 2020, NBU received twelve (12) responses to the RFB during the public bidding process. The Water Treatment and Compliance Division of NBU evaluated the bids and determined that Polydyne, Inc. was the lowest responsible bidder for the delivery of polymer, a chemical used in both the water and wastewater treatment processes.

NBU staff requests that the Board of Trustees approve a Materials Agreement with Polydyne, Inc. for the purchase of the polymer chemicals listed below (the “Agreement”):

1. Liquid, Cationic Polyelectrolyte Sludge Conditioning Polymer Clarifloc SE - 235 or approved equal;
2. Liquid, Cationic Polyelectrolyte Conditioning Polydyne C-338P or approved equal; and
3. Liquid, Cationic Polyelectrolyte Sludge Conditioner Polymer Clarifloc SE - 235 or approved equal.

The initial term of the Agreement will be for a period of one (1) year from June 1, 2020, to May 31, 2021. After the expiration of the initial term, the Agreement will automatically renew for four (4) successive one year terms.

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

FINANCIAL IMPACT

The total contract amount for the Agreement is \$74,539.50 per year and \$372,697.50 for the duration of the Agreement. The Agreement is budgeted within the operations and maintenance budget (“O&M Budget”) for year 2021 and will be budgeted in the O&M Budgets of 2022 through fiscal year 2025.

MEETING DATE: May 28, 2020
AGENDA TYPE: Consent Items for Action
AGENDA ITEM NO.: F.8

LINK TO STRATEGIC PLAN

- ☒ **Recognized as a Trusted Community Partner Dedicated to Excellence in Service**
- ☒ **Provide a Safe and Secure Environment**
- ☒ **Be a Responsible Steward of Natural Resources**

EXHIBITS

1. Materials Agreement with Polydyne, Inc.

MATERIALS AGREEMENT

This **MATERIALS AGREEMENT** (the “Agreement”) is entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **POLYDYNE, INC.**, a Delaware corporation authorized to transact business in the State of Texas (the “Supplier”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below, and will remain in full force and effect for a period of one (1) year from June 1, 2020, to May 31, 2021 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for 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 May 31, 2025
2. **Scope of Services.** NBU desires to purchase certain Utility Products (defined below) from the Supplier in accordance with the provisions of this Agreement. The Supplier shall sell the Utility Products to NBU in accordance with the provisions of this Agreement.
 - A. **Utility Products Defined.** The Utility Products shall mean the present and future goods described in Exhibit A of this Agreement.
 - B. **Non-Exclusive Supplier.** The parties agree that this Agreement is nonexclusive and neither restricts NBU’s ability to procure the same or similar materials and services from a different supplier nor limits NBU’s sole discretion to contract for any materials or services with other vendors.
 - C. **Subcontractors.** The Supplier is prohibited from utilizing subcontractors to perform its obligations under this Agreement, unless NBU, in its sole discretion, expressly agrees in writing beforehand to allow such named subcontractor to perform the specified work.
 - D. **Shipment and Delivery.** During the term of this Agreement, the Supplier will deliver and/or ship the Utility Products to NBU from time to time as requested by NBU according to the following provisions:
 - I. **General.**
 - a. **Place of Delivery.** The Supplier shall ship and/or deliver the Utility Products to sites listed in Exhibit D, located in New Braunfels, Texas 78130 (individually a “Facility”) within seven (7) business days after receipt of order or as otherwise requested by NBU in writing from time to time.

- b. Supplier to Package Utility Products. The Supplier shall prepare and package all Utility Products in accordance with good commercial practice so that they are delivered free of damage and in original condition. Each shipping container shall be clearly and permanently marked as follows:
 - 1. the Supplier's name and address;
 - 2. container number and total number of containers (e.g., box 1 of 4 boxes); and
 - 3. container number bearing the packing slip.
- c. No Packing, Crating Charges. No charges will be allowed for packing, crating, or carriage unless agreed to in writing by NBU prior to shipment and/or delivery of the Utility Products. NBU's inventory of the Utility Products at the time of delivery, including without limitation, count or weight, shall be conclusive on shipments that are not marked as described in Section 2.D.I.b.
- d. Title, Risk of Loss, and Returns. Title and risk of loss of the Utility Products shall not pass to NBU until NBU actually receives and takes possession of the Utility Products. All deliveries shall be F.O.B. destination. Cost of all return shipments, for whatever reason returned, shall be borne by the Supplier with title and risk of loss passing at NBU's time of shipment, unless otherwise specified by NBU at the time of return.
- e. Inspection. NBU shall have a reasonable time after delivery to inspect the Utility Products. All such items must conform to the specifications described in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. NBU, in its sole discretion, may reject and refuse acceptance of any Utility Products that do not conform to such specifications. NBU shall notify the Supplier of such rejection either by (i) providing notice in writing or (ii) returning the Utility Products to the Supplier at the Supplier's expense and risk. All returned Utility Products shall be F.O.B. NBU's place of shipment. NBU shall not incur any charges for such rejected Utility Products.
- f. Storage. The Supplier shall not utilize the Facility for the storage of any goods that are not intended for the exclusive use of NBU.

II. Deliveries.

- a. Unloading Utility Products. The Supplier shall deliver and unload the Utility Products without the assistance of any NBU employees or agents at the Facility in a manner that is safe and does not result in any harm or damage to the Utility Products, the Facility, or any NBU personnel. In the

event NBU, rather than the Supplier, unloads any portion of the Utility Products, the Supplier bears the sole risk of liability for damages to property and personnel arising from such unloading and placement in NBU's point of delivery. NBU employees shall at all times be acting within the course and scope of their employment during such unloading and placement of Utility Products.

- b. Cost of Delivery. The Supplier agrees to load, move, and unload the Utility Products safely on the Supplier trucks as needed at no cost to NBU.
- c. Notification of Delivery. The Supplier shall notify NBU in writing no less than twenty-four (24) hours in advance of all Utility Products to be delivered to the Facility, unless a shipment is to be made on a Monday, in which case the Supplier shall make such notification no later than the preceding Friday. Further, such notification shall also include information regarding any Utility Products that are back ordered and will not be delivered to NBU. The Supplier shall schedule its shipments to arrive on weekdays that are not national or religious holidays between the times of 9:00 a.m. and 3:00 p.m. or as otherwise provided by NBU in writing to the Supplier. NBU may choose, in its sole discretion, to refuse to receive a shipment that does not arrive during the business hours specified herein. The Supplier shall incur all costs associated with delays due to failure of the Supplier to provide the notice required herein, or due to a failure of the shipment to arrive during the business hours specified herein.

III. Urgent Shipments. The Supplier shall deliver all Utility Products identified by NBU as an "Urgent Shipment" to the Facility or other jobsite designated by NBU within five (5) business days of NBU's request. In the event of an Urgent Shipment, the Supplier may use a common carrier to deliver the Utility Products if necessary. To the extent the Supplier is capable of complying with the five (5) business day requirement with no additional cost to it, NBU shall not be charged any additional fee for an Urgent Shipment. If the Supplier is only capable of delivering an Urgent Shipment within the required five (5) business days by incurring additional costs for expedited delivery, then the Supplier shall have the right to reimbursement from NBU for the limited additional actual cost of Supplier's freight or delivery. NBU may agree to accept an Urgent Shipment at times other than weekdays during normal business hours, but the Supplier shall provide NBU as much advance notice of projected time of arrival and the projected additional cost, if any, as may be possible under the circumstances.

IV. Failure to Deliver/Ship Utility Products.

- a. Inability to Meet Contractual Obligations. In the event that the Supplier is unable to deliver Utility Products as requested by NBU pursuant to this Agreement and within the time required by NBU for any reason whatsoever, NBU may purchase said Utility Products from a third party(s)

without any further payment or other obligation to the Supplier for such Utility Products and said purchase shall not be deemed to be a breach of the terms of this Agreement. In the event that Utility Products are needed for an emergency or in a manner that is not in the normal course of business, NBU shall inform the Supplier of that fact as soon as reasonably practicable.

- b. Force Majeure. The Supplier shall not be liable for delay or default in delivery resulting from any unforeseeable cause beyond the Supplier's reasonable control, including, but not limited to, governmental action, epidemic, pandemic, fire, damage or destruction of goods, wars (declared or undeclared), acts of terrorism, and acts of God (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the time for the Supplier's performance shall be extended reasonably and NBU and the Supplier shall adjust all affected dates accordingly. If NBU finds the affected dates unsatisfactory, NBU may purchase Utility Products from a third party(s) until the Supplier is able to perform its obligations hereunder.

3. **Compensation.**

- A. Amount. NBU shall pay the amount set forth in Exhibit B to the Supplier for the Utility Products provided that NBU accepts such items after inspection pursuant to Section 2.D.I.e.
- B. Billing Period. NBU shall pay the Supplier within thirty (30) days after receipt and NBU approval of invoices. All invoices shall document the Utility Products delivered to, and accepted by, NBU, the date of delivery, and other details necessary to justify payment.
- C. Taxes. NBU is exempt from all city, state, and federal excise taxes. The Supplier shall not include taxes on its invoice. The NBU tax identification number is 1-74-6001783-7.

- 4. **Warranties.** The Supplier expressly warrants that the Utility Products covered hereunder shall be free of defects in workmanship and shall strictly conform to the standards articulated in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. These warranties shall be in addition to all warranties, express, implied, or statutory. All warranties shall inure to the benefit of NBU, its customers, and subsequent owners of items or services covered hereunder. A failure of NBU to discover or reject Utility Products that are not supplied in accordance with this Agreement shall neither be deemed an acceptance thereof nor a waiver of a claim of a defect therein. No payment or use of goods provided by the Supplier shall be construed as an acceptance of the Utility Products that are not strictly in accordance with the specifications in this Agreement.

5. Insurance.

A. General.

- I. Insurer Qualifications. Without limiting any obligations or liabilities of the Supplier, the Supplier shall purchase and maintain, at its own expense, the insurance type and coverage specified herein with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- or better with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
 - a. Coverage Term. All insurance required herein shall be maintained in full force and effect until this Agreement is terminated.
 - b. Additional Insured. The Supplier shall add NBU, its agents, representatives, officers, directors, officials, and employees as an additional named insured on all required insurance policies, except Worker's Compensation insurance, for claims arising out of the performance of this Agreement.
 - c. Waiver of Subrogation. All policies shall contain a waiver of right of recovery (subrogation) against NBU, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the performance of any services under this Agreement. The Supplier shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
 - d. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to, nor reduce the required amounts of, the policy limits provided to NBU. The Supplier shall be solely responsible for any such deductible or self-insured retention amount.
 - e. Subcontractors. If NBU authorizes any work under this Agreement to be performed by a subcontractor of the Supplier in any way, such authorization shall not reduce or limit the Supplier's liability, indemnifications, warranties, insurance requirements, or any other obligation, term or condition arising from this Agreement. If NBU authorizes any such work under this Agreement to be performed by a subcontractor of the Supplier, the Supplier shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Supplier. The Supplier shall be

responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

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

a. Workers' Compensation and Employer's Liability Insurance. The Supplier shall maintain Worker's Compensation and Employers' Liability insurance to cover all of its own personnel engaged in performing services for NBU under this Agreement in not less than the following amounts:

1. Workmen's Compensation – Texas Statutory Minimum Limit; and
2. Employers' Liability – \$1,000,000.

b. Commercial General Liability. The Supplier also agrees to maintain Commercial General Liability insurance to cover claims for damages resulting from bodily injury, death, or property damage from accidents arising in the course of work performed under this Agreement in not less than the following amounts:

1. \$1,000,000 combined single limit each occurrence; and
2. \$2,000,000 aggregate

The Commercial General Liability Policy shall be of an "occurrence" type policy.

c. Vehicle Liability. The Supplier shall maintain Comprehensive Business Automobile Liability insurance on its owned, hired, and non-owned vehicles assigned to or used in the course of work performed under this Agreement in not less \$2,000,000 combined single limit each occurrence.

III. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Supplier shall furnish 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. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Supplier's responsibility to forward renewal certificates and declaration page(s) to NBU thirty (30) days prior to the expiration

date. All certificates of insurance and declarations required by this Agreement will be identified by referencing the RFB number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFB number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

- IV. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed except upon a minimum of thirty (30) days' prior written notice to NBU.

6. **Term and Termination.** Either party may terminate this Agreement at any time to the limited extent described in this Section.

- A. 60-day Termination. Either party may terminate this Agreement, with or without cause, upon at least sixty (60) days advance written notice of termination (a "60-day Termination"). Upon delivering a notice for a 60-day Termination to the Supplier, NBU shall use commercially reasonable efforts to purchase and pay for all Utility Products that NBU accepts as of the date of such termination in the normal course of business under this Agreement. Further, NBU shall use commercially reasonable efforts to purchase all Utility Products that the Supplier has in its inventory at such date of termination that (i) are exclusively used by or designed for NBU and (ii) the Supplier acquired as a consequence of a written notice from NBU indicating that NBU would need a specific number of such Utility Products in the future (items meeting both such criteria being referred to herein as the "Inventory Items"). NBU shall only be obligated to purchase a maximum of the specific number of such Inventory Items indicated in such written notice that NBU has accepted after inspection of the Utility Products in connection with Section 2.D.I.e. The purchase price for any such items shall be no greater than the price set forth herein. In the event the Supplier has failed to provide the Utility Products to NBU within the time periods specified by NBU, NBU may purchase the Utility Products from other suppliers and sources without any liability to the Supplier and without any obligation to purchase the Utility Products from the Supplier as described in this Section.

- B. Insolvency or Bankruptcy. NBU may immediately terminate this Agreement upon written notice to the Supplier if the Supplier becomes insolvent, makes an assignment for the benefit of creditors, or files or is the subject of a petition in bankruptcy. In the event of such termination, NBU shall have no liability to the Supplier.

- C. Annual Appropriations. NBU may terminate this Agreement pursuant to Section 7 of this Agreement.

7. **Annual Appropriations.** Notwithstanding the five-year term listed above, the Supplier agrees and understands that NBU is a governmental entity and it has projected costs under the terms of this Agreement and NBU expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of NBU are subject to annual appropriation by the NBU Board of Trustees in future years. Accordingly, the above provisions

notwithstanding, in the event that NBU fails to appropriate sums to pay any of the Supplier's obligations under this Agreement, and due to such failure to appropriate, fails to pay such obligations, the Supplier's sole option will be to terminate this Agreement. NBU agrees to give the Supplier a minimum of thirty (30) days' written notice if NBU must terminate the Agreement because of any non-appropriation. In the event of such termination, NBU shall have no liability to the Supplier.

8. **Indemnification.** THE SUPPLIER SHALL INDEMNIFY AND HOLD HARMLESS NBU, ITS BOARD MEMBERS, OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, AND LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF THE SUPPLIER, ITS REPRESENTATIVES, AGENTS, OR EMPLOYEES IN ANY MANNER RELATED TO THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH IN THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.

9. **Miscellaneous.**

- A. **Assignment.** This Agreement shall not be assignable by either party without the prior written consent of the other party. If consent to an assignment is required, NBU reserves the right to refuse, in its sole discretion, to consent to the assignment by the Supplier.
- B. **Notice.** Any notice or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by facsimile transmission, certified mail, postage prepaid, return receipt requested, or overnight courier addressed as herein below provided, until another address or addresses shall be furnished in writing to the other party.

If to NBU:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130
Attention: Director of Water Services

With a copy to:

New Braunfels Utilities
355 FM 306
New Braunfels, Texas 78130
Attention: Purchasing Manager

If to the Supplier:
Polydyne, Inc.
1 Chemical Plant Road
Riceboro, Georgia 31323

- C. Entire Agreement; Conflicting Terms. This Agreement sets forth the entire understanding between the parties regarding the subject matter hereof and shall not be altered or modified in any way other than by a written document executed by both parties. All Exhibits referred to in this Agreement and attached hereto are essential provisions of this Agreement, are to be construed in harmony with each to give purpose and effect to the fulfillment of the obligations and responsibilities of the parties and are incorporated herein by this reference as if set out herein verbatim. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern.
- D. No Waiver. Failure of NBU or the Supplier to insist on any one or more instances on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of that covenant or any other covenant.
- E. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- F. Governing Law and Venue. This Agreement shall be governed and controlled by the laws of the State of Texas, considered without regard to choice of law rules. Venue of any claim, cause of action, or lawsuit based in whole or in part upon this Agreement shall be in Comal County, Texas.
- G. State or Federal Laws. This Agreement is subject to all applicable federal and state laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. Each provision and clause required by state and federal law to be inserted into this Agreement shall be deemed to be included herein and the Agreement shall be read and enforced as though each were included herein.
- H. No Third Party Beneficiary. The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.
- I. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially

describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) business days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

- J. **Immunity not Waived or Limited.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OR LIMITATION IN ANY MANNER BY NBU OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT NBU MAY HAVE BY OPERATION OF LAW.
- K. Acknowledgement and Authority. The Supplier acknowledges that it has read this Agreement and is familiar with and fully understands the terms and obligations set out in this Agreement and the Supplier's obligations and responsibilities for performance. The Supplier further acknowledges that any questions concerning the terms and conditions of this Agreement have been satisfactorily explained to the Supplier. The person or persons executing and signing this Agreement on behalf of the Supplier represent and guarantee that they have been fully authorized by the Supplier to execute this Agreement and to legally bind the Supplier to all the terms and provisions of this Agreement.
- L. Multiple Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- M. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. The Supplier represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.
- N. Independent Contractor. The Supplier acknowledges that the Supplier is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Supplier shall not represent, either expressly or through implication, that the Supplier is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Supplier.
- O. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Supplier.
- P. Confidentiality of Records. The Supplier shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the

Supplier's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Supplier's duties under this Agreement. Persons requesting such information should be referred to NBU. The Supplier also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Supplier as needed for the performance of duties under this Agreement.

- Q. Right to Audit. NBU shall have the right to examine and audit the books and records of the Supplier with regards to the Utility Products, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- R. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- S. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- T. Additional Representations. The Supplier hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The Supplier further declares that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.
- U. Texas Public Information Act Requests. The Supplier recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within this Agreement, the Supplier agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in section 9(Q).

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

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

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

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

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

[The remainder of this page is intentionally left blank.]

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Ian Taylor
Chief Executive Officer

SUPPLIER:

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

By: _____
Name: _____
Title: _____

Exhibit A

The Supplier shall provide the following Utility Products to NBU at the times and locations NBU specifies:

1. Liquid, Cationic Polyelectrolyte Sludge Conditioning Polymer Clarifloc SE - 235 or approved equal;
2. Liquid, Cationic Polyelectrolyte Conditioning Polydyne C-338P or approved equal; and
3. Liquid, Cationic Polyelectrolyte Sludge Conditioner Polymer Clarifloc SE - 235 or approved equal.

Exhibit B

NBU shall pay the Supplier for Utility Products not to exceed \$74,539.50 annually and \$372,697.50 for the duration of the Agreement. NBU shall pay the Supplier in accordance with the table below; however, the table is subject to the not to exceed amounts described herein.

Item No.	Description	Unit	Quantity		Polydyne, Inc.
3.1	Liquid, Cationic Polyelectrolyte Sludge Conditioning Polymer Clarifloc SE - 235 or approved equal	LB	6,750	Unit Cost	1.29
3.2	Liquid, Cationic Polyelectrolyte Conditioning Polydyne C-338P or approved equal	LB	36,000	Unit Cost	.51
3.3	Liquid, Cationic Polyelectrolyte Sludge Conditioner Polymer Clarifloc SE - 235 or approved equal	LB	36,800	Unit Cost	1.29

The prices for Utility Products shall remain fixed for a period of twelve (12) months. Sixty (60) days prior to the automatic renewal of this Agreement, the Supplier will be permitted to propose pricing adjustments with the written approval of NBU; however, any price adjustment approved by NBU shall be included in the calculation of the not-exceed amounts specified in this Exhibit. The Supplier will make every reasonable effort to tie future Utility Products increases or decreases to generally acceptable metals, oil, labor, and other indices.

Exhibit C

Evidence of Insurance

Exhibit D

Delivery Sites

Cationic Polymer Drop Sites (Lift Gate Required)

- | | |
|--|-------------------|
| 1. Surface Water Treatment Facilities | 2356 Gruene Road |
| 2. North Kuehler Wastewater Treatment Facilities | 1922 Kuehler Road |
| 3. Sam C. McKenzie Water Reclamation Facility | 400 Elley Lane |
| 4. Gruene Road Water Reclamation Facility | 1835 Gruene Road |

To:
NBU Board of Trustees

From:
Brent Lundmark
Water Treatment and Compliance Manager

Reviewed by:
Michael Short, P.E.
Director of Water Services

Submitted by:
Ryan Kelso
Chief Operations Officer

Approved by:
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Authorize CEO to Negotiate and Execute a Materials Agreement with Brenntag Southwest, Inc. for the Purchase of Water and Wastewater Treatment Chemicals

BACKGROUND

New Braunfels Utilities (“NBU”) issued a request for bids (“RFB”) for the purchase and delivery of select water and wastewater treatment chemicals to NBU facilities. The RFB allows NBU to award a Materials Agreement to one or more respondents for select water and wastewater treatment chemicals.

On March 3, 2020, NBU received twelve (12) responses to the RFB during the public bidding process. The Water Treatment and Compliance Division of NBU evaluated the bids and determined that Brenntag Southwest, Inc. was the lowest responsible bidder for the delivery of Liquid Ammonium Sulfate (“LAS”), Aluminum Chlorohydrate (“ACH”) and Liquid Aluminum Sulfate (“Alum”). LAS and ACH are chemicals used in the water treatment process and Alum is a chemical used in both the water and wastewater treatment processes.

NBU staff requests that the Board of Trustees approve a Materials Agreement with Brenntag Southwest, Inc. for the purchase of the LAS, ACH, and Alum chemicals listed below (the “Agreement”):

1. Liquid, Aluminum Sulfate Liquid Aluminum, Papermakers Aluminum Inorganic Sal A12 (SO₄)₃ (14H₂O) with 2% Copper Sulfate American Water Works Association (“AWWA”) Spec. B703-89;
2. Liquid, Ammonium Sulfate;
3. Liquid Aluminum Sulfate Hydrate 16828-12-9; and
4. Aluminum Chlorohydrate (“ACH”) - Aquapac 9042, National Sanitation Foundation (“NSF”).

The initial term of the Agreement will be for a period of one (1) year from June 1, 2020, to May 31, 2021. After the expiration of the initial term, the Agreement will automatically renew for four (4) successive one year terms.

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

FINANCIAL IMPACT

The total contract amount for the Agreement is \$234,000 per year and \$1,170,000 for the duration of the Agreement. The Agreement is budgeted within the operations and maintenance budget (“O&M Budget”) for year 2021 and will be budgeted in the O&M Budgets of 2022 through fiscal year 2025.

MEETING DATE: May 28, 2020
AGENDA TYPE: Consent Items for Action
AGENDA ITEM NO.: F.9

LINK TO STRATEGIC PLAN

- ☒ **Recognized as a Trusted Community Partner Dedicated to Excellence in Service**
- ☒ **Provide a Safe and Secure Environment**
- ☒ **Be a Responsible Steward of Natural Resources**

EXHIBITS

1. Materials Agreement with Brenntag Southwest, Inc.

MATERIALS AGREEMENT

This **MATERIALS AGREEMENT** (the “Agreement”) is entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **BRENNTAG SOUTHWEST, INC.**, a Texas corporation (the “Supplier”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below, and will remain in full force and effect for a period of one (1) year from June 1, 2020, to May 31, 2021 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for 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 May 31, 2025
2. **Scope of Services.** NBU desires to purchase certain Utility Products (defined below) from the Supplier in accordance with the provisions of this Agreement. The Supplier shall sell the Utility Products to NBU in accordance with the provisions of this Agreement.
 - A. **Utility Products Defined.** The Utility Products shall mean the present and future goods described in Exhibit A of this Agreement.
 - B. **Non-Exclusive Supplier.** The parties agree that this Agreement is nonexclusive and neither restricts NBU’s ability to procure the same or similar materials and services from a different supplier nor limits NBU’s sole discretion to contract for any materials or services with other vendors.
 - C. **Subcontractors.** The Supplier is prohibited from utilizing subcontractors to perform its obligations under this Agreement, unless NBU, in its sole discretion, expressly agrees in writing beforehand to allow such named subcontractor to perform the specified work.
 - D. **Shipment and Delivery.** During the term of this Agreement, the Supplier will deliver and/or ship the Utility Products to NBU from time to time as requested by NBU according to the following provisions:
 - I. **General.**
 - a. **Place of Delivery.** The Supplier shall ship and/or deliver the Utility Products to sites listed in Exhibit D, located in New Braunfels, Texas 78130 (individually a “Facility”) within seven (7) business days after receipt of order or as otherwise requested by NBU in writing from time to time.

- b. Supplier to Package Utility Products. The Supplier shall prepare and package all Utility Products in accordance with good commercial practice so that they are delivered free of damage and in original condition. Each shipping container shall be clearly and permanently marked as follows:
 - 1. the Supplier's name and address;
 - 2. container number and total number of containers (e.g., box 1 of 4 boxes); and
 - 3. container number bearing the packing slip.
- c. No Packing, Crating Charges. No charges will be allowed for packing, crating, or carriage unless agreed to in writing by NBU prior to shipment and/or delivery of the Utility Products. NBU's inventory of the Utility Products at the time of delivery, including without limitation, count or weight, shall be conclusive on shipments that are not marked as described in Section 2.D.I.b.
- d. Title, Risk of Loss, and Returns. Title and risk of loss of the Utility Products shall not pass to NBU until NBU actually receives and takes possession of the Utility Products. All deliveries shall be F.O.B. destination. Cost of all return shipments, for whatever reason returned, shall be borne by the Supplier with title and risk of loss passing at NBU's time of shipment, unless otherwise specified by NBU at the time of return.
- e. Inspection. NBU shall have a reasonable time after delivery to inspect the Utility Products. All such items must conform to the specifications described in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. NBU, in its sole discretion, may reject and refuse acceptance of any Utility Products that do not conform to such specifications. NBU shall notify the Supplier of such rejection either by (i) providing notice in writing or (ii) returning the Utility Products to the Supplier at the Supplier's expense and risk. All returned Utility Products shall be F.O.B. NBU's place of shipment. NBU shall not incur any charges for such rejected Utility Products.
- f. Storage. The Supplier shall not utilize the Facility for the storage of any goods that are not intended for the exclusive use of NBU.

II. Deliveries.

- a. Unloading Utility Products. The Supplier shall deliver and unload the Utility Products without the assistance of any NBU employees or agents at the Facility in a manner that is safe and does not result in any harm or damage to the Utility Products, the Facility, or any NBU personnel. In the

event NBU, rather than the Supplier, unloads any portion of the Utility Products, the Supplier bears the sole risk of liability for damages to property and personnel arising from such unloading and placement in NBU's point of delivery. NBU employees shall at all times be acting within the course and scope of their employment during such unloading and placement of Utility Products.

- b. Cost of Delivery. The Supplier agrees to load, move, and unload the Utility Products safely on the Supplier trucks as needed at no cost to NBU.
- c. Notification of Delivery. The Supplier shall notify NBU in writing no less than twenty-four (24) hours in advance of all Utility Products to be delivered to the Facility, unless a shipment is to be made on a Monday, in which case the Supplier shall make such notification no later than the preceding Friday. Further, such notification shall also include information regarding any Utility Products that are back ordered and will not be delivered to NBU. The Supplier shall schedule its shipments to arrive on weekdays that are not national or religious holidays between the times of 9:00 a.m. and 3:00 p.m. or as otherwise provided by NBU in writing to the Supplier. NBU may choose, in its sole discretion, to refuse to receive a shipment that does not arrive during the business hours specified herein. The Supplier shall incur all costs associated with delays due to failure of the Supplier to provide the notice required herein, or due to a failure of the shipment to arrive during the business hours specified herein.

III. Urgent Shipments. The Supplier shall deliver all Utility Products identified by NBU as an "Urgent Shipment" to the Facility or other jobsite designated by NBU within five (5) business days of NBU's request. In the event of an Urgent Shipment, the Supplier may use a common carrier to deliver the Utility Products if necessary. To the extent the Supplier is capable of complying with the five (5) business day requirement with no additional cost to it, NBU shall not be charged any additional fee for an Urgent Shipment. If the Supplier is only capable of delivering an Urgent Shipment within the required five (5) business days by incurring additional costs for expedited delivery, then the Supplier shall have the right to reimbursement from NBU for the limited additional actual cost of Supplier's freight or delivery. NBU may agree to accept an Urgent Shipment at times other than weekdays during normal business hours, but the Supplier shall provide NBU as much advance notice of projected time of arrival and the projected additional cost, if any, as may be possible under the circumstances.

IV. Failure to Deliver/Ship Utility Products.

- a. Inability to Meet Contractual Obligations. In the event that the Supplier is unable to deliver Utility Products as requested by NBU pursuant to this Agreement and within the time required by NBU for any reason whatsoever, NBU may purchase said Utility Products from a third party(s)

without any further payment or other obligation to the Supplier for such Utility Products and said purchase shall not be deemed to be a breach of the terms of this Agreement. In the event that Utility Products are needed for an emergency or in a manner that is not in the normal course of business, NBU shall inform the Supplier of that fact as soon as reasonably practicable.

- b. Force Majeure. The Supplier shall not be liable for delay or default in delivery resulting from any unforeseeable cause beyond the Supplier's reasonable control, including, but not limited to, governmental action, epidemic, pandemic, fire, damage or destruction of goods, wars (declared or undeclared), acts of terrorism, and acts of God (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the time for the Supplier's performance shall be extended reasonably and NBU and the Supplier shall adjust all affected dates accordingly. If NBU finds the affected dates unsatisfactory, NBU may purchase Utility Products from a third party(s) until the Supplier is able to perform its obligations hereunder.

3. **Compensation.**

- A. Amount. NBU shall pay the amount set forth in Exhibit B to the Supplier for the Utility Products provided that NBU accepts such items after inspection pursuant to Section 2.D.I.e.
- B. Billing Period. NBU shall pay the Supplier within thirty (30) days after receipt and NBU approval of invoices. All invoices shall document the Utility Products delivered to, and accepted by, NBU, the date of delivery, and other details necessary to justify payment.
- C. Taxes. NBU is exempt from all city, state, and federal excise taxes. The Supplier shall not include taxes on its invoice. The NBU tax identification number is 1-74-6001783-7.

4. **Warranties.** The Supplier hereby assigns to NBU all product warranties received from manufacturers and suppliers with respect to the Utility Products the Supplier sells to NBU pursuant to this Agreement. The Supplier further warrants that it will transfer good and marketable title to the Utility Products to NBU free and clear of all liens, claims, and encumbrances.

- A. Quality. For purposes of this Section, the Supplier is a reseller of the Utility Products ("Supplier-Reseller") and as such does not provide a warranty for the Utility Products it supplies hereunder. Notwithstanding the foregoing, the Supplier-Reseller shall pass through to NBU any transferable manufacturer's standard warranties with respect to the Utility Products purchased hereunder. The Supplier-Reseller makes no warranty on any item provided/sold to NBU beyond the warranties of the manufacturer of said item, except that Supplier-Reseller warrants that it will transfer good and marketable title to the Utility Products to NBU free and clear of all liens, claims, and encumbrances in the same

condition as the Utility Products were in when they came into the possession of Supplier-Reseller.

- B. Infringement. The Supplier-Reseller is a reseller of Utility Products and as such does not provide a warranty against infringement for the Utility Products it supplies hereunder. Notwithstanding the foregoing, the Supplier-Reseller shall pass through to NBU any transferable manufacturer's warranties against infringement with respect to the Utility Products purchased hereunder and shall cooperate with NBU in connection with any such infringement claim arising from the Utility Products.
- C. Compliance. The Supplier-Reseller hereby passes on to NBU any manufacturer's warranties that Utility Products shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Utility Products are subject. The Supplier-Reseller shall execute and deliver to NBU any documents as may be required to effectuate or to provide evidence of such compliance.
- D. Disclaimer. **EXCEPT AS PROVIDED HEREIN, THE SUPPLIER-RESELLER EXCLUDES AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

5. Insurance.

A. General.

- I. Insurer Qualifications. Without limiting any obligations or liabilities of the Supplier, the Supplier shall purchase and maintain, at its own expense, the insurance type and coverage specified herein with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- or better with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
 - a. Coverage Term. All insurance required herein shall be maintained in full force and effect until this Agreement is terminated.
 - b. Additional Insured. The Supplier shall add NBU, its agents, representatives, officers, directors, officials, and employees as an additional named insured on all required insurance policies, except Worker's Compensation insurance, for claims arising out of the performance of this Agreement.
 - c. Waiver of Subrogation. All policies shall contain a waiver of right of recovery (subrogation) against NBU, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the performance of any services under this Agreement. The Supplier shall

arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

- d. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to, nor reduce the required amounts of, the policy limits provided to NBU. The Supplier shall be solely responsible for any such deductible or self-insured retention amount.
- e. Subcontractors. If NBU authorizes any work under this Agreement to be performed by a subcontractor of the Supplier in any way, such authorization shall not reduce or limit the Supplier's liability, indemnifications, warranties, insurance requirements, or any other obligation, term or condition arising from this Agreement. If NBU authorizes any such work under this Agreement to be performed by a subcontractor of the Supplier, the Supplier shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Supplier. The Supplier shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

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

- a. Workers' Compensation and Employer's Liability Insurance. The Supplier shall maintain Worker's Compensation and Employers' Liability insurance to cover all of its own personnel engaged in performing services for NBU under this Agreement in not less than the following amounts:
 - 1. Workmen's Compensation – Texas Statutory Minimum Limit; and
 - 2. Employers' Liability – \$1,000,000.
- b. Commercial General Liability. The Supplier also agrees to maintain Commercial General Liability insurance to cover claims for damages resulting from bodily injury, death, or property damage from accidents arising in the course of work performed under this Agreement in not less than the following amounts:
 - 1. \$1,000,000 combined single limit each occurrence; and
 - 2. \$2,000,000 aggregate

The Commercial General Liability Policy shall be of an “occurrence” type policy.

- c. Vehicle Liability. The Supplier shall maintain Comprehensive Business Automobile Liability insurance on its owned, hired, and non-owned vehicles assigned to or used in the course of work performed under this Agreement in not less \$2,000,000 combined single limit each occurrence.

III. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Supplier shall furnish 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. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Supplier’s responsibility to forward renewal certificates and declaration page(s) to NBU thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement will be identified by referencing the RFB number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFB number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

IV. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed except upon a minimum of thirty (30) days’ prior written notice to NBU.

6. Term and Termination. Either party may terminate this Agreement at any time to the limited extent described in this Section.

A. 60-day Termination. Either party may terminate this Agreement, with or without cause, upon at least sixty (60) days advance written notice of termination (a “60-day Termination”). Upon delivering a notice for a 60-day Termination to the Supplier, NBU shall use commercially reasonable efforts to purchase and pay for all Utility Products that NBU accepts as of the date of such termination in the normal course of business under this Agreement. Further, NBU shall use commercially reasonable efforts to purchase all Utility Products that the Supplier has in its inventory at such date of termination that (i) are exclusively used by or designed for NBU and (ii) the Supplier acquired as a consequence of a written notice from NBU indicating that NBU would need a specific number of such Utility Products in the future (items meeting both such criteria being referred to herein as the “Inventory Items”). NBU shall only be obligated to purchase a

maximum of the specific number of such Inventory Items indicated in such written notice that NBU has accepted after inspection of the Utility Products in connection with Section 2.D.I.e. The purchase price for any such items shall be no greater than the price set forth herein. In the event the Supplier has failed to provide the Utility Products to NBU within the time periods specified by NBU, NBU may purchase the Utility Products from other suppliers and sources without any liability to the Supplier and without any obligation to purchase the Utility Products from the Supplier as described in this Section.

B. Insolvency or Bankruptcy. NBU may immediately terminate this Agreement upon written notice to the Supplier if the Supplier becomes insolvent, makes an assignment for the benefit of creditors, or files or is the subject of a petition in bankruptcy. In the event of such termination, NBU shall have no liability to the Supplier.

C. Annual Appropriations. NBU may terminate this Agreement pursuant to Section 7 of this Agreement.

7. Annual Appropriations. Notwithstanding the five-year term listed above, the Supplier agrees and understands that NBU is a governmental entity and it has projected costs under the terms of this Agreement and NBU expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of NBU are subject to annual appropriation by the NBU Board of Trustees in future years. Accordingly, the above provisions notwithstanding, in the event that NBU fails to appropriate sums to pay any of the Supplier's obligations under this Agreement, and due to such failure to appropriate, fails to pay such obligations, the Supplier's sole option will be to terminate this Agreement. NBU agrees to give the Supplier a minimum of thirty (30) days' written notice if NBU must terminate the Agreement because of any non-appropriation. In the event of such termination, NBU shall have no liability to the Supplier.

8. Indemnification. **THE SUPPLIER SHALL INDEMNIFY AND HOLD HARMLESS NBU, ITS BOARD MEMBERS, OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, AND LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF THE SUPPLIER, ITS REPRESENTATIVES, AGENTS, OR EMPLOYEES IN ANY MANNER RELATED TO THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH IN THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.**

9. Miscellaneous.

A. Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party. If consent to an assignment is required, NBU reserves the right to refuse, in its sole discretion, to consent to the assignment by the Supplier.

- B. Notice. Any notice or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by facsimile transmission, certified mail, postage prepaid, return receipt requested, or overnight courier addressed as herein below provided, until another address or addresses shall be furnished in writing to the other party.

If to NBU:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130
Attention: Director of Water Services

With a copy to:

New Braunfels Utilities
355 FM 306
New Braunfels, Texas 78130
Attention: Purchasing Manager

If to the Supplier:

Brenntag Southwest, Inc.
704 E Wintergreen Road
Lancaster, Texas 75134

- C. Entire Agreement; Conflicting Terms. This Agreement sets forth the entire understanding between the parties regarding the subject matter hereof and shall not be altered or modified in any way other than by a written document executed by both parties. All Exhibits referred to in this Agreement and attached hereto are essential provisions of this Agreement, are to be construed in harmony with each to give purpose and effect to the fulfillment of the obligations and responsibilities of the parties and are incorporated herein by this reference as if set out herein verbatim. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern.
- D. No Waiver. Failure of NBU or the Supplier to insist on any one or more instances on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of that covenant or any other covenant.
- E. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- F. Governing Law and Venue. This Agreement shall be governed and controlled by the laws of the State of Texas, considered without regard to choice of law rules. Venue of

any claim, cause of action, or lawsuit based in whole or in part upon this Agreement shall be in Comal County, Texas.

- G. State or Federal Laws. This Agreement is subject to all applicable federal and state laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. Each provision and clause required by state and federal law to be inserted into this Agreement shall be deemed to be included herein and the Agreement shall be read and enforced as though each were included herein.
- H. No Third Party Beneficiary. The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.
- I. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) business days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.
- J. Immunity not Waived or Limited. **THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OR LIMITATION IN ANY MANNER BY NBU OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT NBU MAY HAVE BY OPERATION OF LAW.**
- K. Acknowledgement and Authority. The Supplier acknowledges that it has read this Agreement and is familiar with and fully understands the terms and obligations set out in this Agreement and the Supplier's obligations and responsibilities for performance. The Supplier further acknowledges that any questions concerning the terms and conditions of this Agreement have been satisfactorily explained to the Supplier. The person or persons executing and signing this Agreement on behalf of the Supplier represent and guarantee that they have been fully authorized by the Supplier to execute this Agreement and to legally bind the Supplier to all the terms and provisions of this Agreement.

- L. Multiple Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- M. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. The Supplier represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.
- N. Independent Contractor. The Supplier acknowledges that the Supplier is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Supplier shall not represent, either expressly or through implication, that the Supplier is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Supplier.
- O. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Supplier.
- P. Confidentiality of Records. The Supplier shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Supplier's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Supplier's duties under this Agreement. Persons requesting such information should be referred to NBU. The Supplier also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Supplier as needed for the performance of duties under this Agreement.
- Q. Right to Audit. NBU shall have the right to examine and audit the books and records of the Supplier with regards to the Utility Products, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- R. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- S. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

- T. Additional Representations. The Supplier hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The Supplier further declares that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.
- U. Texas Public Information Act Requests. The Supplier recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Supplier agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU’s audit rights in section 9(Q).

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

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

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

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

(The remainder of this page intentionally left blank)

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Ian Taylor
Chief Executive Officer

SUPPLIER:

BRENNTAG SOUTHWEST, INC.
a Texas corporation

By: _____
Name: _____
Title: _____

Exhibit A

The Supplier shall provide the following Utility Products to NBU at the times and locations NBU specifies:

1. Liquid, Aluminum Sulfate Liquid Aluminum, Papermakers Aluminum Inorganic Sal A12 (SO₄)₃ (14H₂O) with 2% Copper Sulfate American Water Works Association (“AWWA”) Spec. B703-89;
2. Liquid, Ammonium Sulfate;
3. Liquid Aluminum Sulfate Hydrate 16828-12-9; and
4. Aluminum Chlorohydrate (“ACH”) - Aquapac 9042, National Sanitation Foundation (“NSF”).

Exhibit B

NBU shall pay the Supplier for Utility Products not to exceed \$234,000, annually and \$1,170,000, for the duration of the Agreement. NBU shall pay the Supplier in accordance with the table below; however, the table is subject to the not to exceed amounts described in this Exhibit.

Item No.	Description	Quantity	Unit		Brenntag Southwest, Inc.
3.4	Liquid, Aluminum Sulfate Liquid Aluminum, Papermakers Aluminum Inorganic Sal A12 (SO4) 3 (14H2O) with 2% Copper Sulfate AWWA Spec. B703-89	282,000	LB	Unit Cost	0.0729
3.5	Liquid, Ammonium Sulfate	470,000	LB	Unit Cost	0.102
3.6	Liquid Aluminum Sulfate Hydrate 16828-12-9	3,744,000	LB	Unit Cost	0.0625
3.12	ACH - Aquapac 9042, NSF	36,800	LB	Unit Cost	0.49

The prices for Utility Products shall remain fixed for a period of twelve (12) months. Sixty (60) days prior to the automatic renewal of this Agreement, the Supplier will be permitted to propose pricing adjustments with the written approval of NBU; however, any price adjustment approved by NBU shall be included in the calculation of the not-exceed amounts specified in this Exhibit. The Supplier will make every reasonable effort to tie future Utility Products increases or decreases to generally acceptable metals, oil, labor, and other indices.

Exhibit C

Evidence of Insurance

Exhibit D

Delivery Sites

Aluminum Sulfate Drop Sites

- | | |
|--|------------------|
| 1. Surface Water Treatment Facilities | 2356 Gruene Road |
| 2. South Kuehler Wastewater Treatment Facilities | 2055 Coco Lane |
| 3. North Kuehler Wastewater Treatment Facilities | 1922 Kuehler Rd |
| 4. Sam C. McKenzie Water Reclamation Facility | 400 Elley Lane |
| 5. Gruene Road Water Reclamation Facility | 1835 Gruene Road |

Ammonium Sulfate Drop Sites

- | | |
|---|------------------|
| 1. Surface Water Treatment Facilities | 2356 Gruene Road |
| 2. Trinity Membrane Facility | 3295 Westpointe |
| 3. Weltner Road Pumpstation | Weltner Road |
| (exact address to be provided in 2021 once established) | |

ACH (Aluminum Chlorohydrate – Aquapac 9042)

- | | |
|------------------------------|-----------------|
| 1. Trinity Membrane Facility | 3295 Westpointe |
|------------------------------|-----------------|

To:
NBU Board of Trustees

From:
Brent Lundmark
Water Treatment and Compliance Manager

Reviewed by:
Michael Short, P.E.
Director of Water Services

Submitted by:
Ryan Kelso
Chief Operations Officer

Approved by:
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Authorize CEO to Negotiate and Execute a Materials Agreement with Geo Specialty Chemicals, Inc. for the Purchase of Water and Wastewater Treatment Chemicals

BACKGROUND

New Braunfels Utilities (“NBU”) issued a request for bids (“RFB”) for the purchase and delivery of select water and wastewater treatment chemicals to NBU facilities. The RFB allows NBU to award a Materials Agreement to one or more respondents for select water and wastewater treatment chemicals.

On March 3, 2020, NBU received twelve (12) responses to the RFB during the public bidding process. The Water Treatment and Compliance Division of NBU evaluated the bids and determined that Geo Specialty Chemicals, Inc. was the lowest responsible bidder for the delivery of Polyaluminum Chloride (“PAC”), a chemical used in both the water and wastewater treatment processes.

NBU staff requests that the Board of Trustees approve a Materials Agreement with Geo Specialty Chemicals, Inc. for the purchase of the PAC chemicals listed below (the “Agreement”):

1. PAC, NSF, UltraFloc 5202; and
2. PAC, UltraFloc 1209.

The initial term of the Agreement will be for a period of one (1) year from June 1, 2020, to May 31, 2021. After the expiration of the initial term, the Agreement will automatically renew for four (4) successive one year terms.

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

FINANCIAL IMPACT

The total contract amount for the Agreement is \$95,626.80 per year and \$478,134.00 for the duration of the Agreement. The Agreement is budgeted within the operations and maintenance budget (“O&M Budget”) for year 2021 and will be budgeted in the O&M Budgets of 2022 through fiscal year 2025.

MEETING DATE: May 28, 2020
AGENDA TYPE: Consent Items for Action
AGENDA ITEM NO.: F.10

LINK TO STRATEGIC PLAN

- ☒ **Recognized as a Trusted Community Partner Dedicated to Excellence in Service**
- ☒ **Provide a Safe and Secure Environment**
- ☒ **Be a Responsible Steward of Natural Resources**

EXHIBITS

1. Materials Agreement with Geo Specialty Chemicals, Inc.

MATERIALS AGREEMENT

This **MATERIALS AGREEMENT** (the “Agreement”) is entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **GEO SPECIALTY CHEMICALS, INC.**, an Ohio corporation authorized to transact business in the State of Texas (the “Supplier”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below, and will remain in full force and effect for a period of one (1) year from June 1, 2020, to May 31, 2021 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for 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 May 31, 2025
2. **Scope of Services.** NBU desires to purchase certain Utility Products (defined below) from the Supplier in accordance with the provisions of this Agreement. The Supplier shall sell the Utility Products to NBU in accordance with the provisions of this Agreement.
 - A. **Utility Products Defined.** The Utility Products shall mean the present and future goods described in Exhibit A of this Agreement.
 - B. **Non-Exclusive Supplier.** The parties agree that this Agreement is nonexclusive and neither restricts NBU’s ability to procure the same or similar materials and services from a different supplier nor limits NBU’s sole discretion to contract for any materials or services with other vendors.
 - C. **Subcontractors.** The Supplier is prohibited from utilizing subcontractors to perform its obligations under this Agreement, unless NBU, in its sole discretion, expressly agrees in writing beforehand to allow such named subcontractor to perform the specified work.
 - D. **Shipment and Delivery.** During the term of this Agreement, the Supplier will deliver and/or ship the Utility Products to NBU from time to time as requested by NBU according to the following provisions:
 - I. **General.**
 - a. **Place of Delivery.** The Supplier shall ship and/or deliver the Utility Products to sites listed in Exhibit D, located in New Braunfels, Texas 78130 (individually a “Facility”) within seven (7) business days after receipt of order or as otherwise requested by NBU in writing from time to time.

- b. Supplier to Package Utility Products. The Supplier shall prepare and package all Utility Products in accordance with good commercial practice so that they are delivered free of damage and in original condition. Each shipping container shall be clearly and permanently marked as follows:
 - 1. the Supplier's name and address;
 - 2. container number and total number of containers (e.g., box 1 of 4 boxes); and
 - 3. container number bearing the packing slip.
- c. No Packing, Crating Charges. No charges will be allowed for packing, crating, or carriage unless agreed to in writing by NBU prior to shipment and/or delivery of the Utility Products. NBU's inventory of the Utility Products at the time of delivery, including without limitation, count or weight, shall be conclusive on shipments that are not marked as described in Section 2.D.I.b.
- d. Title, Risk of Loss, and Returns. Title and risk of loss of the Utility Products shall not pass to NBU until NBU actually receives and takes possession of the Utility Products. All deliveries shall be F.O.B. destination. Cost of all return shipments, for whatever reason returned, shall be borne by the Supplier with title and risk of loss passing at NBU's time of shipment, unless otherwise specified by NBU at the time of return.
- e. Inspection. NBU shall have a reasonable time after delivery to inspect the Utility Products. All such items must conform to the specifications described in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. NBU, in its sole discretion, may reject and refuse acceptance of any Utility Products that do not conform to such specifications. NBU shall notify the Supplier of such rejection either by (i) providing notice in writing or (ii) returning the Utility Products to the Supplier at the Supplier's expense and risk. All returned Utility Products shall be F.O.B. NBU's place of shipment. NBU shall not incur any charges for such rejected Utility Products.
- f. Storage. The Supplier shall not utilize the Facility for the storage of any goods that are not intended for the exclusive use of NBU.

II. Deliveries.

- a. Unloading Utility Products. The Supplier shall deliver and unload the Utility Products without the assistance of any NBU employees or agents at the Facility in a manner that is safe and does not result in any harm or damage to the Utility Products, the Facility, or any NBU personnel. In the

event NBU, rather than the Supplier, unloads any portion of the Utility Products, the Supplier bears the sole risk of liability for damages to property and personnel arising from such unloading and placement in NBU's point of delivery. NBU employees shall at all times be acting within the course and scope of their employment during such unloading and placement of Utility Products.

- b. Cost of Delivery. The Supplier agrees to load, move, and unload the Utility Products safely on the Supplier trucks as needed at no cost to NBU.
- c. Notification of Delivery. The Supplier shall notify NBU in writing no less than twenty-four (24) hours in advance of all Utility Products to be delivered to the Facility, unless a shipment is to be made on a Monday, in which case the Supplier shall make such notification no later than the preceding Friday. Further, such notification shall also include information regarding any Utility Products that are back ordered and will not be delivered to NBU. The Supplier shall schedule its shipments to arrive on weekdays that are not national or religious holidays between the times of 9:00 a.m. and 3:00 p.m. or as otherwise provided by NBU in writing to the Supplier. NBU may choose, in its sole discretion, to refuse to receive a shipment that does not arrive during the business hours specified herein. The Supplier shall incur all costs associated with delays due to failure of the Supplier to provide the notice required herein, or due to a failure of the shipment to arrive during the business hours specified herein.

III. Urgent Shipments. The Supplier shall deliver all Utility Products identified by NBU as an "Urgent Shipment" to the Facility or other jobsite designated by NBU within five (5) business days of NBU's request. In the event of an Urgent Shipment, the Supplier may use a common carrier to deliver the Utility Products if necessary. To the extent the Supplier is capable of complying with the five (5) business day requirement with no additional cost to it, NBU shall not be charged any additional fee for an Urgent Shipment. If the Supplier is only capable of delivering an Urgent Shipment within the required five (5) business days by incurring additional costs for expedited delivery, then the Supplier shall have the right to reimbursement from NBU for the limited additional actual cost of Supplier's freight or delivery. NBU may agree to accept an Urgent Shipment at times other than weekdays during normal business hours, but the Supplier shall provide NBU as much advance notice of projected time of arrival and the projected additional cost, if any, as may be possible under the circumstances.

IV. Failure to Deliver/Ship Utility Products.

- a. Inability to Meet Contractual Obligations. In the event that the Supplier is unable to deliver Utility Products as requested by NBU pursuant to this Agreement and within the time required by NBU for any reason whatsoever, NBU may purchase said Utility Products from a third party(s)

without any further payment or other obligation to the Supplier for such Utility Products and said purchase shall not be deemed to be a breach of the terms of this Agreement. In the event that Utility Products are needed for an emergency or in a manner that is not in the normal course of business, NBU shall inform the Supplier of that fact as soon as reasonably practicable.

- b. Force Majeure. The Supplier shall not be liable for delay or default in delivery resulting from any unforeseeable cause beyond the Supplier's reasonable control, including, but not limited to, governmental action, epidemic, pandemic, fire, damage or destruction of goods, wars (declared or undeclared), acts of terrorism, and acts of God (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the time for the Supplier's performance shall be extended reasonably and NBU and the Supplier shall adjust all affected dates accordingly. If NBU finds the affected dates unsatisfactory, NBU may purchase Utility Products from a third party(s) until the Supplier is able to perform its obligations hereunder.

3. **Compensation.**

- A. Amount. NBU shall pay the amount set forth in Exhibit B to the Supplier for the Utility Products provided that NBU accepts such items after inspection pursuant to Section 2.D.I.e.
- B. Billing Period. NBU shall pay the Supplier within thirty (30) days after receipt and NBU approval of invoices. All invoices shall document the Utility Products delivered to, and accepted by, NBU, the date of delivery, and other details necessary to justify payment.
- C. Taxes. NBU is exempt from all city, state, and federal excise taxes. The Supplier shall not include taxes on its invoice. The NBU tax identification number is 1-74-6001783-7.

- 4. **Warranties**. The Supplier expressly warrants that the Utility Products covered hereunder shall be free of defects in workmanship and shall strictly conform to the standards articulated in Exhibit A. If the Utility Product standards are not specified in Exhibit A, the Utility Products shall comply with the highest industry standards. These warranties shall be in addition to all warranties, express, implied, or statutory. All warranties shall inure to the benefit of NBU, its customers, and subsequent owners of items or services covered hereunder. A failure of NBU to discover or reject Utility Products that are not supplied in accordance with this Agreement shall neither be deemed an acceptance thereof nor a waiver of a claim of a defect therein. No payment or use of goods provided by the Supplier shall be construed as an acceptance of the Utility Products that are not strictly in accordance with the specifications in this Agreement.

5. Insurance.

A. General.

- I. Insurer Qualifications. Without limiting any obligations or liabilities of the Supplier, the Supplier shall purchase and maintain, at its own expense, the insurance type and coverage specified herein with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- or better with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
 - a. Coverage Term. All insurance required herein shall be maintained in full force and effect until this Agreement is terminated.
 - b. Additional Insured. The Supplier shall add NBU, its agents, representatives, officers, directors, officials, and employees as an additional named insured on all required insurance policies, except Worker's Compensation insurance, for claims arising out of the performance of this Agreement.
 - c. Waiver of Subrogation. All policies shall contain a waiver of right of recovery (subrogation) against NBU, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the performance of any services under this Agreement. The Supplier shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
 - d. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to, nor reduce the required amounts of, the policy limits provided to NBU. The Supplier shall be solely responsible for any such deductible or self-insured retention amount.
 - e. Subcontractors. If NBU authorizes any work under this Agreement to be performed by a subcontractor of the Supplier in any way, such authorization shall not reduce or limit the Supplier's liability, indemnifications, warranties, insurance requirements, or any other obligation, term or condition arising from this Agreement. If NBU authorizes any such work under this Agreement to be performed by a subcontractor of the Supplier, the Supplier shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Supplier. The Supplier shall be

responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

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

a. Workers' Compensation and Employer's Liability Insurance. The Supplier shall maintain Worker's Compensation and Employers' Liability insurance to cover all of its own personnel engaged in performing services for NBU under this Agreement in not less than the following amounts:

1. Workmen's Compensation – Texas Statutory Minimum Limit; and
2. Employers' Liability – \$1,000,000.

b. Commercial General Liability. The Supplier also agrees to maintain Commercial General Liability insurance to cover claims for damages resulting from bodily injury, death, or property damage from accidents arising in the course of work performed under this Agreement in not less than the following amounts:

1. \$1,000,000 combined single limit each occurrence; and
2. \$2,000,000 aggregate

The Commercial General Liability Policy shall be of an "occurrence" type policy.

c. Vehicle Liability. The Supplier shall maintain Comprehensive Business Automobile Liability insurance on its owned, hired, and non-owned vehicles assigned to or used in the course of work performed under this Agreement in not less \$2,000,000 combined single limit each occurrence.

III. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Supplier shall furnish 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. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Supplier's responsibility to forward renewal certificates and declaration page(s) to NBU thirty (30) days prior to the expiration

date. All certificates of insurance and declarations required by this Agreement will be identified by referencing the RFB number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFB number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

- IV. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed except upon a minimum of thirty (30) days' prior written notice to NBU.

6. **Term and Termination.** Either party may terminate this Agreement at any time to the limited extent described in this Section.

- A. 60-day Termination. Either party may terminate this Agreement, with or without cause, upon at least sixty (60) days advance written notice of termination (a "60-day Termination"). Upon delivering a notice for a 60-day Termination to the Supplier, NBU shall use commercially reasonable efforts to purchase and pay for all Utility Products that NBU accepts as of the date of such termination in the normal course of business under this Agreement. Further, NBU shall use commercially reasonable efforts to purchase all Utility Products that the Supplier has in its inventory at such date of termination that (i) are exclusively used by or designed for NBU and (ii) the Supplier acquired as a consequence of a written notice from NBU indicating that NBU would need a specific number of such Utility Products in the future (items meeting both such criteria being referred to herein as the "Inventory Items"). NBU shall only be obligated to purchase a maximum of the specific number of such Inventory Items indicated in such written notice that NBU has accepted after inspection of the Utility Products in connection with Section 2.D.I.e. The purchase price for any such items shall be no greater than the price set forth herein. In the event the Supplier has failed to provide the Utility Products to NBU within the time periods specified by NBU, NBU may purchase the Utility Products from other suppliers and sources without any liability to the Supplier and without any obligation to purchase the Utility Products from the Supplier as described in this Section.

- B. Insolvency or Bankruptcy. NBU may immediately terminate this Agreement upon written notice to the Supplier if the Supplier becomes insolvent, makes an assignment for the benefit of creditors, or files or is the subject of a petition in bankruptcy. In the event of such termination, NBU shall have no liability to the Supplier.

- C. Annual Appropriations. NBU may terminate this Agreement pursuant to Section 7 of this Agreement.

7. **Annual Appropriations.** Notwithstanding the five-year term listed above, the Supplier agrees and understands that NBU is a governmental entity and it has projected costs under the terms of this Agreement and NBU expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of NBU are subject to annual appropriation by the NBU Board of Trustees in future years. Accordingly, the above provisions

notwithstanding, in the event that NBU fails to appropriate sums to pay any of the Supplier's obligations under this Agreement, and due to such failure to appropriate, fails to pay such obligations, the Supplier's sole option will be to terminate this Agreement. NBU agrees to give the Supplier a minimum of thirty (30) days' written notice if NBU must terminate the Agreement because of any non-appropriation. In the event of such termination, NBU shall have no liability to the Supplier.

8. **Indemnification.** THE SUPPLIER SHALL INDEMNIFY AND HOLD HARMLESS NBU, ITS BOARD MEMBERS, OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, AND LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF THE SUPPLIER, ITS REPRESENTATIVES, AGENTS, OR EMPLOYEES IN ANY MANNER RELATED TO THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH IN THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.

9. **Miscellaneous.**

- A. **Assignment.** This Agreement shall not be assignable by either party without the prior written consent of the other party. If consent to an assignment is required, NBU reserves the right to refuse, in its sole discretion, to consent to the assignment by the Supplier.
- B. **Notice.** Any notice or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by facsimile transmission, certified mail, postage prepaid, return receipt requested, or overnight courier addressed as herein below provided, until another address or addresses shall be furnished in writing to the other party.

If to NBU:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130
Attention: Director of Water Services

With a copy to:

New Braunfels Utilities
355 FM 306
New Braunfels, Texas 78130
Attention: Purchasing Manager

If to the Supplier:
GEO Specialty Chemicals, Inc.
9213 Arch Street Pike
Little Rock, Arkansas 72206

- C. Entire Agreement; Conflicting Terms. This Agreement sets forth the entire understanding between the parties regarding the subject matter hereof and shall not be altered or modified in any way other than by a written document executed by both parties. All Exhibits referred to in this Agreement and attached hereto are essential provisions of this Agreement, are to be construed in harmony with each to give purpose and effect to the fulfillment of the obligations and responsibilities of the parties and are incorporated herein by this reference as if set out herein verbatim. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern.
- D. No Waiver. Failure of NBU or the Supplier to insist on any one or more instances on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of that covenant or any other covenant.
- E. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- F. Governing Law and Venue. This Agreement shall be governed and controlled by the laws of the State of Texas, considered without regard to choice of law rules. Venue of any claim, cause of action, or lawsuit based in whole or in part upon this Agreement shall be in Comal County, Texas.
- G. State or Federal Laws. This Agreement is subject to all applicable federal and state laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. Each provision and clause required by state and federal law to be inserted into this Agreement shall be deemed to be included herein and the Agreement shall be read and enforced as though each were included herein.
- H. No Third Party Beneficiary. The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.
- I. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially

describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) business days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

- J. **Immunity not Waived or Limited.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OR LIMITATION IN ANY MANNER BY NBU OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT NBU MAY HAVE BY OPERATION OF LAW.
- K. Acknowledgement and Authority. The Supplier acknowledges that it has read this Agreement and is familiar with and fully understands the terms and obligations set out in this Agreement and the Supplier's obligations and responsibilities for performance. The Supplier further acknowledges that any questions concerning the terms and conditions of this Agreement have been satisfactorily explained to the Supplier. The person or persons executing and signing this Agreement on behalf of the Supplier represent and guarantee that they have been fully authorized by the Supplier to execute this Agreement and to legally bind the Supplier to all the terms and provisions of this Agreement.
- L. Multiple Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- M. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. The Supplier represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.
- N. Independent Contractor. The Supplier acknowledges that the Supplier is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Supplier shall not represent, either expressly or through implication, that the Supplier is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Supplier.
- O. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Supplier.
- P. Confidentiality of Records. The Supplier shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the

Supplier's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Supplier's duties under this Agreement. Persons requesting such information should be referred to NBU. The Supplier also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Supplier as needed for the performance of duties under this Agreement.

- Q. Right to Audit. NBU shall have the right to examine and audit the books and records of the Supplier with regards to the Utility Products, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- R. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- S. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- T. Additional Representations. The Supplier hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The Supplier further declares that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.
- U. Texas Public Information Act Requests. The Supplier recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within this Agreement, the Supplier agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in section 9(Q).

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

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

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

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

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

The remainder of this page is intentionally left blank.

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Ian Taylor
Chief Executive Officer

SUPPLIER:

GEO SPECIALTY CHEMICALS, INC.,
an Ohio corporation authorized to transact business
in the State of Texas

By: _____
Name: _____
Title: _____

Exhibit A

The Supplier shall provide the following Utility Products to NBU at the times and locations NBU specifies:

1. PAC, NSF, UltraFloc 5202; and
2. PAC, UltraFloc 1209.

Exhibit B

NBU shall pay the Supplier for Utility Products not to exceed \$95,626.80 annually and \$478,134.00 for the duration of the Agreement. NBU shall pay the Supplier in accordance with the table below; however, the table is subject to the not to exceed amounts described in this Exhibit.

Item No.	Description	Unit		GEO Specialty Chemicals, Inc.
3.8	PAC, NSF, UltraFloc 5202	LB	Unit Cost	.294
3.9	PAC, UltraFloc 1209	LB	Unit Cost	.468

The prices for Utility Products shall remain fixed for a period of twelve (12) months. Sixty (60) days prior to the automatic renewal of this Agreement, the Supplier will be permitted to propose pricing adjustments with the written approval of NBU; however, any price adjustment approved by NBU shall be included in the calculation of the not-exceed amounts specified in this Exhibit. The Supplier will make every reasonable effort to tie future Utility Products increases or decreases to generally acceptable metals, oil, labor, and other indices

Exhibit C

Evidence of Insurance

Exhibit D

Delivery Sites

PAC (Poly Aluminum Chloride) Drop Sites

1. Surface Water Treatment Facilities (UltraFloc 5202)
2. Gruene Road Wastewater Facility (UltraFloc 1209)

2356 Gruene Road
1493 Gruene Road



ACTION ITEMS



To:
NBU Board of Trustees

From:
Michael G. Short
Director of Water Services

Reviewed by:
Ryan Kelso
Chief Operations Officer

Submitted by:
Ryan Kelso
Chief Operations Officer

Approved by:
Ian Taylor
Chief Executive Officer

RECOMMENDED ACTION

Authorize CEO to Negotiate and Execute AIA Standard Form of Agreement with Marmon Mok Architecture for the Design of the Proposed New Braunfels Utilities Headquarters Facility

BACKGROUND

In October of 2019, New Braunfels Utilities (“NBU”) issued a request for qualifications (“RFQ”) to provide architectural design services for the proposed New Braunfels Utilities Headquarters Facility (the “Project”). The RFQ solicited statements of qualifications (“SOQ”) from interested and qualified architectural firms to provide for the programming, master planning, and design of a campus facility consisting of a 55,000 square foot office building with parking areas, a 50,000 square foot warehouse, and maintenance and storage buildings.

Twenty-six (26) SOQs were received on November 8, 2019, for the Project. A Project review team (the “Team”) was assembled to select the most responsive respondent to the RFQ. The Team consisted of NBU staff members and two Board members. Over the course of several meetings, the Team selected three finalists for the Project. The Team interviewed all three finalists and on January 21, 2020, and selected Marmon Mok Architecture as the most highly qualified provider of those services on the basis of demonstrated competence and qualifications. Therefore, the Team is recommending that the Board authorize the CEO to negotiate and execute a Professional Services Agreement with Marmon Mok Architecture for the design of the Project (“the Agreement”).

This Agreement is being presented to the Board because the total contract amount is greater than \$250,000 for the architectural services.

Upon approval of this Agreement, NBU staff will solicit for a construction manager at risk contract (“CMAR contract”) and anticipates bringing the CMAR contract to the Board for approval later this year or early next year. NBU staff anticipates beginning construction no sooner than the fall of 2021.

FINANCIAL IMPACT

The total cost of the Agreement with Marmon Mok Architecture for the design of the Project is \$3,935,923. The entire design and construction budget for the Project is currently estimated to be \$44.8M. The Project is budgeted within the fiscal year 2020 through fiscal year 2022 NBU Board approved Capital Improvements Projects Budget.

MEETING DATE: May 28, 2020

AGENDA TYPE: Action Items

AGENDA ITEM NO.: G.1

LINK TO STRATEGIC PLAN

- ☒ **Plan and Build for the Future**
- ☒ **Be Sustainable**

EXHIBITS

1. Marmon Mok Architectural Services AIA Contract



AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Thirtieth (30th) day of April in the year Two Thousand Twenty (2020).

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

New Braunfels Utilities
263 E. Main Plaza
New Braunfels, Texas 78130
830-629-8496

and the Architect:
(Name, legal status, address and other information)

Marmon Mok, LP
1020 NE Loop 410, Suite 201
San Antonio, Texas 78209
210-223-9492

for the following Project:
(Name, location and detailed description)

New Braunfels Utilities Headquarters
New Braunfels, Texas

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

Init.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.") Not applicable

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Program to be developed through programming exercise lead by Architect as summarized as follows and found within ATTACHMENT B – SERVICES TO BE PROVIDED BY THE ARCHITECT.

The Architect ("Marmon Mok") shall work with the New Braunfels Utility Project Manager (NBU PM), and other project team members to develop site space planning requirements, and the relationships between the various building elements and functions to facilitate interactions between buildings, (horizontal and vertical elements) and campus personnel. Marmon Mok shall prepare a schedule with milestones and deliverables during Phase I of the project for approval by NBU PM and other project team members. Marmon Mok shall provide the resources and expertise to effectively assist NBU in formalizing a detailed Space Program and Functional Use Requirements ("SPFR"). Marmon Mok shall work closely with stakeholders, NBU's PM, and other interested parties to evaluate detailed space requirements that respond to the functional needs of NBU. Marmon Mok shall provide recommendations that address and satisfy multiple objectives including maximizing space; minimizing cost; providing flexible spaces capable of adapting to changing programs and technological requirements, sustainability and efficiency, and achieving overall quality.

Marmon Mok shall incorporate the findings and requirements into the final program for approval by NBU before proceeding to the Schematic Design Phase. Marmon Mok and their subcontractors shall conduct an analysis of the site to program requirements, context, and site planning guidelines. Investigation areas include soils, topography, site

utilities (either on site or available to the site), access and circulation, and urban design context. Marmon Mok and their subcontractors shall define site and environmental issues including ingress and egress to the new site, neighborhood overlays, and storm water management. Marmon Mok and their subcontractors shall utilize the topography of the site, shall identify with massing studies potential building sites, circulation paths (pedestrian and vehicular), and present the pros and cons of the various studies by using the appropriate graphical representation techniques to NBU for approval. Based on approved site development scheme, Marmon Mok will develop a final site masterplan depicting building massing studies based upon program requirements, site parking and circulation, roadways and improvements including utilities, stormwater management features, and site enhancement opportunities as determined with the owner.

Marmon Mok shall design buildings such that site attributes integrate with building functions creating a high-performance, resource conserving, flexible, and resilient facility that promotes and enhances occupant health, productivity, and well-being over the lifespan of the building. The design shall include innovative strategies that conserve and maximize onsite water, energy and other natural resources. The water component of the facility is critical. Design and construction should minimize overall water use, maximize onsite reuse of all waters - including rain, gray, black and a/c condensate - and minimize wastewater discharge. Design of the buildings and site must facilitate circulation between indoor and outdoor areas to promote access to outdoor areas by building occupants for both work-related and informal activities. Marmon Mok shall consider the climate of Central Texas in the design of connections between buildings. Marmon Mok shall configure such connections to facilitate interactions among employees. Marmon Mok and their subconsultants shall provide design services required for the preparation of plans, specifications and estimates ("PS&E") and related documents for the Project. Services will include items described in Attachment B "Scope of Work"

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The site selected for the new campus is a 48.58-acre tract located in west New Braunfels adjacent to Westpointe Drive to the north. The site is heavily wooded with cedars and mesquite scrub trees. Primary access to the site is anticipated to be from Westpointe Drive with a potential secondary access to be investigated. NBU desires that the campus utilize the natural site features to organize the design of the campus. Design must provide offices of approximately 55,000 square feet within a campus plan in a manner to facilitate communication and collaboration between various departments on a formal and informal basis. Design must include a single or multiple building warehouse facility or facilities with approximately 50,000 square feet of storage. The warehouse facility or facilities must be positioned within the site to provide efficient access for loading and unloading of various materials and associated offices, raw material storage, and loading dock access for shipping and receiving. Vehicle Maintenance facilities should have vehicle lifts, fluids distribution, overhead-lift, exhaust evacuation capabilities. The design must include surface parking for approximately 350 vehicles distributed throughout the site for staff parking, guest parking, contractor parking, short term parking, and deliveries. Marmon Mok shall verify final sizing of building(s) and parking requirements with NBU during the Programming Phase of the Project.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Total Budget:	\$48,549,753
Land Purchase:	(\$3,647,102)
Misc. Charges:	(\$102,651)
Remaining	\$44,800,000

Total Budget estimated is based on preliminary scope of sizes of buildings and parking requirements identified in to date; final program requirements to be determined may affect project budget in proportion to final project scope authorized at the conclusion of the Programming Phase of the Project.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Programming – 6 weeks
Master Planning – 6 weeks
Schematic Design – 9.5 weeks
Design Development – 10 weeks
Construction Documents – 20 weeks

.2 Construction commencement date:

April 2021 (Estimated)

.3 Substantial Completion date or dates:

August 2022 (Estimated)

.4 Other milestone dates:

To Be Determined (TBD)

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

The Owner anticipates procuring construction using the Construction Manager At-Risk (CMAR) delivery method.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

The Owner would like the design to incorporate innovative strategies that conserve and maximize onsite water, energy and other natural resources. The water component of the facility is critical. Design and construction should minimize overall water use, maximize onsite reuse of all waters - including rain, gray, black and a/c condensate - and minimize wastewater discharge. Architect will review and discuss sustainable design approaches for building elements, materials, and equipment with The Owner during schematic design phase relative to project budget, value of approach, and desired outcome for the project, determine the features that The Owner would like to include in subsequent design phases. Assessment of approaches will not include life cycle analyses as part of the value assessment of considered approaches. Project will not be submitted for third party certification or third-party review related to sustainability.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

.1 Ian Taylor, Chief Executive Officer
263 Main Plaza
New Braunfels, Texas 78130
830-629-8146

.2 Ryan Kelso, Chief Operations Officer

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263 Main Plaza
New Braunfels, Texas 78130
830-629-8146

- .3 Dawn Schriewer, Chief Financial Officer
263 Main Plaza
New Braunfels, Texas 78130
830-629-8468

- .4 Mike Short, Director of Water Services
355 FM 306
New Braunfels, Texas 78130
830-608-8945

- .5 Dean Watson, Water Systems Engineering, Project Manager
355 FM 306
New Braunfels, Texas 78130
830-608-8991

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

None

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Freese and Nichols, Inc.

(Paragraphs deleted)

Consultant for investigation of critical habitat and site development constraints.

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3. The Architect's representative shall be available to the Owner at all reasonable times for consultation with the Owner. The Architect may not change its representative without written approval of the Owner. Such approval shall not be unreasonably withheld.

(List name, address, and other contact information.)

- .1 Briant A. Harkiewicz, AIA, Project Principal
Marmon Mok Architecture
1020 NE Loop 410, Suite 201
San Antonio, Texas 78209
210-223-9492

- .1 Cody McBrearty, AIA, Project Manager
Marmon Mok Architecture
1020 NE Loop 410, Suite 201
San Antonio, Texas 78209
210-223-9492

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

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§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Alpha Consulting Engineering
10609 IH 10 W, Suite 205
San Antonio, Texas 78230

.2 Mechanical Engineer:

Cleary Zimmermann Engineers
1344 S. Flores, Suite 101
San Antonio, Texas 78204

.3 Electrical Engineer:

Cleary Zimmermann Engineers
1344 S. Flores, Suite 101
San Antonio, Texas 78204

.4 Civil Engineer:

HMT Engineering
209 S. Castell Ave.
New Braunfels, TX 78130

.5 Landscape Architecture:

Rialto Studio, Inc.
2425 Broadway, Suite 105
San Antonio, TX 78215

.6 Fire Protection Engineering:

Fire Protection Consulting Group, Inc. (FPCG)
339 Sandalwood Lane
San Antonio, TX 78216

.7 Technology Consultant:

Combs Consulting Group
8200 IH 10 West, Suite 103
San Antonio, TX 78230

.8 Cost Consultant:

Project Cost Resources, Inc.
410 West Grand Parkway South, Suite 390
Katy, TX 77494

§ 1.1.11.2 Consultants retained under Supplemental Services:

.1 Geotechnical/Geologic Consultant:

Raba Kistner Consultant, Inc.

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211 Trade Center, Suite 300
New Braunfels, TX 78130

.2 Vehicle Fluids Consultant:

Richard N. Berry, PE, Inc.
17038 Redland Road, Suite 115
San Antonio, TX 78247

.3 Topographic and Tree Survey; Platting; Rezoning; Traffic Impact Analysis; WPAP/SWM; Edwards Aquifer/TCEQ SCS:

HMT Engineering
290 S. Castell Ave.
New Braunfels, TX 78130

.4 Commissioning:

Cleary Zimmermann Engineers
1344 S. Flores, Suite 101
San Antonio, Texas 78204

§ 1.1.12 Other Initial Information on which the Agreement is based:

None

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in a document such as AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project (the "Standard of Care"). All such Services shall be performed in accordance with the standard of care (collectively, the Architect's "Standard of Care").

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§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

Professional Liability:	Initial Limits of \$3,000,000 per claim and \$5,000,000 in the aggregate
General Liability Umbrella/Excess:	\$5,000,000 (shall not apply to professional liability insurance)
Worker's Compensation:	\$1,000,000 or Statutory Limits
Comprehensive General Liability:	
Occurrence:	\$1,000,000
Aggregate:	\$2,000,000
Personal Injury:	\$1,000,000 each person
(Coverage to include groups A,B & C w/exclusion "C" aggregate Removed)	
Automobile Liability:	\$1,000,000 combined single limit

- .1 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be reasonably acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.
- .2 The policy so issued in the name of Architect shall also name the Owner as additional insured, except for professional liability insurance and worker's compensation insurance. All policies held by the Architect shall be primary coverage.
- .3 Architect shall furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner, and a statement that, except for professional liability insurance and worker's compensation insurance, the Owner is named as additional insured. Architect shall permit Owner to examine the insurance policies, or at Owner's option, Architect shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If Architect neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Architect's expense.
- .4 Insurance provided pursuant to this Section shall be considered a part of the Architect's Basic services and shall not be Reimbursable Expense within the scope of Section 11.8, or other provisions of this Agreement.
- .5 Architect's General Liability, Automobile Liability, and Worker's Compensation Insurance policies shall be endorsed to provide a waiver of subrogation in favor of the Owner.

§ 2.5.1 With the exception of Cost Consultant and Vehicle Fluids Consultant, the Architect shall contractually require each of its other Consultants to maintain insurance with the same minimum requirements set forth in Section 2.5 except that initial professional liability limits shall be \$1,000,000 per claim and \$2,000,000 in the aggregate and provide proof of each Consultants' compliance with same. Should any of these other Consultants not have the

minimum levels of insurance set forth in Section 2.5, the Architect shall supplement its insurance to provide increased limits that total the aggregate amount required by this Section 2.5.1. As for the Cost Consultant and Vehicle Fluids Consultant, Architect shall require each of these consultants to carry the types of insurance required in Section 2.5 but with limits not greater than \$1,000,000.

§ 2.5.2 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.3 The Architect shall provide certificates of insurance to the Owner that evidence Architect and Consultant compliance with the requirements in Sections 2.5 and 2.5.1.

(Paragraphs deleted)

§ 2.6 Architect shall review all drawings and plans and other design and engineering documents prepared by any Architect Consultant and shall make comments and recommendations regarding the design and engineering of the Project such that the Project is appropriately coordinated among the various disciplines. Architect assumes responsibility for the coordination of the Consultants' documents as part of Architect's Basic Services. Architect further agrees to provide its design documents, background information and design intent for the Project to all Consultants involved in the Project in order to achieve an integrated, consistent overall design for the Project. Consultants are required to perform their services in accordance with the Standard of Care. Nothing in this Agreement or in any Agreement with any Consultant shall relieve Architect or any Consultant of liability for the consequences of any failure to perform services in accordance with such professional standards.

§ 2.7 Architect shall in accordance with the standard of care endeavor to prepare drawings and specifications prepared by or for Architect to address building codes, ordinances, life safety, handicapped accessibility codes (including Chapter 469 of the Texas Government Code, *Elimination of Architectural Barriers*), and related federal and state regulations and all other regulatory requirements, laws, and statutes including, but not limited to the provisions of the Americans with Disabilities Act, and other applicable State and local accessibility requirements and building codes. Architect shall coordinate the work of its Consultants and shall direct its Consultants to make such revisions and modifications to such plans and drawings as may be necessary to comply with the standard of care as it relates to the permitting and other regulatory and legal requirements of the jurisdiction of the Project.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall assist in the selection of a Construction Manager and shall consult with the Construction Manager during the design phase to maintain the Project budget, increase value to the Owner, and promote constructability. The Architect shall provide draft design documents for estimating and pricing at the deliverable milestones as defined in The Scope of Work "Attachment B".

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the

Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall file documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 The Architect shall be responsible for the Architect's negligent acts or omissions, and for the negligent acts and omissions of the Architect's Consultants, their agents and employees, in the performance of their professional duties. Architect shall perform its services in accordance with this Agreement or the requisite Standard of Care established in Sections 2.2 and 2.7.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, up to three preliminary designs illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3. If a Construction Manager has been selected by the Owner during this Phase, the Architect shall coordinate and work with the Construction Manager in the Construction Manager's preparation of an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall coordinate and work with the Construction Manager when Construction Manager updates the estimate of the Cost of the Work previously submitted pursuant to Section 3.2.6 and prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project, in effect at the time of the execution of this Agreement, into the Construction Documents. If the code enforcement official adopts a different code after execution of this Agreement and before Owner approves the design development drawings, Architect will inform Owner of the change and, upon written request of Owner, will revise the drawings to address the different code requirements.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Construction Manager and/or the Owner in the development and preparation of early bid packages as appropriate to the stage of project development that includes the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The scope of early bid packages, if authorized, shall be determined by the Architect after review of the CMAR schedule and overall progress of the development of Construction Documents for purposes of coordination of the work. The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications.

§ 3.4.4 The Architect shall coordinate and work with the Construction Manager as Construction Manager updates the estimate for the Cost of the Work previously submitted pursuant to Section 3.3.2 and prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work in coordination with the CMAR, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in preparing a solicitation for selection of the CMAR, review qualifications and proposals submitted and make recommendations for award as deemed appropriate by the Owner. After selection of a CMAR, and following the Owner's approval of the Construction Documents, the Architect shall assist the Owner

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and/or Construction Manager in (1) obtaining competitive bids; (2) confirming responsiveness of bids; (3) determining the successful bids, if any for recommendation to the owner for award of sub-contract bid packages.

§ 3.5.2 Selection of Construction Manager At-Risk

§ 3.5.2.1 The Architect shall assist the Owner in selecting a Construction Manager At-Risk by:

- .1 procuring the reproduction of Requests for Proposals and/or Requests for Qualifications for distribution to prospective Construction Managers; facilitating the distribution of Requests for Proposals and/or Requests for Qualifications to prospective Construction Managers, requesting their return upon completion of the selection process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and return to prospective Construction Managers;
- .2 preparing responses to questions from prospective Construction Managers and providing clarifications and interpretations of the Requests for Proposals to the prospective Construction Managers in the form of addenda when necessary;
- .3 organizing and conducting the opening of Requests for Proposals and/or Requests for Qualifications, and subsequently documenting and distributing the results; and
- .4 attending any interviews of prospective Construction Managers.

(Paragraphs deleted)

§ 3.5.3 Competitive Bidding

§ 3.5.3.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents for competitive bidding of sub-contract work by the Construction Manager at Risk.

§ 3.5.3.2 The Architect shall assist the Construction Manager at Risk (CMAR) and the Owner in bidding the Project by:

- .1 Participating in a pre-bid conference for prospective bidders organized by the CMAR;
- .2 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda issued through the CMAR; and,
- .3 Reviewing bidding results, as directed by the Owner.

§ 3.5.3.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions and prepare and distribute addenda through the CMAR identifying approved substitutions to all prospective bidders.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction ("General Conditions"). Any modifications to the General Conditions must be agreed to by the Parties.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the execution of the Guaranteed Maximum Price Amendment between the Owner and the Construction Manager and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. Failure to notify the Owner of observed defects and known deficiencies a breach of this Agreement.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within 15 calendar days or any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be subject to the Owner's approval.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A133 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

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§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing, approving, or not approving submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, and Architect shall do so within 10 days

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within 15 calendar days or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 Prepare plan of record drawings reflected changes indicated by approval change orders and if indicated in redline Drawings provided by Construction Manager. (Architect will not verify or confirm these changes.);
- .3 issue Certificates of Substantial Completion;
- .4 receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager; and,

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.5 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Owner may request Supplemental and Additional Services in addition to those listed below which, if requested, shall be provided pursuant to the terms contained in this Section 4.1 and for the sums indicated in the written authorization by Owner. Under no circumstances will Owner be obligated to compensate the Architect or others for fees and expenses related to Supplemental and Additional Services unless the Owner has authorized the performance of such services in advance and in writing. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided pursuant to this Agreement. *(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Not Provided
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Architect (Basic Service)
§ 4.1.1.9 Landscape design	Architect (Basic Service)
§ 4.1.1.10 Architectural interior design	Architect (Basic Service)
§ 4.1.1.11 Value analysis	Not Provided

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Architect (Basic Service)
§ 4.1.1.16 As-constructed record drawings	Architect (Basic Service)
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.21 Telecommunications/data design	Architect (Basic Service)
§ 4.1.1.22 Security evaluation and planning	Architect (Basic Service)
§ 4.1.1.23 Commissioning	Architect (as approved by owner)
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Architect
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.29 Other services provided by specialty Consultants	Fluids Distribution, Geotechnical Analysis, Code Evaluation & Fire Protection System Engineering
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Supplemental Services are described under ATTACHMENT B – SERVICES TO BE PROVIDED BY THE ARCHITECT.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

None defined

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this

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Section 4.2 shall be compensated as provided in Section 11.3. The provision of Additional Services in excess of those referenced in this Section 4, et al. shall not entitle the Architect to additional compensation or an adjustment in the Architect's schedule unless specifically authorized by Owner and memorialized by written change order to this Agreement.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization. Such written authorization to proceed shall not be construed as a change order or acquiescence to a request for change order unless the Owner expressly states in such written authorization that the notice constitutes a change order entitling the Architect to additional compensation:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given in writing by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations not reasonably foreseeable, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit and not an interpretation of which the Architect was aware, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing, other than board of trustees meetings;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination, and the Owner shall have no further obligation to compensate the Architect for those services. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

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(Paragraphs deleted)

Preparing Change Orders and Construction Change Directives that require evaluation of Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;

- .2 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .3 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Sixty-Four (64) visits to the site by the Architect during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-Six (26) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within 15 days after receipt of written request, information relevant for the Architect to evaluate same.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Architect, for the benefit of the owner, shall contract with Civil Engineer to furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Architect, for the benefit of the owner, shall contract with a Geotechnical Engineer to furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Construction Manager's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the Construction Manager's Guaranteed Maximum Price, the Owner shall

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- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the determination of the Guaranteed Maximum Price, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the Construction Manager's Guaranteed Maximum Price exceeds the Owner's budget for the Cost of the Work for reasons not caused by the Architect, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 As part of the total compensation which Owner has agreed to pay Architect for the professional services to be rendered under this Contract, Architect agrees that hard copies of all finished and unfinished "Instruments of Service" including but not limited to documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, preliminary reports, reports, bid packet/construction contract documents/advertisement for bids incorporating any Owner standard provisions provided by Architect, all of which are produced by Architect and paid for by Owner are, and will remain, the property of the Owner. Architect will furnish Owner with electronic copies in .PDF format, to the extent they are available, of all of the foregoing to facilitate coordination; however, ownership of the Instruments of Service and all underlying work product shall remain the intellectual property of the Architect and Architect shall retain its copyrights in all work produced by it. Architect shall have the right to use such work products for Architect's purposes on this Project. However, such documents are not intended to be suitable for reuse by Owner or others. Any reuse without the express written consent of the Architect will be at the Owner's sole risk and without liability or legal exposure to the Architect. The above notwithstanding, Architect shall retain all rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary and intellectual property information provided pursuant to this Contract.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the

Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A133, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. This waiver shall not apply to damages that are within the coverage of the insurance Architect is required to maintain under Section 2.5.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be submitted to senior management for each party for attempted resolution and then be referred to non-binding mediation as a condition precedent to the institution of legal proceedings by either party.

§ 8.2.2 Mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement unless the Parties agree on a mediation administered by a mutually selected mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
- ☒ Litigation in the District Court of Comal County, Texas
- ☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

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(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, and such failure continues for thirty (30) days following written notice, it shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, and Reimbursable Expenses.

§ 9.7

(Paragraphs deleted)

The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and is expressly conditioned upon Owner's payment to Architect for services performed up to termination.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Texas.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A133, Standard Form of Agreement Between the Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified by the Owner.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect

for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after fifteen (15) days' written notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows and in accordance with Section 1.1.3. Compensation for Basic Services shall not increase regardless of any increase in the Project budget or negotiated Guaranteed Maximum Price with the Construction Manager unless authorized by written change order to this Agreement as may be necessitated by an increase in Project scope that creates material differences to the Initial Information:

- .1 Stipulated Sum
(Insert amount)

(Paragraphs deleted)

Three Million One Hundred Seventy-Six Thousand Nine Hundred Ninety Five Dollars (\$3,176,995) as itemized on ATTACHMENT A – ARCHITECT ENGINEER DESIGN SERVICES FEE PROPOSAL.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

.1 Stipulated Sum
(Insert amount)

Seven Hundred Six Thousand Nine Hundred Twenty Eight Dollars (\$706,928) as itemized on ATTACHMENT A – ARCHITECT ENGINEER DESIGN SERVICES FEE PROPOSAL.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

.1 A stipulated sum as mutually negotiated and agreed upon.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

.1 A stipulated sum as mutually negotiated and agreed upon.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (20	%)
Design Development Phase	Twenty	percent (20	%)
Construction Documents Phase	Thirty-Five	percent (35	%)
Procurement Phase		percent (%)
Construction Phase	Twenty-Two and One Half	percent (22.5	%)
Closeout Phase	Two and One Half		2.5	
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

.1 Hourly rates are included with ATTACHMENT A – ARCHITECT ENGINEER DESIGN SERVICES FEE PROPOSAL, including Consultant proposals

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

Init.

- .1 Transportation and authorized out-of-town travel and subsistence for Architect and Architect's Consultants;
- .2 Courier Service;
- .3 Models;
- .4 Renderings; and;
- .5

(Paragraphs deleted)

Printing of Plans and Specifications for Bidding and Construction.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred. Pursuant to Section 1.1.3, Reimbursable Expenses are estimated to be Fifty-Two Thousand Dollars (\$52,000). For any amounts requested by the Architect as Reimbursable Expenses in excess of the estimated amount, in total, the Architect must obtain written authorization for such expenses prior to incurring same. Failure by the Architect to obtain such written authorization for any amounts in excess of the estimate is an express waiver of its right to compensation for such expenses.

§ 11.9

(Paragraphs deleted)

Payments to the Architect

(Paragraphs deleted)

§ 11.9.1 Initial Payments

§ 11.9.1.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.9.2 Progress Payments

§ 11.9.2.1 Time limits and interest due on late payments are governed by chapter 2251 of the Texas Government Code.

§ 11.9.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect. Owner shall have the right to withhold or offset from payments due Architect to the extent reasonably necessary to protect the Owner from costs or damages incurred related to the Architect's breach of this Agreement or the applicable standard of care.

§ 11.9.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

§ 12.1 INDEMNIFICATION

THE ARCHITECT SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES RESULTING FROM PERSONAL INJURY OR PROPERTY DAMAGE, TO THE EXTENT SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY, , THE NEGLIGENT ACTS OF THE ARCHITECT, ITS CONSULTANTS, AGENTS, AND EMPLOYEES, IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

THE TOTAL LIABILITY OF THE ARCHITECT AND ITS AGENTS TO THE OWNER FOR ANY LOSS OR DAMAGES FROM CLAIMS ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT FROM ANY CAUSE INCLUDING ARCHITECT'S PROFESSIONAL NEGLIGENCE, ERRORS AND OMISSIONS, OR BREACH OF CONTRACT SHALL NOT EXCEED THE ARCHITECT'S AVAILABLE INSURANCE LIMITS LIMITS AT THE TIME OF ADJUDICATION OF THE CLAIMS. THIS LIMITATION OF LIABILITY SHALL APPLY ONLY IF ARCHITECT PROVIDED THE INSURANCE

REQUIRED IN SECTION 2.5. FURTHERMORE, THIS LIMITATION OF LIABILITY APPLIES ONLY TO ARCHITECT AND AGENTS WHO ARE ITS EMPLOYEES AND PRINCIPALS AND SHALL NOT APPLY TO INDEPENDENT CONSULTANTS.

§ 12.2 The Architect acknowledges that the Owner intends to execute an agreement, 'AIA A-133, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price".

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect

(Paragraphs deleted)

- .3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

- [X] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

ATTACHMENT A – ARCHITECT ENGINEER DESIGN SERVICES FEE PROPOSAL
ATTACHMENT B – SERVICES TO BE PROVIDED BY THE ARCHITECT

- .4 Other documents:

(List other documents, if any, forming part of the Agreement.)

None identified.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Rows deleted)

Ian Taylor, Chief Executive Officer
New Braunfels Utilities



ARCHITECT (Signature)

By: Marmon Mok Management Group, LLC, a Texas
limited liability company
Its General Partner

By: Briant A. Harkiewicz, AIA, NCARB, Leed AP

Init.

**ATTACHMENT A –
ARCHITECT ENGINEER DESIGN SERVICES FEE PROPOSAL**

April 6, 2020

Ryan Kelso
Chief Operations Officer
New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130

Re: AE Design Services Fee Proposal
New Braunfels Utilities Headquarters
New Braunfels, Texas

Dear Mr. Kelso,

Marmon Mok Architecture appreciates this opportunity to design the new campus headquarters for the New Braunfels Utilities. Our team is ready to go and we know NBU is similarly excited at the prospect of creating a new work environment that honors the work force of your organization. Our approach will be collaborative, transparent and focused on achieving the right solutions that meet your goals and supports your needs as a vibrant workplace in our central Texas home.

Since notice of award, our team including consultants, has participated in introductory meetings with NBU Leadership, toured existing NBU facilities including the current headquarters on Main Plaza in New Braunfels and the satellite location on FM 306. We have visited the proposed site for the new headquarters location and met with the City of New Braunfels development office to ascertain regulatory requirements associated with developing this property. With information available at this initial stage of project development, we have formed a reasonable understanding of the project and scope of services required for the design of your project.

For the design of the project, at your request, we have provided a detailed scope of services statement as an attachment to the proposed Standard Form of Agreement between Owner and Architect, AIA Document B101 – 2017. As well, proposed modifications to the Owner and Architect Agreement have been prepared by your office and reviewed by Marmon Mok. Edits to this document have been completed and are attached here-in for final review and discussion with NBU Legal representatives.

Our proposed fee for AE design services and design schedule to accomplish the proposed scope of services, in accordance with the contract terms, is provided as a lump sum agreement. This proposal includes all known consultants required to complete the scope as currently defined; copies of their proposals and relative scope for their discipline is included for your reference.

We understand your intent and desire for Marmon Mok to provide comprehensive scope of services beyond traditional basic services for AE design and we have included those services as we understand their requirements at this time, except where otherwise prohibited by regulatory rules. Accordingly,

this fee proposal follows the AIA contract document format for Basic Services and Supplemental services as follows:

Basic Services

Basic services include traditional AE design related services that are comprehensive from Schematic Design through Construction Administration to produce plans and specifications to construct the work.

The following disciplines and consultants and related fee comprise basic services.

<u>Discipline</u>	<u>Consultant</u>	<u>Fee</u>
Architecture	Marmon Mok Architecture	\$ 1,585,160
Interior Design	Marmon Mok Architecture	\$ 260,000
Civil Engineering	HMT Engineers	\$ 302,510
Landscape Architecture	Rialto Studio	\$ 106,500
Structural Engineering	Alpha Engineering	\$ 171,000
MEP Engineering	Cleary Zimmermann Engineers	\$ 498,750
Fire Protection Engineering	FPCG Consulting Engineers	\$ 83,980
Technology	Combs Consulting	\$ 101,200
Cost Consulting	Project Cost Resource	\$ 67,895
Total Basic Services:		\$ 3,176,995

As a lump sum fee, basic services will be invoiced based on phase complete and milestone delivery per the following schedule:

<u>PHASE</u>	<u>MILESTONE</u>	<u>PERCENTAGE</u>
Schematic Design		20%
	50% Schematic Design	50%
	100% Schematic Design	50%
Design Development		20%
	50% Design Development	50%
	100% Design Development	50%
Construction Documents		35%
	30% Construction Documents & 100% Civil Site Design	35%
	60% Construction Documents	30%
	90% Construction Documents	30%
	100% Construction Documents	5%
Construction Administration	Invoiced monthly based on completion of the work through substantial completion.	22.5%
Closeout		2.5%
	Final Punchlist and Closeout submittal review	100%

Supplemental Services

Supplemental Services include specific task-based services necessary to support basic service design or are required by regulatory authorities having jurisdiction. As task based services, these services

will be invoiced as completed over the course of the project work. as specific tasks, consultant supplemental fees are marked up 1.1 times for management and administration of the work.

These services include the following:

<u>Service</u>	<u>Consultant</u>	<u>Fee</u>
Programming 75% Draft	Marmon Mok Architecture	\$158,038
Programming Final Report	& Design Consultants	\$ 41,680
Site Masterplan 75% Draft	Marmon Mok Architecture	\$ 96,464
Site Masterplan Final Report	& Design Consultants	\$ 32,154
Geotechnical Investigation	Raba Kistner Consultants	\$ 33,530
Geologic Assessment Update	Raba Kistner Consultants	\$ 5,280
Topographic and Tree Survey	HMT	\$ 35,000
Platting	HMT	\$ 15,280
Rezoning	HMT	\$ 5,615
Traffic Impact Analysis	HMT	\$ 13,100
Storm Water Pollution Prevention Plan (SWPPP)	HMT	\$3,850
Water Pollution Abatement Plan (WPAP)	HMT	\$ 21,032
Edwards Aquifer-TCEQ SCS	HMT	\$ 17,775
Accessibility Design Review	Marmon Mok Architecture/ TDLR RAS	\$ 2,000
Accessibility Site Inspection	Marmon Mok Architecture/ TDLR RAS	\$ 2,000
Furniture Package Specification	Marmon Mok Architecture	\$ 118,000
Furniture Installation Mgmt.	Marmon Mok Architecture	\$ 35,000
Fleet Vehicle Shop Equipment	RNB Consulting	\$ 12,000
Commissioning	Cleary Zimmermann Engineers	\$ 59,130
Total Supplemental Services:		\$ 706,928

Reimbursable Expense Allowance

Reimbursable expenses include direct project related costs authorized by the owner and required for execution of the work. Expenses include printing costs for requested hard copy prints of project submittals; regulatory fees and related filing fees; mileage reimbursement for scheduled project meetings and job site meetings and site visits during construction. Expenses are billed at direct cost times 1.1. Mileage reimbursement billed at IRS authorized rate. Expense Allowance does not include City of New Braunfels plan review or construction permit fees.

Total Reimbursable Allowance: \$52,000

Total Contract Fee Proposal: \$ 3,935,923

Exclusions

This proposal is based upon site development to include primary access from Westpointe Drive and required improvements and secondary access through Stone Crossing. An alternate access through the neighboring proposed Lark Canyon development to Loop 337 is currently excluded from the scope of this proposal but has been discussed as to viability. Whereas measures to obtain that alternate access route may subsequently be identified, design work required to attain that routing may be treated as an additional service.

Municipal plan review and construction permit review fees.

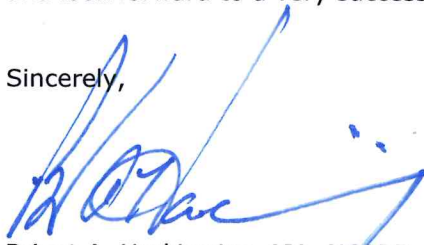
Comprehensive Energy Model Analysis of facilities beyond code required energy analysis. Upon request, may be added as an additional service.

Code required third party inspection services as identified in contract documents.

Substantial changes to project scope beyond that currently understood that result in increases to scope or budget, in excess of 10%, may warrant adjustments to proposed fees and/ or schedule. As identified these changes would be discussed and negotiated as a lump sum contract amendment as appropriate.

Please call if you have any questions regarding this proposal. We remain available to discuss further and look forward to a very successful project outcome.

Sincerely,



Briant A. Harkiewicz, AIA, NCARB, LEED AP
Partner
Marmon Mok Architecture

Cc: Dean Watson, Project Manager, NBU

Encl.

**ATTACHMENT B -
SERVICES TO BE PROVIDED BY THE ARCHITECT**

PROJECT OVERVIEW:

New Braunfels Utilities (NBU) has initiated a campus relocation and consolidation project (“**the Project**”) that will relocate and consolidate the following NBU offices at a single campus to improve efficiency, communication, and collaboration between the various divisions.

1. Main Plaza Office, 263 Main Plaza, New Braunfels, Texas 78130
2. Operation Center, 355 FM 306, New Braunfels, Texas 78130

The site selected for the new campus is a 48.58 acre tract located in west New Braunfels adjacent to Westpointe Drive to the north. The site is heavily wooded with cedars and mesquite scrub trees. Primary access to the site is anticipated to be from Westpointe Drive with a potential secondary access. NBU desires that the campus utilize the natural site features to organize the design of the campus.

Architect shall provide a complete design of the new campus including offices, surface parking, warehouse, maintenance, storage, and infrastructure and support as required by this agreement.

Architect shall also have caused the design or necessary processes to occur through subconsultants the following actions; Platting, Tree and Topographic Survey, Water Pollution Abatement Plan (WPAP), Edwards Aquifer Sewage Collection System Application (SCS), Traffic Impact Analysis (TIA), Drainage Design, Offsite water and sewer extensions to NBU property, Westpointe roadway extension, Permitting, as required by this agreement.

OFFICES:

Design must provide office space adequate to meet the needs of NBU as determined through the approved program within a campus plan in a manner to facilitate communication and collaboration between various departments on a formal and informal basis.

Design must:

1. Accommodate approximately 350 employees on a daily basis. The eventual number of employees will be determined during the programming process.
2. Provide work spaces, including meeting, support spaces, and amenity spaces;
3. Provide satellite food and beverage locations throughout the facility to encourage interactions along paths of travel

Architect shall design buildings such that site attributes integrate with building functions creating a high-performance, resource conserving, flexible, and resilient facility that promotes and enhances occupant health, productivity, and well-being over the lifespan of the building. Design of the buildings and site must facilitate circulation between indoor and outdoor areas to promote access to outdoor areas by building occupants for both work-related and informal activities. Architect shall consider the climate of Central Texas in the design of connections between buildings. Architect shall configure such connections to facilitate interactions among employees.

Design of the campus and individual building components must:

1. Minimize energy consumption through strategic building orientation that takes advantage of solar gain, daylight, shade, and breeze.
2. Include efficient fixtures, a high-performance thermal envelope, and appropriate building fenestration to establish a low-energy-intensity baseline;
3. System furniture selection and design to support modern work space standards and type of work performed with sound masking and acoustical controls appropriate to the type of space design;
4. Office, filing, conference and training room furnishings, seating and support furnishings required for occupancy;
5. Amenity furnishings and outdoor furnishings as determined appropriate through the project programming process.

Design must integrate access control, video surveillance, building security, fire protection, audio announcement, wired and wireless networking systems, and telephone and data systems into all campus facilities. All technology and communications systems must be designed to be upgradable as future technology systems are developed.

SURFACE PARKING:

The design must include surface parking distributed throughout the site for guest parking, contractor parking, short term parking, and deliveries. The Architect shall verify parking requirements with the City of New Braunfels and NBU during the Programming phase of the Project.

WAREHOUSE(S) AND MAINTENANCE:

Design must include a single or multiple building warehouse facility or facilities with approximately 50,000 square feet of storage. The warehouse facility or facilities must be positioned within the site to provide efficient access for loading and unloading of various materials and associated offices, raw material storage, and loading dock access for shipping and receiving.

Vehicle Maintenance facilities should have vehicle lifts, fluids distribution, overhead lift capabilities, exhaust evacuation capabilities, and other requirements as determined through programming effort.

INFRASTRUCTURE AND SUPPORT:

Design shall include all other necessary components including the following:

1. Roadway extension to the campus by means of extending Westpointe Drive to the north and secondary emergency access to Stone Crossing to the south;
2. All required utility connections and utility coordination;
3. Comprehensive campus wide Audio-Visual design for meeting rooms, training rooms, conference rooms, huddle rooms and other spaces, final scope to be developed through project programming;
4. Network system technology including wired network systems, wireless network campus systems, data center relocation including layout and support system design, voice (telephone) system design (PBX or cloud based), utility system control center (coordinate with parallel back up control center project);

5. Security systems including video camera design, access control, intrusion detection system design;
6. Trash and recycling station;
7. Mail facility for pickup, delivery, and processing of mail;
8. Health and wellness features

PROJECT TEAM:

NBU will assign a Project Team comprised of NBU personnel; third party support members may be added if determined necessary by NBU. Architect shall communicate with NBU and other members of the Project Team as instructed by NBU and as required for progress of the Project. NBU anticipates that the Project Team will consist of NBU, Architect, and a Construction Manager at Risk (CMAR) General Contractor to manage and coordinate the overall design and construction of the Project. NBU may add additional members to the Project Team as determined necessary.

Architect shall provide design services required for the preparation of plans, specifications and estimates ("PS&E") and related documents for the Project. These services shall include, but not limited to:

1. Programming;
2. Site master planning;
3. Site Surveys, platting, other regulatory documents required for property development;
4. Architectural design;
5. Interior design;
6. Structural engineering, foundation design and criteria for pre-engineered structures as appropriate;
7. Civil engineering design including offsite road and utility connections;
8. Mechanical engineering design;
9. Electrical engineering design;
10. Plumbing design;
11. Fire protection design;
12. Furniture, fixtures, and equipment ("FF&E") layout and selection;
13. Lighting design;
14. Elevator design;
15. Landscape and irrigation design;
16. Security system design;
17. Networking and telecommunication system design;
18. Site lighting and signage package design;
19. Cost estimating;
20. Construction administration;
21. Geotechnical study with foundation and pavement design criteria recommendations.

DESIGN CRITERIA:

Architect shall design the Project in accordance with applicable building codes and regulations for development adopted by the City of New Braunfels at time of Contract Execution; and laws and regulations of the State of Texas. Architect shall provide a list of all design criteria editions utilized

in design for review by NBU's PM. Where conflict occurs between applicable laws, rules, regulations, codes, ordinances, and standards, Architect shall notify the NBU PM for resolution.

Applicable documents may include but are not limited to the following:

1. Americans with Disabilities Act Accessibility Guidelines ("ADAAG");
2. Texas Accessibility Standards of the Elimination of Architectural Barriers Act, Article 9102, Texas Civil Statutes;
3. International Building Code ("IBC");
4. ASHRAE 90.1 and 62.1;
5. International Mechanical Code;
6. International Plumbing Code;
7. National Electric Code ("NEC");
8. National Fire Protection Association ("NFPA");
9. International Energy Conservation Code ("IECC");
10. Applicable sediment and erosion control regulations;
11. City of New Braunfels Codes and Ordinances;
12. Texas Administrative Code;
13. NBU Connection Policy.

CONSTRUCTION PROCUREMENT:

Architect shall prepare each bid package in a form suitable for letting through NBU's construction contract bidding and awarding process. For this project, NBU will select a Construction Manager at Risk (CMAR) who will perform as General Contractor and procure the construction of the work. It is expected that the CMAR will be selected during the Schematic Design phase and contracted to provide a Guaranteed Maximum Price to NBU following completion of the Design Development phase of work. Architect shall coordinate design work with the selected CMAR in preparing multiple bid packages for procurement and early construction activity. The CMAR must participate in design review and provide constructability and cost review relative to the project budget for consideration by NBU and Design Team for incorporation into the Construction Documents.

RIGHT OF ENTRY COORDINATION:

Architect shall notify NBU's project manager ("NBU PM") and secure permission to enter private property to perform any surveying, environmental, engineering or geotechnical activities needed on NBU property. Off-site property access will be coordinated with the NBU PM and property owner.

PROGRESS REPORTING AND INVOICING:

Architect shall prepare a design time schedule. The schedule shall indicate tasks, subtasks, critical dates, milestones, and deliverables. Architect shall provide assistance to NBU's PM in interpreting the schedule. Architect shall schedule interim progress submittals at 50%, and 100% stages of completion for schematic design and design development phases. Construction documents shall be completed with a 30%, 60% and 90% interim submittal for review and a final 100% submittal for CMAR bidding. Architect shall review and incorporate interim review comments in subsequent interim progress submittals. Milestone submissions shall be submitted at the completion of each of the project phases; schematic design, design development and construction documents for review

by NBU's PM. The Architect shall respond to milestone comments and incorporate comments in subsequent phases. Any necessary document revisions made after release of the 100% construction documents will be issued by addendum or bulletins issued to NBU's PM and CMAR. Architect shall advise NBU's PM in writing if the Architect is not able to meet the scheduled interim or milestone review dates.

Architect shall submit invoices in a format acceptable to NBU after each progress submittal representative of the percentage of work complete and completed project tasks.

QUALITY ASSURANCE (QA) and QUALITY CONTROL (QC):

Architect shall periodically schedule and administer team quality control work sessions to review progress of the work, coordinate consultant design information and develop, and reinforce project process and goals. Architect will assign peer review personnel to provide overview and quality assurance review of each milestone submittal. Architect shall assign appropriate senior staff with depth of experience to key roles on this project and to provide peer review oversight.

Architect shall post coordination review drawings on project FTP site or for consultant review and comment. Architect shall schedule and administer document milestone review sessions with each consultant to review progress, resolve questions, and coordinate design requirements.

ORGANIZATION OF PLAN SHEETS:

Architect shall prepare Plans and Specifications suitable for the permitting, bidding, evaluation and recommendation for award of sub-contract work by the CMAR. The Architect shall assist NBU's PM and CMAR in evaluation and determination of bidders proposals. The Architect shall issue in digital (pdf) format signed and sealed documents for construction incorporating comments obtained from permitting and regulatory review. Architect will make available digital files including Building Information Models to the CMAR for their use in coordinating the construction of the work. Digital files provided for this purpose do not super-cede or supplant documents issued and sealed by respective design professionals.

ARCHITECTURAL PHASES The Architect shall provide services throughout all phases of the Project from programming and preliminary facility design through building completion and move-in coordination. Typical services required are outlined below and shall be conducted in a phased schedule.

PHASE I – PROGRAMMING AND SITE MASTERPLAN

Architect shall work with NBU PM, and other Project Team members to develop site space planning requirements, and the relationships between the various building elements and functions to facilitate interactions between buildings, (horizontal and vertical elements) and Campus personnel. Architect shall prepare a schedule with milestones and deliverables during Phase I of the Project for approval by NBU PM.

A. Space Programming and Functional Requirements

1. Architect shall provide the resources and expertise to effectively assist NBU's PM in formalizing a thorough and detailed Space Program and Functional Use Requirements ("SPFR").
2. Architect shall work closely with stakeholders, NBU's PM and other interested parties to evaluate detailed space requirements that respond to the functional needs of NBU.
3. The architect shall review the requirements necessary for the various project functions, relationships or operations, such as those for existing projected personnel, space, furniture, furnishings and equipment, operating procedures and communications.
4. The architect shall gather information furnished by NBU to aid the architect in understanding NBU's present, short-term and long-term personnel and space requirements, including special equipment needs, organizational structure, adjacencies and workflow.
5. The architect shall conduct interviews with NBU's representatives and shall observe existing conditions at NBU's facilities.
6. The Architect shall provide recommendations that address and satisfy multiple objectives including maximizing space; minimizing cost; providing flexible spaces capable of adapting to changing programs and technological requirements, sustainability and efficiency, and achieving overall quality.
7. The architect will work with NBU to create the goals and objectives with respect to their impact on NBU's space requirements.
8. The architect shall develop personnel space standards based upon an evaluation of the functional requirements and standards of NBU. Personal space standards shall take into consideration the design and layout of furniture.
9. The architect shall develop a general understanding of the Owner's equipment requirements, including data and telecommunications equipment, reproduction equipment and the corresponding environmental conditions required to maintain such equipment.
10. Once the initial program requirements are determined based upon NBU's current requirements and the initial program has been accepted by NBU's PM, Architect shall incorporate the findings and requirements into the final program for approval by NBU's PM before proceeding to the Schematic Design Phase.

B. Site Masterplan

1. Architect shall conduct a complete and thorough analysis of the site to program requirements, context, and site planning guidelines. Investigation areas include soils, topography, site utilities (either on site or available to the site), access and circulation, and urban design context.
2. Architect shall clearly define site permitting and environmental issues including ingress and egress to the new site, neighborhood overlays, and storm water management.
3. Architect shall utilize the topography of the site, and shall identify with massing studies potential building sites, and circulation paths (pedestrian and vehicular), and present the pros and cons of the various studies by using the appropriate graphical representation techniques to NBU for approval
4. Based on approved site development scheme, architect will develop a final site masterplan depicting building massing studies based upon program requirements, site parking and circulation, roadways and improvements including utilities, stormwater

management features, and site enhancement opportunities as determined with the owner.

C. Cost Analysis

1. Based upon final program and approved site master plan, architect will develop an initial cost estimate for the proposed cost of the work. The estimate will be conceptual in nature and intended to provide an initial budget cost assessment for the project prior to authorizing the architect to proceed with schematic design.

PHASE II – SCHEMATIC DESIGN

Upon completion and approval of Phase I – Programing and Site Masterplan, the Architect shall prepare a schematic design including schematic site plans, preliminary floor plans of all buildings, elevations for all buildings and imagery to convey proposed design intent and materials; preliminary specifications Table of Contents; and schematic design level estimate of the cost of the work.

A. Phase IIa – 50% Schematic Design Submittal

1. Architect and required consultants as determined by the Architect shall develop schematic design concepts with input from other Project Team members. Architect shall schedule meetings and design charrettes at appropriate times to allow the Project Team opportunities to review the progress and to provide feedback.
2. Architect shall conduct a complete and thorough investigation of the site including verification of all known existing utility locations either on-site or available to the site. Architect shall notify NBU's PM in writing of any features or conditions that will have an impact on the Project.
3. Architect shall determine the requirements for survey data and geotechnical studies that are needed for the design of the Project and shall cause to be performed the engineering services required.
4. Architect shall determine the required foundation and pavement design requirements from geotechnical test data and analyze various building systems for suitability based upon building types, sustainability, and cost and schedule impacts.
5. Architect shall prepare and submit preliminary schematic and preliminary plans and outline specifications to NBU PM for review and approval.
6. Architect shall prepare and submit 50% complete schematic and preliminary plans, and outline specifications to be submitted electronically to NBU's PM for review and approval.

B. Phase IIb – 100% Schematic Design Submittal

1. Architect shall submit all preliminary plans, outline specifications, and estimates electronically. Prior to approval by NBU's PM, NBU's PM will advise Architect of any changes, additions, or corrections to the preliminary plans and specifications. Architect

shall make corrections necessary before submitting to NBU for final acceptance of this phase of the work.

2. Architect will consult with regulatory authorities having jurisdiction to review the overall project scope and identify any considerations that may be required for obtaining necessary permits for construction.
3. Architect shall make a formal presentation of the final Schematic Design Phase to NBU stakeholders. Architect shall receive NBU PM approval of Phase II – Schematic Design before proceeding to the Phase III – Design Development.
4. Furniture, Furnishings and Equipment Schematic Design – The architect shall review with NBU alternative designs and methods for procurement of the furniture, furnishings and equipment. The architect shall prepare a design concept for the type of furniture to be proposed for the project.

PHASE III – DESIGN DEVELOPMENT

Upon acceptance of Phase II – Schematic Design by NBU's PM, Architect shall proceed with Phase III – Design Development. Design Development shall include further refinement of design approval from Schematic Design including detailed development of building assemblies including structural, MEP, life safety and technology systems required, integrated with architectural design approach. Site development will incorporate utility connections, grading, landscape design consistent with the Owner's requirements. Energy and water conservation approaches will be further developed including measures defined by the US Water Alliance, One Water initiative.

Interior Design will be developed incorporating program requirements and work place initiatives directed by NBU leadership. Approaches to FFE and signage and graphics will be developed for review.

A. Phase IIIa – 50% Design Development Submittal

1. Architect shall submit plans and specifications to NBU's PM for review and approval at approximately 50 percent stage of completion.
2. Architect shall consult with NBU concerning the principal phases of the work and shall immediately advise NBU's PM of any unusual requirements or features not apparent during execution of Phase II.
3. Architect shall prepare plans with computer-aided design and drafting ("CADD") technology and building information modeling ("BIM").
4. Architect shall provide plans and specifications that indicate materials, construction methods, and buildings systems. These building systems include, but are not limited to, architectural, structural, civil, mechanical, plumbing, electrical, landscaping, irrigation, and site work.
5. Architect shall provide a plan with detailed site adaptation and utility extensions costs including letters of "commitment to provide services" from utility providers.

B. Phase IIIb – 100% Design Development Submittal

1. Architect shall consult with NBU's PM concerning the principal phases of the work and shall immediately advise NBU's PM of any unusual requirements or features that have become apparent during execution of Phase III – Design Development.
2. Architect shall submit plans and specifications, for review and approval at approximately 100% stage of Design Development completion to NBU's PM for review and approval.
3. Architect shall make a formal presentation of the 100% Design Development Submittal to the NBU stakeholders for review and comments. All comments and questions generated during this presentation shall be incorporated into the 100% Design Development Submittal. Architect shall submit the 100% Design Development Submittal to NBU's PM for acceptance of the Design Development Phase. Architect shall receive NBU approval of Phase III – Design Development before proceeding to the Phase IV – Construction Documents.
4. Based upon the 100% Design Development Documents, NBU's PM will negotiate Guaranteed Maximum Price (GMP) with the CMAR for the Project. Architect and CMAR shall independently prepare project estimates for the work. Estimates will then be reconciled to a final GMP acceptable to NBU. Architect shall use that construction budget to complete the Phase IV – Construction Documents.
5. Furniture, Furnishings, and Equipment Design Development – The architect shall obtain product data of the furniture, furnishings and equipment as may be appropriate for the project.

PHASE IV – CONSTRUCTION DOCUMENTS PHASE

Plans and Specifications issued per each building as required by the CMAR schedule of work. Separate complete packages will be issued for the office building, and for the warehouse building. Intermediate progress review plans and specifications will be issued at 30%, 60%, 90% design completion and at 100% design completion. Plans issued at 100% design completion will be signed and sealed by the respective design professional in responsible charge.

A. Phase IVa - 30% Construction Documents and Civil Site Design

1. Architect shall prepare complete plans, specifications, and engineering calculations setting forth in detail the work required for architectural, structural, civil, mechanical, plumbing, electrical, and landscaping and irrigation, site work, and all other required disciplines required to fully document the project requirements.
2. Architect shall consult with NBU's PM concerning the principal phases of the work and shall immediately advise NBU of any unusual requirements or features not apparent during execution of any of the previous phases.
3. Architect shall submit plans and specifications to NBU's PM, for review and approval, at approximately 30 percent stage of completion. Architect shall incorporate all comments into the documents while proceeding to Phase IVb – 60% Construction Documents. Architect shall submit 100% Civil Site Design drawings and specifications to NBU's PM, for review and approval. Civil Site Package will be provided to CMAR for early site work packages and regulatory authorities for review and permit process.

B. Phase IVb – 60% Construction Documents

1. Architect shall consult with NBU's PM concerning the principal phases of the work and shall immediately advise NBU of any unusual requirements or features not apparent during execution of any of the previous phases.

2. Architect shall submit plans and specifications to NBU's PM, for review and approval, at approximately 60 percent stage of completion. Architect shall incorporate all comments into the documents while proceeding to Phase IVc – 90% Construction Documents.

C. Phase IVc – 90% Construction Documents

1. Architect shall consult with NBU's PM concerning the principal phases of the work and shall immediately advise NBU of any unusual requirements or features not apparent during execution of any of the previous phases.
2. Architect shall submit plans and specifications to NBU's PM, for review and approval, at approximately 90 percent stage of completion. Architect shall incorporate all comments into the documents while proceeding to Phase IVc – 100% Construction Documents.

D. Phase IVd – 100% Construction Documents

1. Prior to completion of 100% Construction Documents, Architect shall submit completed plans and specifications to a Registered Accessibility Specialist ("RAS") as required by the Texas Board of Architectural Examiners ("TBAE"). Architect shall make such corrections to the necessary to assure compliance as requested by the reviewer.
2. Architect shall ensure the Architect's plans and specifications conform to the latest energy conservation design standards.
3. Architect shall complete the plans and specifications for the entire Project and its component parts. The Project design shall conform to the agreed upon Guaranteed Maximum Price established between the owner and the CMAR.
4. Architect shall complete the plans and specifications for the entire Project or its component parts for construction by the CMAR in accordance with the agreed upon project delivery schedule.
5. Architect shall submit the plans to regulatory authorities for necessary permitting and construction. Architect will make required revisions to plans as may be requested by regulatory authorities prior to release of permits.
6. Furniture, Furnishings, and Equipment - the architect shall prepare, for NBU's approval, documents describing the requirements for procurement, fabrication, shipment, delivery and installation of furniture, furnishings and equipment. Work shall be coordinated with the construction schedule to facilitate delivery and installation within the timeframes allocated in construction and the owner's move schedule.

E. Phase IVe – CMAR Buyout Phase

1. Separate Bidding Phases for each early bid package shall occur concurrently with development of subsequent bid packages and with development of primary construction documents for each building, related site work, and public infrastructure.
2. Architect shall provide final Construction Document packages in accordance with the agreed upon project schedule in multiple procurement packages for use by the CMAR in bidding the project sequentially to the progress of the work.
3. During each bidding phase, Architect shall provide support to CMAR and NBU PM during the pre-bid conference, addressing requests for information ("RFI"), and developing addendum as needed to achieve a quality bid.

4. After receipt of bids by the CMAR, Architect shall advise NBU's PM whether bids received are fair and reasonable, and whether or not the contract should be awarded on the basis of the bids received. NBU will make the final decision as to whether a construction contract will or will not be awarded.
5. After receipt of bids, Architect in coordination with NBU's PM and CMAR shall review any proposed alternative methods or substitution requests offered by subcontractor proposals and evaluate relative to approved design intent, viability to implement and best value to NBU.
6. Architect shall implement approved revisions or alternate measures as directed by the NBU PM where such revisions do not materially affect the approved design.
7. Where revisions are approved that affect the approved design, NBU's PM and the Architect will determine the scope of the additional service and negotiate a change to the contract sum.

PHASE IV – CONSTRUCTION ADMINISTRATION

1. Architect shall provide to the CMAR final BIM design model's and site cad files for use in construction for developing detailed construction shop drawings and coordination of the work between trades. Electronic files provided for this purpose shall not replace or super-cede contract documents signed and sealed by the appropriate design professional. As appropriate and necessary to incorporate changes in the work requested by NBU's PM or to clarify or revise contract documents when requested by the CMAR, Architect shall update and issue changes to the contract documents, as approved by the NBU PM, through construction bulletins, sealed by the appropriate design professional. Updated BIM design model's shall also be provided for use by the CMAR.
2. Architect shall provide dedicated personnel to the Project for the duration of the construction and warranty phases of the Project. NBU's PM shall be notified of any changes in Architect's personnel. A transition plan must be approved by NBU's PM prior to the change in Architect's personnel.
3. Architect shall observe the construction of the project, review required shop drawings, review submittals, answer RFI, and prepare change orders and supplementary drawings. Architect shall make necessary observations to determine if workmanship and quality of materials comply with the requirements of the plans and specifications and all provisions of the construction contract are complied with.
4. Architect shall conduct site visits and perform construction inspections satisfactory to NBU to observe the progress of the construction project. Site visits must be coordinated with the NBU PM. Architect shall submit site visit reports to NBU PM within 48 hours of the site visit. Architect shall attend weekly meetings as appropriate to the stage of construction and attend monthly project meetings with the Contractor, and NBU PM to review the project schedule, review the work completed for the previous month, and to discuss the work to be done the coming month. Architect shall review monthly application for payment. Architect shall recommend whether to accept or reject invoice to NBU's PM.
5. Architect shall review progress estimates of work performed by the CMAR and monies due to the CMAR on forms specified by NBU. Architect shall provide a copy of the project submittal log listing all submittals provided by CMAR. The submittal log must indicate the status of each submittal.

6. Upon receipt of notification by the CMAR that the work or phase of work has been completed, Architect shall conduct an inspection, performed by the appropriate members of Architect's staff and affiliates, and shall prepare a list of the items needing correction. After the CMAR has performed the required corrections, Architect shall notify NBU's PM in writing that the contract has been performed according to the plans and specifications and is ready for Final Inspection. Architect shall accompany NBU's PM on the Final Inspection to ensure that the construction project has been completed in accordance with the contract documents. Architect shall inspect all warranties, guarantees, bonds, equipment operating instructions, and similar required material and documents to make sure that all such materials and documents are received, and that they meet the requirements of the construction contract. Architect shall transmit such documents and materials to NBU's PM
7. Furniture, Furnishings, and Equipment Installation – The architect shall assist NBU in coordinating schedules for delivery and installation of the work, but not be responsible for any failure of a vendor to meet schedules for completion or to perform its respective duties and responsibilities in conformance with such schedules.
8. The architect shall review and approve or take other appropriate action upon the Vendor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given in the Contract Documents.
9. The architect will make site visits at intervals appropriate to the stage of the Vendor's installations to become generally familiar with and to keep NBU informed about the progress and quality of the portion of the Work complete.
10. The architect shall review final placement and inspect for damage, quality, assembly and function in order to determine that furniture, furnishings and equipment are in accordance with the requirements of the Contract Documents. The architect may recommend to NBU acceptance or rejection of furniture, furnishings and equipment.
11. The Architect shall cause to occur by requirements established in project specifications that required inspections, system tests and certifications, that are required to demonstrate project completion, by the CMAR are complete.
12. After determining that all requirements of the plans and specifications have been met, Architect shall certify and shall approve the CMAR's Final Application for Payment.
13. Upon completion of construction and prior to the request for final payment, Architect shall submit the final original BIM design models of the Project to show the changes made by the Architect during construction. Final location of the mechanical service lines and outlets including all outside utilities must be provided by the CMAR in the final record BIM model submitted by the CMAR. The CMAR must be responsible for developing the final record BIM model's accurately representing record of construction to the level of development required by NBU. Architect shall review the final model for completion and advise the NBU PM of any noted discrepancies.
14. Architect shall prepare plan of record drawings for all public infrastructure improvement and site features.