

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

THIS AGREEMENT is between NEW BRAUNFELS UTILITIES (the “Owner” or “NBU”) and SANTA CLARA CONSTRUCTION, LTD (the “Contractor”).

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

**ARTICLE 1 - WORK**

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

**The Contract Agreement**  
**Standard General Conditions of the Contract**  
**Special Conditions**  
**Supplemental Conditions**  
**Technical Specifications**  
**Payment Bond**  
**Performance Bond**

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

This contract is described as an Annual Unit Price Contract with a Total Annual Value Limit not to exceed six hundred thousand dollars (\$600,000). The project documents consist of all of the typical NBU engineered details and specifications. Full design documents may not be provided for all locations. However, some projects may have full design documents. Each separate project location will be issued under a Work Order given to the Contractor.

The Specification Sections and Details included in the Contract Documents provide guidance for the types of Work the Contractor will encounter. However, since this is an Annual Unit Price Contract, all components of the Work are currently unknown.

Each project, or individual Work Order, will define a Work location, a scope of work, and anticipated project duration with substantial and final completion deadlines, as applicable. The Contractor will perform work under the Annual Unit Price Contract up to and not to exceed the Total Annual Value Limit and based on the unit prices set forth in the bid form. No dollar amount is guaranteed, and NBU reserves the right to delete, add substitute projects as it deems necessary.

The Project is anticipated to include some or all of the following items within its scope:

- Rehabilitating or replacement of water and sewer lines and appurtenances various sizes and types.
- Emergency On-Call Response: The Contractor will provide on-call, emergency response service to repair/replace components of the distribution system due to failure, breakage etc.
- Operations Support: The Contractor will provide support service to NBU Operations Staff on an as-needed basis (e.g., exposing existing force mains or appurtenance for which NBU crews are unable to perform).
- All other appurtenances necessary to complete the Project.

**ARTICLE 2 - THE PROJECT**

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

**Water and Wastewater Repair and Replacement Annual Unit Price Contract.**

**ARTICLE 3 - ENGINEER**

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

**Kimley Horn  
Sean Mason, P.E.  
2600 Via Fortuna  
Bldg. 1, Suite 300  
Austin, Texas 78746  
Tel: 512-646-2237**

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

**ARTICLE 4 - CONTRACT TIMES**

**4.01** *Time of the Essence*

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

**4.02** *Contract Term, Time, and Work Order Assignments*

A. The Contract time will be for an initial 12-month term or until all funds under the Total Annual Value Limit are exhausted, with an option for four (4) possible 12-month Contract extensions. Renewal of the Contract will be at the mutual agreement of NBU and the Contractor. If the Contractor chooses not to renew the Contract, a hold over period of up to 120 calendar days may be implemented by NBU to allow time for re-bidding the project. NBU is not obligated to offer a Contract renewal.

B. Work duration and definitions of substantial and final completion will be specific to each Work Order. NBU will consult the Contractor on each Work Order assignment, but NBU will have ultimate discretion on notice to proceed, duration, substantial, and final completion. Failure by the Contractor to satisfy the substantial or final completion requirements of any Work Order may be cause to stop issuance of further Work Orders. The Contractor shall note that there may be multiple individual Work Orders active at any given time.

C. The Contractor agrees to commence Work on a given project proposal within fourteen (14) calendar days after being given a Work Order for planned Work, unless the Contractor and NBU agree otherwise, and the Contractor agrees to diligently execute the Work. The Contractor is required to meet the Owner within two (2) calendar days of this notification. The Owner may require site visits with the Contractor to confirm quantities provided by the Owner and ask for additional clarification. Prior to the site meeting, the Contractor shall develop a cost proposal using unit prices as specified in the Contractor's Proposal Form, Exhibits B and C, for the Work Assignment, which will be the basis for the Work Assignment's Authorized Amount and an estimated schedule. After the quantities are confirmed, and any drawings or new

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specifications forwarded to the Contractor, the Contractor will submit a price and confirm the estimated time of completion within seven (7) calendar days. The price submitted for each Work Order including an Owner agreed contingency will be the maximum price allowed for the Contractor to bill unless otherwise agreed by the Owner.

D. Once the NBU's designated agent has reviewed and approved the proposal, a Work Order Notice-To-Proceed will be issued to the Contractor. Within seven (7) calendar days of receipt of a Work Assignment from the Owner, the Contractor must respond with a signed proposal for the sub-project based upon the scope of Work outlined in the Work Order and the line item pricing in the Bid Form Documents. Once counter-signed by the Owner, a Work Order becomes a Contract Document. The Notice-To-Proceed will identify the authorized amount, substantial completion date, and final completion date. A separate Notice-to-Proceed will be issued for each Work Order.

E. If time of completion cannot be agreed upon or the Owner would like to proceed using the "Cost of Work" method as described in the General Conditions to issue the Work Order using Time and Materials, the Contractor will proceed with the Work Assignment and within five (5) calendar days submit a detailed schedule outlining the work items and time of completion for the Owner's review. After the completion of any work using "Cost of Work" method, the Contractor will turn in a detailed unit item invoice detailing the work completed in Owner approved sufficient detail.

F. Mobilization must begin upon the date specified in the Notice-To-Proceed on the initial contract and within two (2) calendar days of all subsequent Work Order Notices-To-Proceed. The Contractor agrees to commence productive work immediately on emergency projects and to work continuously until the emergency is resolved. Time is of the essence and all Work shall be completed within the time duration stated in each Work Order.

**4.03 Damages**

A. The Contractor shall achieve Substantial Completion of each Work Order as set forth therein, subject to any adjustments of the Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between the Owner and the Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a material breach of this Agreement.

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

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

**4.04 Special Damages**

A. In addition to damages for delay addressed in Paragraph 4.03, the Contractor shall reimburse the Owner (1) for any fines or penalties imposed on the Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by the Owner for engineering, construction observation, inspection, and administrative services needed

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after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

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

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

**ARTICLE 5 - CONTRACT PRICE**

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

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) for each Work Order. The Unit Price Work will be paid at the prices stated in the Contractor's Proposal Form, attached hereto and incorporated herein as Exhibit A.

B. The Extended Prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Owner's Representative.

C. Total amount for all aggregate Unit Price Work under the Contract shall not exceed the Total Annual Value Limit of six hundred thousand dollars (\$600,000) for the initial term and not to exceed three million dollars (\$3,000,000) for the entire term of the Contract subject to renewal by the parties in accordance with Paragraph 4.02.

**ARTICLE 6 - PAYMENT PROCEDURES**

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

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

**6.02** *Progress Payments; Retainage*

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

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or the Owner may withhold, including but not limited to set-offs and other damages, in accordance with Paragraph 14.02 of the General Conditions:
  - a. 95% (percent) of Work completed.
  - b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

**6.03** *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, the Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

**ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS**

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

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

B. The Contractor has become familiar with and is satisfied as to the general and local conditions that may affect cost, progress, and performance of the Work.

C. The Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. The Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site, if any, which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

E. The Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

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

G. The Contractor has correlated the information known to the Contractor, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. The Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to the Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 8 - MISCELLANEOUS**

**8.01** *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions.

**8.02** *Assignment of Contract*

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

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**8.03** *Successors and Assigns*

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

**8.04** *Severability*

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

**8.05** *Governing Law*

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

**8.06** *Venue*

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

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

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

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

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

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

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

**8.09**    *Electronic Signatures*

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

**8.10**    *Texas Public Information Act*

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

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

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

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

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

**ARTICLE 9 - INSURANCE**

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

A. When the Contractor delivers the executed counterparts of the Agreement to Owner, the Contractor shall also deliver to the Owner, with copies to each named insured and additional insured, the certificates and other evidence of insurance required to be provided by the Contractor in accordance with the Insurance

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Rider that is Exhibit A to the General Conditions. Evidence of insurance is attached as Exhibit D to this Agreement.

**Exhibit A – Contractor’s Proposal Form**

**Exhibit B – Work Order**

**Exhibit C – Work Order Summary**

**Exhibit D – Evidence of Insurance**



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

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

OWNER:

CONTRACTOR:

NEW BRAUNFELS UTILITIES

SANTA CLARA CONSTRUCTION, LTD.

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

[CORPORATE SEAL]

[CORPORATE SEAL]

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

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

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

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

Address for giving notices:

Address for giving notices:

New Braunfels Utilities - Attn: Ryan Kelso

Santa Clara Construction, Ltd.  
Attn: Michael S. Heyl

263 Main Plaza

9811 Anderson Mill Road, Suite 201

New Braunfels, Texas 78130

Austin, Texas 78750

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

License No.: \_\_\_\_\_  
(Where Applicable)

Agent for service or process:

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

**END OF DOCUMENT**