

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

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

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

ARTICLE 1 - WORK

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

- A. Contract Agreement and the related Exhibits;**
- B. Standard General Conditions of the Contract;**
- C. Special Conditions;**
- D. Supplemental Conditions (including Texas Water Development Board Supplemental Contract Conditions (TWDB-0551);**
- E. Technical Specifications;**
- F. Payment Bond;**
- G. Performance Bond;**
- H. Design Drawings produced by Plummer Associates, Inc dated February 16, 2023; and**
- I. Technical Specifications produced by Plummer Associates, Inc. dated February 16, 2023.**

1.02 The Work is generally described as follows:

The Project is anticipated to include the following items within its scope: (i) construction of approximately 8,300 linear feet (“LF”) of 16-inch and 24-inch water main line including trenching/backfill, trench safety, fittings, valves, connections, and other appurtenances, generally from the intersection of Lark Lane and Chaparral Drive to Westpointe Drive in New Braunfels, Texas 78130; (ii) preparation of right-of-way including clearing and grubbing and construction staking; (iii) storm water pollution prevention; (iv) groundwater control; (v) traffic control; (vi) tree protection/removal/replacement; (vii) site restoration; and (viii) all other appurtenances necessary to complete the Project.

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:

Mission to Westpointe Connection Water Line Project

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

Jesse Guerra, P.E.
Plummer Associates, Inc.
12500 San Pedro Avenue, Suite 401
San Antonio, Texas 78216
(210) 510-1278

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

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

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work shall be substantially complete within **Three Hundred and Thirty (330) calendar days from the Notice to Proceed date** and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

4.03 *Liquidated Damages*

A. The Contractor and NBU recognize that time is of the essence of this Agreement and that NBU will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by NBU if the Work is not completed on time. Accordingly, instead of requiring any such proof, NBU and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to NBU **One Thousand Dollars (\$1,000)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by NBU, the Contractor shall pay to NBU **One Thousand Dollars (\$1,000)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 *Special Damages*

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

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

ARTICLE 5 - CONTRACT PRICE

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

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

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

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

6.03 *Final Payment*

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

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

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

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

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

- G. The Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

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

8.02 *Assignment of Contract*

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

8.03 *Successors and Assigns*

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

8.04 *Severability*

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

8.05 *Governing Law*

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

8.06 *Venue*

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

8.07 *Prohibition on Contracts with Companies Boycotting Israel*

- A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for

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

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

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

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

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

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

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

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

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

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

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

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

8.10 *Prohibition on Contracts with Companies Boycotting Energy Companies*

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

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

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

8.12 *Texas Public Information Act*

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

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

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

8.13 *Electronic Signatures*

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

8.14 *American Iron and Steel*

- A. The Contractor acknowledges to and for the benefit of NBU and the TWDB that it understands the goods and services under this Agreement are being funded with money made available by the Drinking Water State Revolving Fund that have statutory requirements known as American Iron and Steel that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”). The Contractor hereby represents and warrants to and for the benefit of NBU and the TWDB that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement; unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by NBU or the TWDB. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit NBU to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by NBU resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the TWDB by NBU). While the Contractor has no direct contractual privity with the TWDB, as a lender to NBU for the funding of its project, NBU and the Contractor agree that the TWDB is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the TWDB.

ARTICLE 9 - Insurance

9.01 *Evidence of the Contractor’s Insurance*

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

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

Exhibit A – Insurance Rider

Exhibit B – Contractor’s Bid Form

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

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

This Agreement will be effective on December 11, 2023 (which is the Effective Date of the Agreement).

NBU:

PESADO CONSTRUCTION COMPANY, INC.:

By: _____

By:  _____

Printed Name: Ryan Kelso

Printed Name: Shane Hutson

Title: Interim CEO

Title: president

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: Brenda Real _____

Title: _____

Title: Controller

Address for giving notices:

Address for giving notices:

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

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

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

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

1. Specific Insurance Requirements

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

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

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

		<ul style="list-style-type: none"> ○ Any “Insured vs. Insured” exclusion except Named Insured vs. Named Insured ○ Any Punitive, Exemplary or Multiplied Damages exclusion ○ Any Subsidence exclusion
Business Auto Liability	Amount of coverage shall be no less than: <ul style="list-style-type: none"> ▪ \$1,000,000 Combined Single Limit 	<ul style="list-style-type: none"> ▪ Current ISO edition of CA 00 01 ▪ Arising out of any auto (Symbol 1), including owned, hired and non-owned
Workers’ Compensation and Employer’s Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ Statutory Limits ▪ \$1,000,000 Each Accident and Disease ▪ Alternate Employer endorsement 	<ul style="list-style-type: none"> ▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page ▪ Such insurance shall cover liability arising out of the Contractor’s employment of workers and anyone for whom the Contractor may be liable for workers’ compensation claims. Workers’ compensation insurance is required, and no “alternative” forms of insurance shall be permitted. ▪ Where a Professional Employer Organization (PEO) or “leased employees” are utilized, Contractor shall require its leasing company to provide Workers’ Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers’ Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.
Excess Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ \$5,000,000 Each Occurrence 	<ul style="list-style-type: none"> ▪ Coverage shall “follow form” over underlying policies listed herein.
Professional Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ \$1,000,000 Each Claim ▪ \$2,000,000 Annual Aggregate ▪ If a combined Contractor’s Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Claim. ▪ Such insurance shall cover all services rendered by the Contractor and its 	<ul style="list-style-type: none"> ▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement. ▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> ○ bodily injury or property damage where coverage is provided on behalf

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

	<p>consultants under the Agreement, including but not limited to design or design/build services.</p> <ul style="list-style-type: none"> ▪ Policies written on a Claims Made basis shall be maintained for at least two years beyond termination of the Agreement. 	<p>of design professionals or design/build contractors</p> <ul style="list-style-type: none"> ○ habitational or residential operations ○ mold and/or microbial matter and/or fungus and/or biological substance ▪ Any retroactive date must be effective prior to beginning of services for the Owner. ▪ Policies written on a Claims Made basis shall have an extended reporting period of at least two years beyond termination of the Agreement. Contractor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.
<p>Contractors Pollution Liability</p>	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> ▪ \$1,000,000 Each Claim ▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Claim. ▪ The policy must provide coverage for: <ul style="list-style-type: none"> ○ the full scope of the named insured's operations (on-going and completed) as described within the scope of work for this Agreement ○ loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall ○ third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations; ○ diminution of value and Natural Resources damages ○ contractual liability ○ claims arising from non-owned disposal sites utilized in the performance of this Agreement. 	<ul style="list-style-type: none"> ▪ The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured. ▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> ○ Insured vs. insured actions. However exclusion for claims made between insured within the same economic family are acceptable. ○ impaired property that has not been physically injured ○ materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval. ○ property damage to the work performed by the contractor ○ faulty workmanship as it relates to clean-up costs ○ work performed by subcontractors ▪ If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement

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

<ul style="list-style-type: none"> ○ Flood ○ Freezing \$1,000,000 ○ Mechanical \$ 25,000 ○ breakdown including hot & cold testing Included ○ Ordinance or law Included ○ Pollutant clean-up and removal \$10,000 ○ Preservation of property 2% subject to \$50,000 ○ Theft minimum ● Deductible shall not exceed \$100,000 ○ All Risks of Direct Damage, Per Occurrence, except \$100,000 ○ Named Storm ○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence ○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V 	<ul style="list-style-type: none"> ● No protective safeguard warranty shall be permitted. ● The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> ○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; ○ occupancy, in whole or in part; ○ the date on which release of substantial completion is executed; or ○ the date on which the insurable interests of Contractor in the Covered Property has ceased. ● A waiver of subrogation provision shall be provided in favor of all insureds listed above.
--	--

2. General Insurance Requirements

A. Definitions. For purposes of this Agreement:

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

B. Policies.

- i. Contractor shall maintain such Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall maintain such General Liability insurance in identical coverage, form and amount, including required endorsements, for at least ten (10) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:

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

- a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
 - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
 - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
 - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
 - iv. The Owner shall have the right to prohibit the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

C. Limits, Deductibles and Retentions

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

D. Evidence of Insurance.

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

Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
 - a. Owner as certificate holder at Owner's mailing address;
 - b. Insured's name, which must match that on this Agreement;
 - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - e. Additional Insured status in favor of Owner Parties;
 - f. Amount of any deductible or self-insured retention in excess of \$25,000;
 - g. Designated Construction Project(s) General Aggregate Limit;
 - h. Primary and non-contributory status;
 - i. Waivers of subrogation; and
 - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
 - a. General Liability Additional insured endorsement(s);
 - b. General Liability Schedule of Forms and Endorsements page(s); and
 - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

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

E. Contractor Insurance Representations to Owner Parties

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

F. Insurance Requirements of Contractor's Subcontractors

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

G. Use of the Owners Equipment

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

H. Release and Waiver

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

Bidding Requirements, Contracts Forms & Conditions of the Contract

CONTRACT AGREEMENT

**CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT
LIABILITY OF THE OWNER PARTIES.**

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

Exhibit B – Contractor’s Bid Form

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

New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

PROJECT: Mission to Westpointe Connection Water Line Project

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with New Braunfels Utilities (“NBU”) in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all the terms and conditions of the Request for Bid/Proposal, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to RFB: evaluation for ninety (90) days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other Documents required by the Bidding Requirements within ten (10) days after the date of NBU’s Notice of Award.
3. In submitting this bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - a) BIDDER has examined copies of all the Bidding Documents and of all addenda.
 - b) BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
 - c) BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies that pertain to the subsurface of physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of Work as BIDDER considers necessary for the performance or finishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.02 of the Standard General Conditions of the Contract; and no additional examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by BIDDER for such purposes.
 - d) BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumed responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by the BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.04 of the Standard General Conditions of the Contract.
 - e) BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
 - f) BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable by BIDDER.
 - g) The Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has no solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over NBU.

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

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

Bid Items

Water Adjustments

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST \$</u>	<u>TOTAL \$</u>
1	Pipe, 6" Dia. DIP CL 350 (all depths), including Excavation and Backfill	LF	60	\$88.00	\$5,280.00
2	Pipe, 16" Dia. DIP CL 250 (all depths), including Excavation and Backfill	LF	950	\$345.00	\$327,750.00
3	Pipe, 24" Dia. DIP CL 250 (all depths), including Excavation and Backfill	LF	7,420	\$300.00	\$2,226,000.00
4	Ductile Iron Fitting, 24" 11.25° Bend	LF	7	\$5,137.00	\$35,959.00
5	Ductile Iron Fitting, 24" 22.5° Bend	EA	2	\$5,418.00	\$10,836.00
6	Ductile Iron Fitting, 24" 45° Bend	EA	9	\$6,433.00	\$57,897.00
7	Ductile Iron Fitting, 16"x6" MJ Tee	EA	2	\$2,830.00	\$5,660.00
8	Ductile Iron Fitting, 16"x16" MJ Tee	EA	1	\$4,389.00	\$4,389.00
9	Ductile Iron Fitting, 24"x16" MJ Tee	EA	1	\$8,108.00	\$8,108.00
10	Ductile Iron Fitting, 24"x6" MJ Tee	EA	4	\$6,008.00	\$24,032.00
11	Ductile Iron Fitting, Blind Flange, 24" Dia.	EA	2	\$2,814.00	\$5,628.00
12	Ductile Iron Fitting, 16" to 12" MJ Reducer Coupling	EA	2	\$2,001.00	\$4,002.00
13	Ductile Iron Fitting, 12" DI MJ Solid Sleeve	EA	1	\$2,297.00	\$2,297.00

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

14	Ductile Iron Fitting, 16" DI MJ Solid Sleeve	EA	2	\$3,268.00	\$6,536.00
15	Ductile Iron Fitting, 24" DI MJ Solid Sleeve	EA	6	\$5,786.00	\$34,716.00
16	Additional Ductile Iron Fittings as directed by OWNER	TON	3	\$18,762.00	\$56,286.00
17	Valve, Resilient Gate, 6" Dia.	EA	6	\$2,237.00	\$13,422.00
18	Valve, Resilient Gate, 16" Dia.	EA	2	\$12,857.00	\$25,714.00
19	Valve, Butterfly, 24" Dia.	EA	6	\$19,145.00	\$114,870.00
20	Fire Hydrant Assembly	EA	6	\$5,552.00	\$33,312.00
21	Tie-In #1 at STA 1+00.00 : POB Connect to Ex. 12" Dia. Pipeline	EA	1	\$16,090.00	\$16,090.00
22	Tie-In #2 (Future Connection) at STA 10+43.42 : 24" Dia. Stubout	EA	1	\$28,747.00	\$28,747.00
23	Tie-In #3 at STA 83+93.47 : POE Connect to Ex. 24" Dia. Pipeline	EA	1	\$14,390.00	\$14,390.00
24	Automatic Combination Air/Vacuum Release Valve Assembly, 3" Diameter	EA	8	\$26,845.00	\$214,760.00
25	Drain Valve Assembly	EA	2	\$14,932.00	\$29,864.00
26	Temporary Line Stop Complete (12") as directed by OWNER	EA	2	\$16,732.00	\$33,464.00
27	Hydrostatic Testing and Disinfection	LS	1	\$49,312.00	\$49,312.00

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

Erosion Control

<u>Item</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
28	Non-Native Seeding for Erosion Control, Hydromulch (includes topsoil)	SY	17,000	\$8.00	\$136,000.00
29	Preservation of Trees and Other Vegetation	LS	1	\$45,000.00	\$45,000.00
30	SWPPP and Implementation	LF	8,430	\$10.00	\$84,300.00

General Items

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
31	Temporary Construction Entrance	EA	2	\$2,464.00	\$4,928.00
32	Asphalt Road Removal and Replacement (2" HMAC Type D)	SY	2,000	\$37.00	\$74,000.00
33	Additional Asphalt Road Removal and Replacement as directed by OWNER (2" HMAC Type D)	SY	500	\$37.00	\$18,500.00
34	Gravel/Compacted Base Road Removal and Replacement	SY	2,000	\$29.00	\$58,000.00
35	Concrete Road Removal and Replacement	SY	200	\$147.00	\$29,400.00
36	Concrete Removal and Replacement, Misc	SY	100	\$135.00	\$13,500.00
37	Rock Rip Rap Removal and Replacement	SY	150	\$30.00	\$4,500.00
38	Utility Location and Support	LF	8,430	\$2.00	\$16,860.00
39	Trench Safety Systems (all depths)	LF	8,430	\$4.00	\$33,720.00
40	Traffic Control Plan and Implementation	LS	1	\$13,770.00	\$13,770.00

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

41	Clearing and Grubbing	LS	1	\$51,026.00	\$51,026.00
42	Subsurface Utility Engineering, Level A, as directed by OWNER	EA	5	\$3,000.00	\$15,000.00
43	Moveable Message Board for Traffic Control as directed by OWNER	MO	6	\$2,000.00	\$12,000.00
44	Off-Duty Police Officer as directed by OWNER	DAY	10	\$9,000.00	\$90,000.00
45	OWNER's Contingency	ALW	1	\$100,000	\$100,000
46	Mobilization and Demobilization (5%)	LS	1	\$210,000.00	\$210,000.00

Alternates

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST, \$</u>	<u>TOTAL, \$</u>
47	Pipe, 16" Dia. PVC (DR 18 C-900) (all depths), including Excavation and Backfill	LF	950	\$300.00	\$285,000.00
48	Pipe, 24" Dia. PVC (DR 18 C-900) (all depths), including Excavation and Backfill	LF	7,420	\$346.00	\$2,567,320.00

TOTAL BASE BID (ITEMS 1-46): \$ 4,399,825.00

TOTAL BASE BID + ALTERNATES (ITEMS 1, 4-48): \$ 4,698,395.00

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to liquidated damages and special damages in the event of failure to complete the Work on time.

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

- 6. The following documents are attached to and made a condition of this Bid:
 - a) Required Bid security of five percent (5%) of the Bidder's maximum base bid price and in the form of approved Bid Bond.
 - b) List of BIDDER's primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
- 7. Communication concerning this Bid shall be addressed to:
 New Braunfels Utilities
 Purchasing Manager
 355 FM 306
 New Braunfels, TX 78130
 Phone: 830-608-8867
 Email: Purchasing@NBUTexas.com
- 8. The terms used in this Bid that are defined in the Standard General Conditions of the Contract included as part of the Contract Documents have the meanings assigned to them in the Standard General Conditions of the Contract.
- 9. All bid items for this Project are eligible for TWDB funding.
- 10. The undersigned acknowledges receipt of the following addenda.

Addendum No. 1 dated	<u>10/30/23</u>	Received	
Addendum No. 2 dated	_____	Received	_____
Addendum No. 3 dated	_____	Received	_____

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

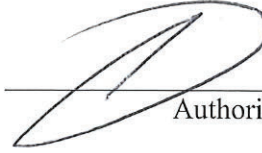


Secretary, *if bidder is a corporation

(Seal)

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

Pesado Construction Company
Company Name of Bidder



Authorized Signature

11/03/2023
Date

Shane Hutson
Printed Name of Authorized Signature

4848 Sinclair Rd.

San Antonio, TX 78222
Address

210-651-4452
Telephone Number/Fax Number

END OF DOCUMENT