

## MATERIALS AGREEMENT

This **MATERIALS AGREEMENT** (the “Agreement”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **KBS ELECTRICAL DISTRIBUTORS, 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 (the “Effective Date”), and will remain in full force and effect for a period of one (1) year from March 1, 2024, to February 28, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond February 28, 2029.
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 the NBU Service Center, located at 355 FM 306, New Braunfels, Texas 78130 (the “Facility”) by the lead times specified in Exhibit B 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 free on board ("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 8:00 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. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement.

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-VII 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 insured (CG 2010 1001 or an equivalent on the general liability policy) on all required insurance policies, except Worker's Compensation insurance, for claims arising out of the performance of this Agreement. Any coverage afforded to the additional insured shall be primary and non-contributory.
  - 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, each accident, policy limit and each employee.
- 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 each occurrence; and
  - 2. \$2,000,000 aggregate.

The Commercial General Liability Policy shall be of an “occurrence” type policy. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded.

- c. Auto Liability. The Supplier shall maintain 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.

III. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Supplier shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Supplier’s responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

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 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. 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, DEFEND, 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 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

With a copy to:

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

If to the Supplier:

KBS Electrical Distributors, Inc.  
P.O. Box 4591  
Bryan, TX 77805-4591

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

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

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

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

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Supplier 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 Supplier understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Supplier and exists to make a profit.

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

- I. it is not owned by or the majority of stock or other ownership interest in the Supplier 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

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

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

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

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

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

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

Y. Texas Public Information Act. 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.

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the 18<sup>th</sup> day of January, 2024.


**NBU:**

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

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

**SUPPLIER:**

**KBS ELECTRICAL DISTRIBUTORS, INC.,**  
a Texas corporation

By:   
Name: Jack McGuinness  
Title: Sales

## Exhibit A

The Supplier shall provide the following Utility Products to NBU at the times specified by NBU in connection with Section 2.D. and Exhibit B of this Agreement:

1. Pole Steel 45' H1;
2. Pole Steel 50' H1;
3. Pole Steel 55' H1;
4. Pole Steel 60' H1;
5. Pole Steel 65' H1;
6. Pole Steel 60' 10 Deg;
7. Pole Steel 60' 20 Deg; and
8. Pole Steel 60' 30 Deg.



### Exhibit B

NBU shall pay the Supplier for the Utility Products under this Agreement an amount not to exceed \$1,281,525 per year, with a total amount not to exceed \$6,407,625.

Item Number	Description	NBU Inventory Number	Qty.	Unit	Price Per	Extended Price	Delivery After Receipt of Order ("Lead Times")
1	POLE STEEL 45' H1	540-090-00004	95	EA	\$4,686.00	\$445,170.00	24 weeks
2	POLE STEEL 50' H1	540-090-00005	45	EA	\$5,275.00	\$237,375.00	24 weeks
3	POLE STEEL 55' H1	540-090-00006	20	EA	\$6,070.00	\$121,400.00	24 weeks
4	POLE STEEL 60' H1	540-090-00007	15	EA	\$6,852.00	\$102,780.00	24 weeks
5	POLE STEEL 65' H1	540-090-00014	10	EA	\$7,840.00	\$78,400.00	24 weeks
6	POLE STEEL 60' 10 DEG	540-090-00009	8	EA	\$9,290.00	\$74,320.00	42-43 weeks
7	POLE STEEL 60' 20 DEG	540-090-00011	8	EA	\$11,780.00	\$94,240.00	42-43 weeks
8	POLE STEEL 60' 30 DEG	540-090-00013	8	EA	\$15,980.00	\$127,840.00	42-43 weeks
Total per year	\$1,281,525.00						

The prices for Utility Products shall remain fixed for a period of 4 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 to 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.