



NOTICE OF OPEN MEETING
OCTOBER BOARD OF TRUSTEES
NBU Board Room, 263 Main Plaza, New Braunfels, Texas 78130
October 31, 2024, at 1:00 PM
www.nbutexas.com

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND INVOCATION

Board Trustee John Harrell

PUBLIC COMMENT

ITEMS FROM THE CHAIR

1. Resolution and Recognition of John Harrell for 15 Years of Service on the NBU Board of Trustees
2. Report from the Investment Committee
- [3.](#) Review of the NBU 2025 Board Meeting Calendar
4. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code

ITEMS FROM STAFF

1. CEO's Update
 - a. Update on the NBU Marketing Campaign and Communication Plan
 - b. NBU Participates with the New Braunfels Chamber of Commerce on Intercity Visit to Franklin, Tennessee
 - c. United Way Employee Giving Campaign Results
 - d. NBU Participates in National Night Out in Magnolia Springs Neighborhood
 - e. Headwaters at the Comal Hosts Community Preview Event
 - f. National Customer Service Week Observed
 - g. Public Power Week Observed
 - h. Cybersecurity Awareness Month Observed
 - i. NBU Hosts Employee Health Fair
 - j. Winter Weatherization Preparation Presentation
 - k. NBU Employees Participate in 2024 International Lineman's Rodeo in Overland Park, Kansas

- l. Leadership Team Participates in Annual Strategic Planning Meeting
- m. NBU Presents at the Water Environment Association of Texas Operational Preparedness Symposium
- n. NBU Participates in City of New Braunfels Spooktacular Community Event
- o. New Braunfels Chamber of Commerce 2024 NB Gives Honoree
- p. Leadership Announcement of New Hires and Position Changes: Finance and Risk Manager Jessica Coleman, Interim Cybersecurity Manager Larry Aguilar

2. Financial Update and Report

CONSENT ITEMS FOR ACTION

1. Approve Minutes of the NBU Regular Board Meeting of September 26, 2024
2. Approve the Change Order Log from August 15, 2024, through September 15, 2024
3. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2024, through September 15, 2024
4. Approve the Electric Line of Business Alternative Procurements from August 15, 2024, through September 15, 2024
5. Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Weston Solutions, Inc. for the Design of the Dove Crossing Force Main Project
6. Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Garver, LLC, for the Design of the Gruene Lift Station Expansion Project
7. Authorize the CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Droptine Utility Construction, LLC for Manhole Rehabilitation Services
8. Approve Resolution #2024-189 Authorizing and Approving (i) the Purchase of 4.87 Acres of Unimproved Real Property Commonly Known As 778 Barbarosa Road, New Braunfels, Texas (the “Property”) in Connection with the FM 1101 Pump Station and Ground Storage Tank Project in an Amount Not to Exceed \$2,230,000.00 Plus Closing Costs; (ii) the CEO or His Designee to Execute Any and All Documents Necessary to Purchase the Property or, if the CEO Deems Necessary, Terminate the Subject Transaction; and (iii) Other Matters in Connection Therewith
9. Approve Resolution #2024-190 By The Board Of Trustees Of New Braunfels Utilities Approving (i) A Water Certificate Of Convenience And Necessity (“CCN”) Transfer Agreement Removing 8.422 Acres Of Real Property Near The Intersection Of FM 725 And East County Line Road (The “Property”) From Green Valley Special Utility District’s Water CCN And Adding It To New Braunfels Utilities’ Water CCN; (ii) A Sewer CCN Transfer Agreement Removing The Property From Guadalupe-Blanco River Authority’s Sewer CCN And Adding It To New Braunfels Utilities’ Sewer CCN; And (iii) Other Matters In Connection Therewith

10. Authorize the CEO or His Designee to Execute a Guaranteed Maximum Price Amendment with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase 2 for Building Interior Finish Out and Additional Landscaping

ACTION ITEMS

1. Provide Governance Committee Report and Discuss and Consider Approving Proposed Revisions to the NBU Board Governance Policies

PRESENTATION ITEMS

1. Report Related to the NBU Board Annual Self-Evaluation
2. One Water Program - Year in Review

EXECUTIVE SESSION

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

1. Power Supply Resources – Competitive Matters
(Section 551.086 – Texas Government Code)
2. Deliberations Regarding Security Devices or Security Audits
(Section 551.089 – Texas Government Code)
 - a. Discussion Regarding Network Security Information
 - b. Discussion Regarding Security Assessments or Deployments Relating to Information Resources Technology

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

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

ADJOURN

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

CERTIFICATE OF POSTING

I, Ryan Kelso, Secretary to the Board of Trustees, do hereby certify that this Notice of Meeting was posted at the City of New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas, and New Braunfels Utilities Main Office, 263 Main Plaza, New Braunfels, Texas, on the **25th day of October 2024**, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.



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

2025 NBU BOARD MEETING CALENDAR

NBU Board Meeting Date	Meeting Type	Location	Time
January 16, 2025	Strategic Planning	Off-Site Location TBD	TBD
January 30, 2025	Regular	NBU Board Room	1:00 pm
February 27, 2025	Regular	NBU Board Room	1:00 pm
March 27, 2025	Regular	NBU Board Room	1:00 pm
April 24, 2025	Regular	NBU Board Room	1:00 pm
May 15, 2025	Budget Workshop	TBD	TBD
May 29, 2025	Regular	NBU Board Room	1:00 pm
June 26, 2025	Regular	NBU Board Room	1:00 pm
No July Regular Board Meeting			
August 28, 2025	Regular	NBU Board Room	1:00 pm
September 25, 2025	Regular	NBU Board Room	1:00 pm
October 30, 2025	Regular	NBU Board Room	1:00 pm
No November Regular Board Meeting			
December 11, 2025	Strategic Planning	Off-Site Location TBD	TBD
December 18, 2025	Regular	NBU Board Room	1:00 pm

** This guide may be subject to changes if situations arise that warrant alterations. **



Meeting Date: October 31, 2024 **Agenda Type:** Items from Staff

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

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

RECOMMENDED ACTION: Financial Update and Report

BACKGROUND

NBU’s service territory experienced higher temperatures and lower rainfall during the month of September than historically. The average temperature was 83.7 degrees, which was 4.8 degrees higher than the historical average temperature of 78.9 degrees. Rainfall totaled 0.80 inches for the month of September, which was 2.50 inches lower than the historical average rainfall of 3.3 inches.

For the month of September 2024, NBU recorded a change in net position after contributions (“CNPAC”) of \$6,253,000 which represents a decrease of \$3,678,000 compared to the budgeted monthly CNPAC of \$9,931,000. Operating service revenues of \$23,607,000 were less than budget by \$8,130,000, or 26%, for the month of September. A \$7,652,000 decrease in electric revenue, \$355,000 decrease in water revenue, and a \$123,000 decrease in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$418,000 were less than budget by \$187,000 for the month of September. Purchased power costs were \$3,909,000 less than budget for September 2024 and \$11,373,000 less for Year-to-Date (“YTD”). A decrease in other operating expenses of \$2,006,000 resulted in total operating expenses to be \$5,915,000, or 25%, less than the budgeted amount of \$23,621,000. The net revenue and operating expense variances contributed to an unfavorable net operating income variance of \$2,401,000 from budget. Net non-operating items had a \$132,000 unfavorable variance compared to budget. Impact fees were less than budget by \$1,099,000, services income was greater than budget by \$128,000, and capital participation fees was less than budget by \$173,000. September 2024 YTD CNPAC was \$12,796,000, which was \$2,953,000 greater than the budgeted amount of \$9,843,000.

FINANCIAL IMPACT

Electric

The Electric Line of Business reported total operating revenues of \$16,481,000, a \$7,782,000 decrease, from the September budgeted amount of \$24,263,000. The net rate realized per kWh was \$0.0931, which was 28% less than the budgeted rate of \$0.1287 for the month of September. September kWh sales were 173.4 million kWh, an 11.5 million kWh decrease, or 6%, in comparison to the budgeted amount of 184.9 million kWh.

Purchased power costs totaled \$9,136,000, which was \$3,909,000 less than the budgeted amount of \$13,045,000. Electric gross margin, which is total operating revenues minus purchased power, resulted in the amount of \$7,345,000 for the month of September and \$10,479,000 YTD. These amounts were \$3,873,000 less and \$3,655,000 less than the budgeted amount of \$11,218,000 Month-to-Date (“MTD”) and \$14,134,000 YTD. Other operating expenses were less than budget by \$571,000. These items resulted in the Electric Line of Business reporting net operating income of \$4,706,000, which was \$3,303,000 less than the budgeted amount of \$8,009,000. Net non-operating items provided an unfavorable variance from budget of \$203,000. Services income was greater than budget by \$128,000. The Electric Line of Business reported September 2024 CNPAC of \$4,101,000 and YTD CNPAC of \$4,495,000. These amounts were \$3,378,000 less and \$1,599,000 less than their respective September 2024 MTD and September 2024 YTD budget amounts.

Water

The Water Line of Business reported total operating revenues of \$4,262,000, a \$404,000 decrease, or 9%, from the September budgeted amount of \$4,666,000. In September, water gallons sold of 404,403,000 was less than the budgeted amount of 481,592,000 (a 77,190,000-gallon variance from budget, or 16%). NBU’s net realized price per 1,000 gallons sold in September was \$10.39, which was greater than the budgeted amount of \$9.46. Operating expenses for September were \$3,410,000, which was \$1,051,000 less than the budgeted amount of \$4,461,000. The net effect of less revenues and less operating expenses than budgeted resulted in the Water’s net operating income of \$853,000, which was greater than budget. Net non-operating items provided an unfavorable variance of \$83,000 from budget. Impact fees of \$729,000 were less than budget by \$798,000, and services income was equal to the budget of \$118,000. The Water Line of Business reported September 2024 CNPAC of \$1,315,000 and YTD CNPAC of \$5,152,000. These amounts were \$235,000 less than and \$2,660,000 greater than their respective September 2024 MTD and September 2024 YTD budget amounts.

Wastewater

The Wastewater Line of Business reported total operating revenues of \$3,283,000, a \$129,000 decrease, or 4%, from the September budgeted amount of \$3,412,000. Total operating expenses of \$2,522,000 were \$385,000 less than the budgeted amount of \$2,907,000. As a result, the Wastewater Line of Business reported net operating income of \$760,000, which was \$255,000 greater than the budgeted amount of \$505,000. Net non-operating items provided a favorable variance of \$154,000 from budget. Impact fees were less than budget by \$301,000, and capital participation fees were less than budget by \$173,000. The Wastewater Line of Business reported September 2024 CNPAC of \$837,000 and YTD CNPAC of \$3,149,000. These amounts were \$65,000 less than and \$1,892,000 greater than their respective September 2024 MTD and September 2024 YTD budget amounts.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

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

NEW BRAUNFELS UTILITIES
OVERVIEW COMPARISON TO BUDGET & PRIOR FISCAL YEAR
YTD Amounts for the Period Ending September 30, 2024

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV	Variance Explanation +/-30%
ELECTRIC						
Sales Volume (MWh)	Actual	346.8				
	Budget	379.2	(32.4)	-9%		
	Prior Year	378.3	(31.5)	-8%		
Revenues (\$M)	Actual	\$ 34.6				
	Budget	\$ 49.6	\$ (15.0)	-30%		Lower revenue than budgeted and prior year, primarily from Power Cost Recovery-Unbilled Generation
	Prior Year	\$ 52.1	\$ (17.5)	-34%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Pwr)</i>	Actual	\$ 10.5				
	Budget	\$ 14.1	\$ (3.7)	-26%		
	Prior Year	\$ 11.8	\$ (1.3)	-11%		
Operating Income (\$M)	Actual	\$ 5.5				
	Budget	\$ 7.2	\$ (1.6)	-23%		
	Prior Year	\$ 7.3	\$ (1.8)	-24%		
WATER						
Sales Volume (Million Gallons)	Actual	0.8				
	Budget	1.0	(0.2)	-23%		
	Prior Year	1.1	(0.3)	-27%		
Revenues (\$M)	Actual	\$ 7.8				
	Budget	\$ 9.2	\$ (1.4)	-16%		
	Prior Year	\$ 9.1	\$ (1.3)	-14%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Water)</i>	Actual	\$ 6.1				
	Budget	\$ 6.7	\$ (0.7)	-10%		
	Prior Year	\$ 7.2	\$ (1.1)	-15%		
Operating Income (\$M)	Actual	\$ 1.1				
	Budget	\$ (0.2)	\$ 1.3	*		
	Prior Year	\$ 2.9	\$ (1.8)	-62%		Higher operating revenues in the prior year, primarily from residential.
WASTEWATER						
Revenues (\$M)	Actual	\$ 6.4				
	Budget	\$ 6.6	\$ (0.3)	-4%		
	Prior Year	\$ 6.0	\$ 0.4	6%		
Operating Income (\$M)	Actual	\$ 1.7				
	Budget	\$ 0.5	\$ 1.2	*		
	Prior Year	\$ 1.7	\$ (0.0)	-1%		
COMBINED						
Operating Expenses (\$M)**	Actual	\$ 7.6				
	Budget	\$ 12.9	\$ (5.3)	-41%		Operating Expenses are lower than budgeted due to Maint of OH Lines, Maint of T&D Mains and SS Allocation
	Prior Year	\$ 6.7	\$ 0.9	14%		
Operating Income (\$M)	Actual	\$ 8.3				
	Budget	\$ 7.4	\$ 0.9	12%		
	Prior Year	\$ 11.8	\$ (3.6)	-30%		Operating Income was higher in the prior year, primarily from Electric Operating Revenues - Power Cost Recovery - Unbilled Generation
Change in Net Position Before Contributions (\$M)	Actual	\$ 5.5				
	Budget	\$ 4.6	\$ 0.9	19%		
	Prior Year	\$ 9.0	\$ (3.5)	-39%		Change in Net Position was higher in the prior year, primarily from Electric Operating Revenues - Power Cost Recovery - Unbilled Generation
Impact Fees (\$M)	Actual	\$ 6.2				
	Budget	\$ 4.2	\$ 2.0	47%		One apartment complex and commercial contributed to higher impact fees.
	Prior Year	\$ 3.3	\$ 2.9	87%		
Change in Net Position After Contributions (\$M)	Actual	\$ 12.8				
	Budget	\$ 9.8	\$ 3.0	30%		Higher YTD Impact Fees than budgeted
	Prior Year	\$ 13.0	\$ (0.2)	-2%		

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

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

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

NEW BRAUNFELS UTILITIES
Balance Sheet
For the Period Ending September 30, 2024
Amounts Shown in Thousands

	September 30 2024	August 31 2024	Variance	% Change
ASSETS				
UTILITY PLANT				
Utility Plant in Service	\$ 1,280,524	\$ 1,280,524	\$ -	0%
Less: Accumulated Depreciation	(382,968)	(379,457)	(3,511)	1%
Construction in Progress	168,567	159,497	9,070	6%
TOTAL UTILITY PLANT	\$ 1,066,123	\$ 1,060,565	\$ 5,559	1%
CURRENT & ACCRUED ASSETS				
Cash & Temporary Investments	\$ 17,435	\$ 21,280	\$ (3,845)	-18%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	23,184	22,719	465	2%
Accounts Receivable - Other	9,853	9,739	114	1%
Accrued Unbilled Revenue	16,021	15,608	413	3%
Inventory	7,812	7,894	(83)	-1%
Prepaid Expenses	25,588	25,595	(7)	0%
Accrued Interest Receivable	214	436	(222)	-51%
Rents Receivable	3	4	(0)	-12%
TOTAL CURRENT & ACCRUED ASSETS	\$ 100,110	\$ 103,275	\$ (3,164)	-3%
RESTRICTED ASSETS & DEFERRED DEBITS				
Restricted Funds	\$ 94,830	\$ 90,332	\$ 4,498	5%
Designated Funds	83,095	81,270	1,825	2%
Pension Deferred Outflows	14,158	14,158	-	0%
Mid-Basin Regulatory Asset	3,685	3,685	-	0%
Other Deferred Debits	3,204	3,158	46	1%
TOTAL RESTRICTED ASSETS & DEFERRED DEBITS	\$ 198,972	\$ 192,603	\$ 6,369	3%
TOTAL ASSETS	\$ 1,365,206	\$ 1,356,443	\$ 8,763	1%
LIABILITIES & NET POSITION				
BONDS PAYABLE				
Bonds Payable	466,241	\$ 466,234	\$ 6	0%
Unamortized Bond Discount/Premium	25,559	25,791	(232)	-1%
TOTAL BONDS PAYABLE	\$ 491,800	\$ 492,025	\$ (226)	0%
CURRENT & ACCRUED LIABILITIES				
Accounts Payable	\$ 10,634	\$ 8,377	\$ 2,257	27%
Accrued Purchased Power	8,998	13,760	(4,762)	-35%
Commercial Paper Payable	15,000	15,000	-	0%
Customer Deposits	14,494	14,428	65	0%
Accrued Payroll & Benefits (Including Compensated Absences)	4,063	4,892	(829)	-17%
Interest Accrued on Long Term Debt	4,872	3,235	1,637	51%
Current Portion of Long Term Debt	8,700	8,700	-	0%
Other Payables	5,867	6,179	(312)	-5%
TOTAL CURRENT & ACCRUED LIABILITIES	\$ 72,628	\$ 74,572	\$ (1,943)	-3%
NONCURRENT LIABILITIES & DEFERRED CREDITS				
Accumulated Provision for Pension	\$ 26,716	\$ 26,716	\$ -	0%
Pension & OPEB Deferred Inflows	\$ 437	\$ 437	\$ -	0%
Power Cost Adjustments - Over-Recovered	20,867	15,972	4,895	31%
Other Deferred Credits	21,340	21,556	(216)	-1%
TOTAL NONCURRENT LIABILITIES & DEFERRED CREDITS	\$ 69,360	\$ 64,681	\$ 4,679	7%
TOTAL LIABILITIES	\$ 633,788	\$ 631,278	\$ 2,510	0%
NET POSITION				
Reserve for Restricted Assets	\$ 78,866	\$ 76,081	\$ 2,785	4%
Reserve for Intergovernmental	10,544	11,441	(897)	-8%
Unrestricted Assets	364,384	360,019	4,364	1%
Contributed Capital	277,624	277,624	-	0%
TOTAL NET POSITION	\$ 731,418	\$ 725,165	\$ 6,253	1%
TOTAL LIABILITIES & NET POSITION	\$ 1,365,206	\$ 1,356,443	\$ 8,763	1%

NEW BRAUNFELS UTILITIES
Statement of Revenues & Expenses
For the Period Ending September 30, 2024
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
VOLUME/RATES								
Electric Sales kWh	173,365	184,895	(11,530)	-6%	346,824	379,195	(32,371)	-9%
Electric Sales Rate Per kWh	\$ 0.0931	\$ 0.1287	\$ (0.0356)	-28%	\$ 0.0972	\$ 0.1283	\$ (0.0311)	-24%
Purchased kWh	172,702	176,430	(3,728)	-2%	364,107	377,748	(13,641)	-4%
Purchased Rate per kWh	\$ 0.0529	\$ 0.0739	\$ (0.0210)	-28%	\$ 0.0661	\$ 0.0938	\$ (0.0277)	-30%
Gallons Sold	404,403	481,592	(77,190)	-16%	795,441	1,028,999	(233,558)	-23%
Rate per 1,000 Gallons Sold	\$ 10.39	\$ 9.46	\$ 0.93	10%	\$ 9.61	\$ 8.77	\$ 0.84	10%
OPERATING REVENUES								
SERVICE REVENUE								
Electric Service	\$ 16,143	\$ 23,795	\$ (7,652)	-32%	\$ 33,721	\$ 48,643	\$ (14,922)	-31%
Water Service	4,203	4,558	(355)	-8%	7,646	9,023	(1,377)	-15%
Wastewater Service	3,261	3,384	(123)	-4%	6,301	6,561	(260)	-4%
TOTAL SERVICE REVENUE	\$ 23,607	\$ 31,737	\$ (8,130)	-26%	\$ 47,668	\$ 64,227	\$ (16,559)	-26%
OTHER OPERATING REVENUE								
Electric Other	\$ 126	\$ 122	\$ 4	3%	\$ 266	\$ 244	\$ 22	9%
Water Other	38	90	(52)	-58%	104	180	(76)	-42%
Wastewater Other	22	28	(6)	-21%	52	56	(4)	-7%
Transmission System Revenue	173	308	(135)	-44%	487	616	(129)	-21%
Electric Pole Attachments	38	38	-	0%	76	76	-	0%
Water Tower Antenna Lease	21	18	3	17%	41	37	4	11%
TOTAL OTHER OPERATING REVENUE	\$ 418	\$ 605	\$ (187)	-31%	\$ 1,026	\$ 1,209	\$ (183)	-15%
TOTAL OPERATING REVENUE	\$ 24,025	\$ 32,341	\$ (8,316)	-26%	\$ 48,694	\$ 65,437	\$ (16,743)	-26%
OPERATING EXPENSES								
ELECTRIC								
Purchased Power	\$ 9,136	\$ 13,045	\$ (3,909)	-30%	\$ 24,072	\$ 35,445	\$ (11,373)	-32%
Electric O&M Expenses	414	870	(456)	-52%	753	1,998	(1,245)	-62%
Electric Depreciation & Amortization	1,293	1,242	51	4%	2,585	2,484	101	4%
Electric Support Services Allocated Operating Expenses	932	1,096	(164)	-15%	1,606	2,497	(891)	-36%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 11,775	\$ 16,253	\$ (4,478)	-28%	\$ 29,016	\$ 42,423	\$ (13,407)	-32%
WATER								
Purchased Water	\$ 714	\$ 1,250	\$ (536)	-43%	\$ 1,725	\$ 2,499	\$ (774)	-31%
Water O&M Expenses	634	935	(301)	-32%	1,111	2,092	(981)	-47%
Water Depreciation & Amortization	1,055	1,065	(10)	-1%	2,109	2,130	(21)	-1%
Water Support Services Allocated Operating Expenses	1,007	1,211	(204)	-17%	1,755	2,715	(960)	-35%
TOTAL WATER OPERATING EXPENSE	\$ 3,409	\$ 4,461	\$ (1,052)	-24%	\$ 6,700	\$ 9,436	\$ (2,736)	-29%
WASTEWATER								
Wastewater O&M Expenses	\$ 663	\$ 804	\$ (141)	-18%	\$ 1,149	\$ 1,746	\$ (597)	-34%
Wastewater Depreciation & Amortization	1,164	1,290	(126)	-10%	2,329	2,580	(251)	-10%
Wastewater Support Services Allocated Operating Expenses	695	813	(118)	-15%	1,221	1,829	(608)	-33%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 2,522	\$ 2,907	\$ (385)	-13%	\$ 4,699	\$ 6,155	\$ (1,456)	-24%
TOTAL OPERATING EXPENSES	\$ 17,706	\$ 23,621	\$ (5,915)	-25%	\$ 40,415	\$ 58,014	\$ (17,599)	-30%
NET OPERATING INCOME								
ELECTRIC	\$ 4,706	\$ 8,010	\$ (3,304)	-41%	\$ 5,535	\$ 7,156	\$ (1,621)	-23%
WATER	853	205	648	*	1,090	(196)	1,286	*
WASTEWATER	760	505	255	50%	1,654	462	1,192	*
TOTAL NET OPERATING INCOME	\$ 6,319	\$ 8,720	\$ (2,401)	-28%	\$ 8,279	\$ 7,423	\$ 856	12%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 930	\$ 515	\$ 415	81%	\$ 1,885	\$ 1,029	\$ 856	83%
Intergovernmental Expense	(979)	(992)	13	-1%	(1,958)	(1,984)	26	-1%
Interest and Amortization Expense	(1,700)	(1,705)	5	0%	(3,092)	(3,409)	317	-9%
Other	206	771	(565)	-73%	346	1,541	(1,195)	-78%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (1,543)	\$ (1,411)	\$ (132)	9%	\$ (2,820)	\$ (2,824)	\$ 4	0%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 4,776	\$ 7,309	\$ (2,533)	-35%	\$ 5,459	\$ 4,599	\$ 860	19%
CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 999	\$ 2,098	\$ (1,099)	-52%	\$ 6,174	\$ 4,196	\$ 1,978	47%
Services	478	350	128	37%	1,162	700	462	66%
GBRA Capital Participation Fee	-	173	(173)	-100%	-	347	(347)	-100%
TOTAL CAPITAL CONTRIBUTIONS	\$ 1,477	\$ 2,622	\$ (1,145)	-44%	\$ 7,337	\$ 5,244	\$ 2,093	40%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 6,253	\$ 9,931	\$ (3,678)	-37%	\$ 12,796	\$ 9,843	\$ 2,953	30%

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
ELECTRIC LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending September 30, 2024
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
ELECTRIC OPERATING REVENUES								
ELECTRIC SERVICE REVENUE								
Electric Service	\$ 16,143	\$ 23,795	\$ (7,652)	-32%	\$ 33,721	\$ 48,643	\$ (14,922)	-31%
TOTAL ELECTRIC SERVICE REVENUE	\$ 16,143	\$ 23,795	\$ (7,652)	-32%	\$ 33,721	\$ 48,643	\$ (14,922)	-31%
OTHER ELECTRIC OPERATING REVENUE								
Electric Other	\$ 126	\$ 122	\$ 4	3%	\$ 266	\$ 244	\$ 22	9%
Transmission System Revenue	173	308	(135)	-44%	487	616	(129)	-21%
Electric Pole Attachments	38	38	-	0%	76	76	-	0%
TOTAL OTHER ELECTRIC OPERATING REVENUE	\$ 337	\$ 468	\$ (131)	-28%	\$ 830	\$ 936	\$ (106)	-11%
TOTAL ELECTRIC OPERATING REVENUE	\$ 16,481	\$ 24,263	\$ (7,782)	-32%	\$ 34,551	\$ 49,579	\$ (15,028)	-30%
ELECTRIC OPERATING EXPENSES								
Purchased Power & Other Power Supply	\$ 9,136	\$ 13,045	\$ (3,909)	-30%	\$ 24,072	\$ 35,445	\$ (11,373)	-32%
Transmission & Distribution	388	808	(420)	-52%	701	1,861	(1,160)	-62%
Customer Service	(3)	43	(46)	*	(9)	85	(94)	*
Administrative & General	28	20	8	40%	60	51	9	18%
Depreciation & Amortization	1,293	1,242	51	4%	2,585	2,484	101	4%
Support Services Allocated Operating Expenses	932	1,096	(164)	-15%	1,606	2,497	(891)	-36%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 11,775	\$ 16,254	\$ (4,479)	-28%	\$ 29,016	\$ 42,423	\$ (13,407)	-32%
ELECTRIC NET OPERATING INCOME	\$ 4,706	\$ 8,009	\$ (3,303)	-41%	\$ 5,535	\$ 7,156	\$ (1,621)	-23%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 426	\$ 214	\$ 212	99%	\$ 866	\$ 429	\$ 437	*
Intergovernmental Expense	(761)	(770)	9	-1%	(1,522)	(1,540)	18	-1%
Interest and Amortization Expense	(725)	(297)	(428)	*	(1,275)	(594)	(681)	*
Other	94	90	4	4%	195	180	15	8%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (966)	\$ (763)	\$ (203)	27%	\$ (1,736)	\$ (1,525)	\$ (211)	-14%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 3,740	\$ 7,247	\$ (3,507)	-48%	\$ 3,799	\$ 5,631	\$ (1,832)	-33%
ELECTRIC CAPITAL CONTRIBUTIONS								
Services	\$ 360	\$ 232	\$ 128	55%	\$ 696	\$ 464	\$ 232	50%
TOTAL ELECTRIC CAPITAL CONTRIBUTIONS	\$ 360	\$ 232	\$ 128	55%	\$ 696	\$ 464	\$ 232	50%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 4,101	\$ 7,479	\$ (3,378)	-45%	\$ 4,495	\$ 6,094	\$ (1,599)	-26%

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending September 30, 2024
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
WATER OPERATING REVENUES								
WATER SERVICE REVENUE								
Water Service	\$ 4,203	\$ 4,558	\$ (355)	-8%	\$ 7,646	\$ 9,023	\$ (1,377)	-15%
TOTAL WATER SERVICE REVENUE	\$ 4,203	\$ 4,558	\$ (355)	-8%	\$ 7,646	\$ 9,023	\$ (1,377)	-15%
OTHER WATER OPERATING REVENUE								
Water Other	\$ 38	\$ 90	\$ (52)	-58%	\$ 104	\$ 180	\$ (76)	-42%
Water Tower Antenna Lease	21	18	3	17%	41	37	4	11%
TOTAL OTHER WATER OPERATING REVENUE	\$ 59	\$ 108	\$ (49)	-45%	\$ 145	\$ 217	\$ (72)	-33%
TOTAL WATER OPERATING REVENUE	\$ 4,262	\$ 4,666	\$ (404)	-9%	\$ 7,791	\$ 9,240	\$ (1,449)	-16%
WATER OPERATING EXPENSES								
Purchased Water	\$ 714	\$ 1,250	\$ (536)	-43%	\$ 1,725	\$ 2,499	\$ (774)	-31%
Supply Source	2	9	(7)	-78%	6	17	(11)	-65%
Transmission & Distribution	195	355	(160)	-45%	353	805	(452)	-56%
Pumping	198	241	(43)	-18%	385	540	(155)	-29%
Water Treatment	204	249	(45)	-18%	322	590	(268)	-45%
Customer Service	(1)	7	(8)	*	(2)	14	(16)	*
Administrative & General	36	74	(38)	-51%	47	126	(79)	-63%
Depreciation & Amortization	1,055	1,065	(10)	-1%	2,109	2,130	(21)	-1%
Support Services Allocated Operating Expenses	1,007	1,211	(204)	-17%	1,755	2,715	(960)	-35%
TOTAL WATER OPERATING EXPENSE	\$ 3,410	\$ 4,461	\$ (1,051)	-24%	\$ 6,700	\$ 9,436	\$ (2,736)	-29%
WATER NET OPERATING INCOME	\$ 853	\$ 206	\$ 647	*	\$ 1,090	\$ (196)	\$ 1,286	*
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 238	\$ 142	\$ 96	68%	\$ 482	\$ 284	\$ 198	70%
Intergovernmental Expense	(103)	(108)	5	-5%	(207)	(216)	9	-4%
Interest and Amortization Expense	(544)	(722)	178	-25%	(1,022)	(1,444)	422	-29%
Other	25	387	(362)	-94%	59	774	(715)	-92%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (384)	\$ (301)	\$ (83)	28%	\$ (689)	\$ (602)	\$ (87)	14%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 468	\$ (95)	\$ 563	*	\$ 401	\$ (798)	\$ 1,199	*
WATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 729	\$ 1,527	\$ (798)	-52%	\$ 4,284	\$ 3,055	\$ 1,229	40%
Services	118	118	-	0%	466	236	230	97%
TOTAL WATER CAPITAL CONTRIBUTIONS	\$ 847	\$ 1,645	\$ (798)	-49%	\$ 4,751	\$ 3,291	\$ 1,459	44%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 1,315	\$ 1,550	\$ (235)	-15%	\$ 5,152	\$ 2,492	\$ 2,660	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WASTEWATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending September 30, 2024
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
WASTEWATER OPERATING REVENUES								
WASTEWATER SERVICE REVENUE								
Wastewater Service	\$ 3,261	\$ 3,384	\$ (123)	-4%	\$ 6,301	\$ 6,561	\$ (260)	-4%
TOTAL WASTEWATER SERVICE REVENUE	\$ 3,261	\$ 3,384	\$ (123)	-4%	\$ 6,301	\$ 6,561	\$ (260)	-4%
OTHER WASTEWATER OPERATING REVENUE								
Wastewater Other	\$ 22	\$ 28	\$ (6)	-21%	\$ 52	\$ 56	\$ (4)	-7%
TOTAL OTHER WASTEWATER OPERATING REVENUE	\$ 22	\$ 28	\$ (6)	-21%	\$ 52	\$ 56	\$ (4)	-7%
TOTAL WASTEWATER OPERATING REVENUE	\$ 3,283	\$ 3,412	\$ (129)	-4%	\$ 6,353	\$ 6,618	\$ (265)	-4%
WASTEWATER OPERATING EXPENSES								
Transmission & Distribution	\$ 1	\$ -	\$ 1	100%	\$ 1	\$ -	\$ 1	100%
Wastewater Operations & Maintenance	655	644	11	2%	1,134	1,399	(265)	-19%
Wastewater Treatment	-	109	(109)	-100%	-	274	(274)	-100%
Customer Service	(1)	7	(8)	*	(2)	13	(15)	*
Administrative & General	8	44	(36)	-82%	15	60	(45)	-75%
Depreciation & Amortization	1,164	1,290	(126)	-10%	2,329	2,580	(251)	-10%
Support Services Allocated Operating Expenses	695	813	(118)	-15%	1,221	1,829	(608)	-33%
TOTAL WASTERWATER OPERATING EXPENSE	\$ 2,522	\$ 2,907	\$ (385)	-13%	\$ 4,699	\$ 6,155	\$ (1,456)	-24%
WASTEWATER NET OPERATING INCOME	\$ 760	\$ 505	\$ 255	50%	\$ 1,654	\$ 463	\$ 1,191	*
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 266	\$ 158	\$ 108	68%	\$ 537	\$ 316	\$ 221	70%
Intergovernmental Expense	(115)	(114)	(1)	1%	(229)	(228)	(1)	0%
Interest and Amortization Expense	(431)	(686)	255	-37%	(795)	(1,371)	576	-42%
Other	87	294	(207)	-70%	92	588	(496)	-84%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (193)	\$ (347)	\$ 154	-44%	\$ (395)	\$ (694)	\$ 299	-43%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 567	\$ 158	\$ 409	*	\$ 1,259	\$ (231)	\$ 1,490	*
WASTEWATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 270	\$ 571	\$ (301)	-53%	\$ 1,890	\$ 1,142	\$ 748	65%
GBRA Capital Participation Fee	-	173	(173)	-100%	-	347	(347)	-100%
TOTAL WASTEWATER CAPITAL CONTRIBUTIONS	\$ 270	\$ 744	\$ (474)	-64%	\$ 1,890	\$ 1,488	\$ 402	27%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 837	\$ 902	\$ (65)	-7%	\$ 3,149	\$ 1,257	\$ 1,892	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
Statement of Cash Flows
For the Period Ending September 30, 2024
Amounts Shown in Thousands

	MTD	YTD
NET POSITION BEFORE CONTRIBUTIONS	\$ 4,776	\$ 5,459
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 3,512	\$ 7,023
Decrease (increase) in accounts receivable	(993)	(249)
Decrease (increase) in inventories	83	554
Decrease (increase) in other assets	1,438	7,780
Increase (decrease) in current liabilities	(400)	(11,984)
Increase (decrease) in other liabilities	4,679	3,065
Net Cash Flow from Operating Activities	\$ 13,095	\$ 11,648
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (9,071)	\$ (11,945)
Investments	(6,323)	(14,303)
Rents/Interest Receivable	223	105
Net Cash Flow from Investing Activities	\$ (15,171)	\$ (26,144)
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (1,543)	\$ (2,820)
Increase (decrease) in long-term debt	(226)	(451)
Net Cash Flow from Financing Activities	\$ (1,769)	\$ (3,271)
Net Increase (Decrease) in Cash and Cash Equivalents	\$ (3,845)	\$ (17,767)

CAPITAL EQUIPMENT SUMMARY - FY 2025
YTD for the Period Ending September 30, 2024

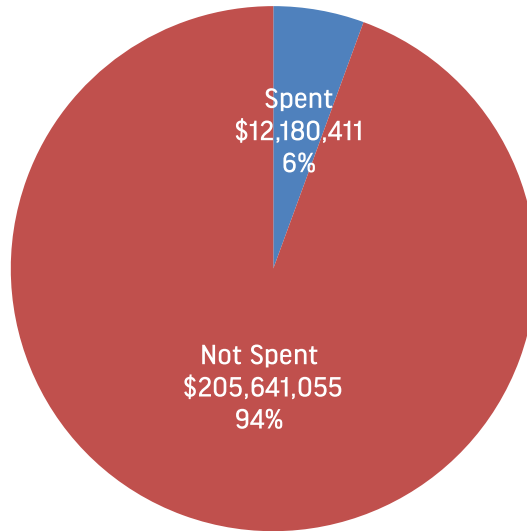


Department	Capital Equipment Description	YTD Actual	FY 2025 Budget	Budget Remaining
ELECTRIC				
117	Ford F-550 Electric/International CV	-	120,000	120,000
117	Ford Maverick	-	30,000	30,000
119	Ford Explorer	-	40,000	40,000
119	Transformer Winding Resistance Rest Set	-	33,000	33,000
119	Vanguard ATRT-03 S2 Transformer Turns Ratio Tester	-	24,200	24,200
119	Megger MIT 1525 15kv Diagnostic Insulation Resistance Tester	-	11,000	11,000
	TOTAL ELECTRIC	\$ -	\$ 258,200	\$ 258,200
WATER				
220	Ford Escape	-	25,000	25,000
220	Small Utility Vehicle (Mule)	-	20,000	20,000
	TOTAL WATER	\$ -	\$ 45,000	\$ 45,000
WASTEWATER				
320	Ford Escape	-	50,000	50,000
	TOTAL WASTEWATER	\$ -	\$ 50,000	\$ 50,000
SHARED WATER/WASTEWATER				
217/317	SEA Combo Unit	-	440,000	440,000
217/317	International Dump Truck	-	405,000	405,000
217/317	Ford F-550 Water / International CV	-	260,000	260,000
217/317	CAT Backhoe w/Ext	-	160,000	160,000
217/317	CAT Backhoe	-	140,000	140,000
217/317	CCTV Camera for unit 206	-	85,000	85,000
217/317	Ford F-150	-	56,000	56,000
217/317	Large CCTV camera for new CCTV truck	-	50,000	50,000
217/317	Tools to outfit two F550s for FY25 new employees	-	30,000	30,000
	TOTAL SHARED WATER/WASTEWATER	\$ -	\$ 1,626,000	\$ 1,626,000
FLEET/FACILITIES				
528	Flatbed Equipment Trailer	-	20,000	20,000
	TOTAL FLEET/FACILITIES	\$ -	\$ 20,000	\$ 20,000
TECHNOLOGY				
531	Copiers and Printers	-	20,000	20,000
531	Firewall and VPN Replacement	-	150,000	150,000
531	Meraki Wifi Replacements	-	50,000	50,000
531	Network Equipment	-	250,000	250,000
531	PC Replacements	-	200,000	200,000
531	Server Replacements	-	750,000	750,000
531	Software Replacements	-	130,000	130,000
531	Tele-Communications Equipment and Enhancements	-	30,000	30,000
531	UPS Replacements	-	10,000	10,000
	TOTAL TECHNOLOGY	\$ -	\$ 1,590,000	\$ 1,590,000
TOTAL CAPITAL EQUIPMENT		\$ -	\$ 3,589,200	\$ 3,589,200

FY 2025 Capital Expenditure Summary As of Sept 30, 2024

17% of Year Completed

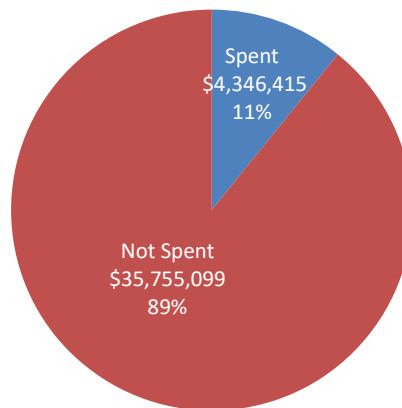
	<u>Spent</u>		<u>Not Spent</u>		<u>Total Budget</u>	<u>% of Total Budget Spent</u>
Electric	\$ 4,346,415	\$	35,755,099	\$	40,101,514	11%
Water	3,295,484		43,415,173		46,710,657	7%
Wastewater	4,071,262		63,873,393		67,944,655	6%
Support Services	467,250		62,597,390		63,064,640	1%
TOTAL	\$ 12,180,411	\$	205,641,055	\$	217,821,466	
	<i>6%</i>		<i>94%</i>		<i>100%</i>	



**Electric Line of Business
FY 2025 Capital Expenditure Summary
As of Sept 30, 2024**

17% of Year Completed

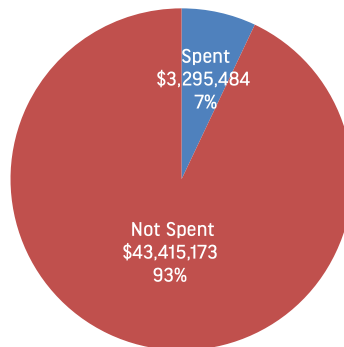
Project	¹ Total Spent YTD	² FY25 Project Budget	FY25 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 1,186,949	\$ 4,499,398	\$ 3,312,449	\$ 4,499,398	26%	17%
Distribution Transformers	1,128,094	4,346,602	3,218,508	4,346,602	26%	17%
Electric Meters	212,902	2,421,653	2,208,751	2,421,653	9%	17%
Electric Aging Infrastructure	643,507	2,770,172	2,126,665	2,770,172	23%	17%
Three-Phase Extensions	-	511,297	511,297	6,347,869	0%	0%
Fiber Optic Extensions	61,851	202,828	140,977	1,174,164	30%	5%
Hueco Springs Substation	110,965	6,909,113	6,798,148	15,540,487	2%	49%
Sheriff's Posse to Marion, T-340 Upgrade	-	788,776	788,776	10,641,695	0%	0%
Kohlenberg Rd Substation	28,983	6,321,475	6,292,492	17,597,009	0%	29%
Electric Aging Infrastructure, Substation	56,064	281,706	225,642	1,823,651	20%	0%
Freiheit Breaker Additions & Control House	30,928	1,690,234	1,659,306	3,073,262	2%	15%
EC23 FM 482 Feeder	300,591	760,605	460,014	1,024,804	40%	50%
HE11 Conrads Rd Feeder	7,523	169,023	161,500	2,469,894	4%	50%
Transmission Access & Wildlife Protection	-	281,706	281,706	1,759,682	0%	0%
Comal T3 Replacement & Feeder C033	53,869	1,352,187	1,298,318	3,302,113	4%	52%
Distribution Feeder Breaker Addition & Replacements	-	845,117	845,117	1,234,730	0%	10%
FR24 Kowald Ln. Feeder	-	833,849	833,849	889,714	0%	10%
Henne Substation Breaker & Half	-	1,802,916	1,802,916	4,432,574	0%	27%
CONB Road Widening Adjustments	1,244	1,270,492	1,269,248	2,397,056	0%	40%
HW14 to FM 3009 Extension Phase 2	-	816,946	816,946	3,218,668	0%	0%
HW23 NB West Feeder	-	211,279	211,279	2,012,570	0%	0%
TxDOT Road Widening	-	1,014,140	1,014,140	7,688,940	0%	0%
Total Budgeted Projects	\$ 3,823,470	\$ 40,101,514	\$ 36,278,044	\$ 100,666,708	10%	
Unbudgeted Projects:						
E.C. Mornhinweg T2 & Feeders	\$ 29,657	\$ -	\$ (29,657)	\$ 4,870,353	0%	95%
Freiheit Feeder 11, Alves Ln	20,689	-	(20,689)	1,993,218	0%	100%
C014 Kentucky Rd Feeder	110,959	-	(110,959)	2,567,357	0%	75%
HE23 IH-35 Stolte Feeder	46,848	-	(46,848)	2,409,963	0%	45%
Industrial Substation PWT Replacement (TXI T1)	314,793	-	(314,793)	1,155,967	0%	100%
Total Unbudgeted Projects	\$ 522,946	\$ -	\$ (522,946)	\$ 12,996,858		
TOTAL	\$ 4,346,415	\$ 40,101,514	\$ 35,755,099	\$ 113,663,566	11%	



Water Line of Business
 FY 2025 Capital Expenditure Summary
 As of Sept 30, 2024

17% of Year Completed

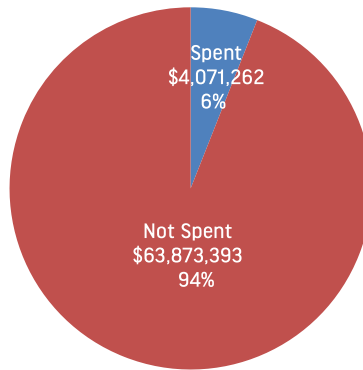
Project	1		2		(1)+(2)	
	Total Spent YTD	FY25 Project Budget	FY25 Budget Remaining	Project Life Total Budget	% Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 156,373	\$ 370,490	\$ 214,117	\$ 370,490	42%	81%
Water Meters	1,111,374	2,078,926	967,552	2,078,926	53%	55%
Water Technology Upgrades	-	115,626	115,626	115,626	0%	100%
Aging System Replacements	158,416	1,057,360	898,944	1,057,360	15%	23%
Aquifer Strg & Recovery Project	8,063	1,889,411	1,881,348	31,951,732	0%	55%
AC Pipe Replacement - Solms	-	224,854	224,854	2,097,767	0%	28%
Wood Meadows Water Line River Crossing	170,007	194,513	24,506	4,216,879	87%	28%
Infrastructure Replacement Package 2-W	-	97,422	97,422	1,252,966	0%	11%
Infrastructure Replacement Package 3-W	-	158,104	158,104	1,414,187	0%	3%
Solms Pump Station and Ground Storage Tank	-	739,119	739,119	21,475,643	0%	1%
SWTP Expansion - Water Supply Facilities	-	825,607	825,607	59,429,772	0%	10%
Western Downtown to Morningside PZ Conversion	31,122	416,357	385,235	10,300,329	7%	21%
FM 306 Pump Station & Discharge Pipeline	111,908	760,070	648,162	12,529,892	15%	84%
Conrads EST	374,607	3,036,292	2,661,685	10,731,648	12%	60%
Landa Pump Station Phase 2/Well 5	361,670	704,243	342,573	15,613,992	51%	97%
Trinity Expansion Treatment Plant - TWDB	327,050	4,248,631	3,921,581	31,982,203	8%	82%
Trinity Expansion Well Field - TWDB	(132,698)	1,978,567	2,111,265	9,620,996	-7%	45%
FM 1044 EST	4,555	6,820,635	6,816,080	19,995,586	0%	4%
Goodwin/Conrads Water Adjustments (CNB)-W	-	545,256	545,256	927,246	0%	4%
Mision/Westpointe Connection Waterlines - TWDB	551,861	4,035,347	3,483,486	7,363,190	14%	14%
Senate Bill 3 EPP Generators	614	570,742	570,128	1,401,078	0%	8%
Water Tank Rehabilitations	7,105	4,853,686	4,846,581	5,290,513	0%	10%
FM 1101 Pump Station & GST	26,764	1,808,657	1,781,893	21,693,333	1%	0%
FM 1101 Discharge Line	-	683,611	683,611	15,689,532	0%	10%
Broken and Critical Valve Replacements	-	249,127	249,127	1,539,620	0%	0%
Barbarosa Waterline CNB	-	546,469	546,469	8,573,616	0%	0%
Central Downtown to Morningside PZ Conversion	-	615,553	615,553	6,464,237	0%	0%
City Widening Street Projects	-	432,743	432,743	4,942,366	0%	0%
Hwy 46 Water Line (Mission) Phase 2	-	279,468	279,468	5,504,231	0%	0%
Downtown to Loop PZ Conversion	-	510,060	510,060	5,031,675	0%	0%
Landa Street and Elm Street Water Line Improvements	2,015	1,311,064	1,309,049	1,311,064	0%	0%
Loop GST Improvements	-	400,832	400,832	2,658,794	0%	0%
Rio to Keuhler River Crossing	-	318,211	318,211	1,870,654	0%	0%
Simon Avenue Improvements	-	707,991	707,991	707,991	0%	0%
San Antonio St Rehabilitation Phase 3 CNB	4,970	499,315	494,345	1,722,054	1%	0%
San Antonio Street Phase 4 CNB W	-	127,763	127,763	1,648,798	0%	0%
Senate Bill 3 EPP Generators Phase 2	-	279,468	279,468	4,063,289	0%	10%
Solms Road Relocations CNB	-	97,422	97,422	1,052,939	0%	0%
Hueco Springs SWTP 2	-	218,786	218,786	1,650,378	0%	0%
Union Avenue Water Replacement CNB	-	1,228,627	1,228,627	1,228,627	0%	0%
Well 6 Site Improvements	-	400,832	400,832	4,294,853	0%	0%
Water Infrastructure Replacement	-	273,400	273,400	2,204,216	0%	0%
Total Budgeted Projects	\$ 3,275,775	\$ 46,710,657	\$ 43,434,882	\$ 345,070,289	7%	
Unbudgeted Projects:						
I-35 Water Line (Downtown)	\$ 10,416	\$ -	\$ (10,416)	\$ 11,218,692		93%
GBRA Interconnect Metering Station	9,293	-	(9,293)	1,729,706		94%
Total Unbudgeted Projects	\$ 19,708	\$ -	\$ (19,708)	\$ 12,948,398		
TOTAL	\$ 3,295,484	\$ 46,710,657	\$ 43,415,173	\$ 358,018,687	7%	



**Wastewater Line of Business
FY 2025 Capital Expenditure Summary
As of Sept 30, 2024**

17% of Year Completed

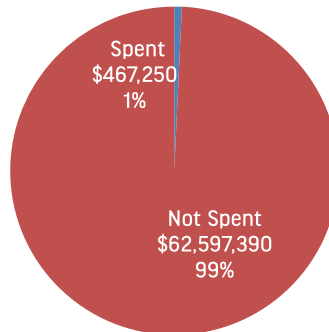
Project	¹ Total Spent YTD	² FY25 Project Budget	FY25 Budget Remaining	Project Life Total Budget	⁽⁰⁾⁽²⁾ % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 198,066	\$ 205,479	\$ 7,413	\$ 205,479	96%	73%
Aging System Replacements	266,236	940,815	674,579	940,815	28%	13%
Wastewater Technology Upgrades	-	104,011	104,011	104,011	0%	1%
Manhole Rehabilitation	-	859,806	859,806	859,806	0%	41%
South Kuehler Interceptor Phase 1	19,970	168,096	148,126	11,545,878	12%	20%
Gruene Rd Sewer Main Rehabilitation/Relocation	-	1,269,663	1,269,663	4,429,206	0%	6%
Infrastructure Replacement Package 1-WW	3,012	1,214,821	1,211,809	1,349,555	0%	20%
Infrastructure Replacement Package 2-WW	-	80,513	80,513	1,819,662	0%	10%
Infrastructure Replacement Package 3-WW	-	152,075	152,075	1,766,431	0%	10%
McKenzie WRF Expansion	2,078,591	33,397,956	31,319,365	81,744,108	6%	32%
Solms Lift Station Expansion	304,207	406,813	102,606	2,033,534	75%	56%
I-35 Interceptor Upgrade	80,262	1,825,571	1,745,309	17,622,616	4%	8%
Kuehler WRF Access Road-Courtyard Dr	3,688	163,226	159,538	2,162,923	2%	18%
McKenzie Interceptor Upgrade	36,035	12,651,763	12,615,728	48,567,847	0%	4%
Kuehler WRF Rehabilitation	135,694	912,059	776,365	48,501,897	15%	3%
Sewer Infrastructure Replacement Package 2	10,019	4,129,702	4,119,683	9,144,824	0%	13%
Saengerhalle North Interceptor	8,996	136,054	127,058	6,026,601	7%	14%
Goodwin/Conrads Adjustments (CNB)-WW	-	492,794	492,794	884,674	0%	6%
North Kuehler Interceptor - Segment 3	-	431,759	431,759	10,649,997	0%	0%
Kuehler WRF Clarifier Rehabilitation	921,990	4,422,261	3,500,271	6,485,144	21%	10%
Dove Crossing Force Main	-	921,097	921,097	6,201,224	0%	1%
City Street Projects CNB	-	393,776	393,776	3,284,840	0%	1%
Coll Street Relocations CNB	-	107,534	107,534	968,243	0%	1%
Gruene Lift Station Expansion	-	472,501	472,501	2,382,361	0%	1%
NKI Odor Control Facility	-	579,309	579,309	579,309	0%	1%
Simon Avenue Improvements CNB	-	524,517	524,517	524,517	0%	1%
San Antonio St Rehabilitation Phase 3 CNB	4,495	452,363	447,868	1,638,667	1%	1%
San Antonio St Phase 4 CNB WW	-	125,373	125,373	1,625,372	0%	1%
Solms Road Relocations CNB	-	98,671	98,671	1,069,036	0%	1%
Wastewater Infrastructure Replacement	-	304,277	304,277	2,681,693	0%	1%
Total Budgeted Projects	\$ 4,071,262	\$ 67,944,655	\$ 63,873,393	\$ 277,800,270	6%	
TOTAL	\$ 4,071,262	\$ 67,944,655	\$ 63,873,393	\$ 277,800,270	6%	



**Support Services Line of Business
FY 2025 Capital Expenditure Summary
As of Sept 30, 2024**

17% of Year Completed

Project	¹ Total Spent YTD	² FY25 Project Budget	FY25 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
Headwaters at the Comal	\$ 8,514	\$ 5,000,000	\$ 4,991,486	\$ 26,646,396	0%	60%
Personnel Workstations	-	30,000	30,000	30,000	0%	0%
NBU Headquarters, Maint & Support Facility	-	45,858,000	45,858,000	186,016,611	0%	10%
Backup Operations Center	-	3,437,640	3,437,640	8,902,316	0%	20%
Upgrade or Replace all NBU Radios	-	200,000	200,000	1,230,231	0%	10%
Data Center Relocation	-	350,000	350,000	700,000	0%	0%
Fiber Network Distribution Expansion	-	1,000,000	1,000,000	1,528,700	0%	10%
GIS Utility Network Migration	-	2,000,000	2,000,000	2,000,000	0%	15%
Water SCADA Replacement & Integration	-	800,000	800,000	1,984,920	0%	50%
Customer Bill Pay Portal	1,008	160,000	158,992	277,485	1%	0%
Future Facilities Rehab Projects	-	162,000	162,000	914,400	0%	0%
CIS Functionality Upgrade	-	50,000	50,000	50,000	0%	0%
Ipads for Cityworks Mobile & mcare	-	40,000	40,000	60,500	0%	30%
New Braunfels Police Department / Annex	423,198	615,000	191,802	1,189,894	69%	0%
RuggedCom Switch Replacement	34,156	200,000	165,844	400,000	17%	10%
Cyber Security Systems	-	125,000	125,000	625,000	0%	0%
EGM Line Sensor Pilot	-	50,000	50,000	50,000	0%	50%
Electric SCADA	-	75,000	75,000	75,000	0%	50%
Equipment Lifecycle Management	-	750,000	750,000	6,000,000	0%	50%
Emerging Technologies Data Strategy Initiatives	-	500,000	500,000	2,500,000	0%	0%
Milsoft Field Syte	-	50,000	50,000	50,000	0%	50%
Next Gen AI	-	250,000	250,000	1,250,000	0%	0%
GP Replacement	-	200,000	200,000	1,200,000	0%	0%
OT Cybersecurity	-	250,000	250,000	500,000	0%	0%
River Chase Fence	-	32,000	32,000	32,000	0%	0%
Security Department Enhancements	-	300,000	300,000	1,500,000	0%	0%
Settlement Software	-	500,000	500,000	500,000	0%	0%
Northstar Smart VX	-	80,000	80,000	80,000	0%	0%
Total Budgeted Projects	\$ 466,877	\$ 63,064,640	\$ 62,597,763	\$ 246,293,454	1%	
Unbudgeted Projects:						
Fleet AVL	\$ 271	\$ -	\$ (271)	\$ 6,452		0%
Smartsheet Control Center	\$ 102	\$ -	\$ (102)	\$ -		0%
Total	\$ 373	\$ -	\$ (373)	\$ 6,452		
Total	\$ 467,250	\$ 63,064,640	\$ 62,597,390	\$ 246,299,906	1%	



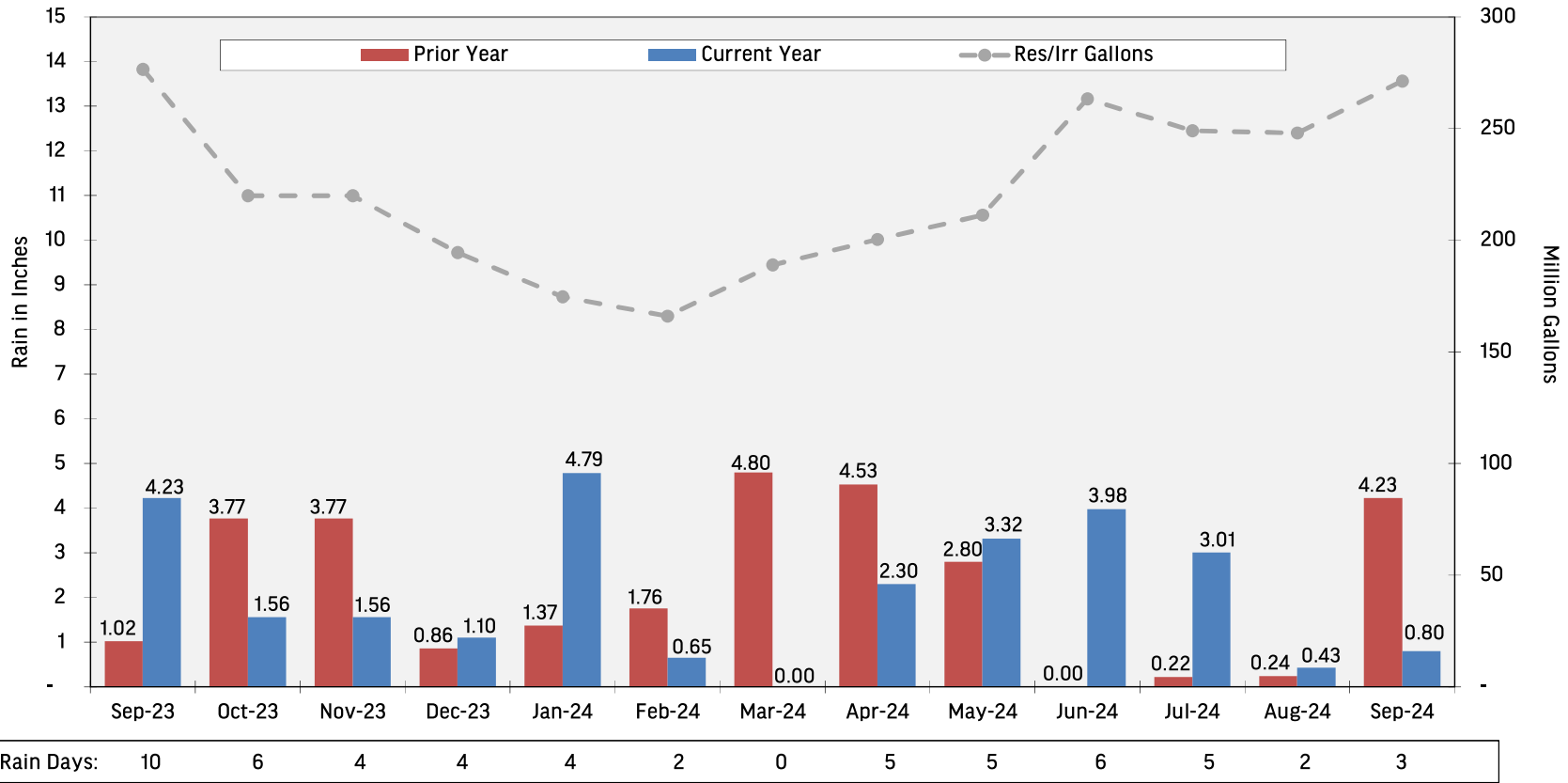
Electric Statistics are provided separately due to competitive matters.

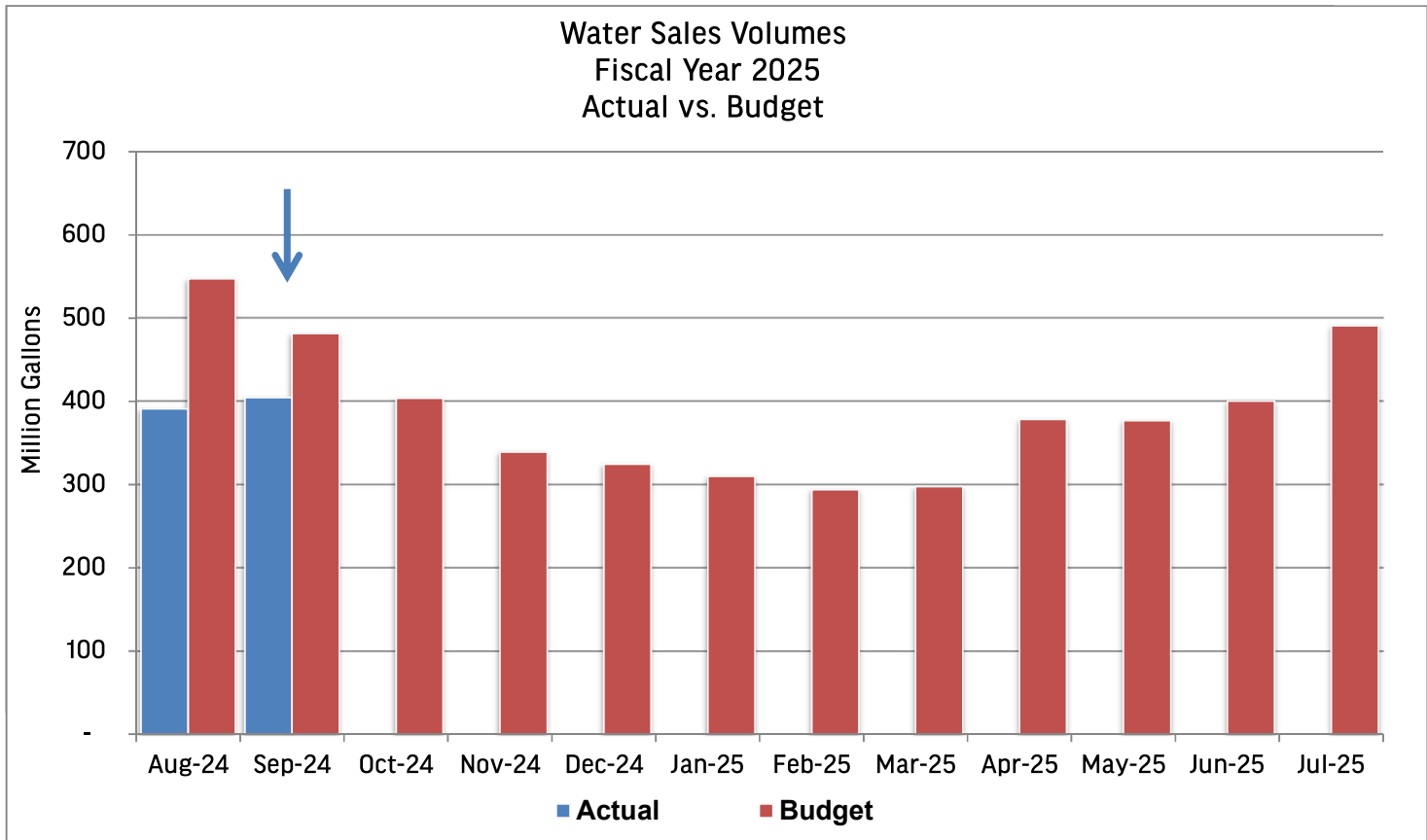
WATER STATISTICS

**NEW BRAUNFELS UTILITIES
WATER STATISTICS
HIGHLIGHTS OVERVIEW**

- September MTD rainfall was lower than the prior year rainfall, totaling 0.80 inches for the month. The September rainfall total of 0.80 inches was 2.50 inches lower than the historical average rainfall of 3.30 inches. For September 2024, there were three rain days during the month compared to ten rain day in 2023.
- September YTD rainfall totaled 1.23 inches compared to the prior year total of 4.47 inches, which is a decrease of 3.24 inches compared to prior year YTD. For YTD, there have been 5 rain days compared to 11 rain days for prior year YTD.
- Average MTD consumption by residential water customer in September 2024 was 5,493 gallons compared to 7,511 gallons in September 2023, reflecting a 26.9% decrease.
- Actual YTD consumption by residential water customer through September 2024 was 10,651 gallons compared to 15,544 for YTD through September 2023, reflecting a decrease of 31.5%.
- Overall trend for fiscal year-to-date in total water sales volume is less than the sales volume over the same period for the previous year with the change being 300.9 million gallons, or 27.4% (795.4 million gallons for FY 2025 YTD vs. 1,096.3 million gallons for FY 2024 YTD).
- Actual total water sales volume for year-to-date FY 2025 is 795.4 million gallons, which is 233.6 million less than the budgeted amount of 1,029.0 million gallons for the same time period.
 - The following are major contributors, by rate classification, towards the 300.9 million gallons change from budget:
 - Residential – decrease of 141.5 million gallons (down 26.2% from budget)
 - Multi-Unit 2-4 - decrease of 1.3 million gallons (down 28.4% from budget)
 - Residential Irrigation – decrease of 91.0 million gallons (down 42.8% from budget)
 - Commercial Irrigation – decrease of 6.3 million gallons (down 10.2% from budget)
 - Small General Services – increase of 11.9 million gallons (up 24.1% from budget)
 - Large General Services – decrease of 8.6 million gallons (down 9.0% from budget)
 - Other Sales – increase of 4.1 million gallons (up 44.9% from budget)

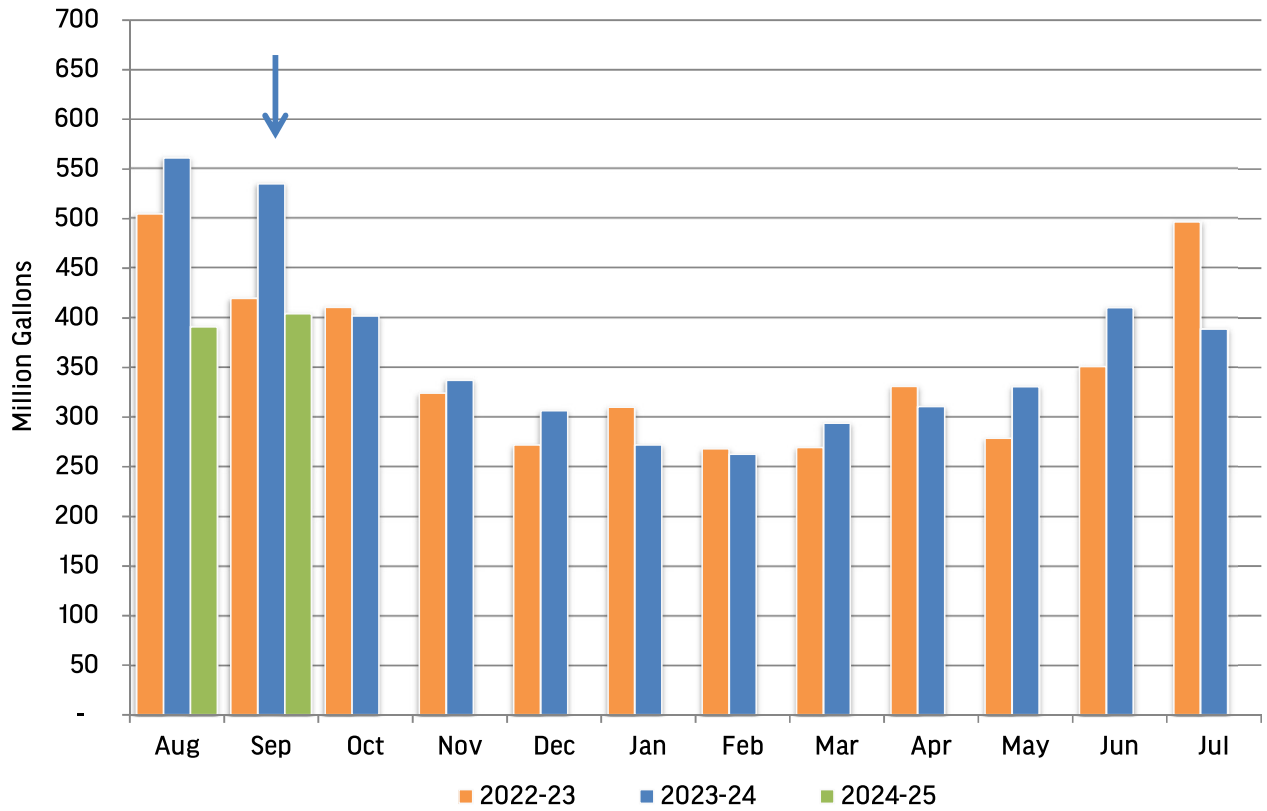
Monthly Rain Data
 Prior Year vs. Current Year
 Rolling 13 Months





Month	Actual	Budget
Aug-24	391	547
Sep-24	404	482
Oct-24	-	404
Nov-24	-	339
Dec-24	-	325
Jan-25	-	310
Feb-25	-	294
Mar-25	-	298
Apr-25	-	378
May-25	-	377
Jun-25	-	400
Jul-25	-	491
TOTAL	795	4,644

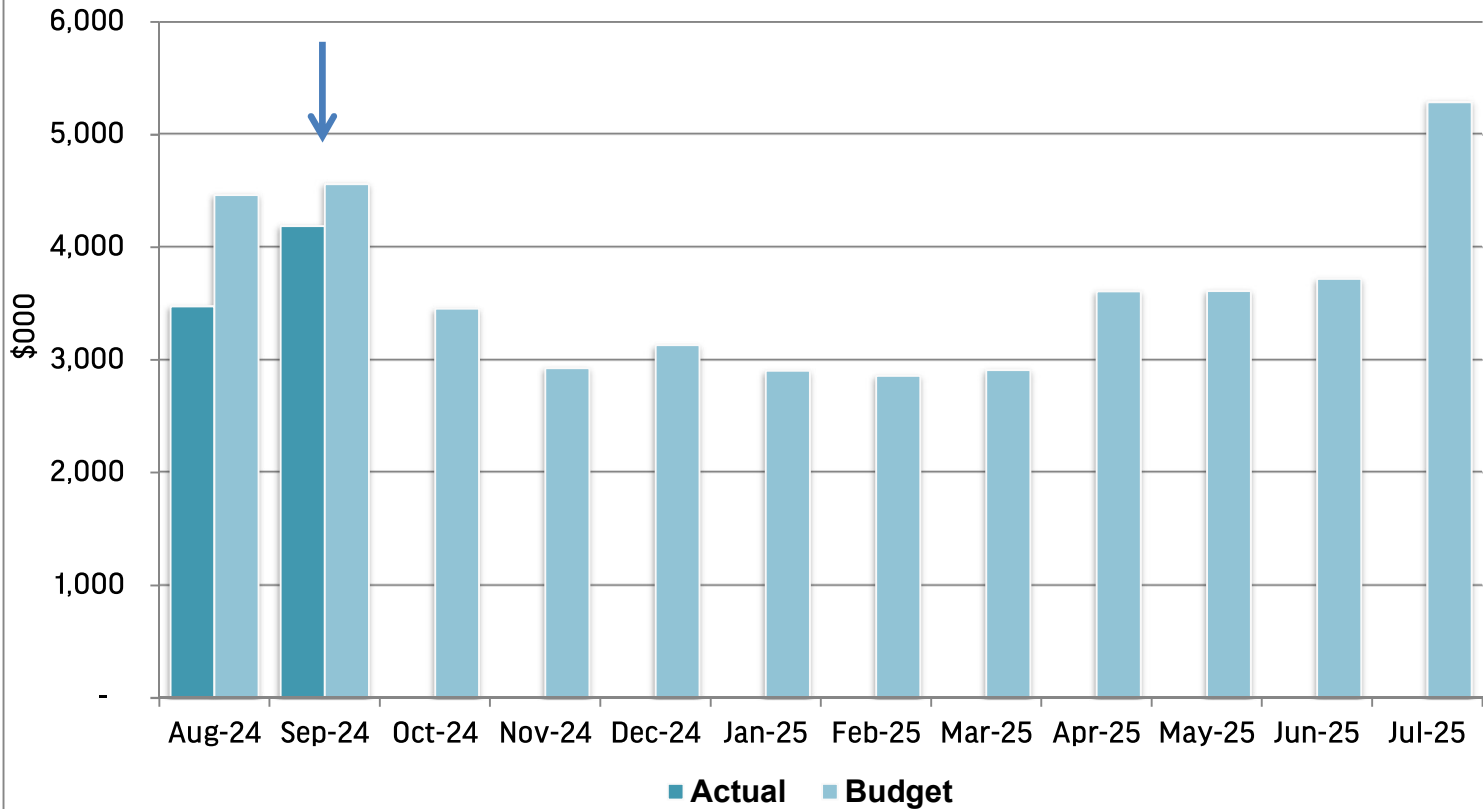
**Water Sales Volumes
3-Year Comparison of Actuals by Month**



Month	Water Sales Volumes (Million Gallons)		
	2022-23	2023-24	2024-25
Aug	505	561	391
Sep	420	535	404
Oct	411	402	-
Nov	324	337	-
Dec	272	306	-
Jan	310	272	-
Feb	268	263	-
Mar	269	294	-
Apr	331	311	-
May	279	331	-
Jun	351	410	-
Jul	497	389	-
TOTAL	4,237	4,411	795

Meter Count	FY 2023	% Change 2022-2023	FY 2024	% Change 2023-2024	FY 2025
Residential	35,017	2.64%	35,942	4.10%	37,416
Irrigation	13,455	6.75%	14,363	9.30%	15,699
Other	2,974	3.63%	3,082	2.21%	3,150
TOTAL	51,446	3.77%	53,387	5.39%	56,265

**Total Water Sales
Fiscal Year 2025
Actual vs. Budget**



Month	Total Water Sales (\$000)	
	Actual	Budget
Aug-24	\$ 3,477	\$ 4,465
Sep-24	\$ 4,188	\$ 4,558
Oct-24	\$ -	\$ 3,455
Nov-24	\$ -	\$ 2,927
Dec-24	\$ -	\$ 3,131
Jan-25	\$ -	\$ 2,903
Feb-25	\$ -	\$ 2,858
Mar-25	\$ -	\$ 2,910
Apr-25	\$ -	\$ 3,611
May-25	\$ -	\$ 3,612
Jun-25	\$ -	\$ 3,718
Jul-25	\$ -	\$ 5,287
TOTAL	\$ 7,664	\$ 43,437

WATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Water Volume (Gallons)
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD	
	AUG	SEP	ACT	AVG
Residential				
Actuals	192,108,425	205,543,129	397,651,554	198,825,777
Budget	291,271,306	247,900,466	539,171,772	269,585,886
Prior Year	286,378,437	269,971,015	556,349,452	278,174,726
Multi-Unit 2-4				
Actuals	1,670,719	1,676,809	3,347,528	1,673,764
Budget	2,399,281	2,273,504	4,672,786	2,336,393
Prior Year	2,241,863	2,314,345	4,556,208	2,278,104
Multi-Unit 5+				
Actuals	28,154,639	27,570,909	55,725,548	27,862,774
Budget	28,153,423	28,343,956	56,497,379	28,248,690
Prior Year	27,135,318	27,407,982	54,543,300	27,271,650
Residential Irrigation				
Actuals	55,966,659	65,719,450	121,686,109	60,843,055
Budget	113,192,169	99,533,902	212,726,070	106,363,035
Prior Year	99,066,089	94,465,846	193,531,935	96,765,968
Commercial Irrigation				
Actuals	26,389,798	28,723,908	55,113,706	27,556,853
Budget	30,527,603	30,879,044	61,406,648	30,703,324
Prior Year	39,196,600	41,949,117	81,145,717	40,572,859
SGS				
Actuals	30,873,784	30,151,514	61,025,298	30,512,649
Budget	25,268,650	23,898,240	49,166,890	24,583,445
Prior Year	88,144,880	36,085,131	124,230,011	62,115,006
LGS				
Actuals	47,717,660	39,542,643	87,260,303	43,630,152
Budget	51,137,660	44,700,916	95,838,576	47,919,288
Prior Year	-	48,367,404	48,367,404	24,183,702
Other Sales				
Actuals	8,156,536	5,168,502	13,325,038	6,662,519
Budget	4,843,538	4,354,736	9,198,273	4,599,137
Prior Year	14,773,264	12,569,962	27,343,226	13,671,613
ReUse Water				
Actuals	31	305,818	305,849	152,925
Budget	613,050	(292,400)	320,650	160,325
Prior Year	4,312,900	1,955,900	6,268,800	3,134,400
Total Sales				
Actuals	391,038,251	404,402,682	795,440,933	397,720,467
Budget	547,406,680	481,592,365	1,028,999,045	514,499,523
Prior Year	561,249,351	535,086,702	1,096,336,053	548,168,027

NEW BRAUNFELS UTILITIES

Water Volume (Gallons) Variance

For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD	
	AUG	SEP	ACT	AVG
Residential				
Actuals	192,108,425	205,543,129	397,651,554	198,825,777
Actual vs Budget	(99,162,881)	(42,357,337)	(141,520,218)	(70,760,109)
Actual vs Prior Year	(94,270,012)	(64,427,886)	(158,697,898)	(79,348,949)
Multi-Unit 2-4				
Actuals	1,670,719	1,676,809	3,347,528	1,673,764
Actual vs Budget	(728,562)	(596,695)	(1,325,258)	(662,629)
Actual vs Prior Year	(571,144)	(637,536)	(1,208,680)	(604,340)
Multi-Unit 5+				
Actuals	28,154,639	27,570,909	55,725,548	27,862,774
Actual vs Budget	1,216	(773,047)	(771,831)	(385,916)
Actual vs Prior Year	1,019,321	162,927	1,182,248	591,124
Residential Irrigation				
Actuals	55,966,659	65,719,450	121,686,109	60,843,055
Actual vs Budget	(57,225,510)	(33,814,452)	(91,039,961)	(45,519,981)
Actual vs Prior Year	(43,099,430)	(28,746,396)	(71,845,826)	(35,922,913)
Commercial Irrigation				
Actuals	26,389,798	28,723,908	55,113,706	27,556,853
Actual vs Budget	(4,137,805)	(2,155,136)	(6,292,942)	(3,146,471)
Actual vs Prior Year	(12,806,802)	(13,225,209)	(26,032,011)	(13,016,006)
SGS				
Actuals	30,873,784	30,151,514	61,025,298	30,512,649
Actual vs Budget	5,605,134	6,253,274	11,858,408	5,929,204
Actual vs Prior Year	(57,271,096)	(5,933,617)	(63,204,713)	(31,602,357)
LGS				
Actuals	47,717,660	39,542,643	87,260,303	43,630,152
Actual vs Budget	(3,420,000)	(5,158,273)	(8,578,273)	(4,289,137)
Actual vs Prior Year	47,717,660	(8,824,761)	38,892,899	19,446,450
Other Sales				
Actuals	8,156,536	5,168,502	13,325,038	6,662,519
Actual vs Budget	3,312,998	813,766	4,126,765	2,063,382
Actual vs Prior Year	(6,616,728)	(7,401,460)	(14,018,188)	(7,009,094)
ReUse Water				
Actuals	31	305,818	305,849	152,925
Actual vs Budget	(613,019)	598,218	(14,801)	(7,401)
Actual vs Prior Year	(4,312,869)	(1,650,082)	(5,962,951)	(2,981,476)
Total Sales				
Actuals	391,038,251	404,402,682	795,440,933	397,720,467
Actual vs Budget	(156,368,429)	(77,189,683)	(233,558,112)	(116,779,056)
Actual vs Prior Year	(170,211,100)	(130,684,020)	(300,895,120)	(150,447,560)

NEW BRAUNFELS UTILITIES
Water Revenue
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD	
	AUG	SEP	ACT	AVG
Residential				
Actuals	\$ 1,356,816	\$ 1,802,196	\$ 3,159,012	\$ 1,579,506
Budget	\$ 1,672,787	\$ 1,747,674	\$ 3,420,462	\$ 1,710,231
Prior Year	\$ 1,827,272	\$ 2,392,640	\$ 4,219,912	\$ 2,109,956
Multi-Unit 2-4				
Actuals	\$ 17,710	\$ 18,734	\$ 36,444	\$ 18,222
Budget	\$ 21,618	\$ 23,850	\$ 45,468	\$ 22,734
Prior Year	\$ 19,957	\$ 20,786	\$ 40,743	\$ 20,372
Multi-Unit 5+				
Actuals	\$ 285,155	\$ 304,890	\$ 590,045	\$ 295,022
Budget	\$ 283,223	\$ 295,768	\$ 578,991	\$ 289,495
Prior Year	\$ 260,228	\$ 257,270	\$ 517,498	\$ 258,749
Residential Irrigation				
Actuals	\$ 755,605	\$ 932,040	\$ 1,687,646	\$ 843,823
Budget	\$ 1,393,278	\$ 1,369,057	\$ 2,762,335	\$ 1,381,167
Prior Year	\$ 1,117,789	\$ 1,105,950	\$ 2,223,739	\$ 1,111,869
Commercial Irrigation				
Actuals	\$ 337,179	\$ 423,268	\$ 760,447	\$ 380,224
Budget	\$ 388,614	\$ 429,953	\$ 818,567	\$ 409,284
Prior Year	\$ 477,522	\$ 504,909	\$ 982,431	\$ 491,215
SGS				
Actuals	\$ 293,265	\$ 324,047	\$ 617,312	\$ 308,656
Budget	\$ 347,774	\$ 302,604	\$ 650,378	\$ 325,189
Prior Year	\$ 765,231	\$ 343,842	\$ 1,109,073	\$ 554,537
LGS				
Actuals	\$ 317,115	\$ 292,964	\$ 610,079	\$ 305,039
Budget	\$ 290,436	\$ 325,951	\$ 616,387	\$ 308,193
Prior Year	\$ -	\$ 288,946	\$ 288,946	\$ 144,473
Other Sales				
Actuals	\$ 113,708	\$ 87,073	\$ 200,781	\$ 100,391
Budget	\$ 64,305	\$ 64,501	\$ 128,806	\$ 64,403
Prior Year	\$ 179,419	\$ 155,792	\$ 335,211	\$ 167,606
ReUse Water				
Actuals	\$ 57	\$ 2,517	\$ 2,574	\$ 1,287
Budget	\$ 2,984	\$ (1,250)	\$ 1,734	\$ 867
Prior Year	\$ 12,545	\$ 173	\$ 12,717	\$ 6,359
Total Sales				
Actuals	\$ 3,476,609	\$ 4,187,731	\$ 7,664,340	\$ 3,832,170
Budget	\$ 4,465,019	\$ 4,558,109	\$ 9,023,128	\$ 4,511,564
Prior Year	\$ 4,659,963	\$ 5,070,307	\$ 9,730,270	\$ 4,865,135

NEW BRAUNFELS UTILITIES
Water Revenue Variance
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD	
	AUG	SEP	ACT	AVG
Residential				
Actuals	\$ 1,356,816	\$ 1,802,196	\$ 3,159,012	\$ 1,579,506
Actual vs Budget	\$ (315,972)	\$ 54,522	\$ (261,450)	\$ (130,725)
Actual vs Prior Year	\$ (470,456)	\$ (590,444)	\$ (1,060,900)	\$ (530,450)
Multi-Unit 2-4				
Actuals	\$ 17,710	\$ 18,734	\$ 36,444	\$ 18,222
Actual vs Budget	\$ (3,908)	\$ (5,116)	\$ (9,024)	\$ (4,512)
Actual vs Prior Year	\$ (2,247)	\$ (2,052)	\$ (4,299)	\$ (2,150)
Multi-Unit 5+				
Actuals	\$ 285,155	\$ 304,890	\$ 590,045	\$ 295,022
Actual vs Budget	\$ 1,932	\$ 9,122	\$ 11,054	\$ 5,527
Actual vs Prior Year	\$ 24,926	\$ 47,621	\$ 72,547	\$ 36,274
Residential Irrigation				
Actuals	\$ 755,605	\$ 932,040	\$ 1,687,646	\$ 843,823
Actual vs Budget	\$ (637,673)	\$ (437,016)	\$ (1,074,689)	\$ (537,344)
Actual vs Prior Year	\$ (362,184)	\$ (173,910)	\$ (536,093)	\$ (268,047)
Commercial Irrigation				
Actuals	\$ 337,179	\$ 423,268	\$ 760,447	\$ 380,224
Actual vs Budget	\$ (51,435)	\$ (6,685)	\$ (58,120)	\$ (29,060)
Actual vs Prior Year	\$ (140,343)	\$ (81,640)	\$ (221,984)	\$ (110,992)
SGS				
Actuals	\$ 293,265	\$ 324,047	\$ 617,312	\$ 308,656
Actual vs Budget	\$ (54,509)	\$ 21,443	\$ (33,066)	\$ (16,533)
Actual vs Prior Year	\$ (471,966)	\$ (19,795)	\$ (491,761)	\$ (245,881)
LGS				
Actuals	\$ 317,115	\$ 292,964	\$ 610,079	\$ 305,039
Actual vs Budget	\$ 26,679	\$ (32,987)	\$ (6,308)	\$ (3,154)
Actual vs Prior Year	\$ 317,115	\$ 4,019	\$ 321,133	\$ 160,567
Other Sales				
Actuals	\$ 113,708	\$ 87,073	\$ 200,781	\$ 100,391
Actual vs Budget	\$ 49,403	\$ 22,572	\$ 71,975	\$ 35,987
Actual vs Prior Year	\$ (65,711)	\$ (68,719)	\$ (134,430)	\$ (67,215)
ReUse Water				
Actuals	\$ 57	\$ 2,517	\$ 2,574	\$ 1,287
Actual vs Budget	\$ (2,927)	\$ 3,767	\$ 840	\$ 420
Actual vs Prior Year	\$ (12,488)	\$ 2,345	\$ (10,144)	\$ (5,072)
Total Sales				
Actuals	\$ 3,476,609	\$ 4,187,731	\$ 7,664,340	\$ 3,832,170
Actual vs Budget	\$ (988,411)	\$ (370,378)	\$ (1,358,789)	\$ (679,394)
Actual vs Prior Year	\$ (1,183,354)	\$ (882,576)	\$ (2,065,931)	\$ (1,032,965)

NEW BRAUNFELS UTILITIES
Water Meters
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD
	AUG	SEP	AVG
Residential			
Actuals	37,250	37,416	37,333
Budget	37,178	37,313	37,246
Prior Year	35,651	35,942	35,797
Multi-Unit 2-4			
Actuals	220	220	220
Budget	234	234	234
Prior Year	208	221	215
Multi-Unit 5+			
Actuals	286	297	292
Budget	289	289	289
Prior Year	262	269	266
Residential Irrigation			
Actuals	14,693	14,817	14,755
Budget	14,645	14,786	14,716
Prior Year	13,351	13,533	13,442
Commercial Irrigation			
Actuals	873	882	878
Budget	825	828	826
Prior Year	884	830	857
SGS			
Actuals	2,287	2,298	2,293
Budget	2,080	2,082	2,081
Prior Year	2,412	2,282	2,347
LGS			
Actuals	234	235	235
Budget	133	134	134
Prior Year	-	198	99
Other Sales			
Actuals	95	99	97
Budget	92	92	92
Prior Year	109	111	110
ReUse Water			
Actuals	1	1	1
Budget	1	1	1
Prior Year	1	1	1
Total Meters			
Actuals	55,939	56,265	56,102
Budget	55,478	55,758	55,618
Prior Year	52,878	53,387	53,133

New Meters	(2)	326	162
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New Meter Growth	0.0%	0.6%	0.3%
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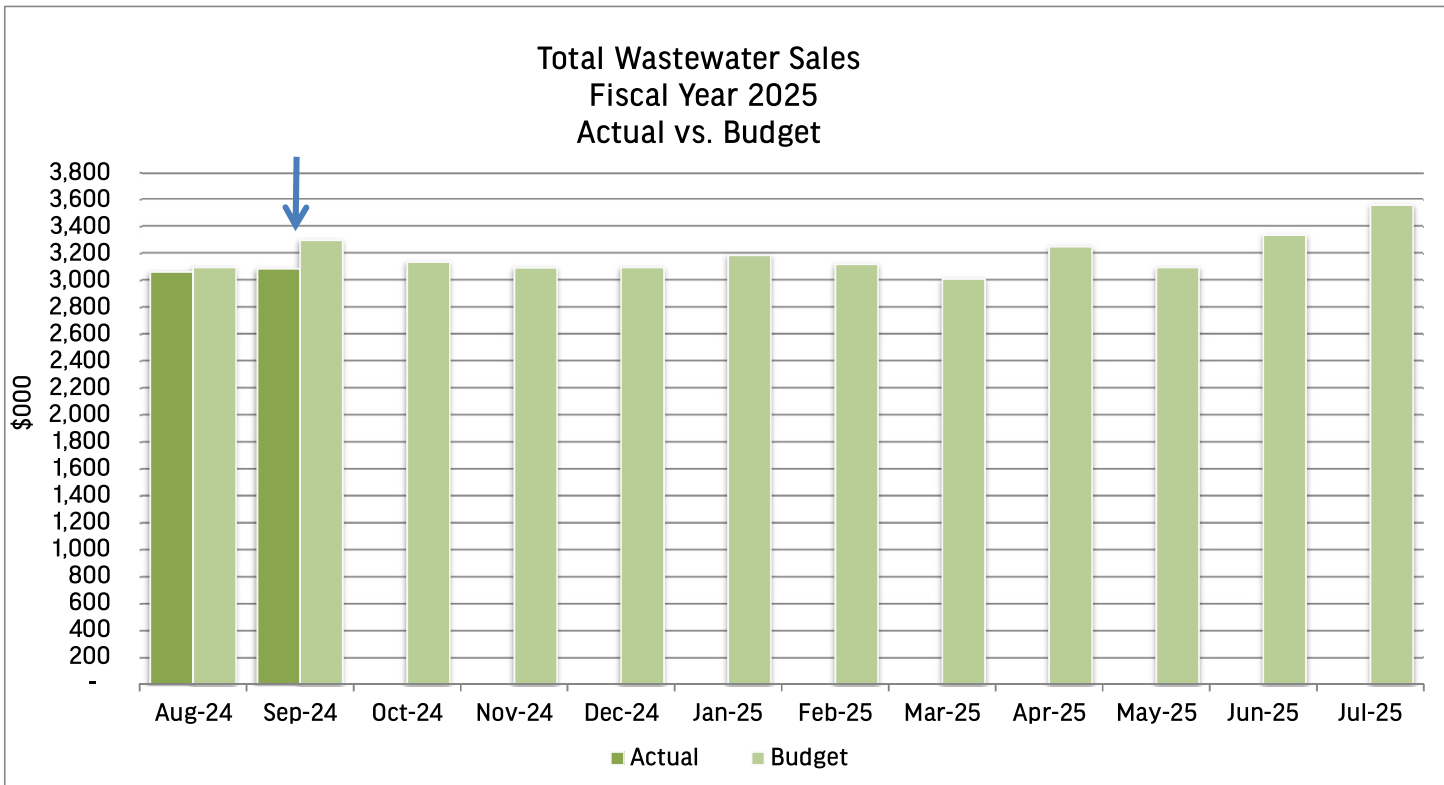
NEW BRAUNFELS UTILITIES
Water Volume per Meter (Gallons)
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD	
	AUG	SEP	ACT	AVG
Residential				
Actuals	5,157	5,493	10,651	5,325
Budget	7,834	6,644	14,478	7,239
Prior Year	8,033	7,511	15,544	7,772
Multi-Unit 2-4				
Actuals	7,594	7,622	15,216	7,608
Budget	10,258	9,714	19,973	9,986
Prior Year	10,778	10,472	21,250	10,625
Multi-Unit 5+				
Actuals	98,443	92,831	191,274	95,637
Budget	97,504	97,976	195,480	97,740
Prior Year	103,570	101,888	205,458	102,729
Residential Irrigation				
Actuals	3,809	4,435	8,244	4,122
Budget	7,729	6,732	14,461	7,230
Prior Year	7,420	6,980	14,401	7,200
Commercial Irrigation				
Actuals	30,229	32,567	62,796	31,398
Budget	36,995	37,302	74,297	37,149
Prior Year	44,340	50,541	94,881	47,441
SGS				
Actuals	13,500	13,121	26,620	13,310
Budget	12,146	11,480	23,627	11,813
Prior Year	36,544	15,813	52,357	26,179
LGS				
Actuals	203,922	168,267	372,188	186,094
Budget	384,494	333,589	718,083	359,041
Prior Year	-	-	-	-
Other Sales				
Actuals	85,858	52,207	138,065	69,033
Budget	52,714	47,203	99,917	49,958
Prior Year	135,535	113,243	248,777	124,389
ReUse Water				
Actuals	31	305,818	305,849	152,925
Budget	613,050	(292,400)	320,650	160,325
Prior Year	4,312,900	1,955,900	6,268,800	3,134,400

NEW BRAUNFELS UTILITIES
Water Rates (per Gallon)
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD
	AUG	SEP	AVG
Residential			
Actuals	\$ 0.0071	\$ 0.0088	\$ 0.0079
Budget	\$ 0.0057	\$ 0.0070	\$ 0.0064
Prior Year	\$ 0.0064	\$ 0.0089	\$ 0.0076
Multi-Unit 2-4			
Actuals	\$ 0.0106	\$ 0.0112	\$ 0.0109
Budget	\$ 0.0090	\$ 0.0105	\$ 0.0098
Prior Year	\$ 0.0089	\$ 0.0090	\$ 0.0089
Multi-Unit 5+			
Actuals	\$ 0.0101	\$ 0.0111	\$ 0.0106
Budget	\$ 0.0101	\$ 0.0104	\$ 0.0102
Prior Year	\$ 0.0096	\$ 0.0094	\$ 0.0095
Residential Irrigation			
Actuals	\$ 0.0135	\$ 0.0142	\$ 0.0138
Budget	\$ 0.0123	\$ 0.0138	\$ 0.0130
Prior Year	\$ 0.0113	\$ 0.0117	\$ 0.0115
Commercial Irrigation			
Actuals	\$ 0.0128	\$ 0.0147	\$ 0.0138
Budget	\$ 0.0127	\$ 0.0139	\$ 0.0133
Prior Year	\$ 0.0122	\$ 0.0120	\$ 0.0121
SGS			
Actuals	\$ 0.0095	\$ 0.0107	\$ 0.0101
Budget	\$ 0.0138	\$ 0.0127	\$ 0.0132
Prior Year	\$ 0.0087	\$ 0.0095	\$ 0.0091
LGS			
Actuals	\$ 0.0066	\$ 0.0074	\$ 0.0070
Budget	\$ 0.0057	\$ 0.0073	\$ 0.0065
Prior Year	\$ -	\$ -	\$ -
Other Sales			
Actuals	\$ 0.0139	\$ 0.0168	\$ 0.0154
Budget	\$ 0.0133	\$ 0.0148	\$ 0.0140
Prior Year	\$ 0.0121	\$ 0.0124	\$ 0.0123
ReUse Water			
Actuals	\$ 1.8242	\$ 0.0082	\$ 0.9162
Budget	\$ 0.0049	\$ 0.0043	\$ 0.0046
Prior Year	\$ 0.0029	\$ 0.0001	\$ 0.0015

WASTEWATER STATISTICS



Month	Total Wastewater Sales (\$000)	
	Actual	Budget
Aug-24	\$ 3,067	\$ 3,098
Sep-24	\$ 3,089	\$ 3,302
Oct-24	\$ -	\$ 3,137
Nov-24	\$ -	\$ 3,097
Dec-24	\$ -	\$ 3,098
Jan-25	\$ -	\$ 3,190
Feb-25	\$ -	\$ 3,123
Mar-25	\$ -	\$ 3,013
Apr-25	\$ -	\$ 3,252
May-25	\$ -	\$ 3,098
Jun-25	\$ -	\$ 3,339
Jul-25	\$ -	\$ 3,565
TOTAL	\$ 6,156	\$ 38,313

Customer Count	FY 2023	% Change 2022-2023	FY 2024	% Change 2023-2024	FY 2025
Residential	31,569	2.86%	32,472	4.46%	33,920
Other	2,559	2.46%	2,622	2.40%	2,685
TOTAL	34,128	2.83%	35,094	4.31%	36,605

WASTEWATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Wastewater Revenue
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD	
	AUG	SEP	ACT	AVG
Residential				
Actuals	\$ 1,856,484	\$ 1,956,314	\$ 3,812,798	\$ 1,906,399
Budget	\$ 1,781,520	\$ 1,956,385	\$ 3,737,905	\$ 1,868,953
Prior Year	\$ 1,620,385	\$ 1,780,256	\$ 3,400,641	\$ 1,700,320
Multi-Unit 2-4				
Actuals	\$ 16,214	\$ 16,604	\$ 32,818	\$ 16,409
Budget	\$ 16,106	\$ 17,441	\$ 33,547	\$ 16,774
Prior Year	\$ 14,354	\$ 16,278	\$ 30,631	\$ 15,316
Multi-Unit 5+				
Actuals	\$ 359,519	\$ 366,806	\$ 726,325	\$ 363,162
Budget	\$ 393,126	\$ 417,412	\$ 810,539	\$ 405,269
Prior Year	\$ 362,783	\$ 369,364	\$ 732,147	\$ 366,074
SGS				
Actuals	\$ 833,399	\$ 747,585	\$ 1,580,984	\$ 790,492
Budget	\$ 905,202	\$ 909,308	\$ 1,814,510	\$ 907,255
Prior Year	\$ 897,364	\$ 818,036	\$ 1,715,400	\$ 857,700
Schertz Sewer				
Actuals	\$ 1,586	\$ 1,575	\$ 3,161	\$ 1,581
Budget	\$ 1,670	\$ 1,638	\$ 3,308	\$ 1,654
Prior Year	\$ 1,307	\$ 1,320	\$ 2,627	\$ 1,314
Total Sales				
Actuals	\$ 3,067,203	\$ 3,088,884	\$ 6,156,087	\$ 3,078,043
Budget	\$ 3,097,625	\$ 3,302,184	\$ 6,399,810	\$ 3,199,905
Prior Year	\$ 2,896,192	\$ 2,985,254	\$ 5,881,447	\$ 2,940,723

NEW BRAUNFELS UTILITIES
Wastewater Revenue Variance
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD	
	AUG	SEP	ACT	AVG
Residential				
Actuals	\$ 1,856,484	\$ 1,956,314	\$ 3,812,798	\$ 1,906,399
Actual vs Budget	\$ 74,964	\$ (71)	\$ 74,893	\$ 37,447
Actual vs Prior Year	\$ 236,099	\$ 176,058	\$ 412,158	\$ 206,079
Multi-Unit 2-4				
Actuals	\$ 16,214	\$ 16,604	\$ 32,818	\$ 16,409
Actual vs Budget	\$ 108	\$ (837)	\$ (729)	\$ (365)
Actual vs Prior Year	\$ 1,861	\$ 326	\$ 2,187	\$ 1,093
Multi-Unit 5+				
Actuals	\$ 359,519	\$ 366,806	\$ 726,325	\$ 363,162
Actual vs Budget	\$ (33,607)	\$ (50,607)	\$ (84,214)	\$ (42,107)
Actual vs Prior Year	\$ (3,264)	\$ (2,558)	\$ (5,823)	\$ (2,911)
SGS				
Actuals	\$ 833,399	\$ 747,585	\$ 1,580,984	\$ 790,492
Actual vs Budget	\$ (71,802)	\$ (161,723)	\$ (233,526)	\$ (116,763)
Actual vs Prior Year	\$ (63,965)	\$ (70,451)	\$ (134,416)	\$ (67,208)
Schertz Sewer				
Actuals	\$ 1,586	\$ 1,575	\$ 3,161	\$ 1,581
Actual vs Budget	\$ (84)	\$ (63)	\$ (147)	\$ (74)
Actual vs Prior Year	\$ 279	\$ 255	\$ 534	\$ 267
Total Sales				
Actuals	\$ 3,067,203	\$ 3,088,884	\$ 6,156,087	\$ 3,078,043
Actual vs Budget	\$ (30,422)	\$ (213,301)	\$ (243,723)	\$ (121,861)
Actual vs Prior Year	\$ 171,011	\$ 103,630	\$ 274,640	\$ 137,320

NEW BRAUNFELS UTILITIES
Wastewater Usage (Gallons)
For Month Ending September 30, 2024

DESCRIPTION	2024 AUG	2024 SEP	FY 2025 YTD	
			ACT	AVG
Residential				
Actuals	107,725,389	103,067,687	210,793,077	105,396,538
Prior Year	104,591,818	110,400,361	214,992,179	107,496,089
Multi-Unit 2-4				
Actuals	812,350	772,528	1,584,878	792,439
Prior Year	835,859	859,259	1,695,118	847,559
Multi-Unit 5+				
Actuals	24,068,802	23,716,877	47,785,679	23,892,840
Prior Year	26,464,494	26,498,569	52,963,063	26,481,532
SGS				
Actuals	135,445,189	120,298,662	255,743,851	127,871,925
Prior Year	147,287,980	131,416,134	278,704,115	139,352,057
Schertz Sewer				
Actuals	434,200	431,300	865,500	432,750
Prior Year	144,400	145,900	290,300	145,150
Total Sales				
Actuals	268,485,930	248,287,054	516,772,985	258,386,492
Prior Year	279,324,551	269,320,223	548,644,775	274,322,387

NEW BRAUNFELS UTILITIES
Wastewater Customers
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD
	AUG	SEP	AVG
Residential			
Actuals	33,760	33,920	33,840
Budget	33,700	33,832	33,766
Prior Year	32,187	32,472	32,330
Multi-Unit 2-4			
Actuals	186	186	186
Budget	187	187	187
Prior Year	173	186	180
Multi-Unit 5+			
Actuals	280	291	286
Budget	271	271	271
Prior Year	261	268	265
SGS			
Actuals	2,196	2,207	2,202
Budget	2,202	2,205	2,204
Prior Year	2,158	2,167	2,163
Schertz Sewer			
Actuals	1	1	1
Budget	1	1	1
Prior Year	1	1	1
Total Accounts			
Actuals	36,423	36,605	36,514
Budget	36,361	36,497	36,429
Prior Year	34,780	35,094	34,937

New Customers	(38)	182	72
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New Customer Growth %	-0.1%	0.5%	0.2%
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NEW BRAUNFELS UTILITIES
Wastewater Rates (per Customer)
For Month Ending September 30, 2024

DESCRIPTION	2024	2024	FY 2025 YTD
	AUG	SEP	AVG
Residential			
Actuals	\$ 54.99	\$ 57.67	\$ 56.33
Budget	\$ 52.86	\$ 57.83	\$ 55.34
Prior Year	\$ 50.34	\$ 54.82	\$ 52.58
Multi-Unit 2-4			
Actuals	\$ 87.17	\$ 89.27	\$ 88.22
Budget	\$ 86.07	\$ 93.13	\$ 89.60
Prior Year	\$ 82.97	\$ 87.52	\$ 85.24
Multi-Unit 5+			
Actuals	\$ 1,284.00	\$ 1,260.50	\$ 1,272.25
Budget	\$ 1,452.23	\$ 1,537.93	\$ 1,495.08
Prior Year	\$ 1,389.97	\$ 1,378.22	\$ 1,384.10
SGS			
Actuals	\$ 379.51	\$ 338.73	\$ 359.12
Budget	\$ 411.00	\$ 412.41	\$ 411.70
Prior Year	\$ 415.83	\$ 377.50	\$ 396.66
Schertz Sewer			
Actuals	\$ 1,585.92	\$ 1,575.32	\$ 1,580.62
Budget	\$ 1,670.33	\$ 1,637.99	\$ 1,654.16
Prior Year	\$ 1,306.75	\$ 1,320.32	\$ 1,313.54



Financial Update

- September 2024 Financials

- Kimberly Huffman, Accounting Manager

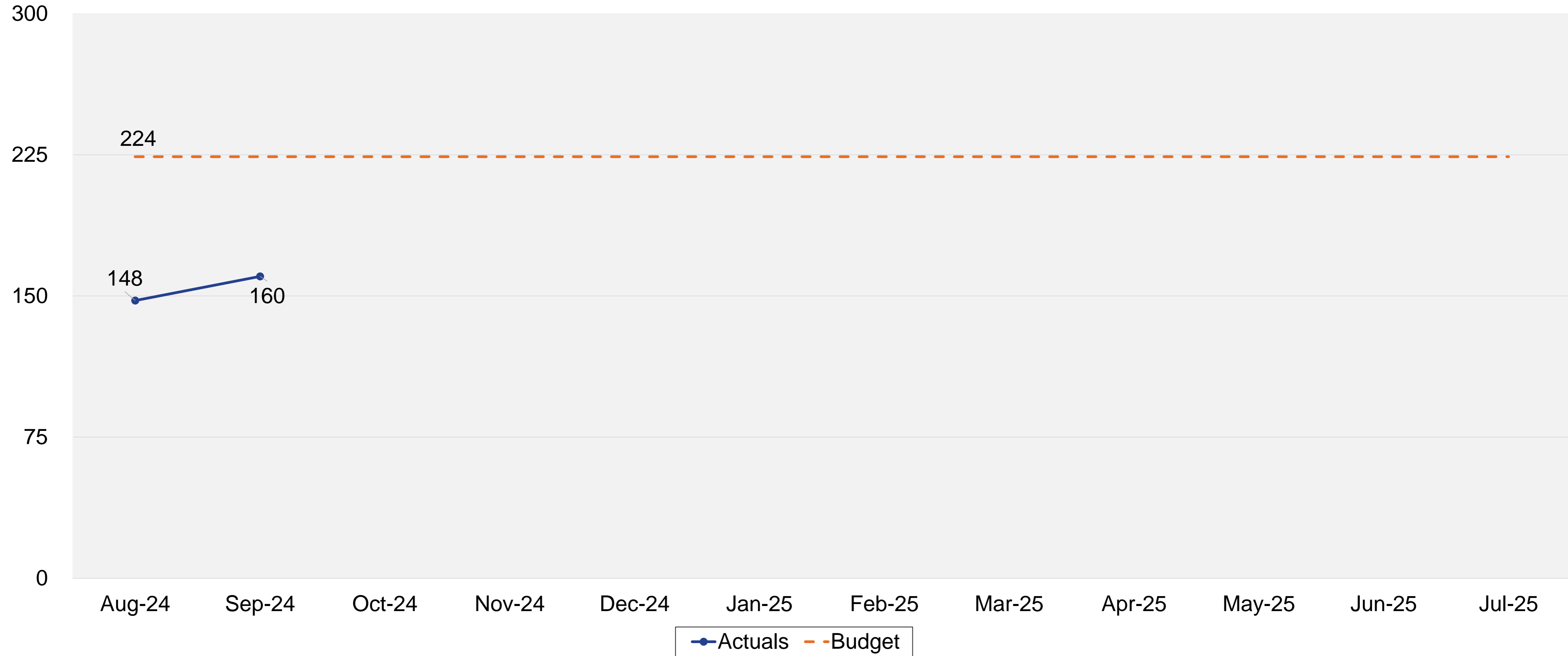
Board Financial Policy Compliance - September 2024 YTD

	FY 2024 Actual**	FY 2025 Budget	Financial Policy	FY 2025 Actual*
Debt to Capitalization (lower is better)	41.1%	45.5%	≤55.0%	40.6%
Debt Service Coverage (higher is better)	5.14	4.71	≥2.40	5.31
Days Cash on Hand (higher is better)	208	224	≥140	160
Days Liquidity on Hand (higher is better)	495	N/A	N/A	416

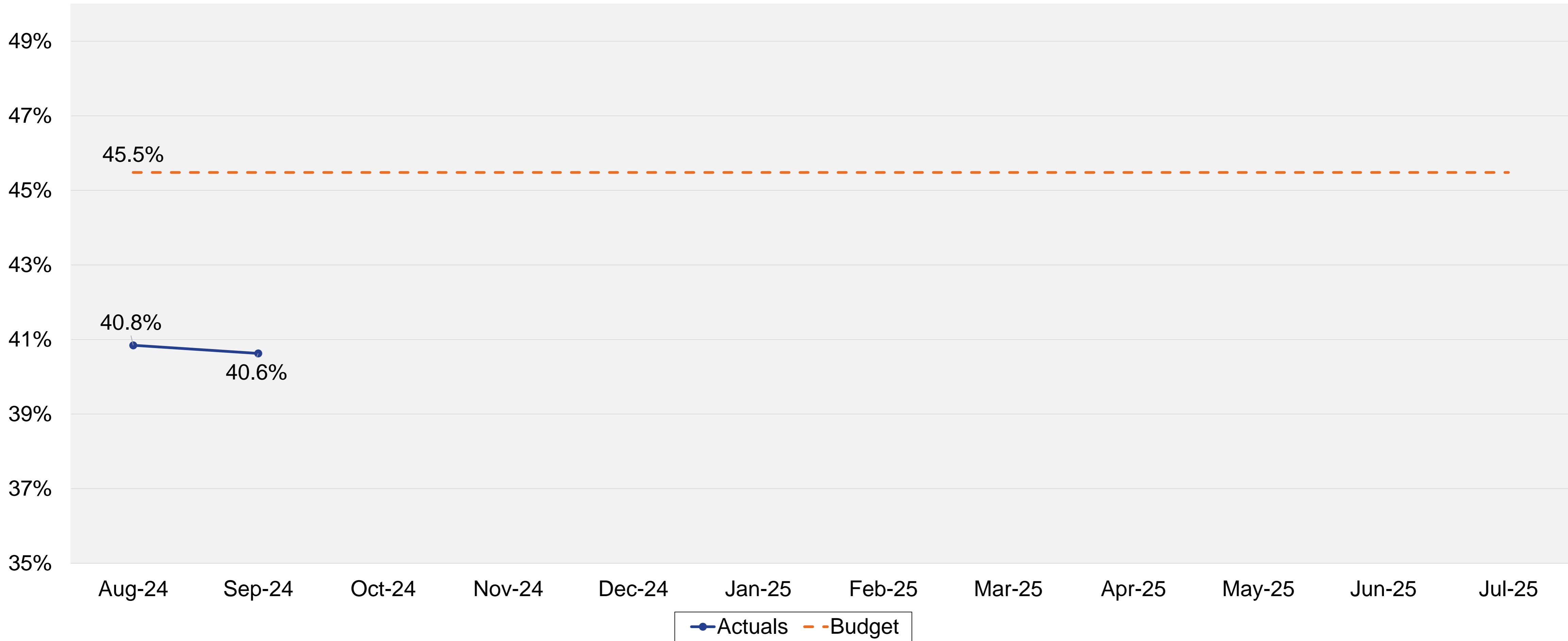
* Amounts are calculated by annualizing the YTD results

** Unaudited amounts

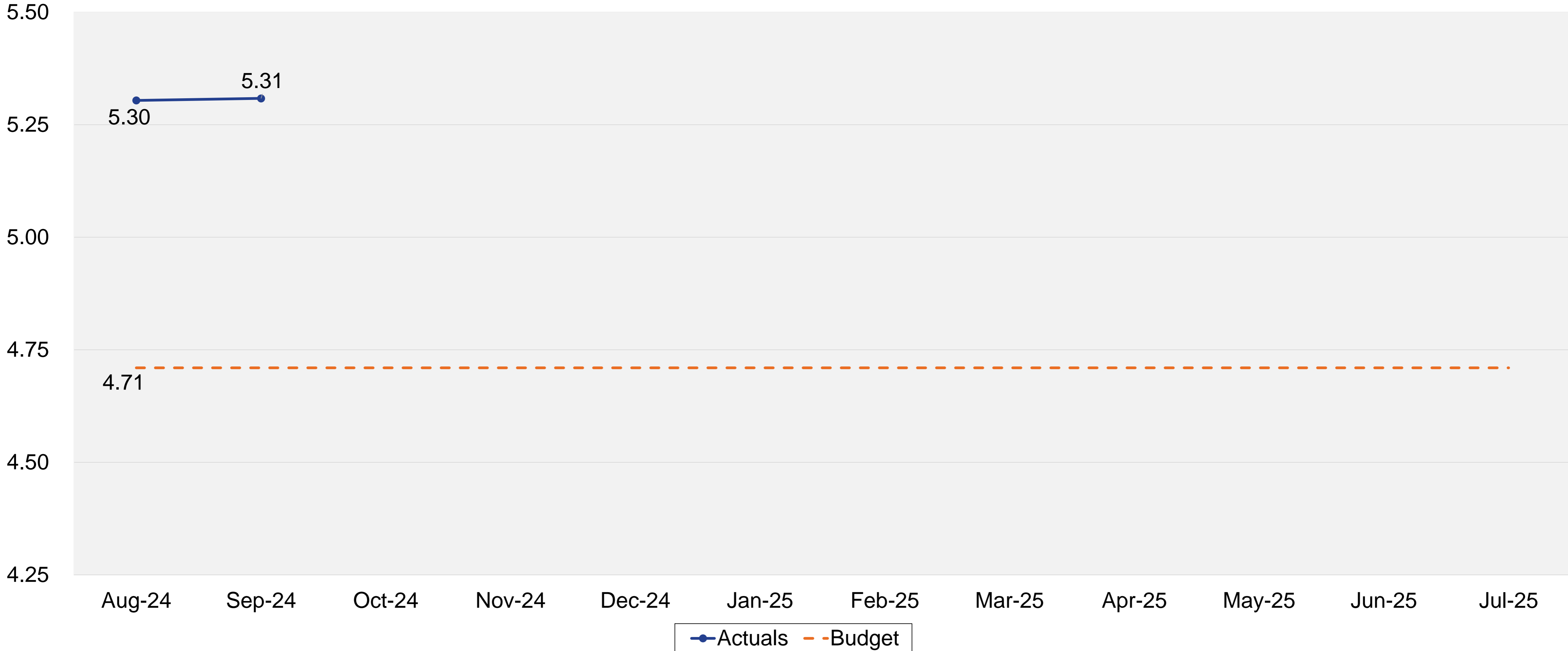
Days Cash on Hand - September 2024 YTD



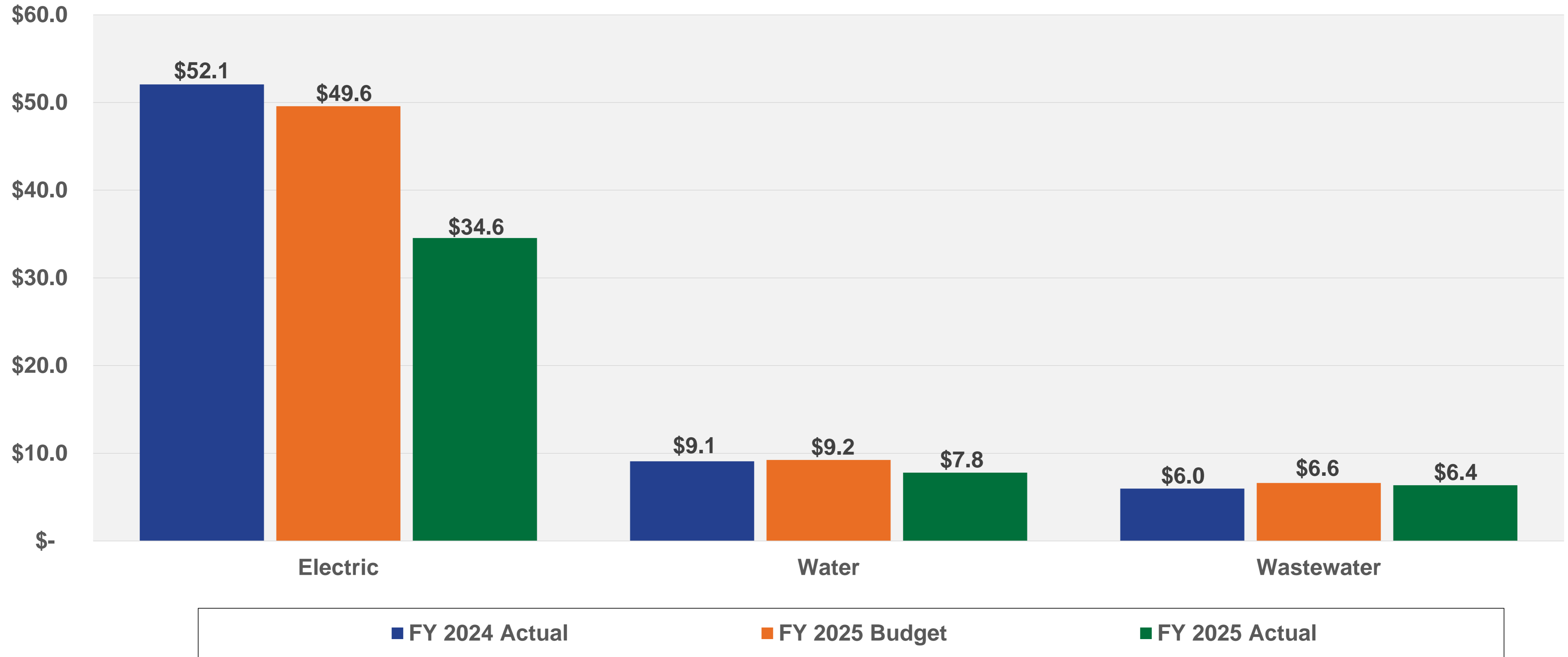
Debt to Capitalization - September 2024 YTD



Debt Service Coverage - September 2024 YTD



Operating Revenue by LOB September 2024 YTD – Amounts in Millions



Mission

Strengthening our community by providing resilient essential services



Vision

Be a trusted community partner dedicated to excellence in service

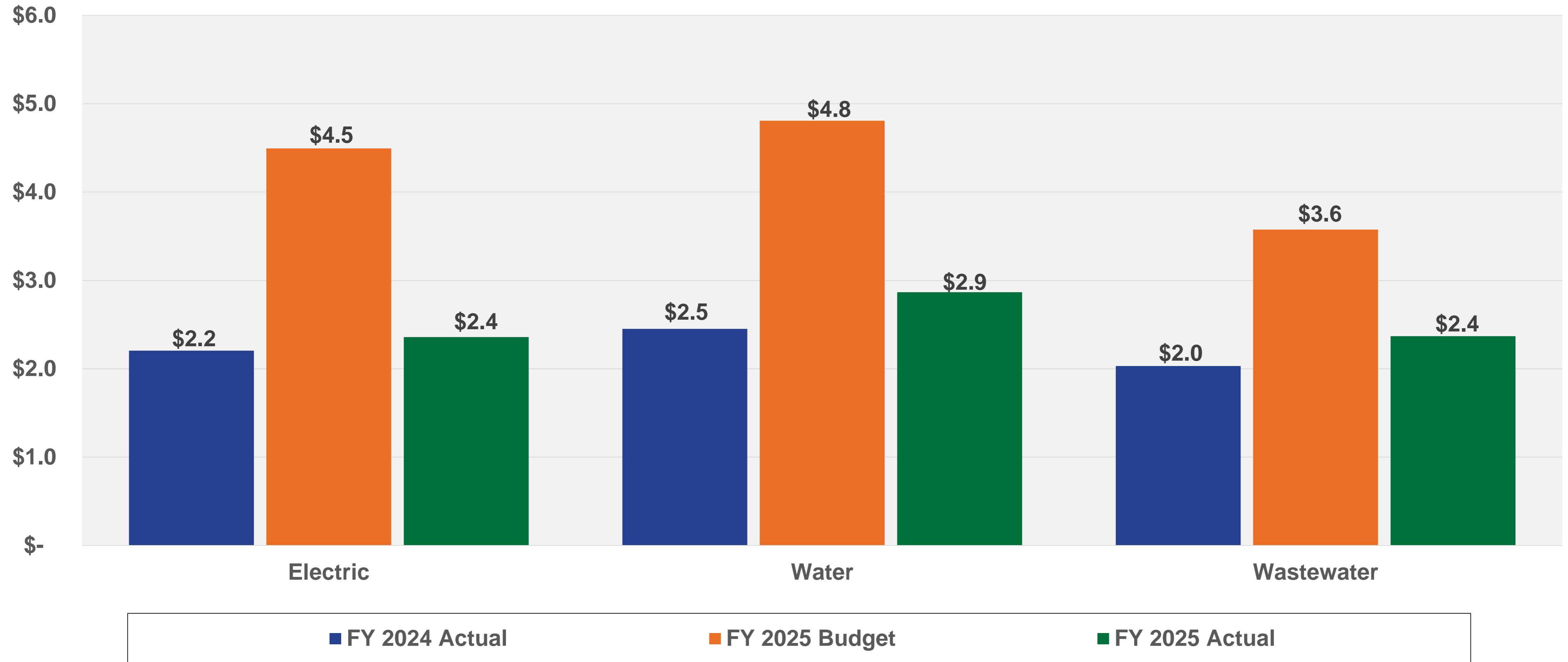


Core Values

Safety, Team, Integrity, Culture, and Stewardship

Operating Expenses* by LOB

September 2024 YTD – Amounts in Millions



*Excludes purchased power, purchased water, and depreciation expense

Mission

Strengthening our community by providing resilient essential services



Vision

Be a trusted community partner dedicated to excellence in service

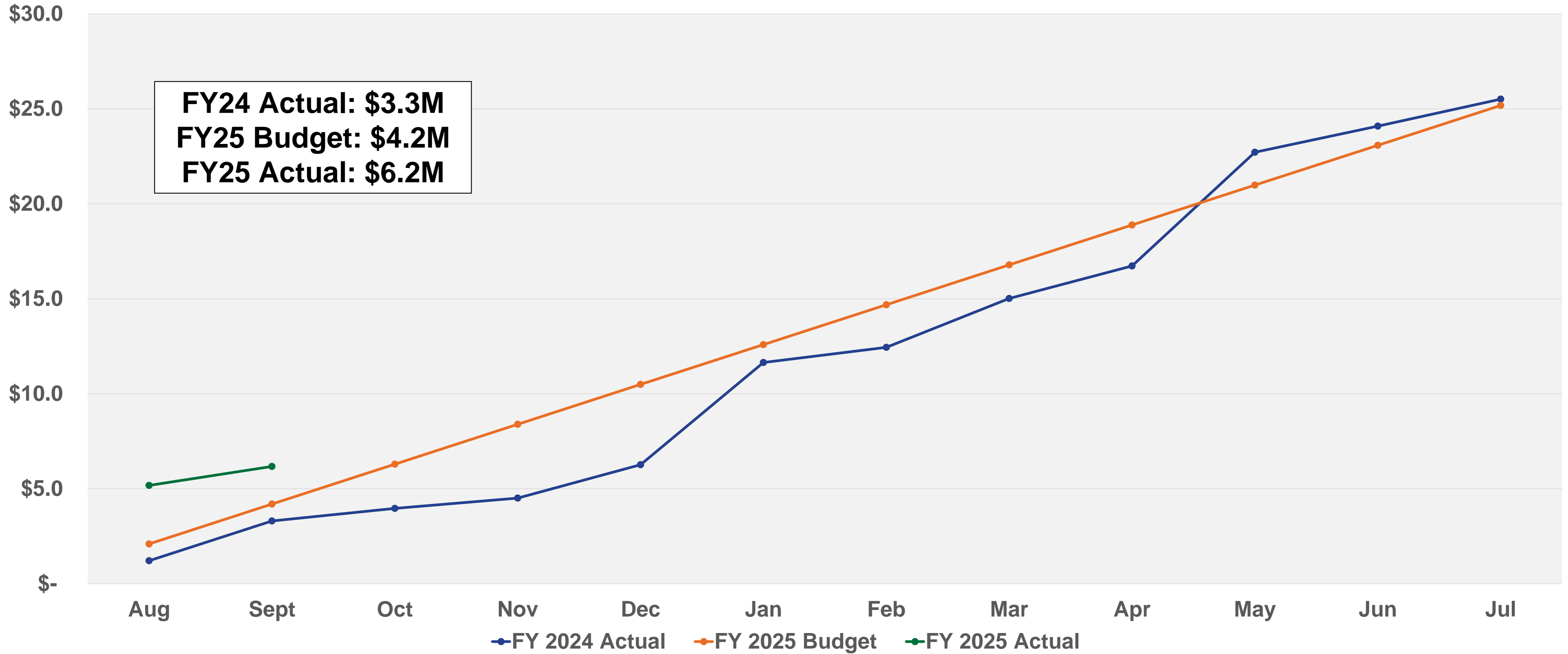


Core Values

Safety, Team, Integrity, Culture, and Stewardship

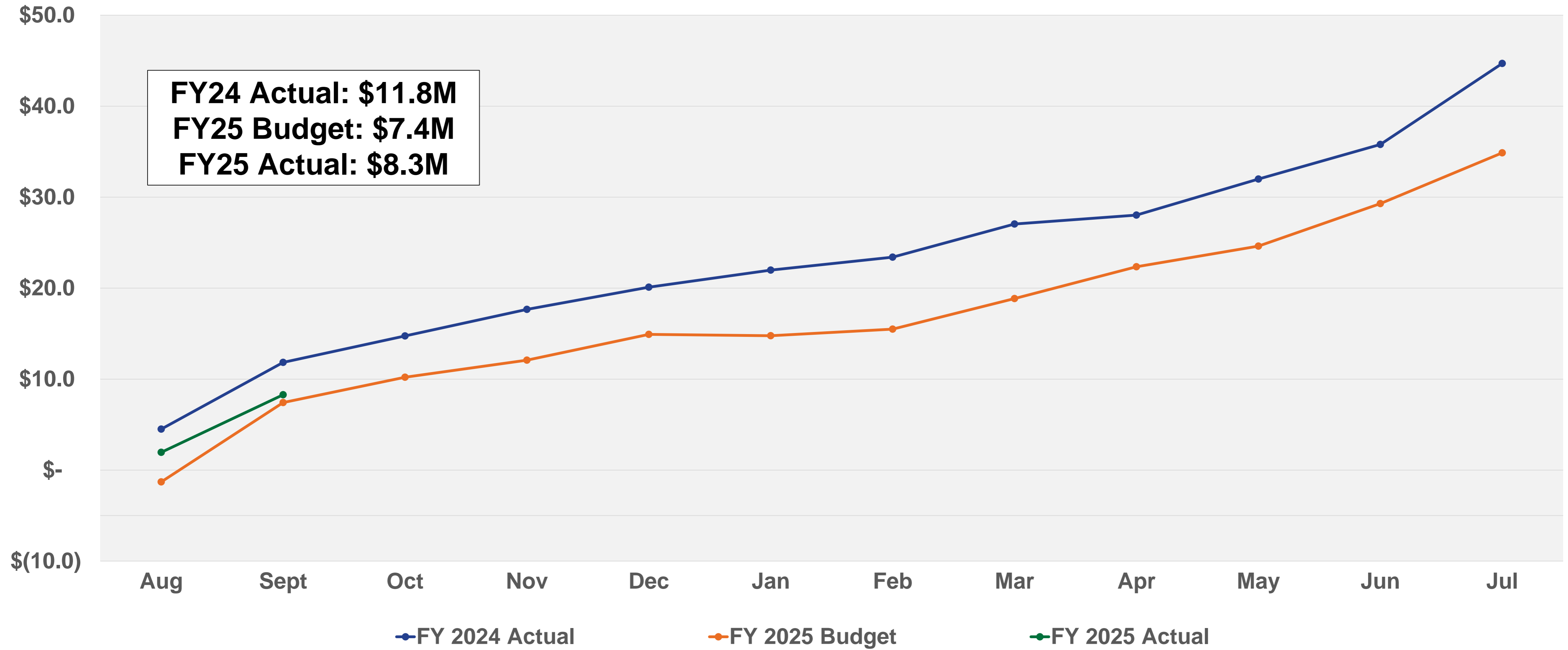
Impact Fees

September 2024 YTD – Amounts in Millions*



* Amounts shown are YTD for each month

Net Operating Income September 2024– Amounts in Millions*



* Amounts shown are YTD for each month

Mission

Strengthening our community by providing resilient essential services



Vision

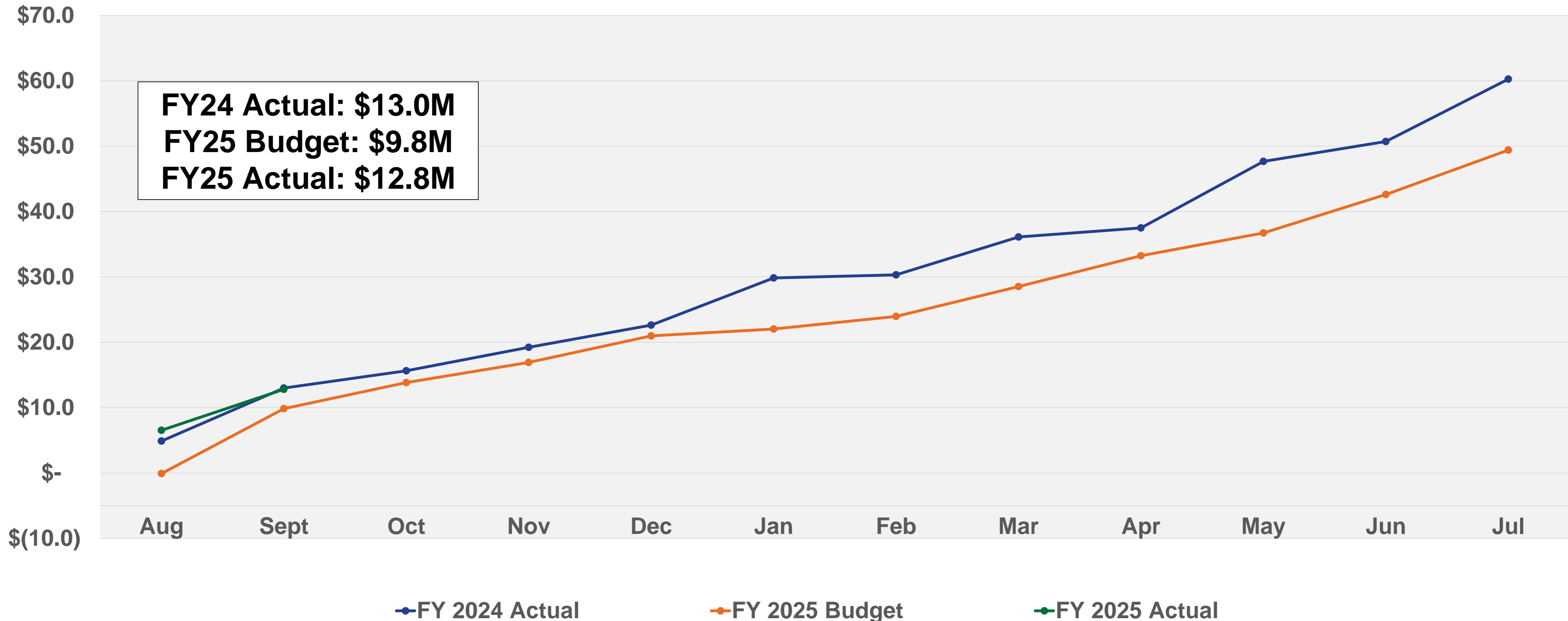
Be a trusted community partner dedicated to excellence in service



Core Values

Safety, Team, Integrity, Culture, and Stewardship

Change in Net Position After Contributions September 2024– Amounts in Millions*



* Amounts shown are YTD for each month

Mission

Strengthening our community by providing resilient essential services



Vision

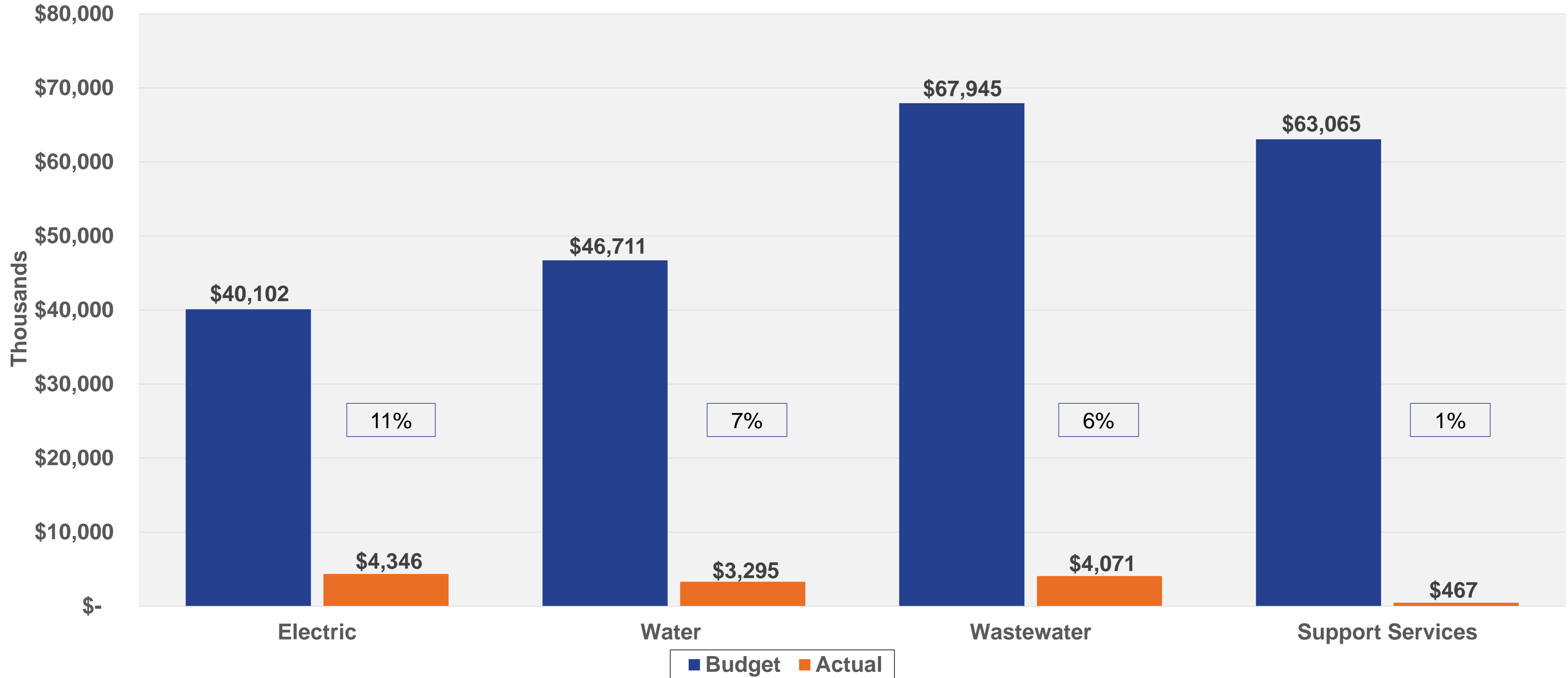
Be a trusted community partner dedicated to excellence in service



Core Values

Safety, Team, Integrity, Culture, and Stewardship

Capital Project Expenditures September 2024 YTD – Amounts in Thousands



Questions?



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve Minutes of the NBU Regular Board Meeting of September 26, 2024

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

- 1. September 26, 2024 Regular Board Meeting Minutes

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

**1:00 P.M.
Thursday, September 26, 2024
NBU Board Room
263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130**

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

PRESENT

Board President Wayne Peters, Board Vice President Judith Dykes-Hoffmann, *Board Trustee John Harrell, Board Trustee Yvette Barrera Villanueva, and Mayor Neal Linnartz

*Board Trustee John Harrell left at 3:03 pm.

ABSENT

None

NBU PERSONNEL

Ryan Kelso, Ragan Dickens, Greg Brown, Dawn Schriewer, Connie Lock, Rocio Gallegos, Mark Steelman, David Hubbard

NBU CONSULTANTS

None

PLEDGE AND INVOCATION

Board President Wayne Peters led the pledge of allegiance and offered the invocation.

NBU EMPLOYEE RECOGNITION

1. Presentation of Service Pins

a. Recognition of Jeffrey Morriss for 20 Years of Service

NBU Employee Jeffrey Morriss was recognized and presented a service pin for 20 years of service with NBU.

b. Recognition of Robert Oliva for 25 Years of Service

NBU Employee Robert Oliva was recognized and presented a service pin for 25 years of service with NBU.

PUBLIC COMMENT

There were no public comment requests.

ITEMS FROM THE CHAIR

1. Report from the Governance Committee

Board Vice President Judith Dykes-Hoffmann provided a report from the Governance Committee meeting on September 16th, 2024, to review Board Governance Policies and the annual Board self-evaluation. The committee reviewed comments provided by Board members on the draft Governance Policies. Revised Governance Policies will be presented to the Board today. Legal counsel will incorporate any changes and distribute revised policies for review. Additionally, a timeline was presented to conduct the annual Board self-evaluation schedule and process.

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

No additional comments were made.

ITEMS FROM STAFF

1. CEO Update

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

a. NBU's Mark Steelman Chosen for Leadership New Braunfels Class of 2025

NBU COO Mark Steelman has been chosen for the Leadership New Braunfels Class of 2025, a program led by the Greater New Braunfels Chamber of Commerce.

b. NBU's Participation in the 2024 New Braunfels Chamber of Commerce Business Showcase

NBU participated in the 2024 Business Trade Show on September 10th, 2024. This event allowed NBU to engage with community members to share information, including utility bill assistance and conservation practices.

c. NBU Awarded the Government Finance Officers Certificate of Achievement for Financial Excellence in Financial Reporting

For the 34th year, NBU has been awarded the Government Finance Officers of America's Certificate of Achievement for Financial Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting.

d. Leadership Announcements of New Hires and Position Changes

Becca Graham has transitioned from the Talent Acquisition Partner to the Enterprise Communications Manager.

e. Any other items permitted under Section 55.0415 of the Texas Government Code:

*No additional items were discussed.

2. Financial Update and Report

Accounting Manager Kimberly Huffman provided an update on the financial status of NBU.

3. Quarterly Investment Report

Finance Manager John Warren provided an update on the quarterly Investment Report.

4. Quarterly Update on the Headwaters at the Comal

Headwaters at the Comal Managing Director Nancy Pappas provided an update on the Headwaters at the Comal.

CONSENT ITEMS FOR ACTION

Trustee John Harrell made a motion, and Mayor Neal Linnartz seconded the motion to approve the Consent Items for Action as follows: #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, and #12. The vote was unanimous.

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

12. Authorize the CEO or His Designee to Negotiate and Execute a Second Amended and Restated Utility Construction Cost Sharing Agreement Among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC, Amending Provisions of the Amended and Restated Utility Construction Cost Sharing Agreement Dated December 14, 2023, Among the Same Parties

PRESENTATION ITEMS

1. **Review and Discuss Proposed Revisions to the NBU Board Governance Policies**
General Counsel Connie Lock introduced outside counsel Christine Reinhard to review the proposed revisions to the NBU Board Governance Policy.
2. **Presentation on the New Braunfels Utilities Aquifer Storage and Recovery Project**
Mike Short introduced Charles Schoening with Arcadis to present information on the NBU Aquifer Storage and Recovery Project.

EXECUTIVE SESSION

Board President Wayne Peters recessed the Open Session at 2:08 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included: Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney-Client Privilege (Section 551.071 – Texas Government Code: a. Discuss Legal Matters Relating to McKenzie Water Reclamation Facility and Gruene Wastewater Treatment Plant; b. Discuss Legal Matters Relating to *Campbellton Road, Ltd. v. City of San Antonio by and through the San Antonio Water System*, 688 S.W.3d 105 (Tex. 2024); c. Discuss and Consider *Allison McCumbee vs. Shawn Benbrook and New Braunfels Utilities*, Comal County, 207th Judicial District Cause No. C2024-1273B; d. Discuss and Consider Items Related to Public Utility Commission of Texas Docket No. 56440, *Application of New Braunfels Utilities to Change Transmission Cost of Service and Wholesale Transmission Rates*, Including Litigation Status and Settlement Negotiations; and Power Supply Resources – Competitive Matters (Section 551.086 – Texas Government Code): a. Power Supply Update

The Executive Session was opened at 2:14 pm and closed at 3:41 pm.

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

The Regular Session resumed at 3:43 pm, and the following actions were taken relating to the Executive Session as described above.

1. Mayor Neal Linnartz made a motion, and Board Vice President Judith Dykes Hoffmann seconded the motion to authorize the CEO or His Designee to Engage Outside Counsel to Pursue Litigation Against TRC for Design Defects Associated with the McKenzie Water Reclamation Facility and the Gruene Wastewater Treatment Facility. The vote was unanimous.

ACTION ITEMS

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

Trustee Yvette Barrera Villanueva made a motion, and Board Vice President Judith Dykes Hoffmann seconded the motion to Approve an Uncontested Stipulation and Settlement Agreement Among NBU, the Staff of the Public Utility Commission, and the Office of Public Utility Counsel to be Filed for Final Approval by the Public Utility Commission in Docket No. 56440 Relating to NBU's Application to Change its Transmission Cost of Service Rates. The vote was unanimous.

ADJOURN

There was no further business, and Board President Wayne Peters adjourned the meeting at 3:42 p.m.

Attest:

Wayne Peters, President
Approved

Ryan Kelso, Secretary of the Board
Chief Executive Officer

Date Approved: October 31, 2024



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action

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

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

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

BACKGROUND

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

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

FINANCIAL IMPACT

Change orders less than \$50,000:

- Trinity Expansion Well Field, Owner's Contingency—MTP fencing repairs, Well control panel shade cover, fiber alignment conflict at chem bldg., 32 days added, Pesado Construction Company, Change order No. 4, No cost change.

Change orders more than \$50,000:

- None reported during this period

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action

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

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

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

BACKGROUND

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

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

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

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

FINANCIAL IMPACT

The financial impact of the contracts approved during this time period is \$6,663,631.00.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

1. Exhibit A – Report for Water Engineering Contracts

Water Engineering PSAs Presented to the Board
FY 2024

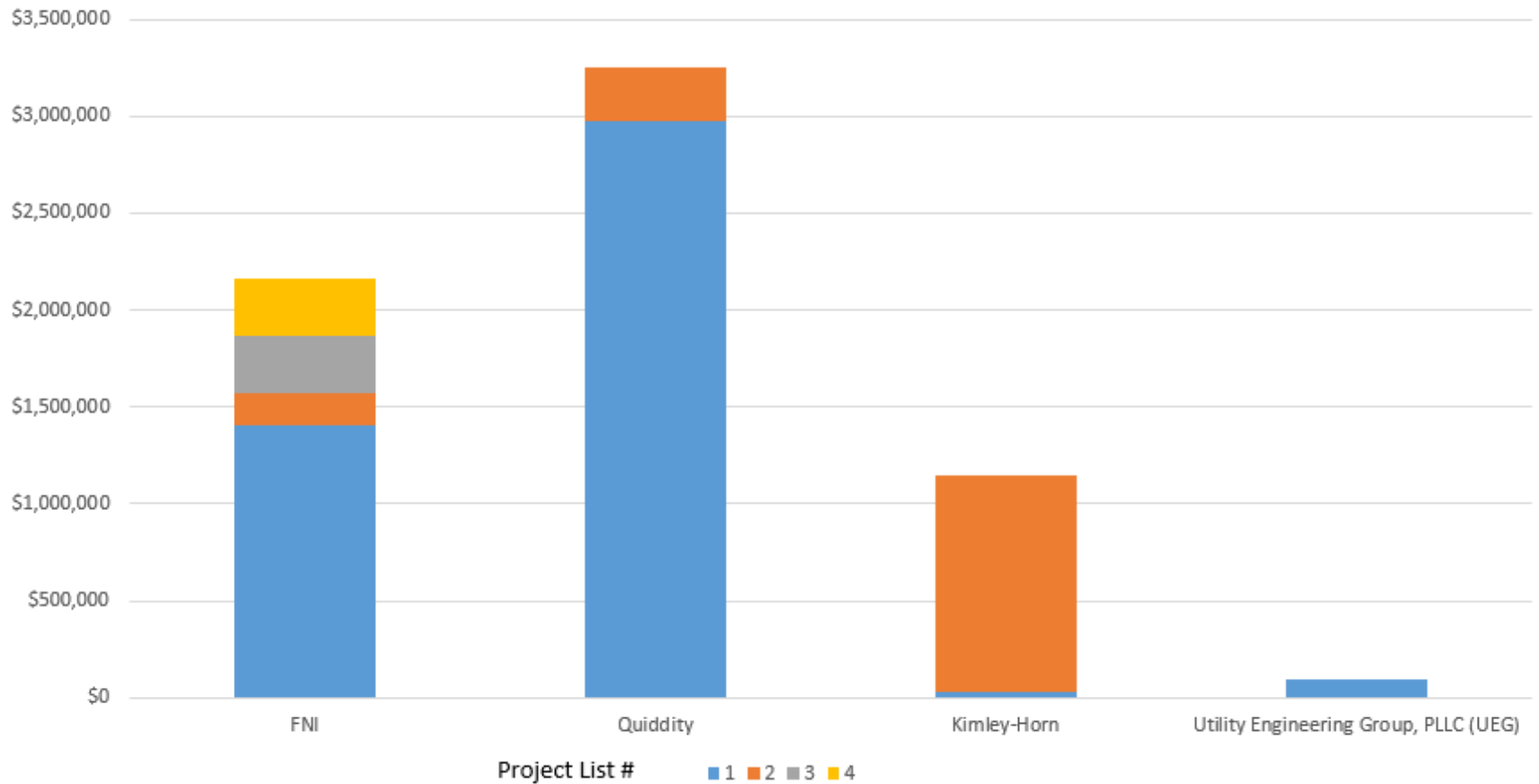


Exhibit A – Report for Water Engineering Contracts August 2024

Item 3.

Project List #	Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
1	Broken and Critical Valve Replacements	Utility Engineering Group, PLLC (UEG)	\$ 99,610.00		Engineering	Professional Service Agreement	8/20/2024
1	FM 1101 Discharge Line (CNB)	Freese and Nichols, Inc.	\$ 1,405,475.00	8/29/2024	Engineering	Professional Service Agreement	9/5/2024
2	Conrads Elevated Storage Tank (Goodwin)	Freese and Nichols, Inc.	\$ 161,726.00	8/29/2024	Engineering	Amendment	9/5/2024
3	FM 1044 EST	Freese and Nichols, Inc.	\$ 302,046.00	8/29/2024	Engineering	Amendment	9/5/2024
1	I-35 Water Line (Downtown)	Kimley-Horn and Associates, Inc.	\$ 30,000.00	8/29/2024	Engineering	Amendment	9/5/2024
1	FM 1101 Pump Station and GST	Quiddity Engineering, LLC	\$ 2,970,000.00	8/29/2024	Engineering	Professional Service Agreement	9/5/2024
2	Central Downtown to Morningside PZ Conversion	Kimley-Horn and Associates, Inc.	\$ 1,121,000.00	8/29/2024	Engineering	Professional Service Agreement	9/5/2024
4	Simon Street Improvements	Freese and Nichols, Inc.	\$ 292,427.00		Engineering	Professional Service Agreement	9/12/2024
2	AC Pipe Replacement - Solms	Quiddity Engineering, LLC	\$ 281,347.00		Engineering	Professional Service Agreement	9/13/2024



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action
From: Jesse Luna **Reviewed by:** David Hubbard
 Purchasing Manager Chief Administrative Officer
Submitted by: David Hubbard **Approved by:** Ryan Kelso
 Chief Administrative Officer Chief Executive Officer

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

BACKGROUND

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

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

FINANCIAL IMPACT

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

- None reported during this period.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Stewardship

EXHIBITS

None



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Weston Solutions, Inc. for the Design of the Dove Crossing Force Main Project

BACKGROUND

This Professional Services Agreement (the “Agreement”) with Weston Solutions, Inc. (“Weston”) provides project management services, preliminary design services, final design phase services, field services, permitting services and stakeholders coordination, and construction phase services for the New Braunfels Utilities (“NBU”) Dove Crossing Force Main Project (the “Project”). The Project is anticipated to replace an existing 8-inch force main with a new 14-inch force main located between the intersections of Roadrunner Avenue and Klein Road, as well as Dragon Trail and Chapel Bend, and will improve the reliability and operability of the system.

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

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

Upon completion of the final design, NBU staff will solicit a construction contract and anticipates bringing the construction contract to the Board for approval in October 2026. NBU staff plans to begin construction in November 2026 and complete construction by November 2027.

FINANCIAL IMPACT

The total financial impact for the Agreement with Weston for the Project is \$890,074.00, including supplemental services. The Project is budgeted within the fiscal year 2025 through fiscal year 2027 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

1. Professional Services Agreement with Weston

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **WESTON SOLUTIONS, INC.**, a Pennsylvania corporation authorized to transact business in the State of Texas (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

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

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All

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

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

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

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

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

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

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

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

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

Section 9. Indemnification.

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

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

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

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

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery

(subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

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

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be

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

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

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

Section 11. Termination.

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

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

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

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

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

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

Section 12. Miscellaneous.

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

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

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

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

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

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

(G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and

superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

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

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

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

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

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

(M) Offset.

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

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

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

If to NBU:

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

With copy to:

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

If to the Professional:

Weston Solutions, Inc.
Attn: Sam Irrinki
211 E 7th Street, Suite 620
Austin, TX 78701

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

(O) Confidentiality of Records. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under

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

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

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

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

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

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

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

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

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

relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

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

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

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

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

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

Section 16. Information Technology

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

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

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

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

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

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

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

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

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

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

- ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

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

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

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

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

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

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

Section 22. Texas Public Information Act. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to

cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgment and obligation are in addition to and complementary to the NBU's audit rights in Section 12(P).

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

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

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

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

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

(The remainder of this page intentionally left blank)

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

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

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

PROFESSIONAL:
WESTON SOLUTIONS, INC.,
a Pennsylvania corporation authorized
to transact business in the State of Texas

By: *Sam Irrinki*
Name: Sam Irrinki
Title: Client Account Director

Exhibit A

Scope of Services

The Professional shall provide all labor, material, and equipment necessary to provide project management services, preliminary design services, final design phase services, field services, permitting services and stakeholder coordination, bid phase services, and construction phase services, for the Dove Crossing Force Main Project. The Project shall consist of replacement of an existing 8-inch force main with a new 14-inch force main located between the intersections of Roadrunner Avenue and West Klein Road, and Dragon Trail and Chapel Bend in New Braunfels, Texas (the “Project Site”).

I. SUMMARY OF PROJECT SERVICES

1. The Project includes approximately 5,600 linear feet (“LF”) of new 14-inch diameter force main wastewater pipeline to be installed by open-cut and/or trenchless methods, starting at the intersection of Roadrunner Avenue and West Klein Road to the intersection of Jester Ridge and Dragon Trail, ending at Dragon Trail and Chapel Bend.
2. Two (2) drainage crossings using trenchless construction are included in the Project.

II. SERVICES BY TASK

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

Task 1. Project Management

1. The Professional shall provide the following project management services described in this Section.
 - 1.1. SCHEDULE. The Professional shall develop a baseline design schedule for the Project using Microsoft Project (“MS Project”) and prepare updated design schedules for the Project on a monthly basis on or before the 25th day of each month, for NBU to monitor progress and identify design submittal dates. Schedules shall be provided to the NBU project manager (“Project Manager”) via email in PDF format.
 - 1.2. QUALITY CONTROL. The Professional shall develop a quality assurance/quality control

program for the Project, which shall be explained in detail via a written document and provided to the Project Manager via email within thirty (30) days of notice to proceed (“NTP”).

- 1.3. **PROGRESS REPORTS.** The Professional shall provide NBU with electronic monthly project progress reports and submit written invoices on or before the 25th day of each month for the previous month’s effort. The Professional shall provide progress reports to NBU’s Project Manager via email.
- 1.4. **MEETING AGENDA/MINUTES.** The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the summary meeting minutes and action item logs to NBU’s Project Manager within one (1) week after meetings. Meeting agendas, minutes, and action item log will be provided to the NBU Project Manager in PDF format via email. The Professional will provide updates on the action item logs with their monthly progress reports identified in Section 1.3.
- 1.5. **PROJECT CONTROLS.** The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, the following:
 - 1.5.1. assigning a senior advisor to oversee quality assurance;
 - 1.5.2. developing an Engineer’s opinion of probable construction cost (“OPCC”) using recent bid tabs from similar projects or vendor prices;
 - 1.5.3. using MS Project to manage the schedule;
 - 1.5.4. coordinating communication with sub-consultants through emails and meetings;
 - 1.5.5. assisting with cash flow monitoring upon NBU’s request; and
 - 1.5.6. assisting with maintaining a risk register log provided by NBU.

Task 2. Preliminary Engineering Phase

2. Upon NBU providing NTP to the Professional, the Professional shall perform the preliminary engineering phase services described in this Section.
 - 2.1. **MEETINGS.** The Professional shall attend the following meetings and provide meeting agendas and summary meeting minutes to NBU’s Project Manager for the following meetings in accordance with the requirements listed in Section 1.4:

- 2.1.1. Project kick-off meeting with NBU (one (1) meeting);
 - 2.1.2. monthly progress status meetings (thirty (30) meetings);
 - 2.1.3. route study review meeting (one (1) meeting);
 - 2.1.4. preliminary engineering report (“PER”) review meeting, (one (1) meeting);
 - 2.1.5. 30% design review meeting (one (1) meeting);
 - 2.1.6. meetings with property owners (five (5) meetings);
 - 2.1.7. meetings with franchise utilities (three (3) meetings);
 - 2.1.8. meetings with the City of New Braunfels (“CoNB”) (four (4) meetings);
 - 2.1.9. meeting with the CoNB Parks Department (one (1) meeting); and
 - 2.1.10. meetings with additional stakeholders (three (3) meetings).
- 2.2. **ALTERNATIVE ROUTE EVALUATION.** The Professional shall perform an alternative route evaluation for up to three (3) routes for the proposed 14-inch force main. The Professional shall:
- 2.2.1. use existing geographic information system (“GIS”) and as-built information to determine locations of existing utilities on the Project Site;
 - 2.2.2. perform preliminary site visits to gather project information;
 - 2.2.3. locate all existing closed-circuit television (“CCTV”) and pipeline assessment certification program (“PACP”) databases provided by NBU. New CCTV services are not included;
 - 2.2.4. coordinate with appropriate stakeholders to gather all available information on the Project including CoNB Public Works, and CoNB Capital Improvements;
 - 2.2.5. evaluate up to three (3) potential routes and make recommendation of preferred route based on cost, constructability, and right of way (“ROW”). The Professional shall produce GIS exhibits showing proposed pipeline alignments and provide maps and hydraulic profiles of up to three (3) potential pipeline routes;
 - 2.2.6. provide a Class 4 Engineer’s OPCC as specified by the Association for the Advancement of Cost Engineering for each route; and
 - 2.2.7. develop a technical memorandum (“TM”) documenting analysis and recommendations, which shall be included in the PER.
- 2.3. **TRENCHLESS CONSTRUCTION METHODS.** The Professional shall evaluate the feasibility of trenchless construction in locations for alignments that cross or go beneath

drainage channels. The Professional shall determine the preferred method of trenchless construction for up to four (4) crossings or alignments.

2.4. 30% DESIGN DOCUMENTS

2.4.1. The Professional shall perform up to three (3) site visits during the 30% preliminary design phase timeframe described in Table 1 to gather Project information.

2.4.2. The Professional shall collect and review existing data, reports, mapping, and records from NBU. The Professional shall provide analysis of NBU's requirements for the Project, including planning, surveys, site evaluations, and comparative studies of prospective sites and solutions.

2.4.3. The Professional shall prepare 30% design drawings including plan views of all proposed infrastructure within the Project Site.

2.4.4. The Professional shall prepare exhibits showing visualizations of general site layout showing major features (tank with logo, building, fence, drive) and appearance from nearby roads.

2.4.5. The Professional shall prepare a Class 3 Engineer's OPCC based on 30% design drawings.

2.5. PRELIMINARY ENGINEERING REPORT. The Professional shall prepare a PER that includes 30% design drawings and describes the scope of the project for final design, ROW requirements, easement requirements, permitting, constructability, OPCC, and schedule. The PER shall include Project implementation, phasing and packaging for all portions of the project. The PER shall cover information, including but not be limited to, project description, force main sizing calculations, Texas Commission on Environmental Quality ("TCEQ") design criteria including velocity requirements, flow data provided by NBU, alternative analysis, constructability analysis, and proposed methods of construction, permitting requirements, recommended alternative alignment, and other relevant information to be utilized as part of the design of the proposed force main. The Professional shall submit a draft PER for NBU review and comment as well as a final PER incorporating all NBU comments in accordance with the timeframes in Table 1 for the 30% preliminary design phase. NBU comments shall be collected in part during an 8-hour full day review workshop. The final PER will be submitted within thirty (30) days of receiving comments.

2.6. DELIVERABLES. The Professional shall provide the following preliminary engineering

phase deliverables to NBU during the 30% preliminary design phase timeframe described in Table 1:

- 2.6.1. route study - maps and hydraulic profiles of up to three (3) potential pipeline routes and a Class 4 Engineer's OPCC;
- 2.6.2. PER – one (1) PDF electronic file; and
- 2.6.3. 30% design drawings including a Class 3 Engineer's OPCC – one (1) PDF electronic file and one (1) electronic Keyhole Markup language Zipped (“KMZ”) or shape (“SHP”) file.

Task 3. Final Design Phase

- 3. Upon NBU's written approval of the PER and 30% design documents, the Professional shall perform the final design phase services described in this Section.
 - 3.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and meeting minutes to NBU in accordance with the requirements listed in Section 1.4:
 - 3.1.1. 60% design review meeting (8-hour full-day workshop);
 - 3.1.2. 90% design review meeting (8-hour full-day workshop);
 - 3.1.3. monthly design meetings (up to (12) meetings);
 - 3.1.4. meetings with property owners (up to (5) meetings);
 - 3.1.5. meetings with franchise utilities (up to (5) meetings);
 - 3.1.6. permitting meeting with CoNB (up to (4) meetings);
 - 3.1.7. meeting with CoNB Parks Department (up to (2) meetings); and
 - 3.1.8. meetings with additional stakeholders (up to (4) meetings).
 - 3.2. 60% DESIGN DOCUMENTS. The Professional shall prepare 60% plans, specifications and Engineer's OPCC based on decisions made in the preliminary design phase. NBU shall provide the Professional easement requirements for each parcel via email to incorporate into the plan. Design documents shall include:
 - 3.2.1. a plan view and/or site layout of the proposed facilities;
 - 3.2.2. a profile view of sewer pipelines;
 - 3.2.3. call outs for major design items;
 - 3.2.4. standard details;

- 3.2.5. specifications for all major equipment and piping, at a minimum; and
 - 3.2.6. a table of contents for all required specifications and specifications that are provided by the Professional with the exception of NBU's standard specifications; and
 - 3.2.7. a Class 2 Engineer's OPCC based on 60% design documents.
- 3.3. 90% DESIGN DOCUMENTS. Upon NBU's written approval of 60% design documents, the Professional shall prepare 90% plans, specifications and Engineer's OPCC. 90% design documents shall include:
- 3.3.1. call outs for all design items on the plan sheets;
 - 3.3.2. complete specifications; and
 - 3.3.3. a Class 1 Engineer's OPCC based on 90% design documents and specifications.
- 3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon NBU's written approval of 90% design documents and specifications, the Professional shall prepare 100% plans, specifications and Engineer's OPCC. 100% drawings and specifications shall include:
- 3.4.1. a final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase;
 - 3.4.2. project files to include: .dwg, .mxd, and .kmz;
 - 3.4.3. preparation of the bid form; and
 - 3.4.4. a Class 1 Engineer's OPCC based on 100% design documents.
- 3.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1 for the final design phases:
- 3.5.1. 60% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 2 Engineer's OPCC during the 60% final design phase timeframe in Table 1;
 - 3.5.2. 90% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 1 Engineer's OPCC during the 90% final design phase timeframe in Table 1; and
 - 3.5.3. 100% design - the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 1 Engineer's OPCC during the 100% final design phase timeframe in Table 1.

Task 4. Field Services

4. The Professional shall perform the field services described in this Section.
 - 4.1. TOPOGRAPHIC SURVEY. The Professional shall conduct a topographic, utility, and boundary survey as described below. The extent of the survey shall include areas offsite as required, such as extending to allow for drainage design. Survey shall include a minimum of two (2) benchmarks within 1,000 feet of the Project Site.
 - 4.1.1. The Professional shall tie in all existing surface topographic features and structures within the vicinity of proposed alignments. This shall include, but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges and flow line), channels and drainage ways (tops, toes and flow line), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits, and visible valves, meters, clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits) mailboxes, etc. Trees shall be tagged and tabulated by size and species specific in compliance with the CoNB Tree Preservation Ordinance as defined in the CoNB Zoning Ordinance Chapter 5.3-5i. The survey limits shall extend approximately 100 feet on intersecting streets. The Professional shall provide sufficient ground shots to create one (1) foot contours for the Project.
 - 4.1.2. The Professional shall conduct a utility survey and locate existing utilities within the vicinity of proposed alignments. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipally owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey. The Professional shall bear all costs for the services associated with utility locates.
 - 4.1.3. The Professional shall locate up to ten (10) geotechnical borings and field locate

the borings by survey to match the Project survey (if applicable) provided by NBU.

- 4.1.4. The Professional shall set and install control points and/or benchmarks as required for the survey work (minimum 200-foot intervals). The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing.
- 4.1.5. NBU shall coordinate right of entry (“ROE”). NBU shall contact private property owners to ascertain permission to enter and perform field services within private properties. NBU shall coordinate with the Professional to provide the acquired ROE before field services begin.
- 4.1.6. The Professional shall research and review adjoining plats and deeds along the survey corridor. The Professional shall locate property corners and verify existing ROW along the survey corridor, based on found monuments and record documents.
- 4.2. **SUBSURFACE UTILITY ENGINEERING.** The Professional shall perform subsurface utility engineering (“SUE”) as described below.
- 4.2.1. The Professional shall perform SUE “Quality Level A” as defined by the American Society for Civil Engineers, for up to twelve (12) pothole locations. Level A includes physically locating the actual utility – often by ‘potholing.’ Once the utility is potholed, it is located horizontally and vertically by survey measurements. This location is typically to the top of pipe, which should be noted on the drawing.
- 4.2.1.1. The Professional shall provide coordination for all utility locates, clearances, and permitting required to conduct SUE potholes.
- 4.2.1.2. The Professional shall provide traffic control based on an estimated one (1) lane closure, depending on the directed dig site locations.
- 4.2.2. The Professional shall provide SUE “Quality Level B” as defined by the American Society for Civil Engineers, utility locates along the entire alignment of the pipeline. Level B includes two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods providing horizontal positioning of subsurface utilities to within approximately one (1) foot.
- 4.3. **GEOTECHNICAL DATA REPORT.** The Professional shall conduct a geotechnical

investigation to complete a Geotechnical Data Report (“GDR”) for the Project as described in this Section.

4.3.1. Field Exploration:

- 4.3.1.1. The Professional shall determine the required boring locations on the Project Site. The Professional shall provide a Project Site boring location map that shows the exploratory borings within the vicinity of the proposed improvements and along the proposed water main alignments.
- 4.3.1.2. The Professional shall coordinate with NBU, the CoNB, and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.
- 4.3.1.3. The Professional shall drill exploratory borings for the proposed improvements according to the schedule provided below:
 - 4.3.1.3.1. Ten (10) borings to a maximum depth of fifteen (15) feet below existing grade.
- 4.3.1.4. The boring method conducted on the Project Site shall be advanced using standard rotary drilling equipment with continuous-flight augers or rotary wash methods. Subsurface samples shall be collected using a 2-inch diameter split-spoon sampler in conjunction with the standard penetration test (“SPT”). Intermittent 3-inch diameter Shelby tube samples shall be collected in between the SPTs.
- 4.3.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.
- 4.3.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.
- 4.3.1.7. The Professional shall patch borings drilled through pavement with like material (asphalt, concrete) upon completion of backfilling.
- 4.3.1.8. The Professional shall have personnel experienced in logging borings, directing the drilling, and handling and transporting the samples. The Professional shall provide visual classification of the subsurface stratigraphy in general accordance to the American Society for Testing

and Materials standard number D2488 and the Unified Soil Classification System during drilling and sampling.

- 4.3.2. The Professional shall provide laboratory testing to include the following:
 - 4.3.2.1. testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials; and
 - 4.3.2.2. laboratory tests assigned for the specific subsurface materials encountered during exploration on the Project Site, but which are expected to include the following number and type of tests:
 - 4.3.2.2.1. Atterberg limits tests (up to ten (10) tests);
 - 4.3.2.2.2. percent passing the #200 sieve (up to ten (10) tests);
 - 4.3.2.2.3. sieve analysis (gradation) tests (up to ten (10) tests);
 - 4.3.2.2.4. moisture content tests (up to ten (10) tests); and
 - 4.3.2.2.5. unconfined compressive strength tests (with unit weights; up to ten (10) tests).
- 4.3.3. The Professional shall prepare a GDR that includes the following information and recommendations, as applicable:
 - 4.3.3.1. a summary of the field and laboratory sampling and testing program;
 - 4.3.3.2. boring logs and laboratory testing results;
 - 4.3.3.3. a review of general site conditions including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered;
 - 4.3.3.4. trenchless construction feasibility and recommendations of auger boring and/or horizontal directional drilling;
 - 4.3.3.5. general discussion of expected construction-related issues; and
 - 4.3.3.6. earthwork-related recommendations for use during development of plans and specifications.

4.4. ENVIRONMENTAL AND CULTURAL INVESTIGATIONS. The Professional shall conduct an environmental and/or cultural study for the Project. The Professionals shall perform the following:

- 4.4.1. provide NBU field delineation of Waters of the U.S. and wetlands utilizing global positioning system (“GPS”) equipment, and complete the desktop analysis to identify areas that could contain jurisdictional waters and wetlands information;
 - 4.4.2. complete wetland determination data forms and permitting for disturbance of the stream beds that will be disturbed during construction, including formal coordination with the United States Army Corps of Engineers (“USACE”);
 - 4.4.3. provide NBU a pedestrian survey to identify potential habitat for federally listed threatened and endangered species, including potential karst habitat identification;
 - 4.4.4. provide a coordination letter and desktop review to the Texas Historical Commission (“THC”) that identifies areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys; and
 - 4.4.5. obtain identification of permits, clearances, and additional required actions for Project.
- 4.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1:
- 4.5.1. ROE list of property owners - one (1) Excel file electronic copy submitted with 30% design deliverables. The list shall be updated and managed as ROE is granted and services are completed;
 - 4.5.2. GDR - one (1) PDF electronic copy submitted with 60% design deliverables; and
 - 4.5.3. environmental documents - one (1) PDF electronic copy submitted with 60% design deliverables.

Task 5. Permitting & Stakeholders

- 5. The Professional shall coordinate with the following stakeholders/agencies as described in this Section.
 - 5.1. UNITED STATES ARMY CORPS OF ENGINEERS. The Professional shall prepare and provide a coordination letter to obtain a USACE Section 404 permit.
 - 5.2. TEXAS HISTORICAL COMMISSION. The Professional shall coordinate with the consultant hired directly by Professional to prepare and provide a coordination letter and desktop review to the THC and to coordinate areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys.

- 5.3. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY. The Professional shall prepare and submit permit applications to TCEQ for approval of all design documents. The permit applications include the following:
- 5.3.1. variance letter; and
 - 5.3.2. notification letter for force main plans.
- 5.4. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit permit applications to the CoNB to obtain permits for:
- 5.4.1. floodplain; and
 - 5.4.2. public infrastructure permit.
- 5.5. GUADALUPE COUNTY. The Professional shall prepare and submit a permit application for all work within Guadalupe County ROW.
- 5.6. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1:
- 5.6.1. USACE coordination letter - one (1) PDF electronic copy;
 - 5.6.2. TCEQ permit/ approval letter not later than the bid advertisement date - one (1) PDF electronic copy; and
 - 5.6.3. CoNB permit not later than the bid advertisement date - one (1) PDF electronic copy.

Task 6. Bid Phase Services

6. Upon completion of the final design, the Professional shall proceed with the bid phase services described in this Section.
- 6.1. PREBID CONFERENCE. The Professional shall attend a pre-bid conference to be administered by NBU. The Professional shall assist NBU with preparation of the agenda, provide NBU with a meeting summary, and coordinate conference responses with NBU. The Professional shall provide NBU with written responses to issues identified at the pre-bid conference, and shall be in the form of addenda issued after the conference and prior to bid opening.
- 6.2. INTERPRET BID DOCUMENTS. The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare up to four (4) addenda to the bid documents if necessary if requested by NBU.

- 6.3. **BID EVALUATION.** The Professional shall attend a bid-opening conference to be administered by NBU. The Professional shall assist NBU in the opening and analyzing of the bids received for the Project, including researching contractor qualifications and references. The Professional shall recommend award of contract or other actions as appropriate to be taken by NBU.
- 6.4. **CONFORMED CONSTRUCTION DOCUMENTS.** The Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications.
- 6.5. **DELIVERABLES.** The Professional shall deliver the following to NBU:
- 6.5.1. up to four (4) addenda between advertisement and bid opening - one (1) PDF electronic copy each to NBU and bidders; and
 - 6.5.2. conformed construction documents by NTP - one (1) PDF electronic copy.

Task 7. Construction Phase Services

7. Upon completion of the bid phase services, the Professional shall proceed with construction phase administration services described in this Section. The Professional shall provide general construction contract administration services described in this Section.
- 7.1. **FACILITY INTEGRATION AND OPERATIONS (“FIO”).** The Professional shall develop an FIO memorandum that provides specific instructions on how the new facilities should be integrated into the existing wastewater system, as well as special operating instructions. The FIO memorandum shall generally include:
- 7.1.1. description of new facilities – major components and equipment, purpose and intent, and how new facilities tie into existing infrastructure;
 - 7.1.2. integration requirements - completion and testing procedures, owner staff required, responsibilities, and notifications; and
 - 7.1.3. operational and maintenance requirements - design settings and controls, operating procedures, and maintenance procedures.
- 7.2. **MEETINGS AND SITE VISITS.** The Professional shall attend the meetings and provide the services for meetings and site visits as described in this Section.
- 7.2.1. The Professional shall assist NBU in conducting a pre-construction conference with

the construction contractor and prepare agenda, prepare and provide NBU with meeting minutes and coordinate conference responses with NBU in accordance with meeting deliverables timelines specified in Section 1.4.

7.2.2. The Professional shall conduct one (1) construction document control workshop for the contractor.

7.2.3. The Professional shall attend up to a total of twenty-four (24) bi-weekly construction progress meetings. The Professional shall prepare the agenda, and submit meeting minutes to NBU and the contractor in accordance with the timeline specified in Section 1.4.

7.2.4. The Professional shall attend up to a total of twenty-four (24) bi-weekly site visits during construction of the Project to observe the progress and the quality of work, and to determine if the work is proceeding in accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports for each site visit and notify NBU of any non-conforming work performed by the contractor, observed on the site visits. The requirements for deliverables in this Section 7.2.4 are more specifically described in Section 7.8.

7.2.5. The Professional shall conduct, with NBU's representatives, two (2) substantial completion inspections and punch list reviews of the Project for conformance with the design concept of the Project and compliance with the construction contract documents within sixty (60) days of substantial completion. The Professional shall prepare a list of deficiencies to be corrected by the contractors before recommendation of final payment.

7.2.6. The Professional shall conduct two (2) final completion inspections of the Project within seven (7) days of final completion for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make recommendation of final payment.

7.3. SUBMITTAL MANAGEMENT. The Professional shall use FNiManager, a document management system for construction documents. The Professional shall monitor the processing of contractor's submittals (shop drawings, requests for information, schedules, certified test reports, etc.), provide for filing and retrieval of Project documentation, and

verify that the contractor is sending and processing submittals in accordance with the schedules. The Professional shall produce monthly reports and submit them to NBU by the 25th day of each month indicating the status of all submittals in the review process.

7.3.1. **SUBMITTAL REVIEW.** The Professional shall review all contractor submittals for compliance with the design concepts to include the following:

- 7.3.1.1. shop drawings (up to thirty (30));
- 7.3.1.2. record data (up to fifteen (15));
- 7.3.1.3. requests for information (up to twenty-five (25));
- 7.3.1.4. schedules (up to thirteen (13));
- 7.3.1.5. certified test reports (up to forty (40));
- 7.3.1.6. operation and maintenance manuals (up to three (3)); and
- 7.3.1.7. miscellaneous submittals (up to fifteen (15)).

7.4. **CHANGE ORDERS.** The Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project as described in this Section.

7.4.1. The Professional shall adhere to the NBU established procedures and document construction changes required to implement modifications to the Project.

7.4.2. The Professional shall process contract modifications and negotiate with the contractor at NBU's direction to determine the cost and time impacts of these changes.

7.4.3. The Professional shall prepare field/change order documentation for up to ten (10) field orders for minor alterations and up to four (4) change orders.

7.4.4. The Professional shall evaluate up to two (2) notices of contractor claims and make initial recommendations to NBU on the merit and value of the claim based on information submitted by the contractor or available Project documentation. The Professional shall negotiate a settlement value with the contractor at NBU's direction.

7.5. **INTERPRET DRAWINGS AND SPECIFICATIONS.** The Professional shall interpret the drawings and specifications for NBU and the contractor during the course of construction per the schedule assumed herein.

7.6. **PAY ESTIMATES.** The Professional shall review and comment on monthly and final

estimates for payment to the contractor pursuant to the general conditions of the construction contract during the course of the construction project per the schedule assumed herein.

7.7. CLOSE-OUT DOCUMENTS

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

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

- 7.7.2.1. location;
- 7.7.2.2. warranty date;
- 7.7.2.3. manufacturer;
- 7.7.2.4. diameter (if applicable); and
- 7.7.2.5. linear feet.

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

- 7.8.1. one (1) PDF electronic copy of FIO memorandum within thirty (30) days of substantial completion;
- 7.8.2. one (1) project site visit memo per site visit, which must be submitted (i) in PDF format; (ii) on FNI Manager, and (iii) no later than three (3) days after each site visit;
- 7.8.3. responses to contractor submittals, requests for information, and other documents within fourteen (14) days of receipt;
- 7.8.4. one (1) PDF electronic copy and one (1) georeferenced .dwg file of record drawings and specifications in accordance with NBU standards, with features adjusted to the

location of GPS points collected in the field by the contractor and provided to NBU within sixty (60) days of receipt of record drawings from contractor or final completion; and

7.8.5. one (1) PDF electronic copy of addition and retirement sheets provided to NBU within thirty (30) days of substantial completion.

SUPPLEMENTAL SERVICES

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

TIME OF COMPLETION

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

Table 1

Project Milestones	Start Date	End Date
Notice to Proceed	1/7/2025	
30% Preliminary Design	1/7/2025	9/14/2025
60% Final Design	9/21/2025	3/27/2026
90% Final Design	4/1/2026	6/5/2026
100% Final Design	6/8/2026	9/14/2026
Permitting	7/14/2025	8/31/2026
Bid Phase	9/23/2026	10/21/2026
Construction Phase	11/9/2026	11/10/2027

Exhibit B

Compensation

NBU agrees to pay the Professional for the Services and the Supplemental Services rendered under this Agreement in accordance with Sections I. and II. below.

I. Services

NBU shall pay the Professional for the Services rendered under this Agreement in an amount not to exceed \$780,074 as further described in Table 2 below.

Table 2

Task	Fee
Task 1: Project Management	\$46,892
Task 2: Preliminary Engineering Phase	\$105,597
Task 3: Final Design Phase	\$167,608
Task 4: Field Services	\$309,641
Task 5: Permitting & Stakeholders	\$30,240
Task 6: Bid Phase	\$14,662
Task 7: Construction Phase	\$105,434
Total	\$780,074

II. Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed under this Agreement in an amount not to exceed \$110,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement, or contract amendment, as appropriate prior to the Professional performing the Supplemental Services.



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Garver, LLC for the Design of the Gruene Lift Station Expansion Project

BACKGROUND

This Professional Services Agreement (the “Agreement”) with Garver, LLC (“Garver”) provides project management, preliminary engineering phase, final design phase, field services, permitting and coordination with stakeholders, bid phase services, and construction phase services for the New Braunfels Utilities (“NBU”) Gruene Lift Station Expansion Project (the “Project”). The Project will consist of a new lift station, decommissioning and demolition of the existing lift station, 300 linear feet (“LF”) of new effluent force main, and 300 LF of new gravity line located at 1701 Hunter Road, and will bring the lift station into compliance with TCEQ and address issues noted from NBU operations.

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

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

Upon completion of the final design, NBU staff will solicit a construction contract and anticipates bringing the construction contract to the Board for approval in January 2026. NBU staff plans to begin construction in February 2026 and complete construction by July 2027.

FINANCIAL IMPACT

The total financial impact for the Agreement with Garver for the Project is \$1,022,531.00, including supplemental services. The Project is budgeted within the Fiscal Year 2025 through Fiscal Year 2027 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

1. Professional Services Agreement with Garver

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **GARVER, LLC**, an Arkansas limited liability company authorized to transact business in the State of Texas (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

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

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall

include a record of time expended and work performed in sufficient detail to justify payment. In the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

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

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

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

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

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

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

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

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

Section 9. Indemnification.

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

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

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

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

Section 10. Insurance.

(A) General.

- i. Insurer Qualifications. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. Primary Insurance. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.

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

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

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

The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

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

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

Section 11. Termination.

(A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

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

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are

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

Section 12. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

(M) Offset.

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

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

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

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

If to NBU:

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

With copy to:

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

If to the Professional:

Garver, LLC
13750 San Pedro Avenue, Suite 350
San Antonio, TX 78232

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

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

Section 16. Information Technology

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

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

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

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

OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, ANY TIER OF SUBCONTRACTOR, OR ANY ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, 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 Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

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

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

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

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

(A) it is not owned by or the majority of stock or other ownership interest in the Professional is not held or controlled by:

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

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

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

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

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

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

controls, is controlled by, or is under common control with the Professional and exists to make a profit.

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

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

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

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

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

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

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

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

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

PROFESSIONAL:
GARVER, LLC,
an Arkansas limited liability company authorized
to transact business in the State of Texas


By: 
Name: Randall G. McIntyre
Title: Vice President

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide project management, preliminary engineering phase, final design phase, field services, permitting and stakeholders, bid phase services, and construction phase services for the Gruene Lift Station Project. The Project will consist of a new lift station, decommissioning and demolition of the existing lift station, 300 linear feet (“LF”) of new effluent force main, and 300 LF of new gravity line located at 1707 Hunter Road in New Braunfels, Texas (the “Project Site”).

I. SUMMARY OF PROJECT SERVICES

A. Wastewater Lift Station

1. The Project includes a new 0.9 million gallon per day (“MGD”) lift station expandable up to 1.4 MGD, including pumps, motors, piping, valves, electrical equipment, and electrical/control/supervisory control and data acquisition (“SCADA”). The lift station shall include structural, electrical, instrumentation, and controls.
2. Site improvements shall include site piping, valves, flowmeter, site power distribution, site lighting, fencing, grading and drainage, detention ponds, roads and parking, and field instrumentation.
3. The lift station shall include a back-up portable electric generating hookup and manual transfer switch.
4. Communication shall tie into the existing fiber optic network on Hunter Road.
5. Security facilities shall include fencing, crash barriers at gates, access control, cameras, and cybersecurity.

B. Force Main

1. The Project includes 300 LF of new effluent force main.

C. Gravity Line

1. The Project includes 300 LF of new gravity line.

II. SERVICES BY TASK

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Effective 09.01.2023

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

Task 1. Project Management

1. The Professional shall provide the project management services described in this Section.
 - 1.1. SCHEDULE. The Professional shall develop a baseline design schedule for the Project and prepare updated design schedules for the Project on a monthly basis on or before the 25th day of each month, for NBU to monitor progress and identify design submittal dates. Schedules shall be provided to the NBU project manager (“Project Manager”) in PDF format via email.
 - 1.2. QUALITY CONTROL. The Professional shall develop a quality assurance/quality control program for the Project, which shall be explained in detail via a written document and provided to NBU’s Project Manager via email within thirty (30) days of issuance of the notice to proceed (“NTP”).
 - 1.3. PROGRESS REPORTS. The Professional shall provide NBU with electronic monthly Project progress reports and submit written invoices on or before the 25th day of each month for the previous month’s effort. Progress reports shall be provided to NBU’s Project Manager via email.
 - 1.4. MEETING AGENDA/MINUTES. The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the documented meeting minutes and action item logs to NBU’s Project Manager within one (1) week after meetings.
 - 1.5. PROJECT CONTROLS. The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, the following:
 - 1.5.1. assigning a senior advisor to oversee quality assurance;
 - 1.5.2. developing cost estimates using recent bid tabs from similar projects or vendor prices;
 - 1.5.3. using Microsoft Project or similar to manage the schedule; and
 - 1.5.4. coordinating communication with sub-consultants through emails and meetings.

1.6. DESIGN COORDINATION MEETINGS. The Professional shall lead up to four (4) design coordination meetings. Each meeting shall be up to two (2) hours in length, either at NBU offices or virtual, as determined by NBU, and the Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the summary meeting minutes and action item log to NBU's Project Manager within one (1) week after the meeting. The meetings may occur at any point during the preliminary engineering or final design phases, as requested by NBU's Project Manager.

Task 2. Preliminary Engineering Phase

2. Upon NBU providing NTP to the Professional, the Professional shall perform the preliminary engineering phase services described in this Section.

2.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and summary meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:

2.1.1. Project kick-off meeting with NBU (one (1) meeting);

2.1.2. monthly progress status meetings (three (3) meetings);

2.1.3. 30% design review meeting (one (1) meeting);

2.1.4. meeting with franchise utilities (one (1) meeting); and

2.1.5. meeting with the City of New Braunfels (one (1) meeting).

2.2. LIFT STATION ANALYSIS. The Professional shall analyze the lift station design requirements as described in this Section.

2.2.1. The Professional shall review design documents and as-builts for the existing lift station.

2.2.2. The Professional shall determine the required pump sizes for the lift station.

2.2.3. The Professional shall coordinate with material and equipment vendors.

2.2.4. The Professional shall determine electrical requirements.

2.2.5. The Professional shall determine the SCADA requirements.

2.2.6. The Professional shall determine security needs for the lift station.

2.2.7. The Professional shall determine wet well size. Size shall be based on minimum Texas Commission on Environmental Quality ("TCEQ") sizing requirements.

2.2.8. The requirements for deliverables in this Section 2.2 are more specifically described in Section 2.5.

2.3. 30% DESIGN DOCUMENTS

2.3.1. The Professional shall perform up to one (1) preliminary site visit during the 30% preliminary design phase timeframe described in Table 1 to gather Project information.

2.3.2. The Professional shall collect and review existing data, reports, mapping, and records from NBU. The Professional shall review documents associated with the Project. The Professional shall provide analyses of NBU's requirements for the Project, including planning, surveys, site evaluations, and comparative studies of prospective sites and solutions.

2.3.3. The Professional shall prepare 30% design drawings including plan views of all proposed infrastructure within the Project Site.

2.3.4. The Professional shall prepare a Class 4 opinion of probable construction cost ("OPCC") based on 30% design drawings.

2.3.5. The requirements for deliverables in this Section 2.3 are more specifically described in Section 2.5.

2.4. PRELIMINARY ENGINEERING REPORT ("PER"). The Professional shall prepare a PER that includes 30% design plans and describes the scope of the Project for final design, right-of-way requirements, easement requirements, permitting, constructability, OPCC and schedule. The PER shall include Project implementation, phasing and packaging for all portions of the Project. The Professional shall submit a draft PER for NBU review and comment as well as a final PER incorporating all NBU comments. The final PER will be submitted within 30 days of receiving comments.

2.5. DELIVERABLES. The Professional shall provide the following preliminary engineering phase deliverables to NBU during the 30% preliminary design phase timeframe described in Table 1:

2.5.1. PER and Class 4 OPCC – one (1) PDF electronic file; and

2.5.2. 30% design drawings – one (1) PDF electronic file.

Task 3. Final Design Phase

3. Upon NBU's written approval of the PER and 30% design documents, the Professional shall perform the final design phase services described in this Section.
 - 3.1. MEETINGS. The Professional shall attend the following meetings and provide meeting agendas and meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
 - 3.1.1. 60% design review meeting (shall be one of the design coordination meetings identified in Section 1.6);
 - 3.1.2. 90% design review meeting (shall be one of the design coordination meetings identified in Section 1.6);
 - 3.1.3. monthly design meetings (seven (7) meetings);
 - 3.1.4. meeting with franchise utilities (one (1) meeting);
 - 3.1.5. permitting meeting with City of New Braunfels ("CoNB") (one (1) meeting); and
 - 3.1.6. meetings with additional stakeholders and regulatory agencies (two (2) meetings).
 - 3.2. 60% DESIGN DOCUMENTS. The Professional shall prepare 60% plans, specifications and OPCC based on decisions made in the preliminary design phase. Design documents shall include:
 - 3.2.1. plan view and/or site layout of the proposed facilities;
 - 3.2.2. a lighting layout;
 - 3.2.3. an electrical one-line diagram;
 - 3.2.4. a profile view of sewer pipelines;
 - 3.2.5. a profile view of the force main;
 - 3.2.6. mechanical drawings to include major design components of the lift station;
 - 3.2.7. call outs for major design items;
 - 3.2.8. table of contents for all required specifications provided by the Professional with the exception of NBU's standard specifications; and
 - 3.2.9. a Class 3 OPCC based on 60% design documents.
 - 3.3. 90% DESIGN DOCUMENTS. Upon NBU's written approval of 60% design documents, the Professional shall prepare 90% drawings, specifications, and an OPCC. 90% design documents shall include:

- 3.3.1. call outs for all design items on the plan sheets;
 - 3.3.2. complete specifications; and
 - 3.3.3. a Class 2 OPCC based on 90% design documents.
- 3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon NBU's written approval of 90% drawings and specifications, the Professional shall prepare 100% drawings, specifications, and an OPCC. 100% drawings and specifications shall include:
- 3.4.1. final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase. NBU shall provide the Professional easement requirements for each parcel via email to incorporate into the plans;
 - 3.4.2. project files to include: .dwg, .mxd, and .kmz;
 - 3.4.3. preparation of the bid form; and
 - 3.4.4. a Class 1 OPCC based on 100% design documents.
- 3.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1:
- 3.5.1. 60% design – the Professional shall provide one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 3 OPCC during the 60% design phase timeframe in Table 1;
 - 3.5.2. 90% design – the Professional shall provide one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 2 OPCC during the 90% design phase timeframe in Table 1; and
 - 3.5.3. 100% design - the Professional shall provide (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 1 OPCC during the 100% final design phase timeframe in Table 1.

Task 4. Field Services

- 4. The Professional shall perform the field services described in this Section.
 - 4.1. TOPOGRAPHIC SURVEY. The Professional shall prepare a topographic, utility and boundary survey as described in this Section.
 - 4.1.1. The Professional shall tie in all existing surface topographic features and structures within the survey limits. This shall include, but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls,

drainage structures (top, edges and flow line), channels and drainage ways (tops, toes and flow line), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits. This shall also include, but is not limited to: visible valves, meters, clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits), mailboxes, etc. Trees shall be tagged and tabulated by size and species specific in compliance with the CoNB Tree Preservation ordinance as defined in the CoNB Zoning Ordinance Chapter 5.3-5i. The survey limits shall extend approximately 100 feet on intersecting streets. The Professional shall provide sufficient ground shots to create one (1) foot contours for the Project.

- 4.1.2. The Professional shall conduct a utility survey and locate existing utilities within the Project boundary. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipal owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey. The Professional shall bear all costs for the services associated with utility locates.
- 4.1.3. The Professional shall locate up to five (5) geotechnical borings and tie them into the Project survey.
- 4.1.4. The Professional shall set and install control points and/or benchmarks as required for the survey work (minimum 500-foot intervals). The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing.
- 4.1.5. NBU shall coordinate right of entry (“ROE”) to private properties. NBU shall contact private property owners to ascertain permission to enter and perform field services within private properties. NBU shall coordinate with the Professional to provide the acquired ROE before field services begin.

4.1.6. The Professional shall research and review adjoining plats and deeds along the survey corridor. The Professional shall locate property corners and identify existing right of way (“ROW”) along the survey corridor, based on found monuments and record documents.

4.2. EASEMENT DOCUMENTS. The Professional shall prepare a metes and bounds description and exhibits for required easements for the Project for up to two (2) parcels based on the criteria described in this Section.

4.2.1. The Professional shall perform deed, plat and courthouse record research, request title reports, and obtain copies of deeds and easement documents.

4.2.2. The Professional shall survey property corners, fences, and appurtenant property evidence.

4.2.3. Easements shall consist of a permanent easement and a temporary construction easement. There shall be a separate document for permanent easements and temporary easements for each parcel. Easements shall be signed and sealed by a registered professional land surveyor, currently registered in the State of Texas. Each easement shall have attached to it a copy of the corresponding deed for that property and a closure computation sheet for the easement tract. A draft copy of the easement shall be submitted for review by the Professional via email to the NBU Project Manager. The Professional shall incorporate comments as appropriate and submit one (1) final copy of the easement and deed to the NBU Project Manager. Each draft metes and bounds exhibit shall be revised up to one (1) time per NBU’s review.

4.2.4. The exhibit plat and legal description must meet all the rules of the Texas Board of Professional Land Surveying and the Professional Land Surveying Practices Act and the Manual of Practice for Land Surveying in the State of Texas as published by the Texas Society of Professional Surveyors. The latest revision shall be used.

4.2.5. Legal descriptions shall include sufficient information to identify the location, boundaries, monumentation, and area of the described tract, as well as its relationship to the parent tract out of which it is surveyed. Each legal description shall be accompanied by an exhibit plat that depicts the worded description. Legal

descriptions and exhibit plats shall be reproduced on 8.5" x 14" size paper. All must be legible. The exhibit plat or legal description should be able to stand alone.

4.2.6. The Professional shall stake final easement boundaries.

4.3. GEOTECHNICAL DATA REPORT. The Professional shall conduct a geotechnical investigation to complete a Geotechnical Data Report ("GDR") for the Project as described in this Section.

4.3.1. Field Exploration

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

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

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

4.3.1.3.1. three (3) borings to a maximum depth of 20 feet below existing grade;

4.3.1.3.2. one (1) boring to a maximum depth of 35 feet below existing grade;
and

4.3.1.3.3. one (1) boring to a maximum depth of 5 feet below existing grade.

4.3.1.4. The borings conducted on the Project Site shall be advanced using standard rotary drilling equipment with continuous-flight augers or rotary wash methods. Subsurface samples shall be collected using 2-inch diameter split-spoon sampler in conjunction with the standard penetration test ("SPT"). Intermittent 3-inch diameter Shelby tube samples shall be collected in between the SPTs.

4.3.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.

4.3.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.

- 4.3.1.7. The Professional shall patch borings drilled through pavement with like material (asphalt, concrete) upon completion of backfilling.
- 4.3.1.8. The Professional shall use personnel experienced in logging borings, directing the drilling, and handling and transporting the samples. The Professional shall provide visual classification of the subsurface stratigraphy in general accordance with the American Society for Testing and Materials standard number D2488 and the Unified Soil Classification System during drilling and sampling.
- 4.3.2. The Professional shall provide laboratory testing to include the following:
 - 4.3.2.1. testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials; and
 - 4.3.2.2. laboratory tests assigned for the specific subsurface materials encountered during exploration on the Project Site, but which are expected to include the following type of tests:
 - 4.3.2.2.1. water content;
 - 4.3.2.2.2. unit dry weight;
 - 4.3.2.2.3. Atterberg limit;
 - 4.3.2.2.4. grain size analysis;
 - 4.3.2.2.5. unconfined compressive strength; and
 - 4.3.2.2.6. soluble sulfates and chlorides.
- 4.3.3. The Professional shall prepare a GDR that includes the following information and recommendations, as applicable:
 - 4.3.3.1. a summary of the field and laboratory sampling and testing program;
 - 4.3.3.2. boring logs and laboratory testing results;
 - 4.3.3.3. a review of general site conditions including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered;
 - 4.3.3.4. general discussion of expected construction-related issues; and
 - 4.3.3.5. earthwork-related recommendations for use during development of plans and specifications.
- 4.3.4. The Professional shall provide the final GDR electronically as a 60% final design

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phase deliverable with the specifications.

4.4. ENVIRONMENTAL AND CULTURAL INVESTIGATIONS. The Professional shall conduct an environmental and/or cultural study for the Project. The Professional shall perform the following:

- 4.4.1. provide NBU field delineation of Waters of the U.S. and wetlands utilizing global positioning system (“GPS”) equipment and complete the desktop analysis to identify areas that could contain jurisdictional waters and wetlands;
- 4.4.2. complete Wetland Determination Data Forms and permitting for disturbance of the stream beds that will be disturbed during construction, including formal coordination with the United States Army Corps of Engineers (“USACE”);
- 4.4.3. provide NBU a pedestrian survey to identify potential habitat for federally listed threatened and endangered species including potential karst habitat identification;
- 4.4.4. provide a coordination letter and desktop review to the Texas Historical Commission (“THC”) that identifies areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys; and
- 4.4.5. obtain identification of permits, clearances, and additional required actions for the Project.

4.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1:

- 4.5.1. ROE list of property owners - one (1) Excel file electronic copy submitted with 30% design deliverables. The list shall be updated and managed as ROE is granted and services are completed;
- 4.5.2. signed and sealed metes and bounds - one (1) PDF electronic copy submitted with 60% design deliverables;
- 4.5.3. GDR - one (1) PDF electronic copy submitted with 60% design deliverables; and
- 4.5.4. environmental and cultural investigation documents and permits - one (1) PDF electronic copy submitted with 60% design deliverables.

Task 5. Permitting & Stakeholders

5. The Professional shall coordinate with the following stakeholders/agencies as described in this Section.

5.1. TEXAS HISTORICAL COMMISSION. The Professional shall prepare and provide a

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coordination letter and desktop review to the THC and to coordinate areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys.

5.2. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY. The Professional shall prepare and submit permit applications to TCEQ for approval of all design documents. The permit applications include the following:

- 5.2.1. sealed engineering report;
- 5.2.2. sealed engineering plans and specifications; and
- 5.2.3. notification letter for sewer plans.

5.3. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit permit applications to the CoNB to obtain permits for:

- 5.3.1. public infrastructure or commercial permit; and
- 5.3.2. floodplain.

5.4. EASEMENT ACQUISITION COORDINATION. The Professional shall coordinate and provide support to NBU and/or NBU hired consultant to obtain easements for up to 2 parcels. The Professional shall provide the following easement acquisition coordination support services:

- 5.4.1. attend up to two (2) meetings per easement with NBU, the hired consultant and/or the property owner; and
- 5.4.2. review draft and final easement documents for up to two (2) parcels.

5.5. DELIVERABLES.

- 5.5.1. TCEQ permit(s)/ approval(s) described in Section 5.2 - one (1) PDF electronic copy of each; and
- 5.5.2. CoNB permit described in Section 5.3 - one (1) PDF electronic copy.

Task 6. Bid Phase Services

6. Upon completion of the final design, the Professional shall proceed with the bid phase services described in this Section.

6.1. PREBID CONFERENCE. The Professional shall attend a pre-bid conference administered by NBU. The Professional shall assist NBU with preparation of the agenda,

provide NBU with a meeting summary, and coordinate conference responses with NBU. The Professional shall provide NBU with written responses to issues identified at the pre-bid conference and shall be in the form of addenda issued after the conference and prior to bid opening.

- 6.2. **INTERPRET BID DOCUMENTS.** The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare addenda to the bid documents if necessary.
- 6.3. **BID EVALUATION.** The Professional shall attend a bid-opening conference if administered by NBU. The Professional shall assist NBU in the opening and analyzing of the bids received for the Project, including researching contractor qualifications and references.
- 6.4. **CONFORMED CONSTRUCTION DOCUMENTS.** The Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications.
- 6.5. **DELIVERABLES.** The Professional shall deliver the following:
- 6.5.1. up to four (4) addenda between advertisement and bid opening - one (1) PDF electronic copy of each addenda to NBU and bidders; and
 - 6.5.2. conformed construction documents provided prior to construction NTP - one (1) PDF electronic copy to NBU.

Task 7. Construction Phase Services

7. Upon completion of the bid phase services, the Professional shall proceed with construction phase administration services described in this Section. The Professional shall provide general construction contract administration services described in this Section.
- 7.1. **FACILITY INTEGRATION AND OPERATIONS (“FIO”).** The Professional shall develop a FIO memorandum that provides specific instructions on how the new facilities should be integrated into the existing wastewater system, as well as special operating instructions. The FIO memorandum shall generally include:
- 7.1.1. description of new facilities – major components and equipment, purpose and intent and how new facilities tie into existing infrastructure;

- 7.1.2. integration requirements - completion & testing procedures, owner staff required, responsibilities and notifications; and
 - 7.1.3. operational and maintenance requirements - design settings and controls, operating procedures, and maintenance procedures.
- 7.2. MEETINGS AND SITE VISITS. The Professional shall provide the following services for meetings and site visits:
- 7.2.1. assist NBU in conducting a pre-construction conference with the construction contractor and prepare agenda, one (1) day prior to meetings, and prepare and provide NBU with meeting notes and coordinate conference responses with NBU within one (1) week of the meeting;
 - 7.2.2. conduct one (1) construction document control workshop for the contractor;
 - 7.2.3. attend up to a total of 36 bi-weekly construction progress meetings. The Professional shall prepare agenda one (1) day prior to meetings, and record and distribute meeting minutes to NBU and the contractor within one (1) week of the meeting;
 - 7.2.4. attend up to a total of 18 monthly site visits during construction of the Project, as distinguished from the continuous services of a resident Project representative, to observe the progress and the quality of work and to determine if the work is proceeding in accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports for each site visit within seven (7) days after each site visit and notify NBU of any non-conforming work performed by the contractor, observed on the site visits;
 - 7.2.5. conduct with NBU's representatives two (2) substantial completion inspections and punch list reviews of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare a list of deficiencies for correction by the contractors before recommendation of final payment; and
 - 7.2.6. conduct one (1) final completion inspections of the Project for conformance with the design concept of the Project and compliance with the construction contract documents within thirty (30) days after final completion of construction. The Professional shall prepare final completion reports and make recommendation of

final payment.

7.3. SUBMITTAL MANAGEMENT. The Professional shall use FNiManager for construction documents. The Professional shall monitor the processing of contractor's submittals (shop drawings, requests for information, schedules, certified test reports, etc.), provide for filing and retrieval of Project documentation, and verify that the contractor is sending and processing submittals in accordance with the schedules. The Professional shall produce monthly reports and submit to NBU indicating the status of all submittals in the review process.

7.3.1. SUBMITTAL REVIEW. The Professional shall review all contractor submittals for compliance with the design concepts to include the following:

- 7.3.1.1. shop drawings (up to 60);
- 7.3.1.2. record data (up to 10);
- 7.3.1.3. requests for information (up to 30);
- 7.3.1.4. schedules (up to 10);
- 7.3.1.5. certified test reports (up to 10);
- 7.3.1.6. operation and maintenance manuals; and
- 7.3.1.7. miscellaneous submittals (up to 30).

7.4. CHANGE ORDERS. The Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project as described in this Section.

7.4.1. The Professional shall establish procedures and document construction changes required to implement modifications to the Project.

7.4.2. The Professional shall process contract modifications and negotiate with the contractor at NBU's direction to determine the cost and time impacts of these changes.

7.4.3. The Professional shall prepare field/change order documentation for up to five (5) field orders for minor alterations and up to five (5) change orders.

7.4.4. The Professional shall evaluate notices of contractor claims and make initial recommendations to NBU on the merit and value of the claim based on information submitted by the contractor or available Project documentation. The Professional shall negotiate a settlement value with the contractor at NBU's direction.

- 7.5. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for NBU and the contractor during the course of construction per the schedule assumed herein.
- 7.6. PAY ESTIMATES. The Professional shall review and comment on monthly and final estimates for payment to the contractor pursuant to the general conditions of the construction contract during the course of the construction project, per the schedule assumed herein.
- 7.7. RESIDENT REPRESENTATION. The Professional shall provide a part-time (15 hours per week) resident project representative (“RPR”) on the site for 18 months and provide an average of four (4) hours per week of construction management time during the construction phase referenced in Table 1. The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, are as described herein.
- 7.7.1. Communication
- 7.7.1.1. The RPR shall establish the communication procedures for all parties involved in the Project. The communication procedures shall be consistent with the contract documents and shall detail the amount of time all parties have to respond to questions, submittals, or other documents, and the most efficient transmission of communication (via email, phone, etc.). These procedures shall be provided in writing and reviewed with NBU, engineer of record (“EOR”), and the contractor. NBU shall be entitled to approve all communication procedures.
- 7.7.1.2. The RPR shall conduct periodic progress meetings with NBU, EOR, and contractor on a level of frequency reasonably determined by NBU, to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any Project related issues.
- 7.7.1.3. The RPR shall prepare an agenda prior to the progress meetings and record and distribute the meeting minutes to NBU and the contractor as described in Section 1.4.
- 7.7.1.4. The RPR shall submit monthly reports of the construction progress to NBU. The reports shall describe the construction progress and summarize Project

costs, cash flow, construction schedule, pending and approved contract modifications, change order status, and outstanding issues.

7.7.2. Quality Assurance

- 7.7.2.1. The RPR shall observe the contractor's work to determine if the work is proceeding in accordance with the contract. The RPR shall prepare site visit reports to be submitted electronically to NBU documenting the RPR's observations.
- 7.7.2.2. The RPR shall document when non-conforming work is observed and submit this documentation via email to the NBU Project Manager and the contractor within forty-eight (48) hours of observation of any non-conforming work. The Professional shall verify and document when the observed non-conforming work has been corrected and submit documentation to that effect to the NBU Project Manager via email.
- 7.7.2.3. The RPR shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.
- 7.7.2.4. The RPR shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in accordance with applicable testing and inspection bureaus who set standards for the testing of materials, witness tests, and factory testing.
- 7.7.2.5. The RPR shall provide specifically qualified personnel to conduct specialty observations for structural, mechanical, electrical, and instrumentation systems as requested by NBU.

7.7.3. Document Management

- 7.7.3.1. The RPR shall be responsible for submittal management as described in Section 7.3. The RPR shall perform an initial review of the submittals and electronically send the submittals to the EOR and/or the NBU Project Manager for a detailed review and response.
- 7.7.3.2. The RPR shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties for documents, and of (ii) the EOR in reviewing and responding to

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submittals. The RPR shall verify that documentation is being processed according to the schedule.

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

7.7.4. Schedule Management

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

7.7.5. Cost Management

- 7.7.5.1. The RPR shall review the schedule of values and payment requests prepared by the contractor. The RPR shall establish with NBU and the contractor, procedures to review the monthly quantities of work in place and the corresponding payment requests for work completed.
- 7.7.5.2. The RPR shall prepare monthly cash flow requirements based upon information provided by the contractor. The RPR shall update cash flow reports monthly and include these reports with monthly updates to NBU.
- 7.7.5.3. The RPR shall verify quantities of work in place, review the payment requests and supporting documentation, and provide an opinion of whether the payment requested matches the work completed to NBU via email.

7.7.6. Issues Management

- 7.7.6.1. The RPR shall provide an initial interpretation of the drawings and specifications when questions arise concerning the definition of the drawings and specifications. The RPR shall coordinate a resolution to these issues based upon a final interpretation of the drawings and specifications by the EOR, the NBU Project Manager, and the contractor.
- 7.7.6.2. The RPR shall track and document issues, procure a resolution, and notify the EOR, the NBU Project Manager, and the contractor via email promptly.

7.7.7. Change Management

- 7.7.7.1. The RPR shall be responsible for change management as described in Section 7.4.
 - 7.7.7.2. The RPR shall establish and document procedures for administering changes to the construction contract.
 - 7.7.7.3. The RPR shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's Texas engineering seal affixed.
- 7.7.8. Project Completion
- 7.7.8.1. The RPR shall coordinate the start-up and commissioning of the facility and all of the process systems with the EOR, the contractor, and the NBU Project Manager. The RPR shall provide engineering and technical assistance to the contractor during the commissioning process.
 - 7.7.8.2. When the contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the RPR shall conduct a review of the Project to determine conformance or non-conformance with the Project design and construction documents within thirty (30) days. The RPR shall determine if a review of the work is required by the EOR, and if so, shall schedule the reviews of the work with the EOR. Within thirty (30) days after the contractor requests substantial completion, the RPR shall prepare a list of deficiencies to be corrected by the contractor before substantial completion is granted and any partial release or reduction of retainage is approved. The RPR shall prepare a certificate of substantial completion within thirty (30) days after substantial completion that includes a list of work to be completed prior to issuance of a final completion certificate.
 - 7.7.8.3. The RPR shall conduct a final review of the Project for conformance with all of the Project documents within thirty (30) days after final completion of construction. The RPR shall confirm work is complete and in accordance with the Project documents prior to recommending final payment.
 - 7.7.8.4. The RPR shall assist NBU in obtaining permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the contractor. The RPR shall review and confirm that the contractor

has submitted all required documents to NBU prior to recommending the final payment.

7.7.9. Materials Transfer

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

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

7.7.10. Record Drawings

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

7.7.11. Limitations of Authority of RPR

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

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

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

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

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

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

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

7.8. CLOSE-OUT DOCUMENTS

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

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

7.8.2.1. address, year built, and description.

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

7.8.3.1. equipment identification;

7.8.3.2. location;

7.8.3.3. network structure;

7.8.3.4. warranty date;

7.8.3.5. manufacturer;

7.8.3.6. model;

7.8.3.7. serial number;

7.8.3.8. rated flow (if applicable); and

7.8.3.9. diameter (if applicable).

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

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- 7.9.1. one (1) PDF electronic copy of a FIO memorandum within 60 days of receipt of all contractor submitted operations and maintenance manuals;
- 7.9.2. one (1) Project Site visit memo per site visit, which must be submitted (i) in PDF format; (ii) on FNI Manager; and (iii) no later than three (3) days after each site visit;
- 7.9.3. responses to contractor submittals, requests for information, and other documents within fourteen (14) days of receipt;
- 7.9.4. one (1) PDF electronic copy and one (1) georeferenced .dwg file of record drawings in accordance with NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor and provided to the NBU Project Manager within sixty (60) days of receipt of record drawings from the contractor or final completion;
- 7.9.5. one (1) PDF electronic copy of asset information memorandum as described in Section 7.8.2 within thirty (30) days after substantial completion.

SUPPLEMENTAL SERVICES

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

TIME OF COMPLETION

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

Table 1

Project Milestones	Start Date	End Date
Notice to Proceed	11/01/2024	N/A
30% Preliminary Design Phase	11/01/2024	01/27/2025
60% Design Phase	01/27/2025	04/28/2025
90% Design Phase	04/28/2025	07/21/2025
100% Final Design Phase	07/21/2025	08/25/2025
Permitting Phase	08/25/2025	09/29/2025
Bid Phase	09/02/2025	02/06/2026
Construction Phase	02/06/2026	07/29/2027

Exhibit B

Compensation

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

Services

NBU shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$922,531.00, as further described in the table below and made a part of this Agreement.

Task	Cost
Task 1: Project Management	\$32,862.00
Task 2: Preliminary Design Phase	\$106,407.00
Task 3: Final Design Phase	\$181,043.00
Task 4: Field Services	\$65,169.00
Task 5: Permitting & Stakeholders	\$13,234.00
Task 6: Bid Phase Services	\$39,760.00
Task 7: Construction Phase Services	
Construction Administration	\$257,076.00
Construction Management and Inspection	\$226,980.00
Total	\$922,531.00

Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$100,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action

From: Jason Theurer **Reviewed by:** Michael Short, P.E.
Water Operations Manager Director of Water Services and Compliance

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Negotiate and Execute a Services and Goods Agreement with Droptine Utility Construction, LLC, for Manhole Rehabilitation Services

BACKGROUND

NBU has a manhole lining program that is designed to rehabilitate aging infrastructure in its wastewater collection system. Every year, NBU staff performs vacuum testing on twenty percent of the manholes located over the Edwards Aquifer Recharge Zone (EARZ). This testing is done to ensure the structural integrity of the manhole material and to make sure the manhole coating is sealing properly. Any manhole that fails a vacuum test will be rehabilitated the following fiscal year.

On July 5, 2024, New Braunfels Utilities (“NBU”) issued a request for bids for a contract for Wastewater Manhole Rehabilitation services. The purpose of this Services and Goods Agreement (the “Agreement”) is to provide labor, material, and equipment necessary to perform manhole rehabilitation services (the “Services”) for New Braunfels Utilities (“NBU”). and shall line various manholes as directed at the locations specified by NBU.

On August 2, 2024, NBU received four (4) bid submittals during the public bidding process. The submittals were evaluated, and the selection of Droptine Utility Construction, LLC was recommended as the lowest responsible bidder.

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

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

FINANCIAL IMPACT

This is a one-year contract with up to four one-year renewals, with each year's total not to exceed \$1,000,000.00 and the entire total contract not to exceed \$5,000,000.00. The Agreement is budgeted within the Water Operation's Operations and Maintenance budget ("O&M Budget") for fiscal year 2025 and will be budgeted in the O&M Budgets of fiscal years 2026 through 2029.

LINK TO STRATEGIC PLAN

Financial Excellence

Stewardship

EXHIBITS

1. Services and Goods Agreement with Droptine Utility Construction, LLC

SERVICES AND GOODS AGREEMENT

This **SERVICES AND GOODS AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **DROPTINE UTILITY CONSTRUCTION, LLC**, a Texas limited liability company (the “Vendor”).

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

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

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

4. Obligations and Representations of Vendor.

- 4.1. Performance and Compliance with Laws. The Vendor shall perform the Services in compliance with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested in writing by NBU, the Vendor shall promptly furnish satisfactory proof of compliance to NBU.
- 4.2. Warranties.
- a. Performance Warranty. The Vendor warrants that the Services provided under this Agreement shall be of the highest quality and standards in accordance with such industry in this country. This warranty shall be in addition to and not in lieu of all other warranties or guaranties offered or provided by the Vendor for the Services and goods.
 - b. Warranties for Goods. All manufacturer warranties and guaranties of goods provided pursuant to this Agreement shall inure to the benefit of NBU. The Vendor shall warrant all work free of defects in materials and workmanship for a period of one (1) year from the date of final acceptance of all work. The Vendor shall, within 30 calendar days after receipt of written notice, repair defects in materials and workmanship that may develop during said one (1) year period, and any damage to other work caused by such defects or the repairing of same, at the Vendor's expense, in a manner acceptable to NBU. The Vendor shall provide NBU the full original equipment manufacturer ("OEM") warranties and guaranties provided by the OEM for all Services and goods under this Agreement free of all liens, claims, and encumbrances. For example, if an OEM offers full replacement of a warranted product at no charge to the Vendor, then the Vendor shall replace such item and shall not charge NBU for such replacement.
- 4.3. Personnel. The Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Vendor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Vendor shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

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

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

will be the Vendor's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.

- k. Required Insurance Coverage. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.
- i. Commercial General Liability. The Vendor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
 - ii. Auto Liability. The Vendor shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Vendor's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Vendor under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
 - iii. Workers' Compensation and Employer's Liability Insurance. The Vendor shall maintain Workers' Compensation insurance to cover the Vendor's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- l. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to NBU.

4.7. Additional Representations.

- a. Prohibited Gifts, Bonus, Commission, Money, and Other Consideration. The Vendor represents and warrants that the Vendor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be

provided to NBU under this Agreement. Violation of this Section shall subject this Agreement to termination under the Termination provisions of this Agreement. The Vendor further agrees that the Vendor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Vendor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Vendor, the Vendor shall immediately report that fact to NBU and, NBU, in its sole discretion, may terminate this Agreement.

- b. Prohibition on Contracts with Companies Boycotting Israel. The Vendor hereby verifies that it and its parent company, wholly- or majority owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Vendor and exists to make a profit.
- c. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. The Vendor represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

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

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

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

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

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

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

- f. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. The Vendor hereby verifies that it and its parent company,

wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

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

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

5. Obligations and Representations of NBU.

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

6. Termination.

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

thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the non-defaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Vendor for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.

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

7. Confidentiality; Texas Public Information Act.

- 7.1. Confidentiality of Records. The Vendor shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Vendor's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Vendor's duties under this Agreement. Persons requesting such information should be immediately referred to NBU. The Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Vendor as needed for the performance of duties under this Agreement.
- 7.2. Confidential Information. To the extent that confidential and proprietary information of each party ("Confidential Information") is exchanged and received in connection with the Services or goods, each party agrees not to use the other party's Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties. Use

by third party contractors may be permitted so long as such contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section. "Confidential Information" includes (but is not limited to) the Vendor's Confidential Information (as defined below), and does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information previously known by or developed by the receiving party independent of the Confidential Information or (iii) information that the receiving party rightfully obtains without restrictions on use and disclosure.

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

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

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

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

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

8. Information Technology and Intellectual Property Infringement.

- 8.1. Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the Vendor with non-exclusive, limited access to NBU's information technology infrastructure. The Vendor understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Vendor shall reasonably enforce such policies, standards, regulations and restrictions with all the Vendor's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Vendor's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Vendor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- 8.2. Data Confidentiality. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Vendor in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Vendor shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.
- 8.3. Data Security. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Vendor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- 8.4. Compromised Security. In the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Vendor shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **THE VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD NBU HARMLESS FROM ANY CLAIMS RESULTING FROM VENDOR'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS SECTION.**
- 8.5. Intellectual Property Infringement. **THE VENDOR SHALL DEFEND AND INDEMNIFY NBU AGAINST ANY COSTS, LIABILITIES OR DAMAGES (INCLUDING ATTORNEY'S FEES) ARISING FROM A CLAIM THAT NBU'S AUTHORIZED USE OF ANY SERVICE OR GOODS PURCHASED PURSUANT TO THIS AGREEMENT INFRINGES ANY PATENT, COPYRIGHT, TRADEMARK OR TRADE SECRET.** NBU agrees to notify the Vendor in writing of any such claim or suit that NBU receives. Notwithstanding NBU's agreement to notify the Vendor of such claim or suit, NBU's failure to so notify the Vendor shall not diminish the Vendor's indemnity obligations hereunder. The Vendor shall have control of any such suit and NBU shall

cooperate with the Vendor in connection with its defense at the expense of the Vendor. If NBU is enjoined from using any portion of any Service or goods purchased pursuant to this Agreement, or if the Vendor believes that such Service or good is likely to become the subject of an infringement claim, the Vendor shall (i) obtain the right for NBU to continue to use such Service or good or (ii) replace or modify the Service or good so as to make it non-infringing and equal to the functionality of such Service or good described in this Agreement.

9. Miscellaneous.

- 9.1. Independent Contractor. The Vendor acknowledges that the Vendor is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Vendor shall not represent, either expressly or through implication, that the Vendor is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Vendor.
- 9.2. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- 9.3. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Vendor.
- 9.4. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- 9.5. Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 9.6. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.
- 9.7. Subcontractors. The Vendor shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Vendor of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Vendor.

- 9.8. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 9.9. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.
- 9.10. Liens. All goods or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.
- 9.11. Offset for Damages, Delinquent Fees or Taxes. In addition to all other remedies at law or equity, NBU may offset from any money due to the Vendor any amount the Vendor owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, goods, equipment rental, travel expenses and associated costs. NBU may offset from any money due to the Vendor any amount the Vendor owes to NBU for delinquent fees, including any interest or penalties.
- 9.12. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

To NBU:

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

With a copy to:

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

To the Vendor:

Droptine Utility Construction, LLC
 2216 Waterford Grace
 New Braunfels, Texas 78130

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

- 9.13. Right to Audit. NBU shall have the right to examine and audit the books and records of the Vendor with regard to the Services and/or goods obtained pursuant to this Agreement, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- 9.14. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- 9.15. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- 9.16. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- 9.17. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 9.18. Exhibits. All Exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

- 9.19. Conflicting Terms. In the case of any conflicts between the terms of this Agreement and an Exhibit to this Agreement, the statements in the body of this Agreement shall govern.
- 9.20. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
- 9.21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 9.22. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.
- 9.23. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, pandemics, epidemics, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.
- 9.24. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of

the dissatisfied party, the dissatisfied party shall give written notice within five (5) business days to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

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

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

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

VENDOR:

DROPTINE UTILITY CONSTRUCTION,
LLC,
a Texas limited liability company

By: R. Davila
Name: Ramon Davila
Title: owner

Exhibit A – Scope of Services

The Vendor shall provide all labor, material, and equipment necessary to provide manhole rehabilitation services. The Services described herein include the minimum requirements for the rehabilitation of wastewater manholes and the products used therein, including the work necessary to install new bolted wastewater manhole frames and covers, adjust existing wastewater manholes to grade, apply chemical grout to stop active leaks, apply cementitious linings to wastewater manhole interior walls and benches, apply coating products to wastewater manhole interior walls, benches and/or inverts, and repair/rebuild existing wastewater manhole benches and/or inverts as directed by the NBU representative. The Vendor shall be responsible for site restoration including final pavement repairs, seeding and sodding to restore all sites to their original or better conditions.

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

1. GENERAL

1.1. DEFINITIONS

A. Products generally referred to herein as Rehabilitation Component Systems (each product individually referred to as a “System,” and collectively the “Systems”) include the following:

1. chemical grout - a chemical sealant solution containing principle chemical sealant constituent, initiator and catalysts specifically recommended for the purpose of reducing or eliminating groundwater inflow to allow application of a cementitious liner;
2. coating - any material that will form a continuous film over a surface for repair, elimination of leaks and corrosion protection;
3. grout - a mixture of cement, sand and water to fill voids;
4. cementitious infiltration control - very fast setting cementitious material designed to stop active leaks in the wastewater manholes;
5. lining - a cementitious material used for manhole reconstruction, elimination of leaks and corrosion protection;
6. patching and invert repair - rapid setting cementitious material to fill voids and repair inverts;

1.2. VENDOR QUALIFICATIONS

A. The Vendor’s applicators of structural and non-structural wastewater manhole coating and lining Systems shall be certified by the product manufacturer in the handling, mixing, and application of the product.

1.3. REFERENCES

- A. The work shall be performed in accordance with the instructions given in the National Association of Sewer Service Companies (“NASSCO”) Performance Specification Guideline for Manhole Rehabilitation (“NPSGMR”).
- B. The NPSGMR references the following standards and specifications, which are incorporated by reference into this Agreement, and shall be the latest edition and revision thereof.
1. CHEMICAL GROUTS:
 - a. American Society for Testing and Materials (“ASTM”) F2414-04R16 Standard Practice for Grouting.
 2. CEMENTITIOUS RESTORATION:
 - a. ASTM F2551-09R16 Standard Practice for Installing a Protective Cementitious Liner System in Sanitary Sewer Manholes.
 - b. ASTM C-150-07 Standard Specification for Portland cement.
 - c. ASTM C33/C33M-18 Standard Specification for Concrete Aggregates.
 - d. ASTM C78-09 Standard Test Method of Flexural Strength of Concrete; Using Simple Beam with Third Point Loading.
 - e. ASTM C109/C109M-20 Standard Test Method for Compressive Strength of Hydraulic-Cement Mortars (Using 2 in. or [50-mm] Cube Specimens).
 - f. ASTM C157/C157M-17 Standard Test Method for Length Change of Hardened Hydraulic-Cement Mortar Cubes.
 - g. ASTM C267-20 Test Methods for Chemical Resistance of Mortars, Grouts and Monolithic Surfacing and Polymer Concretes.
 - h. ASTM C293/C293M-16 Standard Test Method for Flexural Strength of Concrete (Using Simple Beam with Center-Point Loading).
 - i. ASTM C309-19 Specification for Liquid Membrane-Forming Compounds for Curing Concrete.
 - j. ASTM C321-00R12 Standard Test Method for Bond Strength of Chemical- Resistant Mortars.
 - k. ASTM C348-21 Standard Test Method for Flexural Strength of Hydraulic-Cement Mortars.
 - l. ASTM C494/C494M-17 Standard Specification for Chemical Admixtures for Concrete.
 - m. ASTM C496/C496M-17 Standard Test Method for Splitting Tensile Strength of Concrete Specimens.

- n. ASTM C882/C882M-20 Standard Test Method for Bond Strength of Epoxy-Resin SYSTEMs Used With Concrete by Slant Shear.
 - o. ASTM C952-12 Standard Test Method for Bond Strength of Mortar to Masonry Units.
3. PROTECTIVE COATINGS:
- a. ASTM D543-21 Resistance of Plastics to Chemical Reagents.
 - b. ASTM D638-14 Tensile Properties of Plastics.
 - c. ASTM D695-23 Compressive Properties of Rigid Plastics.
 - d. ASTM D2240-15R21 Standard Test Method for Rubber Property-Durometer Hardness.
 - e. ASTM D4060-19 Standard Test Method for Abrasion Resistance of Organic Coatings by the Taber Abrader.
 - f. ASTM D4414-95R20 Standard Practice for the Measurement of Wet Film Thickness of Organic Coatings by Notched Gages.
 - g. ASTM D4541-09 Standard Test Method for Pull-Off Strength of Coatings Using Portable Adhesion Testers.
 - h. ASTM D4787-13R18 Continuity Verification of Liquid or Sheet Linings Applied to Concrete Substrates.
 - i. ASTM D6132-13R17 Standard Test Method for Nondestructive Measurement of Dry Film Thickness of Applied Organic Coatings Using an Ultrasonic Coating Thickness Gage.
 - j. ASTM D7234-21 Standard Test Method for Pull-off Strength of Coatings on Concrete Using Portable Pull-Off Adhesion Testers.
 - k. ASTM G210-13R18 Severe Wastewater Analysis Test.
4. National Association of Corrosion Engineers (“NACE”) SP0188-2024 Discontinuity (Holiday) Testing of New Protective Coatings on Conductive Substrates.
5. SURFACE PREPARATION:
- a. The Society for Protective Coatings (“SSPC”) SP-13/NACE No. 6-Surface Preparation of Concrete.
 - b. International Concrete Repair Institute, Inc. (“ICRI”) Technical Guide No. 310.2R-2013.

1.4. SUBMITTALS

- A. Prior to performing any work for the rehabilitation of wastewater manholes proposed under this Agreement, the Vendor shall submit a Work Authorization in the form attached as Exhibit C setting forth specific requirements as to location, conditions, procedures, timeframe for services, materials to be used, and associated services. Submittals shall include the following:
1. System material type and manufacturer to be used including: product data sheets, ASTM references, material composition, manufacturer's recommended specifications, component physical properties and chemical resistance;
 2. manufacturer's detailed description of the recommended procedures for handling and storing products including shelf life history and proposed method for monitoring temperatures of the storage location, safety requirements and Material Safety Data Sheet ("MSDS") documents;
 3. manufacturer's detailed description of the recommended material installation/application process including environmental conditions, mixing, additives, set time, cure time (return to service), and all equipment required for quality product delivery;
 4. manufacturer's detailed description of all required field-testing processes and procedures;
 5. copies of independent testing performed on the rehabilitation component indicating that the product meets the requirements as specified in these contract documents and the manufacturer's design;
 6. technical data sheet and project specific data for wastewater manhole repair products to be used in conjunction with each rehabilitation component(s) including application cure time and surface preparation procedures;
 7. products shall be clearly labeled with the item, manufacturer, batch, lot number and expiration date;
 8. method to capture and prevent material removed from pressure washing and surface preparation of substrate from flowing downstream;
 9. pressure washing equipment specifications;
 10. a by-pass pumping plan if applicable to the Systems being applied;
 11. a confined space entry plan;
 12. an excavation safety system plan;
 13. a certified statement from the manufacturer that the Vendor/installer is an approved installer of the System with certificates of completed training for product mixer and applicator for each rehabilitation component;

14. for each wastewater manhole rehabilitation, a complete and accurate record of all Systems installed/applied shall be prepared in the form of a report by the Vendor and submitted electronically to NBU within five (5) days of completing the work; and
15. a list of primary and secondary contacts available for emergency work.

1.5. SAFETY

- A. The Vendor shall conform to all work safety requirements of pertinent regulatory agencies, and shall secure the site for working conditions in compliance with the same. The Vendor shall erect such signs and other devices as necessary for the safety of the worksite and meet the Texas Manual on Uniform Traffic Control Devices (“TMUTCD”) guidelines.
- B. The Vendor shall perform all work in accordance with applicable Occupational Safety and Health Administration safety standards, emphasizing requirements for entering confined spaces, the equipment being utilized for wastewater manhole rehabilitation components, and the protection of workers from silica dust.
- C. The Vendor shall have on the job site a minimum of the following safety equipment at all times:
 1. a gas monitor capable of testing and detecting combustible gas, oxygen deficiency, carbon monoxide and hydrogen sulfide;
 2. a confined space access and retrieval winch system;
 3. ventilating fans with 12" diameter ventilation hoses;
 4. a particulate respirator;
 5. safety harness and fall protection devices; and
 6. all equipment to be available for use, in sufficient quantity by the Vendor for the duration of the contract agreement.
- D. The Vendor shall conduct all entries into or work performed within confined spaces in accordance with the U.S. Department of Health and Human Services/National Institute for Occupational Safety and Health Publication No. 87-113, and A Guide to Safety in Confined Spaces.
- E. The Vendor shall electronically submit a proposed safety plan to the NBU representative, prior to beginning any work, identifying all competent persons, equipment and operating procedures. The plan shall include a description of the daily safety program and daily safety meeting for the job site and all emergency procedures to be implemented in the event of a safety incident. All work by the Vendor shall be conducted in accordance with the Vendor’s submitted safety plan.

1.6. STORAGE AND HANDLING

- A. The Vendor shall keep Systems dry, protected from weather and stored under cover and in accordance with manufacturer's recommendation.
- B. The Vendor shall store cementitious and coating products at temperatures recommended by the manufacturer and handled according to their MSDS. The Vendor shall not store these products near flame, heat, or strong oxidants.

2. REHABILITATION SYSTEM COMPONENT PRODUCTS

2.1. GENERAL

- A. The Vendor shall provide and use the products listed in this Section's specifications. The products listed below shall be the only items considered for performing wastewater manhole rehabilitation services. The Vendor shall submit the product selections to NBU prior to performing any work.

2.2. CHEMICAL GROUT

A. PRODUCTS

- 1. The Vendor shall use chemical grouts specifically designed for the purpose of sealing leaks in the wastewater manholes and shall exhibit the properties described herein:
 - a. documented service of satisfactory performance in similar usage;
 - b. controllable reaction times and shrinkage through the use of chemicals supplied by the same manufacturer (the minimum set time shall be established so that adequate grout travel is achieved);
 - c. non-toxic in its cured form; and
 - d. sealing material shall not become rigid or brittle when subjected to dry atmosphere, and the material shall be able to withstand freeze/thaw and moving load conditions.
- 2. Products shall be:
 - a. DE NEEF HA Sealfoam as manufactured by DE NEEF Construction Chemicals of Houston Texas;
 - b. Avanti A-202 Multigrout as manufactured by Avanti International, Webster Texas; and
 - c. Spetec H100, H40, F1000, F400, GT1100 as manufactured by Resiplast US, Cypress, TX 77410; or NBU approved equal.

B. MIXING AND HANDLING

1. The Vendor shall perform mixing and handling of chemical grout, which may be toxic under certain conditions, in such a manner as to minimize any hazard to personnel and shall be in accordance with the manufacturer's recommendations. It shall be the responsibility of the Vendor to provide appropriate protective measure to ensure that chemicals are handled only by trained and authorized personnel. All equipment used by the Vendor to install the grout shall be as recommended by the manufacturer and only personnel thoroughly familiar with all aspects of the grouting material and meeting the qualification requirements specified herein shall perform the grouting operation.

2.3. CEMENTITIOUS RESTORATION

A. GENERAL

1. The Vendor shall provide a cementitious restoration material designed for structural build back, infiltration and inflow abatement, corrosion resistance, and repairing inverts. The Vendor shall ensure all products applied to a structure are compatible, as specified by the manufacturer.

B. INFILTRATION CONTROL PRODUCTS

1. The Vendor shall furnish only fast-setting products designed specifically for leak control. The Vendor shall apply products only in dry powder form, with no prior mixing of water, directly to active leaks under hydrostatic pressure in the wastewater manholes, and in accordance with the manufacturer's recommendations.
2. Products shall be Strong-Seal and Strong-Plug as manufactured by The Strong Company Inc., Pine Bluff, AR; or NBU approved equal.

C. PATCHING AND INVERT REPAIR PRODUCTS

1. Patching and invert repair materials shall exhibit the following properties:
 - a. all material furnished shall be designed to fill large voids in wastewater manhole walls and to repair or reconstruct inverts where no hydrostatic pressure exists;
 - b. material shall consist of rapid setting cements, monocrystalline quartz aggregates, and various accelerating agents;
 - c. products shall not contain chlorides or metallic particles and shall be mixed and applied in accordance with the manufacturer's recommendations; and
 - d. repair and patching materials shall have its bond strength tested to substrate failure in accordance with ASTM C-952 and be compatible with all material components and lining System applied to the wastewater manhole.
2. Products shall be:

- a. Strong-Seal QSR, MS2C, Bench Mix, or High Performance Mix as manufactured by The Strong Company Inc., Pine Bluff, AR;
- b. Refratta HAC 100 as manufactured by Global Materials Company, Cocoa, FL; and
- c. Fuquay Liner SRM, Fuquay Bench Mix, or Fuquay Patch as manufactured by Fuquay Inc., New Braunfels, TX; or NBU approved equal.

D. CEMENTITIOUS LINING SYSTEMS

- 1. Cementitious wastewater manhole lining materials shall exhibit the following properties:
 - a. cementitious restoration products shall be specifically designed for the rehabilitation of the wastewater manholes and other related wastewater structures;
 - b. liner products shall be cement based, fiber reinforced, shrinkage compensated, and enhanced with chemical admixtures and siliceous aggregates;
 - c. liner products shall be mixed with water per manufacturer's written specifications and applied using equipment specifically designed for troweling, low-pressure spray or centrifugal spin casting application; and
 - d. all cementitious liners shall be troweled to density and the surfaces shall be smoothed out.
- 2. Cementitious Wastewater Manhole Lining materials:
 - a. Strong-Seal High Performance Mix or Strong-Seal MS-2C as manufactured by The Strong Company Inc., Pine Bluff, AR;
 - b. Refratta HAC 100 as manufactured by Global Materials Company, Cocoa, FL; and
 - c. Fuquay Liner SRM, Fuquay Bench Mix, or Fuquay Patch as manufactured by Fuquay Inc., New Braunfels, TX.

2.4. PROTECTIVE COATING PRODUCTS

A. GENERAL

- 1. The Vendor shall apply coating products to the wastewater manholes specified to receive a corrosion protective coating sufficiently thick to totally protect the existing host structure from further corrosion, deterioration and water vapor transmission. The Vendor shall use only coating materials compatible with the wastewater manhole rehabilitation System. The Vendor shall perform substrate and surface preparation, application conditions, application equipment, material

preparation, and curing in strict accordance with the manufacturer's written recommendations.

B. COATING PRODUCTS

1. Coating products include the following:
 - a. Reactamine ET as manufactured by Carboline Company, Houston, TX; and
 - b. Spraywall as manufactured by Sprayroq, Inc., Birmingham, AL.

2.5. WASTEWATER MANHOLE SEALS

A. CHIMNEY SEALS

1. The Vendor shall use chimney seals for the purpose of preventing leakage of water into the wastewater manhole through the frame joint area and the area above the wastewater manhole cone including all extensions to the chimney area. Extensions shall include adjustment rings and/or material used to achieve grade.
2. Chimney seals shall be Flex-Seal as manufactured by Sealing Systems Inc., Loretto MN, or NBU approved equal.

B. RING CASTING SEALS

1. The Vendor shall use ring casting seals for the purpose of eliminating infiltration and forming a bond between the ring casting and grade adjustment ring or cone.
2. Adhesive product shall be Encapseal as manufactured by Miller Pipeline, Indianapolis, IN; or NBU approved equal.

2.6. REPLACEMENT RING AND COVER

- A. The Vendor shall replace ring and covers when broken, corroded, or otherwise directed by NBU. The Vendor shall furnish all material, equipment, tools and labor for the installation of a replacement ring and cover. The following specifications shall apply:
 1. 24-inch diameter ring and covers shall be cast grey iron with a blot-down lid; and
 2. 32-inch diameter ring and covers will meet the requirements in NBU's detail drawing 331 (Sanitary Sewer MH Cover 2023 Coat of Arms-1), included in this Agreement as Attachment A.

2.7. WASTEWATER MANHOLE ADJUSTMENTS

- A. The Vendor shall make wastewater manhole adjustments with precast grade rings. Rings shall be Class A concrete and conform to the requirements noted below.
 - 1. Precast Grade Rings, 24 1/2 inch inside diameter: this adjustment ring shall be used only for adjusting existing wastewater manholes with 24 inch diameter lids and for wastewater access device. Inside to outside diameter dimension of the ring shall be 6 inches with a thickness of 3 inches to 6 inches.
 - 2. Precast Grade Rings, 35 inch inside diameter: this adjustment ring shall be used for all new wastewater manhole construction with 32 inch diameter lids. Inside to outside diameter dimension of the ring shall be 6 inches with a thickness of 2 inches to 6 inches.

3. EXECUTION

3.1. GENERAL

- A. The Vendor's Work Authorizations shall be sequentially numbered, submitted electronically to NBU and approved by NBU in writing prior to commencing work.
- B. The Vendor's written safety plan shall be submitted electronically to NBU and approved by NBU prior to commencing work.
- C. The Vendor is responsible for coordinating and attending a site visit to each wastewater manhole designated for rehabilitation work with the NBU representative prior to commencing work.
- D. The Vendor shall provide progress updates and schedule updates via email to the NBU representative. The progress updates may need to be as frequent as daily.
- E. The Vendor shall be responsible for notifying the NBU representative upon completion of all rehabilitation work.

3.2. TRAFFIC CONTROL

- A. The Vendor shall setup and maintain any necessary traffic control devices prior to commencing work.
- B. The Vendor shall carry out disruption to normal traffic flow in compliance with the TMUTCD.
- C. Traffic control devices shall be setup and maintained by a Vendor employee who holds a current "competent person" designation for traffic control in accordance with the TMUTCD.
- D. Any flagging required shall be performed by persons with current training as a flagger in accordance with the TMUTCD.

3.3. BY-PASS PUMPING

- A. The Vendor shall be responsible for the setup, installation, operation and maintenance of by-pass pumping operations as required.
- B. The Vendor shall prepare and submit electronically to NBU a by-pass pumping plan for each work area prior to commencing work. The plan shall detail the sequence of wastewater manhole rehabilitation System installation, plug locations, suction wastewater manholes, discharge wastewater manholes, pump size and pump locations. The plans shall include preferred lane closures, if necessary.
- C. The Vendor shall not perform by-pass pumping if there is a 20% chance of a ½ inch or greater rain event forecasted or within 24 hours after the rain event.
- D. The Vendor shall use a by-pass pumping system sized to accommodate the maximum anticipated flow. NBU will provide the anticipated flow rate.
- E. The Vendor shall be responsible for all pump selection, setup, installation, operation and maintenance of the by-pass equipment. The by-pass pumping piping shall not obstruct storm water conveyance.
- F. The Vendor shall provide self-priming pumps with an integral vacuum pump that includes a sound attenuating enclosure for both the primary and backup pumps. In situations where a single pump is capable of handling the flow, the backup pump shall be of capacity equal to the primary pump. In situations where more than one pump is needed to provide the required capacity, the backup pump shall have the same capacity of the largest of the primary pumps. When three pumps are used for the base flow, at least 2 backup pumps are required. While bypass pumping operations are underway, the pumps and discharge piping shall be monitored by 2 attendants who work for the Vendor.
- G. The Vendor shall use discharge piping and flexible hose designed to withstand at least twice the maximum system pressure, or a minimum of 50 pounds per square inch (“PSI”), whichever is greater. The Vendor shall restrain the discharge piping as necessary to prevent joint separation.
- H. The Vendor shall secure pumps and open wastewater manholes from public access with chain link fence panels.
- I. Prior to disassembling, the Vendor shall flush rigid pipe. The Vendor shall pump clean water through the piping at least equal to five times the volume of the pipe. Flexible hoses are not required to be flushed.

3.4. WASTEWATER MANHOLE PREPARATION

- A. The Vendor shall:

1. Set up by-pass pumping, as required.
2. Install debris catchment or containment prior to cleaning interior wastewater manhole surfaces.
3. Clean interior surfaces of the wastewater manhole of debris, dirt, oil, grease, remains of old coating materials, and any other extraneous materials.
4. Pressure wash wastewater manhole walls to remove loose mortar, concrete, and debris. Water pressure shall be a minimum of 3,000 PSI or as recommended by the manufacturer.
5. Repair irregularities in the wastewater manhole using materials compatible with the proposed System and as required by the manufacturer.
6. Repair leakage in the wastewater manhole using materials, compatible with proposed Systems specified in these specifications (2.2 Section A2, 2.3 Section B2).
7. Trim and grout incoming laterals and pipes as required and/or specified.
8. Remove debris from the wastewater manhole and incoming sewer connections to include the following:
 - a. handle cleaning water to prevent water and residue from causing damage;
 - b. do not discharge debris downstream through the sanitary sewer system;
 - c. filter solids-laden water through a de-silting device; and
 - d. properly dispose of debris and residue from cleaning and other construction operations at a municipal solid waste landfill.

3.5. CHEMICAL GROUT

A. GENERAL

1. The Vendor shall perform grouting only on a structurally sound wastewater manhole unless the grout is used to prevent water from entering the wastewater manhole during application of a lining or coating System. The Vendor shall perform normal grouting operations at the temperatures recommended by the manufacturer.

B. GROUTING APPLICATIONS

1. The Vendor shall apply grout to a wastewater manhole for the purpose of reducing or eliminating infiltration/inflow prior to application of a lining, coating or other structural rehabilitation component.

C. DRILLING AND GROUT INJECTION

1. The Vendor shall drill grout injection holes in the wastewater manhole in strategic locations to re-direct flow coming through cracks and other defects in the wall, or to seal the entire exterior surface of the wastewater manhole, in accordance with the recommendations of the grout manufacturer.
2. The Vendor shall inject grout through the drilled holes using the recommended probe and applying pressures that will effectively inject the grout, but not cause damage to the wastewater manhole structure or the surrounding area.
3. The Vendor shall clean and patch injection holes as recommended by the manufacturer.

D. INSPECTION AND ACCEPTANCE

1. The Vendor shall perform a visual inspection of the work to confirm all significant leakage into the manhole has been eliminated.

3.6. CEMENTITIOUS RESTORATION

A. GENERAL

1. The Vendor shall:
 - a. Before starting any patch work or liner application, install a perforated device, catch bucket, or other straining device to prevent construction debris from entering down-stream pipes.
 - b. Provide all materials, labor, equipment, etc. required to perform the work as recommended by the manufacturer and as required by the Agreement.
 - c. Inspect each wastewater manhole to determine methods of stopping leaks and applying patch repairs.
 - d. Promptly inform NBU of errors or discrepancies between the work assignment, documents, or field conditions found, in order that change conditions can be evaluated and revised directives issued in a timely manner.
 - e. Install all products in accordance with manufacturer's instructions regarding surface preparation, product application and curing.
 - f. Confirm that all materials to be used for the rehabilitation of the wastewater manhole are compatible with each other. Do not use any materials that have not been verified for compatibility.

B. SEALING ACTIVE LEAKS

1. The work on some wastewater manholes shall include, applying by hand, a dry quick-setting cementitious mix designed to instantly stop running water or seepage. The Vendor's applicator shall apply material in accordance with manufacturer's recommendations and the following minimum specifications:
 - a. the area to be repaired shall be clean and free of all debris;
 - b. once cleaned, prepare a crack or hole by chipping out loose material to a minimum depth of 2 inches;
 - c. apply the dry quick-setting cementitious material to the active leak, per the manufacturer's recommendations; and
 - d. proper application shall not require any special mixing of the product or special curing requirements after application.

C. PATCHING, INVERT AND BENCH REPAIR

1. This work consists of hand mixing and applying a rapid setting, high early strength, non-shrink patching material to fill all large voids and repair the wastewater manhole channels prior to installing the wastewater manhole lining. For invert repairs, the Vendor shall temporarily restrict flow by inflatable flow-thru plugs prior to cleaning. The Vendor shall secure plugs by a heavy cable or chain to prevent loss. If Vendor uses non-flow thru plugs, then the Vendor shall use by-pass pumping. Plugging influent lines and allowing flow to backup will not be allowed. The Vendor shall adhere to the following instructions in performing this work:
 - a. the area to be repaired shall be cleaned and free of all debris;
 - b. water used to mix the cementitious patching materials shall be clean potable water and require no additives or admixtures;
 - c. cementitious material shall be mixed with water per manufacturer's specifications;
 - d. material shall be mixed in small quantities, to avoid setting prior to placement;
 - e. once mixed to proper consistency, the materials shall be applied to the invert or void areas by hand or trowel;
 - f. in invert applications, care shall be taken to not apply excessive materials in the channel, which would restrict flow;
 - g. once applied, materials shall be smoothed either by hand or trowel in order to facilitate flow; and
 - h. flows in channels shall be re-established when material has cured enough to withstand the flow as determined by the manufacturer.

D. APPLICATION OF CEMENTITIOUS WASTEWATER MANHOLE LINER

1. This work consists of troweling, spray application, and/or centrifugally spin-casting a cementitious based liner to the inside of the existing wastewater manhole. The Vendor shall use the necessary equipment and application methods to apply the cementitious based liner materials only as recommended and approved by the material manufacturer.
2. The Vendor shall mix the cementitious material with water in accordance with the manufacturer's specifications. The Vendor shall use the equipment recommended by the manufacturer for this work, and matched for the material being applied. The Vendor shall use pumping equipment capable of applying the lining material to the wastewater manholes up to 25 feet in depth.
3. The Vendor shall perform cementitious material application by starting at the wastewater manhole invert and progressing upward.
4. Material thickness may be verified at any point with a depth gauge and shall be no less than a uniform one-half (1/2) inch. The Vendor shall trowel material smooth to compact material into voids and finish with a light brush or broom finish.
5. The Vendor shall follow the manufacturer's specific requirements for curing and the use of curing compounds related to the cementitious lining materials applied by Vendor. Lining material failures due to improper curing shall be repaired by the Vendor at no additional expense to NBU.
6. The Vendor shall not apply material during freezing weather conditions, when the ambient temperature is 37 degrees Fahrenheit and falling, or when the temperature is anticipated to fall below 32 degrees Fahrenheit during the next 24 hours.

E. FRAME TO CHIMNEY SEAL

1. If a chimney seal is required in conjunction with the lining technology, the Vendor shall follow the manufacturer's requirements for proper preparation in effectively installing the chimney seal after the lining has been applied and cured.

F. TESTING AND ACCEPTANCE

1. The Vendor shall perform a visual inspection to verify there are no significant infiltration, cracks, or loose material after the lining material has cured and prior to applying protective coatings.
2. Cementitious Material Physical Property Testing (ASTM C78-09, C109/C109M-20, C157/C157M-17, C293/C293M-16).

3.7. APPLICATION OF PROTECTIVE COATING PRODUCT

A. GENERAL

1. The Vendor shall comply with local, state and federal regulatory and other applicable agencies with regard to environment, health and safety during work.
2. The Vendor shall properly cure cementitious lining materials according to manufacturer's requirements prior to the coating application. The Vendor shall use coating material compatible with the cementitious lining material.
3. The Vendor shall maintain the temperature of the surface to be coated between 40 degrees and 120 degrees Fahrenheit or as recommended by the manufacturer.
4. The Vendor shall shield surfaces that are to be coated to avoid exposure of direct sunlight or other intense heat source. Where varying surface temperatures do exist, the Vendor shall schedule coating application when the temperature is falling and not rising or as recommended by the manufacturer.
5. Prior to commencing surface preparation, the Vendor shall inspect all surfaces specified to receive the coating and shall notify NBU, in writing, of any noticeable disparity in the site, structure or surfaces which may interfere with the work, use of materials or procedures as specified herein.

B. SURFACE PREPARATION

1. The Vendor shall entirely remove oils, grease, incompatible existing coatings, waxes, form release, curing compounds, efflorescence, sealers, salts, or other contaminants which may affect the performance and adhesion of the coating to the substrate.
2. The Vendor shall base the choice of substrate preparation method(s) upon the condition of the structure and concrete or masonry surface, potential contaminants present, access to perform work, and required cleanliness and profile of the prepared surface to receive the specified coating products, as recommended by the manufacturer.
3. Surface preparation methods or a combination of methods that may be used include high pressure water cleaning, high pressure water jetting, abrasive blasting, shot blasting, grinding, scarifying, detergent water cleaning, hot water blasting, and others as described in NACE No. 6/SSPC SP-13 Surface Preparation of Concrete and ICRI Technical Guide No. 310.2R-2013. Whichever method(s) are used, the Vendor shall perform them in a manner that provides a uniform, sound clean neutralized surface with sufficient profile to promote an acceptable bond with the specified coating.
4. The Vendor shall stop infiltration by using a material that is compatible with the repair products and is suitable for top-coating with the coating product. The

Vendor shall verify the product compatibility, in writing, to NBU prior to performing the work.

5. The chimney and ring casting joint shall be the termination point of the coating product.

C. APPLICATION OF PROTECTIVE COATING PRODUCT

1. The application procedures shall conform to the recommendations of the epoxy coating product manufacturer, including environmental controls, product handling, mixing, application equipment and methods.
2. Spray equipment shall be specifically designed to accurately ratio and apply the coating product. The equipment used shall be in proper working order and shall be as recommended by the product manufacturer.
3. The Vendor's applicators shall be qualified in accordance with the manufacturer's specifications and shall perform all aspects of the coating application.
4. The Vendor shall coat prepared surfaces by spray application of the coating product described herein to a minimum of 125 mils or as recommended by the manufacturer.
5. The Vendor shall perform subsequent top coating or additional coats within the product's recoat time as specified by the product manufacturer. The Vendor shall be required to perform additional surface preparation procedures if this recoat time is exceeded. The product manufacturer's re-coat time for the specific application, based on temperature and project conditions, shall be strictly followed by the Vendor.
6. The coating product shall mechanically bond with adjoining construction materials throughout the wastewater manhole structure to effectively seal and protect concrete or masonry substrates from infiltration and attack by corrosive elements. The Vendor shall apply procedures and materials necessary to effect this bond as recommended by the coating product manufacturer. No hollow spots shall be accepted.

D. TESTING AND ACCEPTANCE

1. Visual Inspection – The Vendor shall ensure that the coating System shall be free of pinholes and hollow spots/voids and other defects that will reduce the life expectancy of the applied System.
2. Film Thickness Measurements - (either wet or dry) Coating thickness shall be a minimum of 125 mils or greater dependent on the degree of rehabilitation

consensually agreed upon by the Vendor and the NBU representative prior to the commencement of work.

- 3. Holiday Detection Test (following ASTM G210-13R18) shall be performed by the Vendor to identify pinholes, thin material and any defects that will affect the life and performance of the installed System.

3.8. APPLICATION OF WASTEWATER MANHOLE SEALS

A. CHIMNEY SEALS

- 1. The Vendor shall be responsible for contacting the manufacturer for specific cure times of substrate materials prior to applying the chimney seal product.
- 2. Prior to surface preparation, the Vendor shall stop infiltration by using a material that is compatible with the repair products and is suitable for top-coating with the coating product. The Vendor shall verify the product compatibility, in writing, to the NBU representative prior to performing the work.
- 3. The Vendor shall perform surface preparation using Flex-Seal manufacturer’s approved method to remove oils, grease, existing coatings, wax, loose debris, curing compounds, rust, efflorescence, sealers, salt or other contaminants that may affect the performance and adhesion of the chimney seal to the substrate.
- 4. The Vendor shall follow application procedures that conform to the recommendations of the product manufacturer, including environmental conditions, surface preparation, product mixing, handling, application and cure time.

B. RING CASTING SEALS

- 1. The Vendor shall furnish all material, equipment, tools and labor for the application of a ring casting seal to form a bond between the ring casting and grade adjustment ring or cone.
- 2. The Vendor shall perform preparation and installation in accordance with the manufacturer's recommendations.

3.9. WASTEWATER MANHOLE RING AND COVER REPLACE/GRADE ADJUSTMENT

A. EXTERIOR WASTEWATER MANHOLE CONSTRUCTION – CITY OF NEW BRAUNFELS (“CoNB”) STREET

- 1. The Vendor shall repair the road surface surrounding manhole ring and covers that have been identified for replacement or adjustment in a CoNB street using the following instructions:

- a. all wastewater manholes shall have a seven (7) foot squared section of pavement, centered around the wastewater manhole and square to traffic, removed to facilitate replacement or adjustment;
 - b. guidelines found in “NBU Detail 322 – New Manhole Construction and Minor Manhole Adjustment – Within Pavement” will be used to install a round concrete encasement and has been included in this Agreement as Attachment B;
 - c. base material used to backfill the excavation shall be compacted to 100% density, compaction shall be performed by mechanical tamping; and
 - d. the pavement surface shall be replaced by a 7 feet squared HMA patch matching existing asphalt thickness or 2 inches, whichever is greater.
2. The Vendor shall replace or adjust all wastewater manhole rings and covers that have been identified for replacement or adjustment in a TxDOT street following all of TxDOT’s requirements, including but not limited to Attachment C.

B. EXTERIOR WASTEWATER MANHOLE CONSTRUCTION – UNPAVED SURFACES

1. Wastewater manhole ring and covers that have been identified for replacement or adjustment in an unpaved area shall follow “NBU Detail 322 – New Manhole Construction and Minor Manhole Adjustment – Outside Pavement” to secure the exterior of the ring and cover (Attachment B).
2. The Vendor shall ensure the encasement and frame elevation is 6” above surrounding terrain where safe to do so, otherwise the elevation shall be flush with the surrounding terrain. The NBU representative shall make this determination prior to work commencing. The Vendor shall sufficiently compact backfill material to be flush with the surrounding terrain and minimize settling.
3. The Vendor shall remove all excess spoils and materials from the jobsite.
4. The Vendor shall repair all disturbed vegetation in accordance to the NBU representative’s verbal directives.

C. REPLACE RING AND COVER

1. The Vendor shall replace rings and covers when broken, corroded, or otherwise directed by NBU.
2. The Vendor shall furnish all material, equipment, tools and labor for the installation of a replacement ring and cover.
3. The Vendor shall recycle all removed cast iron rings and covers.

D. WASTEWATER MANHOLE ADJUSTMENT

1. If the adjustment involves lowering the top of the wastewater manhole, the Vendor shall remove a sufficient depth of pre-cast concrete rings or brick courses to permit reconstruction, clean any existing mortar from the top surface remaining in place, and rebuild the manhole to the required elevation. The Vendor shall then install a new wastewater manhole ring and cover with the top surface conforming to the proposed grade.
2. If the adjustment involves raising the elevation of the top of the wastewater manhole, the Vendor shall clean and build up the top of brick or concrete ring vertically to the new elevation, using new concrete rings, and install the ring and cover with the top surface conforming to the proposed grade.
3. After the ring and cover is set to grade, the Vendor shall wipe the inside of the precast concrete grade rings with non-shrink grout to form a durable surface and water-tight joints. The Vendor shall smooth the grouted surface even with the wastewater manhole cone section. The Vendor shall not place grout when the atmospheric temperature is at or below 40 degrees Fahrenheit. If a sudden drop in temperature below 40 degrees Fahrenheit occurs, or temperatures below 40 degrees Fahrenheit are predicted, the Vendor shall protect grouted surfaces against freezing for at least 24 hours.

3.10. QUALITY ASSURANCE AND TESTING

A. GENERAL

1. An independent material testing laboratory selected by NBU shall test materials used on the project. The Vendor shall obtain index and density testing on imported soils used on the project and supply NBU with the imported soil testing prior to NBU accepting the completed project.
2. The Vendor shall notify NBU at least five (5) days in advance of testing. All testing shall be performed in the presence of NBU's representative.

B. TEST REQUIREMENTS

1. Visual Inspection
 - a. All wastewater manholes shall be visually inspected by the Vendor and NBU's representative. Any leakage into the wastewater manhole where Systems were installed by the Vendor shall be repaired at no cost to NBU.
2. Cementitious Material Property Testing
 - a. The Vendor shall provide samples for testing to NBU from the actual installed System.

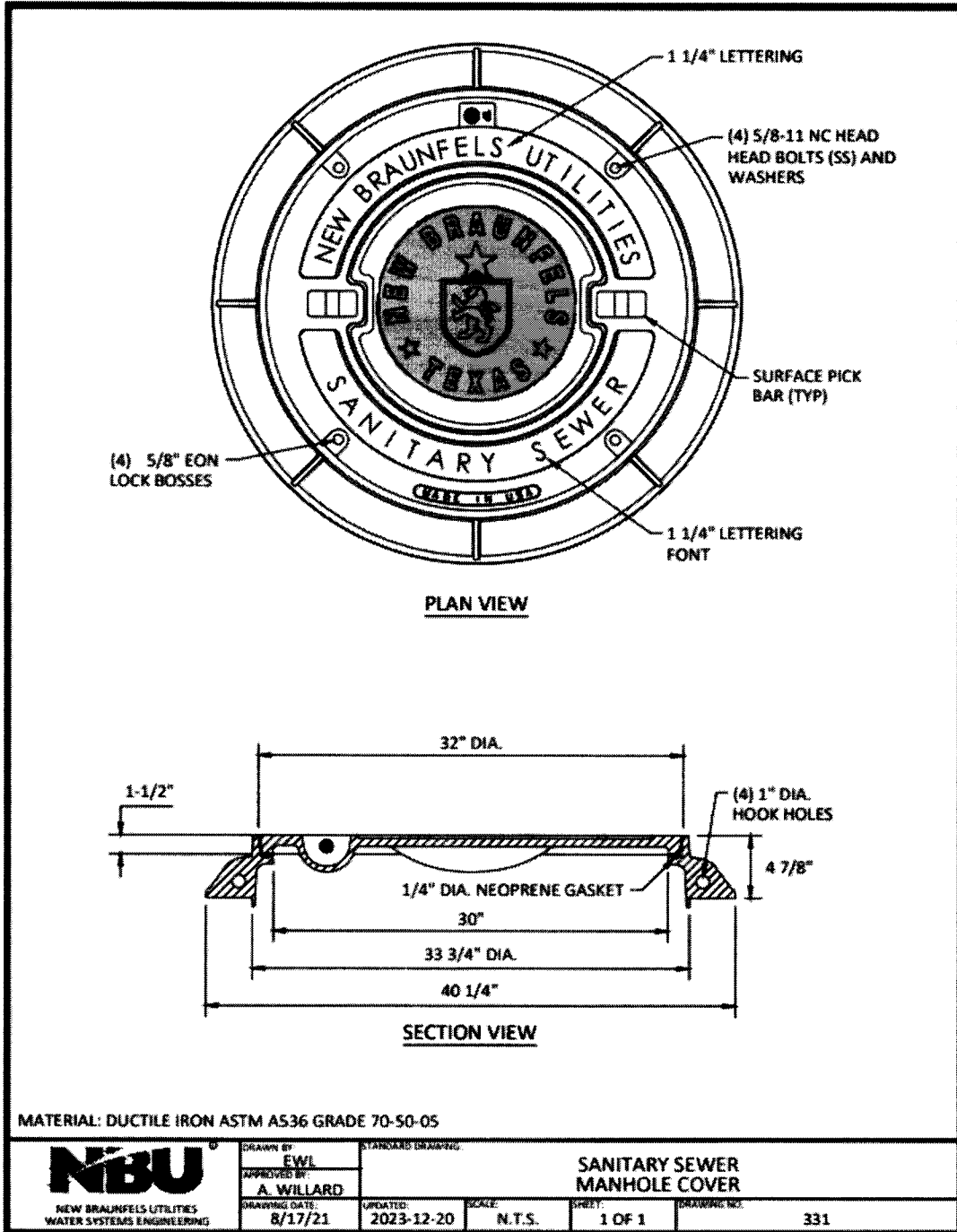
- b. Where specified 2 x 2 inch sample cubes shall be taken for every 50 bags of material used. Samples shall be applied in an identical manner as the System application in the wastewater manhole. Samples shall be collected by the independent test laboratory for compression strength testing as described in ASTM C109/C109M-20.
3. Film Thickness Measurements
 - a. The Vendor shall be responsible for providing all equipment and labor to perform wet film thickness measurements in accordance with ASTM D4414-95R20 - Standard Practice for Measurement of Wet Film Thickness of Organic Coatings by Notched Gages. Measurements shall be taken during application of the coating, documented and attested to by the Vendor for submission to NBU.
 - b. Dry film thickness measurements shall be taken on 10% of the wastewater manholes receiving a coating. The Vendor shall be responsible for providing all equipment and labor to perform dry film thickness in accordance with ASTM D6132-13R17- Standard Test Method for Nondestructive Measurement of Dry Film Thickness of Applied Organic Coatings Using an Ultrasonic Coating Thickness Gage. NBU's representative shall select manholes to be tested.
4. Holiday Detection Test
 - a. The Vendor shall provide all equipment and labor to test for discontinuities (“holidays”) in each new layer of applied coating to detect pinholes, voids, cracks, thin spots and foreign inclusions by using methods and equipment in accordance with ASTM D4787-13R18 Continuity Verification of Liquid or Sheet Linings Applied to Concrete Substrates.
 - b. The Vendor shall perform all discontinuity testing using high-voltage, pulse-type equipment, and another of the Vendor’s designated representative shall witness the performance. The test voltage shall depend on the coating thickness according to the tabulated values in ASTM D4787-13R18.
 - c. The Vendor shall mark and repair all detected holidays in accordance with the coating manufacturers recommended repair procedure.
 - d. The Vendor shall be responsible for documenting and submitting wastewater manhole testing, test results, and repairs made to NBU.
5. Adhesion Testing
 - a. The Vendor shall test a minimum of 10% of the wastewater manholes coated for adhesion/bond of the coating to the substrate. The Vendor shall

provide all equipment and labor to conduct testing in accordance with ASTM D4541-09, ASTM D7234-21, or NACE SP0188-2024. NBU's representative shall select wastewater manholes to be tested.

- b. The Vendor shall affix a minimum of three (3) - 50 mm dollies to the coated surface at the cone area, mid-section, and at the bottom of the structure. The adhesive used to attach the dollies to the coating shall be rapid setting with tensile strengths in excess of the coating product and permitted by the Vendor to cure in accordance with manufacturer recommendations. The Vendor shall adequately prepare the coating and dollies to receive the adhesive.
- c. Failure of the dolly adhesive shall be deemed a non-test and shall require retesting. Prior to performing the pull test, the coating shall be scored to the substrate by mechanical means without disturbing the dolly or bond within the test area.
- d. Two of the three adhesion pulls shall exceed 300 PSI or concrete failure with more than 50% of the subsurface adhered to the coating.
- e. Should a structure fail to achieve two successful pulls as described above, additional testing shall be performed by the Vendor at the discretion of NBU. Any areas detected to have inadequate bond strength shall be evaluated by NBU.
- f. Further bond tests may be performed in that area to determine the extent of the potentially deficient bonded area. Repairs shall be made at the expense of the Vendor.

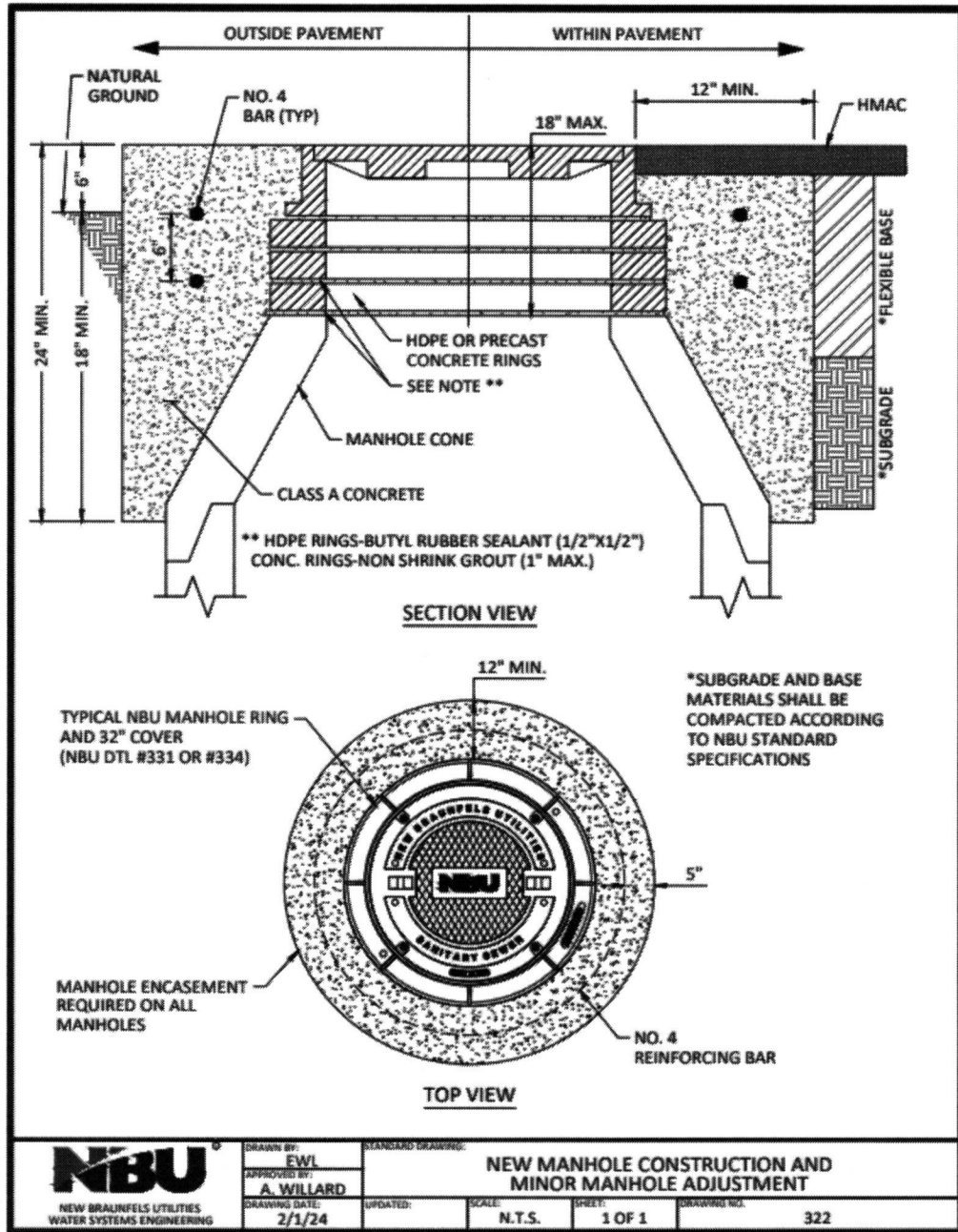
Attachment A

331 SANITARY SEWER MH COVER 2023 Coat-of-Arms-1



Attachment B

322 New Manhole Construction and Minor Manhole Adjustment



Attachment C TXDOT Manhole Diamond

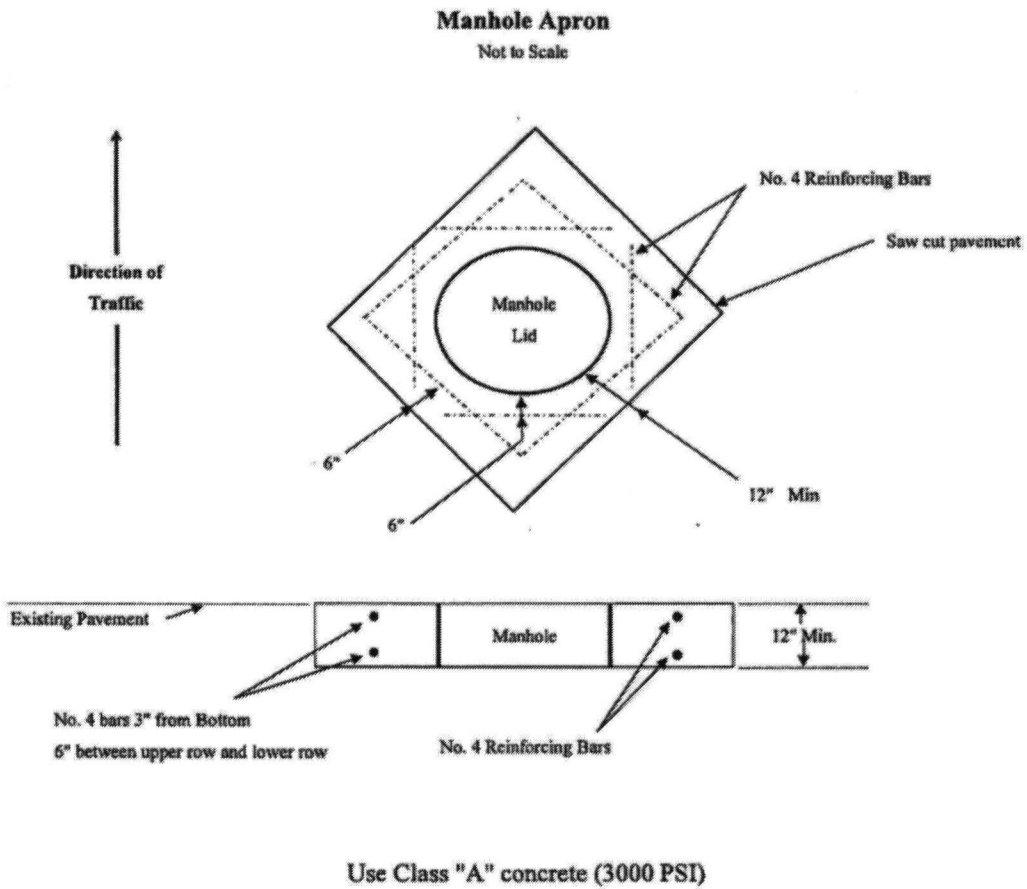


Exhibit B

Price List/ Payment Terms

NBU shall pay the Vendor for the Services rendered under this Agreement in accordance with the tables set forth below in an amount not to exceed \$1,000,000 annually and \$5,000,000 for the duration of the Agreement.

Item	Description	Unit of Measure	Unit Price	Product/Process Details	Additional Details
1	Chemical Grout- Provide, and inject Chemical Grout through the wastewater manhole wall to stop active leaks to allow lining or coating	Gallon	\$89.00	Avanti-A202 Avanti International	
2	Bench and Invert Reconstruction- reconstruction of bench or invert of a 4-foot inside diameter of the wastewater manhole, including flow control	Each	\$350.00	Refratta HAC-100 Global Materials	
3	Cementitious Lining- 4-foot inside diameter of the wastewater manhole, 1/2 inch thickness	Vertical Foot	\$69.00	Refratta HAC-100 Global Materials	
4	Cementitious Lining- 4-foot inside diameter of the wastewater manhole, 1 inch thickness	Vertical Foot	\$85.00	Refratta HAC-100 Global Materials	
5	Cementitious Lining- 4-foot inside diameter of the wastewater manhole, 2 inch thickness	Vertical Foot	\$145.00	Refratta HAC-100 Global Materials	
6	Protective Coating- 4-foot inside diameter of the wastewater manhole, 125 mils	Vertical Foot	\$59.00	SCP Dropliner/specialty Coating Products-Equal to Reactamine ET/Carboline Inc.	
7	Protective Coating- 4-foot inside diameter of the wastewater manhole, 250 mils	Vertical Foot	\$120.00	SCP Dropliner/specialty Coating Products-Equal to Reactamine ET/Carboline Inc.	
8	Chimney Seal Installation- Equipment, labor, and materials to install a chimney seal	Each	\$350.00	Flex Seal by Sealing System Inc.	

9	Ring Casting Seal Installation- Equipment, labor, and materials to install a ring casting seal	Each	\$350.00	Encaseal by Miller Pipeline	
10	Replacement ring and cover- 24 inch diameter bolt-down cast iron	Each	\$850.00	24" by East Jordan	
11	Replacement ring and cover- 32 inch diameter bolt-down cast iron	Each	\$850.00	32" by East Jordan	
12	Equipment, labor, and materials including the concrete diamond (ring and cover price is a separate line item) to replace ring and cover or adjust grade <6 inches in TXDOT Right of Way ("ROW") pavement	Each	\$1500.00		
13	Equipment, labor, and materials including the concrete encasement (ring and cover price is a separate line item) to replace ring and cover or adjust grade <6 inches in NON-TXDOT paved and all unpaved areas	Each	\$1250.00		
14	Additional Cost for equipment, labor, and materials to adjust the wastewater manhole grade 6 to 24 inches.	Each	\$750.00		
15	By-pass Set-up				
15.2	By-pass operation using 4 inch pumps and 500 feet of by-pass discharge line.	Each	\$750.00	4x4x8 solids vac QF pump 041-0137	
15.3	By-pass operation using 6 inch pumps and 500 feet of by-pass discharge line.	Each	\$950.00	6x8x11 vac pump 041-0150	
16	Additional Discharge Piping				
16.1	Additional 500 feet of 4 inch discharge piping	Each	\$150.00	4x50 lay flat	
16.2	Additional 500 feet of 6 inch discharge piping	Each	No pricing provided	6x50 lay flat	
17	NOTE: By-pass operations for mains over 15 inches will be negotiated separately.	-----			

18	Removal of existing protective coating	Per Vertical Foot	\$45.00	N/A	
19	TXDOT single lane closure				
19.1	35 mph	Per Each	\$900.00	Flasher Equipment	
19.2	45 mph	Per Each	\$900.00	Flasher Equipment	
19.3	55 mph	Per Each	\$900.00	Flasher Equipment	
19.4	65 mph	Per Each	\$1000.00	Flasher Equipment	
19.5	75 mph	Per Each	\$1200.00	Flasher Equipment	
20	TXDOT double lane closure			Flasher Equipment	
20.1	35 mph	Per Each	\$1100.00	Flasher Equipment	
20.2	45 mph	Per Each	\$1100.00	Flasher Equipment	
20.3	55 mph	Per Each	\$1100.00	Flasher Equipment	
20.4	65 mph	Per Each	\$1200.00	Flasher Equipment	
20.5	75 mph	Per Each	\$1400.00	Flasher Equipment	
21	TXDOT intersection closure			Flasher Equipment	
21.1	35 mph	Per Each	\$3300.00	Flasher Equipment	
21.2	45 mph	Per Each	\$3300.00	Flasher Equipment	
21.3	55 mph	Per Each	\$3300.00	Flasher Equipment	
21.4	65 mph	Per Each	\$3300.00	Flasher Equipment	
21.5	75 mph	Per Each	\$3300.00	Flasher Equipment	
22	NON-TXDOT single lane closure			Flasher Equipment	
22.1	25 mph	Per Each	\$450.00	Flasher Equipment	
22.2	35 mph	Per Each	\$450.00	Flasher Equipment	
22.3	45 mph	Per Each	\$450.00	Flasher Equipment	
22.4	55 mph	Per Each	\$550.00	Flasher Equipment	
22.5	65 mph	Per Each	\$650.00	Flasher Equipment	
23	NON-TXDOT double lane closure			Flasher Equipment	
23.1	25 mph	Per Each	\$550.00	Flasher Equipment	
23.2	35 mph	Per Each	\$550.00	Flasher Equipment	
23.3	45 mph	Per Each	\$550.00	Flasher Equipment	
23.4	55 mph	Per Each	\$600.00	Flasher Equipment	
23.5	65 mph	Per Each	\$650.00	Flasher Equipment	
24	NON-TXDOT intersection closure			Flasher Equipment	
24.1	25 mph	Per Each	\$1500.00	Flasher Equipment	
24.2	35 mph	Per Each	\$1500.00	Flasher Equipment	
24.3	45 mph	Per Each	\$1500.00	Flasher Equipment	
24.4	55 mph	Per Each	\$1700.00	Flasher Equipment	
24.5	65 mph	Per Each	\$1750.00	Flasher Equipment	

Exhibit C
Work Authorization Form

Work Authorization

Work Authorization No. _____



New Braunfels Utilities ("NBU") Attn: Director of Water Services 263 Main Plaza New Braunfels, Texas 78130	Project No.:
	Agreement No.: 24-0077
	Date:
This Work Authorization No. _____ is in accordance with the terms and conditions outlined in the Services and Goods Agreement between _____ ("Vendor") and NBU dated _____ (the "Agreement").	
Project Description:	
Description of Services:	
The Vendor shall provide the Services in accordance with Exhibit A of the Agreement and more particularly described in Appendix __ to this Work Authorization.	
Deliverables:	
Compensation shall be as follows: Unless otherwise expressly stated herein, compensation for the Services and Deliverables shall be in the amount described in this Work Authorization in accordance with the Fee Schedule described in Exhibit B of the Agreement.	
	Amount of this Authorization \$
Schedule shall be as follows:	

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

This Work Authorization will serve as notice to proceed.

VENDOR:

NEW BRAUNFELS UTILITIES:

BY: _____

BY: _____

Print or Type Name

Print or Type Name

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____



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

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

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

RECOMMENDED ACTION: Approve Resolution #2024-189 Authorizing and Approving (i) the Purchase of 4.87 Acres of Unimproved Real Property Commonly Known As 778 Barbarosa Road, New Braunfels, Texas (the “Property”) in Connection with the FM 1101 Pump Station and Ground Storage Tank Project in an Amount Not to Exceed \$2,230,000.00 Plus Closing Costs; (ii) the CEO or His Designee to Execute Any and All Documents Necessary to Purchase the Property or, if the CEO Deems Necessary, Terminate the Subject Transaction; and (iii) Other Matters in Connection Therewith

BACKGROUND

On August 29, 2024, the New Braunfels Utilities (“NBU”) Board of Trustees (the “Board”) approved a Professional Services Agreement with Quiddity Engineering, LLC for the design of the FM 1101 Pump Station and Ground Storage Tank Project (the “Project”). This Project will facilitate additional distribution pumping capacity in the Kohlenberg Pressure Zone to serve projected growth and further an NBU contractual obligation under the Mayfair Cost Sharing Agreement, as amended. NBU has entered into negotiations with Triple J Family Holdings LLC and Play Strong LLC to acquire approximately 4.78 acres of unimproved property described as Lot 2, Block 1 Health Commons Subdivision, New Braunfels, Comal County, Texas (“Property”), commonly known as 778 Barbarosa Road, New Braunfels, Comal County, Texas, for the construction of the pump station and ground storage tank associated with the Project.

NBU and Triple J Family Holdings LLC, and Play Strong LLC have agreed to the terms and conditions set out in the Real Estate Sales Contract (“Contract”), which is subject to the approval of the NBU Board. NBU proposes to pay \$2,230,000 for the Property, plus the customary closing costs set out in the Contract. NBU obtained an appraisal from Valbridge Property Advisors dated August 7, 2024, which states the value of the property is \$2,230,000.

This item is being presented to the Board because the total amount of the purchase price of the Property exceeds \$250,000.00.

NBU staff requests that the Board authorize and approve (i) the purchase of the Property from Triple J Family Holdings LLC and Play Strong LLC upon terms and conditions in the Contract and (ii) the CEO or his designee to execute any and all documents necessary to purchase the property or, if the CEO deems necessary, terminate the subject transaction.

Upon completion of the purchase of the Property and final design, NBU staff will solicit a construction contract for the Project and anticipates bringing the construction contract to the Board for approval in June 2026.

FINANCIAL IMPACT

The total financial impact of the purchase of the Property from Triple J Family Holdings LLC and Play Strong LLC is \$2,230,000.00 plus estimated closing costs of \$14,273.58 provided in the Contract. The Project is budgeted within the fiscal year 2025 through fiscal year 2028 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Customer and Community

Infrastructure and Technology

EXHIBITS

1. Resolution #2024-189
2. Real Estate Sales Contract
3. Appraisal from Valbridge Property Advisors

RESOLUTION #2024-_____

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES AUTHORIZING AND APPROVING (I) THE PURCHASE OF 4.87 ACRES OF UNIMPROVED REAL PROPERTY COMMONLY KNOWN AS 778 BARBAROSA ROAD, NEW BRAUNFELS, TEXAS (THE “PROPERTY”) IN CONNECTION WITH THE FM 1101 PUMP STATION AND GROUND STORAGE TANK PROJECT IN AN AMOUNT NOT TO EXCEED \$2,230,000 PLUS CLOSING COSTS; (II) THE CEO OR HIS DESIGNEE TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO PURCHASE THE PROPERTY OR, IF THE CEO DEEMS NECESSARY, TERMINATE THE SUBJECT TRANSACTION; AND (III) OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, New Braunfels Utilities (“NBU”) is a Texas municipally owned utility that provides water, wastewater, and electric service to customers in its service territory;

WHEREAS, on August 29, 2024, the NBU Board of Trustees (“Board”) approved a Professional Services Agreement with Quiddity Engineering, LLC for the design of the FM 1101 Pump Station and Ground Storage Tank Project (“Project”);

WHEREAS, the Project will facilitate additional distribution pumping capacity in the Kohlenberg Pressure Zone to serve projected growth and further a contractual obligation of the Mayfair Cost Sharing Agreement, as amended;

WHEREAS, NBU staff evaluated sites in the area for the Project and identified the unimproved property described as Lot 2, Block 1 Health Commons Subdivision, New Braunfels, Comal County, Texas, located at 778 Barbarosa Road, New Braunfels, Texas, more fully described in the attached Exhibit A (the “Property”), as the appropriate site for the pump station and ground storage tank associated with the Project;

WHEREAS, NBU entered into a Real Estate Sales Contract (the “Contract”) for the purchase of the Property from Triple J Family Holdings LLC and Play Strong LLC upon the terms and conditions set forth therein;

WHEREAS, the Contract is subject to the approval of the Board; and

WHEREAS, the Board has reviewed the Contract, together with the exhibits attached thereto, in relation to the proposed purchase of the Property, and is of the opinion that the same should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES THAT:

SECTION 1. The Board of Trustees hereby approves the purchase of the Property in an amount not to exceed \$2,230,000 plus closing costs upon the terms and conditions set forth in the Contract.

SECTION 2. The Board of Trustees hereby authorizes the CEO or his designee to negotiate and execute any and all documents necessary to acquire the Property, including without limitation, the negotiation and acceptance of a Special Warranty Deed to acquire the Property in substantially the form attached to the Contract. The Board of Trustees also authorizes the Chief Executive Officer or his designee to pay or arrange for payment of the costs necessary to close the purchase of the Property, including, but not limited to, the purchase price and the related closing costs.

SECTION 3. The CEO or his designee is hereby authorized to take any additional steps or execute any additional documents reasonably necessary to terminate the subject transaction as the CEO or his designee deems appropriate.

SECTION 4. The recitals contained in the preamble hereof are found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board of Trustees.

SECTION 5. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 6. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 7. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board of Trustees hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 8. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 9. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED, APPROVED, AND ADOPTED, this the 31st day of October, 2024.

Wayne Peters
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ryan Kelso
Secretary, Board of Trustees
New Braunfels Utilities

Exhibit A
Real Estate Sales Contract

**REAL ESTATE SALES CONTRACT
(Unimproved Property)**

This Real Estate Sales Contract ("*contract*") to buy and sell real property is between Seller and Buyer as identified below and is effective on the date ("*Effective Date*") of the last of the signatures by (a) Seller and Buyer as parties to this contract, and (b) Escrow Agent to acknowledge receipt of the Earnest Money. Buyer must deliver the Earnest Money to Escrow Agent before the Earnest Money Deadline provided in Section A.1 for this contract to be effective.

Sellers (collectively "Seller"): **Triple J Family Holdings LLC, a Texas limited liability company**
38 Preston Wood
New Braunfels, Texas 78132
Phone: (830) 626-3688
E-mail: _____

Play Strong LLC, a Texas limited liability company
2234 Cedar Grove
New Braunfels, Texas 78132
Phone: (830) 626-3688
E-mail: _____

Seller's Attorney: _____

Phone: _____
E-mail: _____

Seller's Sales Agent: _____

Phone: _____
E-mail: _____

Buyer: **New Braunfels Utilities, as agent of the City of New Braunfels**
355 FM 306
New Braunfels, Texas 78130
Phone: (830) 608-8805
E-mail: easement@nbutexas.com

Buyer's Attorney: **Connie Lock, General Counsel**
263 Main Plaza
New Braunfels, Texas 78130
Phone: (830) 629-8428
E-mail: clock@nbutexas.com

Buyer's Sales Agent: **None**

Property: Lot 2, Block 1, of Health Commons, a Subdivision in Comal County, Texas, according to the map or plat of record in Document No. 201606041344, of the Map and Plat Records of Comal County, Texas (the "**Property**")

**Escrow Agent
and Title Company:**

Corridor Title Company
410 West San Antonio Street, Suite 100
New Braunfels, Texas 78130
Phone: (830) 387-4739
E-mail: Cindy.Carroll@corridortitle.com

Purchase Price: \$2,230,000

Earnest Money: \$22,300

A. Deadlines and Other Dates

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. A holiday is a day, other than a Saturday or Sunday, on which state or local governmental agencies and financial institutions are not generally open for business where the Property is located. A "business day" means a day other than a Saturday, Sunday or holiday. Time is of the essence.

A.1. Buyer's deadline to deliver Earnest Money to Title Company: fifteen (15) days after the Title Company acknowledges receipt of the fully executed contract ("**Earnest Money Deadline**")

A.2. Delivery of Seller's records as specified in Section G.2.: fourteen (14) days after the Effective Date

A.3. Delivery of Title Commitment by Seller: twenty (20) days after the Effective Date

A.4. Delivery of Survey by Seller: five (5) business days after the Effective Date

A.5. Delivery of legible copies of instruments referenced in the Title Commitment by Seller: twenty (20) days after the Effective Date

A.6. Delivery of Title Objections by Buyer: twenty (20) days after the Buyer's receipt of the last of the Survey, Title Commitment and legible copies of all instruments affecting the Property, as referenced in the Survey and Title Commitment

A.7. Delivery of Cure Notice by Seller: within ten (10) days after receipt of Buyer's Title Objections

A.8. Delivery of Buyer's Cure Notice Response: within ten (10) days after receipt of Seller's Cure Notice

A.9. End of Inspection Period: ninety (90) days after the Effective Date ("**End of Inspection Period**"); provided, Buyer shall have the right, in its sole and absolute discretion, to extend the Inspection Period for an additional thirty (30) days, upon written notice to Seller, given on or before the expiration of the Inspection Period, and if so extended, the End of Inspection Period is defined to be one hundred twenty (120) days after the Effective Date.

A.10. Closing Date: forty-five (45) days after the End of Inspection Period or such earlier date as both parties may mutually agree (“*Closing Date*”)

B. Closing Documents

B.1. At Closing, Seller will deliver the following items:

Special Warranty Deed in substantially the form attached hereto as Exhibit C

IRS Nonforeign Person Affidavit

Evidence of Seller’s authority to close this transaction

Seller’s Closing Statement

Any other documents reasonably requested by Buyer or the Title Company to close the transaction contemplated by this contract

B.2. At Closing, Buyer will deliver the following items:

Balance of Purchase Price as reflected in Buyer’s Closing Statement

Buyer’s Closing Statement

Any other documents reasonably requested by Seller or the Title Company to close the transaction contemplated by this contract

The documents listed in this Section B are collectively known as the “*Closing Documents*.”

C. Exhibits

The following are attached to and are a part of this contract:

Exhibit A— Representations; As Is

Exhibit B— Seller’s Records

Exhibit C— Form Special Warranty Deed

Exhibit D— Notices, Statements, and Certificates

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. Seller will convey the Property to Buyer together with all of Seller’s right, title and interest in and to any easements, property interests, benefits, privileges, permits, licenses, rights and appurtenances pertaining to the Property, including any right, title and interest of Seller in and to any adjacent roads, streets, alleys or rights-of-way to the extent (but only to the extent) that the same relate to the Property.

E. Interest on Earnest Money

Buyer may but is not required to direct Escrow Agent to invest the Earnest Money in an interest-

bearing account in a federally insured financial institution by giving notice to Escrow Agent and satisfying Escrow Agent's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will become part of the Earnest Money.

F. Title and Survey

F.1. Review of Title. The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

F.2. Title Commitment; Title Policy. "**Title Commitment**" means a Commitment for Issuance of an Owner Policy of Title Insurance stating the condition of title to the Property. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "**Title Policy**" means an Owner Policy of Title Insurance issued in conformity with the last Title Commitment delivered to Buyer before Closing.

F.3. Survey. Within the time period specified in Section A.4., Seller will furnish to Buyer and the Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance ("**T-47 Affidavit**"). If Seller does not have an existing survey or the existing survey or T-47 Affidavit provided by Seller is not acceptable to Buyer or the Title Company, Buyer will obtain a new survey (the "**Survey**") of the Property, at Buyer's expense, no later than three (3) days prior to the Closing Date.

F.4. Delivery of Title Commitment and Encumbrances. Seller will deliver or cause the Title Company to deliver:

F.4.a. the Title Commitment to Buyer and Buyer's Attorney by the deadline stated in Section A.3; and

F.4.b. legible copies of all covenants, conditions, liens, encumbrances and any other matters affecting the Property, as referenced in the Title Commitment, by the deadline stated in Section A.5.

F.5. Title Objections. Buyer has until the deadline stated in Section A.6. ("**Title Objection Deadline**") to object to any defects, exceptions, or encumbrances to title ("**Title Objections**"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer approves or is deemed to have approved are "**Permitted Exceptions**." If Buyer notifies Seller of any Title Objections, Seller has until the deadline stated in Section A.7. to notify Buyer whether Seller agrees to cure the Title Objections before Closing ("**Cure Notice**"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before Closing, Buyer may, until the deadline stated in Section A.8, notify Seller that either this contract is terminated or Buyer will proceed to close ("**Buyer's Cure Notice Response**"), subject to Seller's obligations to remove all liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only any other Title Objections that Seller has agreed to cure in the Cure Notice. At or before Closing, Seller must remove all liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure any other Title Objections that Seller has agreed to cure.

G. Inspection Period

G.1. Buyer's Right to Terminate During Inspection Period. Buyer may terminate this contract for any reason or no reason at all for the period of time between the Effective Date of the contract and the End of Inspection Period (such period being referenced herein as the "*Inspection Period*"), by notifying Seller of Buyer's intention to terminate the contract before the End of Inspection Period. If Buyer elects to terminate the contract during the Inspection Period, the Earnest Money will be returned to the Buyer less \$1,500 ("*Independent Consideration*"), which will be paid to the Seller, and Buyer and Seller will be relieved of all further obligations under the contract. Subject to the terms of Section K.1.b., if Buyer does not notify Seller of Buyer's termination of the contract before the End of Inspection Period, Buyer waives the right to terminate this contract pursuant to this provision.

G.2. Review of Seller's Records. Seller will deliver to Buyer copies of Seller's records specified in Exhibit B, or otherwise make those records available for Buyer's review, by the deadline stated in Section A.2.

G.3. Entry onto the Property. Buyer may enter the Property before Closing to inspect it or obtain the Survey at Buyer's cost and risk, subject to the following:

G.3.a. Buyer may not interfere in any material manner with existing operations or occupants of the Property;

G.3.b. Buyer must notify Seller in advance of Buyer's plans to conduct any subsurface testing so that Seller may be present during the tests;

G.3.c. If the Property is physically altered because of Buyer's inspections, Buyer will return the Property to substantially the condition it was in prior to inspections, and this obligation shall survive termination of the contract; and

G.3.d. Buyer must abide by any other reasonable entry rules imposed by Seller that Seller has provided in writing to Buyer.

G.4. Environmental Assessment. Buyer has the right to conduct environmental assessments of the Property. Seller will provide, or will designate a person with knowledge of the use and condition of the Property during Seller's period of ownership to provide information reasonably requested by Buyer or Buyer's agent or representative regarding the use and condition of the Property during the period of Seller's ownership of the Property. Seller will cooperate with Buyer in obtaining and providing to Buyer or its agent or representative information regarding the use and condition of the Property before Seller's period of ownership to the extent that the information is within Seller's possession or control.

H. Representations, As Is, Where Is Provision, and Environmental Matters

The parties' representations stated in Sections A and B of Exhibit A are true and correct as of the Effective Date and must be true and correct on the Closing Date. A party who becomes aware that any of the representations of either party are not true and correct will promptly notify the other party. Unless a party notifies the other party to the contrary on or before the Closing Date, or a party has actual knowledge to the contrary as of the Closing Date, each party is entitled to presume that the representations of the other party in Exhibit A are true and correct as of the Closing Date.

Seller further provides the statutory notices, statements, and certifications set forth in Exhibit D to

Buyer.

I. Condition of the Property until Closing; Cooperation; No Recording of Contract

I.1. Casualty Damage. Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before Closing. Buyer may terminate this contract if the casualty damage that occurs before Closing would affect Buyer's intended use of the Property in Buyer's reasonable opinion, by giving notice to Seller within fifteen (15) days after receipt of Seller's notice of the casualty (or before Closing if Seller's notice of the casualty is received less than fifteen (15) days before Closing), in which event the Earnest Money will be returned to the Buyer, less the Independent Consideration which will be paid to Seller, and the parties will be relieved of all further obligations under the contract. If Buyer does not terminate this contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) credit to Buyer the amount of the deductibles and coinsurance under any insurance policies covering the Property. If Seller has not insured the Property and Buyer does not elect to terminate this contract in accordance with this section, the Purchase Price will be reduced by the cost to repair the casualty damage less any amounts previously paid or incurred by Seller to repair the Property.

I.2. Condemnation. Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract by giving notice to Seller within fifteen (15) days after receipt of Seller's notice to Buyer (or before Closing if Seller's notice is received less than fifteen days before Closing), in which event the Earnest Money will be returned to the Buyer less the Independent Consideration which will be paid to Seller, and the parties will be relieved of all further obligations under the contract. If Buyer does not terminate this contract and elects to close the transaction contemplated by this contract, the Purchase Price will not be reduced and Buyer will have the exclusive right to pursue and retain any award relating to the Property in the condemnation proceeding.

I.3. Claims; Hearings. Seller will notify Buyer promptly after Seller receives notice of any claim or administrative hearing that is threatened, filed, or initiated before Closing that involves or directly affects the Property.

I.4. Cooperation. Seller will cooperate with Buyer (a) before and after Closing, to transfer any applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after Closing; and (b) before Closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

I.5. No Recording. Neither Buyer nor Seller may file this contract or any memorandum or notice of this contract in the real property records of any county.

J. Termination

J.1. Disposition of Earnest Money after Termination

J.1.a. To Buyer. If Buyer terminates this contract in accordance with Buyer's rights to terminate, Buyer will send a request for release of the Earnest Money to Seller, with a copy to Escrow Agent, to be signed by Seller. If Seller fails to deliver a signed release to Escrow Agent within five days after delivery of the request for release, Buyer may make a written demand on Escrow Agent for the Earnest Money, and Escrow Agent will promptly deliver a copy of the demand to Seller. Unless Seller delivers a written objection to Escrow Agent, within fifteen days

after Escrow Agent delivers Buyer's written demand for the Earnest Money, Escrow Agent will, without any further authorization from Seller, deliver the Earnest Money to Buyer, less the Independent Consideration, which will be paid to Seller.

J.1.b. To Seller. If Seller terminates this contract in accordance with Seller's right to terminate under Section L.3., Seller will send a request for release of the Earnest Money to Buyer, with a copy to Escrow Agent, to be signed by Buyer. If Buyer fails to deliver a signed release to Escrow Agent within five days after delivery of the request for release, Seller may make a written demand on Escrow Agent for the Earnest Money, and Escrow Agent will promptly deliver a copy of the demand to Buyer. Unless Buyer delivers a written objection to Escrow Agent, within fifteen days after Escrow Agent delivers Seller's written demand for the Earnest Money, Escrow Agent will, without any further authorization from Buyer, pay the Earnest Money to Seller.

J.2. Duties after Termination. If this contract is terminated, Buyer will, at Seller's request, return to Seller all of Seller's records in Buyer's possession or control. Buyer will follow all applicable state laws, including the Texas Public Information Act, in regards to Seller's records in Buyer's possession.

K. Closing

K.1. Conditions of Closing.

K.1.a. Neither party will be obligated to close the sale and purchase of the Property unless the other party has satisfied the following conditions, any of which may be waived by the first party in its discretion:

K.1.a.(i) the representations and warranties of the other party must be true and correct at Closing;

K.1.a.(ii) the other party must have performed all covenants and agreements required to be performed at or before Closing by that party under the terms of this contract; and

K.1.a.(iii) no voluntary or involuntary proceeding in bankruptcy shall be pending with respect to either party.

K.1.b. Buyer's obligation to close on the purchase of the Property is conditioned on its Board of Trustees consenting to and approving the transaction contemplated by this contract on or before the Closing Date ("**Board Approval**"). If Board Approval has not been obtained on or before the Closing Date, then this contract will terminate and the Earnest Money shall be returned to Buyer, less the Independent Consideration, which will be paid to Seller.

K.2. Closing. This transaction will close ("**Closing**") at Escrow Agent's offices on the Closing Date at a time to be mutually agreed upon by the parties or at such other time and place as may be agreed upon in writing by Seller and Buyer. At Closing, the following will occur:

K.2.a. Closing Documents; Escrow Agent/Underwriter Documents. The parties will execute and deliver the Closing Documents.

K.2.b. Payment of Purchase Price. Buyer will deliver the Purchase Price and any other

amounts that Buyer is obligated to pay under this contract as set out in Buyer's settlement statement to Escrow Agent in funds acceptable to Escrow Agent. The Earnest Money will be applied to the Purchase Price.

K.2.c. Disbursement of Funds; Recording; Copies. Escrow Agent will disburse the Purchase Price and other funds in accordance with this contract upon satisfaction of Buyer and Seller's respective obligations, record the Deed and the other Closing Documents requiring recordation, if any, and distribute documents and copies to the parties.

K.2.d. Delivery of Originals. Seller will deliver to Buyer the originals of Seller's Records upon written request of Buyer.

K.2.e. Possession. Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at Closing and only those liens and security interests created at Closing to secure financing for the Purchase Price, if applicable.

K.3. Transaction Costs

K.3.a. Seller's Costs. Seller will pay Seller's attorney's fees and expenses incurred in connection with the transaction, Seller's Broker's commission, and any Closing costs that Buyer is prevented from paying by law.

K.3.b. Buyer's Costs. Buyer will pay all Closing costs other than those set out in Section K.3.a.

K.3.c. Ad Valorem Taxes.

K.3.c.i. Except for subsequent assessments for prior years due to changes in use or ownership discussed below, ad valorem taxes on the Property for all periods before the period in which Closing occurs must be paid by Seller at or before Closing. Ad valorem taxes for the Property for the calendar year of Closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at Closing as a credit to the Purchase Price. Buyer will assume the obligation to pay, and shall pay in full, such taxes for the year of Closing before delinquency. If the assessment for the calendar year of Closing is not known at the Closing Date, the proration will be based on tax rates for the previous tax year applied to the most current assessed value, and Buyer and Seller will adjust the prorations in cash within thirty days after the actual assessment and taxes are known. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after Closing. All taxes (including any penalties, interest, and attorney's fees) due as of Closing will be paid at Closing. Seller acknowledges that Buyer is a tax exempt entity.

K.3.c.ii. If the Property has been the subject of special valuation and reduced tax assessments pursuant to the provisions of chapter 23, subchapter D, of the Texas Tax Code or under any other provision of law with respect to any period before the Closing, and if additional taxes, penalties, or interest are assessed pursuant to Code Section 23.55 or under the other provision of law, the following will apply: if Seller changes the use of the Property before Closing, resulting in the assessment of additional taxes for periods before Closing, Seller will pay the additional taxes. The obligations of Seller under this provision will survive termination of this contract and Closing.

K.4. Issuance of Title Policy. Seller will cause Escrow Agent to issue the Title Policy to Buyer as soon as practicable after Closing.

L. Default and Remedies

L.1. Seller's Default; Remedies before Closing. If Seller fails to perform its obligations under this contract or if Seller's representations are not true and correct as of the Closing Date ("**Seller's Default**"), Buyer may elect one of the following as its sole and exclusive remedy before Closing:

L.1.a. Termination; Liquidated Damages. Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and have the Earnest Money returned to Buyer, less the Independent Consideration, which will be paid to Seller. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, if Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer terminates this contract in accordance with the previous sentence, Seller will also pay Buyer's actual out-of-pocket expenses incurred to investigate the Property after the Effective Date ("**Buyer's Expenses**") to Buyer, within ten days after Seller's receipt of an invoice from Buyer stating the amount of Buyer's Expenses accompanied by reasonable evidence of Buyer's Expenses.

L.1.b. Specific Performance. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

L.1.c. Actual Damages. If Seller conveys or encumbers any portion of the Property before Closing so that Buyer's ability to enforce specific performance of Seller's obligations under this contract is precluded or impaired, Buyer will be entitled to seek recovery from Seller for the actual damages sustained by Buyer by reason of Seller's Default, including attorney's fees and expenses and court costs.

L.2. Seller's Default; Remedies after Closing. If Seller's representations are not true and correct at Closing due to circumstances reasonably within Seller's control and Buyer does not become aware of the untruth or incorrectness of such representations until after Closing, Buyer will have all the rights and remedies available at law or in equity. If Seller fails to perform any of its obligations under this contract that survive Closing, Buyer will have all rights and remedies available at law or in equity unless otherwise provided by the Closing Documents.

L.3. Buyer's Default; Remedies. If Buyer fails to perform any of its obligations under this contract ("**Buyer's Default**"), Seller may terminate this contract by giving notice to Buyer on or before Closing and have the Earnest Money paid to Seller. The foregoing constitutes Seller's sole and exclusive remedy for a default by Buyer.

L.4. Liquidated Damages. The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money is a reasonable forecast of just compensation to the nondefaulting party for the harm that would be caused by a default.

L.5. Attorney's Fees. If either party retains an attorney to enforce this contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

M. Miscellaneous Provisions

M.1. Notices. Any notice required by or permitted under this contract must be in writing and delivered to the intended recipient at the address shown in this contract by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) certified United States Mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (d) electronic transmission (email) provided that the transmission is completed no later than 5:00 p.m. on a business day and the original also is sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed. Any address for notice may be changed by not less than ten days' prior written notice given as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

M.2. Entire Agreement. This contract, its exhibits, and any Closing Documents delivered at Closing are the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no representations, warranties, agreements, or promises pertaining to the Property or the sale of the Property by Seller to Buyer other than those expressly set forth in this contract, its exhibits or the Closing Documents, and Buyer is not relying on any statements or representations of Seller or any agent of Seller, that are not in those documents.

M.3. Amendment. This contract may be amended only by an instrument in writing signed by the parties.

M.4. Survival. The provisions of this contract that expressly survive termination or Closing and other obligations of this contract that cannot be performed before termination of this contract or before Closing survive termination of this contract or Closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents control. The representations made by the parties in this contract and in writing as of Closing survive Closing.

M.5. Choice of Law; Venue. This contract is to be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue lies exclusively in Comal County, Texas.

M.6. Waiver of Default. Default is not waived if the nondefaulting party fails to declare a default immediately or delays taking any action with respect to the default.

M.7. No Third-Party Beneficiaries. There are no third-party beneficiaries of this contract.

M.8. Severability. If a provision in this contract is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this contract, and this contract is to be construed as if the unenforceable provision is not a part of the contract.

M.9. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document are construed against the party who drafted it does not apply in interpreting this contract.

M.10. No Special Relationship. The parties' relationship is an ordinary commercial relationship, and the parties do not intend to create the relationship of principal and agent, partners, joint venturers, or any other special relationship.

M.11. Counterparts. If this contract is executed in multiple counterparts, all counterparts taken together constitute this contract. Copies of signatures to this contract are effective as original signatures. A signed copy of this contract delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this contract.

M.12. Binding Effect. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

[SIGNATURES ON FOLLOWING PAGE(S)]

Seller:

TRIPLE J FAMILY HOLDINGS LLC, A TEXAS LIMITED LIABILITY COMPANY

By: 
Jeff Johnson, Managing Member

Date: 8-19-24

By: 
Hunter Johnson, Managing Member

Date: 8/19/24

By: 
Yates Johnson, Managing Member

Date: 8-19-24

By: 
Dawn Johnson, Managing Member

Date: 8-19-24

PLAY STRONG LLC, A TEXAS LIMITED LIABILITY COMPANY

By: 
Chris Stansbury, Managing Member


Date: 8-19-24

By: 
Pia Lomax, Managing Member

Date: 8/19/24

Buyer:

NEW BRAUNFELS UTILITIES

By: 
Name: Ryan Kelso
Title: Chief Executive Officer
Date: 9/5/2024

Escrow Agent's Acceptance of Contract

Escrow Agent, by its execution and delivery of this Real Estate Sales Contract, acknowledges receipt of a fully executed counterpart of this Real Estate Sales Contract on this ____ day of _____, 20__.

CORRIDOR TITLE

By: _____
Name: _____
Title: _____

Receipt for Earnest Money Deposit

Escrow Agent acknowledges receipt of the Earnest Money deposit of \$_____ required under this Real Estate Sales Contract on this ____ day of _____, 20__.

CORRIDOR TITLE

By: _____
Name: _____
Title: _____

Exhibit A**Representations; As Is****A. Seller's Representations to Buyer**

Each Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date, unless Seller has given Buyer notice of any changes prior to the Closing Date that such circumstances have changed due to causes not reasonably within Seller's control.

A.1. Authority. Each Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to perform its obligations under this contract. This contract is binding on Seller and there are no members or managers required to bind the Seller that have not executed this contract. This contract and all documents required by this contract to be executed and delivered to Buyer at Closing will be, duly authorized, executed, and delivered by Seller.

A.2. Litigation. Seller has not received written notice and has no actual knowledge of any litigation pending or threatened against the Property or Seller that might adversely affect the Property or Seller's ability to perform its obligations under this contract.

A.3. Violation of Governmental Requirements. Seller has not received written notice and has no actual knowledge of violation of any law, ordinance, regulation, restriction, or legal requirements affecting the Property or Seller's use of the Property.

A.4. Licenses, Permits, and Approvals. Seller has not received written notice and has no actual knowledge that any license, permit, or approval necessary to use the Property in the manner in which it is currently being used has expired or will not be renewed on expiration or that any material condition will be imposed to use or renew the same.

A.5. Condemnation; Zoning; Land Use; Hazardous Materials. Seller has not received written notice and has no actual knowledge of any condemnation, zoning, land-use, hazardous materials, or other proceedings affecting the Property or any written inquiries or notices by any governmental authority or third party with respect to condemnation, zoning, or other land-use regulations or the presence of hazardous materials affecting the Property.

A.6. Environmental Hazards; Dumpsite, Landfill, Underground Storage Tanks; Wetlands; Threatened or Endangered Species. Seller has not received written notice and has no actual knowledge of any environmental hazards that materially and adversely affect the property; any dumpsite, landfill, cemeteries, or underground storage tanks or containers now or previously located on the Property; any wetlands, as defined by federal or state law or regulation affecting the Property; or any threatened or endangered species or their habitat affecting the Property.

A.7. Terrorist Organizations Lists. Seller is not and Seller has no actual knowledge that its partners, members, shareholders, owners, employees, officers, directors, representatives, or agents is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control of the Department of the Treasury or under any statute, executive order, or other governmental action.

A.8. No Other Obligation to Sell the Property or Restriction against Sale. Seller is not obligated to sell any of the Property to any person other than Buyer. Seller's performance of this contract

will not cause a breach of any other agreement or obligation to which Seller is a party or by which Seller or the Property is bound.

A.9. No Liens. On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature not arising by, through, or under Buyer except the Permitted Exceptions or liens to which Buyer has given its consent in writing, and no work or materials will have been furnished to the Property by Seller that might give rise to mechanic's, materialman's, or other liens against the Property.

A.10. There are no service, maintenance, supply, or other contracts affecting the Property.

A.11. There are no leases, unrecorded easements, or any other agreements, written or oral, creating a possessory interest in the Property with any persons leasing, using, or occupying all or any portion of the Property.

A.12. Seller's Records. The records provided by Seller to Buyer **for Buyer's inspection will be true, correct, and complete copies of the records in Seller's possession or control. The records that were prepared by or under Seller's supervision and control will be true, correct, and complete in all material respects. Unless Seller notifies Buyer to the contrary at the time of delivery of records provided by Seller to Buyer that were not prepared by or under Seller's supervision and control, Seller has no actual knowledge that such records are not true, correct, and complete in any material respect.**

A.13 Brokerage Commissions. Seller represents and warrants to Buyer that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder (each a "**Broker**") in connection with this contract or the transactions contemplated other than any such Broker identified on the first page of the contract. Seller hereby agrees to indemnify, defend, and hold Buyer, harmless from and against any and all claims, demands, causes of action, losses, costs, and expenses (including reasonable attorneys' fees, court costs, and disbursements) arising from any claim for commission, fees, or other compensation or reimbursement for expenses made by any Broker engaged by or claiming to have dealt with Seller in connection with this contract or the transactions contemplated hereby.

A.14. No Other Representation. Except as stated herein or in the notices, statements, and certificates set forth in Exhibit D, Seller makes no representation with respect to the Property.

A.15. No Warranty. Except as expressly set forth in this contract and in the Closing Documents, Seller has made no warranty in connection with this transaction.

B. Patriot Act Representation

Seller and Buyer each represent to the other that: (1) its property interests are not blocked by Executive Order No. 13224, 66 Fed. Reg. 49079; (2) it is not a person listed on the Specially Designated Nationals and Blocked Persons list of the Office of Foreign Assets Control of the United States Department of the Treasury; and (3) it is not acting for or on behalf of any person on that list.

C. "As Is, Where Is"

THIS CONTRACT IS AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT

OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS CONTRACT AND THE CLOSING DOCUMENTS.

BUYER IS NOT RELYING ON ANY REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES OTHER THAN THOSE EXPRESSLY CONTAINED IN THIS CONTRACT AND THE CLOSING DOCUMENTS. BUYER IS NOT RELYING ON ANY INFORMATION REGARDING THE PROPERTY PROVIDED BY ANY PERSON, OTHER THAN BUYER'S OWN INSPECTION AND THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS CONTRACT AND THE CLOSING DOCUMENTS.

The provisions of this Section C regarding the Property will not be included in the deed.

Exhibit B**Seller's Records**

To the extent that Seller has possession or control of the following items pertaining to and currently impacting the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in Section A.2. of the contract:

Governmental:

- governmental licenses, certificates, permits, and approvals
- most recent tax statements for the Property
- records of regulatory proceedings or violations (for example, condemnation, environmental)

Property:

- soil reports
- environmental reports and other information regarding the environmental condition of the Property
- water rights
- engineering reports
- prior surveys
- site plans

Other

- copies of any leases and licenses affecting the Property
- copies of any agreements that may survive the Closing and be binding on the Buyer following the Closing

Exhibit C**Form Special Warranty Deed****SPECIAL WARRANTY DEED**

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Effective Date: [Closing Date]

Grantor: **Triple J Family Holdings LLC, a Texas limited liability company**
38 Preston Wood
New Braunfels, Texas 78132

Play Strong LLC, a Texas limited liability company
2234 Cedar Grove
New Braunfels, Texas 78132

Grantee: **New Braunfels Utilities, as agent of the City of New Braunfels**
263 Main Plaza
New Braunfels, Texas 78130

Consideration: Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements): Lot 2, Block 1, of Health Commons, a Subdivision in Comal County, Texas, according to the map or plat of record in Document No. 201606041344, of the Map and Plat Records of Comal County, Texas;

together with all of Grantor's right, title and interest in and to any easements, interests, benefits, privileges, permits, licenses, rights and appurtenances pertaining to the Property, including any right, title and interest of Grantor in and to any adjacent roads, streets, alleys or rights-of-way to the extent (but only to the extent) that the same relate to the Property.

Reservations from Conveyance: None

Exceptions to Conveyance and Warranty: Those matters described in the attached Exhibit A

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

**TRIPLE J FAMILY HOLDINGS LLC, A TEXAS
LIMITED LIABILITY COMPANY**

By: _____
_____, Managing Member

**PLAY STRONG LLC, A TEXAS LIMITED
LIABILITY COMPANY**

By: _____
_____, Managing Member

AFTER RECORDING RETURN TO:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130

**Exhibit A
to Special Warranty Deed
PERMITTED EXCEPTIONS**

Exhibit D

Notices, Statements, and Certifications

The notices, statements, and certifications that are listed below are included in the sales contract and attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

D.1. Statutory Tax District. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

D.2. Annexation. If the Property is located outside the limits of a municipality, Seller notifies Buyer under Section 5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

D.3. Property Located in a Certificated Service Area of a Utility Service Provider. Notice required by Section 13.257 of the Texas Water Code: The real property, described in the contract to which this exhibit is attached that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property.

D.4. Public Improvement District If the Property is in a public improvement district, Section 5.014 of the Texas Property Code requires Seller to notify Buyer as follows: As a Buyer of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under chapter 372 of the Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

D.5. Texas Agricultural Development District. The Property is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.



Valbridge
PROPERTY ADVISORS

Appraisal Report

4.87 Acres
778 Barbarosa Road
New Braunfels, Comal County, Texas

Report Date: August 7, 2024



FOR:
New Braunfels Utilities
Bruce Haby
355 FM 306
New Braunfels, Texas 78130

**Valbridge Property Advisors |
San Antonio**

9901 IH-10 West, Suite 1035
San Antonio, Texas 78230
(210) 227-6229 phone
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TX01-24-0237-000

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(210) 227-8520 fax

www.valbridge.com

August 7, 2024

Clinton J. Bendele, MAI, ARA
cbendele@valbridge.com

Mr. Bruce Haby
New Braunfels Utilities
355 FM 306
New Braunfels, Texas 78130

RE: 4.87 Acres
778 Barbarosa Road
New Braunfels, Comal County, Texas

Dear Mr. Haby:

In accordance with your request, we have performed an appraisal of the above referenced property. This appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to our value opinion. This letter of transmittal does not constitute an appraisal report and the rationale behind the value opinion(s) reported cannot be adequately understood without the accompanying appraisal report.

The appraisal is for a 4.87 acre tract of land located at 778 Barbarosa Road. The property is currently vacant land. The property is owned by Triple J Family Holdings LLC and Play Strong LLC.

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and within the jurisdictional parameters set-forth by the State of Texas and case law.

New Braunfels Utilities is the client in this assignment. The clients are the intended user of the assignment results. The intended use is to assist New Braunfels Utilities in valuing the subject for purchase negotiations. The value opinions reported herein are subject to the definitions, assumptions and limiting conditions, and certification contained in this report.

Extraordinary Assumptions:

- The appraisal is prepared under the extraordinary assumption that the whole property acreage is accurate. A survey of the whole property was not provided. The whole property area was determined utilizing Comal County Appraisal District Records, Plats, vesting deeds, and aerial imagery.

Hypothetical Conditions:

- None

Based on the analysis contained in the following report, our value conclusion is summarized as follows:

Value Conclusion

Component	As Is
Value Type	Market Value
Property Rights Appraised	Fee Simple
Effective Date of Value	April 2, 2024
Value Conclusion	\$2,230,000

Respectfully submitted,
Valbridge Property Advisors | San Antonio



Clinton J. Bendele, MAI, ARA
Senior Managing Director
State Certified General
Real Estate Appraiser
TX-1337546-G

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Summary of Salient Facts

Summary of Salient Facts
Property Identification

Property Address	778 Barbarosa Road, New Braunfels, Comal County, Texas
Latitude & Longitude	29.714630; -98.067051
Tax Parcel Number	402738
Property Owner	Triple J Family Holdings LLC and Play Strong LLC

Site

Property Size	4.87 acres
Zoning	MU-B-AH - Mixed Use Airport Hazard Zone (Horizontal Zone)
FEMA Flood Map No.	48091C0455F
Flood Zone	Zone X

Valuation Opinions

Highest & Best Use - As Vacant	Commercial/Retail as warranted by demand
Reasonable Exposure Time	12 months
Reasonable Marketing Time	12 months

Value Conclusion

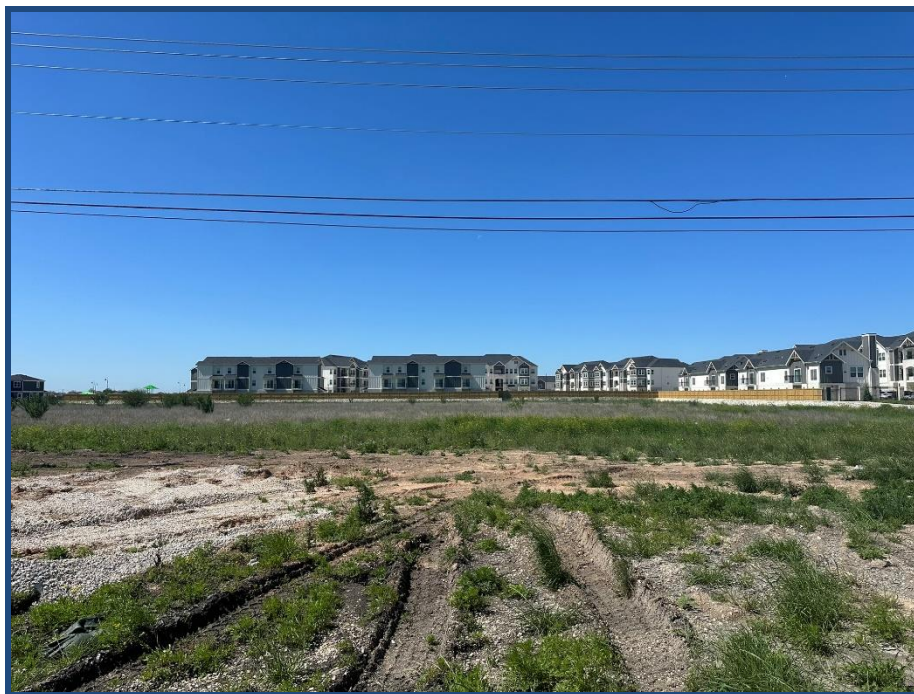
Component	As Is
Value Type	Market Value
Property Rights Appraised	Fee Simple
Effective Date of Value	April 2, 2024
Value Conclusion	\$2,230,000

Aerial and Front Views

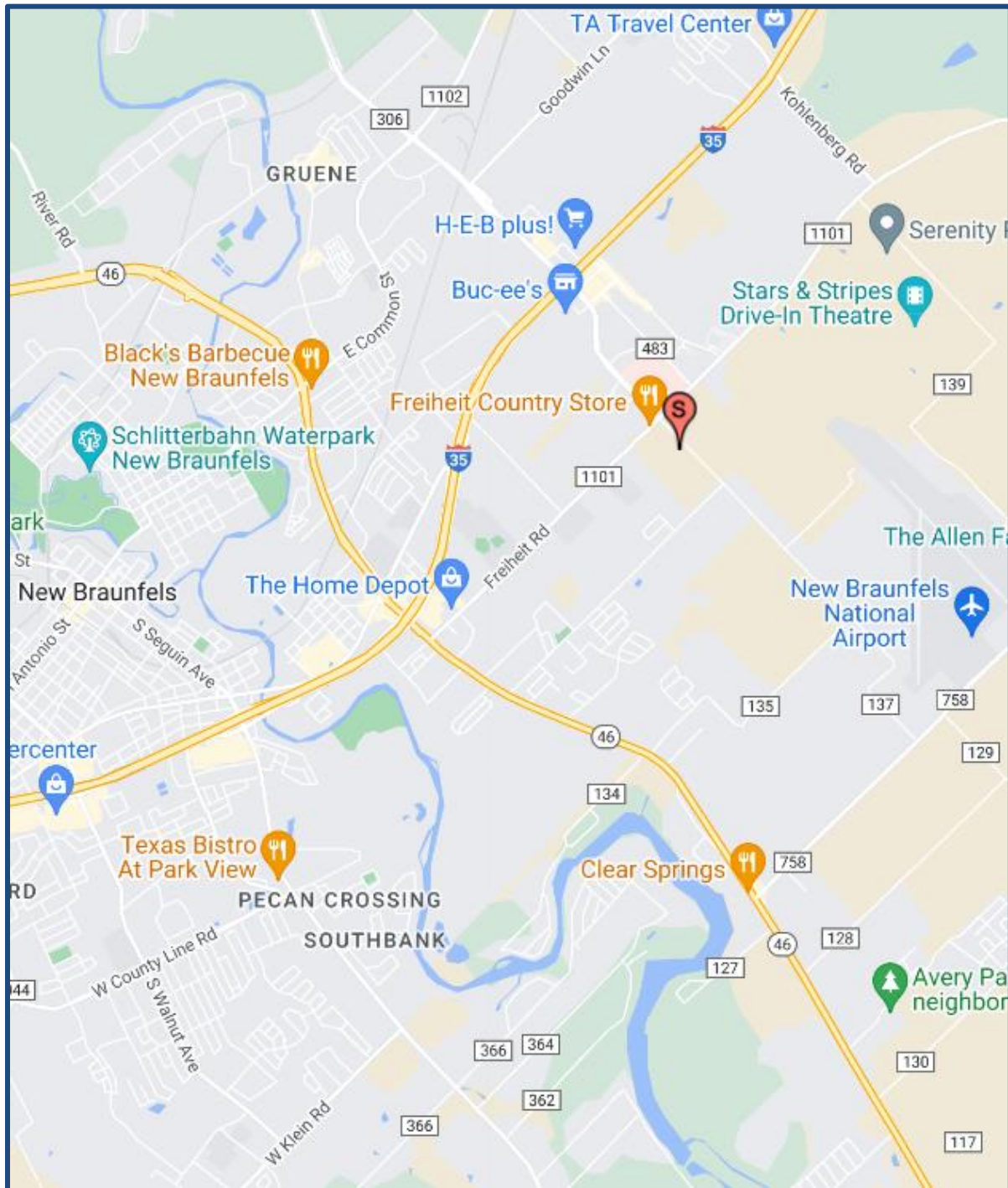
AERIAL VIEW



FRONT VIEW



Location Map



Introduction

Client and Intended Users of the Appraisal

The client in this assignment is New Braunfels Utilities, and the intended user of this report is New Braunfels Utilities and no others. Under no circumstances shall any of the following parties be entitled to use or rely on the appraisal or this appraisal report:

- i. The borrower(s) on any loans or financing relating to or secured by the subject property,
- ii. Any guarantor(s) of such loans or financing; or
- iii. Principals, shareholders, investors, members or partners in such borrower(s) or guarantors.

Intended Use of the Appraisal

The sole intended use is to assist New Braunfels Utilities in valuing the subject for purchase negotiations.

Real Estate Identification

The subject property, as referenced above, is located at 778 Barbarosa Road, New Braunfels, Comal County, Texas. The property is further identified as Property ID 402738 according to the Comal County Appraisal District.

Legal Description

Lot 2, Block 1, of Health Commons, a subdivision in Comal County, Texas.

Use of Real Estate as of the Effective Date of Value

As of the effective date of value, the subject was vacant land.

Use of Real Estate as Reflected in this Appraisal

Same as above.

Ownership of the Property

According to Ellis County tax and deed records, title to the subject property is vested in Triple J Family Holdings LLC and Play Strong LLC.

History of the Property

According to Comal County Appraisal District, the subject property is owned by Triple J Family Holdings LLC and Play Strong LLC. The tract was acquired on May 23, 2022 according to Document Number 202206024415 of the Comal County Deed Records. The listed price at the time was reported at \$2,200,000 and the sale was reported for about half of the listed price. We have considered and analyzed the known history of the subject in the development of our opinions and conclusions. The property has been listed for sale for 6 months. The asking price is \$2,500,000 or \$11.78 per square foot.

Type and Definition of Value

The appraisal problem is to develop an opinion of the market value of the subject property. "Market Value," as used in this appraisal, is defined as "the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus." Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- *Buyer and seller are typically motivated.*
- *Both parties are well informed or well advised, each acting in what they consider their own best interests;*
- *A reasonable time is allowed for exposure in the open market;*
- *Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- *The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale."¹*

The value conclusions apply to the value of the subject property under the market conditions presumed on the effective date of value. Please refer to the Glossary in the Addenda section for additional definitions of terms used in this report.

Valuation Scenarios, Property Rights Appraised, and Effective Dates of Value

The appraisers developed opinions of value for the subject property under the following scenarios of value:

Valuation Scenario	Effective Date of Value
As Is Market Value of the Fee Simple Interest	April 2, 2024

We completed an appraisal inspection of the subject property on April 2, 2024.

Date of Report

The date of this report is August 7, 2024.

¹ Source: Code of Federal Regulations, Title 12, Banks and Banking, Part 722.2-Definitions

List of Items Requested but Not Provided

- None

Assumptions and Conditions of the Appraisal

This appraisal assignment and the opinions reported herein are subject to the General Assumptions and Limiting Conditions contained in the report and the following extraordinary assumptions and/or hypothetical conditions, the use of which might have affected the assignment results.

Extraordinary Assumptions

- The appraisal is prepared under the extraordinary assumption that the whole property acreage is accurate. A survey of the whole property was not provided. The whole property area was determined utilizing Comal County Appraisal District Records, Plats, vesting deeds, and aerial imagery.

Hypothetical Conditions

- None

Scope of Work

The elements addressed in the Scope of Work are (1) the extent to which the subject property is identified, (2) the extent to which the subject property is inspected, (3) the type and extent of data researched, (4) the type and extent of analysis applied, (5) the type of appraisal report prepared, and (6) the inclusion or exclusion of items of non-realty in the development of the value opinion. These items are discussed as below.

Extent to Which the Property Was Identified

The three components of the property identification are summarized as follows:

- Legal Characteristics - The subject was legally identified via Comal County deed records and Comal County Appraisal District records.
- Economic Characteristics - The subject property economic characteristics were identified via in-house economic data, public information, subscriber-based data, market participants, etc.
- Physical Characteristics - The subject property physical characteristics were identified via research and analysis: (1) market area data, (2) property-specific market data, (3) zoning and land-use data, and (4) current data on comparable listings and transactions.

Extent to Which the Property Was Inspected

We inspected the subject on April 2, 2024.

Type and Extent of Data Researched

We researched and analyzed: (1) market area data, (2) property-specific market data, (3) zoning and land-use data, and (4) current data on comparable listings and transactions. We also interviewed people familiar with the subject market/property type.

Type and Extent of Analysis Applied (Valuation Methodology)

We observed surrounding land use trends, the condition of any improvements, demand for the subject property, and relevant legal limitations in concluding a highest and best use. We then valued the subject based on that highest and best use conclusion.

Appraisers develop an opinion of property value with specific appraisal procedures that reflect three distinct methods of data analysis: the Cost Approach, Sales Comparison Approach, and Income Capitalization Approach. One or more of these approaches are used in all estimations of value.

- Cost Approach - In the cost approach, the value indication reflects the sum of current depreciated replacement or reproduction cost, land value, and an appropriate entrepreneurial incentive or profit.

- Sales Comparison Approach - In the sales comparison approach, value is indicated by recent sales and/or listings of comparable properties in the market, with the appraiser analyzing the impact of material differences in both economic and physical elements between the subject and the comparables.
- Income Capitalization Approach - In the income capitalization approach, value is indicated by the capitalization of anticipated future income. There are two types of capitalization: direct capitalization and yield capitalization, more commonly known as discounted cash flow (DCF) analysis.

All of these approaches to value were considered. We assessed the availability of data and applicability of each approach to value within the context of the characteristics of the subject property and the needs and requirements of the client. Based on this assessment, we relied upon the Sales Comparison Approach. Further discussion of the extent of our analysis and the methodology of each approach is provided later in the respective valuation sections.

Appraisal Conformity and Report Type

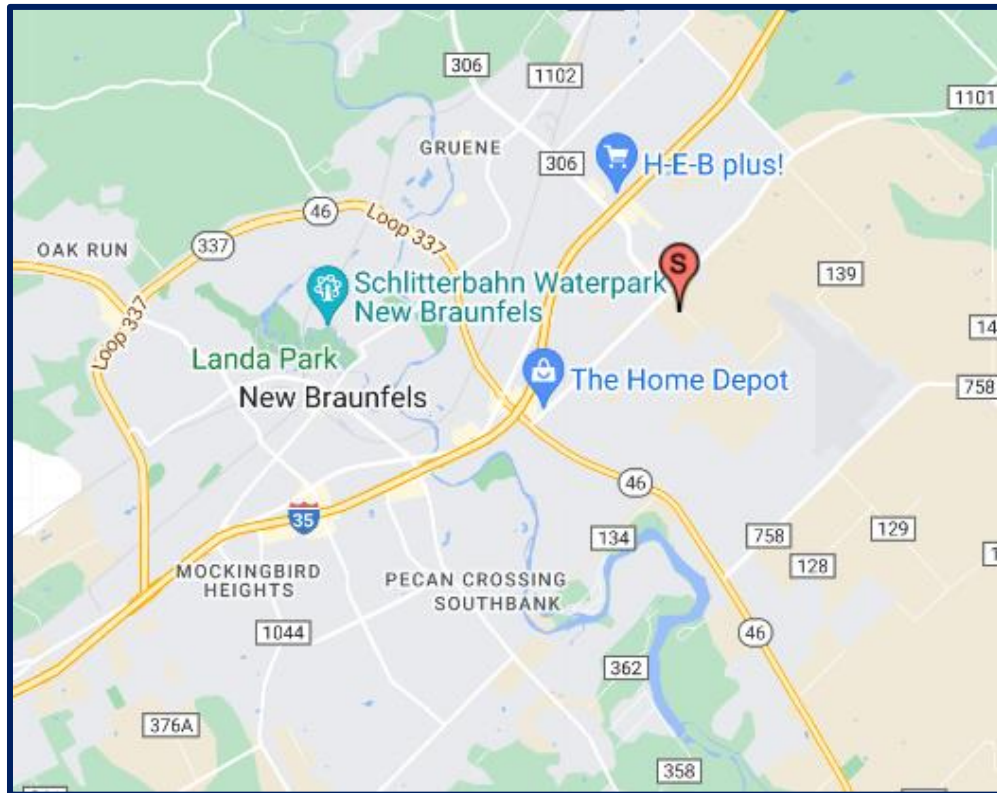
We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA); and the requirements of our client as we understand them. This is an Appraisal Report as defined by the Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2a.

Personal Property/FF&E

All items of non-realty are excluded from this analysis. The opinion of market value developed herein is reflective of real estate only.

Regional and Market Area Analysis

REGIONAL MAP



Overview

The subject is located in the eastern section of New Braunfels, Comal County, Texas. New Braunfels is part of the San Antonio MSA. San Antonio, the seventh largest city by population (within the city limits) in the nation, is the center of economic activity for the South Texas area. San Antonio, the county seat of Bexar County, is located 150 miles north of the Mexico border, 70 miles south of Austin, 190 miles west of Houston, and 250 miles south of Dallas. San Antonio lies within an eight - county area known as the San Antonio Metropolitan Statistical Area (MSA), which includes the counties of Bexar, Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson.

Population

Population characteristics relative to the subject property are presented in the following table.

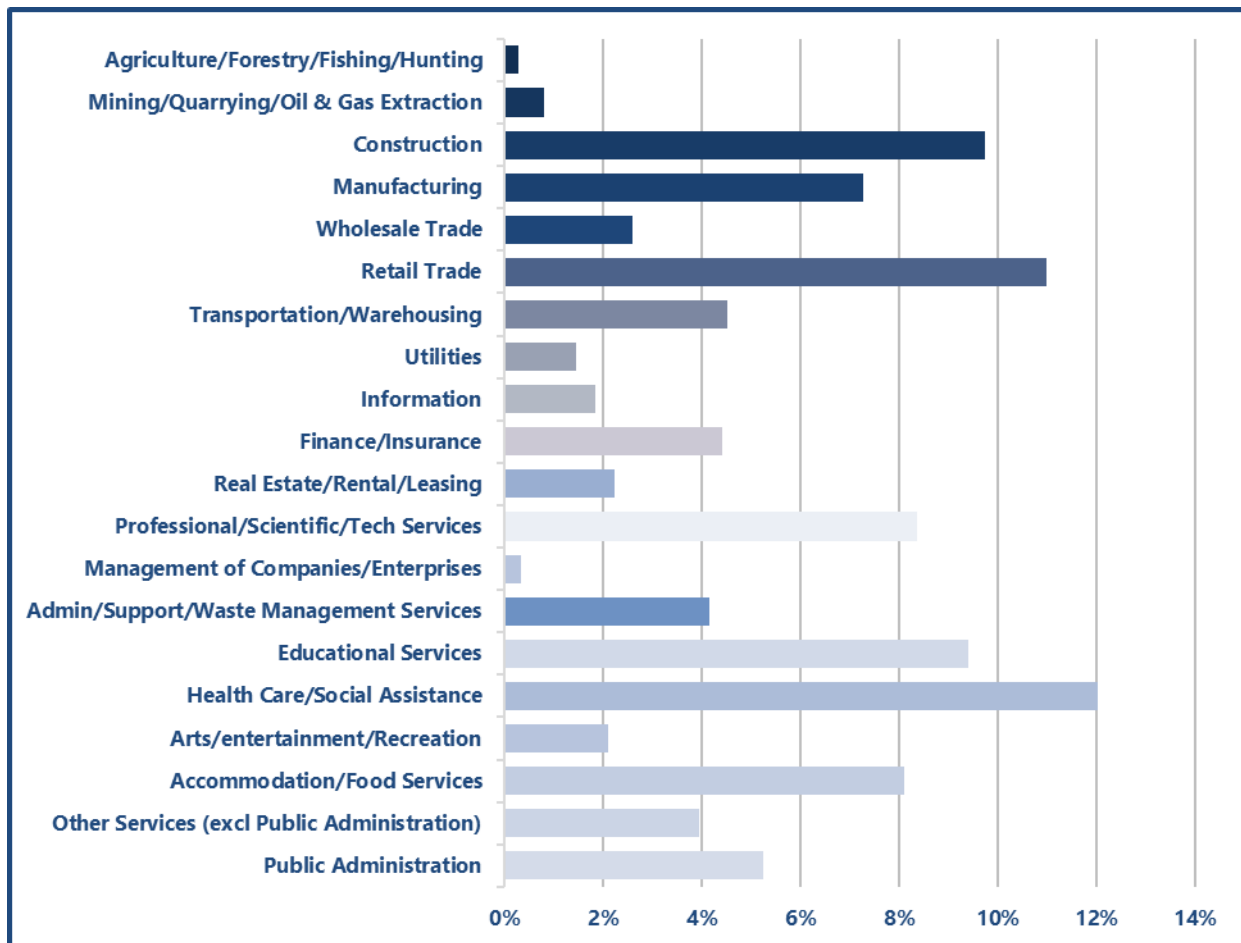
Population

Area	Census Population (2020)	Current Population (2023)	Compound Annual Δ 2020 - 2023	Projected Population (2028)	Compound Annual Δ 2023 - 2028
United States	331,449,520	335,707,897	0.43%	343,238,675	0.44%
Texas	29,145,505	30,506,523	1.53%	32,021,944	0.97%
San Antonio-New Braunfels, TX (MSA)	2,558,143	2,698,487	1.80%	2,872,957	1.26%
Comal County	161,501	186,525	4.92%	216,070	2.98%
New Braunfels city	90,382	100,749	3.69%	116,038	2.87%

Source: ESRI (ArcGIS)

Employment

The chart below outlines employment statistics for the San Antonio MSA.



Unemployment

The following table exhibits current and past unemployment rates as obtained from the Bureau of Labor Statistics.

Unemployment Rates

Area	YE 2019	YE 2020	YE 2021	YE 2022	YE 2023	2024 ¹
United States	3.7%	8.1%	5.3%	3.6%	3.6%	3.9%
Texas	3.5%	7.7%	5.6%	3.9%	3.9%	4.1%
San Antonio-New Braunfels, TX (MSA)	3.1%	7.3%	5.2%	3.7%	3.7%	4.1%
Comal County, TX	3.0%	6.1%	4.6%	3.5%	3.6%	4.1%
New Braunfels city, TX	2.9%	6.3%	4.4%	3.4%	3.4%	3.9%

Median Household Income

Total median household income for the region is presented in the following table.

Income

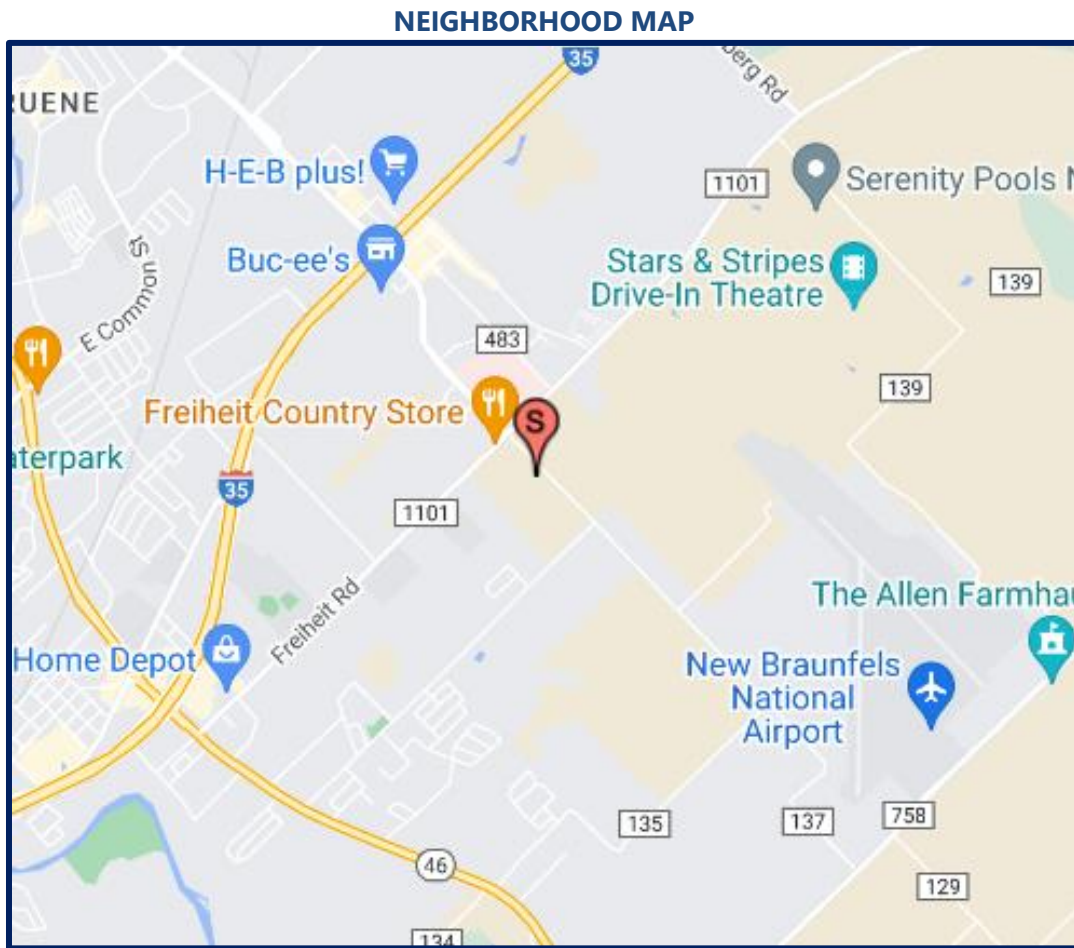
Area	2023 Median HH Income	2023 Average HH Income	2023 Per Capita Income
United States	\$72,233	\$104,831	\$41,000
Texas	\$69,529	\$102,636	\$37,264
San Antonio-New Braunfels, TX (MSA)	\$68,549	\$98,647	\$36,100
Comal County	\$94,687	\$135,208	\$52,400
New Braunfels city	\$81,675	\$109,187	\$41,570

Source: ESRI (ArcGIS)

Conclusions

San Antonio, the second largest city in the state, enjoys a diverse economy with continued growth in the fields of healthcare, biotechnology, telecommunications, higher education and an expanding tourism market, a developing oil/gas industry and continued job growth. The location of San Antonio at the crossroads of three interstate highways and its proximity to Mexico are expected to increase San Antonio's role in international trade in the future. The economic outlook for San Antonio is for continued above-average growth due to low business costs, a young bilingual workforce and proximity to Mexico.

City and Neighborhood Analysis



Overview

The subject is located in the eastern section of New Braunfels in Comal County. New Braunfels has historically had a strong and diverse economy. Major industries include distribution, manufacturing, and trade. Tourism and recreation are reported to be the second largest producer of income with an estimated annual income exceeding \$200 million. Each year, more than 2 million visitors visit New Braunfels. Its strategic location on IH-35 has created additional opportunities for New Braunfels to grow in the global market.

Neighborhood Location and Boundaries

The subject neighborhood is located in the southern section of New Braunfels. The area is suburban in nature. The neighborhood is bounded by F.M. 1863 to the north, Loop 337 to the east, FM 2252 to the west, and Interstate 35 to the south.

Transportation Access

New Braunfels is located along the IH-35 corridor connecting to San Antonio to the southwest and to San Marcos and on to Austin to the northeast. Interstate Highway 35 is a major controlled access freeway. Substantial growth has occurred along IH-35 throughout the city limits of New Braunfels. New Braunfels has an outer loop around the east, north and west boundaries identified as Loop 337 which connects with IH-35 at its termination points. Additional traffic arteries include State Highway 46 which connects New Braunfels with Seguin to the southeast and with Kendall County to the west/northwest, directly linking Boerne and portions of Bandera County. Other major FM roads include FM 306 to the Canyon Lake area, FM 1044 to the Garden Ridge area, FM 725 to McQueeny in the Seguin area, etc.

Neighborhood Land Use

The major industries in New Braunfels include tourism and retail. The retail industry in New Braunfels employs over 10,000 people, 29% of the overall labor force market share. The growth of retail can be attributed to new developments such as West Point Village, Town Center at Creekside, Village at Creekside, and various others. Together these developments alone will potentially have over 3.5 million square feet of retail space.

The New Braunfels Town Center at Creekside is a 400-acre mixed used development and includes the Rolute Hospital and Medical Center. Town Center at Creekside will potentially have over 1,000,000 square feet of retail development. Development includes multi-family as well as an entertainment complex intermixed with jogging trails. Retail businesses at Town Center at Creekside include TJ Maxx, Hobby Lobby, JC Penney, Pets Mart, Target, Best Buy, Creekside Cinemas, Kay Jewelers, and Sally's Beauty Supply. Restaurants within the development include Longhorn Steakhouse, Las Palapas, Willie's Icehouse, B.J.'s, LemonPop, and Whataburger.

Additional mixed-use development proposed for New Braunfels includes Veramendi, a master planned community proposed along the north side of Loop 337, east of State Highway 46. This 2,430-acre proposed development also includes frontage along the Guadalupe River. The land use plan indicates approximately 5,000 residential dwellings with 380 acres of nonresidential use including a Town Center, corporate campus, resort hotel, higher education campus and two elementary schools. In addition, 480 acres of public parks are proposed to be connected through an extensive network of hike and bike trails. Christus Santa Rosa Health System has also announced a long-term multi-year option to construct a medical campus on Veramendi which may include a short stay surgical hospital, imaging services, emergency services, physician offices, rehabilitation services, etc. In addition, Howard Payne University has announced plans to build a satellite campus at Veramendi, establishing New Braunfels' first four-year college campus.

Demographics

The following table depicts the area demographics in Lockhart within a one-, three-, and five-mile radius from the subject.

Neighborhood Demographics

Radius (Miles)	1 Mile	3 Mile	5 Mile
Trade Area (Sq. Mi.)	3.14	28.27	78.54
Trade Density (Pop/Sq. Mi.)	1,808	1,332	1,084
Population			
Census Population (2010)	1,648	18,358	52,896
Census Population (2020)	3,543	30,558	75,329
Current Population (2023)	5,675	37,662	85,145
Projected Population (2028)	7,343	43,496	95,863
<u>Compound Annual Growth</u>			
2010 - 2020	8.0%	5.2%	3.6%
2020 - 2023	17.0%	7.2%	4.2%
2023 - 2028	5.3%	2.9%	2.4%
Households			
Census Households (2010)	508	6,825	19,720
Census Households (2020)	1,295	12,035	28,883
Current Households (2023)	2,226	14,932	33,006
Projected Households (2028)	2,905	17,470	37,457
<u>Compound Annual Growth</u>			
2010 - 2020	9.8%	5.8%	3.9%
2020 - 2023	19.8%	7.5%	4.5%
2023 - 2028	5.5%	3.2%	2.6%
Average Household Size (2023)	2.53	2.49	2.55

Source: ESRI (ArcGIS)

(Lat: 29.714630, Lon: -98.067051)

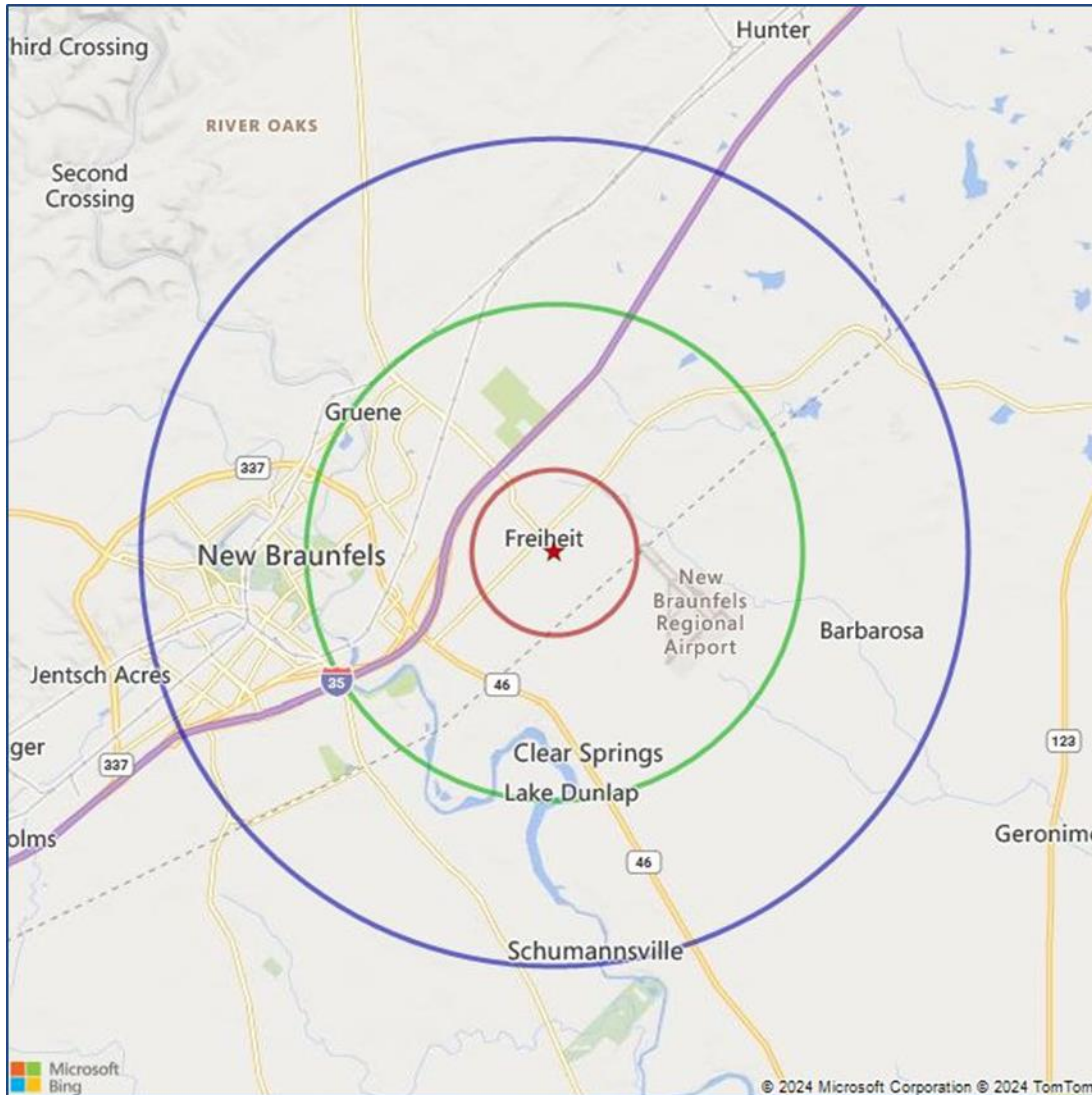
Neighborhood Demographics (cont.)

Radius (Miles)	1 Mile	3 Mile	5 Mile
Trade Area (Sq. Mi.)	3.14	28.27	78.54
Trade Density (Pop/Sq. Mi.)	1,808	1,332	1,084
2023 Housing Units			
Median Home Value	\$235,452	\$253,834	\$276,919
Median Year Built	2014	2004	1999
Total Housing Units	2,387	16,632	36,605
Owner-Occupied Housing %	61.3%	53.8%	60.2%
Renter-Occupied Housing %	32.0%	36.0%	30.0%
Vacant Housing %	6.7%	10.2%	9.8%
2023 Employment			
Total Establishments	168	1,503	3,459
Total Employees	2,892	17,071	37,656
Average Commute Time	n/a	n/a	n/a
% College Graduates	30.6%	36.6%	38.2%
2023 Income Summary			
Median Household Income	\$83,461	\$78,644	\$80,179
Average Household Income	\$111,719	\$102,874	\$107,624
Avg Spending/Household	\$31,407	\$28,157	\$29,266
Per Capita Income	\$44,727	\$40,424	\$41,606

Source: ESRI (ArcGIS)

(Lat: 29.714630, Lon: -98.067051)

DEMOGRAPHIC MAP



Within a three-mile radius, the reported population is 37,662 with a projected growth rate of approximately 2.9% annually. There are 16,632 housing units within that three-mile radius. The growth rate is expected to be 3.2% annually. Most of the housing is owner-occupied. Our research indicates that property values in the area are increasing.

Within a three-mile radius, the average household income is \$102,874. The average income figures suggest that the inhabitants are within the middle to upper income brackets.

Nuisances & External Obsolescence

Neighborhood properties have adequate levels of maintenance. No adverse or unfavorable factors were observed.

Neighborhood Life Cycle

Most neighborhoods are classified as being in four stages: **growth**, **stability**, **decline**, and **renewal**. Overall, the subject neighborhood is in the growth stage of its life cycle.

Immediate Area Uses

The below aerial photo exhibits the uses located in the subject's immediate vicinity.

IMMEDIATE AREA USES



Source: ESRI (ArcGIS)

Analysis and Conclusions

The appraised property is located in the New Braunfels Independent School District. The subject is located in an area of mainly industrial development with some single family residences and commercial development along primary traffic arteries, mostly Interstate 35.

New Braunfels is located within the metropolitan statistical area of San Antonio. San Antonio, the second largest city in the state, enjoys a diverse economy with continued growth in the fields of healthcare, biotechnology, telecommunications, higher education, an expanding tourism market, and continued job growth. The economic outlook for San Antonio as well as New Braunfels is for continued above average population and economic growth.

Property Description

Site Characteristics

Appraised Gross Land Area:	4.87 Acres
Appraised Usable Land Area:	4.87 Acres
Usable Land %:	100.0%
Shape:	Rectangular
Topography:	Level
Drainage:	Appears adequate
Grade:	At street grade
Utilities:	All public available
Off-Site Improvements:	Typical road infrastructure
Interior or Corner:	Interior
Signalized Intersection:	No
Excess or Surplus Land:	None

Street Frontage / Access

The appraised property has frontage and access along Barbarosa Road.

Additional Access

Alley Access:	No
Water or Port Access:	No
Rail Access:	No

Flood Zone Data

Flood Map Panel/Number:	48091C0455F
Flood Map Date:	9/2/2009
Portion in Flood Hazard Area:	0%
Flood Zone:	Zone X – Not in the 100-year floodplain

Other Site Conditions

Soil Type:	The appraiser has not been provided a soil or subsoil survey of the appraised property. This appraisal assumes that there are no soil or subsoil characteristics, including any sort of environmental contamination, which would adversely impact the site. If environmental contamination is present, the value conclusions contained herein may change.
Environmental Issues:	To the knowledge of the appraiser, there are no known environmental issues that adversely affect the value of the appraised site.

Easements/Encroachments: None adverse

Adjacent Land Uses

North: Vacant land / Multi Family Residential
 South: Vacant land / Single Family Residential
 East: Multi Family Residential / Commercial / Single Family Residential
 West: Multi Family Residential / Vacant land / Single Family Residential

Site Ratings

Access: Average
 Visibility: Average

Zoning Designation

Zoning Jurisdiction: City of New Braunfels
 Zoning Classification: MU-B-AH – High intensity mixed use district airport hazard zone
 Zoning Comments: The subject property is located within the City Limits of New Braunfels and is zoned MU-B-AH, high intensity mixed use district airport hazard zone. MU-B is intended to provide for a mixture of more intense retail, office, and industrial uses in close proximity residences. MU-B permitted uses include a variety of multi-family, commercial, and retail uses. The property is located within the Horizontal Zone of the Airport Hazard Zone. The buildings in this zone have a 150 foot height limit.

Analysis/Comments on Site

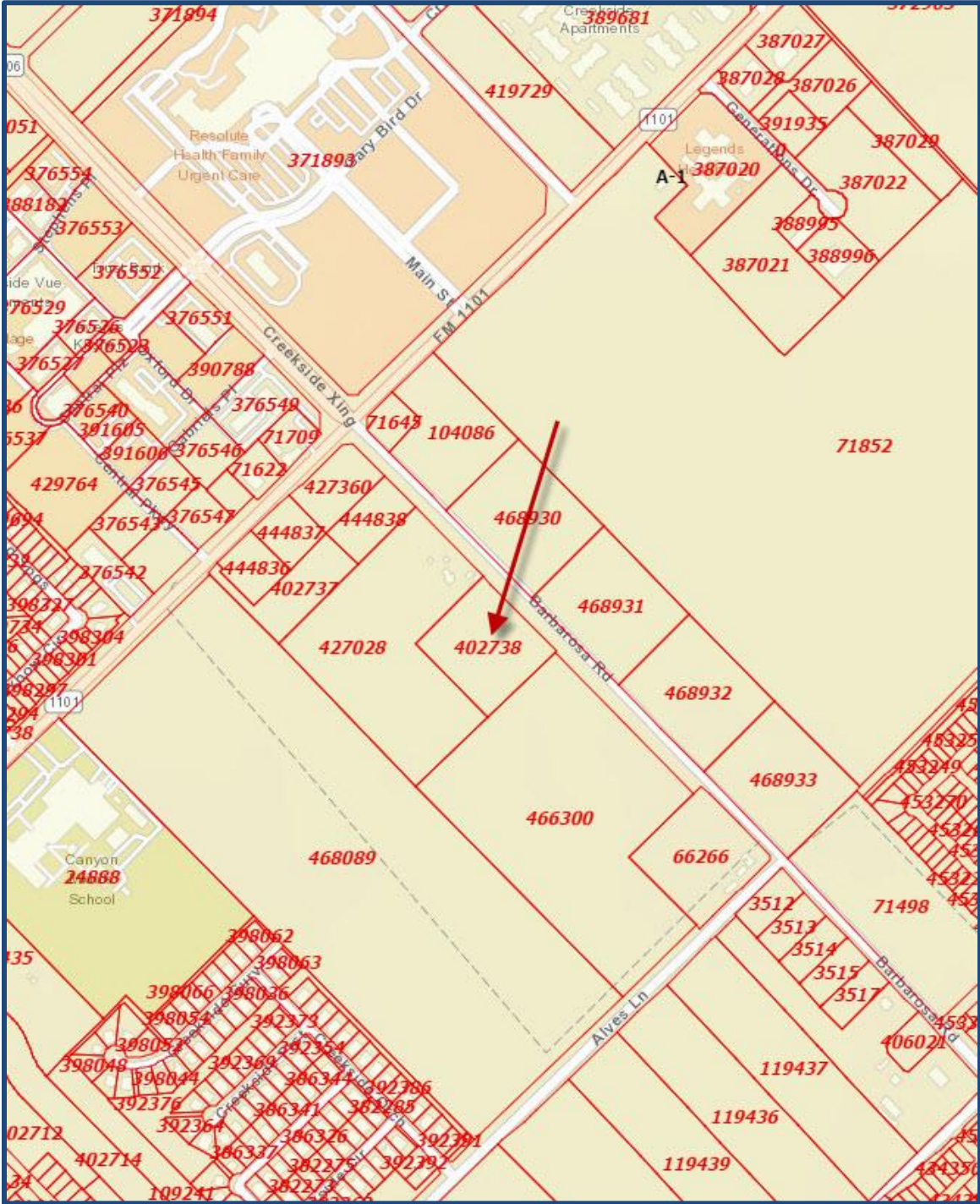
The appraised property is located along the south side of Barbarosa Road, just east of FM 1101. The property is an interior parcel which is currently vacant land. The property is not improved. The property has a rectangular shape and exhibits level topography. According to FEMA, none of the property is within the 100-year floodplain. There are no adverse easements or encumbrances that affect the property.

Various exhibits pertaining to the subject site are included on the following pages.

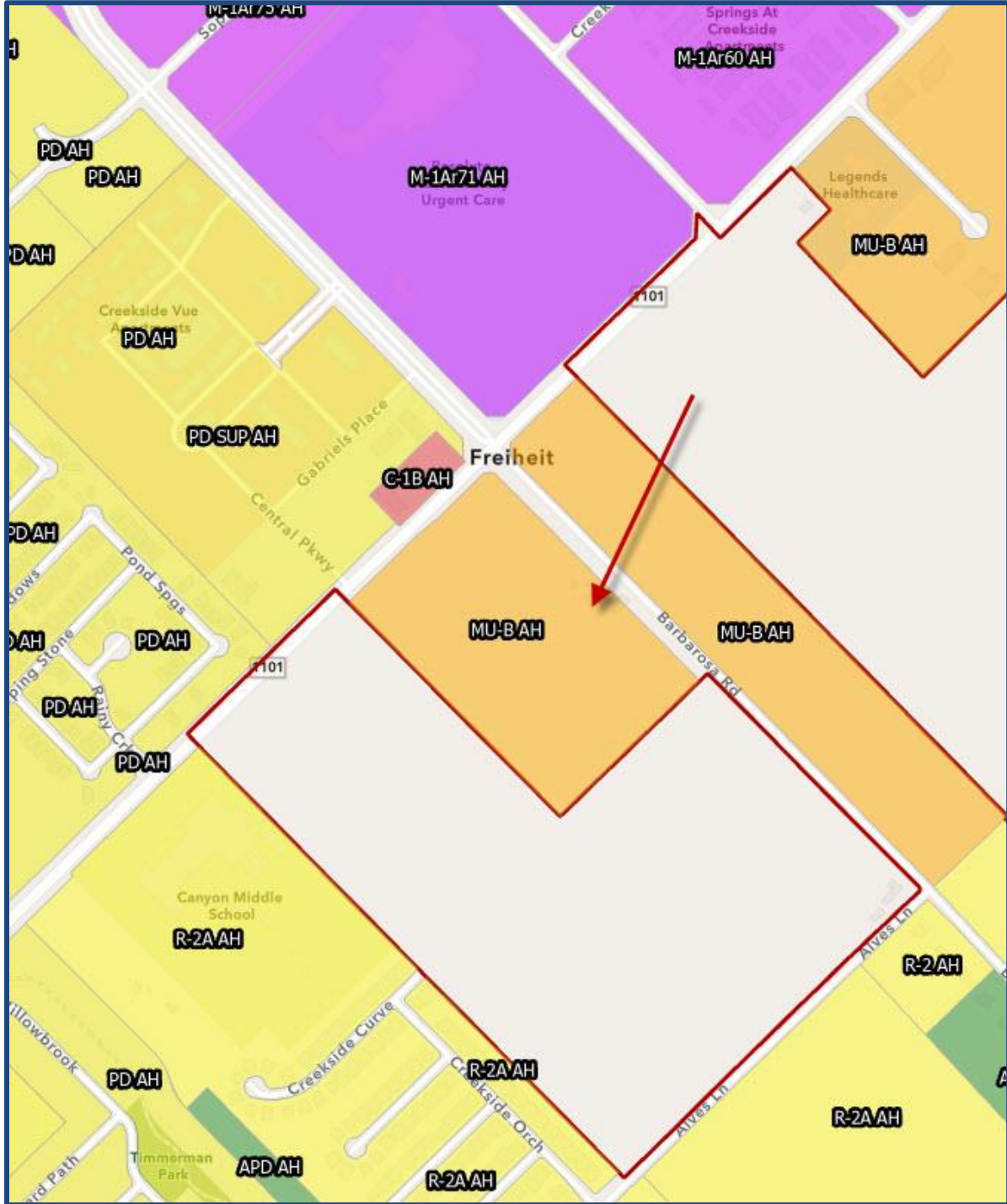
AERIAL MAP



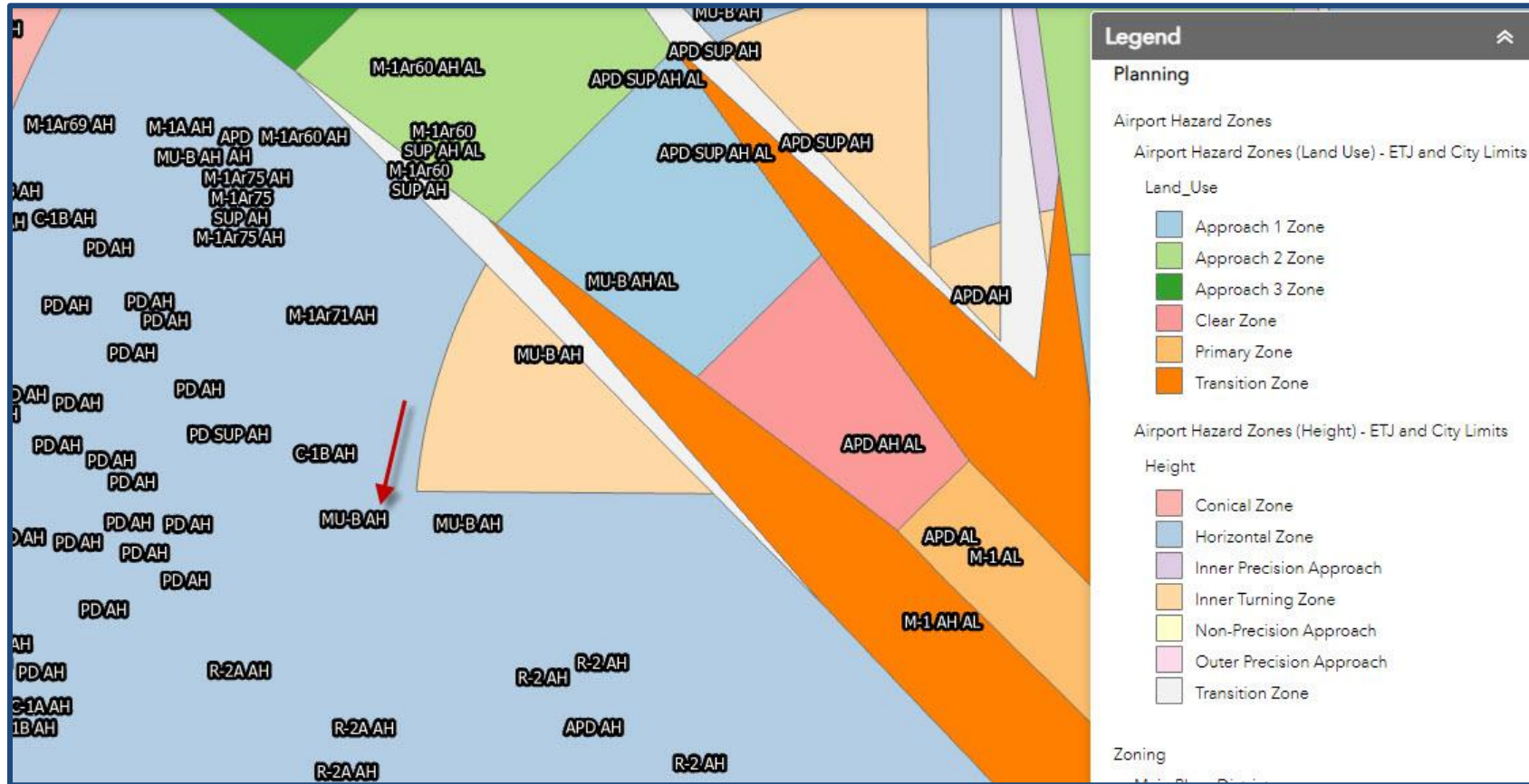
TAX/PLAT MAP



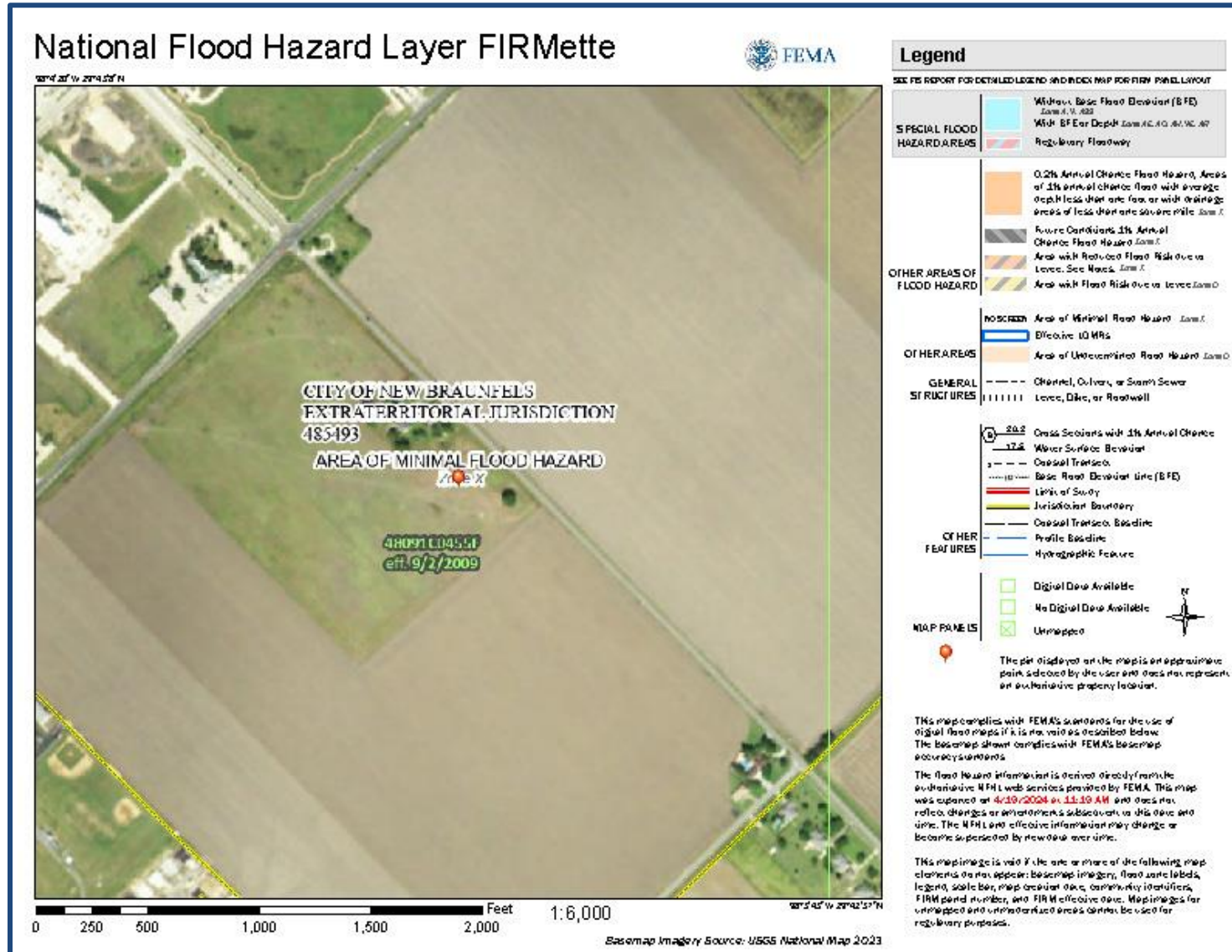
ZONING MAP



AIRPORT HAZARD OVERLAY MAP



FLOOD MAP



Photographs of the Subject Property



View looking southwest at the subject property from Barbarosa Road (northern portion of the property).



View looking southwest at the subject property from Barbarosa Road (southern portion of the property).

Photographs of the Subject Property



View looking southeast along Barbarosa Road. The subject property is on the right.



View looking northwest along Barbarosa Road. The subject property is on the left.

Assessment & Tax Data

Assessment Methodology

In Texas, the properties are mass appraised by the county appraisal district in each county. The market value is estimated for the subject property. The tax rates are set by the tax collector based on the County’s fiscal budget including the school district. Many rural properties in this county are allowed an agricultural or wildlife use exemption, thereby substantially reducing the tax liability. Below is a chart displaying the market value and ag use assessments, if applicable along with the aggregate tax rate and tax liability.

SUMMARY OF ASSESSED VALUES AND PROPERTY TAXES

Account	Acres	Total Market Value	Land Only Value	Land Value Per Acre	Ag Use Value	Improvement	Taxable Value	Aggregate Tax Rate (Per \$100)	Taxes
402738	4.870	\$1,216,180	\$1,216,180	\$249,729	\$0	\$0	\$1,216,180	\$1.773851	\$21,573.22
Totals	4.870	\$1,216,180	\$1,216,180	\$249,729	\$0	\$0	\$1,216,180		\$21,573.22

Our value estimate is higher than the county appraisal district’s value estimate; this is common for this county.

Highest & Best Use

The Highest and Best Use of a property is the use that is legally permissible, physically possible, and financially feasible which results in the highest value. An opinion of the highest and best use results from consideration of the criteria noted above under the market conditions or likely conditions as of the effective date of value. Determination of highest and best use results from the judgment and analytical skills of the appraiser. It represents an opinion, not a fact. In appraisal practice, the concept of highest and best use represents the premise upon which value is based.

Analysis of Highest and Best Use As Though Vacant

The primary determinants of the highest and best use of the property As Though Vacant are the issues of (1) Legal permissibility, (2) Physical possibility, (3) Financial feasibility, and (4) Maximum productivity.

Legally Permissible

The subject site is located within the City Limits of New Braunfels in Comal County. The property is zoned MU-B-AH, high intensity mixed use district and is within the airport hazard overlay horizontal zone. The zoning allows for a number of multi-family, commercial, or retail uses. The airport hazard overlay restricts building height to 150 feet. There are no other known easements, encroachments, covenants, or other use restrictions that would unduly limit or impede development.

Physically Possible

The physical attributes allow for a number of potential uses. Elements such as size, shape, availability of utilities, known hazards (flood, environmental, etc.), and other potential influences are described in the Site Description and have been considered. The size of the site would limit the property for commercial or retail use.

Financially Feasible

The probable use of the site for commercial or retail development conforms to the pattern of land use in the market area. A review of market data suggests that there is an undersupply and demand is sufficient to support construction costs and ensure timely absorption of additional inventory in this market.

Maximally Productive

Among the financially feasible uses, the use that results in the highest value (the maximally productive use) is the highest and best use. Considering these factors, the maximally productive use as though vacant is for commercial or retail development as warranted by demand.

Conclusion of Highest and Best Use As Though Vacant

The conclusion of the highest and best use As Though Vacant is commercial or retail development as warranted by demand.

Most Probable Buyer

As of the date of value, the most probable buyer of the subject property is a developer.

Land Valuation

Methodology

Site Value is most often estimated using the Sales Comparison Approach. This approach develops an indication of market value by analyzing closed sales, listings, or pending sales of properties similar to the subject, focusing on the difference between the subject and the comparables using all appropriate elements of comparison. This approach is based on the principles of supply and demand, balance, externalities, and substitution, or the premise that a buyer would pay no more for a specific property than the cost of obtaining a property with the same quality, utility, and perceived benefits of ownership.

The process of developing the sales comparison approach consists of the following analyses: (1) researching and verifying transactional data, (2) selecting relevant units of comparison, (3) analyzing and adjusting the comparable sales for differences in various elements of comparison, and (4) reconciling the adjusted sales into a value indication for the subject site.

Unit of Comparison

The unit of comparison depends on land use economics and how buyers and sellers use the property. The unit of comparison in this analysis is per gross square foot.

Elements of Comparison

Elements of comparison are the characteristics or attributes of properties and transactions that cause the prices of real estate to vary. The primary elements of comparison considered in sales comparison analysis are as follows: (1) property rights conveyed, (2) financing terms, (3) conditions of sale, (4) expenditures made immediately after purchase, (5) market conditions, (6) location and (7) physical characteristics.

Comparable Sales Data

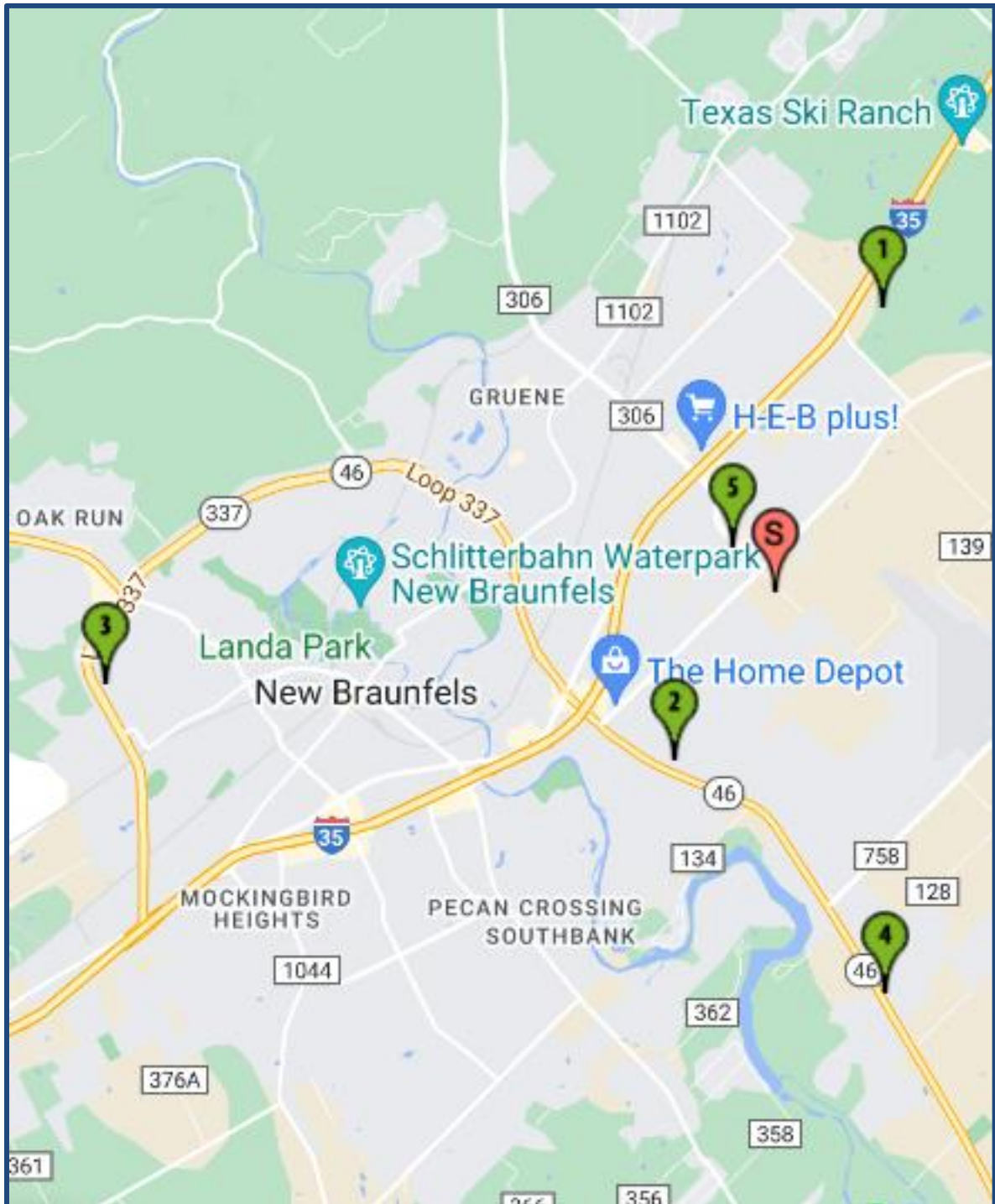
To obtain and verify comparable sales of vacant land properties, we conducted a search of public records, field surveys, interviews with knowledgeable real estate professionals in the area, and a review of our internal database. We included five sales in our analysis, as these sales were judged to be the most comparable to develop an indication of market value for the subject property.

The following is a table summarizing each sale comparable and a map illustrating the location of each in relation to the subject. Details of each comparable follow the location map.

Land Sales Summary

Comp.		Usable				
No.	Date of Sale	Acres	Location		Sale Price	Per SF
1	May-23	19.738	5450 Guthrie Trail	New Braunfels, Texas	\$8,400,000	\$9.77
2	December-21	3.453	Oelkers	New Braunfels, Texas	\$1,250,000	\$8.31
3	December-21	6.999	East side of South Loop 337	New Braunfels, Texas	\$1,600,000	\$5.25
3	July-23	1.420	2125 E. State Hwy 46	New Braunfels, Texas	\$570,000	\$9.22
4	November-22	2.285	2162 Stephen's Place	New Braunfels, Texas	\$1,800,000	\$18.08

COMPARABLE SALES MAP



LAND COMPARABLE NO. 1



Property Identification

Property/Sale ID	11420700/1735002
Property Type	Multi-Family
Address	5450 Guthrie Trail
City, State Zip	New Braunfels, Texas 78130
County	Comal
MSA	San Antonio
Map Latitude	29.749018
Map Longitude	-98.051940
Tax ID	466647

Transaction Data

Sale Status	Closed
Grantor	Southstar at Mayfair Developer, LLC
Grantee	The Village at Mayfair, LLC
Sale Date	May 1, 2023
Sale Price	\$8,400,000
Adjusted Sale Price	\$8,400,000
\$/Acre	\$425,575
\$/SF	\$9.77
Deed Vol./Page	Doc # 202306013268
Sale Confirmed By	Justin Bruni
Sale Confirmed With	Seller's Statement
Confirmation Date	02-21-2024
Deed Reviewed by:	JB
Property Rights	Fee Simple
Financing	Cash to Seller
Conditions of Sale	Arm's Length

Property Description

Land Acres	19.738
Land SF	859,787
Primary Frontage (Feet)	678.00
Primary Frontage Name	Guthrie Trail
Visibility	Average
Shape	Generally Rectangular
Topography	Gently sloping
Minerals	Surface only
Utilities	All public available
In Flood Plain	No
Flood Zone	Zone X
Flood Map Number	48091C0460F
Flood Map Effective Date	09-02-2009
Zoning Code	OCL
Zoning Classification	New Braunfels ETJ
Easements/Encumbrances	Yes
Encumbrances Desc	Drainage easement; Deed restrictions

Additional Information

Property Remarks: The 19.378 acre tract is located along the east side of Guthrie Trail in the Mayfair development just outside of the city of New Braunfels in Comal County, Texas. The property is located outside the city limits of New Braunfels, within the New Braunfels ETJ and is not zoned. The generally rectangular shaped tract has generally level to gently sloping terrain. According to FEMA, none of the property is located within the 100-year floodplain. All public utilities are available to the site. There is a drainage easement along the frontage and multiple utility easements. The property is located in close proximity to Mayfair mixed-use tracts, however it is restricted to multi-family use with certain building restrictions.

Legal Description: Lot 1, Block 80, Mayfair - Parcel E-9S, A subdivision in Comal County, Texas

LAND COMPARABLE NO. 2



Property Identification

Property/Sale ID	11366530/1691061
Property Type	Commercial
Address	0 Oelkers
City, State Zip	New Braunfels, Texas 78130
County	Comal
MSA	San Antonio
Map Latitude	29.693916
Map Longitude	-98.080980
Tax ID	43589

Transaction Data

Sale Status	Closed
Grantor	Wind Water & Waves Management LLC
Grantee	Creekside NB Retail LLC
Sale Date	December 29, 2021
Sale Price	\$1,250,000
Adjusted Sale Price	\$1,250,000
\$/Acre	\$362,004
\$/SF	\$8.31
Sale Confirmed By	Lauren Perkins
Sale Confirmed With	SABOR MLS# 1510346
Confirmation Date	08-14-2023
Property Rights	Fee Simple
Financing	Cash to Seller
Conditions of Sale	Typical

Sale Remarks

This is the sale of 3.45 acres of commercial land located off Highway 46 in New Braunfels, Texas. The land is currently vacant farm land with access along Highway 46, Oelkers Street, and Anne Louise Drive. All utilities are available to the site.

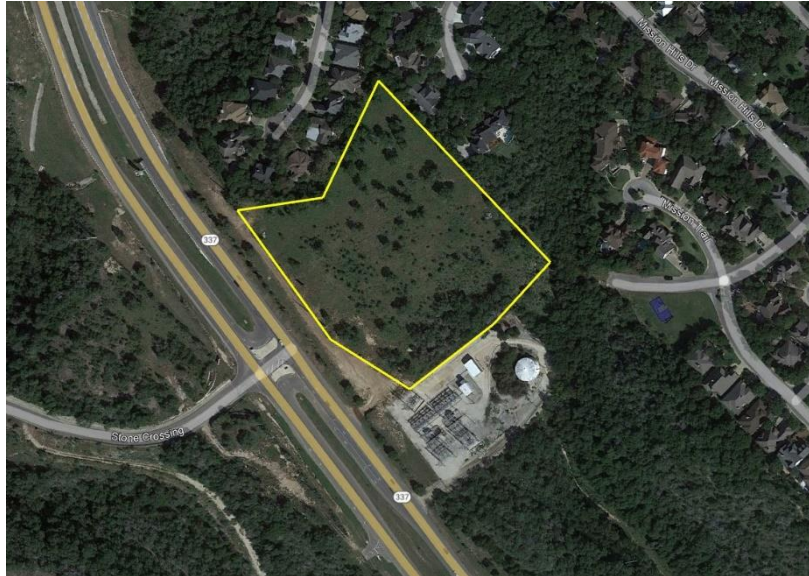
Property Description

Land Acres	3.453
Land SF	150,413
Primary Frontage (Feet)	450.00
Primary Frontage Name	Paved Street
Secondary Frontage (Feet)	260.00
Secondary Frontage Name	Paved Street
Usable Land Acres	3.45300
Usable Land Area (SF)	150,413
Visibility	Good
Shape	Rectangular
Topography	Level
Utilities	All utilities available
In Flood Plain	No
Flood Zone	Zone X
Flood Map Number	48091C0455F
Flood Map Effective Date	09-02-2009
Zoning Code	C-3
Zoning Classification	Commercial District

Additional Information

Property Remarks: This is the sale of 3.45 acres of commercial land located off Highway 46 in New Braunfels, Texas. The land is currently vacant farm land with access along Highway 46, Oelkers Street, and Anne Louise Drive. All utilities are available to the site.

LAND COMPARABLE NO. 3



Property Identification

Property/Sale ID	11234019/1589281
Property Type	Multi-Family
Property Name	Apartment Site
Address	Along the East Side of South Loop 337
City, State Zip	New Braunfels, Texas 78130
County	Comal
MSA	San Antonio
Map Latitude	29.703262
Map Longitude	-98.160275
Tax ID	71419
Proposed Use	Apartments

Transaction Data

Sale Status	Closed
Grantor	Randel C. Taylor and Joyce Taylor
Grantee	Copperhead Properties, LP
Sale Date	December 7, 2021
Sale Price	\$1,600,000
Conditions of Sale Adj \$	\$0
Adjusted Sale Price	\$1,600,000
\$/Acre	\$228,615
\$/SF	\$5.25
Deed Vol./Page	Document No. 202106062540
Sale Confirmed By	Chris Swisher
Sale Confirmed With	CTXMLS# 443383
Confirmation Date	04-29-2022
Property Rights	Fee Simple
Sale Remarks	The property is located along the east side of South Loop 337, in the western sector of the City of New Braunfels in Comal County, Texas. The site includes approximately 6.999 acres of land. The tract is slightly

irregular in shape and exhibits generally level to sloping terrain. The site has access to public utilities. According to FEMA, the property is not located in the 100-year floodplain. Based on survey, the boundary along 337 is bisected by an electric transmission easement.

Property Description

Land Acres	6.999
Land SF	304,862
Primary Frontage (Feet)	350.00
Primary Frontage Name	Maintained, paved road
Third Frontage (Feet)	South Loop 337
Usable Land Acres	6.99867
Usable Land Area (SF)	304,862
Number of Lots	1
Rail	No
Visibility	Good
Access	Average
Shape	Irregular
Topography	Gently sloping
Utilities	Access to public utilities
In Flood Plain	No
Flood Zone	Zone X (unshaded)
Flood Map Number	48091C0455F
Flood Map Effective Date	09-02-2009
Zoning Code	R-3
Zoning Classification	Multi-family
Easements/Encumbrances	Yes
Encumbrances Desc	Electric transmission

Additional Information

Legal Description: All that certain tract or parcel of land containing 6.999 acres (304,862 square feet) of land out of the Juan Martin Veramendi Two League Grant Survey No. 1, Abstract No. 2, in the City of New Braunfels, Comal County, Texas

LAND COMPARABLE NO. 4



Property Identification

Property/Sale ID	11366517/1691052
Property Type	Commercial
Property Name	New Braunfels Commercial Land
Address	2125 E. State Hwy 46
City, State Zip	New Braunfels, Texas 78130
County	Comal
MSA	San Antonio
Map Latitude	29.665947
Map Longitude	-98.051772
Tax ID	56080

Transaction Data

Sale Status	Closed
Grantor	Cassandra Dawn Collazo
Grantee	Benjamin Gonzalez
Sale Date	July 5, 2023
Sale Price	\$570,000
Adjusted Sale Price	\$570,000
\$/Acre	\$401,410
\$/SF	\$9.22
Sale Confirmed By	Lauren Perkins
Sale Confirmed With	SABOR MLS No. 1657782
Confirmation Date	08-14-2023
Property Rights	Fee Simple
Financing	Cash to Seller
Conditions of Sale	Typical

Sale Remarks

This is the sale of 1.42 acres of commercial land located off State highway 46 in New Braunfels. The property has approximately 200 feet of road frontage along Highway 46 and was improved with a 720 square foot home with no contributory value at the time of sale. Costs to

remove the structure were considered nominal and did not affect the purchase price.

Property Description

Land Acres	1.420
Land SF	61,855
Primary Frontage (Feet)	200.00
Primary Frontage Name	Paved Street
Usable Land Acres	1.42000
Usable Land Area (SF)	61,855
Visibility	Good
Shape	Rectangular
Topography	Level
Utilities	All utilities available
In Flood Plain	No
Flood Zone	Zone X
Flood Map Number	48187C0120F
Flood Map Effective Date	11-02-2007
Zoning Code	C-3
Zoning Classification	Commercial District

Additional Information

Legal Description: 1.432 acre tract of land situated in the Antonio Maria Esnaurizar Eleven League Survey, Abstract No. 20 of Guadalupe County, Texas.

LAND COMPARABLE NO. 5



Property Identification

Property/Sale ID	11448647/1759187
Property Type	Mixed Use Land
Address	2162 Stephen's Place
City, State Zip	New Braunfels, Texas 78130
County	Comal
MSA	San Antonio
Map Latitude	29.719831
Map Longitude	-98.072892
Tax ID	376553
Proposed Use	Commercial/Retail

Transaction Data

Sale Status	Closed
Grantor	Peter Riley Properties LLC
Grantee	NB Creekside Development LLC
Sale Date	November 28, 2022
Sale Price	\$1,800,000
Adjusted Sale Price	\$1,800,000
\$/Acre	\$787,746
\$/SF	\$18.08
Deed Vol./Page	Doc # 202206049763
Days on Market	292
Sale Confirmed By	Justin Bruni
Sale Confirmed With	MLS #462313
Confirmation Date	04-19-2024
Deed Reviewed by:	JB
Property Rights	Fee Simple
Financing	Cash to Seller
Conditions of Sale	Arm's Length

Property Description

Land Acres	2.285
Land SF	99,535
Primary Frontage Name	Creekside Crossing
Secondary Frontage Name	Stephen's Place
Visibility	Excellent
Shape	Generally Rectangular
Topography	Level
Landscaping	Average
Utilities	All public available
In Flood Plain	No
Flood Zone	Zone X
Flood Map Number	48091C0455F
Flood Map Effective Date	09-02-2009
Zoning Code	MU-B
Zoning Classification	Mixed Use
Easements/Encumbrances	Yes
Encumbrances Desc	Typical utility easements

Additional Information

Property Remarks:	The 2.285 acre tract is located along the south side of Creekside Crossing, at the south corner of the intersection of Stephens place, New Braunfels, Comal County, Texas. The site is not improved. The property is zoned MU-B high intensity mixed use. The generally rectangular shaped tract has level terrain that is open. According to FEMA, none of the property is in the 100-year floodplain. The property has access to all public utilities. There are no adverse easements or encumbrances.
Legal Description:	Lot 32R1, The amending plat of Lots 8R, 14R & 32R or Creekside Wellness Center Establishing Lots 8R1, 13R1, and 32R1 of Creekside Wellness Center, a subdivision of Comal County, Texas

Land Sales Comparison Analysis

When necessary, adjustments were made for differences in various elements of comparison, including property rights conveyed, financing terms, conditions of sale, expenditures made immediately after purchase, market conditions, location, and other physical characteristics. If the element in comparison is considered superior to that of the subject, we applied a negative adjustment. Conversely, a positive adjustment was applied if inferior. A summary of the elements of comparison follows.

Transaction Adjustments

Transaction adjustments include (1) real property rights conveyed, (2) financing terms, (3) conditions of sale and (4) expenditures made immediately after purchase. These items, which are applied prior to the market conditions and property adjustments, are discussed as follows:

Real Property Rights Conveyed

Real property rights conveyed influence sale prices and must be considered when analyzing a sale comparable. The appraised value and sale comparables all reflect the fee simple interest with no adjustments required.

Financing Terms

The transaction price of one property may differ from that of an identical property due to different financial arrangements. Sales involving financing terms that are not at or near market terms require adjustments for cash equivalency to reflect typical market terms. A cash equivalency procedure discounts the atypical mortgage terms to provide an indication of value at cash equivalent terms. All the sale comparables involved typical market terms by which the sellers received cash or its equivalent and the buyers paid cash or tendered typical down payments and obtained conventional financing at market terms for the balance. Therefore, no adjustments for this category were required.

Conditions of Sale

When the conditions of sale are atypical, the result may be a price that is higher or lower than that of a normal transaction. Adjustments for conditions of sale usually reflect the motivations of either a buyer or a seller who is under duress to complete the transaction. Another more typical condition of sale involves the downward adjustment required to a comparable property's for-sale listing price, which usually reflects the upper limit of value. All the comparable sales are arm's length transactions for which no adjustments are made.

Expenditures Made Immediately After Purchase

A knowledgeable buyer considers expenditures required upon purchase of a property, as these costs affect the price the buyer agrees to pay. Such expenditures may include costs to demolish and remove any portion of the improvements, costs to petition for a zoning change, and/or costs to remediate environmental contamination.

The relevant figure is not the actual cost incurred, but the cost anticipated by both the buyer and seller. Unless the sales involved expenditures anticipated upon the purchase date, no adjustments to the comparable sales are required for this element of comparison. The parties to these transactions did not anticipate expenditures were required immediately after purchase; therefore, no adjustments were warranted.

Market Conditions Adjustment

Market conditions change over time because of inflation, deflation, fluctuations in supply and demand, or other factors. Changing market conditions may create a need for adjustment to comparable sale transactions completed during periods of dissimilar market conditions.

The effective date of appraisal is April 2, 2024. The comparable sales utilized exhibit a range in date of transaction from June 2022 to November 2023. The land market in the general market area has experienced an increase in pricing over the past several years. All of the comparable sales are adjusted for market conditions.

Property Adjustments

Property adjustments are usually expressed quantitatively as percentages or dollar amounts that reflect the differences in value attributable to the various characteristics of the property. In some instances, however, qualitative adjustments are used. These adjustments are based on locational and physical characteristics and are applied after transaction and market conditions adjustments. Our reasoning for the property adjustments made to each sale comparable follows. The discussion analyzes each adjustment category deemed applicable to the subject property.

Location

Location adjustments may be required when the locational characteristics of a comparable property are different from those of the subject property. The subject property is located along Barbarosa Road, just east of FM 1101 in New Braunfels, Texas. Sale No. 1 and 5 have superior locational characteristics and downward adjustments are applied. Sale No. 2 has a similar location and no adjustment is warranted. Sale No. 3 and 4 have inferior locational characteristics and upward adjustments are applied.

Size

The size adjustment addresses variance in the physical size of the comparables and that of the subject, as a larger parcel typically commands a lower price per unit than a smaller parcel. This inverse relationship is due, in part, to the principle of "economies of scale." The subject property consists of a 4.87 of an acre tract. The sales range in size from 1.42 acres to 19.738 acres. Sale Nos. 1 and 3 are larger and upward adjustments are applied. Sale Nos. 2 is similar and no adjustment is warranted. Sale Nos. 4 and 5 are smaller and downward adjustments are applied.

Shape/Configuration

The subject property has a rectangular shape. All of the comparable sales have similar shape characteristics and no adjustments are required.

Frontage

The subject site has direct street frontage along Barbarosa Road. Sale Nos. 1, 3 and 4 have similar frontage and no adjustment is required. Sale Nos. 2 and 5 have good locational characteristics and are corner located; downward adjustments are applied.

Utilities

The subject property has access to all public utilities. All of the comparable sales are similar and no adjustments are required.

Topography

The subject property has level topography. All of the comparable sales have similar topography and no adjustments are required.

Floodplain

According to FEMA, the none of the subject property is located in the 100-year floodplain. All of the comparable sales are located outside of the 100-year floodplain and no adjustment is required.

Zoning

The subject property is zoned MU-B-AH – high intensity mixed use in the airport hazard horizontal zone. All of the comparable sales are deemed similar and no adjustments are required.

Easements/Encumbrances

The subject property is not encumbered with any adverse easements. Sale Nos. 1, 2, 4 and 5 are similar and no adjustments are required. Sale No. 3 is bisected by an electric transmission line and an upward adjustment is applied.

Summary of Adjustments

Presented on the following page is a summary of the adjustments made to the sale comparables. As noted earlier, these quantitative adjustments were based on our market research, best judgment, and experience in the appraisal of similar properties.

LAND SALES ADJUSTMENT GRID

Subject	Sale # 1	Sale # 2	Sale # 3	Sale # 4	Sale # 5	
Sale ID	11420700	11366530	11234019	11366517	11448647	
Date of Value & Sale	April-24	May-23	December-21	December-21	July-23	November-22
Unadjusted Sales Price	\$8,400,000	\$1,250,000	\$1,600,000	\$570,000	\$1,800,000	
Gross Acres	4.870	19.738	3.453	6.999	1.420	2.285
Unadjusted Sales Price per Gross Square Foot	\$9.77	\$8.31	\$5.25	\$9.22	\$18.08	
Transactional Adjustments						
Property Rights Conveyed	<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>	<i>Fee Simple</i>
Adjusted Sales Price	\$9.77	\$8.31	\$5.25	\$9.22	\$18.08	
Financing Terms	<i>Cash to Seller</i>	<i>Cash to Seller</i>	<i>Cash to Seller</i>	<i>Cash to Seller</i>	<i>Cash to Seller</i>	<i>Cash to Seller</i>
Adjusted Sales Price	\$9.77	\$8.31	\$5.25	\$9.22	\$18.08	
Conditions of Sale	<i>Typical</i>	<i>Arm's Length</i>	<i>Arm's Length</i>	<i>Arm's Length</i>	<i>Arm's Length</i>	<i>Arm's Length</i>
Adjustment	-	-	-	-	-	
Adjusted Sales Price	\$9.77	\$8.31	\$5.25	\$9.22	\$18.08	
Expenditures after Sale	<i>\$0</i>	<i>\$0</i>	<i>\$0</i>	<i>\$0</i>	<i>\$0</i>	
Adjusted Sales Price	\$9.77	\$8.31	\$5.25	\$9.22	\$18.08	
Market Conditions Adjustments						
Elapsed Time from Date of Value	<i>0.93 years</i>	<i>2.27 years</i>	<i>2.33 years</i>	<i>2.27 years</i>	<i>1.35 years</i>	
Market Trend Through	April-24	9.3%	22.7%	23.3%	-	13.5%
Analyzed Sales Price	\$10.68	\$10.19	\$6.47	\$9.22	\$20.53	
Physical Adjustments						
Location	<i>778 Barbarosa Road New Braunfels, Texas</i>	<i>5450 Guthrie Trail New Braunfels, Texas</i>	<i>Oelkers New Braunfels, Texas</i>	<i>East side of South Loop 337 New Braunfels, Texas</i>	<i>2125 E. State Hwy 46 New Braunfels, Texas</i>	<i>2162 Stephen's Place New Braunfels, Texas</i>
Adjustment	-10.0%	-	-	30.0%	-	-10.0%
Size	<i>4.870 acres</i>	<i>19.738 acres</i>	<i>3.453 acres</i>	<i>6.999 acres</i>	<i>1.4200 acres</i>	<i>2.2850 acres</i>
Adjustment	10.0%	-	-	5.0%	-5.0%	-
Shape/Configuration	<i>Rectangular</i>	<i>Generally Rectangular</i>	<i>Generally Rectangular</i>	<i>Irregular</i>	<i>Rectangular</i>	<i>Rectangular</i>
Adjustment	-	-	-	-	-	-
Frontage	<i>Average</i>	<i>Average</i>	<i>Good (Corner)</i>	<i>Average</i>	<i>Average</i>	<i>Very Good (Corner)</i>
Adjustment	-	-	-10.0%	-	-	-30.0%
Utilities	<i>All public available</i>	<i>All public available</i>	<i>All public available</i>	<i>All public available</i>	<i>All public available</i>	<i>All public available</i>
Adjustment	-	-	-	-	-	-
Topography	<i>Level</i>	<i>Gently Sloping</i>	<i>Level</i>	<i>Level</i>	<i>Level</i>	<i>Level</i>
Adjustment	-	-	-	-	-	-
Floodplain	<i>Zone X - Outside 100-year floodplain</i>	<i>Zone X - Outside 100-year floodplain</i>	<i>Zone X - Outside 100-year Floodplain</i>	<i>Zone X - Outside 100-year floodplain</i>	<i>Zone X - Outside 100-year Floodplain</i>	<i>Zone X - Outside 100-year Floodplain</i>
Adjustment	-	-	-	-	-	-
Zoning	<i>MU-B-AH High Intensity Mixed Use</i>	<i>OCL (New Braunfels ETJ)</i>	<i>C-3 Commercial</i>	<i>R-3 Multi Family</i>	<i>C-3 Commercial</i>	<i>MU-B High Intensity Mixed Use</i>
Adjustment	-	-	-	-	-	-
Easements/Encumbrances	<i>None adverse</i>	<i>Drainage easement; Deed restricted to Multi-family</i>	<i>None adverse</i>	<i>Electric transmission line bisects the property</i>	<i>None adverse</i>	<i>None adverse</i>
Adjustment	-	5.0%	-	5.0%	-	-
Net Physical Adjustment	5.0%	-10.0%	-	40.0%	-5.0%	-40.0%
Adjusted Sales Price per Square Foot	\$11.21	\$9.17	\$9.06	\$8.75	\$12.32	

Conclusion

From the market data available, we used five land sales in competitive market areas which were adjusted based on pertinent elements of comparison. The following table summarizes the unadjusted and adjusted unit prices:

Land Sale Statistics

Metric	Unadjusted	Adjusted
Minimum Sales Price per Square Foot	\$5.25	\$8.75
Maximum Sales Price per Square Foot	\$18.08	\$12.32
Median Sales Price per Square Foot	\$9.22	\$9.17
Mean Sales Price per Square Foot	\$10.13	\$10.10

The adjusted prices for the comparable sales ranged from \$8.75 to \$12.32 per square foot with an average of \$10.10 per square foot and a median of \$9.17 per square foot. All the comparables are considered meaningful indicators of value. Sale Nos. 1, 2 and 5 indicate a closer range of values from \$9.17 to \$12.32 per square foot with an average of \$10.90 per square foot. These sales are weighted more heavily in the value conclusion

Based on the adjusted prices and the most comparable sales, a unit value for the subject property is near the upper-end of the adjusted range, or \$10.50 per square foot.

Based on this analysis, the land value indication for the subject property is summarized as follows:

Land Value Indication				
Reasonable Adjusted Comparable Range				
4.870 acres	x	\$8.75 psf	=	\$1,857,116
4.870 acres	x	\$12.32 psf	=	\$2,612,694
Market Value Opinion				(Rounded)
4.870 acres	x	\$10.50 psf	=	\$2,230,000

Reconciliation

Summary of Value Indications

The indicated values from the approaches used and our concluded 'as is' fee simple market value for the subject property are summarized in the following tables.

Value Indications

Approach to Value	As Is
Sales Comparison (Land Only)	\$2,230,000
Cost	Not developed
Sales Comparison	Not developed
Income Capitalization	Not developed

Value Conclusion

Component	As Is
Value Type	Market Value
Property Rights Appraised	Fee Simple
Effective Date of Value	April 2, 2024
Value Conclusion	\$2,230,000

Given the availability and reliability of data within the Sales Comparison Approach, we gave this approach sole weight in arriving at our final value conclusion. Furthermore, land properties such as the subject property are typically purchased by an investor/developer, who primarily rely upon the methods employed by the Sales Comparison Approach.

Exposure Time and Marketing Period

Based on statistical information about days on market, escrow length, and marketing times gathered through national investor surveys, sales verification, and interviews of market participants, marketing and exposure time estimates of 12 months and 12 months, respectively, are considered reasonable and appropriate for the subject property.

General Assumptions and Limiting Conditions

This appraisal is subject to the following general assumptions and limiting conditions:

1. The legal description – if furnished to us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | San Antonio will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | San Antonio is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.
9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions. Appraiser is not responsible for determining whether the date of value requested by Client is appropriate for Client's intended use.
10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.

11. The information, estimates and opinions, which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise that would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | San Antonio and Client. The Client shall not include partners, affiliates, or relatives of the party addressed herein. The appraiser assumes no obligation, liability or accountability to any third party.
15. Distribution of this report is at the sole discretion of the client, but third-parties not listed as an intended user on the face of the appraisal or the engagement letter may not rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | San Antonio.
17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
19. The flood maps are not site specific. We are not qualified to confirm the location of the subject property in relation to flood hazard areas based on the FEMA Flood Insurance Rate Maps or other surveying techniques. It is recommended that the client obtain a confirmation of the subject property's flood zone classification from a licensed surveyor.
20. If the appraisal is for mortgage loan purposes 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income and Expense Projection" are anticipated.

21. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
22. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated. Should the client have concerns in these areas, it is the client's responsibility to order the appropriate inspections. The appraiser does not have the skill or expertise to make such inspections and assumes no responsibility for these items.
23. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
24. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
25. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire more precise measurement, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer) as an alternative source. If this alternative measurement source reflects or reveals substantial differences with the measurements used within the report, upon request of the client, the appraiser will submit a revised report for an additional fee.
26. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, upon request of the client, the appraiser will submit a revised report for an additional fee.
27. If only preliminary plans and specifications were available for use in the preparation of this appraisal, and a review of the final plans and specifications reveals substantial differences upon request of the client the appraiser will submit a revised report for an additional fee.

28. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.
29. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
30. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

35. You and Valbridge Property Advisors | San Antonio both agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | San Antonio and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury. In the event that the client, or any other party, makes a claim against Valbridge Property Advisors | San Antonio or any of its employees in connections with or in any way relating to this assignment, the maximum damages recoverable by such claimant shall be the amount actually received by Valbridge Property Advisors | San Antonio for this assignment, and under no circumstances shall any claim for consequential damages be made.
36. Valbridge Property Advisors | San Antonio shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | San Antonio. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | San Antonio and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment. The client also agrees that in case of lawsuit arising from or in any way involving these appraisal services, client will hold Valbridge Property Advisors | San Antonio harmless from and against any liability, loss, cost, or expense incurred or suffered by Valbridge Property Advisors | San Antonio in such action, regardless of its outcome.
37. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Valbridge Property Advisors | San Antonio. Neither Valbridge Property Advisors, Inc., nor any of its affiliates has been engaged to provide this report. Valbridge Property Advisors, Inc. does not provide valuation services, and has taken no part in the preparation of this report.
38. If any claim is filed against any of Valbridge Property Advisors, Inc., a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages, and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.
39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.

Certification – Clinton J. Bendele, MAI, ARA

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The undersigned Clinton J. Bendele, MAI has not performed any services regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Clinton J. Bendele, MAI, ARA made a personal inspection of the property that is the subject of this report.
10. Justin E. Bruni provided significant real property appraisal assistance to the person signing this certification.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the American Society of Farm Managers and Rural Appraisers relating to review by its duly authorized representatives.
13. As of the date of this report, I, Clinton J. Bendele, MAI, ARA has completed the Standards and Ethics Education Requirement for Candidates/Practicing Affiliates of the Appraisal Institute.



Clinton J. Bendele, MAI, ARA
Senior Managing Director
State Certified General
Real Estate Appraiser
TX-1337546-G

Addenda

Glossary

Definitions are taken from the Dictionary of Real Estate Appraisal, 5th Edition (Dictionary), the Uniform Standards of Professional Appraisal Practice (USPAP) and Building Owners and Managers Association International (BOMA).

Deed Restriction

A provision written into a deed that limits the use of land. Deed restrictions usually remain in effect when title passes to subsequent owners. (Dictionary)

Easement

The right to use another's land for a stated purpose. (Dictionary)

Effective Date

1) The date at which the analyses, opinions, and advice in an appraisal, review, or consulting service apply. 2) In a lease document, the date upon which the lease goes into effect. (Dictionary)

Extraordinary Assumption

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. (Dictionary)

Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Dictionary)

Highest & Best Use

The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are 1) legal permissibility, 2) physical possibility, 3) financial feasibility, and 4) maximally profitability. Alternatively, the probable use of land or improved –specific with respect to the user and timing of the use—that is adequately supported and results in the highest present value. (Dictionary)

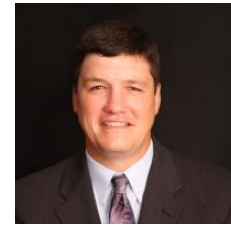
Hypothetical Condition

That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (Dictionary)

Just Compensation

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position as he or she would be if the property had not been taken. (Dictionary)

Qualifications of Clinton J. Bendele, MAI, ARA
Senior Managing Director
Valbridge Property Advisors | San Antonio
cbendele@valbridge.com



Independent Valuations for a Variable World

Education

- *Bachelor of Business Administration Degree in Finance, Southwest Texas State University; December 1999*

Specialized Education

Received credit for and successfully completed the following courses sponsored by the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers:

- Real Estate Appraisal Principles (110) – *February 2005, Plano*
- Real Estate Appraisal Procedures (120) – *March 2005, Plano*
- Highest and Best Use/Market Analyses (520) – *October 2006, Houston*
- Income Capitalization (310) – *May 2007, Plano*
- General Market Analyses and Highest and Best Use (400) – *September 2007, Houston*
- 15 Hour USPAP – *September 2007, San Antonio*
- Current Trends in South Texas Land Market – *August 2008, San Antonio*
- Report Writing & Valuation Analysis (540) – *February 2009, Houston*
- Advanced Income Capitalization (510) – *August 2009, Houston*
- Advanced Applications (550) - *November 2010, Louisville, Kentucky*
- Advanced Sales Comparison and Cost Approach (530) - *August 2011*
- Integrated Approaches (A304) - *March 2017*

Experience

Presently and since December 2004, Clinton J. Bendele has been employed by Valbridge Property Advisors |San Antonio formerly Dugger, Canaday, Grafe, Inc. and is recognized as a State Certified General Real Estate Appraiser (License No. TX-1337546-G). He is a Partner/Shareholder and acts as a Managing Director in the firm. Experience includes appraisal and consulting assignments related to residential and commercial properties, farm and ranch, and special use. Mr. Bendele has testified as an expert witness in real estate related matters.

Real Estate Specializations

- Commercial properties including convenience stores, hotels, industrial properties, auto dealership, retail properties, office, and mini storage
- Commercial rental studies
- Estate planning and undivided interest valuations
- Ranches ranging from small properties to in excess of 125,000 acres
- Groundwater and riparian water rights
- Right-of-Way appraisal
- Working, recreational, and game managed ranches
- Rural property partitions
- Yellow Book Appraisals - Uniform Appraisal Standards for Federal Land Acquisition
- Hunting and grazing lease studies

- Commercial acreage valuation in metropolitan areas; transition land
- Appraisals for government entities
- Irrigated and dry farmland
- Undivided interest valuation

Clint's primary trade area includes the developed and rural areas of South and Central Texas. Appraisals have also been made in East, Central and North Texas. He is currently active in ranching operations in Comal County.

Prior work experience includes tax preparation for accounting firms, auditing HUD forms and files for state agencies, and three years of commercial sales for Enterprise Leasing. Clint was Branch Manager for Enterprise Truck Leasing serving companies in the Houston area and consistently ranked in the top 10 branches in the country.

Professional Affiliations

- State Certified General Real Estate Appraiser (No. TX-1337546-G)
- Member of the Appraisal Institute (No. 467607, August 2016)
- Member IRWA – 2014
- Member "T" Association – Texas State University
- Texas State Hall of Honor Inductee - 2012 - Football
- President - Texas State "T" Association 2015
- Member ASFMRA - 2016

Clint was born in Hondo, Texas and moved to Kingsville, Texas at a young age. Family operations include farming and ranching in Medina, Kleberg, and Comal Counties.

CLINTON JAMES BENDELE
9901 IH-10 WEST STE 1035
SAN ANTONIO, TX 78230



**Certified General
Real Estate Appraiser**

Appraiser: **Clinton James Bendele**
License #: **TX 1337546 G** License Expires: **11/30/2025**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103, authorization is granted to use this title:
Certified General Real Estate Appraiser

For additional information or to file a complaint please contact TALCB at www.talcb.texas.gov.



Chelsea Buchholtz
Commissioner

Qualifications of Justin Bruni
Appraiser
Valbridge Property Advisors | San Antonio
jbruni@valbridge.com



Independent Valuations for a Variable World

Education

- Bachelor of Science, Mechanical Engineering, Minor in Mathematics, Baylor University - 2014

Specialized Education

Received credit for and successfully completed the following Appraisal / Real Estate Courses:

Champions School of Real Estate

- Basic Appraisal Principles
- Basic Appraisal Procedures
- Uniform Standards of Professional Appraisal Practice (USPAP)
- Texas Appraising for the Supervisor and Trainee

Appraisal Institute

- Real Estate Finance, Statistics, and Valuation Modeling
- General Appraiser Sales Comparison Approach
- General Appraiser Income Approach – Part 1
- General Appraiser Income Approach – Part 2
- General Appraiser Site Valuation and Cost Approach
- Quantitative Analysis

Designations/Certifications

- Texas Appraiser Licensing and Certification Board, Trainee; State of Texas; Authorization No. TX-1342002 - Trainee

Experience

Presently and since May 2019, Justin Bruni has been employed by Valbridge Property Advisors | San Antonio. Valuation experience includes appraisal assignments related to farm and ranch, right-of-way, commercial, and special purpose properties.

A San Antonio native, Justin graduated from Texas Military Institute in 2010. After graduation, He attended Baylor University. He is currently active in the family ranching operation in Webb County.



Appraiser Trainee

Trainee: **Justin Bruni**
Authorization #: **TX 1342002 Trainee** Expires: **06/30/2025**

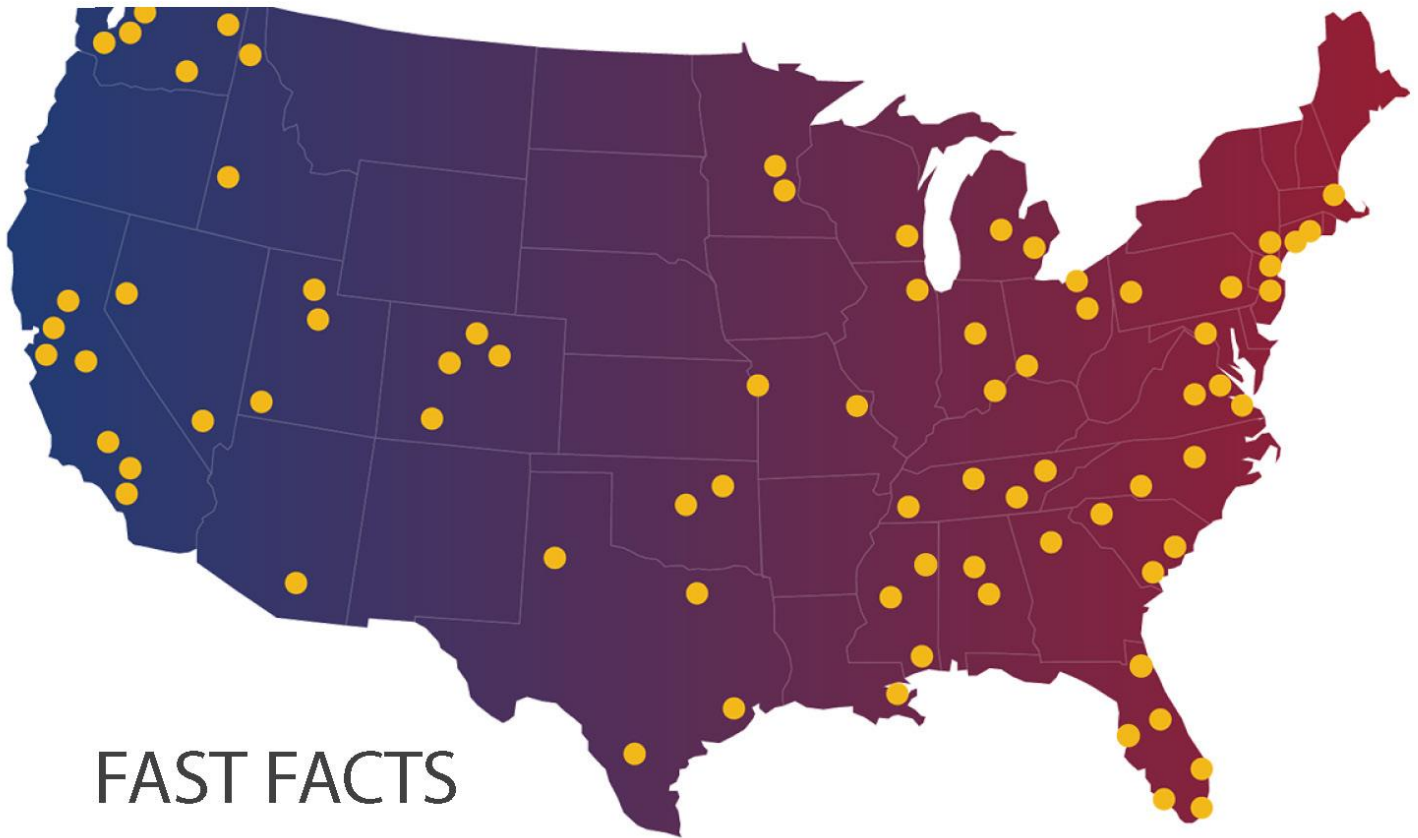
Review the list of the above Trainee's Supervisors on the License Holder Search at www.talcb.texas.gov.

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103, authorization is granted to use this title: Appraiser Trainee

For additional information or to file a complaint please contact TALCB at www.talcb.texas.gov.



Chelsea Buchholtz
Commissioner



FAST FACTS

COMPANY INFORMATION

- Valbridge is the largest independent national commercial real estate valuation and advisory services firm in North America
 - Total number of MAI-designated appraisers: 200+ on staff
 - Total number of office locations: 70 + across U.S
 - Total number of staff: 675+ strong
- Valbridge covers the entire U.S. from coast to coast.
- Valbridge services all property types, including special-purpose properties.
- Valbridge provides independent valuation services. We are not owned by a brokerage firm or investment company.
- Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.
- Valbridge is owned by our local office leaders.
- Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk-property engagements.



Valbridge

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303.443.9600

5345 Arapahoe Avenue
Suite 7
Boulder, CO 80303
303.443.9600

23272 Two Rivers Road
Unit 101
Basalt, CO 81621
970.340.1016

1099 Main Avenue
Suite 311
Durango, CO 81301
970.340.1016

CONNECTICUT

6 Central Row
Third Floor
Hartford, CT 06103-2701
860.246.4606

17 Covewood Drive
Norwalk, CT 06853
203.286.6520

FLORIDA

2240 Venetian Court
Naples, FL 34109
239.514.4646

8200 NW 41st Street
Suite 200
Doral, FL 33166
305.639.8029

603 Hillcrest Street
Orlando, FL 32803
407.839.3626

1100 16th Street N
St. Petersburg, FL 33705
727.894.1800

GEORGIA

2711 Poinsettia Avenue
West Palm Beach, FL 33407
561.833.5331

2675 Paces Ferry Road
Suite 145
Atlanta, GA 30339
678.644.4853

IDAHO

1459 Tyrell Lane
Suite B
Boise, ID 83706
208.336.1097

1875 N. Lakewood Drive
Suite 100
Coeur d'Alene, ID 83814
208.292.2965

ILLINOIS

566 W. Lake Street
Suite 240
Chicago, IL 60661
312.288.8687

INDIANA

820 Fort Wayne Avenue
Indianapolis, IN 46204
317.687.2747

KANSAS

10990 Quivira Road
Suite 100
Overland Park, KS 66210
913.451.1451

KENTUCKY

900 Wessex Place
Suite 306
Louisville, KY 40222
502.585.3651

LOUISIANA

512 North Causeway Boulevard
Metairie, LA 70001
504.207.7730

MARYLAND

11100 Dovedale Court
Marriottsville, MD 21104
443.333.5522

MASSACHUSETTS

260 Bear Hill Road
Suite 106
Waltham MA 02451
781.790.5645

MICHIGAN

1420 Washington Blvd.
Suite 301
Detroit, MI 48226
313.986.3313.

2127 University Park Drive
Suite 390
Okemos, MI 48864
517.336.0001

MINNESOTA

222 South 9th Street
Suite 825
Minneapolis, MN 55402
612.253.0650

MISSOURI

10990 Quivira Road
Suite 100
Overland Park, KS 66210
913.451.1451

MISSISSIPPI

1010 Ford Street
Gulfport, MS 39507
228.604.1900

MISSOURI

737 Highway 51
Suite 1C
Madison, MS 39110
601.853.0736

NEVADA

3034 S. Durango Drive
Suite 100
Las Vegas, NV 89117
702.242.9369

NEW JERSEY

2740 Route 10 West, Suite 204
Morris Plains, NJ 07950
973.970.9333

3500 Route 9 South, Suite 202
Howell, NJ 07731
732.807.3113

NEW YORK

424 West 33rd Street
Suite 630
New York, NY 10001
212.268.1113

NORTH CAROLINA

412 E. Chatham Street
Cary, NC 27511
919.859.2666

4530 Park Road, Suite 100
Charlotte, NC 28209
704.376.5400

OHIO

1655 W. Market Street
Suite 130
Akron, OH 44313
330.899.9900

OHIO (Cont'd)

8291 Beechmont Ave.,
Suite B
Cincinnati, OH 45255
513.785.0820

1422 Euclid Avenue
Suite 1070
Cleveland, OH 44115
216.367.9690

OKLAHOMA

6525 N. Meridian Avenue
Suite 309
Oklahoma City, OK 73116
405.603.1553

6666 South Sheridan Road
Suite 104
Tulsa, OK 74133
918.712.9992

PENNSYLVANIA

150 S. Warner Road
Suite 440
King of Prussia, PA 19406
215.545.1900

4701 Baptist Road
Suite 304
Pittsburgh, PA 15227
412.881.6080

SOUTH CAROLINA

610 N. Main Street
Greenville, SC 29601
864.233.6277

920 Bay Street
Suite 26
Beaufort, SC 29902
843.342.2302

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843.881.1266

TENNESSEE

112 Westwood Place
Suite 300
Brentwood, TN 37027
615.369.0670

701 Broad Street
Suite 209
Chattanooga, TN 37402
423.285.8435

213 Fox Road
Knoxville, TN 37922
865.522.2424

6750 Poplar Avenue
Suite 706
Memphis, TN 38138
901.753.6977

TEXAS

High Point Center
12225 Greenville Avenue
Suite 490
Dallas, TX 75243
214.446.1611

974 Campbell Road
Suite 204
Houston, TX 77024
713.467.5858

2731 81st Street
Lubbock, TX 79423
806.744.1188

TEXAS (Cont'd)

9901 IH-10 West
Suite 1035
San Antonio, TX 78230
210.227.6229

UTAH

260 South 2500 West
Suite 301
Pleasant Grove, UT 84062
801.492.9328

1100 East 6600 South
Suite 201
Sall Lake City, UT 84121
801.262.3388

20 North Main
Suite 304
St. George, UT 84770
435.773.6300

VIRGINIA

656 Independence Parkway
Suite 220
Chesapeake, VA 23320
757.410.1222

7400 Beaufont Springs Drive
Suite 300
Richmond, VA 23225
804.672.4473

5107 Center Street
Unit 2B
Williamsburg, VA 23188
757.345.0010

WASHINGTON

18728 Bothell Way, NE
Suite B
Bothell, WA 98011
425.450.0040

2927 Colby Avenue
Suite 100
Everett, WA 98201
425.258.2611

419 Berkeley Avenue
Suite A
Fircrest, WA 98466
253.274.0099

8378 W. Grandridge Boulevard
Suite 110-D
Kennewick, WA 99336
509.221.1540

506 Second Avenue
Suite 1001
Seattle, WA 98104
206.209.3016

324 N. Mullan Road
Spokane Valley, WA 99206
509.747.0999

WISCONSIN

12660 W. North Avenue
Brookfield, WI 53005
262.782.7990



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action

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

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

RECOMMENDED ACTION: Approve Resolution #2024-190 By The Board Of Trustees Of New Braunfels Utilities Approving (i) A Water Certificate Of Convenience And Necessity (“CCN”) Transfer Agreement Removing 8.422 Acres Of Real Property Near The Intersection Of FM 725 And East County Line Road (The “Property”) From Green Valley Special Utility District’s Water CCN And Adding It To New Braunfels Utilities’ Water CCN; (ii) A Sewer CCN Transfer Agreement Removing The Property From Guadalupe-Blanco River Authority’s Sewer CCN And Adding It To New Braunfels Utilities’ Sewer CCN; And (iii) Other Matters In Connection Therewith

BACKGROUND

Pace Homes of Texas, LLC. (“Developer”) owns 8.442 acres of real property located southeast of the intersection of FM 725 and East County Line Road (the “Property”). The Property is currently located in Green Valley Special Utility District’s (“GVSUD”) Water CCN and Guadalupe Blanco River Authority’s (“GBRA”) Sewer CCN. The Developer has requested (i) GVSUD to transfer the portion of its Water CCN associated with the Property to NBU and (ii) GBRA to transfer the portion of its Sewer CCN associated with the Property to NBU so that NBU can provide both retail water service and sewer service to the Property.

GVSUD has agreed to release its Water CCN associated with the Property to NBU pursuant to a Water CCN Transfer Agreement, and GBRA has agreed to release its Sewer CCN associated with the Property to NBU pursuant to a Sewer CCN Transfer Agreement.

Section 13.248 of the Texas Water Code authorizes contracts between retail public utilities designating areas and customers to be served by those retail public utilities when approved by the Public Utility Commission (“PUC”) after public notice and hearing.

NBU staff requests that the Board of Trustees approve the Water CCN Transfer Agreement with GVSUD and Sewer CCN Transfer Agreement with GBRA.

This item is being presented to the Board because NBU is requesting a change to its current Water CCN and Sewer CCN boundary.

FINANCIAL IMPACT

The Developer has agreed to pay all costs associated with preparing, filing, and advancing the application(s) at the PUC to transfer GVSUD's Water CCN and GBRA's Sewer CCN service areas to NBU.

LINK TO STRATEGIC PLAN

Customers and Community

Stewardship

EXHIBITS

1. Water CCN Transfer Agreement between NBU and GVSUD
2. Sewer CCN Transfer Agreement between NBU and GBRA

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING (I) A WATER CERTIFICATE OF CONVENIENCE AND NECESSITY (“CCN”) TRANSFER AGREEMENT REMOVING 8.422 ACRES OF REAL PROPERTY NEAR THE INTERSECTION OF FM 725 AND EAST COUNTY LINE ROAD (THE “PROPERTY”) FROM GREEN VALLEY SPECIAL UTILITY DISTRICT’S WATER CCN AND ADDING IT TO NEW BRAUNFELS UTILITIES’ WATER CCN; (II) A SEWER CCN TRANSFER AGREEMENT REMOVING THE PROPERTY FROM GUADALUPE-BLANCO RIVER AUTHORITY’S SEWER CCN AND ADDING IT TO NEW BRAUNFELS UTILITIES’ SEWER CCN; AND (III) OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, New Braunfels Utilities (“NBU”) is a Texas municipally owned utility that provides water, wastewater, and electricity to customers in its service area;

WHEREAS, NBU holds water certificate of convenience and necessity (“CCN”) No. 10677 for the provision of retail water service to certain areas in and about Comal County and Guadalupe County;

WHEREAS, NBU holds sewer CCN No. 20282 for the provision of retail sewer service to certain areas in and about Comal County and Guadalupe County;

WHEREAS, Section 13.248 of the Texas Water Code authorizes contracts between retail public utilities designating areas and customers to be served by those retail public utilities, when approved by the Public Utility Commission of Texas (the “PUC”) after public notice and hearing

WHEREAS, Pace Homes of Texas, LLC, a Texas limited liability company (the “Developer”), owns 8.442 acres of real property located southeast of the intersection of FM 725 and East County Line Road, more particularly described in Exhibit A (the “Property”);

WHEREAS, the Property is currently located in Green Valley Special Utility District’s (“GVSUD”) water CCN and Guadalupe Blanco River Authority’s (“GBRA”) sewer CCN;

WHEREAS, GVSUD and GBRA do not have the capacity to serve retail water and retail sewer service, respectively, to the Property;

WHEREAS, the Developer has requested (i) GVSUD to transfer the portion of its water CCN associated with the Property to NBU and (ii) GBRA to transfer the portion of its sewer CCN associated with the Property to NBU so that NBU can provide both retail water service and sewer service to the Property;

WHEREAS, the Developer has agreed to pay all costs associated with transferring the Property to NBU’s water CCN and sewer CCN;

WHEREAS, GVSUD has agreed to release its water CCN associated with the Property to NBU pursuant to a Water CCN Transfer Agreement, attached hereto as Exhibit B, and GBRA has agreed to release its sewer CCN associated with the Property to NBU pursuant to a Sewer CCN Transfer Agreement, attached hereto as Exhibit C; and

WHEREAS, the Board of Trustees has reviewed the Water CCN Transfer Agreement and the Sewer CCN Transfer Agreement and is of the opinion that the Water and Sewer CCN transfer agreements and the related expansion and modification of NBU's water and sewer CCN to include the Property should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES THAT:

SECTION 1. The Board of Trustees hereby approves (i) the Water CCN Transfer Agreement and the Sewer CCN Transfer Agreement attached hereto as Exhibits B and C and (ii) the related expansion and modification of the boundaries of its water CCN and sewer CCN to include the Property.

SECTION 2. The Chief Executive Officer or his designee is hereby authorized to negotiate and execute the Water CCN Transfer Agreement, the Sewer CCN Transfer Agreement, and any other documents necessary to effectuate the transfer of the Property (i) from GVSUD's water CCN to NBU's water CCN and (ii) from GBRA's sewer CCN to NBU's sewer CCN. The Board of Trustees also authorizes the Chief Executive Officer or his designee to file all necessary applications, maps, and related documentation with the PUC to effectuate the transfer of the Property to NBU's water CCN and sewer CCN.

SECTION 3. The recitals contained in the preamble hereof are found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board of Trustees.

SECTION 4. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 6. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board of Trustees hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject

matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 8. This Resolution shall be in full force and effect from and after its final passage, and it is so resolved.

PASSED, APPROVED, AND ADOPTED, this the _____ day of _____, 2024.

Wayne Peters
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ryan Kelso
Secretary, Board of Trustees
New Braunfels Utilities

Exhibit A

Exhibit B

Exhibit C

SEWER CCN SERVICE AREA TRANSFER AGREEMENT

This **SEWER CCN TRANSFER AGREEMENT** is entered into this ____ day of _____, 2024 (this “Agreement”), by and among **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), **GUADALUPE-BLANCO RIVER AUTHORITY**, a Texas conservation and reclamation district organized under Article 16, Section 59 of the Texas Constitution (“GBRA”), and **PACE HOMES OF TEXAS, LLC**, a Texas limited liability company (the “Developer” and, together with NBU and GBRA, the “Parties”), in connection with the boundary lines of the Certificates of Convenience and Necessity (“CCNs”) held by NBU and GBRA for the provision of sewer services to users pursuant to the Texas Water Code.

RECITALS:

WHEREAS, NBU holds sewer CCN No. 20282 for the provision of retail sewer service to certain areas in and about Comal County and Guadalupe County,;

WHEREAS, GBRA holds sewer CCN No. 20892 for the provision of retail sewer service to certain areas in and about Guadalupe County, Comal County, Hays County, and Kendall County.;

WHEREAS, Section 13.248 of the Texas Water Code authorizes contracts between retail public utilities designating areas and customers to be served by those retail public utilities, when approved by the Public Utility Commission of Texas (the “PUC”) after public notice and hearing;

WHEREAS, a portion of GBRA’s sewer CCN service area is adjacent to NBU’s sewer CCN service area;

WHEREAS, Developer owns 8.442 acres of real property located near the intersection of FM 725 and East County Line Road, more particularly described in Exhibit A (the “Property”), which is currently located within the service area of GBRA’s sewer CCN;

WHEREAS, the Developer has requested that GBRA transfer the portion of its sewer CCN service area encompassing the Property (the “Service Area”) to NBU so that NBU can provide retail sewer services to the Property;

WHEREAS, the Property contains one single family dwelling;

WHEREAS, GBRA does not possess facilities capable of providing retail sewer service to the Property, nor does it provide sewer service to any customers in the area surrounding the Property;

WHEREAS, NBU currently has sewer connections or sewer facilities adjacent to or near the Property;

WHEREAS, NBU and GBRA are amenable to altering the boundaries of their respective sewer CCNs by transferring the Service Area to NBU so that it is removed from GBRA’s sewer CCN and added to NBU’s sewer CCN; and

WHEREAS, the Developer has provided to NBU maps and GIS data illustrating the Service Area to include with a petition to the PUC to transfer the Service Area from GBRA’s sewer CCN to NBU’s sewer CCN.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT:

Sewer CCN

1. In accordance with Section 13.248 of the Texas Water Code, but at all times subject to the approval of the PUC, GBRA hereby agrees to the modification of the boundaries of its sewer CCN to exclude the Service Area, such area to be transferred from GBRA’s sewer CCN to the area to be encompassed within NBU’s sewer CCN.
2. In accordance with Section 13.248 of the Texas Water Code, but at all times subject to the approval of the PUC, NBU hereby agrees to the expansion and modification of the boundaries of its sewer CCN to include the Service Area, such area to be transferred from GBRA’s sewer CCN to the area to be encompassed within NBU’s sewer CCN.
3. NBU shall be responsible for preparing and filing the application to obtain the PUC’s approval of the transfer of the Service Area from GBRA’s sewer CCN to NBU’s sewer CCN. The Developer shall be responsible for hiring a third-party vendor to prepare hard copy maps with supporting electronic metadata, including but not limited to GIS shapefiles, for the Service Area that satisfies the PUC rules. The Developer shall submit the hard copy maps and supporting electronic metadata to NBU and GBRA for each party’s review and approval prior to NBU’s filing of such application.
4. NBU has provided a link to the Developer with PUC’s mapping guidance webpage with instructions to the Developer and the third-party vendor to comply with the PUC’s guidance for preparation of the maps. Neither NBU nor GBRA shall be liable for any mapping deficiencies identified by the PUC staff or delays resulting from any requirements by the PUC for revisions of the maps or mapping data.
5. The Developer agrees to pay all the expenses of NBU and GBRA in connection with the sewer CCN transfer, including, but not limited to, the following:
 - a. legal fees for NBU and GBRA;
 - b. PUC administrative fees; and
 - c. fees associated with preparing hard copy maps and electronic maps with supporting electronic metadata for the Service Area filed in connection with the PUC application.
6. GBRA and NBU agree that no compensation shall be due and owing between GBRA and NBU in conjunction with such transfer as no real or personal property of either party is being transferred.

7. NBU shall not commence providing retail sewer services for compensation to the Developer or any retail customer on the Property until the PUC has authorized the transfer of the Service Area from GBRA's sewer CCN to NBU's sewer CCN.
8. NBU shall not approve any documents indicating that NBU is the retail sewer services provider prior to the PUC authorizing the transfer of the Service Area from GBRA's sewer CCN to NBU's sewer CCN.
9. NBU agrees that, upon approval of the revision to its sewer CCN boundaries by the PUC to include the Service Area within the boundaries of its sewer CCN, GBRA shall have no further obligation to provide retail sewer service to the Service Area, and that NBU shall be solely responsible for the provision of retail sewer service to any owner or occupant of, or customers on, the Property and within the Service Area under such terms and condition as are allowed under its sewer CCN and all applicable governmental statutes and regulations.

General Provisions

1. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. ALL ACTS REQUIRED OR PERMITTED TO BE PERFORMED HEREUNDER ARE PERFORMABLE IN COMAL AND GUADALUPE COUNTY, TEXAS, AS APPLICABLE, AND IT IS AGREED THAT ANY CIVIL ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HEREWITH, SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION SITTING IN COMAL COUNTY, TEXAS. IT IS AGREED THAT ANY ADMINISTRATIVE LAW ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HEREWITH, SHALL BE BROUGHT AT THE PUC OR ITS SUCCESSOR AGENCY.
2. **Severability.** In the event one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
3. **Unintended Omission.** If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity or effect to any other word, clause, sentence, or provision appearing in this Agreement shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be supplied by inference.

4. Amendment. This Agreement shall not be amended or terminate except by an instrument signed by all Parties to this Agreement.
5. Entire Agreement. This Agreement reflects the entire agreement among the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the Parties in connection herewith.
6. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall be construed as one and the same instrument.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Ryan Kelso, Chief Executive Officer

[Signature Page of NBU]

GUADALUPE-BLANCO RIVER AUTHORITY,
a Texas conservation and reclamation district

By: _____
Darrell Nichols, General Manager/CEO

[Signature Page of GBRA]

PACE Homes of Texas, LLC
a Texas limited liability company

By: _____
Name: Aaron Tyler Epstein
Title: President

[Signature Page of the Developer]

Exhibit A

METES AND BOUNDS DESCRIPTION
FOR A
8.442 ACRE TRACT OF LAND

Being a 8.442 acre tract situated in the William Pate Survey, Abstract No. 259, Guadalupe County, Texas, being comprised of a 2.310 acre tract of land being the remainder of a called 3.000 acre tract land recorded in Volume 705, Page 184, Official Public Records, Guadalupe County, Texas and a 5.132 acre tract being the remainder of a called 5.453 acre tract of land recorded in Volume 773, Page 29, Official Public Records, Guadalupe County, Texas and being all of a called 1.000 acre tract of land recorded in Document No. 2017011748, Official Public Records, Guadalupe County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron pin with yellow cap found for the Northwest corner of said 2.310 acre tract and the herein described tract, also being the Northeast corner of Lot 7 of Pecan Crossing Unit 1, plat of which is recorded in Volume 7, Pages 625-626, Map and Plat Records, Guadalupe County, Texas, and being in the South right-of-way line of County Line Road (variable width);

THENCE N 63°13'10" E, along the South right-of-way line of County Line Road, common with the North line of said 2.310 acre tract, a distance of 252.43 feet to a 1/2" iron pin with cap stamped "HMT" found for the Northeast corner of said 2.310 acre tract, common with the Northwest corner of said 1.000 acre tract;

THENCE N 63°13'10" E continuing along the South right-of-way line of County Line Road, passing at a distance of 33.27 feet, a 1/2" iron pin with cap stamped "Kolodzie" found, and continuing for a total distance of 71.22 feet to a 1/2" iron pin with cap stamped "HMT" found for the Northeast corner of said 1.000 acre tract and being the Northwest corner of a called 5.132 acre tract being the remainder of a called 5.453 acre tract recorded in Volume 773, Page 29 Official Public Records, Comal County, Texas;

THENCE N 63°13'10" E continuing along the South right-of-way of County Line Road, a distance of 221.61 feet to a 1/2" iron pin with cap stamped "MBC Eng" found for the Northeast corner of said 5.132 acre tract and the herein described tract and being the Northwest corner of a called 1.1 acre tract, recorded in Volume 1187, Page 889, Official Public Records, Guadalupe County, Texas;

THENCE S 38°52'19" E along the East line of said 5.132 acre tract and the herein described tract, common with the West line of said 1.1 acre tract and passing the Northwest corner of Lot 4, Pecan Crossing Unit 3, plat of which is Volume 8, Page 119, Map and Plat Records, Guadalupe County, Texas, continuing a total distance of 616.62 feet to a Nail found in a rock column, for the Southwest corner of Lot 3, of said Pecan Crossing Unit 3 and being the Southeast corner of said 5.132 acre tract and the herein described tract, also being in the North right-of-way line of Pecan Bluff (50ft- right-of-way) as shown on the aforementioned plat of Pecan Crossing, Unit 1;

THENCE S 63°07'52" W, along the North right-of-way of Pecan Bluff, common with the South line of said 5.132 acre tract and the herein described tract, passing at 163.74 feet a 3" fence post, and passing at an additional 300.70 feet a 3" fence post and continuing in all a distance of 673.53 to a 1/2" iron pin found

for the Southwest corner of said 5.132 acre tract and the herein described tract, and being the Southeast corner of Lot 13 and Lot 14 of the aforementioned Pecan Crossing Unit No. 1;

THENCE N 26°51'52" W a distance of 146.75 feet to a 1/2" iron pin with cap stamped "Kolodzie" found for the Northeast corner of said Lot 13 and Southeast corner of Lot 12, Pecan Crossing Unit 1 and being the Northwest corner of said 5.132 acre tract, also being the Southwest corner of the aforementioned 2.310 acre tract;

THENCE N 26°51'52" W continuing along the West line of said 2.310 acre tract and the herein described tract, common with the East line of said Pecan Crossing Unit 1, a distance of 457.22 feet to the POINT OF BEGINNING and containing 8.442 acres of land in Guadalupe County, Texas.

Bearings shown hereon are based on the Texas Coordinate System, South Central Zone (4204), NAD 83.

Surveyed this the 18th day of March, 201 and revised June 1, 2018, to add fences.

Reference survey of said 8.442 acre tract of land prepared this same date.



Douglas B. Cottle
Registered Professional Land Surveyor No. 6149

S:\Projects\Title Surveys\Pate, William - Guadalupe\8.453 ac - 254 E. County Line Rd\
18-0504 BNDY\Pate William 8.442ac MB_254 E County Line Rd_18-0504.docx



BEING A 8.442 ACRE TRACT OF LAND SITUATED IN THE WILLIAM PATE SURVEY, ABSTRACT NO. 259, GUADALUPE COUNTY, TEXAS, COMPRISED OF A 2.310 ACRE TRACT OF LAND BEING THE REMAINDER OF A CALLED 3.000 ACRE TRACT RECORDED IN VOLUME 705, PAGE 184, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS AND A 5.132 ACRE TRACT BEING THE REMAINDER OF A CALLED 5.453 ACRE TRACT, RECORDED IN VOLUME 773, PAGE 29, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS AND BEING ALL OF A CALLED 1.000 ACRE TRACT RECORDED IN DOCUMENT NO. 2017011748, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS.

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.

THIS SURVEYOR HAS NOT CONDUCTED A TITLE SEARCH TO DEPICT OTHER MATTERS OF RECORD, SUCH AS EASEMENTS, SETBACKS, RESTRICTIONS OR OTHER ENCUMBRANCES THAT MAY AFFECT THIS PROPERTY.

NO ATTEMPT HAS BEEN MADE TO LOCATE ANY IMPROVEMENTS, EASEMENTS, OR RIGHTS OF WAY NOT SHOWN HEREON.

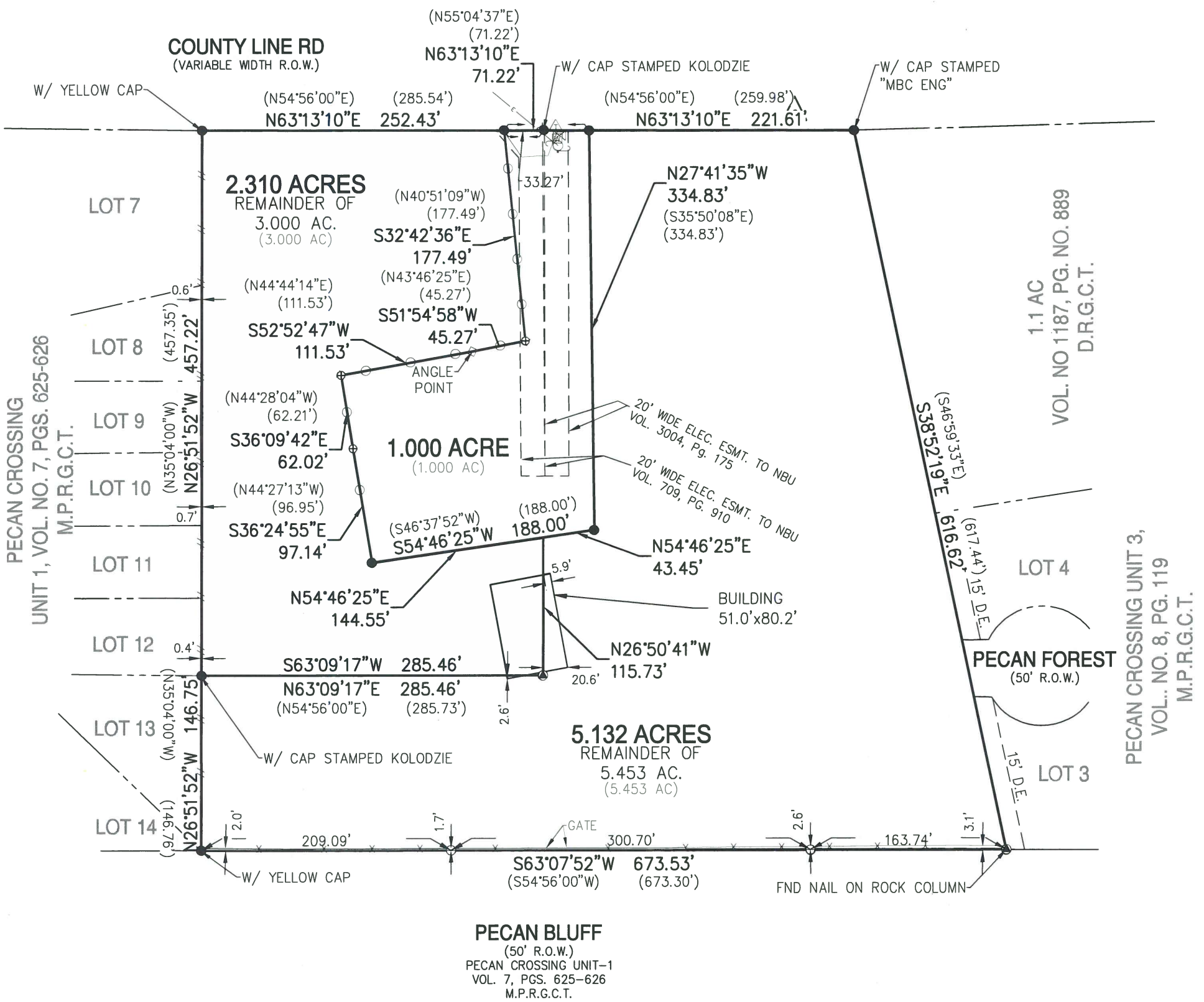
BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD 83.

LEGEND:

- = FND 1/2" IRON PIN
- = PLASTIC CAP STAMPED "HMT" UNLESS OTHERWISE NOTED
- ⊕ = FND 3" FENCE POST
- ⊙ = SET MAG NAIL UNLESS OTHERWISE NOTED
- B.L. = BUILDING SETBACK LINE
- U.E. = UTILITY EASEMENT
- D.E. = DRAINAGE EASEMENT
- R.O.W. = RIGHT-OF-WAY
- () = PLAT CALLS
- ⊞ = WATER METER
- ⊞ = POWER POLE W/ CONDUIT
- ⊞ = TELEPHONE PEDESTAL
- E — = OVERHEAD ELECTRIC
- X — = WATER VALVE
- O — = PIPE FENCE
- M.P.R.G.C.T. = MAP & PLAT RECORDS OF GUADALUPE COUNTY, TEXAS
- O.P.R.G.C.T. = OFFICIAL PUBLIC RECORDS OF GUADALUPE COUNTY, TEXAS
- = SET 60D NAIL
- X — = BARBED WIRE FENCE
- # — = WOOD FENCE



SCALE: 1"=100'



254 E. COUNTY LINE RD
NEW BRAUNFELS, TEXAS

THIS SURVEY IS CERTIFIED TO:
TIM FOWLER



410 N. SEGUIN AVE.
NEW BRAUNFELS,
TEXAS, 78130
WWW.HMTNB.COM
PH: (830)625-8555
TBPLS FIRM 10153600



STATE OF TEXAS
COUNTY OF COMAL

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND UNDER MY SUPERVISION

THIS 18TH DAY OF MAY 2018
REVISED THIS 1ST DAY OF JUNE 2018 - ADDED FENCES

DOUGLAS B. COTTLE
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6149

GENERAL LOCATION MAP

Item 9.

NEW BRAUNFELS

2.61 MILES

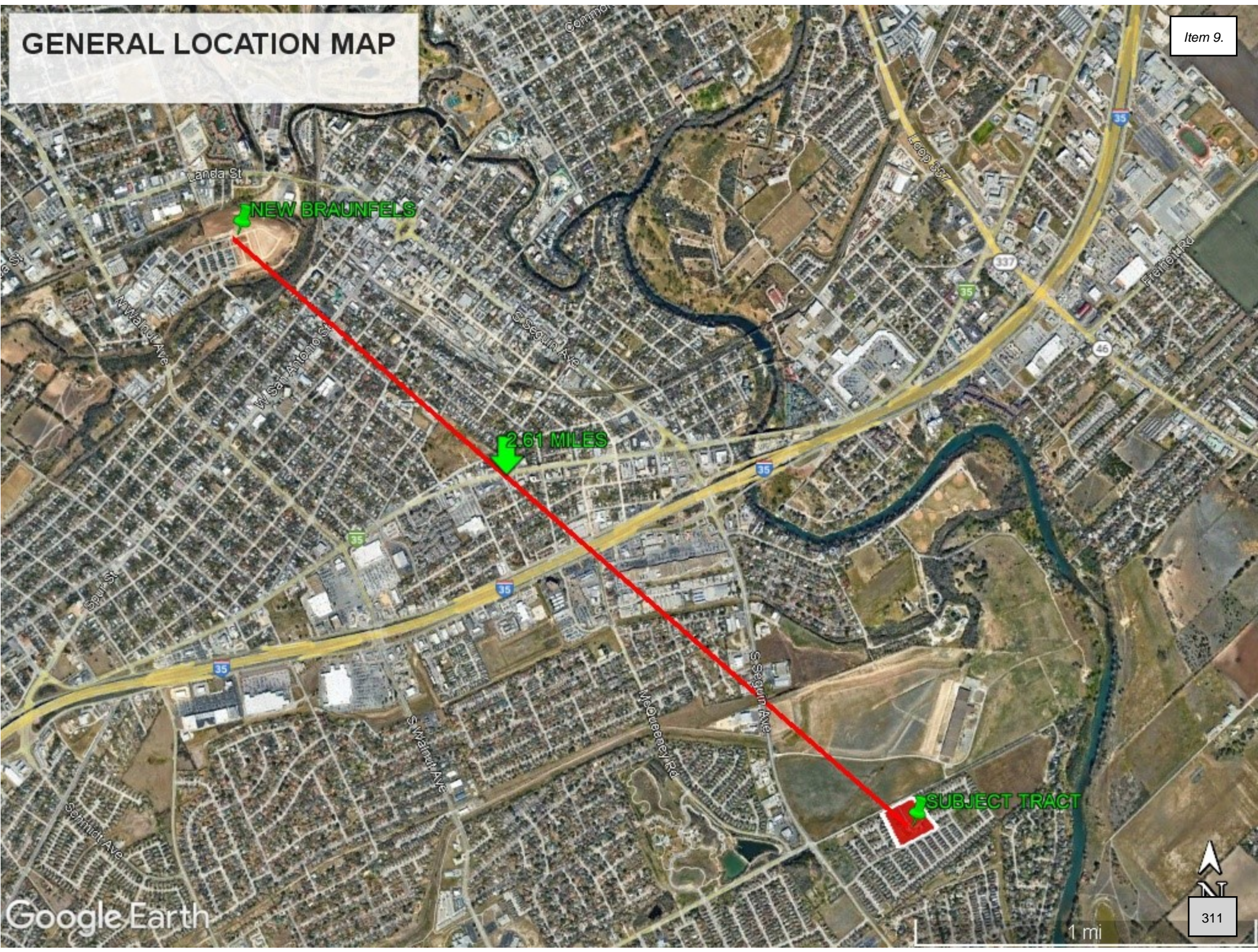
SUBJECT TRACT

Google Earth



311

1 mi



GENERAL LOCATION MAP

Item 9.



Google Earth

1000 ft

312

**AGREEMENT DESIGNATING RETAIL
SEWER SERVICE TERRITORY**

**STATE OF TEXAS §
 §
COUNTY OF COMAL §**

This Agreement Designating Retail Sewer Service Territory (“Agreement”) is made and executed by and between New Braunfels Utilities (hereinafter “NBU”) and the Guadalupe-Blanco River Authority (hereinafter “GBRA”). NBU and GBRA may be collectively referred to herein as the “Parties,” or individually as a “Party.”

I. RECITALS

WHEREAS, NBU is a municipally-owned water, sewer, and electric utility for the City of New Braunfels, Texas which provides sewer services under sewer Certificate of Convenience and Necessity (“CCN”) No. 20282;

WHEREAS, GBRA is a Texas conservation and reclamation district organized under Article 16, Section 59 of the Texas Constitution which provides sewer services under sewer CCN No. 20892;

WHEREAS, NBU is capable of providing sewer service to a portion of the service area under GBRA’s CCN No. 20892, identified as the green shaded area on Exhibit A (the “Service Area”), which is attached hereto and incorporated herein for all purposes;

WHEREAS, GBRA and NBU mutually agree that NBU should be the sewer service provider to the Service Area because of the proximity of NBU’s sewer collection facilities to the area, thereby relieving GBRA of its obligation to provide sewer service in the area;

WHEREAS, this Agreement will accomplish legitimate public purposes of the Parties and will allow for the provision of dependable sewer service to the Service Area, which will benefit the public health, safety, and welfare of current and future customers within the area; and

THEREFORE, for and in consideration of the mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, NBU and GBRA agree as follows:

II. TERMS OF AGREEMENT

Section 1 Service in a Portion of GBRA Sewer CCN. NBU and GBRA agree that, upon and following the Effective Date, NBU shall have the right to provide retail sewer service within the Service Area identified on Exhibit A as “Portion of GBRA WW CCN Service Area to be Served by NBU.”

Section 2 Amendment of CCNs.

a. The Parties agree that at any time following the Effective Date of this Agreement, NBU may prepare and file, at its sole discretion and cost, an application with the Public Utility Commission of Texas (“PUC”) requesting that the PUC:

i. incorporate the terms of this Agreement into the respective sewer CCNs of GBRA and NBU, pursuant to TWC § 13.248;

ii. decertify the Service Area from GBRA’s CCN and recertify the Service Area to NBU.

b. In furtherance hereof, GBRA hereby agrees and consents to (i) any decertification of the Service Area following the filing of any application pursuant to Article II, Section 2(a) above; and (ii) recertification of the Service Area to NBU.

c. Upon the filing of a request with the PUC to transfer the Service Area to NBU, the Parties shall make all reasonable efforts to obtain in an expeditious manner the PUC’s approval of the sewer CCN amendments contemplated herein and will support and cooperate with each other and the PUC to accomplish this goal.

Section 3 Applicable Law. This Agreement shall be construed and interpreted in accordance with the applicable provisions of the Texas Water Code including, but not limited to, TWC § 13.248, and applicable PUC rules and regulations.

Section 4 Waiver of Claim under TWC § 13.252. NBU agrees that it will not file an application with the PUC to transfer the Service Area to NBU prior to the execution of this Agreement. By consenting to NBU’s provision of sewer service to the Service Area, GBRA hereby waives all claims it might have against NBU under TWC § 13.252 relating to NBU’s provision of such sewer service.

Section 5 Waiver of Claim under 7 U.S.C. § 1926(b). The Parties agree that NBU’s sewer service in the Service Area as provided by this Agreement does not limit or curtail the water service provided or that may be provided by NBU to the Service Area, or limit or curtail the sewer service provided or that may be provided by GBRA outside of the Service Area.

Section 6 No Transfer of Customers or Facilities. The Parties agree that there will be no transfer of customers or facilities as part of this Agreement.

Section 7 Term. This Agreement shall remain valid and enforceable until superseded by subsequent written agreement.

III. MISCELLANEOUS

Section 1 Applicable Texas Law. This Agreement shall be governed by, construed, and enforced under the laws of the State of Texas.

Section 2 Performance. The obligations and undertakings of each Party to this Agreement shall be performed in Comal County, Texas. Except for matters within the jurisdiction of the PUC (or its

successor), the Parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Comal County, Texas.

Section 3 Entire Agreement. This Agreement contains the entire agreement of NBU and GBRA with respect to the subject matter of the Agreement and shall supersede any and all prior agreements and understandings of the Parties hereto, whether oral or written, with respect to the subject matter of the Agreement. This Agreement may only be amended or modified by written agreement executed by both NBU and GBRA.

Section 4 Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed to be delivered on the date received if delivered by hand to the address shown hereinafter for GBRA or NBU, as appropriate, or such notice shall, if deposited in the mail, be deemed to be delivered, whether actually received or not, on the first business day after having been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to GBRA or NBU, as appropriate, at the address shown hereinafter. The addresses for GBRA and NBU for all purposes under this Agreement shall be the following:

If to the GBRA: Guadalupe-Blanco River Authority
 c/o General Manager/CEO
 2225 E. Common Street
 New Braunfels, TX 78130
 Phone: 830-379-5822

If to NBU: New Braunfels Utilities
 c/o Chief Executive Officer
 263 Main Plaza
 New Braunfels, TX 78130
 Phone: 830-629-8400

The Parties hereto shall have the right to change their respective addresses, and each Party may specify as its address any other address within the United States of America by at least five (5) days' written notice to the other Party.

Section 5 Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns.

Section 6 Agreement Drafted Equally. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.

Section 7 Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

Section 8 Attorney's Fees. In the event of any lawsuit or other adjudication between the Parties to enforce any claim arising out of this Agreement, or to interpret the terms of this Agreement, the

prevailing Party shall be entitled to recover its fees, damages, costs, attorneys' fees, and such other and further relief, general or special, at law or in equity, from the non-prevailing Party, to which the prevailing Party may show itself justly entitled.

Section 9 Covenant of Authority. Each Party covenants that it has authority to agree to the transfer of the Service Area. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective Party.

Section 10 Time. Time is of the essence in all things pertaining to the performance of this Agreement.

Section 11 Effective Date. The term "Effective Date" as used in this Agreement shall be the date on which this Agreement is executed by the last to sign of GBRA or NBU.

IN WITNESS WHEREOF, EXECUTED by the Chief Executive Officer of NBU and General Manager/CEO of GBRA under the authority of their respective governing bodies in Duplicate Originals on the dates indicated below.

New Braunfels Utilities:

Guadalupe-Blanco River Authority:

[Name]
Chief Executive Officer

Darrell Nichols

Darrell Nichols
General Manager/CEO

Date: _____

Date: DECEMBER 19, 2023

ATTEST:

ATTEST:

[Name]
[Title]

Joseph E. Cole

Joseph E. Cole
General Counsel

Date: _____

Date: DECEMBER 19, 2023

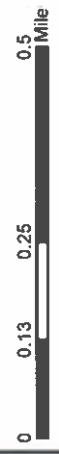
Exhibit A
Portion of GBRA's Stein Falls Wastewater Service Area Map



Guadalupe-Blanco River Authority

Stein Falls Wastewater Service Area

- GBRA WWTP
- GBRA Lift Station
- GBRA Gravity Main
- GBRA Force Main
- Portion of GBRA WW CCN to be served by NBU
- Existing GBRA WW CCN



DATE 9/20/2023

Item 9.
 DISCLAIMER: The data contained in this map is not guaranteed for the accuracy or validity of the information presented herein.



WATER CCN TRANSFER AGREEMENT

This **WATER CCN TRANSFER AGREEMENT** is entered into this ____ day of _____, 2024 (this “Agreement”), by and among **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), **GREEN VALLEY SPECIAL UTILITY DISTRICT**, a special utility district created pursuant to Chapter 65 of the Texas Water Code (“Green Valley”), and **PACE HOMES OF TEXAS, LLC**, a Texas limited liability company (the “Developer” and, together with NBU and Green Valley, the “Parties”), in connection with the boundary lines of the Certificates of Convenience and Necessity (“CCNs”) held by NBU and Green Valley for the provision of water services to users pursuant to the Texas Water Code.

RECITALS:

WHEREAS, NBU holds water CCN No. 10677 for the provision of retail water service to certain areas in and about Comal County and Guadalupe County;

WHEREAS, Green Valley holds water CCN No. 10646 for the provision of retail water service to certain areas in and about Bexar County, Comal County and Guadalupe County;

WHEREAS, Section 13.248 of the Texas Water Code authorizes contracts between retail public utilities designating areas and customers to be served by those retail public utilities, when approved by the Public Utility Commission of Texas (the “PUC”) after public notice and hearing

WHEREAS, the Parties’ respective water CCN boundaries are adjacent to one another;

WHEREAS, Developer owns 8.442 acres of real property located at 254 East County Line Road, near the intersection of FM 725 and East County Line Road, Guadalupe County, more particularly described and illustrated in Exhibit A (the “Property”), which is currently located in Green Valley’s water CCN;

WHEREAS, the Developer has requested that Green Valley transfer the portion of its water CCN associated with the Property to NBU so that NBU can provide retail water services to the Property;

WHEREAS, the Property contains one single family dwelling which is served by a Green Valley water connection;

WHEREAS, NBU currently has water connections or water facilities adjacent to or near the Property;

WHEREAS, NBU and Green Valley are amenable to altering the boundaries of their respective water CCNs by transferring the Property contained within the boundaries of the Green Valley water CCN to NBU so that the Property is removed from Green Valley’s water CCN and added to NBU’s water CCN and the current Green Valley customer’s existing retail water service is transferred from Green Valley to NBU; and

WHEREAS, the Developer has provided to NBU maps and GIS data illustrating the Property to include with a petition to the PUC to transfer the Property from Green Valley's water CCN to NBU's water CCN.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT:

Water CCN

1. In accordance with Section 13.248 of the Texas Water Code, but at all times subject to the approval of the PUC and the United States Department of Agriculture (the "USDA"), Green Valley hereby agrees to the modification of the boundaries of its water CCN to exclude the area contained within the Property, such area to be transferred from Green Valley's water CCN to the area to be encompassed within NBU's water CCN.
2. In accordance with Section 13.248 of the Texas Water Code, but at all times subject to the approval of the PUC, NBU hereby agrees to the expansion and modification of the boundaries of its water CCN to include the area contained within the Property, such area to be transferred from Green Valley's water CCN to the area to be encompassed within NBU's water CCN.
3. NBU shall be responsible for preparing and filing the petition to obtain the PUC's approval of the transfer of the Property from Green Valley's water CCN to NBU's water CCN. The Developer shall be responsible for hiring a third-party vendor to prepare hard copy maps with supporting electronic metadata for the Property that satisfies the PUC rules. The Developer shall submit the hard copy maps and supporting electronic metadata, including but not limited to GIS shapefiles, to NBU and Green Valley for review and approval prior to filing the PUC petition for approval of the Property transfer.
4. NBU has provided a link to the Developer with PUC's mapping guidance webpage with instructions to Developer and the third-party vendor to comply with the PUC's guidance for preparation of the maps. Neither NBU nor Green Valley shall be liable for any mapping deficiencies identified by the PUC Staff or delays resulting from any requirements by PUC for revisions of the maps or mapping data.
5. Green Valley shall be responsible for obtaining USDA consent to the transfer of the Property from Green Valley's water CCN to NBU's water CCN.
6. The Developer agrees to pay all the expenses of NBU and Green Valley in connection with the water CCN transfer, including, but not limited to, the following:
 - a. legal fees for NBU and Green Valley;
 - b. PUC administrative fees;

- c. USDA administrative fees; and
 - d. fees associated with preparing hard copy maps and electronic maps with supporting electronic metadata for the Property filed in connection with the PUC application.
7. Green Valley and NBU agree that no compensation shall be due and owing between Green Valley and NBU in conjunction with such transfer as no real or personal property of either party is contained with the Property or is being affected by such transfer.
 8. NBU shall not commence providing retail water services for compensation to the Developer or any retail customer on the Property until the PUC has authorized the transfer of the Property from Green Valley's water CCN to NBU's water CCN.
 9. NBU shall not approve any documents indicating that NBU is the retail water services provider prior to the PUC authorizing the transfer of the Property from Green Valley's water CCN to NBU's water CCN.
 10. NBU agrees that, upon approval of the revision to its water CCN boundaries by the PUC to include the Property within the boundaries of its water CCN, Green Valley shall have no further obligation to provide retail water service to the Property, and that NBU shall be solely responsible for the provision of retail water service to any owner or occupant of, or customers on, the Property under such terms and condition as are allowed under its water CCN and any applicable governmental statutes and regulations.

General Provisions

1. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. ALL ACTS REQUIRED OR PERMITTED TO BE PERFORMED HEREUNDER ARE PERFORMABLE IN GUADALUPE AND GUADALUPE COUNTY, TEXAS, AS APPLICABLE, AND IT IS AGREED THAT ANY CIVIL ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HEREWITH, SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION SITTING IN GUADALUPE COUNTY, TEXAS. IT IS AGREED THAT ANY ADMINISTRATIVE LAW ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HEREWITH, SHALL BE BROUGHT AT THE PUC OR ITS SUCCESSOR AGENCY.
2. Severability. In the event one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

3. Unintended Omission. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity or effect to any other word, clause, sentence, or provision appearing in this Agreement shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be supplied by inference.
4. Amendment. This Agreement shall not be amended or terminate except by an instrument signed by all parties to this Agreement.
5. Entire Agreement. This Agreement reflects the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith.
6. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall be construed as one and the same instrument.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Ryan Kelso, Chief Executive Officer

[Signature Page of NBU]

GREEN VALLEY SPECIAL UTILITY DISTRICT,
a Texas special utility district

By: _____
Phillip Gage, General Manager

[Signature Page of Green Valley]

PACE Homes of Texas, LLC
a Texas limited liability company

By: _____
Name: Aaron Tyler Epstein
Title: President

[Signature Page of the Developer]

Exhibit A

METES AND BOUNDS DESCRIPTION
FOR A
8.442 ACRE TRACT OF LAND

Being a 8.442 acre tract situated in the William Pate Survey, Abstract No. 259, Guadalupe County, Texas, being comprised of a 2.310 acre tract of land being the remainder of a called 3.000 acre tract land recorded in Volume 705, Page 184, Official Public Records, Guadalupe County, Texas and a 5.132 acre tract being the remainder of a called 5.453 acre tract of land recorded in Volume 773, Page 29, Official Public Records, Guadalupe County, Texas and being all of a called 1.000 acre tract of land recorded in Document No. 2017011748, Official Public Records, Guadalupe County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron pin with yellow cap found for the Northwest corner of said 2.310 acre tract and the herein described tract, also being the Northeast corner of Lot 7 of Pecan Crossing Unit 1, plat of which is recorded in Volume 7, Pages 625-626, Map and Plat Records, Guadalupe County, Texas, and being in the South right-of-way line of County Line Road (variable width);

THENCE N 63°13'10" E, along the South right-of-way line of County Line Road, common with the North line of said 2.310 acre tract, a distance of 252.43 feet to a 1/2" iron pin with cap stamped "HMT" found for the Northeast corner of said 2.310 acre tract, common with the Northwest corner of said 1.000 acre tract;

THENCE N 63°13'10" E continuing along the South right-of-way line of County Line Road, passing at a distance of 33.27 feet, a 1/2" iron pin with cap stamped "Kolodzie" found, and continuing for a total distance of 71.22 feet to a 1/2" iron pin with cap stamped "HMT" found for the Northeast corner of said 1.000 acre tract and being the Northwest corner of a called 5.132 acre tract being the remainder of a called 5.453 acre tract recorded in Volume 773, Page 29 Official Public Records, Comal County, Texas;

THENCE N 63°13'10" E continuing along the South right-of-way of County Line Road, a distance of 221.61 feet to a 1/2" iron pin with cap stamped "MBC Eng" found for the Northeast corner of said 5.132 acre tract and the herein described tract and being the Northwest corner of a called 1.1 acre tract, recorded in Volume 1187, Page 889, Official Public Records, Guadalupe County, Texas;

THENCE S 38°52'19" E along the East line of said 5.132 acre tract and the herein described tract, common with the West line of said 1.1 acre tract and passing the Northwest corner of Lot 4, Pecan Crossing Unit 3, plat of which is Volume 8, Page 119, Map and Plat Records, Guadalupe County, Texas, continuing a total distance of 616.62 feet to a Nail found in a rock column, for the Southwest corner of Lot 3, of said Pecan Crossing Unit 3 and being the Southeast corner of said 5.132 acre tract and the herein described tract, also being in the North right-of-way line of Pecan Bluff (50ft- right-of-way) as shown on the aforementioned plat of Pecan Crossing, Unit 1;

THENCE S 63°07'52" W, along the North right-of-way of Pecan Bluff, common with the South line of said 5.132 acre tract and the herein described tract, passing at 163.74 feet a 3" fence post, and passing at an additional 300.70 feet a 3" fence post and continuing in all a distance of 673.53 to a 1/2" iron pin found

for the Southwest corner of said 5.132 acre tract and the herein described tract, and being the Southeast corner of Lot 13 and Lot 14 of the aforementioned Pecan Crossing Unit No. 1;

THENCE N 26°51'52" W a distance of 146.75 feet to a 1/2" iron pin with cap stamped "Kolodzie" found for the Northeast corner of said Lot 13 and Southeast corner of Lot 12, Pecan Crossing Unit 1 and being the Northwest corner of said 5.132 acre tract, also being the Southwest corner of the aforementioned 2.310 acre tract;

THENCE N 26°51'52" W continuing along the West line of said 2.310 acre tract and the herein described tract, common with the East line of said Pecan Crossing Unit 1, a distance of 457.22 feet to the POINT OF BEGINNING and containing 8.442 acres of land in Guadalupe County, Texas.

Bearings shown hereon are based on the Texas Coordinate System, South Central Zone (4204), NAD 83.

Surveyed this the 18th day of March, 201 and revised June 1, 2018, to add fences.

Reference survey of said 8.442 acre tract of land prepared this same date.



Douglas B. Cottle
Registered Professional Land Surveyor No. 6149

S:\Projects\Title Surveys\Pate, William - Guadalupe\8.453 ac - 254 E. County Line Rd\
18-0504 BNDY\Pate William 8.442ac MB_254 E County Line Rd_18-0504.docx



BEING A 8.442 ACRE TRACT OF LAND SITUATED IN THE WILLIAM PATE SURVEY, ABSTRACT NO. 259, GUADALUPE COUNTY, TEXAS, COMPRISED OF A 2.310 ACRE TRACT OF LAND BEING THE REMAINDER OF A CALLED 3.000 ACRE TRACT RECORDED IN VOLUME 705, PAGE 184, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS AND A 5.132 ACRE TRACT BEING THE REMAINDER OF A CALLED 5.453 ACRE TRACT, RECORDED IN VOLUME 773, PAGE 29, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS AND BEING ALL OF A CALLED 1.000 ACRE TRACT RECORDED IN DOCUMENT NO. 2017011748, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS.

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.

THIS SURVEYOR HAS NOT CONDUCTED A TITLE SEARCH TO DEPICT OTHER MATTERS OF RECORD, SUCH AS EASEMENTS, SETBACKS, RESTRICTIONS OR OTHER ENCUMBRANCES THAT MAY AFFECT THIS PROPERTY.

NO ATTEMPT HAS BEEN MADE TO LOCATE ANY IMPROVEMENTS, EASEMENTS, OR RIGHTS OF WAY NOT SHOWN HEREON.

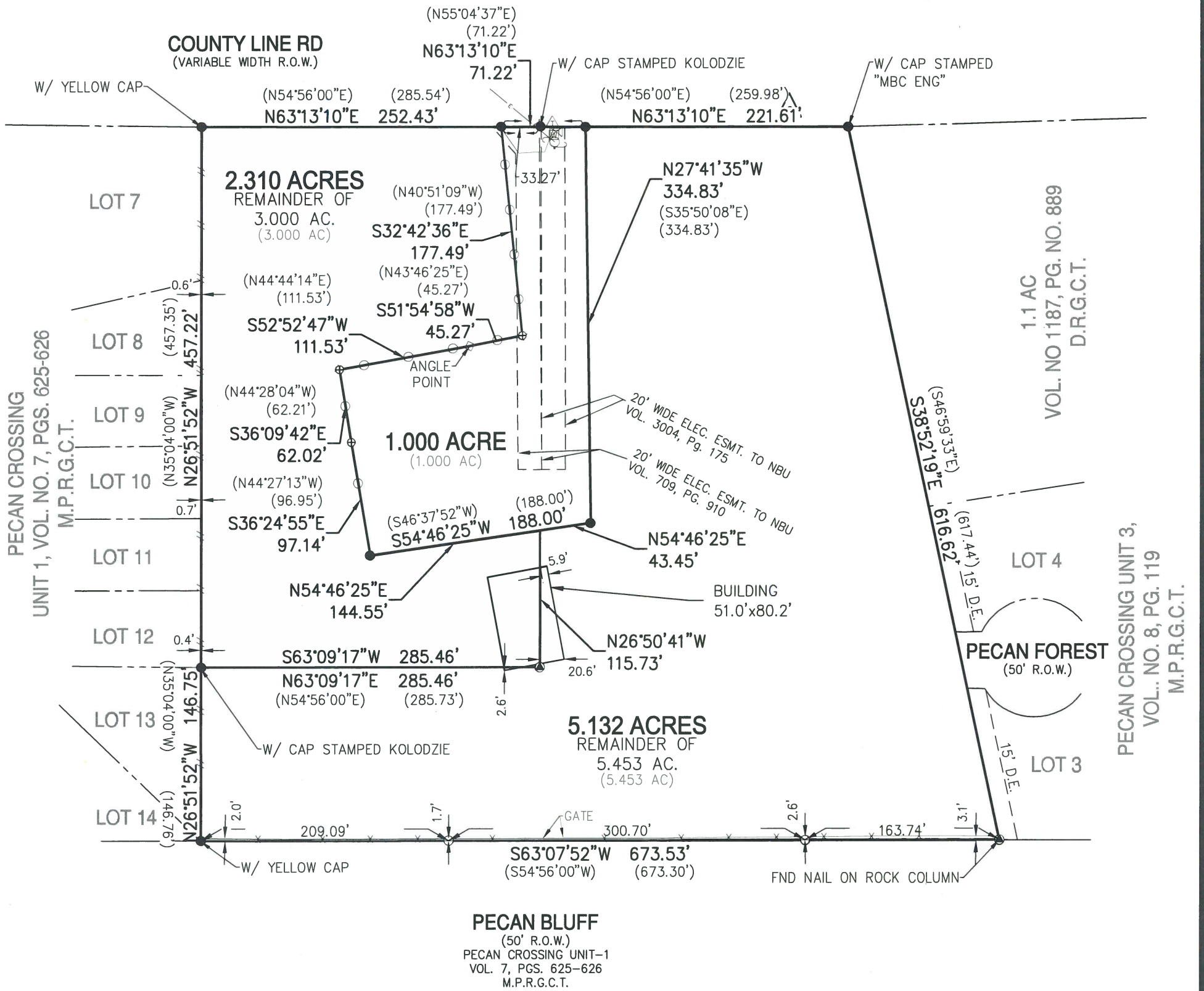
BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD 83.

LEGEND:

- = FND 1/2" IRON PIN
PLASTIC CAP STAMPED "HMT"
UNLESS OTHERWISE NOTED
- ⊕ = FND 3" FENCE POST
- = SET MAG NAIL
UNLESS OTHERWISE NOTED
- B.L. = BUILDING SETBACK LINE
- U.E. = UTILITY EASEMENT
- D.E. = DRAINAGE EASEMENT
- R.O.W. = RIGHT-OF-WAY
- () = PLAT CALLS
- ⊞ = WATER METER
- ⊞ = POWER POLE W/ CONDUIT
- ⊞ = TELEPHONE PEDESTAL
- E — = OVERHEAD ELECTRIC
- X — = WATER VALVE
- O — = PIPE FENCE
- M.P.R.G.C.T. = MAP & PLAT RECORDS OF
GUADALUPE COUNTY, TEXAS
- O.P.R.G.C.T. = OFFICIAL PUBLIC RECORDS
OF GUADALUPE COUNTY, TEXAS
- = SET 60D NAIL
- X — = BARBED WIRE FENCE
- // — = WOOD FENCE



SCALE: 1"=100'



254 E. COUNTY LINE RD
NEW BRAUNFELS, TEXAS

THIS SURVEY IS CERTIFIED TO:
TIM FOWLER

PECAN BLUFF
(50' R.O.W.)
PECAN CROSSING UNIT-1
VOL. 7, PGS. 625-626
M.P.R.G.C.T.



STATE OF TEXAS
COUNTY OF COMAL

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND UNDER MY SUPERVISION

THIS 18TH DAY OF MAY 2018
REVISED THIS 1ST DAY OF JUNE 2018 - ADDED FENCES

DOUGLAS B. COTTLE
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6149



410 N. SEGUIN AVE.
NEW BRAUNFELS,
TEXAS, 78130
WWW.HMTNB.COM
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GENERAL LOCATION MAP

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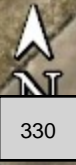
NEW BRAUNFELS

2.61 MILES

SUBJECT TRACT

Google Earth

1 mi



GENERAL LOCATION MAP

Item 9.



Google Earth

1000 ft

331



Green Valley Special Utility District
 529 S Center St, P.O. Box 99
 Marion, Texas 78124
 Telephone: 830.914.2330
 Fax: 830.420.4138

December 22, 2023

Michael Perry
 Assistant Manager
 355 FM 306 | New Braunfels, Texas 78130
 mperry@nbutexas.com | 830.608.8972

RE: Intent to release Water Certificate of Convenience and Necessity; ABS: 259 SUR: WILLIAM PATE 1.0000 acre and ABS: 259 SUR: WILLIAM PATE 7.453 acre. Guadalupe county parcels # 68526 & 68527.

Mr. Perry,

Green Valley Special Utility District (GVSUD) would like to convey an intent to release the water Certificate of Convenience and Necessity (CCN) for the land located at ABS: 259 SUR: WILLIAM PATE 1.0000 acre and ABS: 259 SUR: WILLIAM PATE 7.453 acres, in Guadalupe County, parcels #68526 and #68527. This follows the direction that was voted on by the GVSUD Board of Directors on the September 28, 2023 board meeting.

These parcels are currently surrounded by the CCN of New Braunfels Utilities. It was deemed the best interest of all parties involved for GVSUD to release the CCN and allow NBU to service this property. Please let this letter serve as a declaration from GVSUD to allow the property owner to seek service from NBU.

If you have any questions regarding this release, please contact me via email at philipd@gvsud.org. For coordination on any operational changes or issues that may arise in the field, please contact the GVSUD Development Manager, Gabe Cantu, at (830) 914-2330.

Thank you,

Philip DeFrancesco

Philip DeFrancesco
 Acting General Manager
 Green Valley Special Utility District

BEING A 8.442 ACRE TRACT OF LAND SITUATED IN THE WILLIAM PATE SURVEY, ABSTRACT NO. 259, GUADALUPE COUNTY, TEXAS, COMPRISED OF A 2.310 ACRE TRACT OF LAND BEING THE REMAINDER OF A CALLED 3.000 ACRE TRACT RECORDED IN VOLUME 705, PAGE 184, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS AND A 5.132 ACRE TRACT BEING THE REMAINDER OF A CALLED 5.453 ACRE TRACT, RECORDED IN VOLUME 773, PAGE 29, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS AND BEING ALL OF A CALLED 1.000 ACRE TRACT RECORDED IN DOCUMENT NO. 2017011748, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS.

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THIS SURVEYOR HAS NOT CONDUCTED A TITLE SEARCH TO DEPICT OTHER MATTERS OF RECORD, SUCH AS EASEMENTS, SETBACKS, RESTRICTIONS OR OTHER ENCUMBRANCES THAT MAY AFFECT THIS PROPERTY.

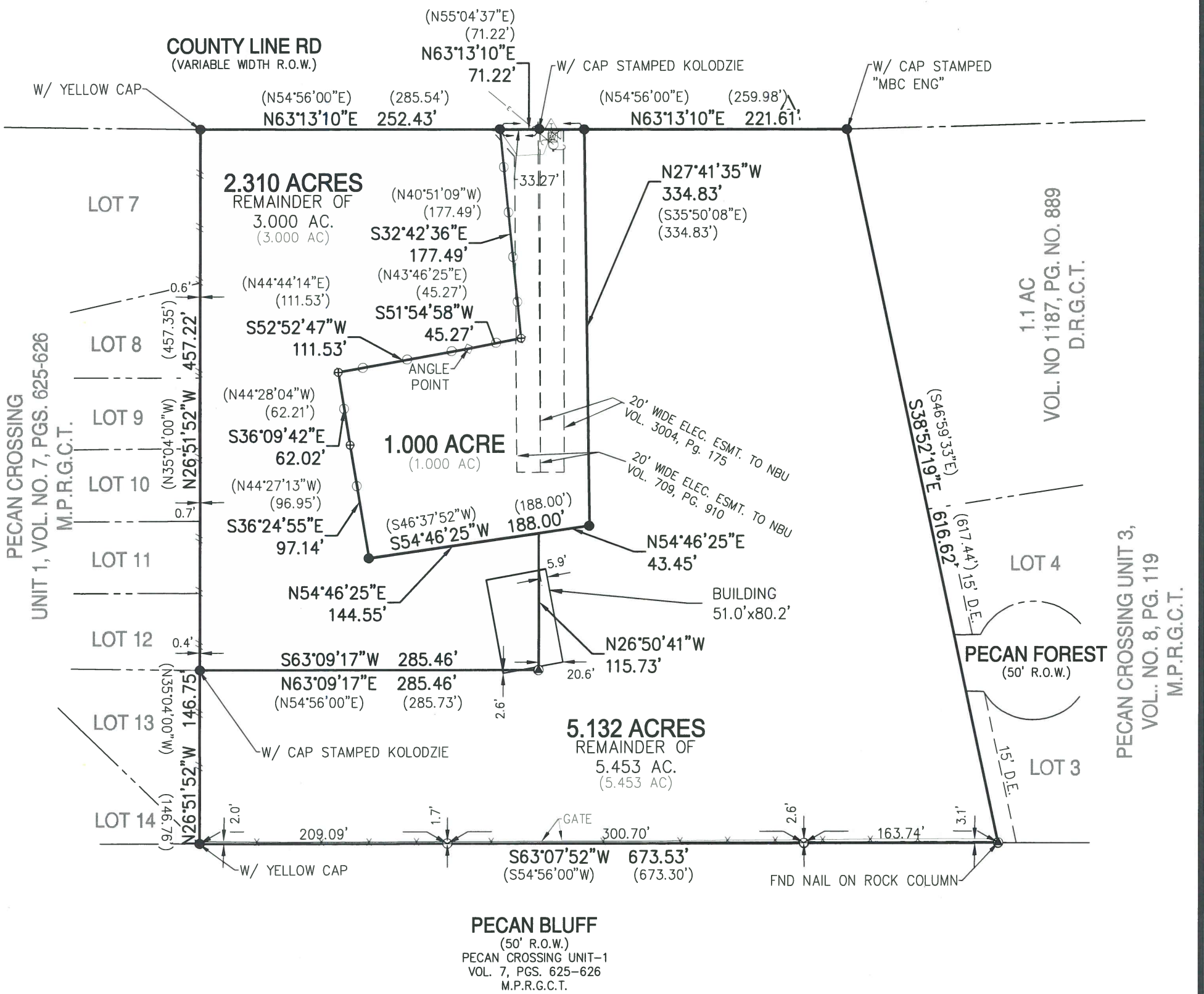
NO ATTEMPT HAS BEEN MADE TO LOCATE ANY IMPROVEMENTS, EASEMENTS, OR RIGHTS OF WAY NOT SHOWN HEREON.

BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD 83.

LEGEND:

- = FND 1/2" IRON PIN
- = PLASTIC CAP STAMPED "HMT" UNLESS OTHERWISE NOTED
- ⊕ = FND 3" FENCE POST
- ⊙ = SET MAG NAIL UNLESS OTHERWISE NOTED
- B.L. = BUILDING SETBACK LINE
- U.E. = UTILITY EASEMENT
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- () = PLAT CALLS
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- ⊞ = TELEPHONE PEDESTAL
- E — = OVERHEAD ELECTRIC
- X — = WATER VALVE
- O — = PIPE FENCE
- M.P.R.G.C.T. = MAP & PLAT RECORDS OF GUADALUPE COUNTY, TEXAS
- O.P.R.G.C.T. = OFFICIAL PUBLIC RECORDS OF GUADALUPE COUNTY, TEXAS
- = SET 60D NAIL
- X — = BARBED WIRE FENCE
- // — = WOOD FENCE

SCALE: 1"=100'



254 E. COUNTY LINE RD
NEW BRAUNFELS, TEXAS

THIS SURVEY IS CERTIFIED TO:
TIM FOWLER



410 N. SEGUIN AVE.
NEW BRAUNFELS,
TEXAS, 78130
WWW.HMTNB.COM
PH: (830)625-8555
TBPLS FIRM 10153600



STATE OF TEXAS
COUNTY OF COMAL

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND UNDER MY SUPERVISION

THIS 18TH DAY OF MAY 2018
REVISED THIS 1ST DAY OF JUNE 2018 - ADDED FENCES

DOUGLAS B. COTTLE
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6149

METES AND BOUNDS DESCRIPTION
FOR A
8.442 ACRE TRACT OF LAND

Being a 8.442 acre tract situated in the William Pate Survey, Abstract No. 259, Guadalupe County, Texas, being comprised of a 2.310 acre tract of land being the remainder of a called 3.000 acre tract land recorded in Volume 705, Page 184, Official Public Records, Guadalupe County, Texas and a 5.132 acre tract being the remainder of a called 5.453 acre tract of land recorded in Volume 773, Page 29, Official Public Records, Guadalupe County, Texas and being all of a called 1.000 acre tract of land recorded in Document No. 2017011748, Official Public Records, Guadalupe County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron pin with yellow cap found for the Northwest corner of said 2.310 acre tract and the herein described tract, also being the Northeast corner of Lot 7 of Pecan Crossing Unit 1, plat of which is recorded in Volume 7, Pages 625-626, Map and Plat Records, Guadalupe County, Texas, and being in the South right-of-way line of County Line Road (variable width);

THENCE N 63°13'10" E, along the South right-of-way line of County Line Road, common with the North line of said 2.310 acre tract, a distance of 252.43 feet to a 1/2" iron pin with cap stamped "HMT" found for the Northeast corner of said 2.310 acre tract, common with the Northwest corner of said 1.000 acre tract;

THENCE N 63°13'10" E continuing along the South right-of-way line of County Line Road, passing at a distance of 33.27 feet, a 1/2" iron pin with cap stamped "Kolodzie" found, and continuing for a total distance of 71.22 feet to a 1/2" iron pin with cap stamped "HMT" found for the Northeast corner of said 1.000 acre tract and being the Northwest corner of a called 5.132 acre tract being the remainder of a called 5.453 acre tract recorded in Volume 773, Page 29 Official Public Records, Comal County, Texas;

THENCE N 63°13'10" E continuing along the South right-of-way of County Line Road, a distance of 221.61 feet to a 1/2" iron pin with cap stamped "MBC Eng" found for the Northeast corner of said 5.132 acre tract and the herein described tract and being the Northwest corner of a called 1.1 acre tract, recorded in Volume 1187, Page 889, Official Public Records, Guadalupe County, Texas;

THENCE S 38°52'19" E along the East line of said 5.132 acre tract and the herein described tract, common with the West line of said 1.1 acre tract and passing the Northwest corner of Lot 4, Pecan Crossing Unit 3, plat of which is Volume 8, Page 119, Map and Plat Records, Guadalupe County, Texas, continuing a total distance of 616.62 feet to a Nail found in a rock column, for the Southwest corner of Lot 3, of said Pecan Crossing Unit 3 and being the Southeast corner of said 5.132 acre tract and the herein described tract, also being in the North right-of-way line of Pecan Bluff (50ft- right-of-way) as shown on the aforementioned plat of Pecan Crossing, Unit 1;

THENCE S 63°07'52" W, along the North right-of-way of Pecan Bluff, common with the South line of said 5.132 acre tract and the herein described tract, passing at 163.74 feet a 3" fence post, and passing at an additional 300.70 feet a 3" fence post and continuing in all a distance of 673.53 to a 1/2" iron pin found

for the Southwest corner of said 5.132 acre tract and the herein described tract, and being the Southeast corner of Lot 13 and Lot 14 of the aforementioned Pecan Crossing Unit No. 1;

THENCE N 26°51'52" W a distance of 146.75 feet to a 1/2" iron pin with cap stamped "Kolodzie" found for the Northeast corner of said Lot 13 and Southeast corner of Lot 12, Pecan Crossing Unit 1 and being the Northwest corner of said 5.132 acre tract, also being the Southwest corner of the aforementioned 2.310 acre tract;

THENCE N 26°51'52" W continuing along the West line of said 2.310 acre tract and the herein described tract, common with the East line of said Pecan Crossing Unit 1, a distance of 457.22 feet to the POINT OF BEGINNING and containing 8.442 acres of land in Guadalupe County, Texas.

Bearings shown hereon are based on the Texas Coordinate System, South Central Zone (4204), NAD 83.

Surveyed this the 18th day of March, 201 and revised June 1, 2018, to add fences.

Reference survey of said 8.442 acre tract of land prepared this same date.



Douglas B. Cottle
Registered Professional Land Surveyor No. 6149

S:\Projects\Title Surveys\Pate, William - Guadalupe\8.453 ac - 254 E. County Line Rd\
18-0504 BNDY\Pate William 8.442ac MB_254 E County Line Rd_18-0504.docx



GENERAL LOCATION MAP

Item 9.

NEW BRAUNFELS

2.61 MILES

SUBJECT TRACT

Google Earth

336

1 mi



GENERAL LOCATION MAP

Item 9.



Google Earth

1000 ft

337



Meeting Date: October 31, 2024 **Agenda Type:** Consent Items for Action

From: Jacob Tschoepe **Reviewed by:** Nancy Pappas
 Program Portfolio Manager Managing Director Headwaters at
 the Comal

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

RECOMMENDED ACTION: Authorize the CEO or His Designee to Execute a Guaranteed Maximum Price Amendment with Thos. S. Byrne, Inc. for the Headwaters at the Comal Master Plan, Phase 2 for Building Interior Finish Out and Additional Landscaping

BACKGROUND

On March 31, 2016, the New Braunfels Utilities (“NBU”) Board approved a Construction Manager at Risk Contract (“CMAR”) contract with Thos. S. Byrne, Inc. (“Byrne”) for the construction of the Comal Springs Conservation Center, now called the Headwaters at the Comal. The Guaranteed Maximum Price (“GMP”) amendment to the CMAR for Phase One of the Master Plan was completed within the GMP of \$5,600,000.00.

On February 23, 2023, the NBU Board approved the execution of an amendment to the CMAR contract for Phase Two of the Master Plan to include site work and the building envelope. The original amount of that amendment was \$5,406,714.00. Due to a delay in the execution of the contract not in Byrne's control, NBU staff requested at the June 27, 2024, Board meeting approval of a change order totaling \$154,644.00. This would bring the total of GMP #2 to \$5,561,358.00. Also approved at the June 27, 2024, Board Meeting was GMP #3, totaling \$1,862,485.00, for additional scope of work for the exterior of the building.

The Headwaters at the Comal has secured additional funding for the building's interior finish out and additional landscaping. The scope of work includes, but is not limited to, flooring, HVAC, electrical, plumbing, window treatments, fire protection, and doors, frames, and hardware. This is being referred to as GMP #4. The total cost impact of GMP #4 is \$4,344,511.00.

NBU Staff requests the Board approve the GMP #4 with Byrne for the project.

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

FINANCIAL IMPACT

The financial impact to NBU for GMP #4 is \$4,344,513.00. This is being budgeted from the NBU Fiscal Year 2025 capital budget.

LINK TO STRATEGIC PLAN

Stewardship**EXHIBITS**

1. A133 ExhibitA-2019-1660 Building Interior Finish Out and Additional Landscaping
2. A133 Exhibit B Cost Estimate and Clarifications
3. A133 Exhibit C Contract Documents



AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the day of September in the year 2024 , is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 21st day of March in the year 2016 (the "Agreement")

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

for the following **PROJECT**:

(Name and address or location)

Comal Springs Conservation Center
333 East Klingemann Street
New Braunfels, Texas 78130

Phase 2 – Building interior Finish Out and Additional Landscaping

THE OWNER:

(Name, legal status, and address)

New Braunfels Utilities (NBU), a municipally owned utility
263 Main Plaza
New Braunfels, Texas 78130

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Thos. S. Byrne, Inc.
5851 Sebastian Place
San Antonio, Texas 78249

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price for Phase 2 – Building interior Finish Out and Additional Landscaping. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not

exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Four Million Three Hundred Forty-Four Thousand Five Hundred Thirteen dollars (\$ 4,344,513.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

(Provide itemized statement below or reference an attachment.)

A detailed cost breakdown of the Building Interior Finish Out and Additional Landscaping components included in the Phase 2 Building Interior Finish Out and Additional Landscaping GMP are shown in Exhibit B – Phased Cost Estimate Summary Sheet. The Phase 2 Building Interior Finish Out and Additional Landscaping GMP includes construction of the Building Interior Finish Out and Additional Landscaping components listed in the Contract Documents List (Exhibit C).

§ A.1.1.3 The Construction Manager's Fee is a fixed fee of One Hundred Twenty-Four Thousand Four Hundred Ninety-One dollars (\$124,491.00) based on a fee percentage of 2.95% of the Cost of the Work.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
See Exhibit B	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ A.1.1.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
See Exhibit B		

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[] The date of execution of this Amendment.

[X] Established as follows: (Insert a date or a means to determine the date of commencement of the Work.)

The Date of commencement of the Work shall be the date the Owner issues a written Notice to Proceed following receipt of any required building permits.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

Init.

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User Notes:

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[] Not later than () calendar days from the date of commencement of the Work.

[X] By the following date: July 18, 2025, based on receipt of Notice to Proceed on November 21, 2024.

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ A.3.1.2 The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

See Exhibit C

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

See Exhibit C

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

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User Notes:

Title	Date	Pages
-------	------	-------

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
See Exhibit B	

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

See Exhibit B and the following:

Material costs have been calculated based on the current prices for labor, equipment, and the component building materials. However, the market for building materials has been volatile, labor shortages are possible, and sudden price increases could occur.

If prices have escalated due to tariffs, material shortages, labor unavailability, or other financial market events beyond Contractor's control, Contractor may be entitled to an equitable adjustment in the contract sum.

Any claim by Contractor for an equitable adjustment, as provided above, requires advance written notice delivered by Contractor to Owner. Contractor's notice shall include the following items: an explanation of the increase in cost for the impacted labor, building materials, or equipment; the source of supply supported by invoices, bills of sale, payroll reports, pricing sheets, work orders, etc. to substantiate the equitable adjustment, and such supporting data shall be subject to Owner's satisfaction.

Owner shall consider all provided pricing data. Owner may request additional data. If approved by Owner, Contractor shall prepare a change order memorializing adjustment in price prior to commencement of the Work subject to the claim.

In the event Owner elects, in its sole discretion, to reject Contractor's request for equitable adjustment, Contractor is not excused from continuing performance. However, Contractor then reserves its right to submit a claim through the dispute resolution process set forth in this Agreement. Owner's failure to continue performance under these circumstances shall be considered a material breach of this Agreement.

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

See Exhibits B & C, which are attached and incorporated herein by reference.

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

To be determined.

This Amendment to the Agreement entered into as of the day and year first written above.

Init.

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User Notes:

(1666658636)

OWNER (Signature)

Ryan Kelso Chief Executive Officer
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Tony Battle President
(Printed name and title)

Init.

Additions and Deletions Report for AIA® Document A133® – 2019 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:32:14 ET on 09/23/2024.

PAGE 1

This Amendment dated the day of September in the year 2024, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 21st day of March in the year 2016 (the "Agreement")

...

(Name and address or location)

Comal Springs Conservation Center
333 East Klingemann Street
New Braunfels, Texas 78130

Phase 2 – Building interior Finish Out and Additional Landscaping

...

New Braunfels Utilities (NBU), a municipally owned utility
263 Main Plaza
New Braunfels, Texas 78130

...

Thos. S. Byrne, Inc.
5851 Sebastian Place
San Antonio, Texas 78249

...

Pursuant to Section ~~3-2.6-2.2~~ of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum ~~Price~~ Price for Phase 2 – Building interior Finish Out and Additional Landscaping. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Four Million Three Hundred Forty-Four Thousand Five Hundred Thirteen dollars (\$ 4,344,513.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

PAGE 2

A detailed cost breakdown of the Building Interior Finish Out and Additional Landscaping components included in the Phase 2 Building Interior Finish Out and Additional Landscaping GMP are shown in Exhibit B – Phased Cost Estimate Summary Sheet. The Phase 2 Building Interior Finish Out and Additional Landscaping GMP includes construction of the Building Interior Finish Out and Additional Landscaping components listed in the Contract Documents List (Exhibit C).

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement, a fixed fee of One Hundred Twenty-Four Thousand Four Hundred Ninety-One dollars (\$124,491.00) based on a fee percentage of 2.95% of the Cost of the Work.

...

See Exhibit B

...

See Exhibit B

...

Established as follows:

...

The Date of commencement of the Work shall be the date the Owner issues a written Notice to Proceed following receipt of any required building permits.

PAGE 3

By the following date: July 18, 2025, based on receipt of Notice to Proceed on November 21, 2024.

...

See Exhibit C

...

See Exhibit C

PAGE 4

See Exhibit B

...

See Exhibit B and the following:

Material costs have been calculated based on the current prices for labor, equipment, and the component building materials. However, the market for building materials has been volatile, labor shortages are possible, and sudden price increases could occur.

If prices have escalated due to tariffs, material shortages, labor unavailability, or other financial market events beyond Contractor’s control, Contractor may be entitled to an equitable adjustment in the contract sum.

Any claim by Contractor for an equitable adjustment, as provided above, requires advance written notice delivered by Contractor to Owner. Contractor’s notice shall include the following items: an explanation of the increase in cost for the impacted labor, building materials, or equipment; the source of supply supported by invoices, bills of sale, payroll reports, pricing sheets, work orders, etc. to substantiate the equitable adjustment, and such supporting data shall be subject to Owner’s satisfaction.

Owner shall consider all provided pricing data. Owner may request additional data. If approved by Owner, Contractor shall prepare a change order memorializing adjustment in price prior to commencement of the Work subject to the claim.

In the event Owner elects, in its sole discretion, to reject Contractor's request for equitable adjustment, Contractor is not excused from continuing performance. However, Contractor then reserves its right to submit a claim through the dispute resolution process set forth in this Agreement. Owner's failure to continue performance under these circumstances shall be considered a material breach of this Agreement.

...

See Exhibits B & C, which are attached and incorporated herein by reference.

...

To be determined.

PAGE 5

Ryan Kelso Chief Executive Officer

Tony Battle President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, The Chapman Firm, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:32:14 ET on 09/23/2024 under Order No. 2114449710 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019 Exhibit A, Guaranteed Maximum Price Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Phased Cost Estimate Summary Sheet

Headwaters at the Comal - Phase 2: GMP #4 Building Interior Finishout and Additional Landscaping 100%
Construction Documents for GMP

Date: August 13, 2024

Bid Package #	Bid Package Description		GMP 4: Building Finishout	Notes
010020	Temporary Construction		\$ 53,010	
061000	Rough Carpentry		\$ 15,000	Byrne Self-Perform
062000	Millwork		\$ 163,020	Madera Millwork
062000	Interior Wood Gapped Ceiling		\$ 302,670	Madera Millwork
062000	Screened Porch		\$ 55,000	Allowance
062000	Millwork Sub Bond		\$ 13,017	Madera Millwork
072500	Spray Insulation		\$ 113,416	Fireproof Contractors
072500	Spray Insulation - K13 Intumescent Coating		\$ 10,267	Fireproof Contractors
072500	Spray Insulation - Sub Bond		\$ 3,092	Fireproof Contractors
074100	Roof Penetrations		\$ 7,500	Allowance
079000	Fire Stopping		\$ 3,270	Fireproof Contractors
081000	Doors, Frames & Hardware		\$ 40,725	The Door Frame Hardware Co.
085000	Steel Framed Doors		\$ 15,626	Presidio
084000	Glass & Glazing		\$ 27,750	Champion Glass
089100	Architectural Louvers		\$ -	None/Excluded
092100	Drywall & Acoustical		\$ 278,475	Lasco Drywall
092100	Drywall & Acoustical Sub Bond		\$ 6,962	Lasco Drywall
093000	Ceramic Tile		\$ 62,765	Spectra Flooring
096600	Carpet Tile & Base		\$ 32,236	Spectra Flooring
099100	Painting		\$ 78,785	FA McComas
100000	Toilet Partitions and Accessories		\$ 31,737	Massive Specialties
101400	Site Specialties		\$ -	Not Included
122000	Window Treatment		\$ 57,200	Next Generation/Service Shade Shop
210000	Fire Protection		\$ 21,720	Skelton
220000	Plumbing		\$ 237,414	Team Mechanical
230000	HVAC		\$ 534,565	Team Mechanical
230000	HVAC DDC Controls		\$ -	Not Included
230000	HVAC & Plumbing Sub Bond		\$ 19,299	Team Mechanical
260000	Electrical		\$ 850,400	Core
260000	Electrical UPS		\$ -	Not Included
260000	Electrical - Sub Bond		\$ 21,873	Core
270000	Fire Alarm		\$ 24,500	Core
310001	Enabling		\$ 15,000	Byrne Self-Perform
329000	Landscaping		\$ 365,324	Maas Verde
329000	Display Garden French Drain		\$ 16,091	Maas Verde
329000	Display Garden Irrigation		\$ 20,244	Maas Verde
329000	Landscaping Sub Bond		\$ 10,041	Maas Verde
Cost of Work Subtotal			\$ 3,507,995	
	Design Completion Factor	0.00%		Excluded
	Market Volatility Contingency	0.00%	\$ -	
	Contractor Contingency	2.50%	\$ 87,700	

Phased Cost Estimate Summary Sheet

Headwaters at the Comal - Phase 2: GMP #4 Building Interior Finishout and Additional Landscaping 100%
Construction Documents for GMP

Date: August 13, 2024

Bid Package #	Bid Package Description		GMP 3: Building Finishout	Notes
	Owner Contingency	2.50%	\$ 87,700	
	Building Permit	0.00%	\$ -	Excluded / By Owner
Construction Costs Subtotal			\$ 3,683,394	
	CGL & Umbrella Insurance	1.10%	\$ 40,517	
	Professional Liability	0.00%	Excluded	Excluded
	Builder's Risk	1.50%	\$ 55,251	
	Payment & Performance Bond	1.77%	\$ 65,196	
Construction Costs & Insurance Subtotal			\$ 3,844,359	
	General Conditions & General Requirements	LSUM	\$ 375,664	
Subtotal			\$ 4,220,023	
	Preconstruction Fee	0.00%	\$ -	None / Excluded
	Fee	2.95%	\$ 124,491	
Project Subtotal			\$ 4,344,513	
	Remodel / Renovation Tax	0.00%	Excluded	Tax Exempt Entity (NBU)
Project Total			\$ 4,344,513	
			GMP 4: Building Finishout	

Qualifications & Clarifications

Headwaters at the Comal - Phase 2: GMP #3 Interior Finishout and Additional Landscaping 100% Construction Documents for GMP

Date: August 13, 2024

General Conditions:	
1	A Contractor's Construction Contingency of 2% is included in this estimate, and is intended for construction use only. Owner contingency is excluded from this estimate.
2	A construction fee of 2.95% is included on the cost summary, and is based upon the total construction cost.
3	Builders Risk Insurance is included, and based upon the total cost. Sublimits for Wind & Hail and Flood & Earthquake are \$10,000,000, respectively.
4	CGL & Umbrella Insurance is included, and based upon the total cost.
5	Payment and Performance bonds for Byrne have been included on the cost summary, and are based upon the total cost.
6	The CM pre-construction services fee is excluded from this budget.
7	All costs associated with approvals, easements, assessments, fees, deposits, charges, permits, studies, impact fees, tap fees, services fees, or similar, required by any governing agency to include County, City, State, or Federal entities, in addition to any and all utility entities are specifically excluded.
8	Building permit cost is not included.
9	Testing Lab services for materials, mock-ups, or delegated engineering components are to be provided by the Owner, and are excluded.
10	Testing of building components for water or air intrusion is not included and is to be provided by the Owner.
11	Commissioning Agent and Services are to be provided by the Owner.
12	The General Conditions included in this estimate are based upon approximately 7 months to substantial completion. Overall project completion is 8 months.
13	Design Fees or services are not included. Where required in the specifications, the Construction Manager will provide design calculations and information provided by the Trade Contractors to the Architect and Engineer for approval and acceptance of the design.
14	The CM does not warrant or guarantee functionality of the design with the Owner's requirements. The CM relies upon the designers to provide and implement the Owner's requirements into the design documents.
15	Includes trucks, fuel, tolls, and maintenance related to the Byrne personnel assigned to this project. Truck / Auto Allowance is inclusive of vehicle costs, insurance, fuel and maintenance.
16	All costs for mobile phones is inclusive of mobile data management.
17	All initial and final survey's and plats required by the City are by the Owner.
18	All electrical costs associated with construction is included.
19	All water costs associated with construction is included.
20	Costs associated to delays with 3rd party or owner are not included in this budget.
21	This budget is to be reviewed as a whole; not as individual line items.
Temporary Construction Cost of Work Items:	
1	Sales tax is excluded.
2	This budget is based upon electronic design document files and models being available to all subcontractors at no additional cost.
3	All furnishings, fixtures, and equipment are excluded from this budget, unless specifically noted in the budget detail.
4	All hazardous or contaminated material and soil testing, remediation and investigation is excluded.

Qualifications & Clarifications

Headwaters at the Comal - Phase 2: GMP #3 Interior Finishout and Additional Landscaping 100% Construction Documents for GMP

Date: August 13, 2024

5	Site is assumed to be free of any contaminates, unencumbered, and ready to begin excavation work. Byrne to coordinate with archeological surveyor/oversight as required, however associated cost for oversight is excluded.
6	CM excludes responsibility for compliance and/or viability of point selections with regard to the design components or specifications.
7	BIM coordination and clash detection is not included for structure and M/E/P during construction.
8	LEED management of onsite waste and documentation of LEED compliances is not included.
9	All costs associated with temporary fencing and gates is included.
10	Includes dumpster costs.
10	Periodical clean up included.
General Comment:	
1	This GMP is schematic, and based upon limited information available. Quantities and selections of materials and components are gathered or assumed per interpretation of the available documents. The quantities and selections may vary as the project is further developed by the design team.
2	Because this GMP is not completely inclusive of the entire set of current construction documents, whereas we have delineated a certain portion of work to be completed under this GMP, the balance of remaining scopes are being deferred to a later date and may be added to the GMP via Change Order once Buyout Savings and/or additional projects funds have been realized.
Division 2 - Existing Conditions:	
1	None/Excluded.
3	Any 3rd party monitoring are excluded.
4	Any archeological investigation is excluded.
Division 3 - Concrete:	
1	None/Excluded.
Division 4 - Masonry:	
1	None/Excluded.
Division 5 - Metals:	
1	None/Excluded.
Division 6 - Wood, Plastics and Composites:	
1	Rough carpentry as required for interior building finish out
2	Includes wood framed removable screen system at Classroom 116
3	Includes Interior Gapped Wood ceiling - C2
4	Includes wood wall paneling and wood wall base
5	Includes millwork, cabinetry, and solid surface countertops
6	All wood slats and paneling to be plain slice white oak.
Division 7 - Thermal and Moisture Protection:	
1	Includes rigid insulation and spray applied insulation at exterior walls, roof deck and above wood slat ceiling
2	Includes K-13 Spray Foam insulation above wood ceiling for a fire barrier in lieu of false ceilings as shown.
Division 8 - Openings:	
1	Flush wood door to be rift cut white oak in lieu of Douglas fir.
Division 9 - Finishes:	
1	Tape & Float to be level 4. No texture has been included.
2	Does not include framing or drywall for false ceiling above wood ceilings.
Division 10 - Specialties:	

Qualifications & Clarifications

Headwaters at the Comal - Phase 2: GMP #3 Interior Finishout and Additional Landscaping 100% Construction Documents for GMP

Date: August 13, 2024

1	Include toilet partitions and toilet accessories.
Division 11 - Equipment:	
1	None/Excluded.
Division 12 - Furnishings:	
1	None/Excluded.
Division 13 - Special Construction:	
1	None/Excluded.
Division 21 - Fire Suppression:	
1	Includes branch lines and sprinkler heads in building finish out spaces to complete the fire suppression system. Reference previous GMP's for additional fire suppression scope.
Division 22 - Plumbing:	
1	Includes the remainder to the plumbing system in the building finish out spaces
Division 23 - Heating, Ventilating and Air Conditioning:	
1	Includes the remainder to the HVAC system in the building finish out spaces
2	Does not include a DDC Controls.
Division 26 - Electrical:	
1	Includes all necessary rough in, wire and fixtures to complete the interior electrical work in Building A. Reference previous GMP's for other electrical work.
2	Includes the rough-in only, conduit and boxes, for low voltage systems shown.
3	Does not include UPS per V.E. Log.
4	Testing and owner training included
Division 27 - Communications & Audio Visual:	
1	Audio Visual system and communications systems are specifically excluded.
Division 28 - Electronic Safety and Security:	
1	Security systems are specifically excluded.
2	Includes fire alarm system.
Division 31 - Earthwork:	
1	None/Excluded.
Division 32 - Exterior Improvements:	
1	Landscaping, Planting, Mulch
2	Subgrade soils prep for all planting types included
3	Spoils haul off to be stock piled on site for future use.
4	French drain at display garden and associated subgrade prep per 14/L501 is included
5	Does not include any work inside the Deductive Alt 1 Area.
Division 33 - Utilities:	
1	None/Excluded.
Other	
1	Dose not include mechanical enclosure louvers.

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Building Interior Finish Out and Additional
Landscaping GMP] 100% Construction Documents for GMP

Date:

Sheet	Original Date	Sheet Name
SPECIFICATIONS		
00 0000	04/29/22	Cover
00 0100	04/29/22	Table of Contents
00 0107	04/29/22	Engineer Stamps
00 0110	08/05/22	Table of Contents
00 3119	04/29/22	Existing Conditions Information
00 3119.1		Asbestos Report
00 3132	04/29/22	Geotechnical Data
00 3132.1		Geotechnical Report
00 7200	04/29/22	General Conditions
00 7300	04/29/22	Supplementary Conditions
08 9119		Fixed Louvers
01 1100	04/29/22	Summary of Work
01 2100	04/29/22	Allowances
01 2200	04/29/22	Unit Prices
01 2300	08/05/22	Alternates
01 2350	04/29/22	Price Breakouts
01 2500	04/29/22	Substitution Procedures
01 2519	04/29/22	Substitution Request Form
01 2600	04/29/22	Contract Modification Procedures
01 2613	04/29/22	Requests for Information
01 2900	04/29/22	Payment Procedures
01 3100	04/29/22	Project Management and Coordination
01 3216	04/29/22	Construction Progress Schedules
01 3233	04/29/22	Photographic Documentation
01 3300	04/29/22	Submittals (Civil)
01 3313	04/29/22	Submittal Procedures
01 3323	04/29/22	Shop Drawings (Civil)
01 3329	04/29/22	Sustainable Design Reporting
01 3516	04/29/22	Alteration Project Procedures
01 3546	04/29/22	Indoor Air Quality Management
01 4000	04/29/22	Quality Requirements
01 4516	04/29/22	Field Observations
01 4523	04/29/22	Testing and Observation Services
01 4529	04/29/22	Laboratory Services
01 5000	04/29/22	Temporary Facilities and Controls
01 5500	04/29/22	Stabilized Construction Entrance/exit
01 5713	04/29/22	Temporary Erosion Controls
01 5713-13	04/29/22	Temporary Sediment Control Fence (Silt Fence)
01 5713-16	04/29/22	Erosion and Sedimentation Control Materials
01 5713-19	04/29/22	Temporary Truck Washout Pit
01 5800	04/29/22	Project Identification
01 6000	04/29/22	Product Requirements
01 7123	04/29/22	Field Engineering
01 7326	04/29/22	Cutting and Patching
01 7329	04/29/22	Cutting and Patching (Civil)
01 7400	04/29/22	Cleaning and Adjusting

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Building Interior Finish Out and Additional Landscaping GMP] 100% Construction Documents for GMP

Date:

Sheet	Original	Sheet Name
01 7419	04/29/22	Waste Material Disposal
01 7421	04/29/22	Construction Waste Management
01 7700	04/29/22	Closeout Procedures
01 7839	04/29/22	Project Record Documents
01 8113	04/29/22	Sustainable Design Requirements
01 9113	04/29/22	General Commissioning Requirements
015639	04/29/22	Temporary Tree and Plant Protection
02 4113	04/29/22	Site Demolition
02 4120	04/29/22	Selective Building Demolition
03 0330	04/29/22	Concrete Restoration
03 1100	04/29/22	Concrete Formwork
03 1500	04/29/22	Concrete Joints and Embedded Items
03 2000	04/29/22	Concrete Reinforcement
03 3000	04/29/22	Cast-In-Place Concrete
03 3053	04/29/22	Miscellaneous Cast-In-Place Concrete
04 4200	04/29/22	Site Stone Masonry
05 1200	04/29/22	Structural Steel Framing
05 1213	04/29/22	Architecturally Exposed Structural Steel
05 3000		Metal Decking
05 4000	04/29/22	Cold-Formed Metal Framing
05 5000	04/29/22	Metal Fabrications
05 5001	04/29/22	Miscellaneous Landscape Metals
05 5213	04/29/22	Metal Railings
06 1000	04/29/22	Rough Carpentry
06 1523	04/29/22	Laminated Wood Decking
06 1600	04/29/22	Sheathing
06 1643	04/29/22	Gypsum Sheathing
06 4000	04/29/22	Architectural Woodwork
06 4100	04/29/22	Architectural Wood Casework
06 4200	04/29/22	Wood Paneling
06 4600	04/29/22	Wood Trim
06 6116	04/29/22	Solid Surfacing Fabrications
07 2113	04/29/22	Board Insulation
07 2119	04/29/22	Foamed-In-Place Insulation
07 2200	04/29/22	Roof Insulation
07 2600	04/29/22	Vapor Retarders
07 2800	04/29/22	Moisture Barriers
07 4113	08/05/22	Metal Roof Panels
07 4213	04/29/22	Metal Wall Panels
07 4623	04/29/22	Wood Siding
07 5200	04/29/22	Modified Bituminous Membrane Roofing
07 6500	04/29/22	Flexible Flashings
07 7255	04/29/22	Roof Accessory Attachment System
07 8400	04/29/22	Firestopping
07 9200	04/29/22	Joint Sealers
08 1113	04/29/22	Hollow Metal Doors and Frames
08 1416	04/29/22	Flush Wood Doors
08 1433	08/05/22	Stile and Rail Wood Doors

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Building Interior Finish Out and Additional Landscaping GMP] 100% Construction Documents for GMP

Date:

Sheet	Original	Sheet Name
08 3100	04/29/22	Access Doors and Panels
08 3473	04/29/22	Sound Control Doors Assemblies
08 3613	04/29/22	Sectional Doors
08 4113	04/29/22	Aluminum-Framed Entrances and Storefronts
08 4513	04/29/22	Fiberglass-Sandwich-Panel Assemblies
08 5113	04/29/22	Aluminum Windows
08 7100	08/05/22	Door Hardware
08 8000	04/29/22	Glazing
08 9100	04/29/22	Louvers
09 2200	04/29/22	Metal Support Assemblies
09 2900	04/29/22	Gypsum Board
09 3000	04/29/22	Tiling
09 5100	04/29/22	Acoustical Ceilings
09 6116	04/29/22	Floor Sealer
09 6513	04/29/22	Resilient Base
09 6813	04/29/22	Tile Carpeting
09 7733	04/29/22	Sanitary Wall Panels
09 8100	08/05/22	Acoustic Insulation
09 8129	04/29/22	Sprayed Acoustical Insulation
09 9100	04/29/22	Painting
09 9600	04/29/22	High-Performance Coatings
10 1423	04/29/22	Interior Panel Signs
10 2115	04/29/22	Plastic-Laminate-Clad Toilet Compartments
10 2813	04/29/22	Toilet Accessories
10 4413	04/29/22	Fire Extinguishers and Cabinets
10 7313	04/29/22	Fabric Canopies
10 8900	04/29/22	Ceiling Fans
12 2413	04/29/22	Roller Window Shades
12 9300	04/29/22	Site Furnishings
12 9313	04/29/22	Bicycle Racks
21 0500	04/29/22	Common Work Results for Fire Suppression
21 0513	04/29/22	Common Motor Requirements for Fire Suppression Equipment
21 1000	04/29/22	Water-Based Fire-Suppression Systems
22 0500	04/29/22	Common Work Results for Plumbing
22 0519	04/29/22	Meters and Gages for Plumbing Piping
22 0523	04/29/22	General Duty Valves for Plumbing Piping
22 0553	04/29/22	Identification for Plumbing Piping and Equipment
22 0700	04/29/22	Plumbing Insulation
22 0800	04/29/22	Commissioning of Plumbing
22 1116	04/29/22	Domestic Water Piping
22 1119	04/29/22	Domestic Water Piping Specialties
22 1316	04/29/22	Sanitary Waste and Vent Piping
22 1319	04/29/22	Sanitary Waste Piping Specialties
22 3300	04/29/22	Electric Water Heaters
22 4000	04/29/22	Plumbing Fixtures
23 0010	04/29/22	Basic Mechanical Requirements
23 0500	04/29/22	Common Work Results for HVAC
23 0513	04/29/22	Common Motor Requirements for HVAC

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Building Interior Finish Out and Additional landscaping GMP] 100% Construction Documents for GMP

Date:

Sheet	Original	Sheet Name
23 0529	04/29/22	Hangars and Supports
23 0548	04/29/22	Vibration and Seismic Controls
23 0553	04/29/22	Identification for HVAC Piping
23 0593	04/29/22	Testing, Adjusting and Balancing
23 0713	04/29/22	Duct Insulation
23 0719	04/29/22	HVAC Piping Insulation
23 0800	04/29/22	Commissioning of HVAC
23 0900		Instrumentation and Control for HVAC
23 2300	04/29/22	Refrigerant Piping
23 3116	04/29/22	Nonmetal Ducts
23 3300	04/29/22	Air Duct Accessories
23 3423	04/29/22	HVAC Power Ventilators
23 3713	04/29/22	Diffusers, Registers and Grilles
23 8126	04/29/22	Split-System Air-Conditioners
26 0010	04/29/22	Basic Electrical Requirements
26 0519	04/29/22	Low-Voltage Electrical Power Conductors and Cables
26 0523	04/29/22	Control-Voltage Electrical Power Cables
26 0526	04/29/22	Grounding and Bonding for Electrical Systems
26 0529	04/29/22	Hangers and Supports for Electrical Systems
26 0533		Raceway and Boxes for Electrical Systems
26 0543		Underground Ducts and Raceways for Electrical Systems
26 0544		SLEEVES AND SLEEVE SEALS FOR ELECTRICAL RACEWAYS AND CABLING
26 0553	04/29/22	Identification for Electrical Systems
26 0573	04/29/22	Overcurrent Protective Device Coordination Study
26 0923	04/29/22	Lighting Control Devices
26 0943	04/29/22	Network Lighting Controls
26 1116	04/29/22	Secondary Unit Substations with Switchboard
26 2200		Low-Voltage Transformers
26 2416		Panelboards
26 2419	04/29/22	Motor-Control Centers
26 2600	04/29/22	Power Distribution Units
26 2726	04/29/22	Wiring Devices
26 2813	04/29/22	Fuses
26 2816	04/29/22	Enclosed Switches and Circuit Breakers
26 3353	08/05/22	Static Uninterruptible Power Supply
26 4313	04/29/22	Transient-Voltage Suppression
26 5100	04/29/22	Interior Lighting
26 5600	04/29/22	Exterior Lighting
27 2133	08/05/22	Wireless Access Points (WAP)
27 4100	08/05/22	Audio-Video Systems
28 3111	04/29/22	Digital, Addressable Fire-Alarm System
31 1000	04/29/22	Site Clearing
31 1100	04/29/22	Clearing and Grubbing
31 2200	04/29/22	Grading
31 2300	04/29/22	Structural Excavation and Backfill
31 2316	04/29/22	Excavation
31 2319	04/29/22	Dewatering
31 2323	04/29/22	Subgrade Fill

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Building Interior Finsih Out and Additional Landscaping GMP] 100% Construction Documents for GMP

Date:

Sheet	Original	Sheet Name
31 2333	04/29/22	Trenching
31 2400	04/29/22	Embankment
31 3116	08/05/22	Termite Control
31 3213	04/29/22	Soil Mixing Stabilization
31 3700	04/29/22	Rip Rap
31 4133	04/29/22	Trench Shielding
31 6600		Special Foundations
32 0190	04/29/22	Operation and Maintenance of Planting
32 0523	04/29/22	Cement-Sand Backfill
32 1216	04/29/22	Asphalt Paving
32 1243	04/29/22	Porous Flexible Paving
32 1316	04/29/22	Decorative Concrete Paving
32 1373	04/29/22	Concrete Paving Joint Sealants
32 1516	04/29/22	Stabilized DG
32 3113	04/29/22	Fencing and Gates
32 3223	04/29/22	Site Walls
32 9113	04/29/22	Soil Preparation
32 9200	04/29/22	Turf and Grasses
32 9213	04/29/22	Hydro Mulch Seeding
32 9219	04/29/22	Seeding
32 9300	04/29/22	Planting
33 0130	04/29/22	Operation and Maintenance of Sewer Utilities
33 0513	04/29/22	Manholes
33 1100	04/29/22	Water Utility Distribution Piping
33 1116	04/29/22	Site Utility Water Distribution Piping
33 1613	04/29/22	Aboveground Water Storage Tanks
33 3113	04/29/22	Sanitary Piping
Drawings		
0 CVR	04/22/22	COVER SHEET
0 IDX	09/22/23	INDEX
D100	10/07/22	SITE PLAN DEMO
D201	10/07/22	EXISTING DEMO PLAN - BLDG 'A'
C000	12/19/22	COVER SHEET
C005	12/19/22	CONSTRUCTION NOTES
C100	12/19/22	EXISTING CONDITIONS PLAN & TREE SURVEY
C101	12/19/22	DEMOLITION PLAN
C201	12/19/22	SWPPP
C202	12/19/22	SWPPP DETAILS
C301	01/05/24	SITE PLAN
C400	01/05/24	GRADING PLAN
C501	09/22/23	UTILITY PLAN
C502	12/19/22	SANITARY SEWER PLAN AND PROFILE
C600	12/19/22	FIRE PROTECTION PLAN
C901	12/19/22	SITE CONSTRUCTION DETAILS
C902	12/19/22	CITY OF NEW BRAUNFELS DETAILS
C905	12/19/22	WATER & WASTEWATER DETAILS
C910	12/19/22	RAIN HARVESTING DETAIL

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Building Interior Finish Out and Additional Landscaping GMP] 100% Construction Documents for GMP

Date:

Sheet	Original	Sheet Name
L000	10/07/22	Landscape Sheet Index & Notes
L010	10/07/22	Overall Site Plan
L011	02/02/24	Phase 2 Site Plan
L012	10/07/22	Tree Protection Plan
L013	10/07/22	Tree Protection Notes & Details
L014	10/07/22	Demo Plan
L100	02/02/24	Overall Grading Plan
L101	02/02/24	Grading Plan
L102	02/02/24	Grading Plan
L103	02/02/24	Grading Plan
L200	02/02/24	Overall Hardscape Plan
L201	02/02/24	Hardscape Plan
L202	02/02/24	Hardscape Plan
L203	02/02/24	Hardscape Plan
L210	02/02/24	Materials Schedule
L300	02/02/24	Overall Layout Plan
L301	02/02/24	Layout Plan
L302	02/02/24	Layout Plan
L303	02/02/24	Layout Plan
L401	10/07/22	Sections
L501	10/07/22	Paving Details
L502	10/07/22	Fence & Gate Details
L503	10/07/22	Wall Details
L600	10/07/22	Overall Planting Plan
L601	10/07/22	Planting Plan
L602	10/07/22	Planting Plan
L603	10/07/22	Planting Plan
L610	10/07/22	Planting Details & Notes
L611	10/07/22	Planting Schedules
L700	10/07/22	Overall Alternates Plan
L800	10/07/22	Irrigation Notes & Legend
L801A	10/07/22	Phasing Plan
L801B	10/07/22	Temporary Vs. Permanent Plan
L803	10/07/22	Irrigation Plan
L806	10/07/22	Irrigation Plan
L808	10/07/22	Irrigation Details
L809	10/07/22	Irrigation Details
A000	09/22/23	ARCHITECTURAL INDEX SHEET
A001	10/07/22	EXISTING CONDITIONS- BLDG A
A010	02/02/24	SITE PLAN
A110	10/07/22	LIFE SAFETY
A111	10/07/22	Hoselay
A200	02/02/24	FLOOR PLANS - BLDGS 'A'
A220	10/07/22	ENLARGED PLANS BLDG 'A'
A240	09/22/23	ROOF PLANS - BLDGS 'A'
A260	10/07/22	ROOM SCHEDULE
A261	09/22/23	DOOR SCHEDULE
A262	09/22/23	WINDOW SCHEDULE

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Building Interior Finish Out and Additional Landscaping GMP] 100% Construction Documents for GMP

Date:

Sheet	Original	Sheet Name
A300	02/02/24	REFLECTED CEILING PLAN - BLDG 'A'
A400	09/22/23	BUILDING ELEVATIONS- BLDG 'A'
A500	09/22/23	BUILDING SECTIONS BLDG 'A'
A501	05/16/22	BUILDING SECTIONS BLDG 'A'
A700	09/22/23	INTERIOR ELEVATIONS - BLDG 'A'
A701	09/22/23	INTERIOR ELEVATIONS - BLDG 'A'
A800	02/02/24	EXTERIOR CIRCULATION
A801	09/22/23	EXTERIOR CIRCULATION
A802	09/22/23	MECHANICAL YARD & MISC DETAILS
A900	02/02/24	DETAILS - BUILDING 'A'
A901	02/02/24	DETAILS - BUILDING 'A'
A902	02/02/24	DETAILS - BUILDING 'A'
A915	02/02/24	INTERIOR DETAILS BLDG. 'A'
A950	09/22/23	MILLWORK DETAILS
S001	05/16/22	GENERAL NOTES
S002	05/16/22	GENERAL NOTES
S101D	09/22/23	BUILDING A DEMO PLAN
S102D	05/16/22	BUILDING A DEMO PLAN
S201	09/22/23	BUILDING A NEW CONSTRUCTION PLAN
S202	09/22/23	BUILDING A NEW CONSTRUCTION PLAN
S210	05/16/22	ENLARGED RAMP PLAN
S301	05/16/22	CONCRETE TYPICAL DETAILS
S302	09/22/23	CONCRETE TYPICAL DETAILS
S303	05/16/22	CONCRETE DETAILS
S304	09/22/23	CONCRETE DETAILS
S305	09/22/23	CONCRETE DETAILS
S501	05/16/22	STEEL TYPICAL DETAILS
S502	05/16/22	STEEL TYPICAL DETAILS
S503	05/16/22	STEEL DETAILS
S504	05/16/22	STEEL DETAILS
S511	05/16/22	BRIDGE DETAILS
S601	05/16/22	WINDFRAMES
M001	05/16/22	SYMBOL LEGEND - MECHANICAL
M200	05/16/22	FLOOR PLANS - BLDG 'A' - DUCTWORK
M260	05/16/22	SCHEDULES - MECHANICAL
M800	05/16/22	CONTROLS - MECHANICAL
M900	05/16/22	DETAILS - MECHANICAL
M901	05/16/22	DETAILS - MECHANICAL
E001	05/16/22	SYMBOL LEGEND - ELECTRICAL
E100	02/02/24	SITE PLAN - ELECTRICAL - POWER
E101	02/02/24	SITE PLAN ELECTRICAL DATA/SECURITY
E200	02/02/24	FLOOR PLANS - BLDGS 'A' & 'C' - POWER
E300	09/22/23	FLOOR PLANS - BLDGS 'A' & 'C' - LIGHTING
E400	09/22/23	PANEL SCHEDULES
E401	05/16/22	PANEL SCHEDULES
E500	09/22/23	ELECTRICAL ONE-LINE DIAGRAM
E700	05/16/22	DETAILS - ELECTRICAL
E701	05/16/22	DETAILS - ELECTRICAL

EXHIBIT C

Contract Documents List

Headwaters at the Comal - Phase 2 [Building Interior Finish Out and Additional Landscaping GMP] 100% Construction Documents for GMP

Date:

Sheet	Original	Sheet Name
EL001	05/16/22	ELECTRICAL COVER SHEET
EL010	05/16/22	ELECTRICAL SCHEDULES
EL011	05/16/22	LIGHTING CONTROLS
EL100	05/16/22	SITE LIGHTING PLAN
EL200	09/22/23	LIGHTING PLAN - LEVEL 1
EL300	05/16/22	EXTERIOR LUMINAIRE CUTSHEETS
EL301	05/16/22	EXTERIOR LUMINAIRE CUTSHEETS
EL302	05/16/22	EXTERIOR LUMINAIRE CUTSHEETS
P001	05/16/22	SYMBOL LEGEND - PLUMBING
P200	09/22/23	FLOOR PLANS - BLDGS 'A' - PRESSURE
P210	09/22/23	FLOOR PLANS - BLDGS 'A' - GRAVITY
P220	09/22/23	FLOOR PLAN - BLDG 'A' - FIRE PROTECTION
P301	05/16/22	RISERS - GRAVITY
P302	05/16/22	RISERS - PRESSURE
P900	05/16/22	DETAILS - PLUMBING
T001	05/16/22	TECHNOLOGY - SYMBOL LEGEND
T200	05/16/22	FLOOR PLAN - BLDG 'A' - TECHNOLOGY
T700	05/16/22	DETAILS - TECHNOLOGY
NS0.02	05/16/22	OVERALL SITE PLAN
G1.0	05/16/22	SIGNAGE DRAWINGS
G2.0	05/16/22	SIGN LOCATION PLAN
G3.0	05/16/22	SIGN LOCATION PLAN
G4.0	05/16/22	Sign Types Message Schedule



Meeting Date: October 31, 2024 **Agenda Type:** Action Item

From: Connie Lock
General Counsel & Chief
Ethics Officer **Reviewed by:** Connie Lock
General Counsel & Chief Ethics
Officer

Submitted by: Connie Lock
General Counsel & Chief
Ethics Officer **Approved by:** Ryan Kelso
Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Approving Proposed Revisions to the NBU Board Governance Policies

BACKGROUND

On January 28, 2010, the New Braunfels Utilities (“NBU”) Board of Trustees approved Governance Policies to establish a framework of how the Board would operate. The Governance Policies were revised on March 31, 2016, May 25, 2021, and June 29, 2023, to reflect organizational changes and the Board’s existing practices.

The Governance Committee (the “Committee”) met on March 6, 2024, July 30, 2024, and September 16, 2024, to review the Governance Policies, evaluate Board comments, and provide recommended revisions. The Committee presented the following recommended changes to the Governance Policies to the Board during its September 26, 2024 meeting:

- update the preface to the Governance Policies to simplify revision history and indicate that the Board follows the Carver Model of governance;
- add references to Carver Model of governance where appropriate;
- include flexibility in the goal measurements in the Strategic Goals Policy to align with NBU’s current strategic plan;
- add a requirement for the Board to complete an annual fiscal year-end report that includes activities and accomplishments of the Board and to share the report publicly;
- update communication protocols with the CEO, Chief of Staff, and General Counsel;
- reduce the timeframe from twenty-one to fourteen days for Board members to request an item be placed on the Board agenda;

- align Board absence and removal provisions with the City of New Braunfels Code of Ordinances;
- clarify that the Vice President conducts the annual self-evaluation and collaborates with the President to report the results to the Board;
- clarify CEO role as Board Secretary;
- update Board committees and add frequency of expected meetings;
- include a process for CEO communication to Board members regarding customer concerns;
- refine CEO evaluation factors and succession requirements;
- eliminate pre-2021 policy references; and
- revise vague, unclear, or outdated language.

The Committee requested and received additional feedback to the Governance Policies after its September Board meeting. The Committee met on October 16, 2024, to consider these comments and recommends the following proposed revisions to the Governance Policies:

- insert proposed Board approval date and effective date of the Governance Policies; and
- eliminate communication protocols with the CEO or Chief of Staff in the context of the Public Information Act and the Open Meetings Act as the protocols do not apply.

The Committee is scheduled to present the final draft of the Governance Policies to the Board during its October 31, 2024 meeting.

FINANCIAL IMPACT

None.

LINK TO STRATEGIC PLAN

Customers and Community

Stewardship

EXHIBITS

1. Governance Policies (redline)
2. Governance Policies (clean)

New Braunfels Utilities

Governance Policies

PREFACE

In January 2010, the Board of Trustees (Board) for New Braunfels Utilities (NBU) established the Governance Policies under which it operates. In doing so, the Board chose to follow the Carver model of governance, which is a system for organizational governance that defines and guides the relationships between its board and chief executive through written policies. By focusing on the ends and not the means, the Carver model of policy governance enables a board to focus on the larger issues, delegate with clarity, and control management without micromanaging.

NBU's Governance Policies were revised in March 2016, May 2021, and June 2023. In October 2024, the Board revised these Governance Policies to align with its fiscal year 2025 strategic goals and make other adjustments deemed necessary.

New Braunfels Utilities

Governance Policies

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<u>Policy Type</u>	<u>Policy #</u>	<u>Policy Title</u>
Strategic Goals	SG #1	Global Policy on Strategic Goals
	SG #2	Customers & Community
	SG #3	People & Culture
	SG #4	Infrastructure & Technology
	SG #5	Financial Excellence
	SG #6	Safety
	SG #7	Stewardship
Board Governance	BG #1	Global Policy on Governance Process
	BG #2	Governing Style
	BG #3	Board Job Description
	BG #4	Board Member Code of Conduct
	BG #5	Board Member Discipline, Resignation & Removal
	BG #6	President's Role
	BG #7	Vice President's Role
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	BG #9	Board Committee Principles
	BG #10	Board Committees & NBU-Supported Boards
	BG #11	Annual Planning
	BG #12	Governance Investment
Board-Management Delegation	BMD #1	Global Policy on Board Delegation
	BMD #2	Unity of Control
	BMD #3	Accountability of the CEO
	BMD #4	Delegation to the CEO
	BMD #5	Evaluating CEO Performance
	BMD #6	Communication and Support to the Board
	BMD #7	Emergency Executive CEO Succession
Appendix		Article 11 from City Charter
		Chapter 130, Article II from City Code of Ordinances

New Braunfels Utilities

Governance Policies: Strategic Goals

POLICY TYPE: STRATEGIC GOALS

SG #1

POLICY TITLE: GLOBAL POLICY ON STRATEGIC GOALS

At a minimum of every five years, the Board will review and establish Strategic Goals for NBU and determine how achievement of or adherence to those Strategic Goals should be measured. The Board then will review NBU's progress periodically throughout each fiscal year (August 1 to July 31), evaluate NBU's achievement of or adherence to those Strategic Goals at least annually each fiscal year, and confirm the continuing validity of each Strategic Goal. The Board maintains discretion to add, remove, or change any Strategic Goal or any achievement or adherence measurement set at any time.

POLICY TYPE: STRATEGIC GOALS

SG #2

POLICY TITLE: CUSTOMERS & COMMUNITY

The Board is committed to NBU providing a customer-first focus and committing to innovative solutions to improve the customer experience.

With respect to interactions with current or potential customers or the community at large, the CEO will not cause or allow conditions, procedures, or decisions that are unsafe, unsecure, untimely, unnecessarily intrusive, or in violation of any federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

The CEO will not:

1. Elicit information for which there is no business necessity.
2. Use methods of collecting, reviewing, transmitting, or storing consumer information that fails to reasonably protect against improper access.
3. Operate facilities without reasonably appropriate customer accessibility and security.
4. Operate without established policies providing customers a clear understanding of what to expect from the services NBU offers.
5. Withhold information about this policy or deny any customers who are aggrieved a right to seek review under this policy.
6. Project an image to customers or the community at large that creates a negative perception of NBU or jeopardizes NBU's status in the community.

The Board will review and measure NBU's progress towards achieving or adhering to its Customers & Community Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the Customers & Community Strategic Goal measure(s) set annually and may include, by way of example, an examination of the annual customer satisfaction survey, customer or community feedback received, and any other related information provided by the CEO, NBU customers, or the community at large. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #3

POLICY TITLE: PEOPLE & CULTURE

The Board is committed to NBU caring for its employees, building on its team-oriented culture, promoting ethical behavior, and preparing its team to meet the challenges ahead.

With respect to employment, compensation, and benefits of employees or contingent workers, the CEO will not cause or allow jeopardy to NBU's fiscal integrity or public image or conditions that violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

With respect to the retention and engagement of consultants or volunteers, the CEO will not cause or allow conditions that create an employment relationship or that violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

The CEO will not:

1. Change the CEO's own compensation without the Board's express approval.
2. Change the CEO's benefits, except as would be consistent with any benefits provided to all other employees.
3. Promise or imply permanent or guaranteed employment or a contract for tenure.
4. Establish compensation and benefits that deviate materially from the geographic or professional market for the skills employed.
5. Create any employment or other compensation or benefit-related obligations over a longer term than revenues can be reasonably projected to satisfy.
6. Enter into any employment agreement without the Board's express approval.

The Board will review and measure NBU's progress towards achieving or adhering to its People & Culture Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the People & Culture Strategic Goal measure(s) set annually and may include, by way of an example, an examination of employee participation in the annual engagement survey, employee feedback or recommendations received or implemented, and any other related information provided by its CEO or NBU employees. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #4

POLICY TITLE: INFRASTRUCTURE & TECHNOLOGY

The Board is committed to NBU maintaining reliable and resilient systems through responsible planning, asset management, and innovative technologies that align with the strategic direction of the organization.

The CEO will not allow NBU assets to be unprotected, inadequately maintained, or unnecessarily risked.

The CEO will not:

1. Unnecessarily expose NBU, its Board, or staff to claims of liability related to infrastructure and technology.
2. Unreasonably fail to protect property, information, or data files from loss, significant damage, or unauthorized access.
3. Unreasonably fail to address aging infrastructure, plan for additional growth, or evaluate the availability and viability of innovative or technological improvements.

The Board will review and measure NBU's progress towards achieving or adhering to its Infrastructure & Technology Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the Infrastructure & Technology Strategic Goal measure(s) set annually and may include, by way of example, an examination of NBU's SAIDI three-year rolling average, technological system reliability, infrastructure leakage index results, percentage of completion of capital improvement projects, compliance events, and any other related information provided by the CEO, NBU customers, or the community at large. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #5

POLICY TITLE: FINANCIAL EXCELLENCE

The Board is committed to NBU practicing sound financial management to be responsible stewards of public funds.

With respect to the actual, ongoing financial condition and activities of NBU, the CEO will not cause or allow the development of fiscal jeopardy or a material deviation of actual expenditures from the annual Board-approved budget or any approved Board expenditures.

The CEO will not:

1. Expend more funds than allocated by the Board for the current fiscal year without express Board approval.
2. Exceed the limits of NBU's Purchasing Policy.
3. Incur debt without appropriate authorization from the Board or City of New Braunfels.
4. Fail to settle liabilities in a timely manner.
5. Allow government-ordered or regulatory filings, fines, or payments to be overdue or inaccurately filed.
6. Acquire, encumber, or dispose of real estate other than for normal operating items, such as rights-of-way or easements, and in connection with Board-approved projects.
7. Invest or hold operating capital in insecure instruments, including uninsured checking accounts or noninterest-bearing accounts, except where necessary to facilitate operational transactions.

The CEO will not allow budgeting to:

1. Fail to include:
 - (a) credible projection of revenues and expenses,
 - (b) separation of capital and operational items,
 - (c) cash flow analysis, and
 - (d) disclosure of planning assumptions
2. Provide less for Board development than is set forth in the Governance Investment policy (BG #12)

The Board will review and measure NBU's progress towards achieving or adhering to its Financial Excellence Strategic Goal at least annually. NBU's progress will be determined based on the

specifics of the Financial Excellence Strategic Goal measure(s) set annually and may include, by way of an example, an examination of its annual cost per customer, its bond (or other recognized financial) rating, and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #6

POLICY TITLE: SAFETY & SECURITY

The Board is committed to NBU placing safety and security as the highest priorities for every employee and customer.

The CEO will not cause or allow conditions that create an unsafe or unsecure environment for NBU or its employees, contingent workers, consultants, volunteers, vendors, or customers.

The CEO will not unreasonably fail to address or create a plan for addressing:

1. Emergency situations;
2. At-fault or willful safety violations;
3. Old or outdated equipment or technology; and
4. Data- and cyber-security.

The Board will review and measure NBU's progress towards achieving or adhering to its Safety & Security Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the Safety & Security Strategic Goal measure(s) set annually and may include, by way of example, an examination of emergency response procedures, data- and cyber-security efforts, preventable equipment damage or vehicular damage incidents, workplace safety or security incidents (including at-fault safety violations), OSHA severity rate, security enhancements, and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #7

POLICY TITLE: STEWARDSHIP

The Board is committed to NBU preserving and protecting community resources through planning, innovation, collaboration, and education.

The CEO will not cause or allow conditions that:

1. Jeopardize or irresponsibly use or deplete NBU's environmental assets or the community's natural resources; or
2. Unreasonably fail to consider environmental conservation and sustainability when creating NBU policies and plans.

The Board will review and measure NBU's progress towards achieving or adhering to its Stewardship Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the Stewardship Strategic Goal measure(s) set annually and may include, by way of example, an examination of the status and progress of any implemented strategies for sustainable resources and conservation initiatives (such as One Water) and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

New Braunfels Utilities

Governance Policies: Board Governance

POLICY TYPE: BOARD GOVERNANCE

BG #1

POLICY TITLE: GLOBAL POLICY ON GOVERNANCE PROCESS

The purpose of the Board is to:

1. Represent the interests of the City of New Braunfels and the community at large, keeping in mind the value of being a “municipally owned utility.”
2. Determine the benefits that NBU will provide, keeping a long term, strategic perspective.
3. Set and reevaluate the Strategic Goals as provided for in the Global Policy on Strategic Goals (SG #1).
4. Monitor NBU operations to ensure achievement of or adherence to the Strategic Goals.

POLICY TYPE: BOARD GOVERNANCE

BG #2

POLICY TITLE: GOVERNING STYLE

The Board will govern lawfully, observing the principles of its adopted governance model, the Carver model of policy governance, with an emphasis on:

- outward vision rather than an internal preoccupation,
 - encouragement of diversity in viewpoints,
 - strategic leadership more than administrative detail,
 - clear distinction of Board and CEO roles,
 - collective rather than individual decisions,
 - future rather than past or present, and
 - proactivity rather than reactivity.
1. The Board will cultivate a sense of group responsibility. The Board, not the staff, will be responsible for excellence in governing. The Board will allow no officer, individual member, or Board committee to hinder or be an excuse for not fulfilling its group responsibility.
 2. The Board will not use the expertise or position of individual members, including the mayor, as a substitute for the judgment of the Board. Expertise of individual members may be used to enhance the understanding of the Board as a whole.
 3. The Board will direct, control, and inspire the organization following the Carver model of policy governance by carefully establishing written policies reflecting the Board's values and perspectives on the strategic goals of the organization. The Board will be responsible for approving, retaining, and overseeing its written policies, with NBU staff assisting with development and implementation in compliance with any Board directives.
 4. The Board will monitor and discuss the Board's process and performance at least annually and more often if necessary and will prepare an annual fiscal year-end report on its activities and accomplishments to be publicly shared. In addition to the annual fiscal year-end report, the Board will conduct an annual self-evaluation that will include a comparison of Board activity and discipline to the Board Governance and Board-Management Delegation Policies.
 5. Although the Board can change its Governance Policies and any other Board policies at any time, it will scrupulously observe those currently in effect.

POLICY TYPE: BOARD GOVERNANCE

BG #3

POLICY TITLE: BOARD JOB DESCRIPTION

Specific job outputs of the Board, as the agent of the City of New Braunfels, are those that ensure appropriate NBU organizational performance.

Accordingly, the Board will provide:

1. Authoritative linkage between the NBU and the City of New Braunfels.
 - a. The Board or the CEO at the Board's direction will update the City of New Braunfels on the status of NBU once each fiscal year and when needed or requested.
 - b. The Board will inform the City of New Braunfels on Board member experience, diversity, and constitution when needed or requested.
 - c. The Board will respond to reasonable requests for information from the City of New Braunfels on a timely basis.
2. Written governing policies that realistically address the broadest level of all NBU decisions and situations, categorized as follows:
 - a. Strategic Goals: Establish the short- and long-term strategic direction of NBU, the method by which the Board will evaluate adherence to or achievement of its strategic direction, and any constraints on CEO authority in relation thereto.
 - b. Board Governance: Specifies how the Board conceives, implements, and monitors itself and its tasks.
 - c. Board-Management Delegation: Sets forth the authority delegated by the Board to the CEO, how the Board and CEO will communicate, and the means by which the CEO will be held accountable, monitored, and succeeded.
3. Assurance of successful organizational performance of NBU's Strategic Goals.

POLICY TYPE: BOARD GOVERNANCE

BG #4

POLICY TITLE: BOARD MEMBER CODE OF CONDUCT

The Board commits itself and its members to ethical, businesslike, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

1. Members must abide by any legal obligations or requirements contained in the City of New Braunfels Charter or Code of Ordinances, maintain loyalty to the City of New Braunfels, NBU, and its customers, and remain unconflicted by loyalties to NBU staff, other organizations, and any personal interests, including as a personal customer of NBU.
2. Members must conduct business in accordance with the Public Information and Open Meetings Acts.
 - a. Members will only conduct business in a posted meeting open to the public.
 - b. Members will use proper protocol when using email and other digital or electronic forms of communication. Email communications, telephone calls, text messages, and any other verbal or written correspondence that ultimately involve a quorum may constitute a meeting, even if the quorum is not physically present in the same location and the discussion does not take place at the same moment in time.
 - c. Members should direct communication through the CEO or NBU’s Chief of Staff (copying the CEO) and should not use “reply all” when responding to communications sent to the Board on an informational basis.
 - d. Members may communicate directly with NBU’s General Counsel when the subject matter dictates or necessitates direct communication and may do so without copying the CEO or NBU’s Chief of Staff when appropriate.
3. Members must abide by the City of New Braunfels’ Code of Ethics and avoid any conflict of interest with respect to their fiduciary responsibility.
 - a. There must be no self-dealing or business by members with NBU. Members will annually disclose their involvements with other organizations, vendors, or associations that may be perceived as being a conflict in accordance with Texas state law.
 - b. When the Board is to decide upon an issue about which a member has an unavoidable conflict of interest, that member will immediately disclose the conflict, withdraw without comment from the deliberations, and abstain from voting on that issue.

4. Members may not attempt to exercise individual authority over NBU or its staff.
 - a. Members' interaction with the CEO or NBU staff must recognize the lack of authority vested in individual Board members, except when expressly Board-authorized.
 - b. Members' interaction with public, press, or other entities must recognize the same limitation and the inability of any individual member to speak for the Board, except on explicitly stated Board decisions.
 - c. Except for participation in Board deliberation about whether the CEO has achieved any reasonable interpretation of Board policy, members will not express individual judgments of performance of the CEO or any NBU staff.
 - d. In furtherance of this objective, members must abide by any constraints on communications or activities provided elsewhere in these policies, including in the Board-Management Delegation policies.
5. Members will maintain the confidentiality appropriate for sensitive issues, including with respect to all Executive Session discussions.
6. Members must attend Board meetings and be properly prepared for Board deliberation.
7. Members may recommend or request an item for Board discussion by submitting the item to the Board President generally fourteen (14) days before the Board meeting, but in no event no later than seven (7) days before the Board meeting. If the timing of the items submitted is problematic, the CEO may visit with the Board President and the requesting Board Member to determine if an alternative meeting would be sufficient or scheduled.

POLICY TYPE: BOARD GOVERNANCE

BG #5

POLICY TITLE: BOARD MEMBER DISCIPLINE, RESIGNATION, & REMOVAL

The Board will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policy-making principles, respect of roles, adherence to Board policies, and ensuring continuance of governance capability.

1. Members who fail to abide by the Board’s Code of Conduct may be subject to censure or a recommendation of removal to the City of New Braunfels.
2. Censure is a formal and public condemnation by the Board of a member whose actions run counter to the Board’s Code of Conduct (BG#4). Censure of a Board member must be unanimous by the remaining Board members.
3. Only the City of New Braunfels can remove a Board member for adequate cause; however, the Board may recommend removal of a member with advanced written notice of at least thirty (30) days to the member and, when appropriate, an opportunity to correct the behavior or actions leading to the recommendation. Any recommendation of removal must be unanimous by the remaining Board members.

Any Board member, other than the mayor, who is continuously absent from all Board meetings for a period of four consecutive months will, unless granted a leave of absence by the unanimous vote of the remaining Board members, be considered to have vacated office.

Any Board member, other than the mayor, who is continuously absent without excuse from all Board meetings for three consecutive months will, unless granted a leave of absence by the unanimous vote of the remaining Board members, be subject to censure.

POLICY TYPE: BOARD GOVERNANCE

BG #6

POLICY TITLE: PRESIDENT'S ROLE

The chief governance officer (Board President or President), a specifically empowered member of the Board, assures the integrity of the Board's process, and secondarily represents the Board to outside parties.

1. The Board President will ensure that the Board's actions consistently comply with its own policies and rules and those legitimately imposed upon it from outside the organization, including, but not limited to, ensuring:
 - a. Meeting discussion content ordinarily addresses only those issues that, according to Board policy, clearly belong to the Board to decide or to monitor.
 - b. Deliberation is fair, open, and thorough, but also timely, orderly, pertinent, and courteous.
 - c. Information that is unnecessary for monitoring NBU performance or Board decisions is avoided or minimized and always noted as such.
2. The authority of the President consists of making decisions that fall within the topics covered by the Board Governance and Board-Management Delegation policies and any other Board policies established, with the exception of (a) personnel matters pertaining to the CEO or (b) where the Board specifically delegates portions of its authority to others. The President is authorized to use any reasonable interpretation of the provisions contained in those policies.
 - a. The President is empowered to conduct Board meetings with all the commonly accepted power of a presiding officer according to Roberts Rules of Order.
 - b. The President cannot enact policies or provide directives to the CEO without Board approval.
 - c. The President may represent the Board to outside parties in announcing Board-stated positions and in stating the President's decisions and interpretations within the areas delegated.
 - d. The President may delegate authority to another Board member but will remain accountable for its use.
 - e. For succession purposes, the President will maintain open dialogue and communication with the Board Vice President and will work with the Vice President to develop and implement any necessary officer transition plans.

- f. The President will collaborate with the Vice President to report the results of the annual Board self-evaluation required under the Governance Investment Policy (BG#12) and conducted by the Vice President under the Vice President's Role (BG#7).
- g. Throughout the year, the President will ensure the Board attends to consent agenda items as expeditiously as possible.

POLICY TYPE: BOARD GOVERNANCE

BG #7

POLICY TITLE: VICE PRESIDENT'S ROLE

The Vice President is an officer of the Board whose role is to assist the Board President and perform the Board President's responsibilities when the Board President is unavailable.

1. The Board or the Board President may delegate special assignments to the Vice President from time to time.
2. The Vice President will implement and oversee the CEO annual evaluation process. In doing so, the Vice President will:
 - a. Develop the evaluation mechanism and procedure to be used during the process;
 - b. Solicit and maintain the confidentiality of completed evaluations from individual Board members;
 - c. Compile, combine, and present Board member evaluation results to the Board as a whole;
 - d. Obtain a self-evaluation from the CEO to be presented to the Board as a whole;
 - e. Ensure the Board advises the CEO of its final evaluation results during an Executive Session and the results are maintained by NBU's General Counsel; and
 - f. Facilitate any CEO compensation discussions amongst the Board.
3. The Vice President will ensure an annual self-evaluation of the Board's performance, processes, and policies is conducted as referenced in Governing Style (BG#2) and as required under the Governance Investment policy (BG#12).
4. For succession purposes, the Vice President will maintain open dialogue and communication with the Board President and will work with the Board President to develop and implement any necessary officer transition plans.

POLICY TYPE: BOARD GOVERNANCE

BG #8

POLICY TITLE: BOARD SECRETARY'S ROLE

The CEO serves as the Board Secretary. The Board Secretary is an officer of the Board but not a member of the Board. The Board Secretary's role is to ensure the integrity of the Board's documents.

1. The Board Secretary will ensure all Board documents and filings are accurate and timely.
2. The Board Secretary will ensure Board policies are current and accurately reflect Board decisions.
3. The Board Secretary will ensure the Board minutes accurately reflect Board decisions and are maintained in accordance with state law, including the Public Information Act and any other record retention laws or requirements.

POLICY TYPE: BOARD GOVERNANCE

BG #9

POLICY TITLE: BOARD COMMITTEE PRINCIPLES

Board committees, when used, will be assigned to assist the entire Board but will not interfere with the authority delegated by the Board to the CEO.

1. Committees will be used sparingly and created as needed.
2. Committees will be appointed by the Board President, unless specially created by Board action.
3. Board committees will not advise or interfere with NBU staff. Committees will assist the Board by preparing policy alternatives and assuring organizational implications for Board deliberation. Typically, Board committees will not deal directly with current staff operations.
4. Board committees may not speak or act for the Board except when specifically authorized. Expectations and scope of authority will be expressly stated to avoid conflict with authority delegated to the CEO.
5. Board committees have no authority over NBU staff. The CEO works for the full Board and is not required to obtain approval of a Board committee before executive action.
6. Board committees will avoid over-identification with organizational parts rather than the whole. Therefore, a Board committee that drafts and recommends a particular policy should not monitor achievement or adherence; rather the entire Board retains responsibility and authority to monitor achievement or adherence.
7. This policy applies to any group formed by Board action, regardless of whether called a committee and whether the group includes Board members. It does not apply to committees formed under the authority of the CEO.

POLICY TYPE: BOARD GOVERNANCE BG #10
 POLICY TITLE: BOARD COMMITTEES & NBU-SUPPORTED BOARDS

A committee is a Board committee only if its existence and charge come from the Board, regardless of whether Board members sit on the committee. The only Board approved committees are those set forth in this policy, and it remains within the Board’s discretion to appoint other standing and ad hoc committees.

Unless otherwise stated, a committee ceases to exist when its task is complete. Timely reporting to the Board will be by submission of a verbal or written report, following each meeting, with appropriate comment by the committee.

An NBU-supported board is a board expressly created by the Board to represent a specified NBU-supported operation. An NBU-supported board is comprised of Board members appointed by the Board in compliance with its applicable bylaws. Timely reporting to the Board will be reported on the Board’s agenda as Items from Staff.

Standing Committees:

1. **Audit Committee** – The Audit Committee is responsible for the oversight of financial reporting, internal controls, as well as the internal and external auditors’ activities. The Audit Committee meets once annually and as otherwise needed.
2. **Budget Committee** – The Budget Committee is responsible for the oversight of development of the budget to ensure shared understanding of the Financial Excellence Strategic Goal and its incorporation into the NBU budget. The Budget Committee meets once annually and as otherwise needed.
3. **Governance Committee** – The Governance Committee is responsible for reviewing and making recommendations to the Board on its governance policies, practices, and procedures. The Governance Committee consists at a minimum of the Board President and Vice President. The Governance Committee meets once annually and as otherwise needed.
4. **Headwaters at the Comal Board (Headwaters)** – Headwaters is an NBU-supported board responsible for site development and fundraising for NBU’s conservation legacy located at 333 Klingemann. Headwaters meets pursuant to its separately established bylaws.
5. **Investment Committee** – The Investment Committee is responsible for the oversight of NBU’s investment assets, the review of the portfolio performance and investment policies of NBU, and to provide recommendations for the Board of Trustees’ approval to ensure that investment activities are in compliance with the Texas Public Funds Investment Act and NBU’s Investment Policy and in furtherance of NBU’s guidelines and objectives. The Investment Committee meets once annually and as otherwise needed.

6. **Legislative Committee** – The Legislative Committee is responsible for (a) the development of comprehensive legislative strategies for NBU including determining which state or national legislative initiatives NBU would like to endorse or oppose; (b) working with the CEO and NBU staff on the effective and timely implementation of those strategies; and (c) developing NBU’s positions on various legislative initiatives, including by undertaking such research as may be necessary to support such positions. The Legislative Committee meets as needed.
7. **Records Management Committee** – The Records Management Committee is responsible for promoting sound records management practices through the development of a Records Management Policy for use by NBU staff, reviewing and proposing changes and improvements if needed to the Records Management Policy, and providing final approval for the destruction of records in accordance with approved records control schedules. The Records Management Committee meets once annually and as otherwise needed.
8. **Facilities Committee** – The Facilities Committee is responsible for evaluating options related to the evaluation of NBU’s existing facilities, and how, when, and where to expend future resources to meet current and future facility needs. The Facilities Committee meets as needed.
9. **Community Advisory Panel** – The Community Advisory Panel (CAP) is a special advisory group to the NBU Board of Trustees. The CAP consists of thirteen (13) members of the community nominated by the City and NBU and appointed by the NBU Board of Trustees. The CAP assists the NBU Board of Trustees by providing diverse views and feedback on topics of significance that will help shape the future of NBU and the community. The CAP meets as needed.
10. **Community Advisory Panel Board Committee** – The Community Advisory Panel Board Committee is responsible for providing structure and guidance to the CAP. The Board President and the mayor of the City of New Braunfels sit on this Board Committee, as NBU and the City of New Braunfels are responsible for nominating community members to the CAP. The Chair and Vice Chair of the CAP are also members of the Board Committee. The Community Advisory Panel Board Committee meets as needed.

POLICY TYPE: BOARD GOVERNANCE

BG #11

POLICY TITLE: ANNUAL PLANNING

To accomplish its job with a governance style consistent with Board policies, the Board will follow an annual agenda that reviews and implements the Strategic Goals and continually improves Board performance through Board education and enriched input and deliberation.

1. Because NBU operates on a fiscal year that begins on August 1, the Board will conduct its annual planning process and annual budget meetings during the first and second calendar quarters of each year.
 - a. To prepare for its annual budget meetings, the Board will provide direction during the first calendar quarter on the gathering of data and information needed.
 - b. The Board's annual planning process for the following fiscal year will occur in connection with the Board's annual retreat and annual budgeting meetings and must occur no later than the end of June of each calendar year.
2. Education of Board members on governance and related to the Strategic Goals (e.g. presentations by futurists, demographers, advocacy groups, staff, and so on) will be included as part of the annual planning process and will occur as needed and at a minimum at least once each fiscal year.

POLICY TYPE: BOARD GOVERNANCE

BG #12

POLICY TITLE: GOVERNANCE INVESTMENT

Because good governance benefits NBU and its customers, the Board will invest in its governance capacity and ability. The Board's investment will be facilitated by the Board President, with assistance from NBU staff, and will include: (a) orientation of new members on these Governance Policies and other Board policies established; (b) an annual Board discussion and review of any necessary process or policy improvements; and (c) annual continuing education of the Board's legal and ethical obligations.

1. Board skills, methods, and support must be sufficient to ensure governing with excellence.
 - a. New Board members will receive at least quarterly training arranged and monitored by NBU's Chief of Staff during their first year of service to assist in orienting them to NBU and their Board responsibilities and obligations.
 - b. Annual training and retraining will be used to maintain and increase existing Board member skills and understandings.
 - c. Outreach mechanisms may be used as needed to ensure the Board's ability to listen to diverse viewpoints and values.
 - d. A Board Member manual will be developed and maintained to assist Board members in their service to the Board.
 - e. New and existing Board members are strongly encouraged to attend ERCOT, American Public Power Association (APPA), American Water Works Association (AWWA), or other industry conferences, seminars, and workshops as part of their initial and continuing education.
2. Costs will be incurred prudently with due consideration for the value of development and maintenance of Board member qualifications.
 - a. Expenses for training, including attendance at industry conferences, seminars, and workshops, will be included in the annual budget.
 - b. Expenses for surveys, focus groups, opinion analyses, and meeting costs will be included in the annual budget.
3. The Board will establish its cost of governance budget for the next fiscal year during the annual budgeting process.
4. The Board will conduct an annual self-evaluation to determine Board and member compliance with the Board Governance and Board-Management Delegation Policies and

whether process or policy improvements are needed, with a more in-depth self-evaluation to be conducted every five (5) years. The Vice President will facilitate this process as described in Vice President's Role (BG#7).

New Braunfels Utilities

Governance Policies: Board Management Delegation

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #1

POLICY TITLE: GLOBAL POLICY ON BOARD DELEGATION

The Board's sole official connection to the operational organization, its achievements, and conduct will be through the chief executive officer (CEO).

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #2

POLICY TITLE: UNITY OF CONTROL

Only officially passed motions of the Board are binding on the CEO.

1. Decisions or instructions of individual Board members, officers, or committees are not binding on the CEO except in rare instances when the Board has specifically authorized such exercise of authority.
2. Individual Board members may communicate with NBU executive management staff on routine administrative matters, provided the Board President, the CEO, and NBU's Chief of Staff are included on or in any written communication.
3. Board member communications regarding the CEO's evaluation or the evaluation process should include the Vice President but need not include the CEO or NBU's Chief of Staff.
4. Any written communication on material NBU matters to the CEO or NBU's Chief of Staff from:
 - a. An individual Board member must include the Board President, unless the communication concerns the Board President, in which case the Vice President must be included.
 - b. The Board President must include the Vice President, unless the communication concerns the Vice President.
5. Individual Board members should refrain from making requests that require a material amount of staff time or funds or are disruptive. Such requests should be Board-authorized requests. The CEO should notify the individual Board member making the request and the Board President or Vice President, as appropriate (but not both), when such requests require, in the CEO's opinion, a material amount of staff time or funds or are disruptive.
6. If a Board member sends a customer request or concern to the CEO or NBU's Chief of Staff, the CEO or NBU's Chief of Staff will provide a response to the Board member indicating that the request or concern has been addressed, or if unable to address quickly, when the request or concern will be addressed.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #3

POLICY TITLE: ACCOUNTABILITY OF THE CEO

The CEO is the Board's only link to operational achievements and conduct. All authority and accountability of staff is considered the authority and accountability of the CEO. The CEO is therefore responsible for ensuring any NBU practice, activity, decision, or circumstance does not violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

1. The Board will not give instructions to staff who report directly or indirectly to the CEO.
2. The Board will not evaluate, either formally or informally, any staff other than the CEO.
3. The Board will consider the following when evaluating CEO job performance (Performance Factors):
 - a. Organizational performance in relation to the Strategic Goals;
 - b. Adherence to all applicable Governance Policies and other Board policies or directives;
 - c. Compliance with any written contractual agreement between the Board and the CEO;
 - d. Realization of Strategic Goals, annual Board priorities, and Board directives;
 - e. Identification of industry trends and emerging issues;
 - f. Maintenance of communication and transparency with the Board;
 - g. Satisfaction of any other specific requirements or expectations set by the Board;
and
 - h. Feedback through a self-evaluation from the CEO.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #4

POLICY TITLE: DELEGATION TO CEO

Through these Governance Policies based on the Carver model of policy governance, as well as other Board policies and directives decided from time to time, the Board defines for the CEO the Strategic Goals to be achieved and prescribes certain organizational situations and actions to be avoided. The CEO may employ any reasonable interpretation of these Governance Policies and other Board policies and directives.

1. The Board will develop Strategic Goals and other Board policies directing the CEO to achieve specified results in accordance with NBU's annual approved budget.
2. If the CEO uses any reasonable interpretation of these Governance Policies and other Board policies or directives, then the CEO is authorized to establish all further policies, make all decisions, take all actions, establish all practices and develop all activities. Such decisions of the CEO will have full force and effect as if decided by the Board.
3. Any Governance Policy or other Board policy or directive limiting the CEO's authority will describe those practices, activities, decisions, and circumstances that would be unacceptable to the Board even if they were to be effective. The Board, however, will never prescribe organizational operational methods delegated to the CEO and will avoid micromanagement of the CEO.
4. At any time, the Board may modify its Governance Policies and other Board policies and directives to redefine or realign the authority delegated to the CEO. The Board, however, may not make any retroactive modification and will recognize and support the decisions of the CEO previously authorized.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #5
POLICY TITLE: EVALUATING CEO PERFORMANCE

The CEO's job performance will be evaluated based on the Performance Factors outlined in the Accountability Policy (BMD #3) and documented through an annual formal evaluation process facilitated by the Vice President (*see* Vice President's Role, BG #7).

1. The CEO's job performance may be monitored informally, in any frequency, and by any method chosen by the Board.
2. The Board will acquire information on the CEO's job performance through one or more of following three methods:
 - a. Internal Report: CEO provides data, interpretations, evaluations and compliance status solely to the Board, whether verbal or written.
 - b. External Report: The Board selects or retains a disinterested third party to assess the CEO's job performance.
 - c. Direct Board Assessment: Designated Board member(s) assess the CEO's job performance.
3. In every case, the Board will evaluate (a) the reasonableness of the CEO's interpretation of the Performance Factors and (b) the data demonstrating the CEO's accomplishment of the Performance Factors. The applicable standard for determining the reasonableness of a CEO interpretation will be as a *reasonable and prudent CEO*, and the Board will avoid subjective, ad-hoc or arbitrary assessment criteria.
4. An evaluation of the CEO's job performance and compensation will be conducted at least annually following the conclusion of the fiscal year (preferably in August). The Board, however, can review and discuss the CEO's job performance and compensation at any other time, as and if necessary.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #6

POLICY TITLE: COMMUNICATION & SUPPORT TO THE BOARD

The Board requires the CEO to maintain communication and transparency and to inform and support the Board's Strategic Goals, Governance Policies, and any other Board policy or directive.

The CEO will not:

1. Neglect to submit data or information required by the Board according to its Evaluating CEO Performance policy in a timely, accurate, and understandable fashion.
2. Let the Board be unaware of any significant incidental information it requires, including anticipated adverse media coverage, threatened or pending lawsuits, and material external and internal changes.
3. Allow the Board to be unaware that, in the CEO's opinion, the Board is not in compliance with its Governance Policies, particularly in the case of Board behavior that is detrimental to the working relationship between the Board and CEO.
4. Allow the Board to be without the information needed to make informed decisions or to be unaware of relevant trends.
5. Allow the Board to be without a workable mechanism for official Board, officer, or committee communications.
6. Deal with the Board in a way that favors or privileges certain Board members over others, except when (a) fulfilling individual requests for information or (b) responding to officers or committees duly charged by the Board.
7. Allow the Board to be unaware of any actual or anticipated noncompliance with any other policy or directive of the Board.
8. Fail to present to the Board any item or action that requires by law or contract Board disclosure and approval.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #7

POLICY TITLE: EMERGENCY EXECUTIVE CEO SUCCESSION

To protect the Board and NBU from the sudden loss of a CEO, the Board will require the CEO to provide some viable mechanism for the operations of NBU to continue in the event of sudden loss of the CEO.

The CEO will not:

1. Fail, within a reasonable time of appointment or any executive staff changes, to identify and inform the Board of no fewer than two executive staff members who are, in the CEO's estimation, sufficiently familiar with the Board, NBU, and the CEO's job duties and responsibilities such that either staff member can assume the role of interim CEO with reasonable proficiency.
2. Allow travel mechanisms or methodologies that put the organization at risk of the sudden loss of these multiple key individuals.

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Appendix

New Braunfels Utilities

Governance Policies

PREFACE

In January 2010, the Board of Trustees (Board) for New Braunfels Utilities (NBU) established the Governance Policies under which it operates. In doing so, the Board chose to follow the Carver model of governance, which is a system for organizational governance that defines and guides the relationships between its board and chief executive through written policies. By focusing on the ends and not the means, the Carver model of policy governance enables a board to focus on the larger issues, delegate with clarity, and control management without micromanaging.

NBU's Governance Policies were revised in March 2016, May 2021, and June 2023. In October 2024, the Board revised these Governance Policies to align with its fiscal year 2025 strategic goals and make other adjustments deemed necessary.

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Governance Policies

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	SG #3	People & Culture
	SG #4	Infrastructure & Technology
	SG #5	Financial Excellence
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	BG #2	Governing Style
	BG #3	Board Job Description
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Appendix		Article 11 from City Charter
		Chapter 130, Article II from City Code of Ordinances

New Braunfels Utilities

Governance Policies: Strategic Goals

POLICY TYPE: STRATEGIC GOALS

SG #1

POLICY TITLE: GLOBAL POLICY ON STRATEGIC GOALS

At a minimum of every five years, the Board will review and establish Strategic Goals for NBU and determine how achievement of or adherence to those Strategic Goals should be measured. The Board then will review NBU’s progress periodically throughout each fiscal year (August 1 to July 31), evaluate NBU’s achievement of or adherence to those Strategic Goals at least annually each fiscal year, and confirm the continuing validity of each Strategic Goal. The Board maintains discretion to add, remove, or change any Strategic Goal or any achievement or adherence measurement set at any time.

POLICY TYPE: STRATEGIC GOALS

SG #2

POLICY TITLE: CUSTOMERS & COMMUNITY

The Board is committed to NBU providing a customer-first focus and committing to innovative solutions to improve the customer experience.

With respect to interactions with current or potential customers or the community at large, the CEO will not cause or allow conditions, procedures, or decisions that are unsafe, unsecure, untimely, unnecessarily intrusive, or in violation of any federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

The CEO will not:

1. Elicit information for which there is no business necessity.
2. Use methods of collecting, reviewing, transmitting, or storing consumer information that fails to reasonably protect against improper access.
3. Operate facilities without reasonably appropriate customer accessibility and security.
4. Operate without established policies providing customers a clear understanding of what to expect from the services NBU offers.
5. Withhold information about this policy or deny any customers who are aggrieved a right to seek review under this policy.
6. Project an image to customers or the community at large that creates a negative perception of NBU or jeopardizes NBU's status in the community.

The Board will review and measure NBU's progress towards achieving or adhering to its Customers & Community Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the Customers & Community Strategic Goal measure(s) set annually and may include, by way of example, an examination of the annual customer satisfaction survey, customer or community feedback received, and any other related information provided by the CEO, NBU customers, or the community at large. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #3

POLICY TITLE: PEOPLE & CULTURE

The Board is committed to NBU caring for its employees, building on its team-oriented culture, promoting ethical behavior, and preparing its team to meet the challenges ahead.

With respect to employment, compensation, and benefits of employees or contingent workers, the CEO will not cause or allow jeopardy to NBU's fiscal integrity or public image or conditions that violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

With respect to the retention and engagement of consultants or volunteers, the CEO will not cause or allow conditions that create an employment relationship or that violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

The CEO will not:

1. Change the CEO's own compensation without the Board's express approval.
2. Change the CEO's benefits, except as would be consistent with any benefits provided to all other employees.
3. Promise or imply permanent or guaranteed employment or a contract for tenure.
4. Establish compensation and benefits that deviate materially from the geographic or professional market for the skills employed.
5. Create any employment or other compensation or benefit-related obligations over a longer term than revenues can be reasonably projected to satisfy.
6. Enter into any employment agreement without the Board's express approval.

The Board will review and measure NBU's progress towards achieving or adhering to its People & Culture Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the People & Culture Strategic Goal measure(s) set annually and may include, by way of an example, an examination of employee participation in the annual engagement survey, employee feedback or recommendations received or implemented, and any other related information provided by its CEO or NBU employees. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #4

POLICY TITLE: INFRASTRUCTURE & TECHNOLOGY

The Board is committed to NBU maintaining reliable and resilient systems through responsible planning, asset management, and innovative technologies that align with the strategic direction of the organization.

The CEO will not allow NBU assets to be unprotected, inadequately maintained, or unnecessarily risked.

The CEO will not:

1. Unnecessarily expose NBU, its Board, or staff to claims of liability related to infrastructure and technology.
2. Unreasonably fail to protect property, information, or data files from loss, significant damage, or unauthorized access.
3. Unreasonably fail to address aging infrastructure, plan for additional growth, or evaluate the availability and viability of innovative or technological improvements.

The Board will review and measure NBU's progress towards achieving or adhering to its Infrastructure & Technology Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the Infrastructure & Technology Strategic Goal measure(s) set annually and may include, by way of example, an examination of NBU's SAIDI three-year rolling average, technological system reliability, infrastructure leakage index results, percentage of completion of capital improvement projects, compliance events, and any other related information provided by the CEO, NBU customers, or the community at large. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #5

POLICY TITLE: FINANCIAL EXCELLENCE

The Board is committed to NBU practicing sound financial management to be responsible stewards of public funds.

With respect to the actual, ongoing financial condition and activities of NBU, the CEO will not cause or allow the development of fiscal jeopardy or a material deviation of actual expenditures from the annual Board-approved budget or any approved Board expenditures.

The CEO will not:

1. Expend more funds than allocated by the Board for the current fiscal year without express Board approval.
2. Exceed the limits of NBU's Purchasing Policy.
3. Incur debt without appropriate authorization from the Board or City of New Braunfels.
4. Fail to settle liabilities in a timely manner.
5. Allow government-ordered or regulatory filings, fines, or payments to be overdue or inaccurately filed.
6. Acquire, encumber, or dispose of real estate other than for normal operating items, such as rights-of-way or easements, and in connection with Board-approved projects.
7. Invest or hold operating capital in insecure instruments, including uninsured checking accounts or noninterest-bearing accounts, except where necessary to facilitate operational transactions.

The CEO will not allow budgeting to:

1. Fail to include:
 - (a) credible projection of revenues and expenses,
 - (b) separation of capital and operational items,
 - (c) cash flow analysis, and
 - (d) disclosure of planning assumptions
2. Provide less for Board development than is set forth in the Governance Investment policy (BG #12)

The Board will review and measure NBU's progress towards achieving or adhering to its Financial Excellence Strategic Goal at least annually. NBU's progress will be determined based on the

specifics of the Financial Excellence Strategic Goal measure(s) set annually and may include, by way of an example, an examination of its annual cost per customer, its bond (or other recognized financial) rating, and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #6

POLICY TITLE: SAFETY & SECURITY

The Board is committed to NBU placing safety and security as the highest priorities for every employee and customer.

The CEO will not cause or allow conditions that create an unsafe or unsecure environment for NBU or its employees, contingent workers, consultants, volunteers, vendors, or customers.

The CEO will not unreasonably fail to address or create a plan for addressing:

1. Emergency situations;
2. At-fault or willful safety violations;
3. Old or outdated equipment or technology; and
4. Data- and cyber-security.

The Board will review and measure NBU's progress towards achieving or adhering to its Safety & Security Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the Safety & Security Strategic Goal measure(s) set annually and may include, by way of example, an examination of emergency response procedures, data- and cyber-security efforts, preventable equipment damage or vehicular damage incidents, workplace safety or security incidents (including at-fault safety violations), OSHA severity rate, security enhancements, and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

POLICY TYPE: STRATEGIC GOALS

SG #7

POLICY TITLE: STEWARDSHIP

The Board is committed to NBU preserving and protecting community resources through planning, innovation, collaboration, and education.

The CEO will not cause or allow conditions that:

1. Jeopardize or irresponsibly use or deplete NBU's environmental assets or the community's natural resources; or
2. Unreasonably fail to consider environmental conservation and sustainability when creating NBU policies and plans.

The Board will review and measure NBU's progress towards achieving or adhering to its Stewardship Strategic Goal at least annually. NBU's progress will be determined based on the specifics of the Stewardship Strategic Goal measure(s) set annually and may include, by way of example, an examination of the status and progress of any implemented strategies for sustainable resources and conservation initiatives (such as One Water) and any other related information provided by its CEO. The Board retains discretion to consider any information deemed applicable to this Strategic Goal.

New Braunfels Utilities

Governance Policies: Board Governance

POLICY TYPE: BOARD GOVERNANCE

BG #1

POLICY TITLE: GLOBAL POLICY ON GOVERNANCE PROCESS

The purpose of the Board is to:

1. Represent the interests of the City of New Braunfels and the community at large, keeping in mind the value of being a “municipally owned utility.”
2. Determine the benefits that NBU will provide, keeping a long term, strategic perspective.
3. Set and reevaluate the Strategic Goals as provided for in the Global Policy on Strategic Goals (SG #1).
4. Monitor NBU operations to ensure achievement of or adherence to the Strategic Goals.

POLICY TYPE: BOARD GOVERNANCE

BG #2

POLICY TITLE: GOVERNING STYLE

The Board will govern lawfully, observing the principles of its adopted governance model, the Carver model of policy governance, with an emphasis on:

- outward vision rather than an internal preoccupation,
 - encouragement of diversity in viewpoints,
 - strategic leadership more than administrative detail,
 - clear distinction of Board and CEO roles,
 - collective rather than individual decisions,
 - future rather than past or present, and
 - proactivity rather than reactivity.
1. The Board will cultivate a sense of group responsibility. The Board, not the staff, will be responsible for excellence in governing. The Board will allow no officer, individual member, or Board committee to hinder or be an excuse for not fulfilling its group responsibility.
 2. The Board will not use the expertise or position of individual members, including the mayor, as a substitute for the judgment of the Board. Expertise of individual members may be used to enhance the understanding of the Board as a whole.
 3. The Board will direct, control, and inspire the organization following the Carver model of policy governance by carefully establishing written policies reflecting the Board's values and perspectives on the strategic goals of the organization. The Board will be responsible for approving, retaining, and overseeing its written policies, with NBU staff assisting with development and implementation in compliance with any Board directives.
 4. The Board will monitor and discuss the Board's process and performance at least annually and more often if necessary and will prepare an annual fiscal year-end report on its activities and accomplishments to be publicly shared. In addition to the annual fiscal year-end report, the Board will conduct an annual self-evaluation that will include a comparison of Board activity and discipline to the Board Governance and Board-Management Delegation Policies.
 5. Although the Board can change its Governance Policies and any other Board policies at any time, it will scrupulously observe those currently in effect.

POLICY TYPE: BOARD GOVERNANCE

BG #3

POLICY TITLE: BOARD JOB DESCRIPTION

Specific job outputs of the Board, as the agent of the City of New Braunfels, are those that ensure appropriate NBU organizational performance.

Accordingly, the Board will provide:

1. Authoritative linkage between the NBU and the City of New Braunfels.
 - a. The Board or the CEO at the Board's direction will update the City of New Braunfels on the status of NBU once each fiscal year and when needed or requested.
 - b. The Board will inform the City of New Braunfels on Board member experience, diversity, and constitution when needed or requested.
 - c. The Board will respond to reasonable requests for information from the City of New Braunfels on a timely basis.
2. Written governing policies that realistically address the broadest level of all NBU decisions and situations, categorized as follows:
 - a. Strategic Goals: Establish the short- and long-term strategic direction of NBU, the method by which the Board will evaluate adherence to or achievement of its strategic direction, and any constraints on CEO authority in relation thereto.
 - b. Board Governance: Specifies how the Board conceives, implements, and monitors itself and its tasks.
 - c. Board-Management Delegation: Sets forth the authority delegated by the Board to the CEO, how the Board and CEO will communicate, and the means by which the CEO will be held accountable, monitored, and succeeded.
3. Assurance of successful organizational performance of NBU's Strategic Goals.

POLICY TYPE: BOARD GOVERNANCE

BG #4

POLICY TITLE: BOARD MEMBER CODE OF CONDUCT

The Board commits itself and its members to ethical, businesslike, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

1. Members must abide by any legal obligations or requirements contained in the City of New Braunfels Charter or Code of Ordinances, maintain loyalty to the City of New Braunfels, NBU, and its customers, and remain unconflicted by loyalties to NBU staff, other organizations, and any personal interests, including as a personal customer of NBU.
2. Members must conduct business in accordance with the Public Information and Open Meetings Acts.
 - a. Members will only conduct business in a posted meeting open to the public.
 - b. Members will use proper protocol when using email and other digital or electronic forms of communication. Email communications, telephone calls, text messages, and any other verbal or written correspondence that ultimately involve a quorum may constitute a meeting, even if the quorum is not physically present in the same location and the discussion does not take place at the same moment in time.
 - c. Members should direct communication through the CEO or NBU's Chief of Staff (copying the CEO) and should not use "reply all" when responding to communications sent to the Board on an informational basis.
 - d. Members may communicate directly with NBU's General Counsel when the subject matter dictates or necessitates direct communication and may do so without copying the CEO or NBU's Chief of Staff when appropriate.
3. Members must abide by the City of New Braunfels' Code of Ethics and avoid any conflict of interest with respect to their fiduciary responsibility.
 - a. There must be no self-dealing or business by members with NBU. Members will annually disclose their involvements with other organizations, vendors, or associations that may be perceived as being a conflict in accordance with Texas state law.
 - b. When the Board is to decide upon an issue about which a member has an unavoidable conflict of interest, that member will immediately disclose the conflict, withdraw without comment from the deliberations, and abstain from voting on that issue.

4. Members may not attempt to exercise individual authority over NBU or its staff.
 - a. Members' interaction with the CEO or NBU staff must recognize the lack of authority vested in individual Board members, except when expressly Board-authorized.
 - b. Members' interaction with public, press, or other entities must recognize the same limitation and the inability of any individual member to speak for the Board, except on explicitly stated Board decisions.
 - c. Except for participation in Board deliberation about whether the CEO has achieved any reasonable interpretation of Board policy, members will not express individual judgments of performance of the CEO or any NBU staff.
 - d. In furtherance of this objective, members must abide by any constraints on communications or activities provided elsewhere in these policies, including in the Board-Management Delegation policies.
5. Members will maintain the confidentiality appropriate for sensitive issues, including with respect to all Executive Session discussions.
6. Members must attend Board meetings and be properly prepared for Board deliberation.
7. Members may recommend or request an item for Board discussion by submitting the item to the Board President generally fourteen (14) days before the Board meeting, but in no event no later than seven (7) days before the Board meeting. If the timing of the items submitted is problematic, the CEO may visit with the Board President and the requesting Board Member to determine if an alternative meeting would be sufficient or scheduled.

POLICY TYPE: BOARD GOVERNANCE

BG #5

POLICY TITLE: BOARD MEMBER DISCIPLINE, RESIGNATION, & REMOVAL

The Board will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policy-making principles, respect of roles, adherence to Board policies, and ensuring continuance of governance capability.

1. Members who fail to abide by the Board’s Code of Conduct may be subject to censure or a recommendation of removal to the City of New Braunfels.
2. Censure is a formal and public condemnation by the Board of a member whose actions run counter to the Board’s Code of Conduct (BG#4). Censure of a Board member must be unanimous by the remaining Board members.
3. Only the City of New Braunfels can remove a Board member for adequate cause; however, the Board may recommend removal of a member with advanced written notice of at least thirty (30) days to the member and, when appropriate, an opportunity to correct the behavior or actions leading to the recommendation. Any recommendation of removal must be unanimous by the remaining Board members.

Any Board member, other than the mayor, who is continuously absent from all Board meetings for a period of four consecutive months will, unless granted a leave of absence by the unanimous vote of the remaining Board members, be considered to have vacated office.

Any Board member, other than the mayor, who is continuously absent without excuse from all Board meetings for three consecutive months will, unless granted a leave of absence by the unanimous vote of the remaining Board members, be subject to censure.

POLICY TYPE: BOARD GOVERNANCE

BG #6

POLICY TITLE: PRESIDENT'S ROLE

The chief governance officer (Board President or President), a specifically empowered member of the Board, assures the integrity of the Board's process, and secondarily represents the Board to outside parties.

1. The Board President will ensure that the Board's actions consistently comply with its own policies and rules and those legitimately imposed upon it from outside the organization, including, but not limited to, ensuring:
 - a. Meeting discussion content ordinarily addresses only those issues that, according to Board policy, clearly belong to the Board to decide or to monitor.
 - b. Deliberation is fair, open, and thorough, but also timely, orderly, pertinent, and courteous.
 - c. Information that is unnecessary for monitoring NBU performance or Board decisions is avoided or minimized and always noted as such.
2. The authority of the President consists of making decisions that fall within the topics covered by the Board Governance and Board-Management Delegation policies and any other Board policies established, with the exception of (a) personnel matters pertaining to the CEO or (b) where the Board specifically delegates portions of its authority to others. The President is authorized to use any reasonable interpretation of the provisions contained in those policies.
 - a. The President is empowered to conduct Board meetings with all the commonly accepted power of a presiding officer according to Roberts Rules of Order.
 - b. The President cannot enact policies or provide directives to the CEO without Board approval.
 - c. The President may represent the Board to outside parties in announcing Board-stated positions and in stating the President's decisions and interpretations within the areas delegated.
 - d. The President may delegate authority to another Board member but will remain accountable for its use.
 - e. For succession purposes, the President will maintain open dialogue and communication with the Board Vice President and will work with the Vice President to develop and implement any necessary officer transition plans.

- f. The President will collaborate with the Vice President to report the results of the annual Board self-evaluation required under the Governance Investment Policy (BG#12) and conducted by the Vice President under the Vice President's Role (BG#7).
- g. Throughout the year, the President will ensure the Board attends to consent agenda items as expeditiously as possible.

POLICY TYPE: BOARD GOVERNANCE

BG #7

POLICY TITLE: VICE PRESIDENT'S ROLE

The Vice President is an officer of the Board whose role is to assist the Board President and perform the Board President's responsibilities when the Board President is unavailable.

1. The Board or the Board President may delegate special assignments to the Vice President from time to time.
2. The Vice President will implement and oversee the CEO annual evaluation process. In doing so, the Vice President will:
 - a. Develop the evaluation mechanism and procedure to be used during the process;
 - b. Solicit and maintain the confidentiality of completed evaluations from individual Board members;
 - c. Compile, combine, and present Board member evaluation results to the Board as a whole;
 - d. Obtain a self-evaluation from the CEO to be presented to the Board as a whole;
 - e. Ensure the Board advises the CEO of its final evaluation results during an Executive Session and the results are maintained by NBU's General Counsel; and
 - f. Facilitate any CEO compensation discussions amongst the Board.
3. The Vice President will ensure an annual self-evaluation of the Board's performance, processes, and policies is conducted as referenced in Governing Style (BG#2) and as required under the Governance Investment policy (BG#12).
4. For succession purposes, the Vice President will maintain open dialogue and communication with the Board President and will work with the Board President to develop and implement any necessary officer transition plans.

POLICY TYPE: BOARD GOVERNANCE

BG #8

POLICY TITLE: BOARD SECRETARY'S ROLE

The CEO serves as the Board Secretary. The Board Secretary is an officer of the Board but not a member of the Board. The Board Secretary's role is to ensure the integrity of the Board's documents.

1. The Board Secretary will ensure all Board documents and filings are accurate and timely.
2. The Board Secretary will ensure Board policies are current and accurately reflect Board decisions.
3. The Board Secretary will ensure the Board minutes accurately reflect Board decisions and are maintained in accordance with state law, including the Public Information Act and any other record retention laws or requirements.

POLICY TYPE: BOARD GOVERNANCE

BG #9

POLICY TITLE: BOARD COMMITTEE PRINCIPLES

Board committees, when used, will be assigned to assist the entire Board but will not interfere with the authority delegated by the Board to the CEO.

1. Committees will be used sparingly and created as needed.
2. Committees will be appointed by the Board President, unless specially created by Board action.
3. Board committees will not advise or interfere with NBU staff. Committees will assist the Board by preparing policy alternatives and assuring organizational implications for Board deliberation. Typically, Board committees will not deal directly with current staff operations.
4. Board committees may not speak or act for the Board except when specifically authorized. Expectations and scope of authority will be expressly stated to avoid conflict with authority delegated to the CEO.
5. Board committees have no authority over NBU staff. The CEO works for the full Board and is not required to obtain approval of a Board committee before executive action.
6. Board committees will avoid over-identification with organizational parts rather than the whole. Therefore, a Board committee that drafts and recommends a particular policy should not monitor achievement or adherence; rather the entire Board retains responsibility and authority to monitor achievement or adherence.
7. This policy applies to any group formed by Board action, regardless of whether called a committee and whether the group includes Board members. It does not apply to committees formed under the authority of the CEO.

POLICY TYPE: BOARD GOVERNANCE BG #10
 POLICY TITLE: BOARD COMMITTEES & NBU-SUPPORTED BOARDS

A committee is a Board committee only if its existence and charge come from the Board, regardless of whether Board members sit on the committee. The only Board approved committees are those set forth in this policy, and it remains within the Board’s discretion to appoint other standing and ad hoc committees.

Unless otherwise stated, a committee ceases to exist when its task is complete. Timely reporting to the Board will be by submission of a verbal or written report, following each meeting, with appropriate comment by the committee.

An NBU-supported board is a board expressly created by the Board to represent a specified NBU-supported operation. An NBU-supported board is comprised of Board members appointed by the Board in compliance with its applicable bylaws. Timely reporting to the Board will be reported on the Board’s agenda as Items from Staff.

Standing Committees:

1. **Audit Committee** – The Audit Committee is responsible for the oversight of financial reporting, internal controls, as well as the internal and external auditors’ activities. The Audit Committee meets once annually and as otherwise needed.
2. **Budget Committee** – The Budget Committee is responsible for the oversight of development of the budget to ensure shared understanding of the Financial Excellence Strategic Goal and its incorporation into the NBU budget. The Budget Committee meets once annually and as otherwise needed.
3. **Governance Committee** – The Governance Committee is responsible for reviewing and making recommendations to the Board on its governance policies, practices, and procedures. The Governance Committee consists at a minimum of the Board President and Vice President. The Governance Committee meets once annually and as otherwise needed.
4. **Headwaters at the Comal Board (Headwaters)** – Headwaters is an NBU-supported board responsible for site development and fundraising for NBU’s conservation legacy located at 333 Klingemann. Headwaters meets pursuant to its separately established bylaws.
5. **Investment Committee** – The Investment Committee is responsible for the oversight of NBU’s investment assets, the review of the portfolio performance and investment policies of NBU, and to provide recommendations for the Board of Trustees’ approval to ensure that investment activities are in compliance with the Texas Public Funds Investment Act and NBU’s Investment Policy and in furtherance of NBU’s guidelines and objectives. The Investment Committee meets once annually and as otherwise needed.

6. **Legislative Committee** – The Legislative Committee is responsible for (a) the development of comprehensive legislative strategies for NBU including determining which state or national legislative initiatives NBU would like to endorse or oppose; (b) working with the CEO and NBU staff on the effective and timely implementation of those strategies; and (c) developing NBU’s positions on various legislative initiatives, including by undertaking such research as may be necessary to support such positions. The Legislative Committee meets as needed.
7. **Records Management Committee** – The Records Management Committee is responsible for promoting sound records management practices through the development of a Records Management Policy for use by NBU staff, reviewing and proposing changes and improvements if needed to the Records Management Policy, and providing final approval for the destruction of records in accordance with approved records control schedules. The Records Management Committee meets once annually and as otherwise needed.
8. **Facilities Committee** – The Facilities Committee is responsible for evaluating options related to the evaluation of NBU’s existing facilities, and how, when, and where to expend future resources to meet current and future facility needs. The Facilities Committee meets as needed.
9. **Community Advisory Panel** – The Community Advisory Panel (CAP) is a special advisory group to the NBU Board of Trustees. The CAP consists of thirteen (13) members of the community nominated by the City and NBU and appointed by the NBU Board of Trustees. The CAP assists the NBU Board of Trustees by providing diverse views and feedback on topics of significance that will help shape the future of NBU and the community. The CAP meets as needed.
10. **Community Advisory Panel Board Committee** – The Community Advisory Panel Board Committee is responsible for providing structure and guidance to the CAP. The Board President and the mayor of the City of New Braunfels sit on this Board Committee, as NBU and the City of New Braunfels are responsible for nominating community members to the CAP. The Chair and Vice Chair of the CAP are also members of the Board Committee. The Community Advisory Panel Board Committee meets as needed.

POLICY TYPE: BOARD GOVERNANCE

BG #11

POLICY TITLE: ANNUAL PLANNING

To accomplish its job with a governance style consistent with Board policies, the Board will follow an annual agenda that reviews and implements the Strategic Goals and continually improves Board performance through Board education and enriched input and deliberation.

1. Because NBU operates on a fiscal year that begins on August 1, the Board will conduct its annual planning process and annual budget meetings during the first and second calendar quarters of each year.
 - a. To prepare for its annual budget meetings, the Board will provide direction during the first calendar quarter on the gathering of data and information needed.
 - b. The Board's annual planning process for the following fiscal year will occur in connection with the Board's annual retreat and annual budgeting meetings and must occur no later than the end of June of each calendar year.
2. Education of Board members on governance and related to the Strategic Goals (e.g. presentations by futurists, demographers, advocacy groups, staff, and so on) will be included as part of the annual planning process and will occur as needed and at a minimum at least once each fiscal year.

POLICY TYPE: BOARD GOVERNANCE

BG #12

POLICY TITLE: GOVERNANCE INVESTMENT

Because good governance benefits NBU and its customers, the Board will invest in its governance capacity and ability. The Board's investment will be facilitated by the Board President, with assistance from NBU staff, and will include: (a) orientation of new members on these Governance Policies and other Board policies established; (b) an annual Board discussion and review of any necessary process or policy improvements; and (c) annual continuing education of the Board's legal and ethical obligations.

1. Board skills, methods, and support must be sufficient to ensure governing with excellence.
 - a. New Board members will receive at least quarterly training arranged and monitored by NBU's Chief of Staff during their first year of service to assist in orienting them to NBU and their Board responsibilities and obligations.
 - b. Annual training and retraining will be used to maintain and increase existing Board member skills and understandings.
 - c. Outreach mechanisms may be used as needed to ensure the Board's ability to listen to diverse viewpoints and values.
 - d. A Board Member manual will be developed and maintained to assist Board members in their service to the Board.
 - e. New and existing Board members are strongly encouraged to attend ERCOT, American Public Power Association (APPA), American Water Works Association (AWWA), or other industry conferences, seminars, and workshops as part of their initial and continuing education.
2. Costs will be incurred prudently with due consideration for the value of development and maintenance of Board member qualifications.
 - a. Expenses for training, including attendance at industry conferences, seminars, and workshops, will be included in the annual budget.
 - b. Expenses for surveys, focus groups, opinion analyses, and meeting costs will be included in the annual budget.
3. The Board will establish its cost of governance budget for the next fiscal year during the annual budgeting process.
4. The Board will conduct an annual self-evaluation to determine Board and member compliance with the Board Governance and Board-Management Delegation Policies and

whether process or policy improvements are needed, with a more in-depth self-evaluation to be conducted every five (5) years. The Vice President will facilitate this process as described in Vice President's Role (BG#7).

New Braunfels Utilities

Governance Policies: Board Management Delegation

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #1

POLICY TITLE: GLOBAL POLICY ON BOARD DELEGATION

The Board's sole official connection to the operational organization, its achievements, and conduct will be through the chief executive officer (CEO).

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #2

POLICY TITLE: UNITY OF CONTROL

Only officially passed motions of the Board are binding on the CEO.

1. Decisions or instructions of individual Board members, officers, or committees are not binding on the CEO except in rare instances when the Board has specifically authorized such exercise of authority.
2. Individual Board members may communicate with NBU executive management staff on routine administrative matters, provided the Board President, the CEO, and NBU's Chief of Staff are included on or in any written communication.
3. Board member communications regarding the CEO's evaluation or the evaluation process should include the Vice President but need not include the CEO or NBU's Chief of Staff.
4. Any written communication on material NBU matters to the CEO or NBU's Chief of Staff from:
 - a. An individual Board member must include the Board President, unless the communication concerns the Board President, in which case the Vice President must be included.
 - b. The Board President must include the Vice President, unless the communication concerns the Vice President.
5. Individual Board members should refrain from making requests that require a material amount of staff time or funds or are disruptive. Such requests should be Board-authorized requests. The CEO should notify the individual Board member making the request and the Board President or Vice President, as appropriate (but not both), when such requests require, in the CEO's opinion, a material amount of staff time or funds or are disruptive.
6. If a Board member sends a customer request or concern to the CEO or NBU's Chief of Staff, the CEO or NBU's Chief of Staff will provide a response to the Board member indicating that the request or concern has been addressed, or if unable to address quickly, when the request or concern will be addressed.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #3

POLICY TITLE: ACCOUNTABILITY OF THE CEO

The CEO is the Board's only link to operational achievements and conduct. All authority and accountability of staff is considered the authority and accountability of the CEO. The CEO is therefore responsible for ensuring any NBU practice, activity, decision, or circumstance does not violate federal, state, or local law, NBU policies, or the City of New Braunfels Charter or Code of Ordinances.

1. The Board will not give instructions to staff who report directly or indirectly to the CEO.
2. The Board will not evaluate, either formally or informally, any staff other than the CEO.
3. The Board will consider the following when evaluating CEO job performance (Performance Factors):
 - a. Organizational performance in relation to the Strategic Goals;
 - b. Adherence to all applicable Governance Policies and other Board policies or directives;
 - c. Compliance with any written contractual agreement between the Board and the CEO;
 - d. Realization of Strategic Goals, annual Board priorities, and Board directives;
 - e. Identification of industry trends and emerging issues;
 - f. Maintenance of communication and transparency with the Board;
 - g. Satisfaction of any other specific requirements or expectations set by the Board;
and
 - h. Feedback through a self-evaluation from the CEO.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #4

POLICY TITLE: DELEGATION TO CEO

Through these Governance Policies based on the Carver model of policy governance, as well as other Board policies and directives decided from time to time, the Board defines for the CEO the Strategic Goals to be achieved and prescribes certain organizational situations and actions to be avoided. The CEO may employ any reasonable interpretation of these Governance Policies and other Board policies and directives.

1. The Board will develop Strategic Goals and other Board policies directing the CEO to achieve specified results in accordance with NBU's annual approved budget.
2. If the CEO uses any reasonable interpretation of these Governance Policies and other Board policies or directives, then the CEO is authorized to establish all further policies, make all decisions, take all actions, establish all practices and develop all activities. Such decisions of the CEO will have full force and effect as if decided by the Board.
3. Any Governance Policy or other Board policy or directive limiting the CEO's authority will describe those practices, activities, decisions, and circumstances that would be unacceptable to the Board even if they were to be effective. The Board, however, will never prescribe organizational operational methods delegated to the CEO and will avoid micromanagement of the CEO.
4. At any time, the Board may modify its Governance Policies and other Board policies and directives to redefine or realign the authority delegated to the CEO. The Board, however, may not make any retroactive modification and will recognize and support the decisions of the CEO previously authorized.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #5

POLICY TITLE: EVALUATING CEO PERFORMANCE

The CEO's job performance will be evaluated based on the Performance Factors outlined in the Accountability Policy (BMD #3) and documented through an annual formal evaluation process facilitated by the Vice President (*see* Vice President's Role, BG #7).

1. The CEO's job performance may be monitored informally, in any frequency, and by any method chosen by the Board.
2. The Board will acquire information on the CEO's job performance through one or more of following three methods:
 - a. Internal Report: CEO provides data, interpretations, evaluations and compliance status solely to the Board, whether verbal or written.
 - b. External Report: The Board selects or retains a disinterested third party to assess the CEO's job performance.
 - c. Direct Board Assessment: Designated Board member(s) assess the CEO's job performance.
3. In every case, the Board will evaluate (a) the reasonableness of the CEO's interpretation of the Performance Factors and (b) the data demonstrating the CEO's accomplishment of the Performance Factors. The applicable standard for determining the reasonableness of a CEO interpretation will be as a *reasonable and prudent CEO*, and the Board will avoid subjective, ad-hoc or arbitrary assessment criteria.
4. An evaluation of the CEO's job performance and compensation will be conducted at least annually following the conclusion of the fiscal year (preferably in August). The Board, however, can review and discuss the CEO's job performance and compensation at any other time, as and if necessary.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #6

POLICY TITLE: COMMUNICATION & SUPPORT TO THE BOARD

The Board requires the CEO to maintain communication and transparency and to inform and support the Board's Strategic Goals, Governance Policies, and any other Board policy or directive.

The CEO will not:

1. Neglect to submit data or information required by the Board according to its Evaluating CEO Performance policy in a timely, accurate, and understandable fashion.
2. Let the Board be unaware of any significant incidental information it requires, including anticipated adverse media coverage, threatened or pending lawsuits, and material external and internal changes.
3. Allow the Board to be unaware that, in the CEO's opinion, the Board is not in compliance with its Governance Policies, particularly in the case of Board behavior that is detrimental to the working relationship between the Board and CEO.
4. Allow the Board to be without the information needed to make informed decisions or to be unaware of relevant trends.
5. Allow the Board to be without a workable mechanism for official Board, officer, or committee communications.
6. Deal with the Board in a way that favors or privileges certain Board members over others, except when (a) fulfilling individual requests for information or (b) responding to officers or committees duly charged by the Board.
7. Allow the Board to be unaware of any actual or anticipated noncompliance with any other policy or directive of the Board.
8. Fail to present to the Board any item or action that requires by law or contract Board disclosure and approval.

POLICY TYPE: BOARD-MANAGEMENT DELEGATION BMD #7

POLICY TITLE: EMERGENCY EXECUTIVE CEO SUCCESSION

To protect the Board and NBU from the sudden loss of a CEO, the Board will require the CEO to provide some viable mechanism for the operations of NBU to continue in the event of sudden loss of the CEO.

The CEO will not:

1. Fail, within a reasonable time of appointment or any executive staff changes, to identify and inform the Board of no fewer than two executive staff members who are, in the CEO's estimation, sufficiently familiar with the Board, NBU, and the CEO's job duties and responsibilities such that either staff member can assume the role of interim CEO with reasonable proficiency.
2. Allow travel mechanisms or methodologies that put the organization at risk of the sudden loss of these multiple key individuals.

New Braunfels Utilities

Appendix

ARTICLE XI. FRANCHISE AND PUBLIC UTILITIES¹

Sec. 11.01. Powers of the City.

In addition to the City's power to buy, construct, lease, maintain, operate, and regulate public utilities and to manufacture, distribute, and sell the output of such utility operations, the city shall have further powers as may now or hereafter be granted under the constitution and laws of the State of Texas.

Sec. 11.02. Franchise, power of council.

The City Council shall have power by ordinance to grant, amend, renew and extend, all franchise of all public utilities of every character operating within the City of New Braunfels. All ordinances granting, amending, renewing, or extending franchises for public utilities shall be read at two (2) separate regular meetings of the City Council, and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take effect until thirty (30) days after its final passage; and pending such time, the full text of such ordinance shall be published once each week for four (4) consecutive weeks in a newspaper in the City of New Braunfels, and the expense of such publication shall be born [borne] by the proponent of the franchise. No public utility franchise shall be granted for a term of more than twenty (20) years nor be transferable except with the approval of the City Council expressed by ordinance.

Sec. 11.03. Franchise value not to be allowed.

No value shall be assigned to any franchise granted by the City of New Braunfels under this Charter in fixing reasonable rates and charges for utility service within the City and in determining the just compensation to be paid by the City for public utility property which the City may acquire by condemnation or otherwise.

Sec. 11.04. Right of regulation.

All grants, removals, extensions, or amendments of public utility franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the City Council of the City of New Braunfels:

- (a) To repeal the same ordinance at any time upon the failure of the grantee to comply with any provision of the ordinance, the franchise, the Charter of the City of New Braunfels, any applicable statute of the State of Texas or the rule of any applicable governmental body,
- (b) To require proper and adequate extension of plant and service, and the maintenance of the plant and fixtures at the highest reasonable standard of efficiency,
- (c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates,
- (d) At any time to examine and audit the accounts and other records of any such utility and to require annual and other reports, including reports on operations within the City of New Braunfels; and shall have the power to prescribe the accounts and accounting system to be used by a public utility,

¹Code references—Cable communications, ch. 22; utilities, ch. 130.

- (e) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the safety, welfare, and accommodation of the public,
- (f) To require such compensation and rental as may be permitted by the laws of the State of Texas,
- (g) To require a utility to repair at its expense public property, streets, and ways which are destroyed or damaged in the process of laying or maintaining their lines.

Sec. 11.05. Grant not to be exclusive.

No grant or franchise to construct, maintain or operate a public utility and/or renewal or extension of such grant shall be exclusive.

Sec. 11.06. Consent of property owners.

The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance or operation of any public utility, but nothing in this Charter or in any franchise granted thereunder shall ever be construed to deprive any such property owner of any right of action for damage or injury to his property as now or hereafter provided by law.

Sec. 11.07. Extensions.

All extensions of public utilities within the City limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter and in any original grant hereafter made. The right to use and maintain any extension shall terminate with the original grant and shall be terminable as provided in Section 11.04 of this Charter. In case of an extension of a public utility operated under a franchise hereafter granted, such right shall be terminable at the same time and under the same conditions as the original grant.

Sec. 11.08. Other conditions.

All franchises heretofore granted are recognized as contracts between the City of New Braunfels and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the City of New Braunfels to exercise the right to eminent domain in the acquisition of utility property is in all things reserved, and except the general power of the City heretofore existing and herein provided for, to regulate the rates and services of a grantee which shall include the right to require proper and adequate extension of plant and service and in the maintenance of the plant and fixtures at the highest reasonable standard of efficiency. Every public utility franchise hereafter granted shall be held subject to all the terms and conditions contained in the various sections of this article whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the City Council or voters of the City in imposing terms and conditions as may be reasonable in connection with any franchise grant.

Charter cross reference—Eminent domain generally, § 2.03.

Sec. 11.09. Public utilities board.

So far as not inconsistent with the terms and provisions of any existing encumbrance, or the general laws of the State of Texas, the City Council shall have the power and may at any time create by ordinance to such effect, a public utilities board, for the purpose of managing, controlling, and operating any or all of any such system or systems or properties at any time acquired or owned or held by said City, and which shall be known as the public utilities board of said City, and consist of five (5) freeholders of said City, one of whom shall be the mayor of said

City, and the compensation of the members of such board, their terms of office, the powers and duties of such board and the members thereof, the manner of exercising same, the appointment or election of their successors, and all matters pertaining to their organization and duties, shall be as prescribed by the City Council in the ordinance creating such board; all as the City Council may deem best; and such City Council may thereafter at any time by ordinance to such effect, amend, modify, or change the terms and provisions of any such ordinance creating any such board, and may abolish such board or modify or change the duties of such board or of the members thereof, all as the City Council may deem best.

Sec. 11.10. Accounts of municipally owned utilities.

Accounts shall be kept for each public utility owned or operated by the City, in such manner as to show the true and complete financial results of such City ownership and operation, including all assets and all liabilities, appropriately subdivided by classes, depreciation reserve, other reserves and surplus, also revenues, operating expenses including depreciation, interest payments, rental, and other disposition of annual income. The accounts shall show actual capital cost to the City of each public utility owned, also the costs of all extensions, additions, and improvements and the source of funds expended for such capital purposes. They shall show as nearly as possible the cost of any service furnished to or rendered by any such utility to any City government department. The City Council shall cause an annual audit report to be made by a Certified Public Accountant and shall publish a summary of such report showing the financial results of such City ownership and operation, giving the information specified in this section and such other data as the City Council shall deem expedient.

Sec. 11.11. Sales of electricity, water and sewer services.

- (a) The City Council shall have the power and authority to sell and distribute electricity and water and to sell and provide for sewer services and any other utilities to any person, firm or corporation outside the limits of the City of New Braunfels, and to permit them to connect with said system under contract with the City, under such terms and conditions as may appear to be for the best interests of the City.
- (b) The City Council shall have the power and authority to prescribe the kind of materials used within or beyond the limits of the City of New Braunfels where it furnishes the service, and to inspect the same and require them to be kept in good order and condition at all times and to make such rules and regulations as shall be necessary and proper, and prescribe penalties for noncompliance with same.

Sec. 11.12. Regulation of rates and service.

The City Council shall have full power after notice and hearing to regulate by ordinance the rates, charges and fares of every public utility franchise holder operating in the city, provided that no such ordinance shall be passed as an emergency measure. Any franchise holder requesting an increase in its rate, charges, or fares shall have, at the hearing on such request, the burden of establishing by clear and convincing evidence the value of its investments and the amount and character of its expenses and revenues. No franchise holder shall institute any legal action to contest any rate, charge, or fare fixed by the City Council until such franchise holder has filed a motion for rehearing with the City Council specifically setting out each ground of its complaint against the rate, charge or fare fixed by the City Council, and until the City Council shall have acted upon such motion. The City of New Braunfels shall [have the] power to employ at the expense of the grantee, expert assistance and advice in determining a reasonable rate and equitable profit to the grantee.

ARTICLE II. BOARD OF TRUSTEES¹

Sec. 130-26. Composition and term of office.

- (a) Pursuant to authority contained in V.T.C.A., Government Code, § 1502.070, and by the Charter of the city, the complete management and control of the city's waterworks, sanitary sewer and electric light systems shall be through a board of trustees, to consist of five citizens, one of whom shall be the mayor, permanently residing in New Braunfels, Comal County, Texas, to be known as the board of trustees of the New Braunfels Waterworks, Sanitary Sewer and Electric Light Systems, and referred to as the board of trustees, New Braunfels Utilities, in which name such board of trustees shall act and transact business, and referred to in this chapter as the "board of trustees" or "board."
- (b) All members of the board of trustees, except the mayor, shall be appointed by the city council to serve for five-year terms of office; with such term of office to commence on December 1; provided that vacancies in office for any reason other than the expiration of a trustee's term of office shall be filled only for the unexpired term of the office vacant.
- (c) Any member of the board of trustees whose term of office has expired shall continue to serve as a member of the board until their successor in office has been appointed. Appointments to the board of trustees resulting from the expiration of a member's term of office shall be made by the city council in November each year in which the term of office to be filled shall expire, or as soon as possible thereafter. All vacancies in membership on the board of trustees, other than the mayor, whether occasioned by failure or refusal of any person named to such board to accept appointment, or by expiration of the term of office or otherwise, shall be filled by the majority vote of the city council. No person who is related within the second degree of consanguinity or affinity to any member of the city council shall be eligible to membership on the board. No person who is employed by or serves as a board member for a utility, a governmental body other than the city council, or an agency that regulates NBU shall be eligible to serve on the NBU board of trustees. The term "employed" includes part-time and full-time employees, as well as someone who serves under contract as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the utility.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02; Ord. No. 2019-44, § 2, 7-22-19; Ord. No. 2023-87, § 1, 12-11-23)

Sec. 130-27. Organization and authority.

The members of the board of trustees shall continue to organize their body by the election of one of the board members as president and another as vice-president. The board of trustees shall also appoint a secretary who may or may not be a member of the board, as the board may elect. The board of trustees may make such resolutions and bylaws for the orderly handling of its affairs and the governing of its own procedure, and shall thereafter manage and operate the systems with the same freedom and in the same manner as is ordinarily enjoyed and followed by the board or directors of a private corporation operating properties of a similar nature; provided, however, that nothing in this section shall be construed to take away from the city council the exercise of all duties imposed upon such governing body under the provisions of the other sections of this article and/or the Charter of the city. A majority of the trustees shall constitute a quorum for the transaction of business at any

¹Cross reference(s)—Administration, ch. 2

meeting. Any member of the board of trustees, other than the mayor, who shall be continuously absent from all meetings of the board for a period of four consecutive months shall, unless granted a leave of absence by the unanimous vote of the remaining members of the board, be considered to have vacated their office. Any member of the board of trustees, other than the mayor, may be removed by action of the city council for adequate cause.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-28. Insurance.

The board of trustees shall obtain and keep continuously in force a fidelity and indemnity bond of the so-called "blanket" type, covering both members of the board of trustees and any employees who are charged with the handling of any funds, securities and/or materials owned by NBU, written by a solvent and recognized indemnity company and covering such members, officers and employees in an amount of not less than \$5,000.00 per person, the premiums for such bonds to be paid out of the waterworks, sanitary sewer and electric light systems funds as part of the operating expenses of such systems.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-29. Employment of general manager, chief executive officer (CEO) and attorney.

The board of trustees shall appoint a CEO of the systems and an attorney or attorneys. The CEO shall appoint all employees. No contracts of tenure shall be given to any employee.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-30. Compensation of members; exception.

The members of the board of trustees, excluding the mayor, shall receive an annual compensation of not less than \$1,200.00, and such compensation may be increased from time to time by the city council as it is deemed advisable, subject to the limitations set out in the Charter of the city. A member of the board of trustees may waive receipt of this compensation by providing written notice of such waiver to the CEO. If a member of the board of trustees chooses to waive his or her annual compensation, the member may revoke the waiver and reinstate the member's annual compensation at any time by providing written notice of such reinstatement to the CEO. After revocation of the waiver, a member is entitled to a prorated amount of the compensation for the remainder of the fiscal year.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02; Ord. No. 2021-48, § 3, 6-28-21)

Sec. 130-31. Duties.

Subject to the provisions and restrictions contained in this article, and as set forth in bond ordinances, which can only be issued by the city, and the provisions of the City Charter, all of the provisions and covenants of which shall be binding upon the board of trustees in like manner as they would have been binding on the city council had operation of the systems been retained by the city council, the board of trustees shall have complete authority and control of the management and operation of the waterworks, sanitary sewer and electric light systems; and among the powers that may be exercised by the board of trustees, but not limited thereto, the same are hereby enumerated for greater certainty:

- (1) To take, have and exercise exclusive possession and control of such waterworks, sanitary sewer and electric light systems, and all additions thereto, and to collect, and enforce the collection of, all funds and revenues that may be or become owing or that may arise out of the operation of such systems,

and to disburse the same in accordance with the provisions of this article, and in the manner provided by V.T.C.A., Government Code, §§ 1502.070 and 1502.071;

- (2) To maintain, improve, enlarge and extend such waterworks, sanitary sewer and electric light systems;
- (3) To fix all rates for all services to be furnished by such systems, with the power to alter such rates at any time, subject to approval of the city council, as set out in section 11.12 of the charter;
- (4) To employ and pay the compensation of a CEO of the systems, and attorneys, engineers and other professional or technical aids as the board of trustees may deem necessary in the proper conduct of its business;
- (5) To adopt, alter, amend and enforce all such rules and regulations governing the conduct of the business of such systems as the board of trustees may deem necessary or proper; and
- (6) To do any and all things necessary in reference to the installing and maintaining of a complete system of records and accounts pertaining to such systems and to make the monies available for the payment of such revenue bonds in the manner provided by V.T.C.A., Government Code, § 1502.057.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-32. Liability of members.

- (a) The members of the board of trustees, either singly or collectively, shall not be personally liable for any act or omission not willfully fraudulent or mala fide on their part. If any act or omission, willfully fraudulent or mala fide on the part of any employee, is investigated by the board of trustees, a report of such investigation shall be immediately provided to the city council by the mayor.
- (b) Complying with the city Charter, any member of the board of trustees who has a substantial financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the board or in the sale of any land, material, supplies or services to the board or to a contractor supplying the board, shall make known that interest to the board of trustees and refrain from voting upon or otherwise participating in their capacity as a board member in the making of such sale or in the making or performance of such contract. Any board member who conceals such substantial financial interest or violates the requirements of this subsection shall be guilty of malfeasance in office or position and shall forfeit their office or position. Violation of this subsection with the knowledge express or implied of the person or corporation contracting with or making sale to the board of trustees shall render the contract or sale voidable by the board. Where ownership or stock in a corporation is involved, such stock ownership in an amount in excess of one percent of the stock of such corporation shall constitute substantial interest.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-33. Fiscal year; creating special funds; use of surplus funds.

The systems shall be operated on the basis of a fiscal year commencing on August 1 of each year and ending on July 31 of the following year, and the city covenants and agrees that as received, all revenues and income of every nature derived from the operation of its waterworks, sanitary sewer and electric light systems shall be deposited from day to day into accounts designated as utility system funds, kept separate and apart from all other funds or accounts, and such system funds shall be pledged, appropriated and used for the following purposes, and in the order of precedence shown, all in accordance with the laws of the state, the ordinances of the city and all current and future utility system revenue bond ordinances, as follows:

- (1) *First.* Payment of the necessary and reasonable expense of operating and maintaining the systems, including salaries, labor, materials, interest, repairs and extensions necessary to render efficient

service. Repairs and extensions referred to in this section shall include only such as are found by the board of trustees to be necessary to keep the systems in operation and render efficient service, or necessary to remedy some physical defect which would otherwise impair the security of any bonds authorized and issued.

- (2) *Second.* Payment to those funds required by bond ordinances previously adopted and as may be adopted in the future.
- (3) *Third.* All revenues of the systems remaining after the above requirements of this section have been satisfied (including any increased payments into the aforesaid interest and sinking fund, reserve fund and contingencies fund, as may be necessary by reason of the issuance of additional parity bonds in the future under the provisions of this section) and after all deficiencies existing in such requirements have been remedied, may be used either for retiring in advance of maturity bonds issued hereunder, previously issued bonds, or additional bonds issued on a parity therewith according to the provisions made for their prior redemption, or may be used to purchase bonds on the open market at not exceeding the market value thereof. All bonds so paid, redeemed, or purchased shall be canceled and shall not be reissued. It is further provided that all revenues of the systems remaining at the close of any fiscal year, after the requirements of the bonds herein authorized, the previously issued bonds, or additional parity bonds hereafter legally authorized have been completely satisfied in accordance with the provisions of the ordinances authorizing such bonds, may be transferred to the city's general fund as permitted by V.T.C.A., Government Code, § 1502.059.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-34. Investigation by city council.

As provided in the city Charter, the city council shall have power to inquire into the conduct of the board of trustees, NBU, or any office, department, agency, officer or employee of the board of trustees, and to make investigations as to the affairs of the board, and for that purpose may subpoena witnesses, administer oaths and compel the production of books, papers or other evidence as ordered under the provision of this section. Any violation of this article shall constitute a misdemeanor and shall be punishable by a fine as provided in section 3.12 of the city Charter and/or cancellation of a faithful performance bond.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Secs. 130-35—130-55. Reserved.

Annual Board Self-Evaluation

- FY2024

- October 31, 2024



Board Annual Self-Evaluation

Category	FY2023 Weighted Average	FY2024 Weighted Average
Board Information: Are you receiving clear and concise information prior to Board meetings that helps you sufficiently understand and evaluate Board Agenda items?	2.9	3
Board Information: Is the information provided prior to and during Board meetings sufficient to enable you to make sound decisions?	3.2	3
Board Composition: Does the Board have the right mix of characteristics, experiences, and skills to serve NBU and its constituents?	3	3.6
Board Accountability: Is the Board abiding by its established Governance Policies?	3.6	3.6

Mission

Strengthening our community by providing resilient essential services



Vision

Be a trusted community partner dedicated to excellence in service



Core Values

Safety, Team, Integrity, Culture, and Stewardship



Board Annual Self-Evaluation

Category	FY2023 Weighted Average	FY2024 Weighted Average
Board Accountability: Do all Board members know and understand NBU’s values, mission, and strategic plan and reflect this understanding when addressing key issues?	3.2	3.2
Board Accountability: Do all Board members spend sufficient time learning about NBU’s business and understand it well enough to provide critical oversight?	2.8	2.6
Standards of Conduct: Do all Board members actively contribute during Board meetings and when making decisions for NBU?	3	3.6
Standards of Conduct: Do all Board members place NBU’s interests above their own personal interests?	3.8	3.4

Common Responses to Evaluation Questions

- **The Board collectively spends about 100 hours per month on NBU activities**
- **Greatest Strength: Diversity of skill sets and dedication**
- **Greatest Weakness: Tenure of board members**
- **Areas to contribute and improve upon: Learning more about the utility business, training and education**
- **Needed by NBU staff or other Board members over the next fiscal year: Training and education for Board members, ask questions during meetings, and clear and concise information from staff when presenting to the Board**



One Water New Braunfels ANNUAL REPORT

**PRESENTATION TO
New Braunfels Utilities Board of Directors
Oct. 31, 2024**

Collaboration for our shared resources

Item 2.



ONE WATER

NEW BRAUNFELS

One Water New Braunfels Launched

Item 2.



Announcing One Water New Braunfels

A collaborative program to ensure water remains a celebrated and protected feature of our community.

VISION To ensure water remains a celebrated and protected feature of our community by collaboratively managing our water resources to safeguard watersheds, waterways and groundwater.	1	Plan for and manage water resources holistically and sustainably
	2	Maximize environmental, social, and economic benefits to the greater New Braunfels area
	3	Ensure water remains a celebrated feature of New Braunfels
	4	Provide sustainable and high-quality water
	5	Ensure healthy watersheds, waterways and groundwater resources

Learn more at nbutexas.com/one-water



Aug. 14, 2023: Interlocal Agreement Finalized
Oct. 1, 2023: Beginning of first Program Year



One Water Program Organization



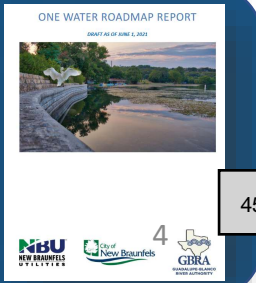
NBU Chief Administrative Officer
Provide guidance and direction for OWC

One Water Advisory Council
Budgetary & strategic decision-making power
Ryan Kelso, *NBU*; Robert Camareno, *CoNB*; Darrell Nichols, *GBRA*

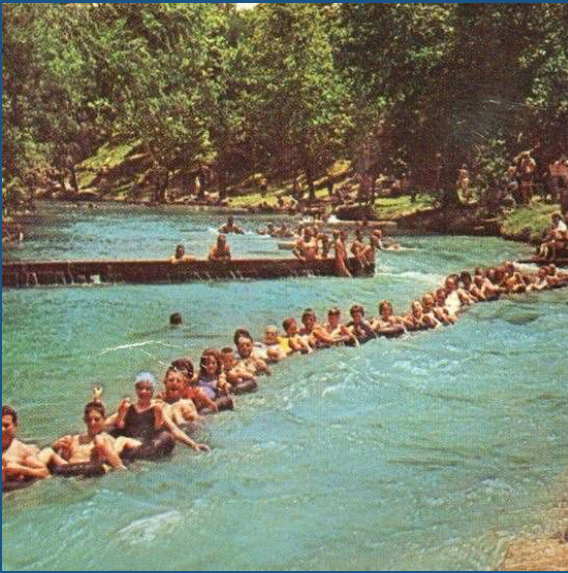
One Water Governance Committee
Program oversight
David Hubbard, *NBU*; Christopher Looney, *CoNB*; Jonathan Stinson, *GBRA*

One Water Coordinator
Manage daily One Water program

One Water Working Group
Collaborate and implement Roadmap projects
40+ members
15+ different departments



What is One Water?



One Water is an integrated planning and implementation approach to managing finite water resources for long-term resilience and reliability, meeting both community and ecosystem needs.

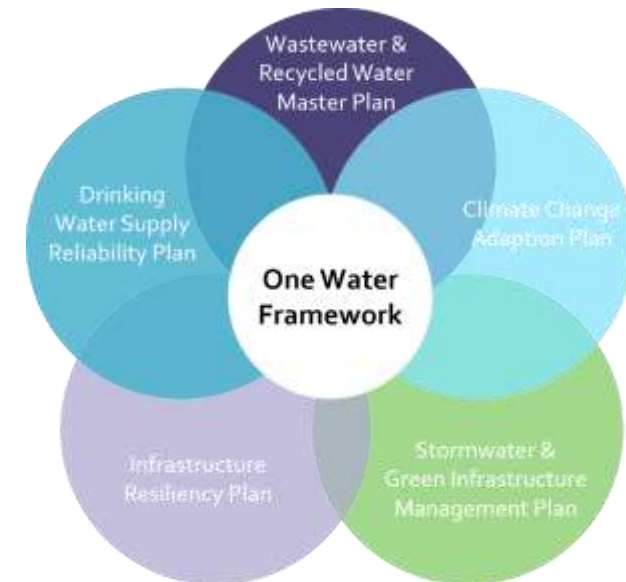
Water Research Foundation (WRF)



Traditional Approach



One Water Approach



ONE WATER ROADMAP REPORT

DRAFT AS OF JUNE 1, 2021



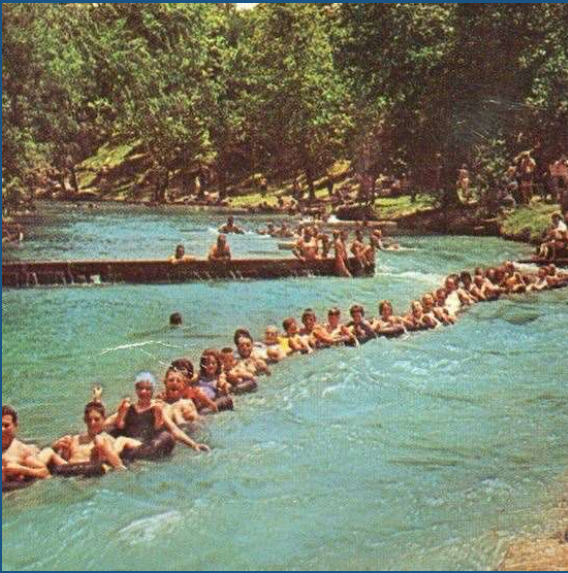
VISION

To ensure water remains a celebrated & protected feature of our community by collaboratively managing our water resources to safeguard watersheds, waterways & groundwater.

- 1 Plan for & manage water resources holistically & sustainably
- 2 Maximize environmental, social, & economic benefits to the greater New Braunfels area
- 3 Ensure water remains a celebrated feature of New Braunfels
- 4 Provide sustainable & high-quality water
- 5 Ensure healthy watersheds, waterways & groundwater resources

Year 1 Project Priorities

Item 2.



Committee	Project
Education & Comms	Logo and Brand Development
	Website Development
	Stakeholder Engagement and Education Plan RFP Development
	Communications Guide
	Internal staff One Water knowledge poll
Project Pipeline	Triple Bottom Line scoring matrix (partners and stakeholder input)
	One Water Project Spotlight Write-ups
	Incorporate One Water into NBU's Water Plans

Accomplishments

Item 2.

ONE WATER NEW BRAUNFELS

- Forged strong working relationships across agencies and across departments
- Compiled foundational documents (Triple Bottom Line Evaluation tool, Communications Guide, One Water Spotlights structure and examples)
- Developing a One Water New Braunfels logo and associated branding kit
- Developing a stand-alone website to serve as a reference and to spotlight One Water efforts
- Incorporating One Water approach into plans
- Collaboration (CoNB - Land Development Ordinance, NBU - Water Conservation Plan)
- Increased community knowledge base for One Water strategies (presentations, Net Zero workshop, Envision Training)



Envision Sustainability Professional Training,
New Braunfels, Oct. 2024

Outreach

One Water New Braunfels in the limelight:

1. Aug. 24, 2023: US Water Alliance, Texas One Water Quarterly Gathering presentation
2. Oct. 25, 2023: Hill Country Master Naturalists Training presentation
3. Mar. 27, 2024: US Water Alliance Road Trip Visit to Headwaters
4. Apr. 10-12, 2024: Texas Water Conference panel discussion
5. Apr. 16: Comal Conservation community presentation
6. Jun. 27: Hill Country Heritage Society community presentation
7. Jun. 20: HCA Leadership Institute Innovative Water Strategies presentation
8. Jul. 25: Plum Creek Watershed Protection Plan Stakeholders meeting presentation
9. Aug. 28: US Water Alliance, Progress in the Texas Hill Country webinar panel discussion



Recognition – One Water Working Group Item 2.



Departments

Conservation and Customer Solutions	Communications and Community Engagement	Communications and Outreach
Executive Leadership	Executive Leadership	Engineering
Headwaters at the Comal	Parks & Recreation	Environmental Science
Public Affairs (Comms)	Planning and Development Services	Executive Leadership
Resource Strategy	Public Works	
Water Services	Transportation and Capital Improvements	

Year 2



- Oct. 3: One Water + Net Zero workshop (collaborators invited to Oct. OWWG meeting)
- Oct. 8: Envision Sustainability Professional (ENV SP) Training
- Oct. 16: GBRA Board Meeting, Annual Report co-presentation
- Oct. 21: CoNB City Council Meeting, Annual Report co-presentation
- Oct. 31: NBU Board Meeting, Annual Report co-presentation

Committee	Project
Education & Comms	Logo and Brand Rollout
	Website Maintenance, Content Development
	Stakeholder Engagement and Education Plan Development
	Internal Education and Training
	Events and presentations
Project Pipeline	Triple Bottom Line (TBL) scoring matrix continued (partners and stakeholder input)
	Create Standard Operating Procedure that will govern use of the TBL Matrix

