



NOTICE OF OPEN MEETING
MARCH BOARD OF TRUSTEES
NBU Board Room, 263 Main Plaza, New Braunfels, Texas 78130
March 28, 2024 at 1:00 PM
www.nbutexas.com

AGENDA

AMENDED

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND INVOCATION

Board President Wayne Peters

NBU VISION: Be a Trusted Community Partner Dedicated to Excellence in Service

Dawn Schriewer, Chief Financial Officer

PUBLIC COMMENT

RECOGNITIONS

1. New Braunfels Utilities ("NBU") Kinderschuhe 5K Check Presentation to Communities in School of South Central Texas

ITEMS FROM THE CHAIR

1. American Public Power Association (APPA) Legislative Rally Update
2. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code

ITEMS FROM STAFF

1. CEO's Update
 - a. Update on Electric Operations: Materials and Project Status Updates
 - b. NBU Control Center Ribbon Cutting Ceremony
 - c. Customer Service Real-Time Survey
 - d. NBU Leadership Team Participation in Project Management Professional Bootcamp Training Update
 - e. Update on the Participating Solar Contracting Program
 - f. Leadership Announcements: Jacob Cleland named Interim Communications Manager
 - g. Any Other Items Permitted Under Section 551.0415 of the Texas Government Code
2. Financial Update and Report

3. Discuss NBU Outage Notification Protocols

CONSENT ITEMS FOR ACTION

1. Approve Minutes of the NBU Regular Board Meeting of February 29, 2024
2. Approve the Change Order Log from January 15, 2024, through February 15, 2024
3. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through February 15, 2024
4. Approve the Electric Line of Business Alternative Procurements from January 15, 2024, through February 15, 2024
5. Authorize CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement for Construction Management and Inspections for the FM 306 Pump Station & Discharge Line Project with Freese and Nichols, Inc.
6. Authorize CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Gruene Wastewater and Inverted Siphon Improvements as part of the Gruene Road Sewer Main Rehabilitation/Relocation Project
7. Authorize CEO or His Designee to Negotiate and Execute a Materials Agreement for Annual Steel Pole Purchases with KBS Electrical Distributors

ACTION ITEMS

1. Discuss and Consider Authorizing CEO or His Designee to Negotiate and Execute a Treated Water Sharing Agreement with Guadalupe Blanco River Authority for the Resale of Water from the Gonzales Carrizo Water Supply Project on a Temporary Basis
2. Discuss and Consider Approving the Updated NBU Five-Year Water Conservation Plan as Required by the Texas Commission on Environmental Quality (TCEQ)
3. Discuss and Consider Authorizing CEO or His Designee to Negotiate and Execute an AIA Standard Form of Agreement Between Owner and Construction Manager as Constructor with SpawGlass, Contractors, Inc. for the Construction of the Proposed NBU Headquarters Facility Project Located on a 76-acre Tract of Property at the Intersection of Engel Road and IH-35

PRESENTATION ITEMS

1. Presentation on the Future Population Growth and Economic Outlook in the Texas Area from Real Estate Research Firm, Zonda Intelligence Corporation
2. Presentation Regarding the Transfer of Real Property Located at 263 Main Plaza, New Braunfels, Texas (the “Property”) from NBU to the City of New Braunfels (the “City”) and Lease of the Property from the City to NBU

EXECUTIVE SESSION

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

1. Power Supply Resources – Competitive Matters
(Section 551.086 – Texas Government Code)
2. Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney Client Privilege
(Section 551.071 – Texas Government Code)
 - a. Discuss the Pending Litigation Styled *Skyblue Utilities, Inc. v. New Braunfels Utilities*, Comal County, 433rd Judicial District Cause No. 2024-0253D
 - b. Discuss Legal Matters Related to the Texas Open Meetings Act

The Board of Trustees upon reconvening in Open Session, will discuss and consider any action, if necessary, 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 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 **22nd day of March 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



Meeting Date: March 28, 2024 **Agenda Type:** Items from Staff

From: Kimberly Huffman **Reviewed by:** Ashley Van Booven
Accounting Manager Director of Finance

Submitted by: Dawn Schriever **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 February than historically. The average temperature was 60.1 degrees, which was 5.8 degrees higher than the historical average temperature of 54.3 degrees. Rainfall totaled 0.65 inches for the month of February, which was 1.35 inches lower than the historical average rainfall of 2.0 inches.

For the month of February 2024, NBU recorded a change in net position after contributions ("CNPAC") of \$472,000 which represents a decrease of \$567,000 compared to the budgeted monthly CNPAC of \$1,039,000. Operating service revenues of \$20,212,000 were less than budget by \$1,491,000, or 7%, for the month of February. A \$705,000 decrease in electric revenue, \$488,000 decrease in water revenue, and a \$298,000 decrease in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$457,000 were greater than budget by \$37,000 for the month of February. Purchased power costs were \$1,366,000 less than budget for February 2024 and \$9,313,000 greater for Year-to-Date ("YTD"). A decrease in other operating expenses of \$441,000 resulted in total operating expenses to be \$1,807,000, or 9%, less than the budgeted amount of \$21,059,000. The net revenue and operating expense variances contributed to a favorable net operating income variance of \$354,000 from budget. Net non-operating items had a \$434,000 unfavorable variance compared to budget. Impact fees were less than budget by \$600,000, services income was greater than budget by \$180,000, and capital participation fees were less than budget by \$66,000. February 2024 YTD CNPAC was \$30,322,000, which was \$15,623,000 greater than the budgeted amount of \$14,699,000.

FINANCIAL IMPACT

Electric

The Electric Line of Business reported total operating revenues of \$15,202,000, a \$690,000 decrease, or 4%, from the February budgeted amount of \$15,892,000. The net rate realized per kWh was \$0.1111, which was 7% greater than the budgeted rate of \$0.1034. February kWh sales were 133.6 million kWh, a 16.8 million kWh decrease, or 11%, in comparison to the budgeted amount of 150.4 million kWh. Purchased power costs totaled \$10,054,000, which was \$1,366,000 less than the budgeted amount of \$11,420,000. Electric gross margin, which is total operating revenues minus purchased power, resulted in the amount of \$5,148,000 for the month of February and \$35,895,000 YTD. These amounts were

\$676,000 greater and \$415,000 greater than the budgeted amount of \$4,472,000 Month-to-Date (“MTD”) and \$35,480,000 YTD. Other operating expenses were less than budget by \$297,000. These items resulted in the Electric Line of Business reporting net operating income of \$2,431,000, which was \$974,000 greater than the budgeted amount of \$1,457,000. Net non-operating items provided an unfavorable variance from budget of \$409,000. Services income was greater than budget by \$153,000. The Electric Line of Business reported January 2024 CNPAC of \$1,618,000 and YTD CNPAC of \$16,449,000. These amounts were \$717,000 greater and \$6,175,000 greater than their respective February 2024 MTD and February 2024 YTD budget amounts.

Water

The Water Line of Business reported total operating revenues of \$2,523,000, a \$476,000 decrease, or 16%, from the February budgeted amount of \$2,999,000. In February, water gallons sold of 262,824,000 was less than the budgeted amount of 289,131,000 (a 26,307,000-gallon variance from budget, or 9%). NBU’s net realized price per 1,000 gallons sold in February was \$9.34, which was less than the budgeted amount of \$10.18. Operating expenses for February were \$3,786,000, which was \$112,000 less than the budgeted amount of \$3,898,000. The net effect of less revenues and lesser operating expenses than budgeted resulted in the Water’s net operating income of (\$1,263,000), which was greater than budget. Net non-operating items provided an unfavorable variance of \$150,000 from budget. Impact fees of \$459,000 were less than budget by \$557,000, and services income was greater than budget by \$27,000. The Water Line of Business reported February 2024 CNPAC of (\$1,350,000) and YTD CNPAC of \$7,604,000. These amounts were \$1,044,000 less than and \$6,108,000 greater than their respective February 2024 MTD and February 2024 YTD budget amounts.

Wastewater

The Wastewater Line of Business reported total operating revenues of \$2,944,000, a \$288,000 decrease, or 9%, from the February budgeted amount of \$3,232,000. Total operating expenses of \$2,695,000 were \$32,000 less than the budgeted amount of \$2,727,000. As a result, the Wastewater Line of Business reported net operating income of \$249,000, which was \$256,000 less than the budgeted amount of \$505,000. Net non-operating items provided a favorable variance of \$126,000 from budget. Impact fees were less than budget by \$43,000, and capital participation fees were less than budget by \$66,000. The Wastewater Line of Business reported February 2024 CNPAC of \$204,000 and YTD CNPAC of \$6,269,000. These amounts were \$240,000 less than and \$3,340,000 greater than their respective February 2024 MTD and February 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
 For the Period Ending February 29, 2024

		AMOUNT	VARIANCE*	% CHANGE	FAV/UNFAV	Variance Explanation +/-30%
ELECTRIC						
Sales Volume (MWh)	Actual	1,032.1				
	Budget	1,136.0	(103.9)	-9%		
	Prior Year	1,036.0	(4.0)	0%		
Revenues (\$M)	Actual	\$ 125.5				
	Budget	\$ 115.8	\$ 9.7	8%		
	Prior Year	119.8	\$ 5.7	5%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Pwr)</i>	Actual	\$ 35.9				
	Budget	\$ 35.5	\$ 0.4	1%		
	Prior Year	33.1	\$ 2.8	8%		
Operating Income (\$M)	Actual	\$ 18.9				
	Budget	\$ 14.2	\$ 4.8	34%		Higher YTD operating revenues, primarily from residential, offset the higher YTD purchased power. Lower operating expenses.
	Prior Year	16.7	\$ 2.3	14%		
WATER						
Sales Volume (Million Gallons)	Actual	2.7				
	Budget	2.6	0.0	2%		
	Prior Year	2.5	0.2	7%		
Revenues (\$M)	Actual	\$ 24.5				
	Budget	\$ 25.2	\$ (0.6)	-2%		
	Prior Year	20.8	\$ 3.7	18%		
Gross Margin (\$M) <i>(Total Operating Revenues Minus Purchased Water)</i>	Actual	\$ 17.4				
	Budget	\$ 17.9	\$ (0.5)	-3%		
	Prior Year	16.1	\$ 1.3	8%		
Operating Income (\$M)	Actual	\$ 0.5				
	Budget	\$ (2.7)	\$ 3.2	*		Higher YTD operating expenses compared to PY, primarily from Purchased Water
	Prior Year	1.6	\$ (1.0)	-65%		
WASTEWATER						
Revenues (\$M)	Actual	\$ 20.5				
	Budget	\$ 22.7	\$ (2.2)	-10%		
	Prior Year	18.7	\$ 1.8	10%		
Operating Income (\$M)	Actual	\$ 3.9				
	Budget	\$ 3.4	\$ 0.6	17%		
	Prior Year	4.0	\$ (0.0)	-1%		
COMBINED						
Operating Expenses (\$M)**	Actual	\$ 28.2				
	Budget	\$ 36.4	\$ (8.1)	-22%		
	Prior Year	26.2	\$ 2.1	8%		
Operating Income (\$M)	Actual	\$ 23.4				
	Budget	\$ 14.9	\$ 8.5	57%		YTD Electric Service revenues are greater than budget, primarily from Residential
	Prior Year	22.2	\$ 1.2	5%		
Change in Net Position Before Contributions (\$M)	Actual	\$ 15.1				
	Budget	\$ 2.6	\$ 12.6	*		
	Prior Year	14.1	\$ 1.1	8%		
Impact Fees (\$M)	Actual	\$ 12.4				
	Budget	\$ 9.8	\$ 2.7	27%		
	Prior Year	10.2	\$ 2.3	22%		
Change in Net Position After Contributions (\$M)	Actual	\$ 30.3				
	Budget	\$ 14.7	\$ 15.6	*		
	Prior Year	27.2	\$ 3.1	12%		

*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 February 29, 2024
Amounts Shown in Thousands

	February 29 2024	January 31 2024	Variance	% Change
ASSETS				
UTILITY PLANT				
Utility Plant in Service	\$ 1,200,661	\$ 1,196,973	\$ 3,688	0%
Less: Accumulated Depreciation	(363,759)	(360,552)	(3,207)	1%
Construction in Progress	136,559	130,937	5,622	4%
TOTAL UTILITY PLANT	\$ 973,461	\$ 967,358	\$ 6,103	1%
CURRENT & ACCRUED ASSETS				
Cash & Temporary Investments	\$ 42,809	\$ 51,774	\$ (8,965)	-17%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)	15,541	13,228	2,313	17%
Accounts Receivable - Other	6,243	6,538	(295)	-5%
Accrued Unbilled Revenue	13,975	13,552	423	3%
Inventory	9,565	9,514	51	1%
Prepaid Expenses	16,281	17,928	(1,648)	-9%
Accrued Interest Receivable	162	143	19	13%
Rents Receivable	448	458	(11)	-2%
TOTAL CURRENT & ACCRUED ASSETS	\$ 105,024	\$ 113,136	\$ (8,112)	-7%
RESTRICTED ASSETS & DEFERRED DEBITS				
Restricted Funds	\$ 117,901	\$ 87,750	\$ 30,151	34%
Designated Funds	69,358	68,473	885	1%
Pension Deferred Outflows	16,755	16,755	-	0%
Power Cost Adjustments - Under-Recovered	578	1,463	(885)	-60%
Mid-Basin Regulatory Asset	3,265	3,195	70	2%
Other Deferred Debits	3,574	3,574	-	0%
TOTAL RESTRICTED ASSETS & DEFERRED DEBITS	\$ 211,431	\$ 181,210	\$ 30,221	17%
TOTAL ASSETS	\$ 1,289,916	\$ 1,261,704	\$ 28,212	2%
LIABILITIES & NET POSITION				
BONDS PAYABLE				
Long-Term Debt	\$ 474,928	\$ 372,229	\$ 102,699	28%
Unamortized Bond Discount/Premium	27,053	24,048	3,005	12%
TOTAL BONDS PAYABLE	\$ 501,981	\$ 396,277	\$ 105,704	27%
CURRENT & ACCRUED LIABILITIES				
Accounts Payable	\$ 7,303	\$ 10,732	\$ (3,428)	-32%
Accrued Purchased Power	12,013	15,246	(3,233)	-21%
Commercial Paper Payable	-	75,000	(75,000)	-100%
Customer Deposits	13,097	12,935	163	1%
Accrued Payroll & Benefits (Including Compensated Absences)	4,178	3,898	279	7%
Interest Accrued on Long Term Debt	3,033	1,781	1,252	70%
Current Portion of Long Term Debt	8,045	8,045	-	0%
Other Payables	4,318	3,094	1,224	40%
TOTAL CURRENT & ACCRUED LIABILITIES	\$ 51,988	\$ 130,731	\$ (78,744)	-60%
NONCURRENT LIABILITIES & DEFERRED CREDITS				
Accumulated Provision for Pension	\$ 29,068	\$ 29,068	\$ -	0%
Power Cost Adjustments - Over-Recovered	5,018	5,122	(104)	-2%
Other Deferred Credits	25,303	25,620	(317)	-1%
TOTAL NONCURRENT LIABILITIES & DEFERRED CREDITS	\$ 59,389	\$ 59,810	\$ (420)	-1%
TOTAL LIABILITIES	\$ 613,358	\$ 586,818	\$ 26,540	5%
NET POSITION				
Reserve for Restricted Assets	\$ 100,831	\$ 70,753	\$ 30,078	43%
Reserve for Intergovernmental	10,233	10,270	(37)	0%
Unrestricted Assets	297,947	327,516	(29,569)	-9%
Contributed Capital	267,546	266,346	1,200	0%
TOTAL NET POSITION	\$ 676,558	\$ 674,886	\$ 1,672	0%
TOTAL LIABILITIES & NET POSITION	\$ 1,289,916	\$ 1,261,704	\$ 28,212	2%

NEW BRAUNFELS UTILITIES
Statement of Revenues & Expenses
For the Period Ending February 29, 2024
Amounts Shown in Thousands

	MTD Actual	MTD Budget	Variance	% Variance	YTD Actual	YTD Budget	Variance	% Variance
VOLUME/RATES								
Electric Sales kWh	133,580	150,356	(16,776)	-11%	1,032,077	1,135,964	(103,887)	-9%
Electric Sales Rate Per kWh	\$ 0.1111	\$ 0.1034	\$ 0.0077	7%	\$ 0.1189	\$ 0.0998	\$ 0.0192	19%
Purchased kWh	156,314	153,045	3,269	2%	1,086,903	1,149,982	(63,079)	-5%
Purchased Rate per kWh	\$ 0.0643	\$ 0.0746	\$ (0.0103)	-14%	\$ 0.0824	\$ 0.0698	\$ 0.0126	18%
Gallons Sold	262,824	289,131	(26,307)	-9%	2,676,733	2,631,346	45,386	2%
Rate per 1,000 Gallons Sold	\$ 9.34	\$ 10.18	\$ (0.84)	-8%	\$ 8.94	\$ 9.41	\$ (0.47)	-5%
OPERATING REVENUES								
SERVICE REVENUE								
Electric Service	\$ 14,841	\$ 15,546	\$ (705)	-5%	\$ 122,759	\$ 113,349	\$ 9,410	8%
Water Service	2,455	2,943	(488)	-17%	23,928	24,760	(832)	-3%
Wastewater Service	2,916	3,214	(298)	-9%	20,276	22,604	(2,328)	-10%
TOTAL SERVICE REVENUE	\$ 20,212	\$ 21,703	\$ (1,491)	-7%	\$ 166,963	\$ 160,713	\$ 6,250	4%
OTHER OPERATING REVENUE								
Electric Other	\$ 94	\$ 100	\$ (6)	-6%	\$ 884	\$ 700	\$ 184	26%
Water Other	47	42	5	12%	453	291	162	56%
Wastewater Other	28	18	10	56%	203	123	80	65%
Transmission System Revenue	229	217	12	6%	1,603	1,518	85	6%
Electric Pole Attachments	38	29	9	31%	252	204	48	24%
Water Tower Antenna Lease	21	14	7	50%	146	102	44	43%
TOTAL OTHER OPERATING REVENUE	\$ 457	\$ 420	\$ 37	9%	\$ 3,541	\$ 2,938	\$ 603	21%
TOTAL OPERATING REVENUE	\$ 20,669	\$ 22,123	\$ (1,454)	-7%	\$ 170,504	\$ 163,651	\$ 6,853	4%
OPERATING EXPENSES								
ELECTRIC								
Purchased Power	\$ 10,054	\$ 11,420	\$ (1,366)	-12%	\$ 89,604	\$ 80,291	\$ 9,313	12%
Electric O&M Expenses	622	833	(211)	-25%	3,818	5,908	(2,090)	-35%
Electric Depreciation & Amortization	1,109	1,215	(106)	-9%	7,633	8,506	(873)	-10%
Electric Support Services Allocated Operating Expenses	986	966	20	2%	5,517	6,895	(1,378)	-20%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 12,771	\$ 14,434	\$ (1,663)	-12%	\$ 106,572	\$ 101,600	\$ 4,972	5%
WATER								
Purchased Water	\$ 1,011	\$ 1,032	\$ (21)	-2%	\$ 7,112	\$ 7,225	\$ (113)	-2%
Water O&M Expenses	790	818	(28)	-3%	4,459	6,050	(1,591)	-26%
Water Depreciation & Amortization	934	1,032	(98)	-9%	6,462	7,224	(762)	-11%
Water Support Services Allocated Operating Expenses	1,051	1,016	35	3%	5,949	7,310	(1,361)	-19%
TOTAL WATER OPERATING EXPENSE	\$ 3,786	\$ 3,898	\$ (112)	-3%	\$ 23,982	\$ 27,809	\$ (3,827)	-14%
WASTEWATER								
Wastewater O&M Expenses	\$ 816	\$ 730	\$ 86	12%	\$ 4,361	\$ 5,258	\$ (897)	-17%
Wastewater Depreciation & Amortization	1,164	1,306	(142)	-11%	8,048	9,144	(1,096)	-12%
Wastewater Support Services Allocated Operating Expenses	715	691	24	3%	4,140	4,970	(830)	-17%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 2,695	\$ 2,727	\$ (32)	-1%	\$ 16,549	\$ 19,372	\$ (2,823)	-15%
TOTAL OPERATING EXPENSES	\$ 19,252	\$ 21,059	\$ (1,807)	-9%	\$ 147,103	\$ 148,781	\$ (1,678)	-1%
NET OPERATING INCOME								
ELECTRIC	\$ 2,431	\$ 1,457	\$ 974	67%	\$ 18,927	\$ 14,171	\$ 4,756	34%
WATER	(1,263)	(899)	(364)	40%	544	(2,656)	3,200	*
WASTEWATER	249	505	(256)	-51%	3,930	3,355	575	17%
TOTAL NET OPERATING INCOME	\$ 1,417	\$ 1,063	\$ 354	33%	\$ 23,401	\$ 14,870	\$ 8,531	57%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 587	\$ 431	\$ 156	36%	\$ 4,832	\$ 3,017	\$ 1,815	60%
Intergovernmental Expense	(945)	(989)	44	-4%	(6,600)	(6,922)	322	-5%
Interest and Amortization Expense	(1,992)	(1,376)	(616)	45%	(10,066)	(9,633)	(433)	4%
Other	160	178	(18)	-10%	3,564	1,243	2,321	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (2,190)	\$ (1,756)	\$ (434)	25%	\$ (8,270)	\$ (12,295)	\$ 4,025	33%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (773)	\$ (693)	\$ (80)	12%	\$ 15,131	\$ 2,575	\$ 12,556	*
CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 799	\$ 1,399	\$ (600)	-43%	\$ 12,446	\$ 9,795	\$ 2,651	27%
Services	447	267	180	67%	2,745	1,865	880	47%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	464	(464)	-100%
TOTAL CAPITAL CONTRIBUTIONS	\$ 1,246	\$ 1,732	\$ (486)	-28%	\$ 15,191	\$ 12,124	\$ 3,067	25%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 472	\$ 1,039	\$ (567)	-55%	\$ 30,322	\$ 14,699	\$ 15,623	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
ELECTRIC LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending February 29, 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	\$ 14,841	\$ 15,546	\$ (705)	-5%	\$ 122,759	\$ 113,349	\$ 9,410	8%
TOTAL ELECTRIC SERVICE REVENUE	\$ 14,841	\$ 15,546	\$ (705)	-5%	\$ 122,760	\$ 113,349	\$ 9,411	8%
OTHER ELECTRIC OPERATING REVENUE								
Electric Other	\$ 93	\$ 100	\$ (7)	-7%	\$ 884	\$ 700	\$ 184	26%
Transmission System Revenue	229	217	12	6%	1,603	1,518	85	6%
Electric Pole Attachments	38	29	9	31%	252	204	48	24%
TOTAL OTHER ELECTRIC OPERATING REVENUE	\$ 361	\$ 346	\$ 15	4%	\$ 2,739	\$ 2,422	\$ 317	13%
TOTAL ELECTRIC OPERATING REVENUE	\$ 15,202	\$ 15,892	\$ (690)	-4%	\$ 125,499	\$ 115,771	\$ 9,728	8%
ELECTRIC OPERATING EXPENSES								
Purchased Power & Other Power Supply	\$ 10,054	\$ 11,420	\$ (1,366)	-12%	\$ 89,604	\$ 80,291	\$ 9,313	12%
Transmission & Distribution	516	784	(268)	-34%	3,443	5,538	(2,095)	-38%
Customer Service	88	35	53	*	208	246	(38)	-15%
Administrative & General	18	14	4	29%	167	123	44	36%
Depreciation & Amortization	1,109	1,215	(106)	-9%	7,633	8,506	(873)	-10%
Support Services Allocated Operating Expenses	986	966	20	2%	5,517	6,896	(1,379)	-20%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 12,771	\$ 14,434	\$ (1,663)	-12%	\$ 106,572	\$ 101,600	\$ 4,972	5%
ELECTRIC NET OPERATING INCOME	\$ 2,431	\$ 1,457	\$ 974	67%	\$ 18,927	\$ 14,171	\$ 4,756	34%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 249	\$ 183	\$ 66	36%	\$ 2,054	\$ 1,283	\$ 771	60%
Intergovernmental Expense	(753)	(799)	46	-6%	(5,254)	(5,596)	342	-6%
Interest and Amortization Expense	(783)	(246)	(537)	*	(2,348)	(1,725)	(623)	36%
Other	105	90	15	17%	1,113	631	482	76%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (1,181)	\$ (772)	\$ (409)	-53%	\$ (4,435)	\$ (5,407)	\$ 972	18%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 1,250	\$ 685	\$ 565	82%	\$ 14,492	\$ 8,764	\$ 5,728	65%
ELECTRIC CAPITAL CONTRIBUTIONS								
Services	\$ 369	\$ 216	\$ 153	71%	\$ 1,957	\$ 1,510	\$ 447	30%
TOTAL ELECTRIC CAPITAL CONTRIBUTIONS	\$ 369	\$ 216	\$ 153	71%	\$ 1,957	\$ 1,510	\$ 447	30%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 1,618	\$ 901	\$ 717	80%	\$ 16,449	\$ 10,274	\$ 6,175	60%

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending February 29, 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	\$ 2,455	\$ 2,943	\$ (488)	-17%	\$ 23,927	\$ 24,760	\$ (833)	-3%
TOTAL WATER SERVICE REVENUE	\$ 2,455	\$ 2,943	\$ (488)	-17%	\$ 23,927	\$ 24,760	\$ (833)	-3%
OTHER WATER OPERATING REVENUE								
Water Other	\$ 47	\$ 42	\$ 5	12%	\$ 453	\$ 292	\$ 161	55%
Water Tower Antenna Lease	21	14	7	50%	146	102	44	43%
TOTAL OTHER WATER OPERATING REVENUE	\$ 68	\$ 56	\$ 12	21%	\$ 599	\$ 394	\$ 205	52%
TOTAL WATER OPERATING REVENUE	\$ 2,523	\$ 2,999	\$ (476)	-16%	\$ 24,526	\$ 25,154	\$ (628)	-2%
WATER OPERATING EXPENSES								
Purchased Water	\$ 1,011	\$ 1,032	\$ (21)	-2%	\$ 7,113	\$ 7,225	\$ (112)	-2%
Supply Source	5	9	(4)	-44%	66	66	-	0%
Transmission & Distribution	313	288	25	9%	1,471	2,234	(763)	-34%
Pumping	205	235	(30)	-13%	1,390	1,703	(313)	-18%
Water Treatment	233	227	6	3%	1,225	1,620	(395)	-24%
Customer Service	20	9	11	*	55	60	(5)	-8%
Administrative & General	15	50	(35)	-70%	252	367	(115)	-31%
Depreciation & Amortization	933	1,032	(99)	-10%	6,461	7,224	(763)	-11%
Support Services Allocated Operating Expenses	1,051	1,016	35	3%	5,949	7,309	(1,360)	-19%
TOTAL WATER OPERATING EXPENSE	\$ 3,786	\$ 3,898	\$ (112)	-3%	\$ 23,982	\$ 27,808	\$ (3,826)	-14%
WATER NET OPERATING INCOME	\$ (1,263)	\$ (899)	\$ (364)	40%	\$ 544	\$ (2,654)	\$ 3,198	*
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 164	\$ 120	\$ 44	37%	\$ 1,347	\$ 841	\$ 506	60%
Intergovernmental Expense	(93)	(90)	(3)	3%	(653)	(630)	(23)	4%
Interest and Amortization Expense	(731)	(577)	(154)	27%	(4,195)	(4,043)	(152)	4%
Other	36	73	(37)	-51%	1,383	514	869	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (624)	\$ (474)	\$ (150)	32%	\$ (2,118)	\$ (3,318)	\$ 1,200	-36%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (1,887)	\$ (1,373)	\$ (514)	37%	\$ (1,574)	\$ (5,972)	\$ 4,398	-74%
WATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 459	\$ 1,016	\$ (557)	-55%	\$ 8,390	\$ 7,113	\$ 1,277	18%
Services	78	51	27	53%	788	355	433	*
TOTAL WATER CAPITAL CONTRIBUTIONS	\$ 537	\$ 1,067	\$ (530)	-50%	\$ 9,178	\$ 7,468	\$ 1,710	23%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ (1,350)	\$ (306)	\$ (1,044)	*	\$ 7,604	\$ 1,496	\$ 6,108	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WASTEWATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending February 29, 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	\$ 2,916	\$ 3,214	\$ (298)	-9%	\$ 20,276	\$ 22,604	\$ (2,328)	-10%
TOTAL WASTEWATER SERVICE REVENUE	\$ 2,916	\$ 3,214	\$ (298)	-9%	\$ 20,276	\$ 22,604	\$ (2,328)	-10%
OTHER WASTEWATER OPERATING REVENUE								
Wastewater Other	\$ 28	\$ 18	\$ 10	56%	\$ 203	\$ 123	\$ 80	65%
TOTAL OTHER WASTEWATER OPERATING REVENUE	\$ 28	\$ 18	\$ 10	56%	\$ 203	\$ 123	\$ 80	65%
TOTAL WASTEWATER OPERATING REVENUE	\$ 2,944	\$ 3,232	\$ (288)	-9%	\$ 20,479	\$ 22,727	\$ (2,248)	-10%
WASTEWATER OPERATING EXPENSES								
Transmission & Distribution	\$ -	\$ -	\$ -	100%	\$ 1	\$ -	\$ 1	100%
Wastewater Operations & Maintenance	776	704	72	10%	4,112	4,951	(839)	-17%
Customer Service	30	9	21	*	73	63	10	16%
Administrative & General	10	17	(7)	-41%	175	244	(69)	-28%
Depreciation & Amortization	1,164	1,306	(142)	-11%	8,048	9,145	(1,097)	-12%
Support Services Allocated Operating Expenses	715	691	24	3%	4,140	4,970	(830)	-17%
TOTAL WASTEWATER OPERATING EXPENSE	\$ 2,695	\$ 2,727	\$ (32)	-1%	\$ 16,549	\$ 19,373	\$ (2,824)	-15%
WASTEWATER NET OPERATING INCOME	\$ 249	\$ 505	\$ (256)	-51%	\$ 3,930	\$ 3,354	\$ 576	17%
NONOPERATING REVENUES (EXPENSES)								
Interest Income	\$ 174	\$ 128	\$ 46	36%	\$ 1,431	\$ 894	\$ 537	60%
Intergovernmental Expense	(99)	(100)	1	-1%	(693)	(697)	4	-1%
Interest and Amortization Expense	(478)	(552)	74	-13%	(3,523)	(3,866)	343	-9%
Other	19	14	5	36%	1,068	98	970	*
TOTAL NONOPERATING REVENUES (EXPENSES)	\$ (384)	\$ (510)	\$ 126	-25%	\$ (1,717)	\$ (3,571)	\$ 1,854	-52%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ (135)	\$ (5)	\$ (130)	*	\$ 2,213	\$ (217)	\$ 2,430	*
WASTEWATER CAPITAL CONTRIBUTIONS								
Impact Fees	\$ 340	\$ 383	\$ (43)	-11%	\$ 4,056	\$ 2,682	\$ 1,374	51%
GBRA Capital Participation Fee	-	66	(66)	-100%	-	464	(464)	-100%
TOTAL WASTEWATER CAPITAL CONTRIBUTIONS	\$ 340	\$ 449	\$ (109)	-24%	\$ 4,056	\$ 3,146	\$ 910	29%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 204	\$ 444	\$ (240)	-54%	\$ 6,269	\$ 2,929	\$ 3,340	*

*Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
Statement of Cash Flows
For the Period Ending February 29, 2024
Amounts Shown in Thousands

	MTD	YTD
NET POSITION BEFORE CONTRIBUTIONS	\$ (773)	\$ 15,131
<i>Operating activities, cash flows provided by or used in:</i>		
Depreciation	\$ 3,207	\$ 22,143
Decrease (increase) in accounts receivable	(2,441)	12,984
Decrease (increase) in inventories	(51)	(3,029)
Decrease (increase) in other assets	4,907	22,677
Increase (decrease) in current liabilities	(76,554)	(48,971)
Increase (decrease) in other liabilities	(420)	(2,912)
Net Cash Flow from Operating Activities	\$ (72,126)	\$ 18,024
<i>Investing activities, cash flows provided by or used in:</i>		
Capital Expenditures	\$ (9,310)	\$ (84,735)
Investments	(31,035)	(47,172)
Rents/Interest Receivable	(8)	(33)
Net Cash Flow from Investing Activities	\$ (40,353)	\$ (131,940)
<i>Financing activities, cash flows provided by or used in:</i>		
Transfers to City of New Braunfels	\$ (2,190)	\$ (8,270)
Increase (decrease) in long-term debt	105,704	104,505
Net Cash Flow from Financing Activities	\$ 103,514	\$ 96,235
Net Increase (Decrease) in Cash and Cash Equivalents	\$ (8,965)	\$ (17,681)

CAPITAL EQUIPMENT SUMMARY - FY 2024
YTD for the Period Ending February 29, 2024



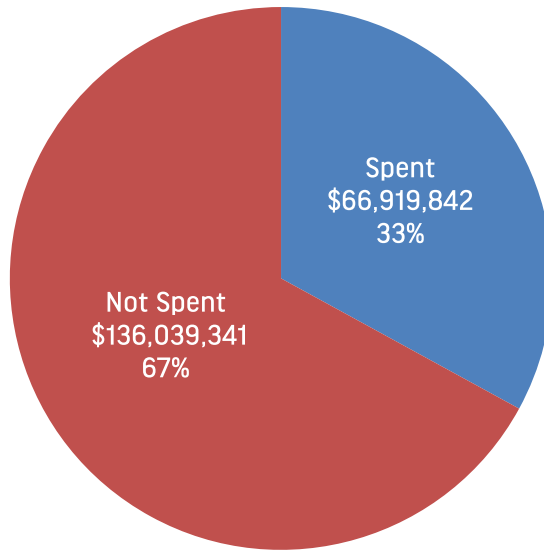
Department	Capital Equipment Description	YTD Actual	FY 2024 Budget	Budget Remaining
ELECTRIC				
117	SEA Air Excavation Unit	-	650,000	650,000
117	Altec Pressure Dipper	429,317	400,000	(29,317)
117	Altec AM 60E	-	300,000	300,000
117	Altec 5F Articulating Boom	-	300,000	300,000
117	Altec AM 60E	-	185,000	185,000
117	Acc. Demo Trailer	-	150,000	150,000
117	Ford F-550	111,982	-	-
117	Ford F-550	-	11,982	11,982
117	Ford F-550	-	11,982	11,982
117	Ford F-550	-	11,982	11,982
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Ford F-150	-	55,000	55,000
117	Locator Unit	-	45,000	45,000
117	Dump Trailer	12,733	15,000	2,267
119	Ford F-550 w/Drum	-	150,437	150,437
119	Ford F-550 Electric	-	61,393	61,393
TOTAL ELECTRIC		\$ 554,032	\$ 2,894,750	\$ 2,340,726
WATER				
216	Ford F-150	26,995	55,000	28,005
220	Ford F-550 w/Drum	-	150,437	150,437
220	Ford F-150	54,845	55,000	155
TOTAL WATER		\$ 81,840	\$ 260,437	\$ 178,597
WASTEWATER				
320	Ford F-550 w/Drum	-	150,437	150,437
320	Ford F-150	54,845	55,000	155
320	Small Utility Unit	-	15,000	15,000
TOTAL WASTEWATER		\$ 54,845	\$ 220,437	\$ 165,592
SHARED WATER/WASTEWATER				
217/317	CAT 313 Excavator	214,865	250,000	35,135
217/317	Ford F-550	-	244,534	244,534
217/317	International Dump Truck	-	230,000	230,000
217/317	International HST	165,749	175,000	9,251
217/317	SEA Truck Mounted letter	192,947	150,000	(42,947)
217/317	CAT Backhoe w/Ext	158,995	125,000	(33,995)
217/317	Ford F-550	-	122,267	122,267
217/317	Ford F-550	-	122,267	122,267
217/317	Ford F-550	-	122,267	122,267
217/317	International Dump Truck	-	115,000	115,000
217/317	CAT Backhoe	137,855	115,000	(22,855)
217/317	CAT Backhoe	-	115,000	115,000
217/317	CAT Backhoe	-	115,000	115,000
217/317	CAT Backhoe	-	115,000	115,000
217/317	E.H. Waichs Large VE	-	86,000	86,000
217/317	E.H. Waichs Large VE	-	86,000	86,000
217/317	1500' of Bypass Hose	-	85,000	85,000
217/317	CAT Skid Steer	57,985	65,000	7,015
217/317	Ford F-150	54,845	55,000	155
217/317	Scorpion Towable Attenuator	-	35,000	35,000
217/317	Towable Air Compressor	-	25,000	25,000
217/317	Tools for F-550	-	15,000	15,000
217/317	DTS Trailer	6,637	10,000	3,363
TOTAL SHARED WATER/WASTEWATER		\$ 988,878	\$ 2,463,335	\$ 1,473,457
Business Planning				
425	Ford Escape	-	30,000	30,000
425	GPS Unit	-	30,000	30,000
TOTAL BUSINESS PLANNING		\$ -	\$ 60,000	\$ 60,000
SAFETY				
524	Ford Explorer	54,845	38,000	(16,845)
TOTAL SAFETY		\$ 54,845	\$ 38,000	\$ (16,845)
PURCHASING				
527	Ford F-350	-	75,500	75,500
TOTAL PURCHASING		\$ -	\$ 75,500	\$ 75,500
FLEET/FACILITIES				
528	Ford F-550 Fleet Service	-	185,000	185,000
528	Ford F-350	-	85,576	85,576
528	Ford F-150	54,845	55,000	155
528	Ford F-150	54,845	55,000	155
528	Ford F-150	54,845	55,000	155
528	Ford F-150	-	55,000	55,000
528	Ford F-150	-	55,000	55,000
528	Ford Escape	-	30,000	30,000
528	Lawn Mowing Equipment	-	25,000	25,000
528	Other	-	25,000	25,000
528	Pressure washing trailer	-	16,000	16,000
528	Janitorial Equipment	-	15,000	15,000
TOTAL FLEET/FACILITIES		\$ 184,535	\$ 656,576	\$ 492,041
CONSERVATION AND CUSTOMER SOLUTIONS				
529	Ford Escape Plug-in Hybrid	26,995	40,000	13,005
529	Ford Escape Plug-in Hybrid	-	40,000	40,000
TOTAL CONSERVATION AND CUSTOMER SOLUTIONS		\$ 26,995	\$ 80,000	\$ 53,005
TECHNOLOGY				
531	Server Replacements	646,595	600,000	(46,595)
531	PC Replacements	165,910	400,000	234,090
531	Drill Molder	-	400,000	400,000
531	Network Equipment Replacements	95,610	200,000	104,390
531	IT to Purchase Unit	-	50,000	50,000
531	Copier and High-end Printer & Plotter Replacements	-	37,500	37,500
531	UPS Replacements	-	10,000	10,000
TOTAL TECHNOLOGY		\$ 908,105	\$ 1,697,500	\$ 789,345
SYSTEM CONTROL				
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	26,995	30,000	3,005
532	Ford Escape	-	30,000	30,000
TOTAL SYSTEM CONTROL		\$ 134,975	\$ 180,000	\$ 45,025
TOTAL CAPITAL EQUIPMENT		\$ 2,970,099	\$ 8,626,543	\$ 5,656,444

BUDGETED PRIOR YEAR ITEMS				
ELECTRIC				
117	Magnum Pintle Trailer	50,813	-	(50,813)
TOTAL ELECTRIC		\$ 50,813	\$ -	\$ (50,813)
WATER				
220	2023 Aluminum Dump Trailer (FY22)	21,080	-	(21,080)
220	2023 Ford F150 4X4 Super crew (FY22)	54,845	-	(54,845)
220	2023 Ford F150 4X4 Super crew (FY22)	54,845	-	(54,845)
220	2023 Ford Explorer	38,994	-	(38,994)
TOTAL WATER		\$ 169,764	\$ -	\$ (169,764)
SHARED WATER/WASTEWATER				
217/317	2022 CUES Sewer Truck CCTV (FY22)	330,894	-	(330,894)
217/317	2023 Ford F150 4X4 Supercrew (FY22)	54,845	-	(54,845)
TOTAL SHARED WATER/WASTEWATER		\$ 385,739	\$ -	\$ (385,739)
TOTAL BUDGETED PRIOR YEAR CAPITAL EQUIPMENT		\$ 606,316	\$ -	\$ (606,316)
UNBUDGETED ITEMS				
FLEET/FACILITIES				
528	2023 Ford Explorer	38,994	-	(38,994)
528	2023 Ford Explorer	38,994	-	(38,994)
TOTAL FLEET/FACILITIES		\$ 77,988	\$ -	\$ (77,988)
TOTAL UNBUDGETED CAPITAL EQUIPMENT		\$ 77,988	\$ -	\$ (77,988)

FY 2024 Capital Expenditure Summary As of February 29, 2024

58% of Year
Completed

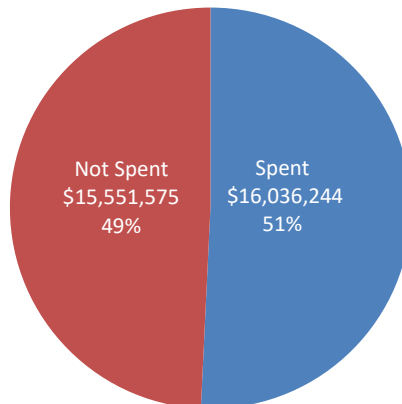
	<u>Spent</u>	<u>Not Spent</u>	<u>Total Budget</u>	<u>% of Total Budget Spent</u>
Electric	\$ 16,036,244	\$ 15,551,575	\$ 31,587,819	51%
Water	25,673,915	46,311,241	71,985,156	36%
Wastewater	9,327,907	43,002,648	52,330,555	18%
Support Services	15,881,776	31,173,877	47,055,653	34%
TOTAL	\$ 66,919,842	\$ 136,039,341	\$ 202,959,183	
	<i>33%</i>	<i>67%</i>	<i>100%</i>	



**Electric Line of Business
FY 2024 Capital Expenditure Summary
As of February 29, 2024**

58% of Year Completed

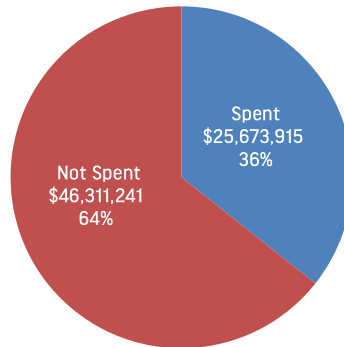
Project	¹ Total Spent YTD	² FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 5,844,099	\$ 5,582,835	\$ (261,264)	\$ 5,582,835	105%	58%
Distribution Transformers	5,368,351	5,642,698	274,347	5,642,698	95%	58%
Electric Meters	1,585,257	3,514,000	1,928,743	3,514,000	45%	58%
Electric Aging Infrastructure	871,342	2,967,536	2,096,194	2,967,536	29%	58%
Electric Technology Upgrades	1,079	149,106	148,027	149,106	1%	80%
Three-Phase Extensions	2,931	1,806,177	1,803,246	9,313,421	0%	90%
Fiber Optic Extensions	415	102,624	102,209	1,086,371	0%	5%
Hueco Springs Substation	511,281	7,301,106	6,789,825	9,939,535	7%	39%
Electric Aging Infrastructure, Substation	222,527	115,672	(106,855)	4,666,606	192%	100%
Freiheit Breaker Additons & Control House	129,477	2,371,748	2,242,271	2,445,650	5%	52%
EC23 FM 482 Feeder	352	712,665	712,313	812,622	0%	50%
HE11 Conrads Rd Feeder	1,651	114,026	112,375	1,966,183	1%	10%
Transmission Access & Wildlife Protection	247,677	175,117	(72,560)	953,166	141%	100%
Comal T3 Replacement & Feeder C033	150,623	377,427	226,804	3,644,220	40%	45%
Distribution Feeder Breaker Addition & Replacements	-	159,067	159,067	3,113,453	0%	10%
FR24 Kowald Ln. Feeder	42,939	91,221	48,282	880,778	47%	10%
Henne Substation Breaker & Half	5,905	171,040	165,135	2,419,085	3%	23%
CONB Road Widening Adjustments	88,504	233,754	145,250	2,256,995	38%	20%
Total Budgeted Projects	\$ 15,074,410	\$ 31,587,819	\$ 16,513,409	\$ 61,354,259	48%	
Unbudgeted Projects:						
Sheriff's Posse T3 Addition	\$ 20,904	\$ -	\$ (20,904)	\$ 7,622,556	0%	99%
E.C. Mornhinweg T2 & Feeders	42,759	-	(42,759)	4,093,931	0%	85%
Residential OH to UG Conversion	402,663	-	(402,663)	3,776,463	0%	97%
Weltner Rd Feeder 13, Clear Springs	14,927	-	(14,927)	965,027	0%	100%
L023 Loop 337 FM 1863 Extension Phase 2	3,019	-	(3,019)	1,224,681	0%	100%
C014 Kentucky Rd Feeder	91,502	-	(91,502)	601,370	0%	34%
HE23 IH-35 Stolte Feeder	325,922	-	(325,922)	1,564,074	0%	45%
Freiheit Feeder 11, Alves Ln	41,874	-	(41,874)	1,951,344	0%	100%
Kohlenberg Rd Substation	13,258	-	(13,258)	44,780	0%	23%
Industrial Substation PWT Replacement (TXI T1)	5,005	-	(5,005)	1,155,967	0%	100%
Total Unbudgeted Projects	\$ 961,833	\$ -	\$ (961,833)	\$ 23,000,192		
TOTAL	\$ 16,036,244	\$ 31,587,819	\$ 15,551,575	\$ 84,354,451	51%	



**Water Line of Business
FY 2024 Capital Expenditure Summary
As of February 29, 2024**

58% of Year Completed

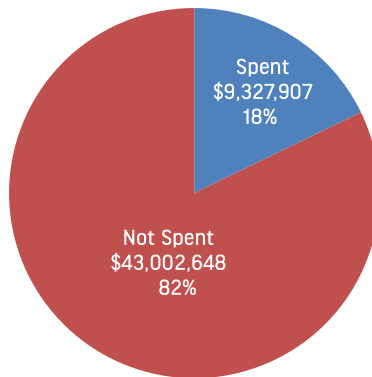
Project	¹ Total Spent YTD	² FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	^{(1)/(2)} % Spent YTD	% Physical Completion
Budgeted Projects:						
System Extensions	\$ 648,511	\$ 375,703	\$ (272,808)	\$ 375,703	173%	58%
Water Meters	1,302,449	1,844,670	542,221	1,844,670	71%	44%
Water Technology Upgrades	-	140,116	140,116	140,116	0%	2%
Aging System Replacements	985,897	2,092,123	1,106,226	2,092,123	47%	15%
ASR Feasibility Dev (IF)	122,620	2,069,462	1,946,842	38,120,155	6%	41%
Wood Meadows Water Line River Crossing	461,527	216,373	(245,154)	3,052,319	213%	28%
I-35 Water Line (Downtown)	6,197,242	7,963,912	1,766,670	11,468,136	78%	66%
1.00MG Solms Ground Storage Tank and Flow Control Valve	278	235,473	235,195	4,337,137	0%	6%
Western Downtown to Morningside PZ Conversion	78,216	308,393	230,177	8,525,525	25%	21%
FM 306 Pump Station & Discharge Pipeline	1,076,827	1,885,704	808,877	10,821,940	57%	69%
Conrads EST	921,332	5,488,218	4,566,886	6,852,776	17%	10%
Goodwin Lane Water Main	4,870,916	6,884,157	2,013,241	12,624,155	71%	80%
Klein Rd Reconstruction Phase 2	386,250	1,126,496	740,246	1,404,382	34%	80%
Landa Pump Station Phase 2/Well 5	1,266,502	6,242,981	4,976,479	15,931,146	20%	68%
Trinity Expansion- Treatment Plant	4,418,103	17,173,917	12,755,814	27,357,602	26%	48%
Trinity Expansion- Well Field	1,310,535	7,057,207	5,746,672	10,222,796	19%	35%
FM 1044 EST	29,644	1,373,451	1,343,807	13,187,743	2%	2%
GBRA Interconnect Metering Station	701,101	701,780	679	996,909	100%	52%
Garden Street Bridge Water Line	152,529	390,851	238,322	587,926	39%	52%
Goodwin/Conrads Water Adjustments	879	403,683	402,804	434,276	0%	4%
Misison/Westpointe Connection Waterlines	56,467	5,539,877	5,483,410	6,495,952	1%	11%
Senate Bill 3 EPP Generators	113,493	1,301,224	1,187,731	1,328,362	9%	4%
Tank Decommission	234,568	865,803	631,235	954,937	27%	37%
Water Tank Rehabilitations	23,887	303,582	279,695	303,582	8%	10%
Total Budgeted Projects	\$ 25,359,773	\$ 71,985,156	\$ 46,625,383	\$ 179,460,368	35%	
Unbudgeted Projects:						
Castell Ave Rehabilitation (CNB)	\$ -	\$ -	\$ -	\$ 26,681,290		100%
Infrastructure Replacement Package 1-W	234	-	(234)	2,762		10%
30/24-inch SWTP Discharge Line (Downtown)	17,399	-	(17,399)	21,587,112		100%
Well 4 to Grandview Pump Station & Discharge Line Upgrades	182,074	-	(182,074)	9,460,061		100%
Weltner Rd Ground Strg Tank & Pump Station-Ph 1	114,435	-	(114,435)	24,173,897		100%
Total Unbudgeted Projects	\$ 314,142	\$ -	\$ (314,142)	\$ 81,905,122		
TOTAL	\$ 25,673,915	\$ 71,985,156	\$ 46,311,241	\$ 261,365,489	36%	



**Wastewater Line of Business
FY 2024 Capital Expenditure Summary
As of February 29, 2024**

58% of Year Completed

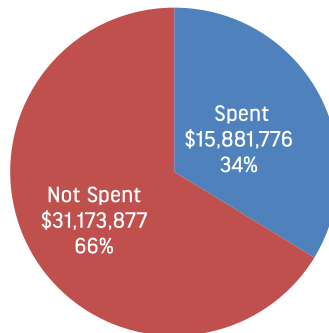
Project	1		2		Project Life Total Budget	(1)/(2)	
	Total Spent YTD	FY24 Project Budget	FY24 Budget Remaining	FY24 Budget Remaining		% Spent YTD	% Physical Completion
Budgeted Projects:							
System Extensions	\$ 311,684	\$ 249,038	\$ (62,646)	\$ 249,038	125%	55%	
Aging System Replacements	666,835	2,046,224	1,379,389	2,046,224	33%	10%	
Wastewater Technology Upgrades	-	145,563	145,563	145,563	0%	1%	
Manhole Rehabilitation	-	789,673	789,673	789,673	0%	37%	
South Kuehler Interceptor Phase 1	26,744	480,284	453,540	5,426,066	6%	16%	
Gruene Rd Sewer Main Rehabilitation/Relocation	-	107,441	107,441	2,896,802	0%	6%	
McKenzie WRF Expansion	7,295,429	20,026,694	12,731,265	72,312,120	36%	16%	
Solms Lift Station Expansion	177,343	1,076,397	899,054	1,705,332	16%	22%	
I-35 Interceptor Upgrade	159,110	4,090,487	3,931,377	14,155,678	4%	7%	
Kuehler WRF Access Road-Courtyard Dr	17,404	3,265,043	3,247,639	3,739,824	1%	14%	
McKenzie Interceptor Upgrade	379,620	2,291,295	1,911,675	50,706,156	17%	3%	
Kuehler WRF Rehabilitation	28,721	12,890,556	12,861,835	44,788,333	0%	3%	
Sewer Infrastructure Replacement Package 2	141,527	739,180	597,653	4,957,511	19%	8%	
Saengerhalle North Interceptor	40,570	215,817	175,247	5,888,532	19%	13%	
Goodwin/Conrads Adjustments (CNB)-WW	27,264	406,908	379,644	1,114,676	7%	6%	
Gruene WRF Spoils & Materials Yard	69,035	447,632	378,597	1,061,999	15%	100%	
North Kuehler Manhole Rehabilitation-Segment 3	-	494,109	494,109	1,016,271	0%	100%	
Kuehler WRF Rehabilitation-Clarifier Replacement	138,716	2,568,214	2,429,498	2,758,806	5%	7%	
Total Budgeted Projects	\$ 9,480,003	\$ 52,330,555	\$ 42,850,552	\$ 215,758,603	18%		
Unbudgeted Projects:							
Castell Ave Rehabilitation (CNB)	\$ -	\$ -	\$ -	\$ 5,585,413		100%	
North Kuehler 42" Interceptor Upgrade	2,217	-	(2,217)	15,524,017		100%	
North Kuehler 30 and 33-inch Interceptor Upgrade	40	-	(40)	26,748,112		100%	
Gruene Rd Sewer Main Odor Control	5,475	-	(5,475)	239,659		16%	
Infrastructure Replacement Package 1-WW	9,132	-	(9,132)	123,819		20%	
Rio Lift Station Expansion	55,136	-	(55,136)	3,576,417		100%	
Schmidt I-35 N Sewer Main Replacement	(236,923)	-	236,923	376,069		97%	
Saengerhalle Lift Station Expansion & Force Main	12,826	-	(12,826)	4,892,290		100%	
Total Unbudgeted Projects	\$ (152,096)	\$ -	\$ 152,096	\$ 57,065,796			
TOTAL	\$ 9,327,907	\$ 52,330,555	\$ 43,002,648	\$ 272,824,400	18%		



**Support Services Line of Business
FY 2024 Capital Expenditure Summary
As of February 29, 2024**

58% of Year Completed

Project	¹ Total Spent YTD	² FY24 Project Budget	FY24 Budget Remaining	Project Life Total Budget	⁽¹⁾⁺⁽²⁾ % Spent YTD	% Physical Completion
Budgeted Projects:						
Headwaters at the Comal	\$ 2,369,895	\$ 4,500,000	\$ 2,130,105	\$ 25,670,681	53%	60%
Cyber Security System	61,600	325,000	263,400	325,000	19%	15%
Software Replacement and Enhancements	-	130,000	130,000	130,000	0%	10%
NBU Headquarters, Maint & Support Facility	11,945,098	25,000,000	13,054,902	134,505,960	48%	10%
Laserfiche Development	-	300,000	300,000	570,867	0%	20%
Backup Operations Center	37,061	1,280,000	1,242,939	8,452,700	3%	20%
Upgrade or Replace all NBU Radios	-	200,000	200,000	200,000	0%	10%
Kerlick Tower Modifications	-	450,000	450,000	457,597	0%	20%
Data Strategy Upgrades - BDAP	561,602	1,185,653	624,051	1,185,653	47%	33%
System Technology Upgrades - Monitoring	38,625	400,000	361,375	400,000	10%	0%
Fiber Network Distribution Expansion	-	650,000	650,000	1,428,700	0%	10%
Fleet AVL	-	75,000	75,000	75,000	0%	0%
Data Strategy Upgrades - GIS Upgrades	-	200,000	200,000	1,900,000	0%	15%
Pioneer Upgrade	-	171,000	171,000	171,000	0%	5%
Smartsheet Control Center	-	73,000	73,000	73,000	0%	0%
Tele-Communications Enhancements	6,500	102,000	95,500	181,754	6%	40%
Water/Wastewater SCADA Aging Infrastructure	-	1,000,000	1,000,000	1,000,000	0%	0%
Water SCADA Replacement & Integration	307,636	2,000,000	1,692,364	3,413,098	15%	50%
OT Security	-	50,000	50,000	50,000	0%	0%
Customer Bill Pay Portal	7,004	160,000	152,996	230,044	4%	0%
ARCGIS Indoors	-	50,000	50,000	50,000	0%	0%
Loop 337 Substation Control House	-	42,000	42,000	42,000	0%	0%
Replace Control Center Console	-	100,000	100,000	100,000	0%	0%
Future Facilities Rehab Projects	-	150,000	150,000	1,229,990	0%	0%
Firewall and VPN Replacement	-	120,000	120,000	120,000	0%	0%
Gruene Rd Fence	-	32,000	32,000	32,000	0%	0%
CIS Functionality Upgrade	-	1,500,000	1,500,000	1,500,000	0%	0%
Ipads for Cityworks Mobile & mcare	-	125,000	125,000	125,000	0%	30%
Customer Service Kiosk	-	78,000	78,000	78,000	0%	0%
Level 2 EV Chargers	-	72,000	72,000	72,000	0%	0%
Meraki Wifi Replacement	74,397	125,000	50,603	125,000	60%	60%
RTU replacement 4.6,7 Main office	-	40,000	40,000	40,000	0%	0%
New Braunfels Police Department	400,487	3,585,000	3,184,513	3,645,000	11%	0%
RuggedCom Switch Replacement	-	200,000	200,000	600,000	0%	10%
Sheriff's Posse Control House Recondition	-	35,000	35,000	35,000	0%	0%
Solar Array and Battery Storage	-	50,000	50,000	50,000	0%	0%
Mass Meter Change Out	-	2,000,000	2,000,000	2,000,000	0%	0%
Water Meter Study	-	500,000	500,000	500,000	0%	0%
Total Budgeted Projects	\$ 15,809,905	\$ 47,055,653	\$ 31,245,748	\$ 190,765,042	34%	
Unbudgeted Projects:						
Physical Security Systems	\$ 71,872	\$ -	\$ (71,872)	\$ 71,872		90%
Total	\$ 71,872	\$ -	\$ (71,872)	\$ 71,872		
Total	\$ 15,881,776	\$ 47,055,653	\$ 31,173,877	\$ 190,836,914	34%	



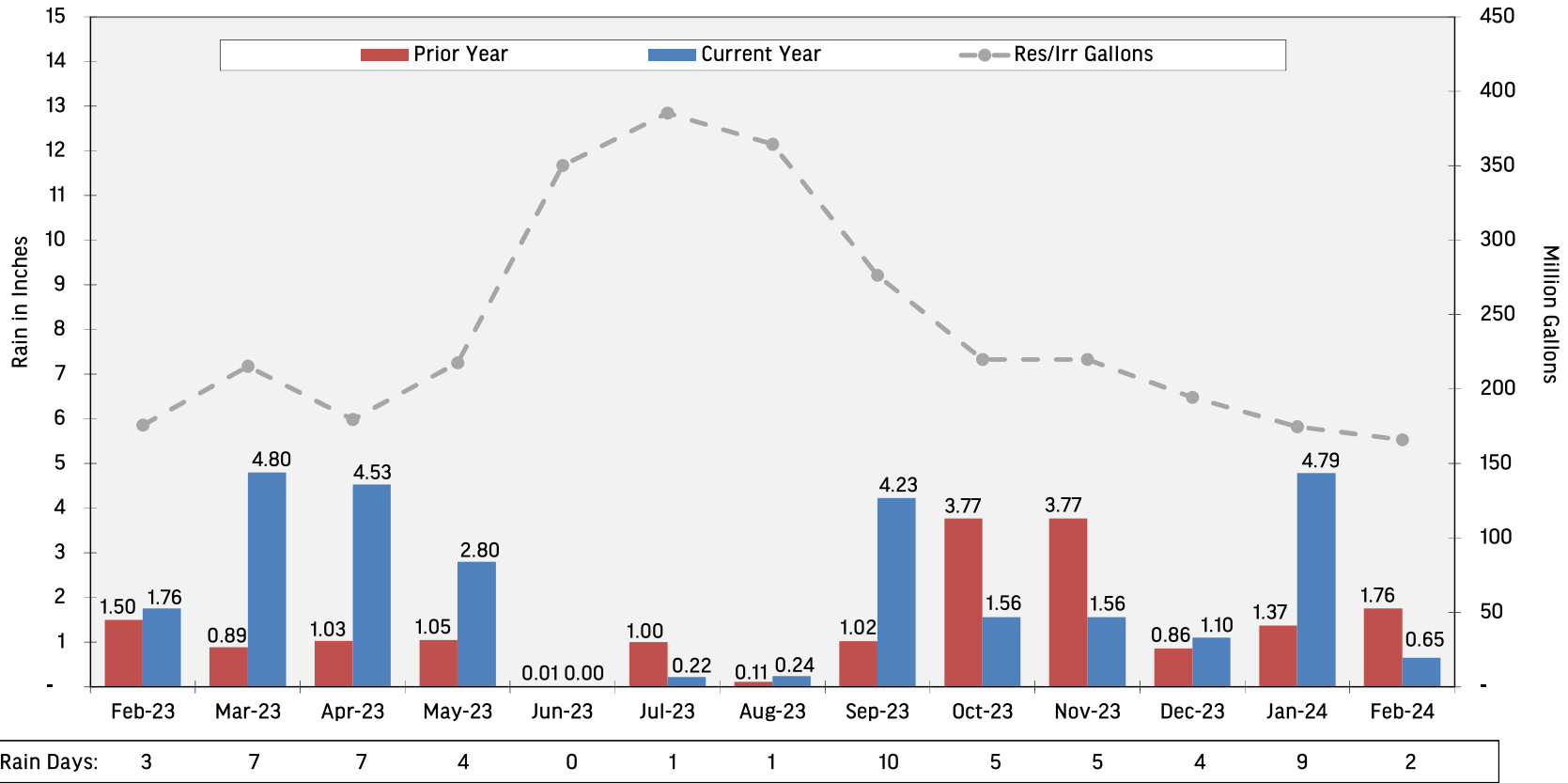
Electric Statistics are provided separately due to competitive matters.

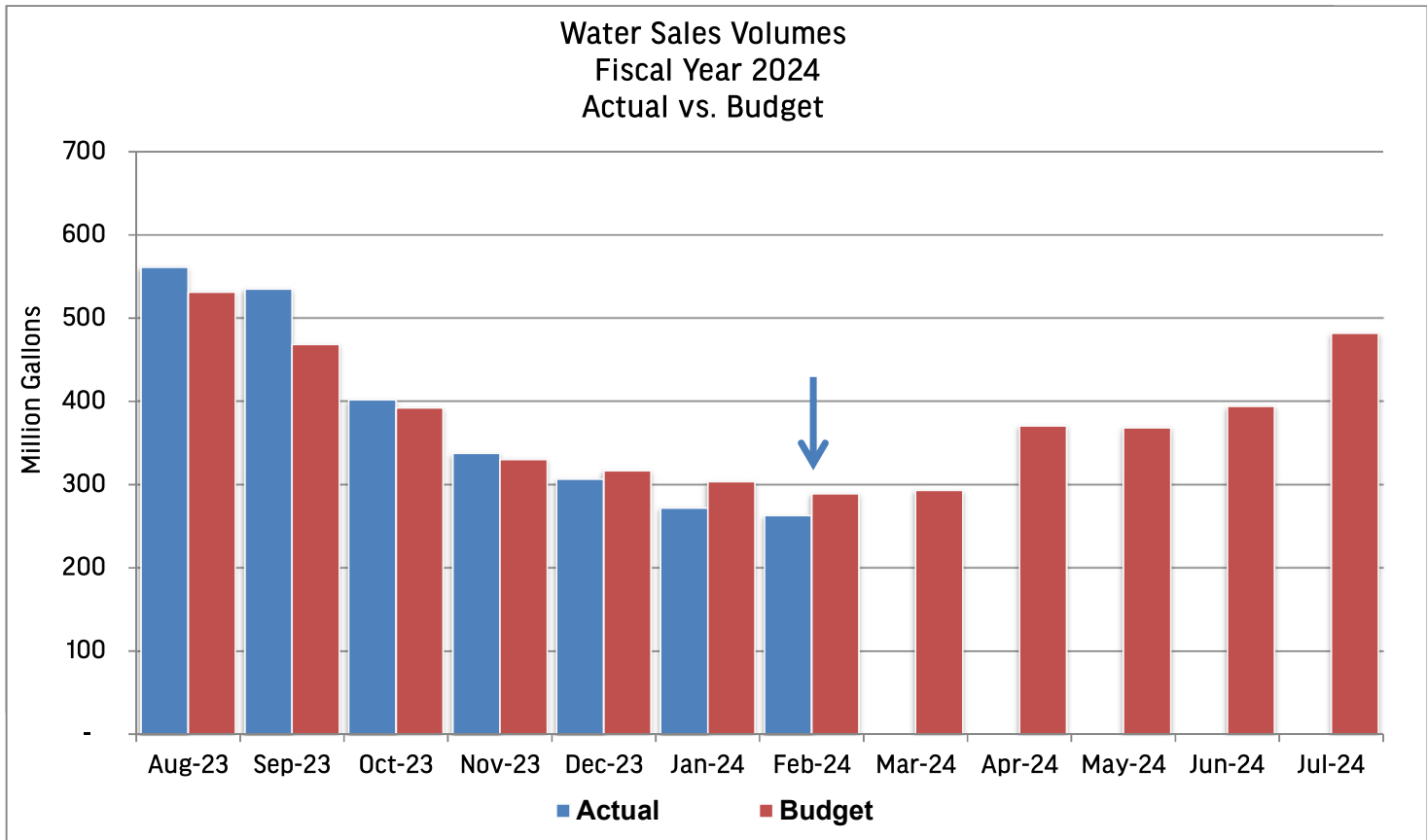
WATER STATISTICS

**NEW BRAUNFELS UTILITIES
WATER STATISTICS
HIGHLIGHTS OVERVIEW**

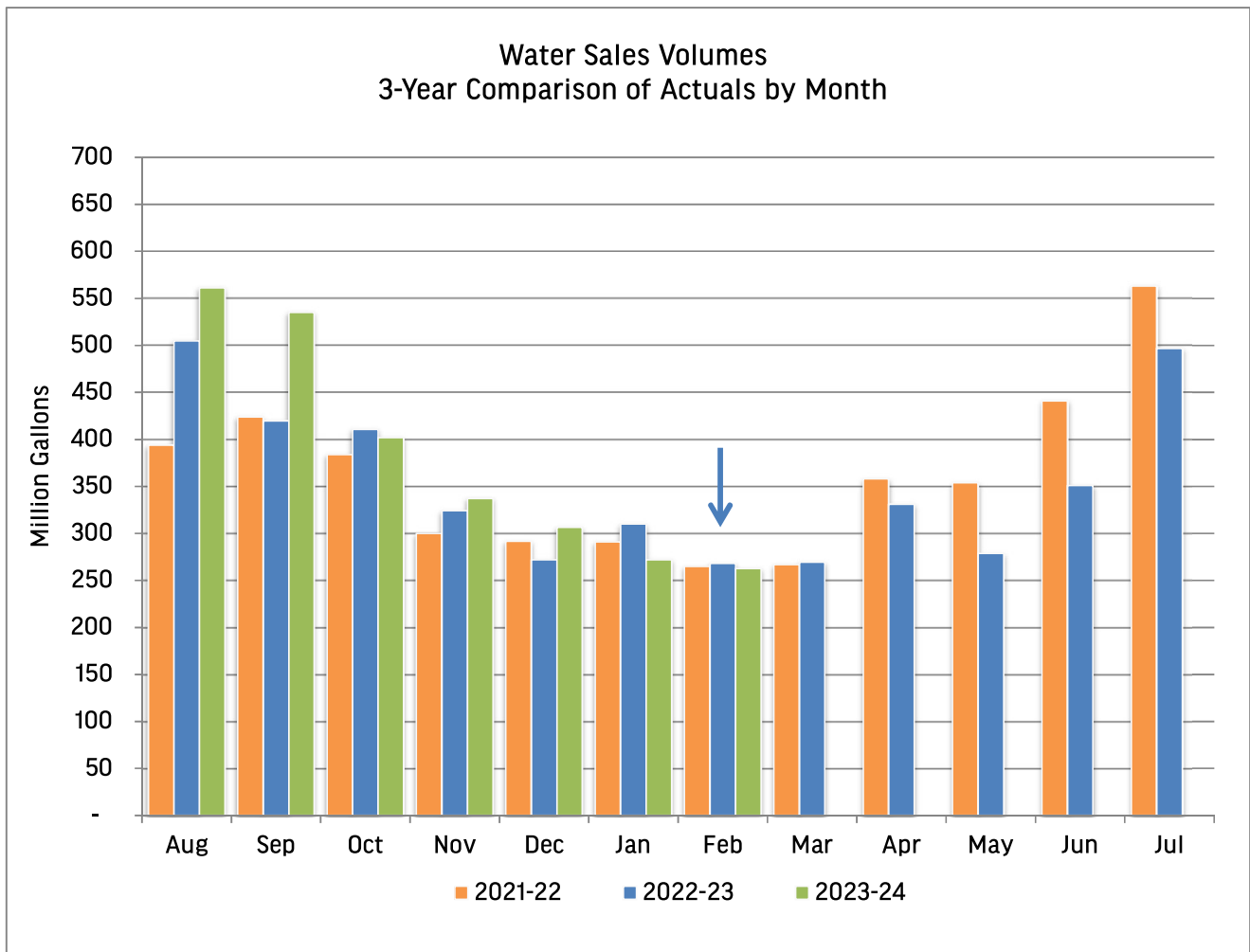
- February MTD rainfall was lower than the prior year rainfall, totaling 0.65 inches for the month. The February rainfall total of 0.65 inches was 1.35 inches lower than the historical average rainfall of 2.0 inches. For February 2024, there were two rain days during the month compared to three rain days in February 2023.
- February YTD rainfall totaled 14.13 inches compared to the prior year total of 12.66 inches, which is an increase of 1.47 inches compared to prior year YTD. For YTD, there have been 36 rain days compared to 28 rain days for prior year YTD.
- Average MTD consumption by residential water customer in February 2024 was 4,209 gallons compared to 4,278 gallons in February 2023, reflecting a 1.6% decrease.
- Actual YTD consumption by residential water customer through February 2024 was 38,914 gallons compared to 38,032 for YTD through February 2023, reflecting an increase of 2.3%.
- Overall trend for fiscal year-to-date in total water sales volume is more than the sales volume over the same period for the previous year with the change being 166.8 million gallons, or 6.6% (2,676.7 million gallons for FY 2024 YTD vs. 2,509.9 million gallons for FY 2023 YTD).
- Actual total water sales volume for year-to-date FY 2024 is 2,676.7 million gallons, which is 45.4 million more than the budgeted amount of 2,631.3 million gallons for the same time period.
 - The following are major contributors, by rate classification, towards the 45.4 million gallons change from budget:
 - Residential Domestic – decrease of 6.7 million gallons (down 0.5% from budget)
 - Multi-Unit 5+ - increase of 14.7 million gallons (up 8.7% from budget)
 - Residential Irrigation – decrease of 22.8 million gallons (down 5.7% from budget)
 - Commercial Irrigation – increase of 22.6 million gallons (up 15.3 % from budget)
 - Small General Services – increase of 74.7 million gallons (up 38.3% from budget)
 - Large General Services – decrease of 67.1 million gallons (down 24.6% from budget)
 - Other Sales – increase of 23.0 million gallons (up 98.2% from budget)
 - ReUse Water – increase of 6.7 million gallons (up 487.0% from budget)

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





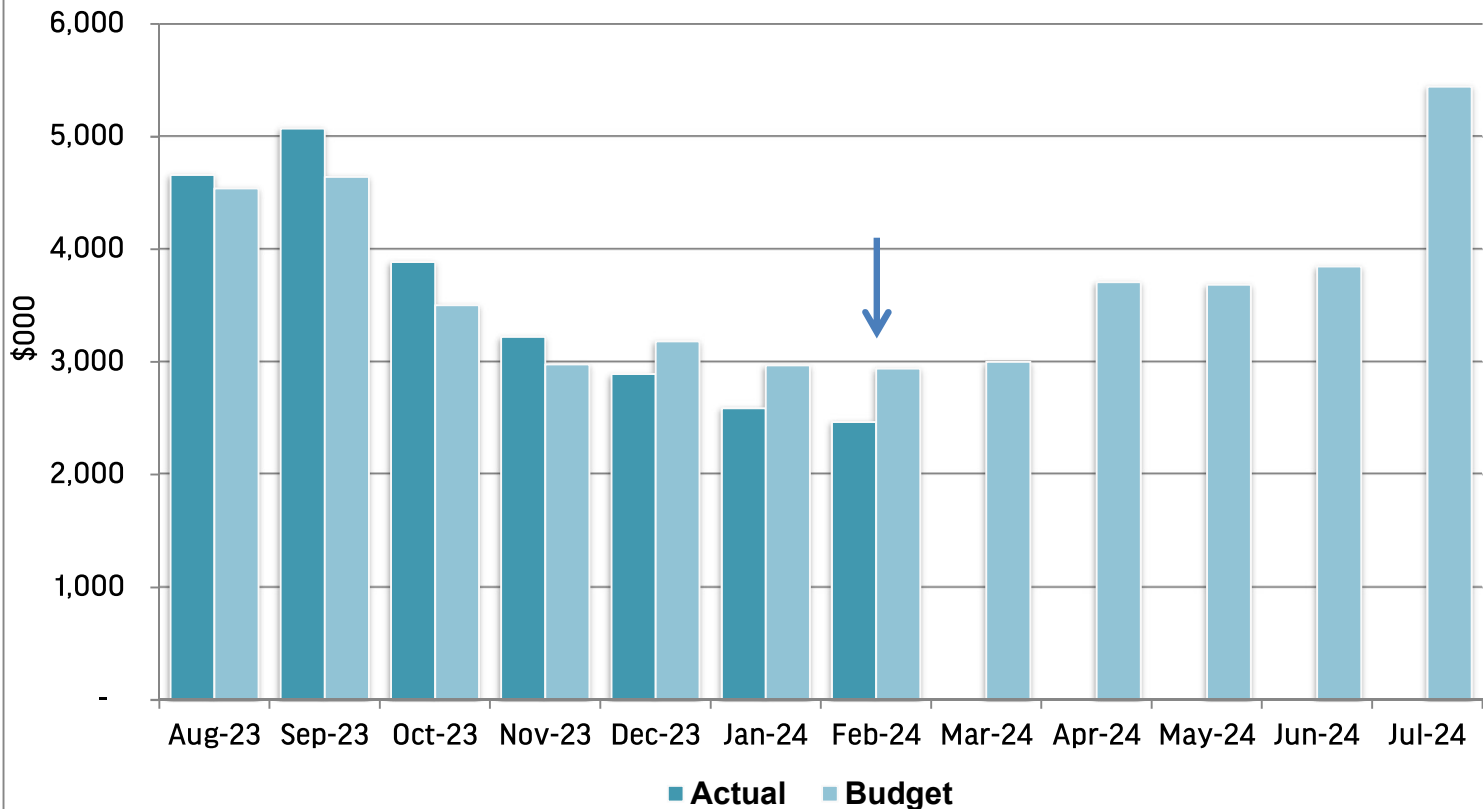
Month	Actual	Budget
Aug-23	561	531
Sep-23	535	468
Oct-23	402	392
Nov-23	337	330
Dec-23	306	317
Jan-24	272	304
Feb-24	263	289
Mar-24	-	293
Apr-24	-	371
May-24	-	368
Jun-24	-	394
Jul-24	-	482
TOTAL	2,677	4,539



Water Sales Volumes (Million Gallons)			
Month	2021-22	2022-23	2023-24
Aug	394	505	561
Sep	424	420	535
Oct	384	411	402
Nov	300	324	337
Dec	292	272	306
Jan	291	310	272
Feb	265	268	263
Mar	267	269	-
Apr	358	331	-
May	354	279	-
Jun	441	351	-
Jul	563	497	-
TOTAL	4,333	4,237	2,677

Meter Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	33,710	4.52%	35,235	3.36%	36,419
Irrigation	12,514	9.92%	13,756	7.47%	14,783
Other	2,940	0.88%	2,966	4.79%	3,108
TOTAL	49,164	5.68%	51,957	4.53%	54,310

**Total Water Sales
Fiscal Year 2024
Actual vs. Budget**



Month	Total Water Sales (\$000)	
	Actual	Budget
Aug-23	\$ 4,660	\$ 4,539
Sep-23	\$ 5,070	\$ 4,642
Oct-23	\$ 3,888	\$ 3,503
Nov-23	\$ 3,224	\$ 2,978
Dec-23	\$ 2,890	\$ 3,184
Jan-24	\$ 2,587	\$ 2,971
Feb-24	\$ 2,465	\$ 2,943
Mar-24	\$ -	\$ 2,999
Apr-24	\$ -	\$ 3,708
May-24	\$ -	\$ 3,685
Jun-24	\$ -	\$ 3,847
Jul-24	\$ -	\$ 5,445
TOTAL	\$ 24,786	\$ 44,444

WATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Water Volume (Gallons)
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	152,601,010	153,302,646	1,401,863,540	200,266,220
Budget	278,669,478	237,292,325	207,072,688	175,109,490	173,209,570	174,176,159	163,056,961	1,408,586,671	201,226,667
Prior Year	264,945,370	214,133,721	210,921,150	168,052,918	147,195,572	177,670,848	150,738,797	1,333,658,376	190,522,625
Multi-Unit 2-4									
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	1,409,153	1,552,115	12,317,891	1,759,699
Budget	2,133,762	2,020,591	1,702,965	1,531,918	1,502,289	1,598,116	1,411,754	11,901,395	1,700,199
Prior Year	2,255,895	1,811,283	1,706,631	1,468,178	1,558,732	1,991,094	1,731,278	12,523,091	1,789,013
Multi-Unit 5+									
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	25,622,619	27,819,886	183,091,787	26,155,970
Budget	25,326,666	25,620,852	24,285,693	22,896,149	23,054,060	23,641,597	23,603,566	168,428,583	24,061,226
Prior Year	25,435,941	26,247,479	23,126,169	22,573,660	22,243,553	27,640,694	24,981,709	172,249,205	24,607,029
Residential Irrigation									
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	22,127,445	12,702,243	379,644,308	54,234,901
Budget	101,916,516	89,848,970	67,370,554	47,455,669	40,755,051	29,226,787	25,896,276	402,469,822	57,495,689
Prior Year	75,502,265	57,908,800	60,546,492	42,139,788	25,242,936	22,372,220	18,434,179	302,146,680	43,163,811
Commercial Irrigation									
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	10,744,133	5,317,364	169,961,654	24,280,236
Budget	31,806,969	32,170,482	23,953,236	19,136,346	16,184,358	13,285,633	10,869,113	147,406,137	21,058,020
Prior Year	33,744,774	30,535,334	28,118,852	21,721,253	14,886,687	8,439,663	8,440,206	145,886,770	20,840,967
SGS									
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	26,281,878	27,100,968	269,902,244	38,557,463
Budget	31,764,131	29,773,888	26,212,617	27,978,022	28,661,024	23,437,606	27,384,033	195,211,320	27,887,331
Prior Year	78,178,199	78,468,416	69,448,844	58,815,374	57,772,260	67,638,990	59,416,751	469,738,835	67,105,548
LGS									
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	205,352,771	29,336,110
Budget	51,137,660	44,700,916	38,954,200	34,714,127	32,435,703	36,602,561	33,955,022	272,500,190	38,928,599
Prior Year	-	-	-	-	-	-	-	-	-
Other Sales									
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	2,123,877	2,696,819	46,508,136	6,644,019
Budget	7,964,649	7,211,502	2,237,575	1,361,680	320,031	1,497,983	2,870,647	23,464,067	3,352,010
Prior Year	19,291,639	10,429,974	11,829,866	6,504,861	2,722,722	4,009,008	2,940,187	57,728,257	8,246,894
ReUse Water									
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	8,090,200	1,155,743
Budget	613,050	(292,400)	117,738	177,998	442,163	235,575	84,025	1,378,148	196,878
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	15,937,900	2,276,843
Total Sales									
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	272,090,315	262,824,137	2,676,732,531	382,390,362
Budget	531,332,881	468,347,126	391,907,266	330,361,397	316,564,249	303,702,017	289,131,396	2,631,346,333	375,906,619
Prior Year	504,840,083	419,802,207	410,811,004	324,222,832	271,907,662	310,232,817	268,052,507	2,509,869,113	358,552,730

NEW BRAUNFELS UTILITIES
Water Volume (Gallons) Variance
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	286,378,437	269,971,015	205,507,686	172,501,880	161,600,866	152,601,010	153,302,646	1,401,863,540	200,266,220
Actual vs Budget	7,708,959	32,678,690	(1,565,002)	(2,607,610)	(1,608,704)	(21,575,149)	(9,754,315)	(6,723,131)	(960,447)
Actual vs Prior Year	21,433,067	55,837,294	(5,413,464)	4,448,962	14,405,294	(25,069,838)	2,563,849	68,205,164	9,743,595
Multi-Unit 2-4									
Actuals	2,241,863	2,314,345	1,899,923	1,522,212	1,378,280	1,409,153	1,552,115	12,317,891	1,759,699
Actual vs Budget	108,101	293,754	196,958	(9,706)	(124,009)	(188,963)	140,361	416,496	59,499
Actual vs Prior Year	(14,032)	503,062	193,292	54,034	(180,452)	(581,941)	(179,163)	(205,200)	(29,314)
Multi-Unit 5+									
Actuals	27,135,318	27,407,982	22,473,477	24,538,890	28,093,615	25,622,619	27,819,886	183,091,787	26,155,970
Actual vs Budget	1,808,652	1,787,130	(1,812,216)	1,642,741	5,039,555	1,981,022	4,216,320	14,663,204	2,094,743
Actual vs Prior Year	1,699,377	1,160,503	(652,692)	1,965,230	5,850,062	(2,018,075)	2,838,177	10,842,582	1,548,940
Residential Irrigation									
Actuals	99,066,089	94,465,846	70,964,442	47,428,899	32,889,344	22,127,445	12,702,243	379,644,308	54,234,901
Actual vs Budget	(2,850,427)	4,616,876	3,593,888	(26,770)	(7,865,707)	(7,099,342)	(13,194,033)	(22,825,514)	(3,260,788)
Actual vs Prior Year	23,563,824	36,557,046	10,417,950	5,289,111	7,646,408	(244,775)	(5,731,936)	77,497,628	11,071,090
Commercial Irrigation									
Actuals	39,196,600	41,949,117	32,913,746	22,756,456	17,084,238	10,744,133	5,317,364	169,961,654	24,280,236
Actual vs Budget	7,389,631	9,778,635	8,960,510	3,620,110	899,880	(2,541,500)	(5,551,749)	22,555,517	3,222,217
Actual vs Prior Year	5,451,826	11,413,783	4,794,894	1,035,203	2,197,551	2,304,470	(3,122,842)	24,074,884	3,439,269
SGS									
Actuals	88,144,880	36,085,131	31,847,997	31,141,415	29,299,975	26,281,878	27,100,968	269,902,244	38,557,463
Actual vs Budget	56,380,749	6,311,243	5,635,380	3,163,393	638,951	2,844,272	(283,065)	74,690,924	10,670,132
Actual vs Prior Year	9,966,681	(42,383,285)	(37,600,847)	(27,673,959)	(28,472,285)	(41,357,112)	(32,315,783)	(199,836,591)	(28,548,084)
LGS									
Actuals	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	205,352,771	29,336,110
Actual vs Budget	(51,137,660)	3,666,488	(11,924,886)	(141,756)	(564,317)	(5,422,361)	(1,622,926)	(67,147,419)	(9,592,488)
Actual vs Prior Year	-	48,367,404	27,029,314	34,572,371	31,871,386	31,180,200	32,332,096	205,352,771	29,336,110
Other Sales									
Actuals	14,773,264	12,569,962	7,367,839	2,816,330	4,160,045	2,123,877	2,696,819	46,508,136	6,644,019
Actual vs Budget	6,808,615	5,358,460	5,130,264	1,454,650	3,840,014	625,894	(173,828)	23,044,069	3,292,010
Actual vs Prior Year	(4,518,375)	2,139,988	(4,462,027)	(3,688,531)	1,437,323	(1,885,131)	(243,368)	(11,220,121)	(1,602,874)
ReUse Water									
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	8,090,200	1,155,743
Actual vs Budget	3,699,850	2,248,300	1,703,662	(177,998)	(442,163)	(235,575)	(84,025)	6,712,052	958,865
Actual vs Prior Year	(1,173,100)	1,688,700	(3,291,600)	(2,946,800)	(285,200)	(470,300)	(1,369,400)	(7,847,700)	(1,121,100)
Total Sales									
Actuals	561,249,351	535,086,702	401,825,824	337,278,453	306,377,749	272,090,315	262,824,137	2,676,732,531	382,390,362
Actual vs Budget	29,916,470	66,739,576	9,918,558	6,917,056	(10,186,500)	(31,611,702)	(26,307,259)	45,386,198	6,483,743
Actual vs Prior Year	56,409,268	115,284,495	(8,985,180)	13,055,621	34,470,087	(38,142,502)	(5,228,370)	166,863,418	23,837,631

NEW BRAUNFELS UTILITIES
Water Revenue
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 1,224,701	\$ 1,225,157	\$ 11,135,761	\$ 1,590,823
Budget	\$ 1,675,906	\$ 1,751,798	\$ 1,399,790	\$ 1,266,297	\$ 1,417,615	\$ 1,371,746	\$ 1,309,178	\$ 10,192,329	\$ 1,456,047
Prior Year	\$ 1,435,468	\$ 1,424,172	\$ 1,284,509	\$ 1,094,836	\$ 976,144	\$ 1,109,772	\$ 972,939	\$ 8,297,839	\$ 1,185,406
Multi-Unit 2-4									
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 15,725	\$ 16,542	\$ 123,499	\$ 17,643
Budget	\$ 20,133	\$ 22,197	\$ 18,479	\$ 17,431	\$ 18,354	\$ 19,284	\$ 18,172	\$ 134,049	\$ 19,150
Prior Year	\$ 19,176	\$ 17,926	\$ 16,683	\$ 15,050	\$ 16,630	\$ 17,942	\$ 16,479	\$ 119,885	\$ 17,126
Multi-Unit 5+									
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 255,463	\$ 270,981	\$ 1,779,340	\$ 254,191
Budget	\$ 266,804	\$ 279,964	\$ 279,474	\$ 255,175	\$ 286,678	\$ 288,535	\$ 286,395	\$ 1,943,024	\$ 277,575
Prior Year	\$ 241,401	\$ 258,388	\$ 239,757	\$ 226,649	\$ 220,174	\$ 253,389	\$ 237,675	\$ 1,677,434	\$ 239,633
Residential Irrigation									
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 421,127	\$ 336,040	\$ 5,015,380	\$ 716,483
Budget	\$ 1,313,660	\$ 1,294,138	\$ 883,179	\$ 648,549	\$ 645,400	\$ 503,243	\$ 523,810	\$ 5,811,979	\$ 830,283
Prior Year	\$ 876,750	\$ 751,431	\$ 715,064	\$ 518,829	\$ 371,346	\$ 345,040	\$ 310,796	\$ 3,889,255	\$ 555,608
Commercial Irrigation									
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 136,872	\$ 75,668	\$ 2,081,286	\$ 297,327
Budget	\$ 424,000	\$ 469,064	\$ 310,403	\$ 234,897	\$ 222,201	\$ 184,303	\$ 153,156	\$ 1,998,023	\$ 285,432
Prior Year	\$ 405,253	\$ 401,101	\$ 328,274	\$ 240,204	\$ 164,788	\$ 94,550	\$ 97,630	\$ 1,731,801	\$ 247,400
SGS									
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 267,962	\$ 267,142	\$ 2,548,861	\$ 364,123
Budget	\$ 434,693	\$ 388,629	\$ 291,965	\$ 281,162	\$ 354,123	\$ 315,931	\$ 346,915	\$ 2,413,419	\$ 344,774
Prior Year	\$ 616,047	\$ 678,287	\$ 558,030	\$ 450,987	\$ 450,757	\$ 516,134	\$ 461,766	\$ 3,732,009	\$ 533,144
LGS									
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 1,378,836	\$ 196,977
Budget	\$ 290,436	\$ 325,951	\$ 289,257	\$ 252,430	\$ 233,412	\$ 259,549	\$ 243,598	\$ 1,894,633	\$ 270,662
Prior Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Sales									
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 50,717	\$ 55,637	\$ 677,587	\$ 96,798
Budget	\$ 110,730	\$ 111,853	\$ 30,081	\$ 20,845	\$ 5,798	\$ 28,566	\$ 61,475	\$ 369,349	\$ 52,764
Prior Year	\$ 241,628	\$ 145,742	\$ 143,275	\$ 89,711	\$ 50,358	\$ 62,775	\$ 51,200	\$ 784,688	\$ 112,098
ReUse Water									
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 56	\$ 56	\$ 45,433	\$ 6,490
Budget	\$ 3,125	\$ (1,309)	\$ 634	\$ 952	\$ -	\$ -	\$ -	\$ 3,402	\$ 486
Prior Year	\$ 25,191	\$ 1,078	\$ 24,810	\$ 14,201	\$ 1,166	\$ 2,072	\$ 6,476	\$ 74,993	\$ 10,713
Total Sales									
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 2,587,060	\$ 2,465,474	\$ 24,785,982	\$ 3,540,855
Budget	\$ 4,539,486	\$ 4,642,285	\$ 3,503,262	\$ 2,977,737	\$ 3,183,581	\$ 2,971,156	\$ 2,942,699	\$ 24,760,207	\$ 3,537,172
Prior Year	\$ 3,860,913	\$ 3,678,125	\$ 3,310,402	\$ 2,650,466	\$ 2,251,363	\$ 2,401,673	\$ 2,154,961	\$ 20,307,904	\$ 2,901,129

NEW BRAUNFELS UTILITIES
Water Revenue Variance
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	\$ 1,827,272	\$ 2,392,640	\$ 1,747,250	\$ 1,412,358	\$ 1,306,382	\$ 1,224,701	\$ 1,225,157	\$ 11,135,761	\$ 1,590,823
Actual vs Budget	\$ 151,366	\$ 640,842	\$ 347,460	\$ 146,062	\$ (111,232)	\$ (147,045)	\$ (84,021)	\$ 943,432	\$ 134,776
Actual vs Prior Year	\$ 391,804	\$ 968,468	\$ 462,741	\$ 317,523	\$ 330,238	\$ 114,929	\$ 252,218	\$ 2,837,921	\$ 405,417
Multi-Unit 2-4									
Actuals	\$ 19,957	\$ 20,786	\$ 18,489	\$ 16,371	\$ 15,628	\$ 15,725	\$ 16,542	\$ 123,499	\$ 17,643
Actual vs Budget	\$ (176)	\$ (1,410)	\$ 10	\$ (1,060)	\$ (2,726)	\$ (3,559)	\$ (1,630)	\$ (10,550)	\$ (1,507)
Actual vs Prior Year	\$ 781	\$ 2,861	\$ 1,806	\$ 1,321	\$ (1,001)	\$ (2,216)	\$ 62	\$ 3,614	\$ 516
Multi-Unit 5+									
Actuals	\$ 260,228	\$ 257,270	\$ 230,761	\$ 241,325	\$ 263,312	\$ 255,463	\$ 270,981	\$ 1,779,340	\$ 254,191
Actual vs Budget	\$ (6,575)	\$ (22,694)	\$ (48,714)	\$ (13,849)	\$ (23,366)	\$ (33,072)	\$ (15,414)	\$ (163,685)	\$ (23,384)
Actual vs Prior Year	\$ 18,828	\$ (1,119)	\$ (8,997)	\$ 14,676	\$ 43,138	\$ 2,074	\$ 33,305	\$ 101,905	\$ 14,558
Residential Irrigation									
Actuals	\$ 1,117,789	\$ 1,105,950	\$ 869,979	\$ 647,488	\$ 517,007	\$ 421,127	\$ 336,040	\$ 5,015,380	\$ 716,483
Actual vs Budget	\$ (195,872)	\$ (188,188)	\$ (13,200)	\$ (1,062)	\$ (128,393)	\$ (82,116)	\$ (187,769)	\$ (796,599)	\$ (113,800)
Actual vs Prior Year	\$ 241,039	\$ 354,519	\$ 154,916	\$ 128,659	\$ 145,660	\$ 76,086	\$ 25,245	\$ 1,126,124	\$ 160,875
Commercial Irrigation									
Actuals	\$ 477,522	\$ 504,909	\$ 398,908	\$ 276,791	\$ 210,617	\$ 136,872	\$ 75,668	\$ 2,081,286	\$ 297,327
Actual vs Budget	\$ 53,522	\$ 35,845	\$ 88,505	\$ 41,894	\$ (11,584)	\$ (47,431)	\$ (77,488)	\$ 83,263	\$ 11,895
Actual vs Prior Year	\$ 72,269	\$ 103,808	\$ 70,634	\$ 36,587	\$ 45,828	\$ 42,322	\$ (21,962)	\$ 349,485	\$ 49,926
SGS									
Actuals	\$ 765,231	\$ 343,842	\$ 309,028	\$ 304,058	\$ 291,599	\$ 267,962	\$ 267,142	\$ 2,548,861	\$ 364,123
Actual vs Budget	\$ 330,538	\$ (44,787)	\$ 17,063	\$ 22,896	\$ (62,525)	\$ (47,969)	\$ (79,774)	\$ 135,443	\$ 19,349
Actual vs Prior Year	\$ 149,184	\$ (334,445)	\$ (249,002)	\$ (146,929)	\$ (159,159)	\$ (248,172)	\$ (194,625)	\$ (1,183,147)	\$ (169,021)
LGS									
Actuals	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 1,378,836	\$ 196,977
Actual vs Budget	\$ (290,436)	\$ (37,006)	\$ (80,664)	\$ (17,421)	\$ (19,812)	\$ (45,112)	\$ (25,346)	\$ (515,797)	\$ (73,685)
Actual vs Prior Year	\$ -	\$ 288,946	\$ 208,593	\$ 235,009	\$ 213,600	\$ 214,437	\$ 218,252	\$ 1,378,836	\$ 196,977
Other Sales									
Actuals	\$ 179,419	\$ 155,792	\$ 105,303	\$ 58,471	\$ 72,249	\$ 50,717	\$ 55,637	\$ 677,587	\$ 96,798
Actual vs Budget	\$ 68,689	\$ 43,939	\$ 75,222	\$ 37,625	\$ 66,451	\$ 22,151	\$ (5,838)	\$ 308,238	\$ 44,034
Actual vs Prior Year	\$ (62,209)	\$ 10,051	\$ (37,972)	\$ (31,240)	\$ 21,891	\$ (12,059)	\$ 4,437	\$ (107,101)	\$ (15,300)
ReUse Water									
Actuals	\$ 12,545	\$ 173	\$ 165	\$ 32,382	\$ 56	\$ 56	\$ 56	\$ 45,433	\$ 6,490
Actual vs Budget	\$ 9,420	\$ 1,482	\$ (470)	\$ 31,430	\$ 56	\$ 56	\$ 56	\$ 42,031	\$ 6,004
Actual vs Prior Year	\$ (12,646)	\$ (905)	\$ (24,645)	\$ 18,181	\$ (1,109)	\$ (2,016)	\$ (6,419)	\$ (29,559)	\$ (4,223)
Total Sales									
Actuals	\$ 4,659,963	\$ 5,070,307	\$ 3,888,476	\$ 3,224,252	\$ 2,890,450	\$ 2,587,060	\$ 2,465,474	\$ 24,785,982	\$ 3,540,855
Actual vs Budget	\$ 120,477	\$ 428,022	\$ 385,214	\$ 246,514	\$ (293,131)	\$ (384,096)	\$ (477,225)	\$ 25,775	\$ 3,682
Actual vs Prior Year	\$ 799,050	\$ 1,392,183	\$ 578,074	\$ 573,785	\$ 639,087	\$ 185,387	\$ 310,513	\$ 4,478,078	\$ 639,725

NEW BRAUNFELS UTILITIES
Water Meters
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	AVG
Residential								
Actuals	35,651	35,942	36,027	36,016	36,162	36,355	36,419	36,082
Budget	35,570	35,716	35,862	36,008	36,154	36,301	36,447	36,008
Prior Year	34,863	35,017	35,058	35,080	35,155	35,219	35,235	35,090
Multi-Unit 2-4								
Actuals	208	221	225	223	223	222	222	221
Budget	208	208	208	208	208	208	208	208
Prior Year	208	209	207	208	209	209	208	208
Multi-Unit 5+								
Actuals	262	269	270	270	273	274	275	270
Budget	260	262	263	265	267	269	270	265
Prior Year	257	257	259	258	258	259	259	258
Residential Irrigation								
Actuals	13,351	13,533	13,592	13,610	13,749	13,895	13,938	13,667
Budget	13,187	13,347	13,507	13,668	13,828	13,989	14,149	13,668
Prior Year	12,525	12,620	12,669	12,722	12,769	12,831	12,901	12,720
Commercial Irrigation								
Actuals	884	830	831	832	839	841	845	843
Budget	860	862	865	868	870	873	876	868
Prior Year	845	835	849	849	850	851	855	848
SGS								
Actuals	2,412	2,282	2,276	2,270	2,290	2,293	2,290	2,302
Budget	2,268	2,271	2,275	2,277	2,280	2,284	2,288	2,278
Prior Year	2,380	2,383	2,383	2,386	2,389	2,384	2,383	2,384
LGS								
Actuals	-	198	213	214	219	218	219	183
Budget	133	134	134	136	137	137	137	135
Prior Year	-	-	-	-	-	-	-	-
Other Sales								
Actuals	109	111	116	108	107	102	101	108
Budget	151	153	154	156	158	160	161	156
Prior Year	124	124	130	132	124	120	115	124
ReUse Water								
Actuals	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1
Total Meters								
Actuals	52,878	53,387	53,551	53,544	53,863	54,201	54,310	53,676
Budget	52,638	52,954	53,271	53,588	53,904	54,221	54,537	53,588
Prior Year	51,203	51,446	51,556	51,636	51,755	51,874	51,957	51,632

New Meters	241	509	164	(7)	319	338	109	239
------------	-----	-----	-----	-----	-----	-----	-----	-----

New Meter Growth	0.5%	1.0%	0.3%	0.0%	0.6%	0.6%	0.2%	0.4%
------------------	------	------	------	------	------	------	------	------

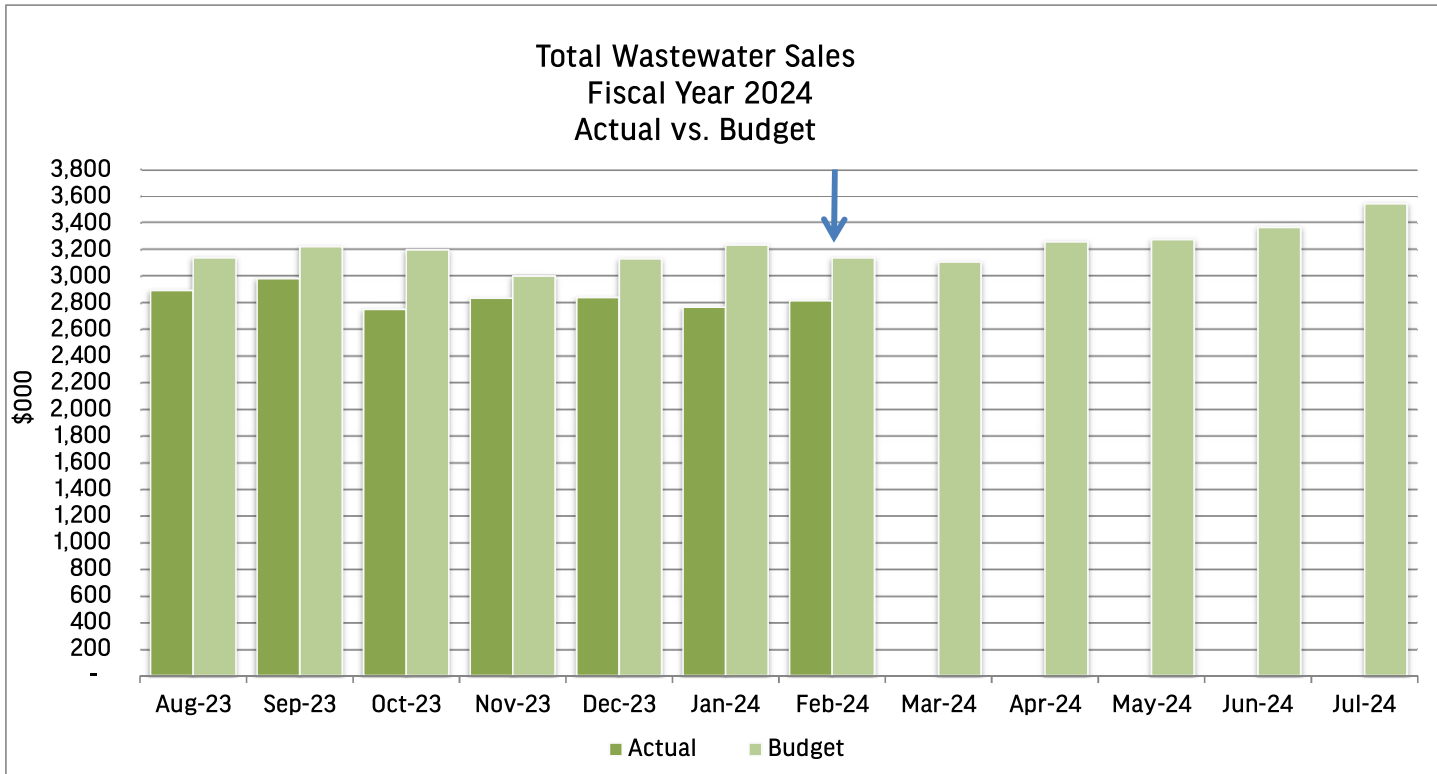
NEW BRAUNFELS UTILITIES
Water Volume per Meter (Gallons)
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	8,033	7,511	5,704	4,790	4,469	4,198	4,209	38,914	5,559
Budget	7,834	6,644	5,774	4,863	4,791	4,798	4,474	39,178	5,597
Prior Year	7,600	6,115	6,016	4,791	4,187	5,045	4,278	38,032	5,433
Multi-Unit 2-4									
Actuals	10,778	10,472	8,444	6,826	6,181	6,348	6,992	56,040	8,006
Budget	10,258	9,714	8,187	7,365	7,223	7,683	6,787	57,218	8,174
Prior Year	10,846	8,666	8,245	7,059	7,458	9,527	8,323	60,123	8,589
Multi-Unit 5+									
Actuals	103,570	101,888	83,235	90,885	102,907	93,513	101,163	677,162	96,737
Budget	97,504	97,976	92,253	86,400	86,426	88,050	87,340	635,950	90,850
Prior Year	98,973	102,130	89,290	87,495	86,215	106,721	96,454	667,278	95,325
Residential Irrigation									
Actuals	7,420	6,980	5,221	3,485	2,392	1,592	911	28,002	4,000
Budget	7,729	6,732	4,988	3,472	2,947	2,089	1,830	29,787	4,255
Prior Year	6,028	4,589	4,779	3,312	1,977	1,744	1,429	23,858	3,408
Commercial Irrigation									
Actuals	44,340	50,541	39,607	27,352	20,363	12,775	6,293	201,271	28,753
Budget	36,995	37,302	27,689	22,053	18,594	15,217	12,411	170,260	24,323
Prior Year	39,935	36,569	33,120	25,585	17,514	9,917	9,872	172,511	24,644
SGS									
Actuals	36,544	15,813	13,993	13,719	12,795	11,462	11,834	116,160	16,594
Budget	14,002	13,108	11,520	12,285	12,568	10,260	11,966	85,708	12,244
Prior Year	32,848	32,928	29,143	24,650	24,183	28,372	24,934	197,058	28,151
LGS									
Actuals	-	244,280	126,898	161,553	145,531	143,028	147,635	968,926	138,418
Budget	384,494	333,589	290,703	255,251	236,757	267,172	247,847	2,015,812	287,973
Prior Year	-	-	-	-	-	-	-	-	-
Other Sales									
Actuals	135,535	113,243	63,516	26,077	38,879	20,822	26,701	424,773	60,682
Budget	52,714	47,203	14,487	8,721	2,028	9,391	17,809	152,352	21,765
Prior Year	155,578	84,113	90,999	49,279	21,957	33,408	25,567	460,901	65,843
ReUse Water									
Actuals	4,312,900	1,955,900	1,821,400	-	-	-	-	8,090,200	1,155,743
Budget	613,050	(292,400)	117,738	177,998	442,163	235,575	84,025	1,378,148	196,878
Prior Year	5,486,000	267,200	5,113,000	2,946,800	285,200	470,300	1,369,400	15,937,900	2,276,843

NEW BRAUNFELS UTILITIES
Water Rates (per Gallon)
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	AVG
Residential								
Actuals	\$ 0.0064	\$ 0.0089	\$ 0.0085	\$ 0.0082	\$ 0.0081	\$ 0.0080	\$ 0.0080	\$ 0.0080
Budget	\$ 0.0060	\$ 0.0074	\$ 0.0068	\$ 0.0072	\$ 0.0082	\$ 0.0079	\$ 0.0080	\$ 0.0074
Prior Year	\$ 0.0054	\$ 0.0067	\$ 0.0061	\$ 0.0065	\$ 0.0066	\$ 0.0062	\$ 0.0065	\$ 0.0063
Multi-Unit 2-4								
Actuals	\$ 0.0089	\$ 0.0090	\$ 0.0097	\$ 0.0108	\$ 0.0113	\$ 0.0112	\$ 0.0107	\$ 0.0102
Budget	\$ 0.0094	\$ 0.0110	\$ 0.0109	\$ 0.0114	\$ 0.0122	\$ 0.0121	\$ 0.0129	\$ 0.0114
Prior Year	\$ 0.0085	\$ 0.0099	\$ 0.0098	\$ 0.0103	\$ 0.0107	\$ 0.0090	\$ 0.0095	\$ 0.0097
Multi-Unit 5+								
Actuals	\$ 0.0096	\$ 0.0094	\$ 0.0103	\$ 0.0098	\$ 0.0094	\$ 0.0100	\$ 0.0097	\$ 0.0097
Budget	\$ 0.0105	\$ 0.0109	\$ 0.0115	\$ 0.0111	\$ 0.0124	\$ 0.0122	\$ 0.0121	\$ 0.0116
Prior Year	\$ 0.0095	\$ 0.0098	\$ 0.0104	\$ 0.0100	\$ 0.0099	\$ 0.0092	\$ 0.0095	\$ 0.0098
Residential Irrigation								
Actuals	\$ 0.0113	\$ 0.0117	\$ 0.0123	\$ 0.0137	\$ 0.0157	\$ 0.0190	\$ 0.0265	\$ 0.0157
Budget	\$ 0.0129	\$ 0.0144	\$ 0.0131	\$ 0.0137	\$ 0.0158	\$ 0.0172	\$ 0.0202	\$ 0.0153
Prior Year	\$ 0.0116	\$ 0.0130	\$ 0.0118	\$ 0.0123	\$ 0.0147	\$ 0.0154	\$ 0.0169	\$ 0.0137
Commercial Irrigation								
Actuals	\$ 0.0122	\$ 0.0120	\$ 0.0121	\$ 0.0122	\$ 0.0123	\$ 0.0127	\$ 0.0142	\$ 0.0125
Budget	\$ 0.0133	\$ 0.0146	\$ 0.0130	\$ 0.0123	\$ 0.0137	\$ 0.0139	\$ 0.0141	\$ 0.0135
Prior Year	\$ 0.0120	\$ 0.0131	\$ 0.0117	\$ 0.0111	\$ 0.0111	\$ 0.0112	\$ 0.0116	\$ 0.0117
SGS								
Actuals	\$ 0.0087	\$ 0.0095	\$ 0.0097	\$ 0.0098	\$ 0.0100	\$ 0.0102	\$ 0.0099	\$ 0.0097
Budget	\$ 0.0137	\$ 0.0131	\$ 0.0111	\$ 0.0100	\$ 0.0124	\$ 0.0135	\$ 0.0127	\$ 0.0123
Prior Year	\$ 0.0079	\$ 0.0086	\$ 0.0080	\$ 0.0077	\$ 0.0078	\$ 0.0076	\$ 0.0078	\$ 0.0079
LGS								
Actuals	\$ -	\$ 0.0060	\$ 0.0077	\$ 0.0068	\$ 0.0067	\$ 0.0069	\$ 0.0068	\$ 0.0058
Budget	\$ 0.0057	\$ 0.0073	\$ 0.0074	\$ 0.0073	\$ 0.0072	\$ 0.0071	\$ 0.0072	\$ 0.0070
Prior Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Sales								
Actuals	\$ 0.0121	\$ 0.0124	\$ 0.0143	\$ 0.0208	\$ 0.0174	\$ 0.0239	\$ 0.0206	\$ 0.0174
Budget	\$ 0.0139	\$ 0.0155	\$ 0.0134	\$ 0.0153	\$ 0.0181	\$ 0.0191	\$ 0.0214	\$ 0.0167
Prior Year	\$ 0.0125	\$ 0.0140	\$ 0.0121	\$ 0.0138	\$ 0.0185	\$ 0.0157	\$ 0.0174	\$ 0.0149
ReUse Water								
Actuals	\$ 0.0029	\$ 0.0001	\$ 0.0001	\$ -	\$ -	\$ -	\$ -	\$ 0.0004
Budget	\$ 0.0051	\$ 0.0045	\$ 0.0054	\$ 0.0053	\$ -	\$ -	\$ -	\$ 0.0029
Prior Year	\$ 0.0046	\$ 0.0040	\$ 0.0049	\$ 0.0048	\$ 0.0041	\$ 0.0044	\$ 0.0047	\$ 0.0045

WASTEWATER STATISTICS



Month	Total Wastewater Sales (\$000)	
	Actual	Budget
Aug-23	\$ 2,896	\$ 3,143
Sep-23	\$ 2,985	\$ 3,224
Oct-23	\$ 2,755	\$ 3,201
Nov-23	\$ 2,838	\$ 3,005
Dec-23	\$ 2,845	\$ 3,134
Jan-24	\$ 2,770	\$ 3,238
Feb-24	\$ 2,818	\$ 3,140
Mar-24	\$ -	\$ 3,111
Apr-24	\$ -	\$ 3,260
May-24	\$ -	\$ 3,279
Jun-24	\$ -	\$ 3,370
Jul-24	\$ -	\$ 3,549
TOTAL	\$ 19,908	\$ 38,653

Customer Count	FY 2022	% Change 2022-2023	FY 2023	% Change 2023-2024	FY 2024
Residential	30,297	4.87%	31,772	3.70%	32,947
Other	2,552	0.43%	2,563	3.32%	2,648
TOTAL	32,849	4.52%	34,335	3.67%	35,595

WASTEWATER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES
Wastewater Revenue
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 1,732,442	\$ 1,739,432	\$ 12,059,416	\$ 1,722,774
Budget	\$ 1,877,005	\$ 1,952,128	\$ 1,949,215	\$ 1,872,739	\$ 1,976,311	\$ 2,036,536	\$ 1,986,258	\$ 13,650,192	\$ 1,950,027
Prior Year	\$ 1,431,988	\$ 1,602,167	\$ 1,517,326	\$ 1,513,842	\$ 1,516,902	\$ 1,594,334	\$ 1,541,595	\$ 10,718,153	\$ 1,531,165
Multi-Unit 2-4									
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 15,819	\$ 15,767	\$ 110,368	\$ 15,767
Budget	\$ 15,982	\$ 16,707	\$ 16,656	\$ 15,857	\$ 16,392	\$ 16,876	\$ 16,643	\$ 115,112	\$ 16,445
Prior Year	\$ 12,873	\$ 14,215	\$ 13,595	\$ 13,583	\$ 13,704	\$ 14,466	\$ 13,990	\$ 96,425	\$ 13,775
Multi-Unit 5+									
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 349,101	\$ 367,256	\$ 2,469,210	\$ 352,744
Budget	\$ 387,068	\$ 401,507	\$ 399,515	\$ 372,282	\$ 397,709	\$ 411,152	\$ 404,255	\$ 2,773,487	\$ 396,212
Prior Year	\$ 324,197	\$ 352,643	\$ 334,562	\$ 322,131	\$ 318,915	\$ 360,340	\$ 334,996	\$ 2,347,784	\$ 335,398
SGS									
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 671,740	\$ 694,327	\$ 5,260,275	\$ 751,468
Budget	\$ 861,177	\$ 851,972	\$ 833,952	\$ 741,792	\$ 741,660	\$ 771,065	\$ 730,594	\$ 5,532,212	\$ 790,316
Prior Year	\$ 720,511	\$ 787,794	\$ 743,962	\$ 649,301	\$ 662,503	\$ 740,317	\$ 672,769	\$ 4,977,157	\$ 711,022
Schertz Sewer									
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 1,311	\$ 1,407	\$ 9,167	\$ 1,310
Budget	\$ 1,902	\$ 1,867	\$ 1,902	\$ 1,865	\$ 1,853	\$ 2,085	\$ 2,178	\$ 13,651	\$ 1,950
Prior Year	\$ 1,476	\$ 1,282	\$ 1,310	\$ 1,306	\$ 1,194	\$ 1,269	\$ 1,425	\$ 9,262	\$ 1,323
Total Sales									
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 2,770,413	\$ 2,818,188	\$ 19,908,435	\$ 2,844,062
Budget	\$ 3,143,133	\$ 3,224,180	\$ 3,201,239	\$ 3,004,535	\$ 3,133,925	\$ 3,237,713	\$ 3,139,928	\$ 22,084,654	\$ 3,154,951
Prior Year	\$ 2,491,044	\$ 2,758,100	\$ 2,610,754	\$ 2,500,162	\$ 2,513,218	\$ 2,710,727	\$ 2,564,775	\$ 18,148,780	\$ 2,592,683

NEW BRAUNFELS UTILITIES
Wastewater Revenue Variance
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD	
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	ACT	AVG
Residential									
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 1,737,263	\$ 1,758,843	\$ 1,732,442	\$ 1,739,432	\$ 12,059,416	\$ 1,722,774
Actual vs Budget	\$ (256,620)	\$ (171,872)	\$ (258,420)	\$ (135,477)	\$ (217,468)	\$ (304,094)	\$ (246,826)	\$ (1,590,776)	\$ (227,254)
Actual vs Prior Year	\$ 188,397	\$ 178,089	\$ 173,470	\$ 223,421	\$ 241,941	\$ 138,108	\$ 197,837	\$ 1,341,263	\$ 191,609
Multi-Unit 2-4									
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 16,127	\$ 16,106	\$ 15,819	\$ 15,767	\$ 110,368	\$ 15,767
Actual vs Budget	\$ (1,628)	\$ (430)	\$ (738)	\$ 270	\$ (286)	\$ (1,056)	\$ (876)	\$ (4,744)	\$ (678)
Actual vs Prior Year	\$ 1,481	\$ 2,063	\$ 2,323	\$ 2,544	\$ 2,402	\$ 1,353	\$ 1,776	\$ 13,943	\$ 1,992
Multi-Unit 5+									
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 343,852	\$ 349,655	\$ 349,101	\$ 367,256	\$ 2,469,210	\$ 352,744
Actual vs Budget	\$ (24,285)	\$ (32,143)	\$ (72,316)	\$ (28,430)	\$ (48,054)	\$ (62,050)	\$ (37,000)	\$ (304,277)	\$ (43,468)
Actual vs Prior Year	\$ 38,586	\$ 16,721	\$ (7,364)	\$ 21,721	\$ 30,740	\$ (11,239)	\$ 32,260	\$ 121,426	\$ 17,347
SGS									
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 739,767	\$ 718,962	\$ 671,740	\$ 694,327	\$ 5,260,275	\$ 751,468
Actual vs Budget	\$ 36,188	\$ (33,935)	\$ (113,873)	\$ (2,025)	\$ (22,698)	\$ (99,326)	\$ (36,267)	\$ (271,937)	\$ (38,848)
Actual vs Prior Year	\$ 176,854	\$ 30,242	\$ (23,883)	\$ 90,466	\$ 56,459	\$ (68,578)	\$ 21,558	\$ 283,119	\$ 40,446
Schertz Sewer									
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 1,313	\$ 1,213	\$ 1,311	\$ 1,407	\$ 9,167	\$ 1,310
Actual vs Budget	\$ (595)	\$ (547)	\$ (606)	\$ (552)	\$ (640)	\$ (774)	\$ (771)	\$ (4,485)	\$ (641)
Actual vs Prior Year	\$ (169)	\$ 38	\$ (14)	\$ 7	\$ 19	\$ 41	\$ (18)	\$ (95)	\$ (14)
Total Sales									
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 2,838,322	\$ 2,844,779	\$ 2,770,413	\$ 2,818,188	\$ 19,908,435	\$ 2,844,062
Actual vs Budget	\$ (246,941)	\$ (238,926)	\$ (445,953)	\$ (166,214)	\$ (289,145)	\$ (467,300)	\$ (321,740)	\$ (2,176,219)	\$ (310,888)
Actual vs Prior Year	\$ 405,148	\$ 227,154	\$ 144,532	\$ 338,159	\$ 331,561	\$ 59,686	\$ 253,414	\$ 1,759,655	\$ 251,379

NEW BRAUNFELS UTILITIES
Wastewater Usage (Gallons)
For Month Ending February 29, 2024

DESCRIPTION	2023 AUG	2023 SEP	2023 OCT	2023 NOV	2023 DEC	2024 JAN	2024 FEB	FY 2024 YTD	
								ACT	AVG
Residential									
Actuals	104,591,818	110,400,361	98,017,580	104,695,640	106,901,538	102,505,493	103,123,767	730,236,199	104,319,457
Prior Year	105,945,683	113,046,276	100,144,142	99,574,341	99,394,434	165,422,006	103,083,536	786,610,418	112,372,917
Multi-Unit 2-4									
Actuals	835,859	859,259	803,385	849,140	838,636	814,487	800,547	5,801,313	828,759
Prior Year	834,405	876,991	783,357	774,377	790,783	904,980	832,938	5,797,831	828,262
Multi-Unit 5+									
Actuals	26,464,494	26,498,569	21,294,621	23,400,792	23,794,355	23,835,720	25,905,743	171,194,294	24,456,328
Prior Year	25,753,140	28,032,246	23,907,336	22,819,107	22,650,042	27,891,169	24,467,609	175,520,649	25,074,378
SGS									
Actuals	147,287,980	131,416,134	111,637,606	114,268,301	111,907,830	102,975,607	107,558,109	827,051,570	118,150,224
Prior Year	130,005,417	129,722,018	125,164,836	97,417,889	104,504,690	119,839,409	108,336,432	814,990,693	116,427,242
Schertz Sewer									
Actuals	433,200	437,700	429,500	435,300	402,200	434,500	466,400	3,038,800	434,114
Prior Year	145,500	141,667	144,733	144,333	131,933	140,267	157,433	1,005,867	143,695
Total Sales									
Actuals	279,613,351	269,612,023	232,182,693	243,649,174	243,844,560	230,565,808	237,854,567	1,737,322,176	248,188,882
Prior Year	262,684,145	271,819,198	250,144,405	220,730,048	227,471,883	314,197,831	236,877,949	1,783,925,458	254,846,494

NEW BRAUNFELS UTILITIES
Wastewater Customers
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD AVG
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	
Residential								
Actuals	32,187	32,472	32,558	32,545	32,691	32,878	32,947	32,611
Budget	34,071	34,211	34,352	34,494	34,636	34,779	34,922	34,495
Prior Year	31,424	31,569	31,602	31,627	31,697	31,757	31,772	31,635
Multi-Unit 2-4								
Actuals	173	186	189	188	188	187	187	185
Budget	182	182	182	182	182	182	182	182
Prior Year	174	174	173	174	175	175	174	174
Multi-Unit 5+								
Actuals	261	268	269	269	270	270	270	268
Budget	260	261	263	265	267	268	270	265
Prior Year	256	257	259	258	258	258	258	258
SGS								
Actuals	2,158	2,167	2,168	2,167	2,185	2,191	2,190	2,175
Budget	2,135	2,139	2,142	2,146	2,150	2,154	2,158	2,146
Prior Year	2,125	2,127	2,131	2,131	2,134	2,127	2,130	2,129
Schertz Sewer								
Actuals	1	1	1	1	1	1	1	1
Budget	1	1	1	1	1	1	1	1
Prior Year	1	1	1	1	1	1	1	1
Total Accounts								
Actuals	34,780	35,094	35,185	35,170	35,335	35,527	35,595	35,241
Budget	36,648	36,794	36,941	37,088	37,236	37,384	37,533	37,089
Prior Year	33,980	34,128	34,166	34,191	34,265	34,318	34,335	34,198
New Customers	85	314	91	(15)	165	192	68	129
New Customer Growth %	0.2%	0.9%	0.3%	0.0%	0.5%	0.5%	0.2%	0.4%

NEW BRAUNFELS UTILITIES
Wastewater Rates (per Customer)
For Month Ending February 29, 2024

DESCRIPTION	2023	2023	2023	2023	2023	2024	2024	FY 2024 YTD AVG
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	
Residential								
Actuals	\$ 50.34	\$ 54.82	\$ 51.93	\$ 53.38	\$ 53.80	\$ 52.69	\$ 52.79	\$ 52.82
Budget	\$ 55.09	\$ 57.06	\$ 56.74	\$ 54.29	\$ 57.06	\$ 58.56	\$ 56.88	\$ 56.53
Prior Year	\$ 45.57	\$ 50.75	\$ 48.01	\$ 47.87	\$ 47.86	\$ 50.20	\$ 48.52	\$ 48.40
Multi-Unit 2-4								
Actuals	\$ 82.97	\$ 87.52	\$ 84.22	\$ 85.78	\$ 85.67	\$ 84.60	\$ 84.31	\$ 85.01
Budget	\$ 87.80	\$ 91.78	\$ 91.48	\$ 87.08	\$ 90.01	\$ 92.65	\$ 91.36	\$ 90.31
Prior Year	\$ 73.98	\$ 81.69	\$ 78.58	\$ 78.06	\$ 78.31	\$ 82.66	\$ 80.40	\$ 79.10
Multi-Unit 5+								
Actuals	\$ 1,389.97	\$ 1,378.22	\$ 1,216.35	\$ 1,278.26	\$ 1,295.02	\$ 1,292.97	\$ 1,360.21	\$ 1,315.86
Budget	\$ 1,490.48	\$ 1,535.99	\$ 1,518.40	\$ 1,405.67	\$ 1,491.88	\$ 1,532.25	\$ 1,496.72	\$ 1,495.91
Prior Year	\$ 1,266.40	\$ 1,372.15	\$ 1,291.75	\$ 1,248.57	\$ 1,236.11	\$ 1,396.67	\$ 1,298.43	\$ 1,301.44
SGS								
Actuals	\$ 415.83	\$ 377.50	\$ 332.14	\$ 341.38	\$ 329.04	\$ 306.59	\$ 317.04	\$ 345.65
Budget	\$ 403.40	\$ 398.37	\$ 389.25	\$ 345.61	\$ 344.93	\$ 357.97	\$ 338.57	\$ 368.30
Prior Year	\$ 339.06	\$ 370.38	\$ 349.11	\$ 304.69	\$ 310.45	\$ 348.06	\$ 315.85	\$ 333.94
Schertz Sewer								
Actuals	\$ 1,306.75	\$ 1,320.32	\$ 1,295.59	\$ 1,313.08	\$ 1,213.24	\$ 1,310.67	\$ 1,406.90	\$ 1,309.51
Budget	\$ 1,902.07	\$ 1,866.97	\$ 1,901.70	\$ 1,864.68	\$ 1,853.06	\$ 2,084.54	\$ 2,178.27	\$ 1,950.19
Prior Year	\$ 1,476.00	\$ 1,282.01	\$ 1,309.76	\$ 1,306.14	\$ 1,193.93	\$ 1,269.34	\$ 1,424.69	\$ 1,323.12



Financial Update

February 2024 Financials
Kimberly Huffman
Accounting Manager

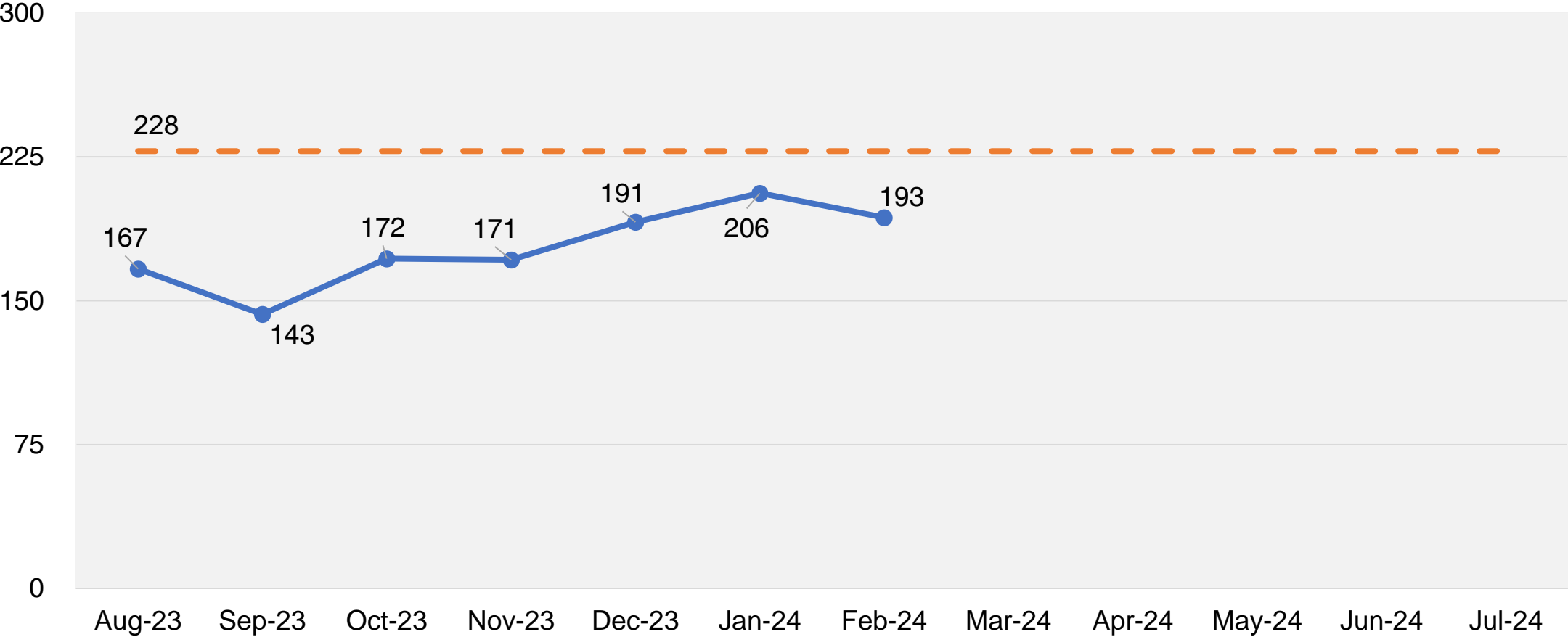
Board Financial Policy Compliance

February 2024 YTD

	FY 2023 Actual	FY 2024 Budget	Financial Policy	FY 2024 Actual*
Debt to Capitalization (lower is better)	39.1%	47.4%	≤55.0%	43.0%
Debt Service Coverage (higher is better)	5.05	4.28	≥2.40	4.68
Days Cash on Hand (higher is better)	214	228	≥140	193
Days Liquidity on Hand (higher is better)	442	N/A	N/A	495

* Amounts are calculated by annualizing the YTD results

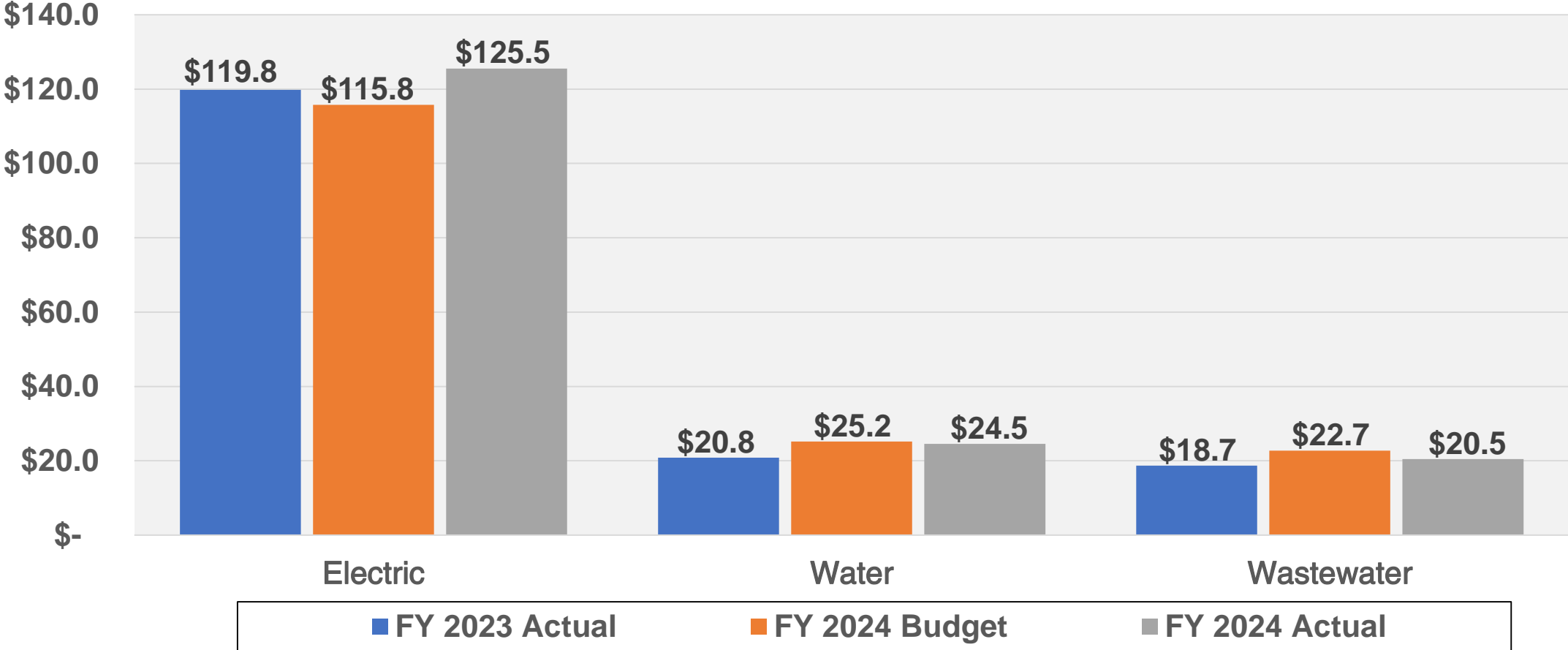
Days Cash on Hand February 2024 YTD



—●— Actuals - - - Budget

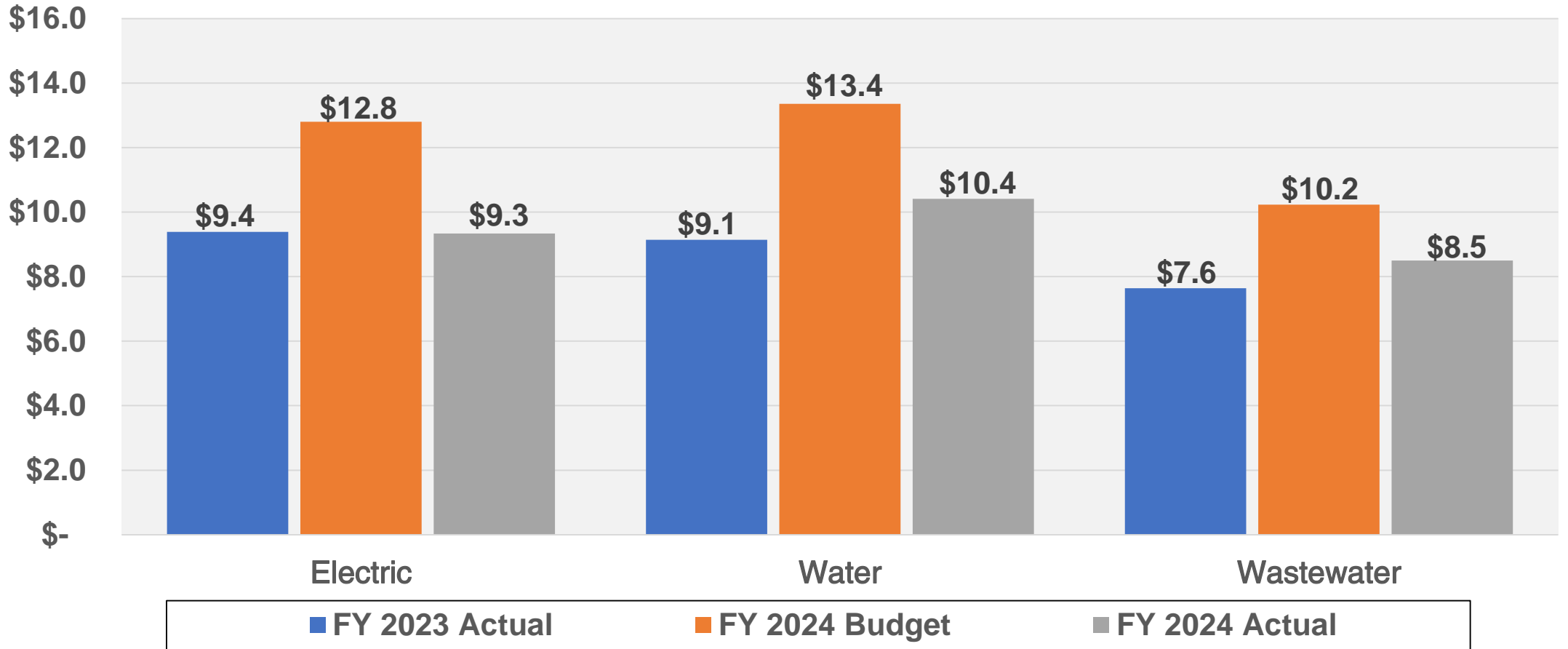
Operating Revenue by LOB

February 2024 YTD – Amounts in Millions



Operating Expenses* by LOB

February 2024 YTD – Amounts in Millions



*Excludes purchased power, purchased water, and depreciation expense

Operating Expenses- Variance to Budget

- Reviewed two largest variances in each LOB including Support
 - Timing or delay in services provided by outside consultants and impact to invoice payment processing.
 - How Departments cash flow out expenses over the 12-month budget giving their best estimates, assumptions and predictions on when expenses will hit. We are seeing a shift on when expenses will actually hit.
 - Items budgeted, but no longer needed.
 - Payroll related such as unfilled positions remaining open for a longer period of time (some being difficult to fill due to complexity and qualifications), turnover, or salary differences from budget.

Operating Expenses – Largest Variances

Electric- Operations and Engineering - \$1.8

- Outsourced staff augmentation for solar, turnover and time to fill positions, and contract tree trimming services

Water – Operations and Engineering - \$1.0M

- Time to fill open positions, turnover, and timelines for consultant services

Wastewater –Operations and Engineering \$1.4M

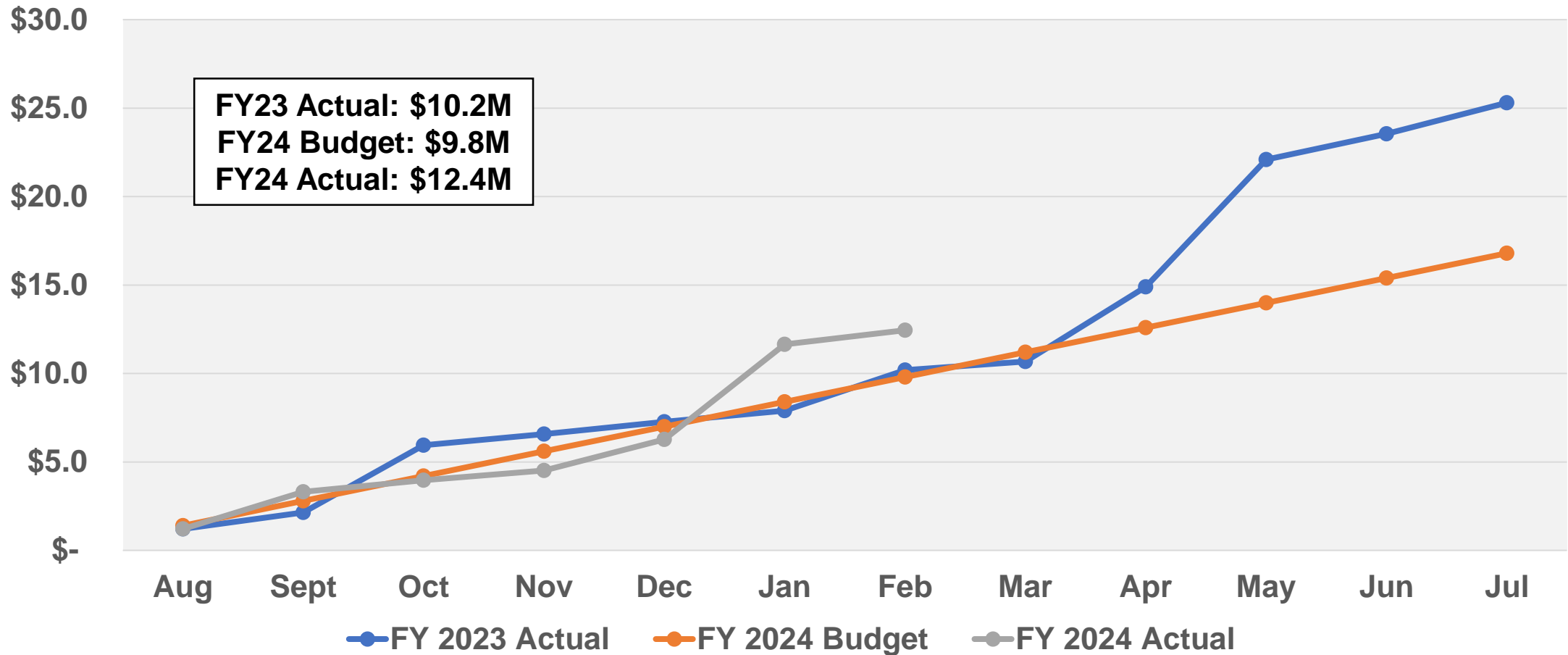
- Payroll related and debris removal under budget

Support – Executive and IT - \$1.7M

- Payroll related – Executive and other support positions unfilled, and IT outside services

Impact Fees

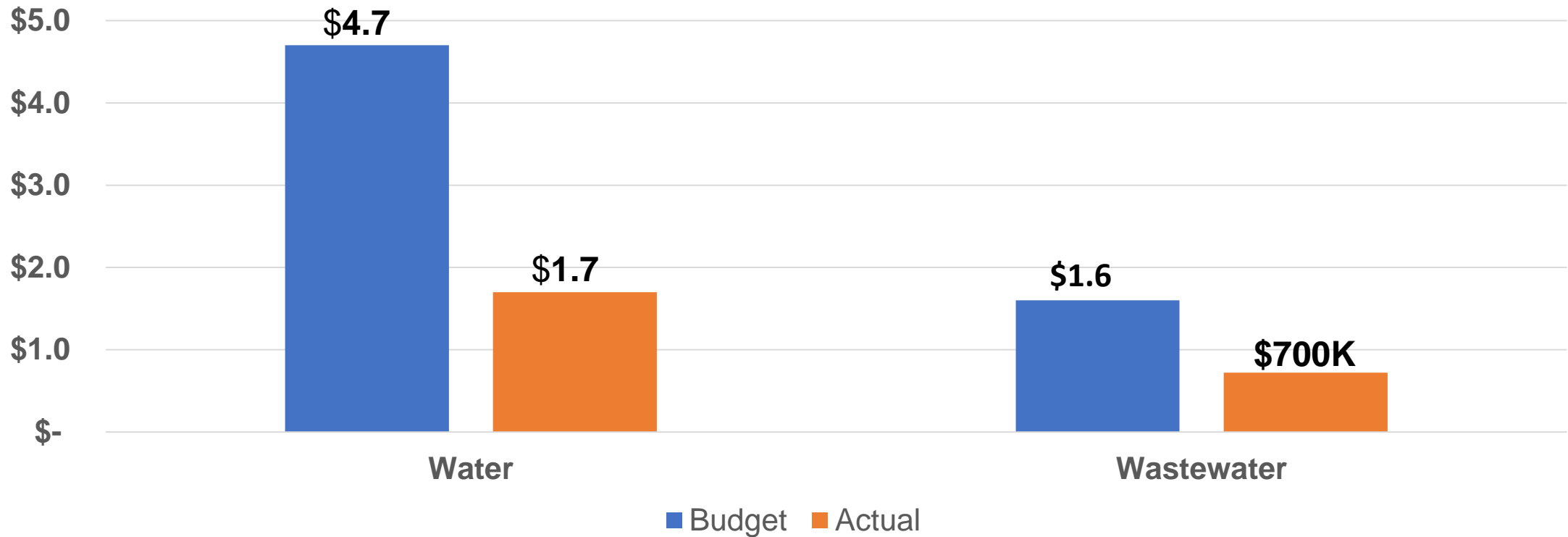
February 2024 YTD – Amounts in Millions*



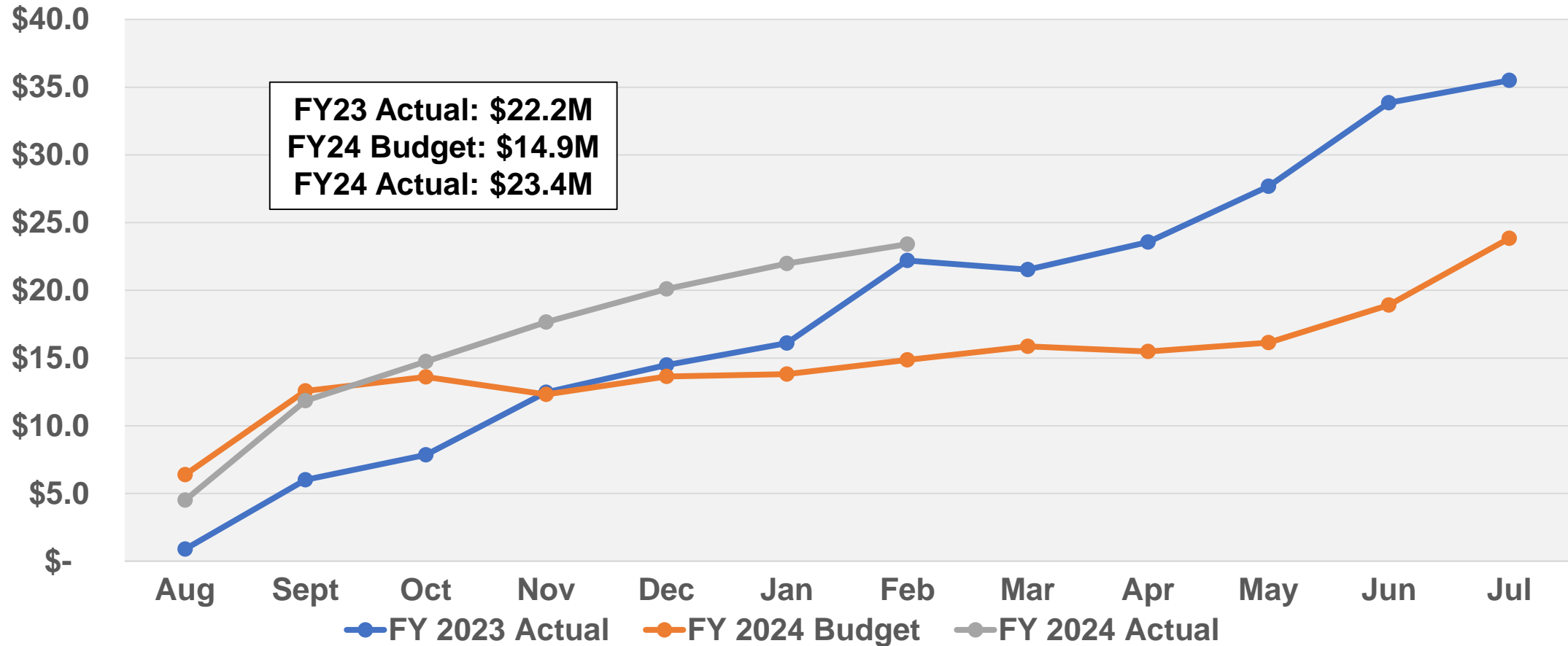
* Amounts shown are YTD for each month

Impact Fees-Program E Update

February 2024 YTD – Amount in Millions

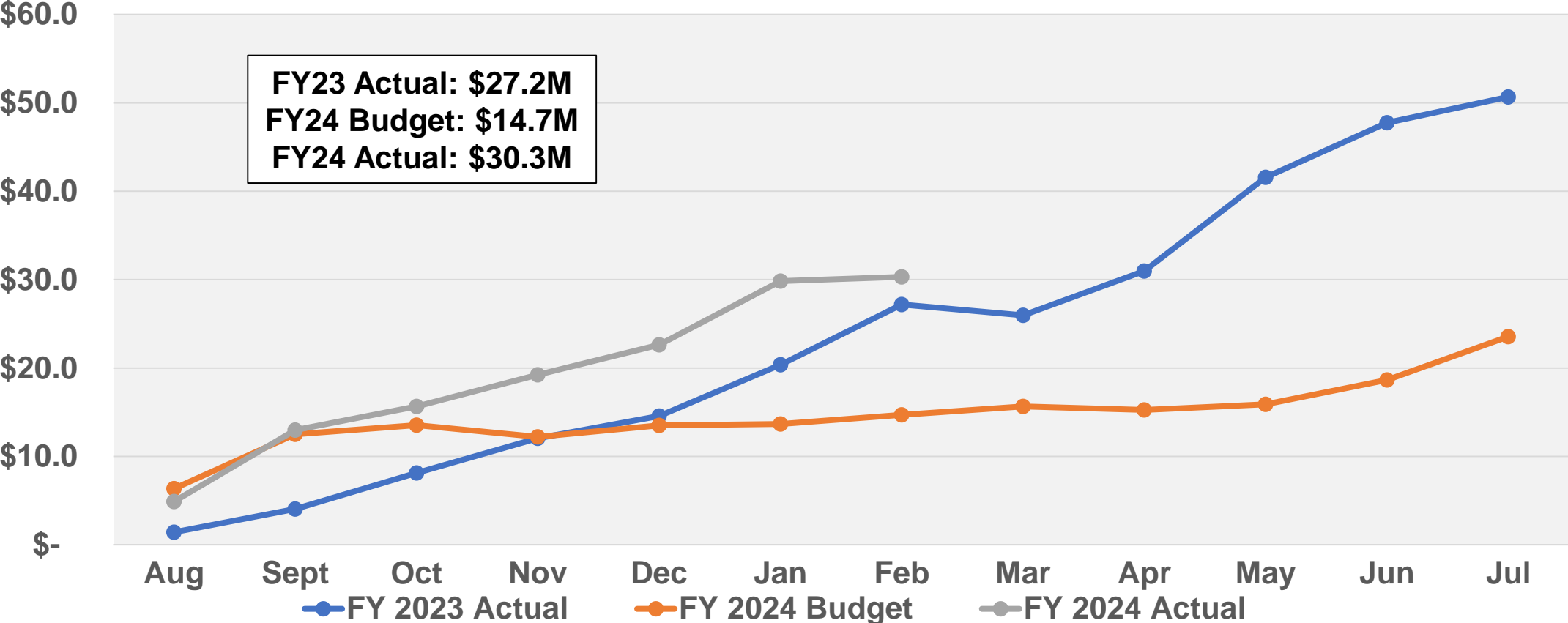


Net Operating Income February 2024– Amounts in Millions*



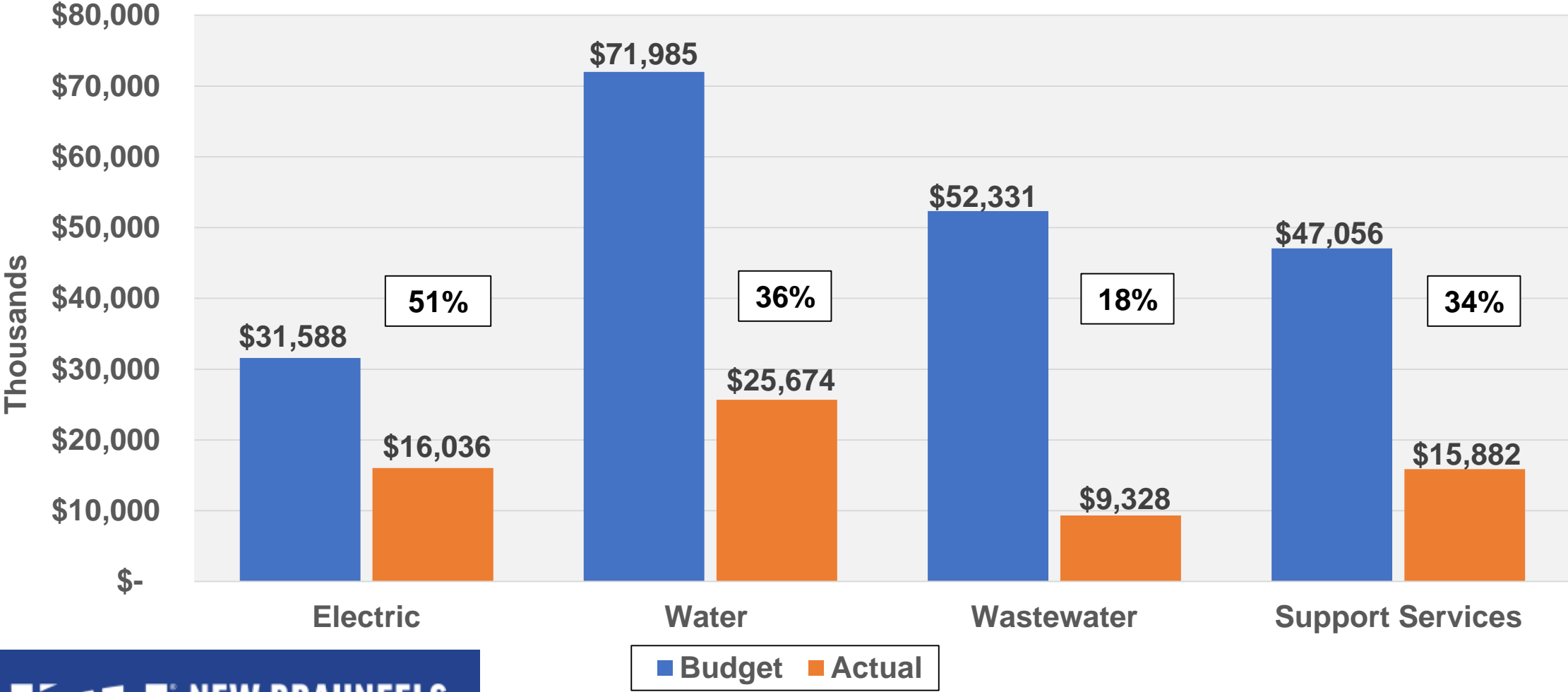
* Amounts shown are YTD for each month

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



* Amounts shown are YTD for each month

Capital Project Expenditures February 2024 YTD – Amounts in Thousands





Questions?





Meeting Date: March 28, 2024 **Agenda Type:** Consent Items for Action

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

Submitted by: Laura Rivers
Chief of Staff **Approved by:** Ryan Kelso
Chief Executive Officer

RECOMMENDED ACTION: Approve Minutes of the NBU Regular Board Meeting of February 29, 2024

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

- 1. February 29, 2024 Regular Board Meeting Minutes

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

**1:00 P.M.
Thursday, February 29, 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, and Mayor Neal Linnartz

ABSENT

Board Trustee Yvette Villanueva Barrera

NBU PERSONNEL

Ryan Kelso, Dawn Schriewer, Connie Lock, David Hubbard, Greg Brown, and Laura Rivers

NBU CONSULTANTS

None

PLEDGE AND INVOCATION

New Braunfels Mayor Neal Linnartz led the pledge of allegiance and offered the invocation.

NBU MISSION, VISION, AND CORE VALUES STATEMENT

Chief of Staff Laura Rivers shared the mission, vision, and core values of New Braunfels Utilities. This month the focus was on the NBU Mission.

PUBLIC COMMENT

Ron Schmidt, citizen, addressed the Board on the need for an easement to serve as a pathway for emergency vehicles or for emergency situations.

NBU EMPLOYEE RECOGNITIONS

1. Presentation of Service Pins

- a. Recognizing Kurt Knettel, Henry Luna, and Greg Williams for 20 Years of Service

CEO Ryan Kelso recognized Kurt Knettel, Henry Luna, and Greg Williams with 20 years of dedicated service to New Braunfels Utilities.

- b. Recognizing Chris Kusak and Jesse Rosales for 35 Years of Service

CEO Ryan Kelso recognized Chris Kusak and Jesse Rosales with 35 years of dedicated service to New Braunfels Utilities.

ITEMS FROM THE CHAIR

Board President Wayne Peters shared a reminder that early voting has opened.

ITEMS FROM STAFF

1. CEO Update

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

- a. NBU Awarded Employer of the Year by the International Right of Way Association (IRWA): NBU received an Employer of the Year award from the International Right of Way Association (IRWA). The award is given to recognize companies that actively support their employees as IRWA members. NBU has demonstrated a commitment to the continuing education and training of its employees by allowing its staff to attend IRWA educational courses and participate in chapter events. The award recognizes NBU's 100% staff participation as members of the local IRWA chapter.
- b. Youth Leadership New Braunfels Visits NBU: On February 6, NBU hosted 27 members of the Youth Leadership New Braunfels program. During their visit, NBU leaders spoke with the cohort about choosing a career in government, reviewed the safety aspects of electricity, and even provided an arc welding demo for the youth leaders.
- c. Leadership New Braunfels Visits NBU: On February 13, NBU hosted members of the Leadership New Braunfels program. During their visit, the state of NBU presentation was share, the group toured the newly renovated Control Center and they got to see an arcing demonstration and discussion on electrical safety.
- d. CEO Roadshow: Hunter's Creek Homeowner Association: On February 13, CEO Kelso met with the Hunter's Creek Homeowners Association to discuss rates, NBU's competitiveness, and projects in their part of town.
- e. CEO Roadshow: New Braunfels Realtors Group – Corridor Title: On February 22, CEO Kelso presented on rate increases and growth to Corridor Title.
- f. Customer Satisfaction Survey Window Opens: The 2024 Customer Satisfaction survey opened on February 26th and will close on March 25th. The survey evaluates community satisfaction with NBU's utility services. The outcomes will be used to drive enhancements and will be accessible digitally to all customers. Additionally, some customers will receive phone calls from GreatBlue Research. This survey is in line with NBU's strategic goals for FY 2024
- g. NBU Partners with Communities in Schools (CIS) of South Texas to sponsor the Kinderschuhe 5k: NBU and CIS of South Texas will host the 20th Kinderschuhe 5K Run and Walk. Proceeds from the race are used to provide new shoes for kids served by CIS.
- h. Leadership Announcements/New Hires: Chelsea Mikulencak has joined NBU as the Senior Associate Attorney.

i. Any other items permitted under Section 55.0415 of the Texas Government Code: No additional items were discussed. *no discussion under this item

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 updated the board on the quarterly Investment Report.

4. Report on NBU Executive Strategic Planning Workshop

CEO Ryan Kelso presented information on the NBU Executive Strategic Planning Workshop. The four-day workshop was used to discuss the future of NBU. Discussions included levels of service and key performance indicators, personnel requests for FY 2025, reorganization and restructuring to help align resources and areas of the company, focus on customer service across the company, and develop a plan to address gaps in those services.

CONSENT ITEMS FOR ACTION

Board Vice President Judith Dykes-Hoffmann 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. The vote was unanimous.

1. Approve Minutes of the NBU Regular Board Meeting of January 25, 2024
2. Approve the Change Order Log from December 15, 2023, through January 15, 2024
3. Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through January 15, 2024
4. Approve the Electric Line of Business Alternative Procurements from December 15, 2023, through January 15, 2024
5. Approve 2023 Third Quarter Charge-Off Accounts
6. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Titan Utility Services, LLC, for the Inspection, Testing, and Documentation of Electrical Tools and Equipment
7. Authorize CEO or His Designee to Negotiate and Execute a Professional Service Agreement with the San Antonio Food Bank d/b/a New Braunfels Food Bank for the Utility Bill Assistance Program
8. Authorize CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Xylem Dewatering Solutions, Inc. d/b/a Wachs Water Services for Fire Hydrant Inspection, Maintenance, and Flow Testing
9. Authorize CEO or His Designee to Negotiate and Execute an AIA Design Build Amendment to the AIA Agreement with SpawGlass Contractors, Inc., for the New Braunfels Utilities Annex Facility Renovation Design Build Guaranteed Maximum Price

10. Approve the Appointment of Dawn Schriewer as President of the Headwaters at the Comal Board of Directors

ITEMS FOR FUTURE ACTION

1. **Review and Discuss the Proposed Five-Year Water Conservation Plan**

Sarah Richards presented information on the proposed five-year conservation plan that is to be reviewed and approved by the NBU Board of Trustees and the New Braunfels City Council. This is required by the Texas Commission on Environmental Quality (TCEQ), Texas Administrative Code, Title 30, Part 1 TCEQ, Chapter 288 Water Conservation Plans. Currently, there are no changes being proposed to the current Water Conservation Plan within city ordinance Chapter 130 – Utilities, Article IV. – Water Service, Division 5.- Water Conservation and Critical Period Management Plan.

EXECUTIVE SESSION

Board President Wayne Peters recessed the Open Session at 2:25 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included Power Supply Resources – Competitive Matters: Power Supply Update, Discuss, and Consider Edison Electric Institute (EEI) Resolution allowing NBU to enter into a Master Agreement Related to Power Supply Transactions; Consultation with Attorney Regarding Pending or Contemplated Litigation, Settlement Offer, and/or Matters Protected by Attorney Client Privilege: Legal Matters Relating to McKenzie Water Reclamation Facility and Gruene Wastewater Treatment Plant; Discuss Legal Issues Relating to the Proposed Sale of 263 Main Plaza; Discuss the Pending Litigation Styled *Skyblue Utilities, Inc. v. New Braunfels Utilities*, Comal County, 433rd Judicial District Cause No. 2024-0253D; Personnel Matters – Discuss the appointment, employment, evaluation, and duties of the CEO.

The Executive Session was opened at 2:32 pm and closed at 4:28 pm.

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

ADJOURN

There was no further business, and Board President Wayne Peters adjourned the meeting at 4:28 p.m.

Attest:

Wayne Peters, President
Approved

Ryan Kelso, Secretary of the Board
Chief Executive Officer

Date Approved: March 28, 2024



Meeting Date: March 28, 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 January 15, 2024, through February 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 January 15, 2024, through February 15, 2024.

FINANCIAL IMPACT

Change orders less than \$50,000:

- Gruene WRF Spoils & Materials Yard, Light pole delivery days, 480v fixtures, fixture and pole adaptor, Jerdon Enterprise L.P., Change order No. 1, Cost increase of \$2,656.50.
- Landa Pump Station Phase 2 / Well 5, Moonglow PRV delay, Project time extension, Moonglow PRVs, deduct remaining Owners contingency, MGC Contractors, Change Order No. 5, Cost increase of \$19,491.00.
- Gruene WRF Spoils & Materials Yard, Revised drainage layout, Jerdon Enterprise L.P., Change Order No. 2, Cost increase of \$7,805.58.
- Trinity Expansion Well Field, Owner's Contingency - primary conduit modifications from (1) 4" to (3) 3", Pesado Construction Company, Changer Order No. 2, No cost increase.

Change orders more than \$50,000:

- McKenzie WRF Expansion, Contractor to over-excavate under tertiary filters and backfill and compact with structural fill., MGC Contractors, Inc., Change Order No. 2, Cost increase of \$213,068.00.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None



Meeting Date: March 28, 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, 2023, through February 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, 2023, through February 15, 2024.

FINANCIAL IMPACT

There were no new contracts executed during this period.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

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

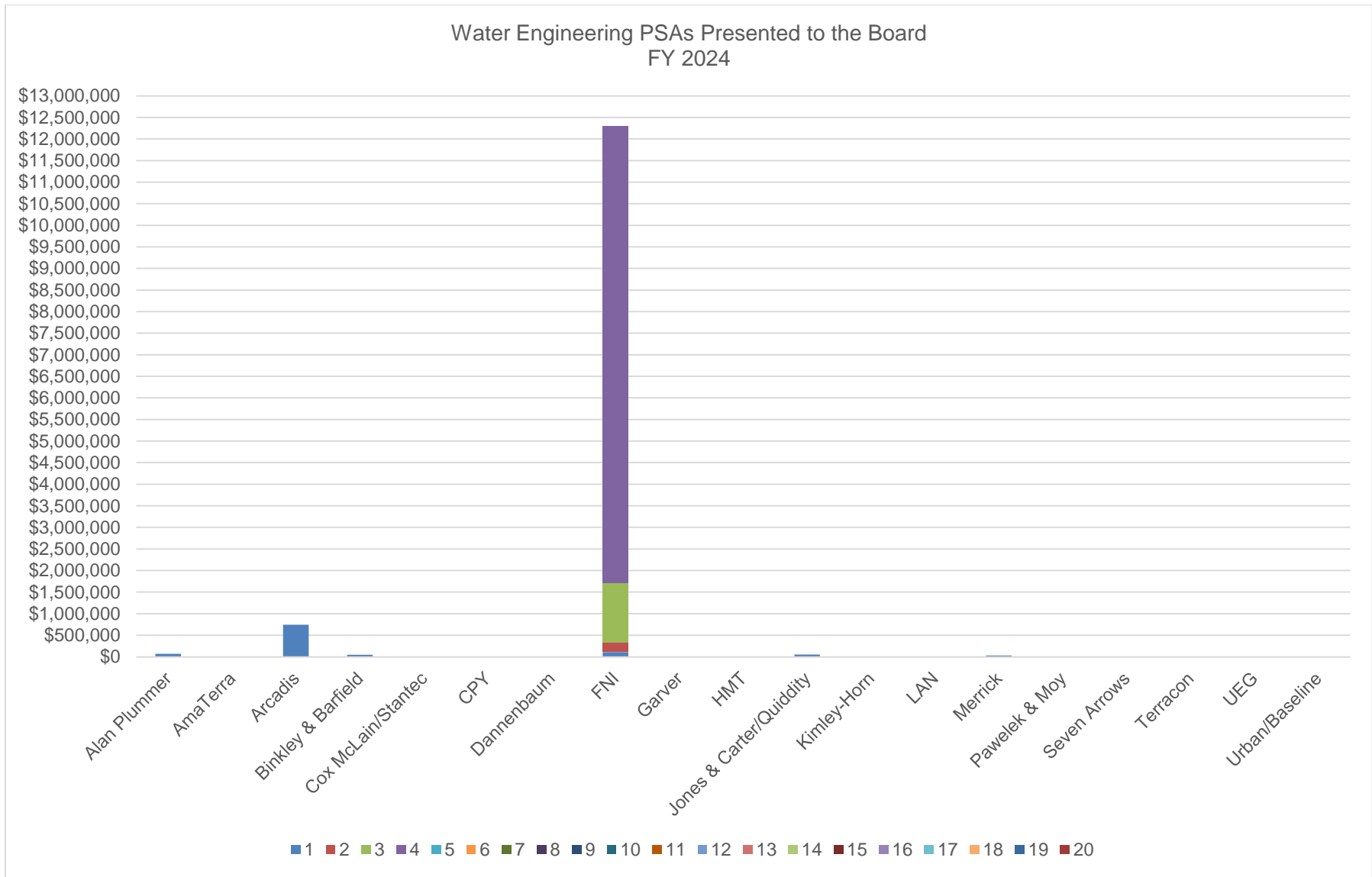
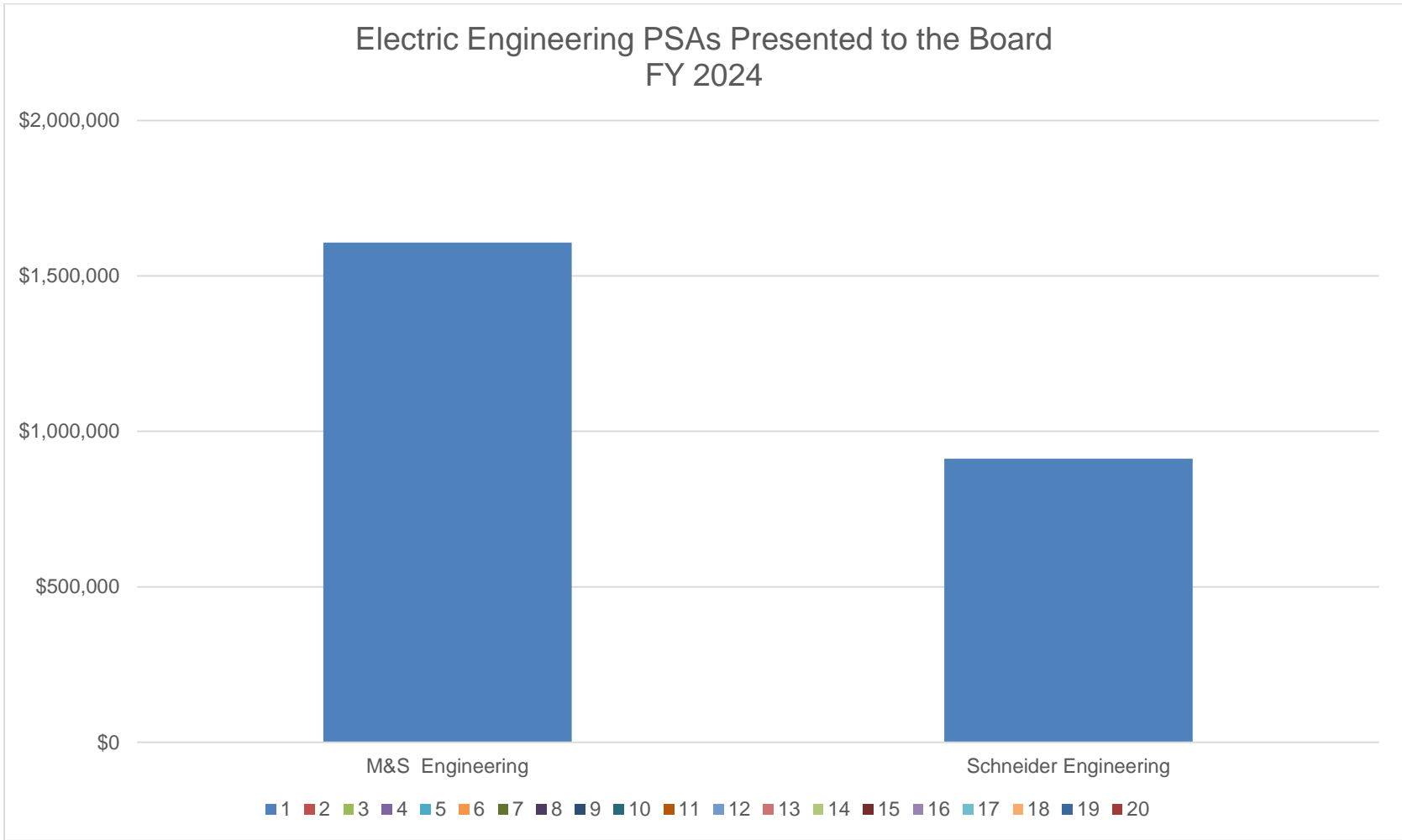


Exhibit A – Report for Water Engineering Contracts February 2024

Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
Castell Ave Rehabilitation (CNB)	Binkley and Barfield Inc.	\$ 50,892.00	8/31/2023	Engineering	Amendment	9/1/2023
Solms Lift Station Expansion	Merrick & Company	\$ 30,988.00	8/31/2023	Engineering	Amendment	9/1/2023
Well 4 to Grandview Pump Station and Discharge Line Upgrac	Freese and Nichols, Inc.	\$ 108,850.00	8/31/2023	Engineering	Amendment	9/7/2023
Kuehler WRF Access Road - Courtyard Drive	Quiddity Engineering, LLC	\$ 66,410.00		Engineering	Amendment	10/3/2023
South Kuehler Interceptor Phase 1	Quiddity Engineering, LLC	\$ 52,780.00	9/28/2023	Engineering	Amendment	10/3/2023
24-Inch McQueeney Road Parallel Water Line (Downtown)	Alan Plummer and Associates, Inc.	\$ 70,000.00	9/28/2023	Engineering	Amendment	10/3/2023
FM 306 Pump Station & Discharge Line	Freese and Nichols, Inc.	\$ 228,917.00	9/28/2023	Engineering	Amendment	10/3/2023
San Antonio St Rehabilitation Phase 3 (CNB)	Quiddity Engineering, LLC	\$ 341,540.00		Engineering	PSA	11/3/2023
Water Tank Rehabilitations	Freese and Nichols, Inc.	\$ 1,380,592.00	10/26/2023	Engineering	PSA	11/13/2023
Water Resource Plan	Arcadis, US, Inc.	\$ -	12/14/2023	Engineering	Amendment	12/22/2023
Aquifer Strg & Recovery Project	Arcadis, US, Inc.	\$ 744,898.00	12/14/2023	Engineering	Amendment	12/22/2023
Staff Augmentation	Freese and Nichols, Inc.	\$ 10,578,296.00	12/14/2023	Engineering	PSA	12/22/2023



Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
Substation and transmission Design FY 2024	Schneider Engineering	\$ 912,000.00	8/31/2023	Engineering		9/1/2023
Electric Distribution Projects	M&S Engineering	\$ 1,607,590.00	8/31/2023	Engineering		9/1/2023



Meeting Date: March 28, 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 January 15, 2024, through February 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 January 15, 2024, through February 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

Customers and Community

People and Culture

Stewardship

EXHIBITS

None



Meeting Date: March 28, 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: Michael Short, P.E. **Approved by:** Ryan Kelso
 Director of Water Services Chief Executive Officer
 and Compliance

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement for Construction Management and Inspections for Multiple Projects with Freese and Nichols, Inc.

BACKGROUND

On August 25, 2022, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Professional Services Agreement (the “Agreement”) with Freese and Nichols, Inc. (“FNI”) for professional engineering services for Construction Management and Inspection Services (the “Project”). The Project allowed for construction management and inspection services for water and wastewater capital improvement projects and additional specific assignments related to the Gruene Apartment Collector project, Klein Road Reconstruction Phase II project, Gruene Spoils and Materials Yard project, Schmidt I-35 North Sewer Main Replacement project, and general construction management tasks.

NBU and FNI have identified a need for additional quality assurance/quality control services (the “New Services”) due to construction delays of the FM 306 PS & Discharge Line project. As a result, NBU staff requests that the Board of Trustees approve the First Amendment to the Agreement (the “First Amendment”), which will (i) add New Services, (ii) include additional compensation for the New Services, and (iii) extend the completion time for the Services to August 31, 2024.

This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved.

FINANCIAL IMPACT

The total financial impact for the First Amendment is \$138,570. The total contract amount for the Agreement and the First Amendment with FNI for the Project is \$937,580. The Project is budgeted within the fiscal year 2024 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

1. First Amendment to the Professional Services Agreement with FNI

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(CONSTRUCTION MANAGEMENT AND INSPECTIONS FOR MULTIPLE PROJECTS)**

This **FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “First Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **FREESE AND NICHOLS, INC.**, a Texas corporation (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated August 31, 2022 (the “Agreement”), for construction management services, including project management and construction phase services, in connection with select fiscal year 2023 NBU water and wastewater capital improvement projects, including the Gruene Apartment Collector Project, Klein Road Reconstruction Phase II Project, Gruene Spoils & Materials Yard Project, and the Schmidt I-35 North Sewer Main Replacement Project (collectively, the “Original Services”);

WHEREAS, NBU and the Professional have identified a need to add additional quality assurance/quality control (“QA/QC”) services for the FM 306 Pump Station and Discharge Line Project (the “New Services” and, together with the Original Services, the “Services”) that were not contemplated in the Agreement;

WHEREAS, the New Services require an increase in the compensation to the Professional and an extension of the completion date;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to amend or modify the Agreement; and

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New Services, (ii) include additional compensation for the New Services, and (iii) extend the completion time for the Services to August 31, 2024.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, as follows:

AGREEMENT

Section 1. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this First Amendment as of the effective date of this First Amendment.

Section 2. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted in its entirety and replaced by Exhibit B to this First Amendment as of the effective date of this First Amendment.

Section 3. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 4. Entire Agreement. This First Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 5. Binding Effect. This First Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 6. Severability. If any term or provision of this First Amendment 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 First Amendment shall not be affected thereby, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this First Amendment on this the ____ day of _____, 20__.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

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

THE PROFESSIONAL:

FREESE AND NICHOLS, INC.,
a Texas corporation

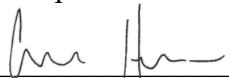
By:  _____
Name: Anne Hoskins
Title: Principal

EXHIBIT A

SERVICES

The Professional shall provide all labor, materials, and equipment necessary to provide construction management services including project management and construction phase services as further defined herein (collectively, the “Services”). The Professional shall perform the Services for the construction management and inspection of select fiscal year 2023 NBU water and wastewater capital improvement projects, as well as additional specific assignments relating to the following projects listed below (all collectively referenced herein as the “Project”):

- Gruene Apartment Collector (“Gruene Apartment Collector”) Project;
- Klein Road Reconstruction Phase II (“Klein Rd Reconstruction Ph2”) Project;
- Gruene Spoils & Materials Yard (“Gruene Spoils Yard”) Project;
- Schmidt I-35 North Sewer Main Replacement (“Schmidt Sewer Main”) Project;
- general construction management tasks (“General CM Tasks”); and
- FM 306 Pump Station and Discharge Line (“FM 306 PS & DL”) Project.

SERVICES

The Professional shall perform the Services in accordance with the tasks described herein.

Task 1. Project Management – NO CHANGE

Task 2. Construction Phase Services

2. Upon completion of the bid phase, the Professional shall proceed with the construction phase services described herein.

2.1. COMMUNICATION – NO CHANGE

2.2. QA/QC

2.2.1. NO CHANGE

2.2.2. NO CHANGE

2.2.3. NO CHANGE

2.2.4. NO CHANGE

2.2.5. The Professional shall provide an on-site representative that shall be at the following sites for the durations shown below beginning from the NTP:

- Gruene Apartment Collector – NO CHANGE;
- Klein Rd Reconstruction Ph2 – NO CHANGE;
- Gruene Spoils Yard – NO CHANGE;
- Schmidt Sewer Main – NO CHANGE; and
- FM 306 PS & DL - 20 hours a week.

2.2.6. The Professional shall provide a construction manager that shall be responsible for the overall management of the Project. The Professional's construction manager shall visit the following Project sites a minimum of once per week for the durations shown below beginning from the NTP:

- Gruene Apartment Collector – NO CHANGE;
- Klein Rd Reconstruction Ph2 – NO CHANGE;
- Gruene Spoils Yard – NO CHANGE;
- Schmidt Sewer Main – NO CHANGE; and
- FM 306 PS & DL – 5 hours a week.

2.2.7. NO CHANGE

2.3. DOCUMENT MANAGEMENT – NO CHANGE

2.4. SCHEDULE MANAGEMENT – NO CHANGE

2.5. COST MANAGEMENT – NO CHANGE

2.6. ISSUES MANAGEMENT – NO CHANGE

2.7. CHANGE MANAGEMENT – NO CHANGE

2.8. PROJECT COMPLETION – NO CHANGE

2.9. MATERIAL TRANSFER – NO CHANGE

2.10. RECORD DRAWINGS – NO CHANGE

2.11. LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE – NO CHANGE

TIME OF COMPLETION

The Professional is authorized to commence work on the Project after an NTP is issued for each individual project. The Professional shall complete the Services by August 31, 2024. The anticipated schedule for each project is listed below.

Project Name	Start Date	End Date
T1: Project Management	No Change	No Change
T2: Gruene Apartment Collector	No Change	No Change
T2: Klein Rd Reconstruction Ph2	No Change	No Change
T2: Gruene Spoils Yard	No Change	No Change
T2: Schmidt Sewer main	No Change	No Change
T2: General Construction Management Tasks	No Change	No Change
T2: FM 306 PS & DL	4/1/2024	8/31/2024

Exhibit B

Compensation

NBU shall pay the Professional to perform the Services described in this Agreement in an amount not to exceed \$937,580 in accordance with the schedule of charges and table below and made a part hereof.

Project	Cost	First Amendment	Total Contract
T1: Project Management	\$54,545	\$0	\$54,545
T2: Gruene Apartment Collector	\$65,025	\$0	\$65,025
T2: Klein Rd Reconstruction Ph2	\$114,819	\$0	\$114,819
T2: Gruene Spoils Yard	\$46,014	\$0	\$46,014
T2: Schmidt Sewer Main	\$87,069	\$0	\$87,069
T2: General CM Tasks	\$431,538	\$0	\$431,538
T2: FM 306 PS & DL	\$0	\$138,570	\$138,570
Total	\$799,010	\$138,570	\$937,580

Schedule of Charges

The schedule of charges is included for information purposes only. All costs and expenses described herein shall be included in (and not in addition to) the not to exceed amounts described in Exhibit B.

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	75	139
Professional 2	94	148
Professional 3	115	214
Professional 4	143	230
Professional 5	174	300
Professional 6	185	300
Construction Manager 1	83	166
Construction Manager 2	102	148
Construction Manager 3	125	179
Construction Manager 4	150	218
Construction Manager 5	185	250
Construction Manager 6	200	279
Construction Representative 1	87	118
Construction Representative 2	97	139
Construction Representative 3	120	148
Construction Representative 4	130	179
CAD Technician/Designer 1	67	138
CAD Technician/Designer 2	98	149
CAD Technician/Designer 3	128	196
Corporate Project Support 1	49	118
Corporate Project Support 2	69	165
Corporate Project Support 3	99	250
Intern / Coop	40	101
Senior Advisor	175	175

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>	<u>B&W</u>	<u>Color</u>	<u>Equipment</u>	
Standard IRS Rates				Valve Crew Vehicle (hour)	\$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each)	\$200
<u>Technology Charge</u>	Large Format (per sq. ft.)			Water Quality Meter (per day)	\$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each)	\$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day)	\$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness Gauge (per day)	\$275
	Mounting (per sq. ft.)	\$2.00		Coating Inspection Kit (per day)	\$275
	Binding (per binding)	\$0.25		Flushing / Cfactor (each)	\$500
				Backpack Electrofisher (each)	\$1,000
					<u>Survey Grade</u> <u>Standard</u>
				Drone (per day)	\$200 \$100
				GPS (per day)	\$150 \$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.10. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.



Meeting Date: March 28, 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: Michael Short, P.E. **Approved by:** Ryan Kelso
 Director of Water Services Chief Executive Officer
 and Compliance

RECOMMENDED ACTION: Authorize CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Gruene Wastewater and Inverted Siphon Improvements as part of the Gruene Road Sewer Main Rehabilitation/Relocation Project

BACKGROUND

On February 8, 2021, New Braunfels Utilities (“NBU”) approved a Professional Services Agreement (the “Agreement”) with Freese and Nichols, Inc. (“FNI”) for professional engineering services for the Gruene Wastewater and Inverted Siphon Improvements Project (the “Project”). On May 24, 2022, the NBU Board of Trustees approved a Professional Services Contract Amendment (the “First Amendment”) to (i) add additional services related to the Project (defined therein); (ii) increase the compensation; (iii) extend the time for completion of the Services; (iv) modify the Supplemental Services to allow for general professional engineering services; and (v) increase the compensation for Supplemental Services.

NBU and FNI have identified a need to combine the project milestones relating to the odor control and non-odor control components of the Project and add additional services not contemplated in the Agreement, including final design phase services, field services, and construction phase services (the “New Services”). As a result, NBU staff requests that the Board approve the Second Amendment to the Agreement (the “Second Amendment”), which will (i) add the New Services, (ii) extend the time of completion, (iii) authorize additional compensation for the New Services, and (iv) increase the amount of Supplemental Services authorized under the Agreement.

This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved. The Agreement did not initially require Board approval because the cost for the services and supplemental services totaled \$338,808 and did not exceed the \$500,000 threshold for Board approval as required by the NBU Purchasing Policy.

Upon completion of the final design, NBU staff will solicit a construction contract and bring the construction contract to the Board for approval in June 2025. NBU staff plans to begin construction in August 2025 and complete construction by April 2026.

FINANCIAL IMPACT

The total financial impact for the Second Amendment is \$634,844. The total contract amount for the Agreement and the Second Amendment with FNI for the Project is \$1,136,260. The Project is budgeted within the fiscal year 2024 through fiscal year 2026 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

EXHIBITS

1. Second Amendment to the Professional Services Agreement with FNI

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(GRUENE WASTEWATER AND INVERTED SIPHON IMPROVEMENTS)**

This **SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Second Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **FREESE AND NICHOLS, INC.**, a Texas corporation (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated February 8, 2021 (the “Original Agreement”), for project management, final design phase, field services, permitting and stakeholder coordination, bid phase services, and construction phase services (the “Original Services”) for the Gruene Wastewater and Inverted Siphon Improvements Project (the “Project”) to be completed by December 20, 2021;

WHEREAS, the Original Agreement included supplemental services for professional engineering services, including but not limited to assistance with geotechnical borings, permitting, and environmental investigation (the “Supplemental Services”);

WHEREAS, the Original Agreement did not require Board approval because the cost for the Services and Supplemental Services totaled \$388,808 and did not exceed the \$500,000 threshold for Board approval required by the NBU Purchasing Policy;

WHEREAS, the Parties entered into a First Amendment to Professional Services Agreement on May 27, 2022, to (i) add additional services related to the Project (defined therein); (ii) increase the compensation; (iii) extend the time for completion of the Original Services; (iv) modify the Supplemental Services to allow for general professional engineering services; and (v) increase the compensation for Supplemental Services (the “First Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, the Parties have identified a need to combine the project milestones relating to the odor control and non-odor control components of the Project and add additional services not contemplated in the Agreement, including final design phase services, field services, and construction phase services (the “New Services” and, together with the Original Services, as amended in the First Amendment, the “Services”);

WHEREAS, the addition of the New Services requires an extension of the completion date and an increase in the compensation due to the Professional under the Agreement;

WHEREAS, due to the modification in scope, the Parties have also identified a need to increase the amount of Supplemental Services authorized under the Agreement;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to amend or modify the Agreement; and

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New

Services, (ii) extend the time of completion, (iii) authorize additional compensation for the New Services, and (iv) increase the amount of Supplemental Services authorized under the Agreement, all as more fully described in Exhibit A and Exhibit B attached hereto.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, as follows:

AGREEMENT

Section 1. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this Second Amendment as of the effective date of this Second Amendment.

Section 2. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted in its entirety and replaced by Exhibit B to this Second Amendment as of the effective date of this Second Amendment.

Section 3. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 4. Entire Agreement. This Second Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 5. Binding Effect. This Second Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 6. Severability. If any term or provision of this Second Amendment 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 Second Amendment shall not be affected thereby, and this Second Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this Second Amendment on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

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

THE PROFESSIONAL:

FREESE AND NICHOLS, INC.,
a Texas corporation

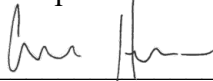
By:  _____
Name: Anne Hoskins
Title: Principal

Exhibit A
Scope of Services

NO CHANGE

WASTEWATER PIPELINE

PROJECT SITE 1

NO CHANGE

PROJECT SITE 2

NO CHANGE

PROJECT SITE 3

NO CHANGE

GRUENE ROAD SIPHON STRUCTURE

NO CHANGE

SERVICES

The Professional shall provide the following Services in accordance with the tasks described herein.

Task 1. Project Management

NO CHANGE

Task 2. Final Design Phase

2. The Professional shall perform the final design phase services described below.

2.1. MEETINGS. The Professional shall provide meeting agenda and meeting minutes to the NBU Project Manager via email for the following meetings:

2.1.1. NO CHANGE

2.1.2. NO CHANGE

2.1.3. 90% design review meeting (two (2) meetings);

- 2.1.4. NO CHANGE
 - 2.1.5. permitting meeting with City of New Braunfels (six (6) meetings);
 - 2.1.6. meetings with additional stakeholders (ten (10) meetings); and
 - 2.1.7. monthly meetings with the NBU Project Manager (twenty (20) meetings).
- 2.2. NO CHANGE
 - 2.3. NO CHANGE
 - 2.4. NO CHANGE
 - 2.5. 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare and submit 100% plans, specifications, and OPCC to the NBU Project Manager via email. 100% design documents shall include:
 - 2.5.1. NO CHANGE
 - 2.5.2. NO CHANGE
 - 2.5.3. NO CHANGE
 - 2.5.4. NO CHANGE
 - 2.5.5. additional design document preparation and revisions, as approved by NBU;
 - 2.5.6. additional utility coordination, as approved by NBU; and
 - 2.5.7. additional OPCC preparation, as approved by NBU.
 - 2.6. NO CHANGE

Task 3. Field Services

- 3. The Professional shall perform the field services described below.
 - 3.1. NO CHANGE
 - 3.2. EASEMENT DOCUMENTS. The Professional shall prepare a metes and bounds description and exhibits for required easements for the Project for up to four (4) parcels approved by NBU.
 - 3.2.1. NO CHANGE
 - 3.2.2. NO CHANGE

3.2.3. NO CHANGE

3.2.4. NO CHANGE

3.2.5. NO CHANGE

3.2.6. NO CHANGE

3.3. NO CHANGE

3.4. NO CHANGE

3.5. NO CHANGE

Task 4. Permitting & Stakeholder Coordination

NO CHANGE

Task 5. Bid Phase Services

NO CHANGE

Task 6. Construction Phase Services

6. The Professional shall proceed with construction phase administration Services described below. The Professional shall provide general construction observation and contract administration services described below.

6.1. MEETINGS AND SITE VISITS. The Professional shall provide the following services for meetings and site visits:

6.1.1. NO CHANGE

6.1.2. NO CHANGE

6.1.3. attend up to a total of eight (8) monthly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor;

6.1.4. attend up to a total of eight (8) 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 and notify NBU of any non-conforming work performed by the contractor observed on the site visits;

- 6.1.5. conduct one (1) substantial completion inspection and punch list review 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 to be corrected by the contractors before recommendation of final payment; and
- 6.1.6. NO CHANGE
- 6.2. 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 those reports to NBU indicating the status of all submittals in the review process.
 - 6.2.1. SUBMITTAL REVIEW. The Professional shall review all contractor submittals for compliance with the design concepts to include the following:
 - 6.2.1.1. shop drawings (up to twenty (20));
 - 6.2.1.2. NO CHANGE
 - 6.2.1.3. requests for information (up to fifteen (15));
 - 6.2.1.4. schedules (up to twelve (12));
 - 6.2.1.5. certified test reports (up to ten (10));
 - 6.2.1.6. NO CHANGE
 - 6.2.1.7. NO CHANGE
- 6.3. CHANGE ORDERS. The Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project as described below.
 - 6.3.1. NO CHANGE
 - 6.3.2. NO CHANGE
 - 6.3.3. The Professional shall prepare field/change order documentation for five (5) field order(s) for minor alterations and three (3) change order(s).
 - 6.3.4. NO CHANGE
- 6.4. NO CHANGE

6.5. NO CHANGE

6.6. NO CHANGE

6.7. RESIDENT REPRESENTATION. The Professional shall have a full-time (forty (40) hours per week) Resident Project Representative (RPR) on all sites for thirty-five (35) weeks and provide an average of ten (10) hours per week of construction management time for forty (40) weeks. The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, are as follows:

6.7.1. NO CHANGE

6.7.2. NO CHANGE

6.7.3. NO CHANGE

6.7.4. NO CHANGE

6.7.5. NO CHANGE

6.7.6. NO CHANGE

6.7.7. NO CHANGE

6.7.8. NO CHANGE

6.7.9. NO CHANGE

6.7.10. NO CHANGE

6.7.11. NO CHANGE

6.8. ABOVE GROUND ASSET INFORMATION. The Professional shall prepare a memorandum that provides the asset information listed below for all above grade facilities for insurance purposes within 30 days after substantial completion by the contractor.

6.8.1. Address

6.8.2. Year Built

6.8.3. Description

6.9. BELOW GROUND ASSET INFORMATION. The Professional shall prepare a memorandum that provides the asset information for all new and abandoned pipelines for insurance purposes within 30 days after substantial completion by the contractor.

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

- 6.10.1. project site visit memorandums and construction progress meeting minutes within seven (7) days after the subject site visit or construction progress meeting;
- 6.10.2. one (1) PDF electronic copy and one (1) georeferenced .dwg file of record drawings including plans and specifications in accordance with NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor within sixty (60) days after final completion; and
- 6.10.3. one (1) PDF electronic copy of Final Completion memorandum within seven (7) days after final completion walkthrough.

SUPPLEMENTAL SERVICES

NO CHANGE

TIME OF COMPLETION

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

Project Milestones (Odor Control and non-Odor Control)	Start Date	End Date
Notice to Proceed	NO CHANGE	
Task 1: Project Management	NO CHANGE	1/31/2025
Task 2: Final Design Phase	NO CHANGE	1/31/2025
Task 3: Field Services	NO CHANGE	12/31/2023
Task 4: Permitting and Stakeholder Coordination	9/2/2024	1/31/2025
Task 5: Bid Phase	2/1/2025	6/30/2025
Task 6: Construction Phase	8/1/2025	3/31/2026

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 rendered under this Agreement in accordance with the table below and made a part of this Agreement. NBU shall pay the Professional for the Services performed throughout the term of this Agreement not to exceed \$1,086,260.

Cost Breakdown	Original Contract Amount	First Amendment	Second Amendment	Total
Task 1: Project Management	\$17,931	\$0	\$36,670	\$54,601
Task 2: Final Design Phase	\$221,215	\$84,363	\$66,497	\$372,075
Task 3: Field Services	\$59,950	\$17,930	\$23,428	\$101,308
Task 4: Permitting & Stakeholders	\$6,588	\$6,911	\$25,277	\$38,776
Task 5: Bid Phase	\$5,869	\$0	\$20,726	\$26,595
Task 6: Construction Phase	\$40,659	\$0	\$452,246	\$492,905
Grand Total	\$352,212	\$109,204	\$624,844	\$1,086,260

Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$50,000; 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: March 28, 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: Authorize CEO or His Designee to Negotiate and Execute a Materials Agreement for Annual Steel Pole Purchases with KBS Electrical Distributors

BACKGROUND

On September 25, 2023, New Braunfels Utilities (“NBU”) issued a request for bids for a contract for Annual Steel Pole Purchases. The purpose of this contract is to ensure NBU maintains an adequate stock of steel poles for projects associated with new construction and for as-needed maintenance and replacements to be completed by our Electric Operations department.

On October 30, 2023, NBU received five (5) bid submittals during the public bidding process. The submittals were evaluated and recommends the selection of KBS Electrical Distributors, Inc. as the lowest responsible bidder.

NBU staff requests that the Board of Trustees approve the Material Agreement (the “Contract”) with KBS to supply steel poles to maintain adequate stock of inventory materials.

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

FINANCIAL IMPACT

The total financial impact of the Contract with KBS Electrical Distributors, Inc. is a not to exceed of \$1,281,525 per year with a total amount not to exceed of \$6,407,625 for the term of the Contract.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

Stewardship

EXHIBITS

1. Material Agreement with KBS Electrical Distributors, Inc

MATERIALS AGREEMENT

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

1. **Term of Agreement.** This Agreement will be effective on the latest date subscribed below (the “Effective Date”), and will remain in full force and effect for a period of one (1) year from March 1, 2024, to February 28, 2025 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond February 28, 2029.

2. **Scope of Services.** NBU desires to purchase certain Utility Products (defined below) from the Supplier in accordance with the provisions of this Agreement. The Supplier shall sell the Utility Products to NBU in accordance with the provisions of this Agreement.
 - A. **Utility Products Defined.** The Utility Products shall mean the present and future goods described in Exhibit A of this Agreement.

 - B. **Non-Exclusive Supplier.** The parties agree that this Agreement is nonexclusive and neither restricts NBU’s ability to procure the same or similar materials and services from a different supplier nor limits NBU’s sole discretion to contract for any materials or services with other vendors.

 - C. **Subcontractors.** The Supplier is prohibited from utilizing subcontractors to perform its obligations under this Agreement, unless NBU, in its sole discretion, expressly agrees in writing beforehand to allow such named subcontractor to perform the specified work.

 - D. **Shipment and Delivery.** During the term of this Agreement, the Supplier will deliver and/or ship the Utility Products to NBU from time to time as requested by NBU according to the following provisions:
 - I. **General.**
 - a. **Place of Delivery.** The Supplier shall ship and/or deliver the Utility Products to the NBU Service Center, located at 355 FM 306, New Braunfels, Texas 78130 (the “Facility”) by the lead times specified in Exhibit B or as otherwise requested by NBU in writing from time to time.

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

II. Deliveries.

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

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

- b. Cost of Delivery. The Supplier agrees to load, move, and unload the Utility Products safely on the Supplier trucks as needed at no cost to NBU.
- c. Notification of Delivery. The Supplier shall notify NBU in writing no less than twenty-four (24) hours in advance of all Utility Products to be delivered to the Facility, unless a shipment is to be made on a Monday, in which case the Supplier shall make such notification no later than the preceding Friday. Further, such notification shall also include information regarding any Utility Products that are back ordered and will not be delivered to NBU. The Supplier shall schedule its shipments to arrive on weekdays that are not national or religious holidays between the times of 8:00 a.m. and 3:00 p.m. or as otherwise provided by NBU in writing to the Supplier. NBU may choose, in its sole discretion, to refuse to receive a shipment that does not arrive during the business hours specified herein. The Supplier shall incur all costs associated with delays due to failure of the Supplier to provide the notice required herein, or due to a failure of the shipment to arrive during the business hours specified herein.

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

IV. Failure to Deliver/Ship Utility Products.

- a. Inability to Meet Contractual Obligations. In the event that the Supplier is unable to deliver Utility Products as requested by NBU pursuant to this Agreement and within the time required by NBU for any reason whatsoever, NBU may purchase said Utility Products from a third party(s) without any further payment or other obligation to the Supplier for such Utility Products

and said purchase shall not be deemed to be a breach of the terms of this Agreement. In the event that Utility Products are needed for an emergency or in a manner that is not in the normal course of business, NBU shall inform the Supplier of that fact as soon as reasonably practicable.

- b. Force Majeure. The Supplier shall not be liable for delay or default in delivery resulting from any unforeseeable cause beyond the Supplier's reasonable control, including, but not limited to, governmental action, epidemic, pandemic, fire, damage or destruction of goods, wars (declared or undeclared), acts of terrorism, and acts of God (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the time for the Supplier's performance shall be extended reasonably and NBU and the Supplier shall adjust all affected dates accordingly. If NBU finds the affected dates unsatisfactory, NBU may purchase Utility Products from a third party(s) until the Supplier is able to perform its obligations hereunder. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement.

3. Compensation.

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

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

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

Products to NBU free and clear of all liens, claims, and encumbrances in the same condition as the Utility Products were in when they came into the possession of Supplier-Reseller.

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

A. General.

- I. Insurer Qualifications. Without limiting any obligations or liabilities of the Supplier, the Supplier shall purchase and maintain, at its own expense, the insurance type and coverage specified herein with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A-VII or better with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
- a. Coverage Term. All insurance required herein shall be maintained in full force and effect until this Agreement is terminated.
- b. Additional Insured. The Supplier shall add NBU, its agents, representatives, officers, directors, officials, and employees as an additional insured (CG 2010 1001 or an equivalent on the general liability policy) on all required insurance policies, except Worker's Compensation insurance, for claims arising out of the performance of this Agreement. Any coverage afforded to the additional insured shall be primary and non-contributory.
- c. Waiver of Subrogation. All policies shall contain a waiver of right of recovery (subrogation) against NBU, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the performance of any services under this Agreement. The Supplier shall

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

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

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

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

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

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

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

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

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

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

event the Supplier has failed to provide the Utility Products to NBU within the time periods specified by NBU, NBU may purchase the Utility Products from other suppliers and sources without any liability to the Supplier and without any obligation to purchase the Utility Products from the Supplier as described in this Section.

- B. Insolvency or Bankruptcy. NBU may immediately terminate this Agreement upon written notice to the Supplier if the Supplier becomes insolvent, makes an assignment for the benefit of creditors, or files or is the subject of a petition in bankruptcy. In the event of such termination, NBU shall have no liability to the Supplier.
- C. Annual Appropriations. NBU may terminate this Agreement pursuant to Section 7 of this Agreement.
7. Annual Appropriations. Notwithstanding the Term listed above, the Supplier agrees and understands that NBU is a governmental entity and it has projected costs under the terms of this Agreement. NBU expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of NBU are subject to annual appropriation by the NBU Board of Trustees in future years. Accordingly, the above provisions notwithstanding, in the event that NBU fails to appropriate sums to pay any of the Supplier's obligations under this Agreement, and due to such failure to appropriate, fails to pay such obligations, the Supplier's sole option will be to terminate this Agreement. NBU agrees to give the Supplier a minimum of thirty (30) days' written notice if NBU must terminate the Agreement because of any non-appropriation. In the event of such termination, NBU shall have no liability to the Supplier.
8. Indemnification. THE SUPPLIER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS NBU, ITS BOARD MEMBERS, OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, AND LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF THE SUPPLIER, ITS REPRESENTATIVES, AGENTS, OR EMPLOYEES IN ANY MANNER RELATED TO THIS AGREEMENT. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH IN THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION.
9. Miscellaneous.
- A. Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party. If consent to an assignment is required, NBU reserves the right to refuse, in its sole discretion, to consent to the assignment by the Supplier.
- B. Notice. Any notice or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by certified mail, postage prepaid, return receipt requested, or overnight

courier addressed as herein below provided, until another address or addresses shall be furnished in writing to the other party.

If to NBU:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130

With a copy to:

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

If to the Supplier:

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

- C. Entire Agreement; Conflicting Terms. This Agreement sets forth the entire understanding between the parties regarding the subject matter hereof and shall not be altered or modified in any way other than by a written document executed by both parties. All Exhibits referred to in this Agreement and attached hereto are essential provisions of this Agreement, are to be construed in harmony with each to give purpose and effect to the fulfillment of the obligations and responsibilities of the parties and are incorporated herein by this reference as if set out herein verbatim. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern.
- D. No Waiver. Failure of NBU or the Supplier to insist on any one or more instances on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of that covenant or any other covenant.
- E. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- F. Governing Law and Venue. This Agreement shall be governed and controlled by the laws of the State of Texas, considered without regard to choice of law rules. Venue of any claim, cause of action, or lawsuit based in whole or in part upon this Agreement shall be in Comal County, Texas.
- G. State or Federal Laws. This Agreement is subject to all applicable federal and state laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing

contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. Each provision and clause required by state and federal law to be inserted into this Agreement shall be deemed to be included herein and the Agreement shall be read and enforced as though each were included herein.

- H. No Third Party Beneficiary. The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.
- I. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. First, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) business days after receipt of the notice of dispute. Second, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) business days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.
- J. Immunity not Waived or Limited. **THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OR LIMITATION IN ANY MANNER BY NBU OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT NBU MAY HAVE BY OPERATION OF LAW.**
- K. Acknowledgement and Authority. The Supplier acknowledges that it has read this Agreement and is familiar with and fully understands the terms and obligations set out in this Agreement and the Supplier's obligations and responsibilities for performance. The Supplier further acknowledges that any questions concerning the terms and conditions of this Agreement have been satisfactorily explained to the Supplier. The person or persons executing and signing this Agreement on behalf of the Supplier represent and guarantee that they have been fully authorized by the Supplier to execute this Agreement and to legally bind the Supplier to all the terms and provisions of this Agreement.
- L. Multiple Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- M. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. The Supplier represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.
- N. Independent Contractor. The Supplier acknowledges that the Supplier is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Supplier shall not represent, either expressly or through implication, that the Supplier is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Supplier.
- O. Amendments. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Supplier.
- P. Confidentiality of Records. The Supplier shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Supplier's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Supplier's duties under this Agreement. Persons requesting such information should be referred to NBU. The Supplier also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Supplier as needed for the performance of duties under this Agreement.
- Q. Right to Audit. NBU shall have the right to examine and audit the books and records of the Supplier with regard to the Utility Products, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- R. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- S. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- T. Prohibition on Contracts with Companies Boycotting Israel. The Supplier hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made

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

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

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

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

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

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

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

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

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

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

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

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

Y. Texas Public Information Act. The Supplier recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within this Agreement, the Supplier agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU’s

obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in Section 9(Q).

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

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

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

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

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

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

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

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

SUPPLIER:

KBS ELECTRICAL DISTRIBUTORS, INC.,
a Texas corporation

By: *Jack McGuinness*
Name: Jack McGuinness
Title: Sales

Exhibit A

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

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

Exhibit B

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

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

The prices for Utility Products shall remain fixed for a period of 4 months. Sixty (60) days prior to the automatic renewal of this Agreement, the Supplier will be permitted to propose pricing adjustments with the written approval of NBU; however, any price adjustment approved by NBU shall be included in the calculation of the not to exceed amounts specified in this Exhibit. The Supplier will make every reasonable effort to tie future Utility Products increases or decreases to generally acceptable metals, oil, labor, and other indices.



Meeting Date: March 28, 2024 **Agenda Type:** Action Items

From: Michael G. Short, P.E.
 Director of Water Services
 and Compliance **Reviewed by:** Michael G. Short, P.E.
 Director of Water Services and
 Compliance

Submitted by: Michael G. Short, P.E.
 Director of Water Services
 and Compliance **Approved by:** Ryan Kelso
 Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Authorizing CEO or His Designee to Negotiate and Execute a Treated Water Sharing Agreement with Guadalupe Blanco River Authority for the Resale of Water from the Gonzales Carrizo Water Supply Project on a Temporary Basis

BACKGROUND

On January 25, 2018, the New Braunfels Utilities (“NBU”) Board of Trustees approved entering into the Gonzales Carrizo Water Supply (“GCWSP”) Project Treated Water Supply Agreement (the “Supply Agreement”) with Guadalupe Blanco River Authority (“GBRA”). The Supply Agreement established the terms governing NBU’s purchase of 8,000 acre-feet per year (“AFY”) of treated water supply. The current anticipated delivery of this supply is to begin in the Summer of 2024.

On June 27, 2018, GBRA contracted with Alliance Regional Water Authority (“Alliance”) to construct and operate groundwater treatment and transportation facilities (the “Project”) to provide up to 15,000 AFY to GBRA customers (Goforth Special Utility District, the City of Lockhart, and NBU collectively the “Initial Customers”) to include the 8,000 AFY to NBU as described in the Supply Agreement. Subsequently, GBRA executed separate Gonzales Carrizo Water Supply Project Treated Water Supply Agreements with County Line Special Utility District, Goforth Special Utility District, Maxwell Special Utility District, and Camino Real Utility Company, LLC (collectively referred to as “Expansion Customers”) in 2022 to supply up to an additional 8,757 AFY of treated water from an expansion of the Project (the “Expanded Project”). However, the Expanded Project and the resulting extra water will not be available for the Expansion Customers until 2028.

Some of the Expansion Customers have determined that they need a temporary source of treated water while they await the completion of the Expanded Project. NBU and the City of Lockhart have individually determined that they have contracted with GBRA under their respective agreements for a volume of treated water from the Project that may not all be needed for use within their utility systems prior to January 1, 2029. NBU has determined the amount of water NBU does not need until after January 1, 2029, to be 4,000 AFY. GBRA proposes to purchase and resell on a temporary basis (the “Water Sharing

Agreement”) up to 4,000 AFY of NBU’s Project water as described in the Supply Agreement. GBRA also proposes to purchase and resell on a temporary basis 500 AFY of the City of Lockhart’s Project water.

The Water Sharing Agreement, among other things, requires GBRA to make its best effort to resell up to 4,000 AFY of NBU Project water on a temporary basis to terminate December 31, 2028, pay NBU a shared fixed rate for shared water sold equivalent to the Project’s debt service currently estimated at \$668.79 per AFY, resell at a minimum 500 AFY within 180 days of executing the Water Sharing Agreement, and pay an administrative fee of five (5) percent on water sold.

Staff has determined that it is in NBU’s best interest to authorize GBRA to deliver the shared water to its customers on a short-term, temporary basis. Staff recommends approval of the Water Sharing Agreement.

This item is being presented to the Board because it creates an agreement between NBU and GBRA.

FINANCIAL IMPACT

The Water Sharing Agreement allows NBU to offset a portion of the current debt service payments it makes to GBRA under the terms of the Water Supply Agreement for water NBU does not need until after December 31, 2028. Assuming the potential range of water volume sold, NBU could save anywhere between \$1.4MM. to 11.2MM.

LINK TO STRATEGIC PLAN

Customers and Community

Financial Excellence

Stewardship

EXHIBITS

1. Water Sharing Agreement
2. Presentation

**TREATED WATER SHARING AGREEMENT
BY AND BETWEEN
GUADALUPE-BLANCO RIVER AUTHORITY,
NEW BRAUNFELS UTILITES AND CITY OF LOCKHART**

This Treated Water Sharing Agreement (“Agreement”) is made and entered into by and between the Guadalupe-Blanco River Authority, a Texas conservation and reclamation district organized under Article 16, Section 59 of the Texas Constitution (“GBRA”), New Braunfels Utilities, a Texas municipally owned utility (“NBU”), and City of Lockhart, a municipal corporation (“City”) (referenced herein as a “Party” and collectively, the “Parties”).

RECITALS

1. GBRA represents that it has leased approximately 42,000 acres of land in Gonzales and Caldwell counties, Texas, the lease of which provides GBRA the right to access the Carrizo Aquifer groundwater beneath the land.
2. GBRA represents that it is currently authorized by the Gonzales County Underground Water Conservation District (“District”), pursuant to Operating Permit No. 11-16-17 and Export No. 01-13-01 (together “Permits”) to produce and transport out of the District up to 15,000 acre-feet per year (AFY) of groundwater from the land leased by GBRA, subject to the restrictions and limitations in the Permits and further, GBRA represents that it has requested the District authorize the production and transportation out of the District of an additional 9,000 AFY.
3. GBRA has contracted with Alliance Regional Water Authority (“Alliance”) to construct and operate certain groundwater treatment and transportation facilities pursuant to the terms of the Water Treatment and Delivery Agreement Between Alliance and GBRA dated June 27, 2018 (“Alliance Agreement”). GBRA has the contractual right to use the facilities under construction pursuant to the Alliance Agreement to treat and transport groundwater to current and future GBRA customers in Hays, Guadalupe, Caldwell, and Comal counties. A copy of the Alliance Agreement is incorporated by reference into this Agreement as if attached as an exhibit.
4. GBRA executed separate Gonzales Carrizo Water Supply Project Treated Water Supply Agreements with NBU, the City, and Goforth Special Utility District (collectively referred to as “Initial Customers”) in 2018 (collectively referred to as the “2018 Agreements”) to supply up to 15,000 AFY of treated water from the Project (as that term is defined in Section 2.1 of this Agreement).
5. Section 3.8 of the respective NBU and City 2018 Agreements authorize each to sublease or wholesale the water purchased from GBRA.
6. GBRA executed separate Gonzales Carrizo Water Supply Project Treated Water Supply Agreements with County Line Special Utility District, Goforth Special Utility District, Maxwell Special Utility District, and Camino Real Utility Company, LLC (collectively

referred to as “Expansion Customers”) in 2022 to supply up to 8,757 AFY of additional treated water from the Project.

7. Crystal Clear Special Utility District (“Crystal Clear”) is a water supply customer of Alliance and similarly will receive water from the Project upon completion of Alliance’s portion of the Project.
8. GBRA anticipates construction completion of those portions of the Project necessary to serve the Initial Customers in 2024.
9. GBRA anticipates construction completion of those portions of the Project necessary to serve the Expansion Customers (the “Expansion Customers’ Project Portions”) in 2028.
10. Some of the Expansion Customers have determined that they need a temporary source of treated water while they await the completion of the Expansion Customers’ Project Portions and the delivery of water therefrom.
11. Similarly, Crystal Clear has determined that it needs a temporary source of treated water while it awaits the completion of some of Alliance’s portions of the Project and the delivery of water therefrom.
12. NBU and the City have individually determined that they have contracted with GBRA under their respective 2018 Agreements for a volume of treated water from the Project that may not all be needed for use within their utility systems prior to January 1, 2029.
13. NBU and the City have furthermore determined that they are willing to authorize GBRA to resell a portion of their Treated Carrizo Project Water (as defined below), for use by the Users (as defined below) on a short-term, temporary basis not extending beyond December 31, 2028. The volume of NBU’s and City’s contracted water from the Project that is available for resale under this Agreement is defined below as Shared Water.
14. NBU and the City have separately determined that it is in their best individual interest to authorize GBRA to deliver the Shared Water to the Users on a short-term, temporary basis pursuant to the terms of this Agreement and pursuant to the terms of individual contracts between GBRA and such Users.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, GBRA, NBU and the City agree as follows:

ARTICLE I **DEFINITIONS**

“Alliance Regional Water Authority” or “Alliance” means the regional water authority created and operating under Texas Special District Local Laws Code Chapter 11010.

“Effective Date” means the date of the last signatory of this Agreement and enforceable as between Parties following execution by all Parties.

“Gonzales Carrizo Water Supply Project” or “Project” means the project described in Section 2.1 of this Agreement.

“Groundwater Leases” means the leases held by GBRA on approximately 42,000 acres of land in Gonzales and Caldwell counties and which provide GBRA the right to access the Carrizo Aquifer groundwater beneath the land identified in the leases.

“Provider” or “Providers” means individually or jointly, NBU and/or the City.

“Provider’s Administration Fee” means the fee described in Section 3.3 (f) of this Agreement.

“Shared Water” means treated water from the Project that Providers are willing to temporarily authorize GBRA to resell and deliver to Users on a short-term basis for a period of time not extending beyond December 31, 2028.

“Shared Water Points of Delivery” means the point or points at which GBRA will deliver Shared Water to Users, in an amount and at a delivery rate not to exceed the aggregate Shared Water Commitments of the Providers and the terms of this Agreement, as such Points are generally described in **Exhibit A** attached hereto and incorporated herein for all purposes.

“TCEQ” means the Texas Commission on Environmental Quality or its successor agency.

“Termination Date” means the date upon which this Agreement terminates as described in Section 5.1.

“Treated Carrizo Project Water” means treated groundwater from the Project that GBRA is lawfully entitled to obtain, deliver and use under the terms of the Permits and Alliance Agreement.

“User” or “Users” means individually or jointly, Camino Real Utility Company LLC, County Line Special Utility District, Crystal Clear Special Utility District, and/or Maxwell Special Utility District.

ARTICLE II

GONZALES CARRIZO WATER SUPPLY PROJECT

2.1 Description of the Gonzales Carrizo Water Supply Project. The Gonzales Carrizo Water Supply Project (“Project”) primarily consists of the Groundwater Leases, facilities to pump, treat, and convey groundwater in and from Gonzales and Caldwell counties, including but not

limited to water treatment plant(s) and associated facilities, and facilities to convey treated water through and to Gonzales, Guadalupe, Caldwell, Hays, and Comal counties. The Project also includes all lands and interests in lands necessary and desirable for the construction, operation, and maintenance of the Project facilities, and may further include storage and blending facilities, and other facilities necessary or desirable for the supply of treated water to Project customers, including the Initial Customers.

2.2 GBRA Project Rights, Responsibilities and Ownership.

(a) Alliance shall own and operate certain portions of the Project, as described in the Alliance Agreement. For the benefit of its customers, GBRA has secured an ownership interest in the capacity of the Project Facilities, as such term is defined in the Alliance Agreement.

(b) Under the Alliance Agreement, GBRA’s ownership interest in capacity in the Project Facilities may not be terminated or abrogated, and Alliance shall be obligated to treat and deliver water from GBRA’s Water Supply (as defined in the Alliance Agreement) using GBRA’s capacity in the Project Facilities.

(c) GBRA shall own those Project portions not owned by Alliance, including various facilities and interest in the land comprising the Project. GBRA shall be responsible for the operation, maintenance, design, permitting, financing, construction, expansions, extensions, and other modifications to those GBRA Project portions in order to provide a long-term water supply on behalf of the Initial and Expansion Customers.

2.3 Providers’ Annual Commitment of Treated Water from the Project. The Annual Commitment of treated water from the Project, as defined in their respective 2018 Agreement, is 8,000 AFY for NBU and 3,000 AFY for the City. The 2018 Agreements for NBU and the City are respectively incorporated into this Agreement by reference as if attached as exhibits.

ARTICLE III
SHARED WATER

3.1 Shared Water Available from Providers. The Parties agree that the delivery of Shared Water on a temporary, short-term basis may start on the date that the Project infrastructure necessary to deliver Treated Carrizo Project Water to the Initial Customers is completed, as such date is determined by GBRA in its sole discretion, and extend up to, but not beyond December 31, 2028. Pursuant to the terms of this Agreement, NBU hereby commits 4,000 AFY of Treated Carrizo Project Water as Shared Water and the City hereby commits 500 AFY of Treated Carrizo Project Water as Shared Water (Providers’ respective “Shared Water Commitment”).

3.2 Rights to Adjust Shared Water Commitment. On each anniversary of the Effective Date during the term of this Agreement, each Provider shall have the individual right to adjust its respective Shared Water Commitment, in each Provider’s sole discretion, in one of the following

ways: (i) Provider may increase its then-current Shared Water Commitment by giving GBRA thirty (30) days' written notice; or (ii) Provider may decrease its then-current Shared Water Commitment, to the extent such Shared Water Commitment has not been contractually committed by GBRA to Users, by giving GBRA sixty (60) day's written notice.

3.3 Shared Water Resale Terms. During the term of this Agreement, GBRA shall use its best efforts to contract with Users for the resale of up to the then-total volume of Shared Water Commitments (initially 4,500 AFY of Shared Water).

The Parties agree that all GBRA contracts to resell Shared Water shall include:

- (a) Contract counterparties that are Users or other customers that will ultimately receive water from the Project upon completion of all phases of construction;
- (b) A water delivery commencement date for each User, as determined by GBRA in its sole discretion, that is no earlier than the completion of all infrastructure construction necessary to convey Treated Carrizo Project Water to the Initial Customers;
- (c) A water delivery termination date that is no later than December 31, 2028;
- (d) A Shared Water Fixed Rate expressed in dollars per AFY. The Shared Water Fixed Rate shall be not less than the total of Providers' actual then-current annual Gonzales Carrizo Debt Service Charge and Gonzales Carrizo Water Charge, as those terms are defined in the respective 2018 Agreements between GBRA and each of the Providers, divided by 11,000 AFY. GBRA has determined that, as of the Effective Date, the Annual Shared Water Fixed Rate would be \$668.79 per AFY;
- (e) A Shared Water Fixed Charge equal to the Shared Water Fixed Rate multiplied by the number of acre-feet of Shared Water committed to a User. Such Shared Water Fixed Charge shall be assessed (i) to the Users on a take or pay basis, such that the Charge is paid whether all, some or any of the water is taken or not, (ii) on a monthly basis, such that one-twelfth of the Shared Water Fixed Charge is billed by GBRA and collected from the Users each month, and (iii) such Charge shall be billed by GBRA and paid by Users starting on the month after the Effective Date;
- (f) A Provider's Administration Fee equal to, a percentage multiplied by the Shared Water Charge. The initial Provider's Administration Fee of 5 percent (5%) may be increased from time to time on the anniversary of the Effective Date at the sole discretion of the Providers; provided however the percentage may not be increased more than the Consumer Price Index change for the previous year. Such Provider's Administration Fee shall be assessed (i) to the Users on a take or pay basis, such that the Fee is paid whether all, some or any of the water is taken or not, (ii) on a monthly basis, such that one-twelfth of the Provider's Administration Fee is billed by GBRA and collected from the Users each month, and (iii) such Fee shall be billed by GBRA and paid by Users starting on the month after the Effective Date;

(g) The amount of Shared Water committed to a User (expressed in AFY) which includes water lost in production, treatment and delivery;

(h) A maximum delivery rate to a User, expressed in gallons per minute (GPM), equal to the number of AFY of Shared Water committed to a User multiplied by 0.62, less actual losses occurring during production, treatment and delivery;

(i) A provision that Users may amend the contract to increase the volume of Shared Water contractually committed by GBRA, if Shared Water is available for commitment by a Provider; but that the committed volume of Shared Water may not be decreased during the term of the contract;

(j) A provision stating that no Shared Water will be provided by GBRA after the earlier of the termination date or December 31, 2028; ;

(k) A provision stating that Users' water losses will be determined and calculated using the same criteria used to determine and calculate water losses for Alliance and Providers.

(l) A provision recognizing that Users are fully and solely responsible for paying to GBRA the Gonzales Carrizo Delivery Charge, as such term is defined in the 2018 Agreements between GBRA and each of the Providers, applicable to the actual volume of Shared Water delivered to Users;

(m) A provision recognizing that Users are fully and solely responsible for the design, construction, maintenance, repair, and associated costs of any additional infrastructure ("User Extension") that might be necessary for GBRA to deliver the Shared Water beyond the Users' Shared Water Points of Delivery; that none of those User Extension costs shall be included, in whole or in part, as a cost payable by Providers under the Gonzales Carrizo Debt Service Charge and Gonzales Carrizo Water Charge, as those terms are defined in the respective 2018 Agreements between GBRA and each of the Providers;

(n) A provision recognizing that Users fully understand and accept that there is risk that the Expansion Customers' Project Portions may not be completed by December 31, 2028, and that Users fully understand and accept that no Shared Water will be available after December 31, 2028;

(o) A provision requiring Users to adopt and enforce conservation and drought contingency plans at least as stringent as those required of Providers by GBRA and regulatory agencies;

(p) A provision requiring the Users to pay a late payment charge, if applicable;

(q) A provision prohibiting the User from reselling the Shared Water to other wholesale water providers; and

- (r) A provision stating that GBRA shall be responsible for notifying the Users regarding water quality issues concerning the Shared Water.

3.4 Title to and Responsibility for Shared Water. Title to and responsibility for all Shared Water made available by Providers under this Agreement shall be in GBRA while said water is within the Project. If at any time Shared Water passes a Provider's point of delivery, as such term is described in the 2018 Agreements respectively, title to and responsibility for said water shall be in Provider. In such cases, title to and responsibility for the Shared Water shall remain with Provider until such time the Shared Water leaves the Provider's water distribution system and re-enters GBRA's or a User's water conveyance system. The Providers and GBRA hereby agree to save and hold each other harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation, storage, delivery, processing and handling of such water while title to and responsibility for the Shared Water remains in the other Party.

3.5 Allocation of Water During Shortage. During conditions beyond GBRA's control when water cannot be supplied to meet the demands of all customers, treated water from the Project including Shared Water, shall be divided pro rata among all GBRA customers of the Project, according to the amount each may otherwise be entitled under their respective contracts with GBRA, subject to reasonable conservation and drought management plans and requirements based on particular purposes of use of the water, so that preference is given to no one and everyone suffers alike.

ARTICLE IV

REMITTANCE BY GBRA OF USER PAYMENTS

4.1 Monthly Compilation of Shared Water Charges. Each month, GBRA shall compile an accounting of the previous month's Shared Water Fixed Charge, Provider's Administration Fee, and late payment fee billings to Users as well as the Users' payments thereof. Said compilation shall be transmitted to the Providers by the tenth (10th) day of each month, beginning one month after the Effective Date.

4.2 Remittance of Shared Water Charges. Contemporaneous with the transmittal of the monthly compilation described in Section 4.1, GBRA shall remit payment to the Providers of the total Shared Water Fixed Charge, Provider's Administration Fee, and late payment fee payments received from Users during the previous month. Said remittance payment to Providers shall be prorated between NBU and the City based on their respective, then-current Shared Water Commitment amount.

ARTICLE V

TERM AND TERMINATION

5.1 Term. This Agreement shall be in force and effect until the earlier of (i) the date that each Expansion Customers' Project Portions are complete, as such date is determined by GBRA in its sole discretion or, (ii) 11:59 p.m. Central time on December 31, 2028 ("Termination Date").

5.2 Providers' Rights to Terminate. In addition to their other rights and remedies, each Provider shall have the right to terminate this Agreement if, after proper notice: (i) GBRA has not entered into one or more contracts with Users for the resale of at least 500 AFY of Shared Water within 180 days after the Effective Date; and/or (ii) GBRA fails to enforce the terms and limitations of GBRA's contracts with Users related specifically to the termination date, limitations on the annual volume of Shared Water committed to a User and/or the maximum delivery rate at each User Shared Water Delivery Point.

5.3 Rights after Termination. Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement, except that such termination shall not affect any rights or liabilities accrued prior to such termination, including but not limited to GBRA's obligation to collect and remit to each Provider the total Shared Water Fixed Charge and Provider's Administration Fee payments paid by Users.

ARTICLE VI **OTHER PROVISIONS**

6.1 Regulatory Requirements. This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the TCEQ, or any successor agency subject to Section 6.8 below regarding severability and provided that changes in the law shall not be applied retroactively to amend this Agreement unless retroactivity is required by law.

6.2 Remedies. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default by any Party, but all such other remedies existing at law or in equity shall be cumulative including, without limitation, specific performance may be availed of by any Party. The prevailing Party shall be entitled to any reasonable attorney's fees, court costs or other expenses incurred in bringing or defending any suit alleging such default or claim.

6.3 Actual Damages. No Party shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive, delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based on whole or in part on agreement, negligence, strict liability, tort, statute or other theory of liability.

6.4 Assignability. The Providers may not assign their rights or obligations under this Agreement without first obtaining the written consent of GBRA, which consent shall not be unreasonably withheld or delayed.

6.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties, and supersedes any prior understanding or oral or written agreements between the Parties respecting the subject matter of this Agreement.

6.6 No Third Party Beneficiaries. This Agreement does not create any third party benefits to any person or entity other than the signatories hereto and their authorized successors in interest, and is solely for the consideration herein expressed.

6.7 Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary action of the Parties. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties hereto.

6.8 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, administrative rule, regulation or finding, rule of public policy, or for any other reason, this Agreement shall remain in effect and be construed as if the invalid, inoperative, or unenforceable provision had never been in the Agreement, and such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

6.9 Waiver and Amendment. Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by any Party shall not be deemed a waiver by the other Parties of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of GBRA is authorized to waive or modify any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document signed by all Parties' authorized representatives.

6.10 Force Majeure. If for any reason of force majeure, any Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then that Party shall give notice of the reasons in writing to the other Parties within a reasonable time after the occurrence of the force majeure event. The obligation of the Party giving the notice, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, but only so long as the Party giving notice uses its best efforts to mitigate the impact and remedy the condition which constitutes the force majeure. The term "force majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, order or actions of any kind of government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accidental or intentional), and any other cause not reasonably within the control of GBRA or a Provider.

6.11 Captions. The sections and captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Agreement.

6.12 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

6.13 Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. The obligations contained within this Agreement are performable in Hays County, Caldwell County, Comal County or Guadalupe County, Texas. Any action in law or equity brought to enforce or interpret any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Hays County, Caldwell County, Comal County or Guadalupe County, Texas.

6.14 Negotiation by Counsel. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement, and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

6.15 Counterparts and Electronic Transmissions. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. A telecopied or emailed electronically transmitted facsimile of an executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each Party to the terms hereof. However, each Party agrees to promptly deliver to the other Parties an original, duly executed counterpart of this Agreement.

6.16 Legal Construction. Whenever context requires, the singular will include the plural and the neuter will include the masculine or feminine gender, and vice versa.

6.17 Notices. Any notice or payment required or permitted hereunder shall be in writing and shall be deemed to be delivered (a) on the date received if delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) if deposited in the mail, whether actually received or not, on the third business day after having been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to a Provider or GBRA, as appropriate, at the address shown hereinafter. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the Parties shall be as follows:

For GBRA:

Guadalupe-Blanco River Authority

Attention: General Manager/CEO
2225 E. Common St.
New Braunfels, Texas 78130

For NBU:

New Braunfels Utilities
Attention: CEO
263 Main Plaza
New Braunfels, Texas 78130

For the City:

City of Lockhart
Attention: City Manager
308 W. San Antonio St.
P.O. Box 239
Lockhart, TX 78644

The Parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days' written notice to the other Parties.

6.18 Business Days. In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Texas.

GUADALUPE-BLANCO RIVER AUTHORITY

By: _____
Darrell Nichols, General Manager / CEO

Date: _____

ATTEST:

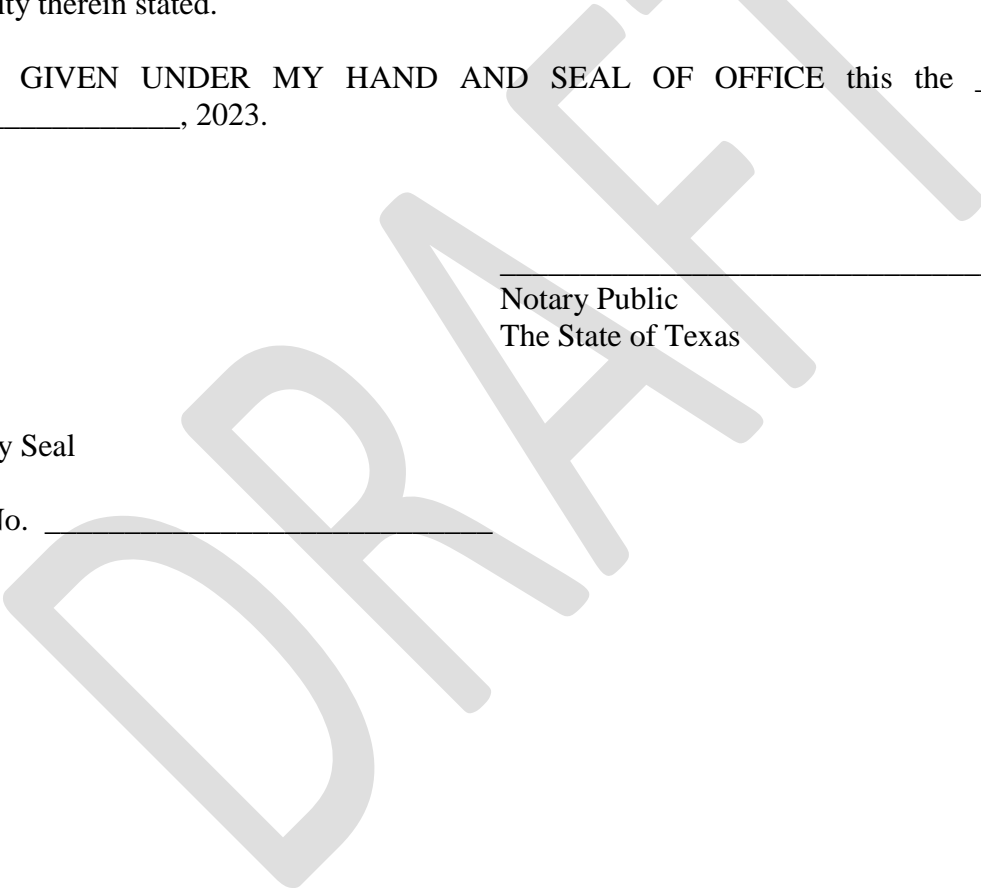
STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Darrell Nichols, General Manager/CEO of the GUADALUPE-BLANCO RIVER AUTHORITY, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such entity for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2023.

Notary Public
The State of Texas

Notary Seal
&
I.D. No. _____



NEW BRAUNFELS UTILITIES

By: _____
Ryan Kelso, Interim Chief Executive Officer

Date: _____

STATE OF TEXAS §
 §
COUNTY OF COMAL §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Ryan Kelso, Chief Executive Officer of NEW BRAUNFELS UTILITES, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the NEW BRAUNFELS UTILITIES, a Texas municipally owned utility, and that he/she executed the same as the act of such entity for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2023.

Notary Public
The State of Texas

Notary Seal
&
I.D. No. _____

CITY OF LOCKHART

By: _____

Date: _____

STATE OF TEXAS §
 §
COUNTY OF CALDWELL §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared _____, _____ of the CITY OF LOCKHART, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the CITY OF LOCKHART, a conservation district and political subdivision, and that he/she executed the same as the act of such entity for the purposes and consideration therein expressed, and in the capacity therein stated.

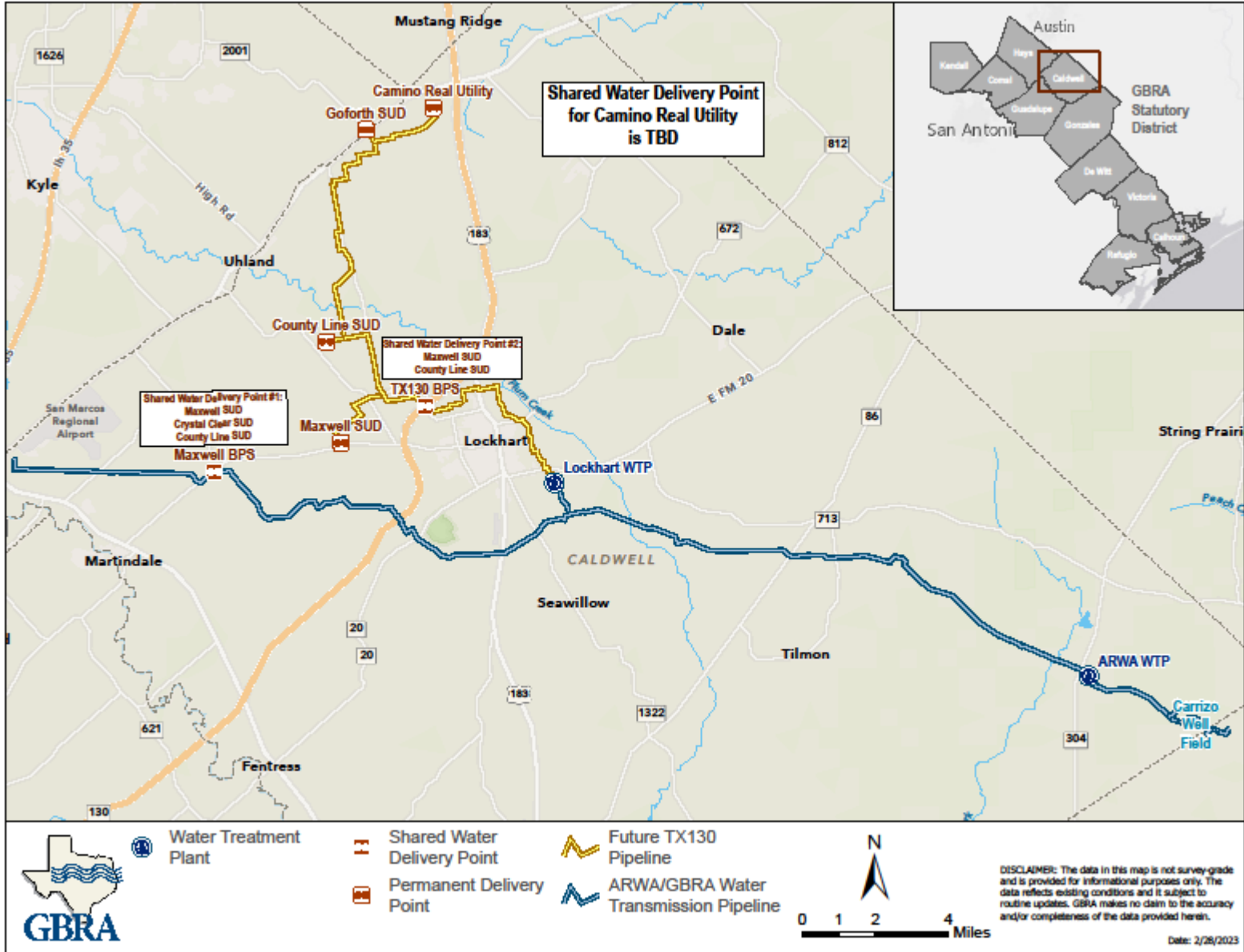
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2023.

Notary Public
The State of Texas

Notary Seal
&
I.D. No. _____

EXHIBIT A
USERS' SHARED WATER POINTS OF DELIVERY

DRAFT

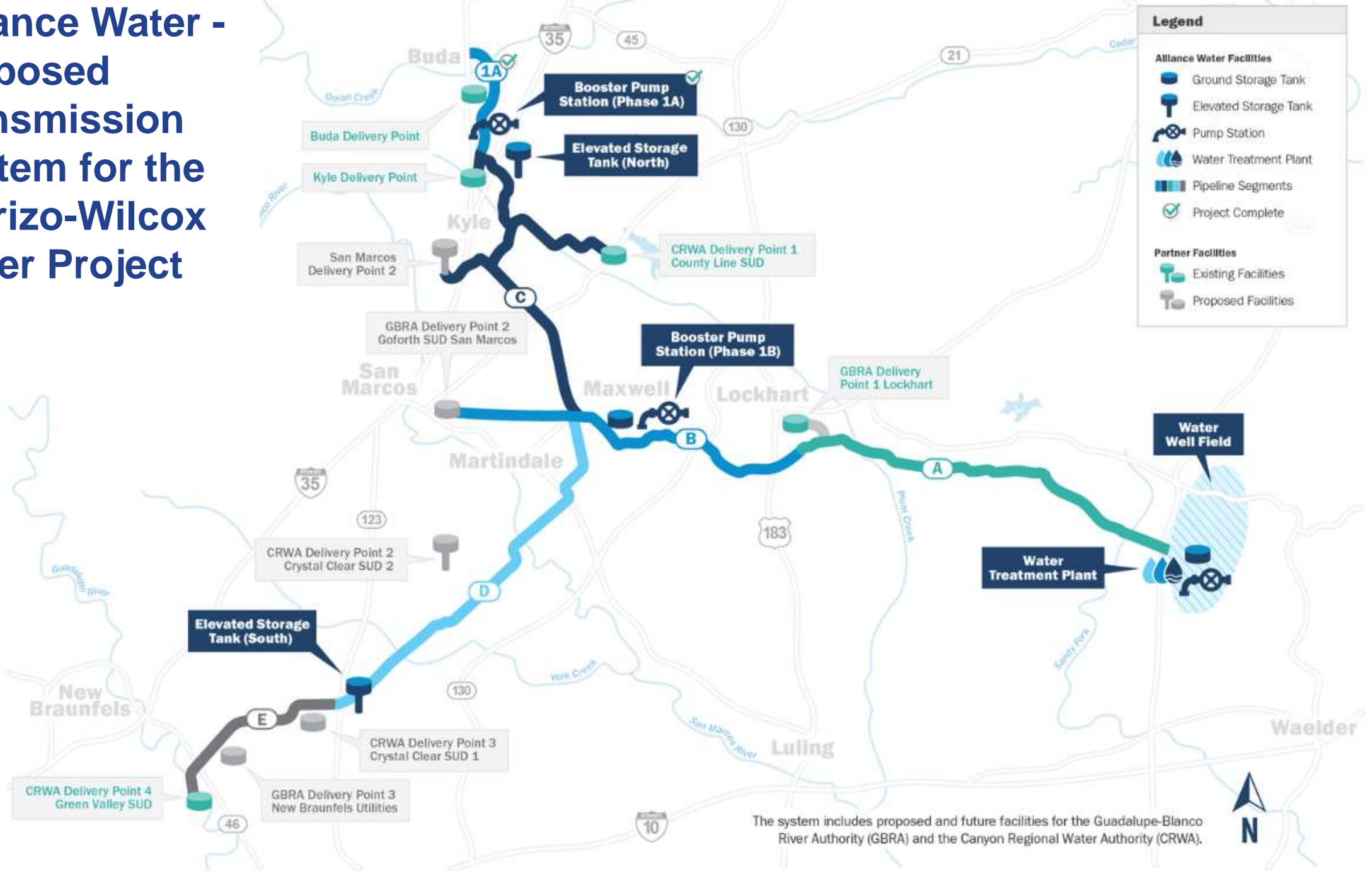


DRAFT

GBRA - GCWSP Temporary Water Sharing Opportunities



Alliance Water - Proposed Transmission System for the Carrizo-Wilcox Water Project



The system includes proposed and future facilities for the Guadalupe-Blanco River Authority (GBRA) and the Canyon Regional Water Authority (CRWA).

Item 1.

GBRA – GCWSP Project

GBRA contracted with Alliance Regional Water Authority to deliver 15,000 AFY to it's Customers;

- Goforth Special Utility District,
- the City of Lockhart,
- and NBU (8,000 AFY).

GBRA is expanding the project to be completed in 2028 to include;

- County Line Special Utility District,
- Goforth Special Utility District,
- Maxwell Special Utility District,
- and Camino Real Utility Company, LLC.



(Alliance Water, 2024)

GBRA/NBU Water Share Agreement

The agreement and resell of water would;

- allow GBRA to facilitate bridging a temporary water need in the region,
- require GBRA to resell at least 500 AFY promptly,
- make use of NBU's available unused water supply (up to 4,000 AFY),
- terminate no later than 2028,
- and slightly reduce NBU rates in the short term.



(NBU GIS, 2024)

FY24 GBRA Water Sharing Financial Scenarios



Assumptions - Low Scenario

GBRA Water Sharing – Low Scenario	FY 2024	FY2025	FY2026	FY2027	FY2028	Total
Purchased Water	5,811,451	6,891,779	7,544,083	8,224,925	8,891,027	37,363,264
Purchased Water Savings	0	350,000	350,000	350,000	350,000	1,400,000
New Purchased Water Cost	5,811,451	6,541,779	7,194,083	7,874,925	8,541,027	35,963,264

*Full rebate amount is \$25.2M, but \$7.0M is outside the 5 year plan.

** \$4.9M received for 850 LUE's in FY23



Assumptions- High Scenario

GBRA Water Sharing – High Scenario	FY 2024	FY2025	FY2026	FY2027	FY2028	Total
Purchased Water	5,811,451	6,891,779	7,544,083	8,224,925	8,891,027	37,363,264
Purchased Water Savings	0	2,800,000	2,800,000	2,800,000	2,800,000	11,200,000
New Purchased Water Cost	5,811,451	4,091,779	4,744,083	5,424,925	6,091,027	26,163,264

*Full rebate amount is \$25.2M, but \$7.0M is outside the 5 year plan.

** \$4.9M received for 850 LUE's in FY23



Results

Plan E- Sewerage Development Fee - With NBUHQ Project Adjustments - NEW BASELINE						FY2028 Results		Policy
FY24 Budget	FY24	FY25	FY26	FY27	FY28	DSC		
Electric*	4.8%	5.9%	4.6%	3.9%	1.2%	Total New Debt	3.09	≥2.4X
Water	9.1%	13.4%	14.2%	12.8%	12.7%	642.0M		
Wastewater	7.3%	7.3%	8.5%	9.3%	9.6%	Debt to Cap.	54.3%	<55%
						Total Debt	1,037.4M	
GBRA Water Sharing - Low Scenario						FY2028 Results		Policy
FY24 Budget	FY24	FY25	FY26	FY27	FY28	DSC		
Electric*	4.8%	5.9%	4.6%	3.9%	1.2%	Total New Debt	3.09	≥2.4X
Water	9.1%	13.4%	14.1%	12.7%	12.6%	642.0M		
Wastewater	7.3%	7.3%	8.5%	9.3%	9.6%	Debt to Cap.	54.3%	<55%
						Total Debt	1,037.4M	
GBRA Water Sharing - High Scenario						FY2028 Results		Policy
FY24 Budget	FY24	FY25	FY26	FY27	FY28	DSC		
Electric*	4.8%	5.9%	4.6%	3.9%	1.2%	Total New Debt	3.07	≥2.4X
Water	9.1%	13.3%	13.6%	12.0%	12.0%	642.0M		
Wastewater	7.3%	7.3%	8.5%	9.3%	9.6%	Debt to Cap.	54.3%	<55%
						Total Debt	1,037.4M	



Results – Yearly Ratios

Plan E- Sewerage Development Fee - With NBUHQ Project Adjustments - NEW BASELINE	FY24	FY25	FY26	FY27	FY28	Policy
Total Debt / Capitalization Ratio	47.65%	51.76%	54.66%	54.99%	54.26%	55%
Debt Service Coverage	4.28	3.92	3.38	3.18	3.09	2.40
Days Cash on Hand	228	261	287	305	322	140
GBRA Water Sharing - Low Scenario	FY24	FY25	FY26	FY27	FY28	Policy
Total Debt / Capitalization Ratio	47.65%	51.74%	54.64%	54.98%	54.26%	55%
Debt Service Coverage	4.28	3.93	3.39	3.18	3.09	2.40
Days Cash on Hand	228	261	287	305	322	140
GBRA Water Sharing - High Scenario	FY24	FY25	FY26	FY27	FY28	Policy
Total Debt / Capitalization Ratio	47.65%	51.60%	54.48%	54.90%	54.26%	55%
Debt Service Coverage	4.28	3.99	3.41	3.16	3.07	2.40
Days Cash on Hand	228	261	287	305	322	140



Revenue Results

Plan E- Sewerage Development Fee - With NBUHQ Project Adjustments - NEW BASELINE					
FY24 Budget	FY24	FY25	FY26	FY27	FY28**
Electric*	174,032,724	180,938,939	193,891,902	210,962,451	222,016,372
Water	44,444,079	50,427,388	59,761,172	69,583,672	77,291,367
Wastewater	39,543,805	44,403,322	53,923,847	64,566,132	72,635,208
GBRA Water Sharing - Low Scenario					
FY24 Budget	FY24	FY25	FY26	FY27	FY28**
Electric*	No change	No change	No change	No change	No change
Water	No change	50,308,454	59,485,336	69,105,806	76,581,223
Wastewater	No change	No change	No change	No change	No change
GBRA Water Sharing - High Scenario					
FY24 Budget	FY24	FY25	FY26	FY27	FY28**
Electric*	No change	No change	No change	No change	No change
Water	No change	49,832,721	57,453,099	65,382,746	72,625,119
Wastewater	No change	No change	No change	No change	No change



Questions?





Meeting Date: March 28, 2024 **Agenda Type:** Action Items

From: Sarah Richards **Reviewed by:** David Hubbard
 Director of Customer Chief Administrative Officer
 Solutions

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

RECOMMENDED ACTION: Discuss and Consider Approving the Updated NBU Five-Year Water Conservation Plan as Required by the Texas Commission on Environmental Quality (TCEQ)

BACKGROUND

The most recent NBU water conservation plan (WCP) was approved by NBU’s Board and by the New Braunfels City Council and submitted to The Texas Commission on Environmental Quality (TCEQ) in May 2019. Texas Administrative Code, Title 30, Part 1 Texas Commission on Environment Quality, Chapter 288 Water Conservation Plans, Guidelines and Requirements, Subchapter A, requires municipal utilities with more than 3,300 connections to update WCPs every five years by May 1st.

As presented at the February 29 Board meeting, the proposed WCP was developed by NBU staff with the help of Arcadis, Inc. The teams identified regulatory and industry best practices; compiling a list of approximately 50 water conservation practices. The list of best practices was screened for multiple factors, including best fit with the New Braunfels community and those with demonstrated success. The practices that made it through the screening process were then evaluated for the cost of implementation, potential water savings, and ease of implementation, among other things.

NBU staff requests that the Board of Trustees approve the proposed WCP, as is required by state code.

At this time, no changes are being proposed to city ordinance Chapter 130 – Utilities, Article IV. – Water Service, Division 5.- Water Conservation and Critical Period Management Plan. As such, staff will provide an informational presentation to Council following formal adoption of this plan.

FINANCIAL IMPACT

The WCP was developed with the assistance of Arcadis, Inc. as a component of the 2023 Water Resources Plan at an estimated final cost of \$145,000. There is no anticipated financial impact associated with the adoption of the WCP.

LINK TO STRATEGIC PLAN

Customers and Community

Stewardship

EXHIBITS

1. Draft 2024 Five-Year Water Conservation Plan



Five-Year Water Conservation Plan



March 2024



WCP Overview Presentation

- What and Why of Water Conservation
- Why a Water Conservation Plan
- Water Use Trends
- Overview of Existing Water Conservation Program
- Overview of Proposed Water Conservation Plan
- Measuring Success

Conservation Plan Strategies

New Conservation Strategies	Expanded Conservation Strategies
<ul style="list-style-type: none">• Conservation Data Analytics and Visualization• Irrigation System Inspection Program• New Development Ordinance Revisions• Water Conservation Education and Outreach Plan• Engage Local Officials and Community Stakeholders• Establish Water Conservation Partnerships with Local Trade Organizations	<ul style="list-style-type: none">• Advanced Metering Infrastructure• Increased Investment in Asset Management• Drought Management Plan and Enforcement• Home and Commercial Irrigation Assessments with Rebates• Water-Wise Landscape Rebates

Next Steps

- Plan will be presented to City Council for informational purposes
- Staff will implement new and expanded strategies across the five-year period



Item for Action

- Consider Approving the NBU Five-Year Water Conservation Plan

Questions?

New Braunfels Utilities

Water Conservation Plan

DRAFT FOR INTERNAL REVIEW ONLY

2024

REVIEW ONLY



Contents

Acronyms and Abbreviations..... v

A Note from NBU’s Conservation Team..... 1

1 Water Conservation Planning at NBU 1

1.1 Our Water Conservation Goals 1

1.2 Conservation Plan Purpose..... 2

2 Water Use Trends 3

2.1 Historical Per Capita Demand 3

2.2 Historical Water Use per Customer Type..... 5

2.3 Outdoor Water Use 6

2.4 Non-Revenue Water..... 8

3 NBU’s Water Conservation Program 9

3.1 Conservation Data Management..... 11

3.1.1 Conservation Data Analytics and Visualization Solution 11

3.1.2 Advanced Metering Infrastructure..... 12

3.2 Water Conservation Rate Structure..... 12

3.3 Non-Revenue Water Program..... 13

3.3.1 Satellite Leak Detection 13

3.3.2 Meter Testing Program..... 14

3.3.3 Increase Investment in Asset Management 14

3.4 Landscape Water Transformation Program..... 14

3.4.1 Drought Management Plan and Enforcement 14

3.4.2 Irrigation System Inspection Program..... 15

3.4.3 Home & Commercial Irrigation Assessments with Rebates 16

3.4.4 Water-Wise Landscape Rebates 16

3.4.5 New Development Ordinance Revisions 16

3.5 Indoor Water Use Reduction Program 17

3.5.1 Home and Commercial Assessment for Indoor Use..... 17

3.5.2 Indoor Water Use Rebates 17

3.6 Outreach and Education Program 17

3.6.1 Continuous Consumption Alerts 18

- 3.6.2 Utility Consumption Reports 19
- 3.6.3 Top 30 Water User Report..... 19
- 3.6.4 Top 10 Water Violator Strategy 19
- 3.6.5 📍 Water Conservation Education and Outreach Plan 19
- 3.6.6 📍 Engage Local Officials and Community Stakeholders..... 20
- 3.6.7 📍 Establish Water Conservation Partnerships with Local Trade Organizations 20
- 4 Five-Year Water Conservation Implementation Plan 21
 - 4.1 Implementation Plan..... 21
 - 4.2 Water Conservation Program Metrics 27
 - 4.3 Approval and Distribution of the Water Conservation Plan..... 27
 - 4.4 Adaptive Implementation 27

Tables

- Table 2-1 2022 Total Annual Usage by Customer Type..... 6
- Table 3-1 NBU Water Restrictions in Drought Stages 15
- Table 4-1 List of New and Expanded Water Conservation Strategies 21
- Table 4-2 Water Conservation Program Responsible Teams and Metrics 25

Figures

- Figure 2-1 Customer Groups..... 3
- Figure 2-2 NBU Per Capita Water Demand Between 2013-2022 4
- Figure 2-3 Historical Water Use Per Customer Group..... 5
- Figure 2-4 Number of Customers Per Group..... 6
- Figure 2-5 Percentage of Water that is Used for Irrigation 7
- Figure 2-6 Average Monthly Irrigation Usage Based on Data from Customers with Separate Irrigation Meters (2018-2022) 8
- Figure 3-1 Water Savings by Conservation Strategy from 2014 to 2022 9
- Figure 3-2 NBU’s Roadmap in Reducing Water Consumption 10
- Figure 3-3 New Billing System Dashboard 11

Figure 3-4 Rate Advisory Committee..... 12

Figure 3-5 Example Rate Tier Structure for Residential Users 13

Figure 3-6 Leak Detection Equipment 13

Figure 3-7 NBU Partners with Fisher Park Nature Education Center, Headwaters at the Comal, West Side Community Center, and New Braunfels Food Bank to Provide Education on Water Conservation to the Community..... 18

Figure 3-8 Example NBU Social Media Posts on Conservation 18

Figure 3-9 Utility Consumption Reports..... 19

Figure 4-1 Implementation Timeline and Budget for New and Expanded Water Conservation Strategies (in addition to continuing to implement and fund the existing water conservation strategies). 22

Appendices

- Appendix A: Per Capita Demand Goals**
- Appendix B: TWDB and TCEQ Water Conservation Plan Requirements**
- Appendix C: TWDB and TCEQ Conservation Strategies**
- Appendix D: NBU Utility Profile**
- Appendix E: Distribution to Water Planning Groups**
- Appendix F: City Council Adoption of the Water Conservation Plan**
- Appendix G: NBU Board Approval of the Water Conservation Plan**

Acronyms and Abbreviations

AMI	Advanced Metering Infrastructure
AMR	Automated Meter Reading
ASR	Aquifer Storage and Recovery
BMPs	Best Management Practices
CCS	Conservation and Customer Solutions
CIP	Capital Improvement Plan
FTE	Full-time employees
gpcd	Gallons per capita per day
NBU	New Braunfels Utilities
NRW	Non-revenue water
SAWS	San Antonio Water System
TCEQ	Texas Commission on Environmental Quality
TWDB	Texas Water Development Board

A Note from NBU's Conservation Team

The City of New Braunfels has long been known for its rich heritage, vibrant community, and the pristine waters of the Edwards Aquifer and the Comal and Guadalupe Rivers. As we cherish the beauty and vitality that water brings to our lives, we also bear the responsibility to protect and preserve this invaluable resource.

In this New Braunfels Utilities Water Conservation Plan, we outline the methods and practices necessary to secure the future of our city and its unique natural surroundings. It is a testament to NBU's commitment to sustainable living and responsible stewardship of our water resources.

Amidst the challenges of increasingly severe weather patterns, a rapidly growing population, and the changing demands of our dynamic community, this plan serves as our guidance document. The plan also meets requirements put forth by the Texas Commission on Environmental Quality (TCEQ) and the Texas Water Development Board (TWDB).

In the pages that follow, you will find strategies, recommendations, and actions that underscore NBU's dedication to water conservation. Together, we embark on this journey, united by our admiration for New Braunfels and a shared responsibility to protect the life-giving force of water that sustains us all. With your help, we can make a difference for our community and our environment.

Let us embrace this plan with open hearts and determined minds, for it is through our actions that we will secure a brighter, more sustainable future for New Braunfels. For more information on current NBU water conservation efforts, please visit us at nbutexas.com/conservation or call us at 830.608.8925.



Andrew Cummings
Conservation and Customer Solutions Manager
New Braunfels Utilities

1 Water Conservation Planning at NBU

The New Braunfels community has established a 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” (New Braunfels One Water Roadmap). Responsible water resource planning includes a shared community responsibility to proactively pursue water conservation.

In every Central Texas community and across the state, growth is increasing demand for water. In NBU’s service area, population has been increasing at an average of more than 5% per year and rapid growth is forecasted to continue. NBU’s recent Water Resources Plan Update (2023) projects the number of residents in NBU’s service area to double by 2050. Drought conditions further exacerbate the stress on local water supplies.

To ensure sufficient water supplies are available to support residential and business water needs for current and future generations, utilities in the region are pursuing various strategies to increase water supply and decrease demand. As local water resources are generally fully allocated, communities including New Braunfels are turning to expensive measures such as importing new water supplies long distances (e.g., over 50 miles) to increase the water supply available to residents. Water conservation is the most economical and sustainable source for water because it aims to proactively reduce the amount of water required to meet customer needs. This less disruptive approach of meeting water needs through reduced demand provides additional benefits that strengthen the community and safeguard our water resources. Water conservation:

- Reduces costs required to accommodate greater demand, thereby reducing future rate increases. Cost savings come from eliminating or delaying the need for additional supplies (which are increasingly expensive as availability decreases), reducing system operating costs, and avoiding additional infrastructure required to accommodate greater demand.
- Increases watershed sustainability; reducing unnecessary usage helps ensure regional water sources remain healthy and reliable supplies now and into the future.
- Reduces environmental impacts, including by reducing the energy requirements associated with pumping and treating water.
- Preserves recreational flows, protects endangered species and local wildlife, and promotes biodiversity for future generations to enjoy by reducing reliance on the Edwards Aquifer and Guadalupe River.

1.1 Our Water Conservation Goals

NBU’s goal for water conservation is to reduce non-revenue, residential, commercial, and institutional water use to postpone or eliminate the need for additional water supplies and to protect our existing water supplies. Specific objectives for NBU’s conservation program include:

- Maintain compliance with the Texas Water Development Board (TWDB) and Texas Commission on Environmental Quality (TCEQ) water conservation and water loss requirements.
- Increase the annual volume of water saved through conservation strategies.
- Develop a robust database management system (information collection and analysis procedures) to better understand water consumption and track conservation activities impact on water resources.
- Promote innovation in water conservation while pursuing cost-effective strategies.

1.2 Conservation Plan Purpose

This Conservation Plan reviews historical water use trends and documents the conservation strategies selected by NBU for implementation from 2024 through 2029. This document also serves to fulfill the Conservation Plan requirements established by TWDB and the Texas Commission on Environmental Quality (TCEQ). Refer to **Appendices A and B** for more information on regulatory requirements.

CONTACT US AT:

NBU Conservation and Customer Solutions Team

Conservation Coordinator: Andrew Cummings

conservation@nbutexas.com

830.608.8925

DRAFT FOR INTERNAL REVIEW

2 Water Use Trends

The water produced by NBU serves a variety of purposes as illustrated in **Figure 2-1**. There are conservation strategies that could reduce demand for each of these use types, and thus to prioritize conservation efforts and funds, more information is needed. This section describes analysis of NBU’s historical water demands to better understand the opportunities for greatest impact.





RESIDENTIAL		NON-RESIDENTIAL	
Customer Types:		Customer Types:	
 Single-Family freestanding house	 Multi-Family apartments, duplexes, etc.	 Institutional public buildings, hospitals, schools, parks, etc.	 Commercial Businesses hotels, restaurants, stores, banks, etc.
Types of Use:		Types of Use:	
OUTDOOR USE	INDOOR USE	OUTDOOR USE	INDOOR USE
Examples: <ul style="list-style-type: none"> • Landscape Irrigation • Swimming Pools • Car Washing 	Examples: <ul style="list-style-type: none"> • Bathroom • Kitchen • Laundry 	Examples: <ul style="list-style-type: none"> • Construction • Car Washes • Athletic Fields • Landscape Irrigation 	Examples: <ul style="list-style-type: none"> • Bathroom • Kitchen • Laundry • Medical Equipment • Water Cooling/Heating
NON-REVENUE WATER: Firefighting, Water System Maintenance, Water Line Breaks, Aquifer Storage & Recovery			

Figure 2-1 Customer Groups

2.1 Historical Per Capita Demand

Per capita demand is the average water consumption per resident per day, presented as gallons per capita per day (gpcd). It is calculated by taking total system usage and dividing by the number of residents within the service area. While it provides a standardized metric, this measurement is imprecise as a large percentage of system usage is not tied to the number of residents served by a utility but instead businesses (which can serve and employ individuals outside of the service area), institutions, visitors, and non-revenue water.

As shown in blue in **Figure 2-2**, the average total system water use per resident over the last ten years has varied between 120 and 140 gpcd. Variability in per capita demand from year to year is expected as usage is impacted by a variety of factors including weather and climate changes, economic conditions, regulations, conservation programs, and even pandemics like COVID-19. Due to the various factors that impact gpcd, total per capita demand can be difficult to interpret when evaluating potential conservation programs.

New Braunfels Utilities
Water Conservation Plan

NBU’s gpccd has also been impacted recently by implementation of an Aquifer Storage and Recovery (ASR) demonstration in 2021. This strategic underground water reservoir is a key component of NBU’s water supply resiliency plan. However, producing water to store in this reservoir contributed an additional total per capita demand of 5 gpccd in 2022. The total per capita demand, had ASR not been underway, is shown in orange in **Figure 2-2**.

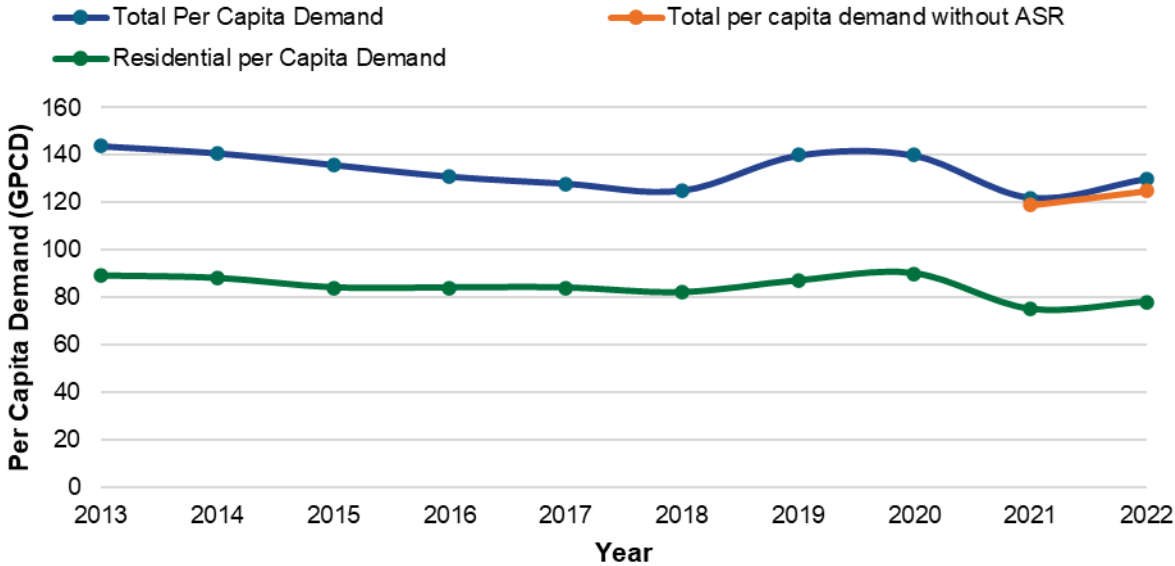


Figure 2-2 NBU Per Capita Water Demand Between 2013-2022

As an alternative metric, the residential per capita demand is also shown in green in **Figure 2-2**, which is the volume of water used by single- and multi-family customers divided by the number of residents in NBU’s service area. Over the last five years, the residential per capita demand has ranged from 75 to 90 gpccd, with water use for the most recent two years below 80 gpccd. As with overall gpccd, residential per capita demand has been slowly decreasing over the last 10 years except during 2019, 2020 and 2022 when slight increases were observed compared to the prior year. This decline could be attributable to a variety of factors including COVID-19, NBU conservation measures, water-saving appliances, and changing demographics (e.g., a larger percentage of multi-family homes). Thus, additional data are required to determine whether the recent trends are indicative of long-term reductions in use for residential customers.

What is a good per capita demand?

Recognizing the need to address the global water shortage crisis, global industry leaders have partnered with public and civil society institutions to form the 50L Home coalition¹. This coalition has adapted a goal of achieving a future at home water use of only 50L per day per person, which is equivalent to 13 gpccd! These industry leaders are striving to accelerate innovation of sustainable and financially viable solutions to achieve this goal.

Peer water systems implementing proactive conservation programs can also provide reference points for consideration. Southern Nevada Water Authority (providing water to Las Vegas) has a goal to achieve 105 gpccd as the total per capita demand by 2035. Locally in central Texas, San Antonio Water System (SAWS) aims to reduce total per capita demand to 88 gpccd and residential per capita demand to 55 gpccd by 2070. Austin Water has also projected achieving a per capita demand for potable water of 79 gpccd by 2070. However, consideration of differences in community characteristics, such as percent multi-family, are important to consider when comparing against these goals.

While progress has been made, a more significant reduction in per account water usage is needed to ensure NBU existing water supplies are not only sufficient to meet demand but are also protected and preserved. As there are no expected national or state regulations in the near-future that would restrict usage further by individual water users (the most recent was the United States Energy Policy Act of 1992 which required new structures to have water-saving appliances), intentional conservation strategies are needed to achieve the necessary decreases in per-customer water usage.

2.2 Historical Water Use per Customer Type

Total water use across each customer group for the last 10 years is shown in **Figure 2-3**. Single-family customers used the greatest total volume of water, ranging from 65% to 70% of total demand over this time period. However, water use has increased for each customer group. Increased demand of 39% for single-family customers, 38% for multi-family customers, 37% for institutional customers, and 32% for commercial customers has been observed since 2013.

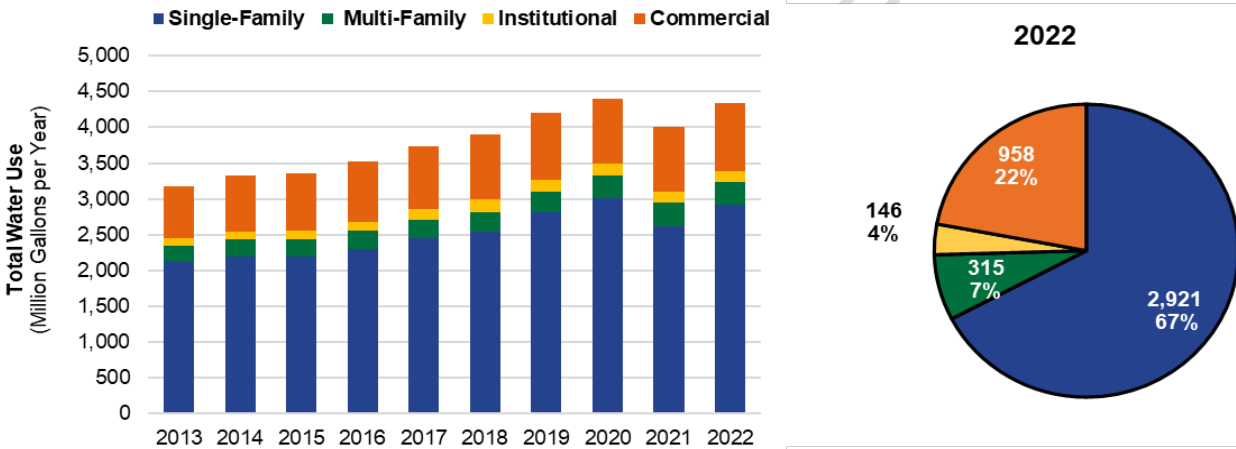


Figure 2-3 Historical Water Use Per Customer Group

This increase in system water demand correlates with the increase in the number of customers served by NBU. Between 2013 and 2022 (**Figure 2-4**), the total number of customers has increased from 29,315 to 45,588 – a 55% increase. There has been a 57% increase in single-family customers, 62% increase in multi-family customers, 9% increase in institutional customers, and 23% increase in commercial customers.

The amount of water used by individual customers varies widely by customer type. **Table 2-1** presents the total amount of water used and number of accounts in each customer group for 2022, and the resulting average usage per customer. The high system-wide water use by single-family households is due to the high percentage of NBU’s customers that are living in single-family homes, as the amount used per single-family account is significantly lower than the other account types. On the other hand, although the number of multi-family, commercial, and institutional accounts are much lower than single-family, the average water use per account is greater. Therefore, conservation initiatives focused on commercial and institutional customers could yield significant impact per customer. For example, if one commercial customer reduced their water consumption by

¹ [50L Home White Paper.pdf \(50lhome.org\)](#)

New Braunfels Utilities
Water Conservation Plan

10%, it could save approximately 43,000 gallons of water annually on average. In contrast, one single-family customer reducing their use by 10% only saves approximately 8,400 gallons and thus comparable water savings would require 5 residential customers to participate. These data illustrate why conservation strategies targeting commercial customers can have a significant impact on system-wide demand while only requiring changes by a small number of customers.

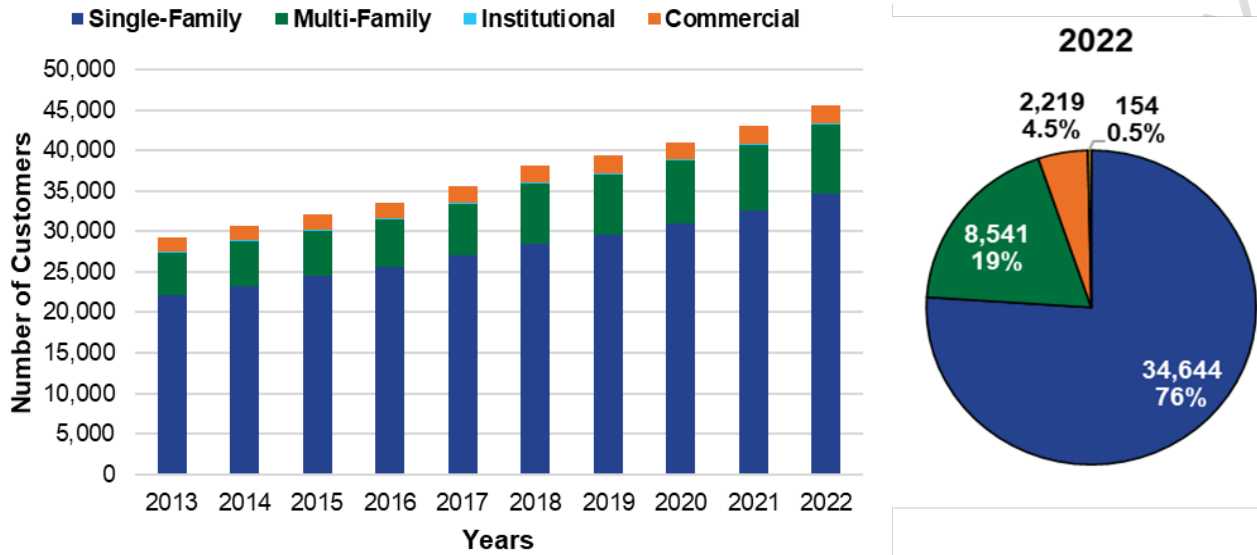


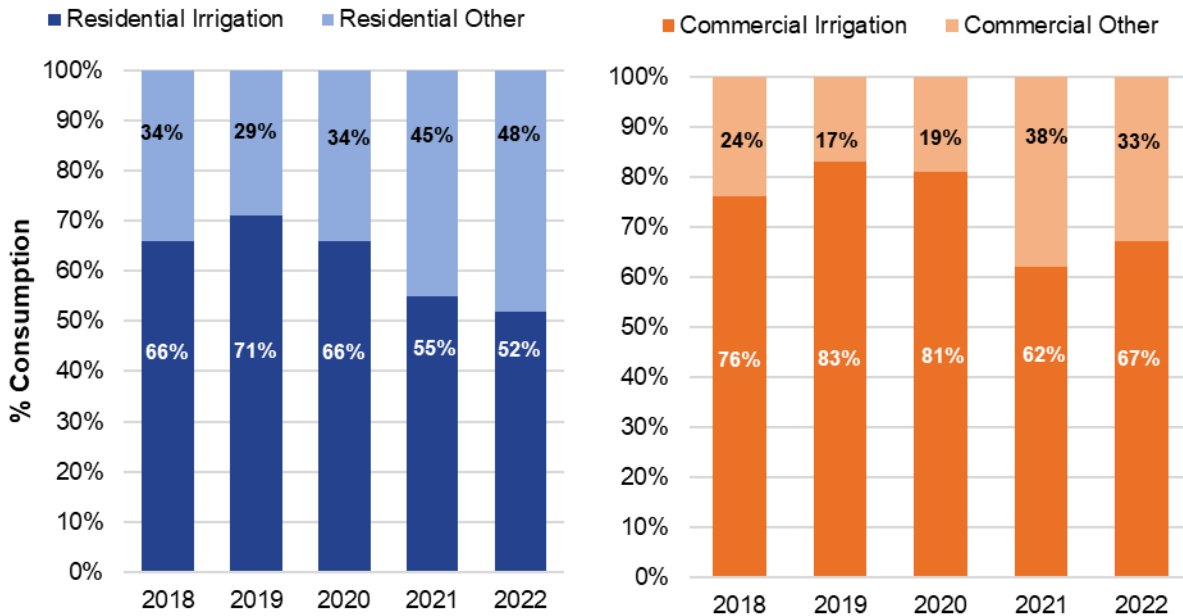
Figure 2-4 Number of Customers Per Group

Table 2-1 2022 Total Annual Usage by Customer Type

Customer Group	Total Annual Water Use per Customer Group (gallons)	Number of Customers	Average Annual Usage by Customer (gallons per customer)
Single-Family	2,921,000,000	34,600	26,600
Multi-Family	315,000,000	474	665,000
Commercial	958,000,000	2,220	432,000
Institutional	146,000,000	154	948,000

2.3 Outdoor Water Use

Especially in hot climates, a large percentage of water is used outdoors, including for landscape irrigation, watering home foundations, or filling up swimming pools and fountains. Approximately one third of NBU's customers have a separate irrigation meter, which allows for some measurement of outdoor usage. **Figure 2-5** summarizes the water usage for this group of customers, highlighting that over half of water usage is for irrigation, on average. Note that the amount of outdoor water usage may be even higher than presented here, as water withdrawn from external spouts and for pools and fountains is generally not measured by irrigation meters.



*Figure 2-5 Percentage of Water that is Used for Irrigation
Data presented are approximate and based on average usage data for all accounts compared to average irrigation usage data for customers with irrigation meters.*

Figure 2-6 further illustrates the impact of weather on water usage. The most water is used for irrigation between August and October during warm, dry weather, and the lowest water use is in February and March. For commercial customers, the peak month’s irrigation usage is over three times that of winter month usage.

For 2022, the total estimated amount of water used for irrigation within the NBU service area was over two billion gallons, or an average of almost seven million gallons per day. These data suggest that reduction of water used for irrigation has the potential to significantly decrease NBU’s system demand.

Irrigation meters provide customers with greater awareness to encourage conservation.

Irrigation meters are a critical tool for conserving water at home and at work. Irrigation meters allow customers to better track water use by type and understand opportunities for reducing water use and water bills. For example, irrigation meters can identify irrigation system water leaks quickly. Further, irrigation water meter data also helps customers ensure lawns and plants are receiving the optimal amount of water, thereby, prevent overwatering and ensuring landscaping remains healthy and beautiful.

Since 2007, NBU’s water connection policy has required all new irrigation systems for single-family residences and small commercial buildings with a site plan of 10,000 square feet or less to have separate irrigation meters. However, it wasn’t until 2019 that the water connection policy was made enforceable by connecting it to the City’s Drought Management Ordinance. This enforcement tool has correlated with an increase in NBU’s number of customers with irrigation meters. However, today, only one third of NBU customers have irrigation meters. Greater investment in inspections and enforcement would result in an even greater number of customers with irrigation meters.

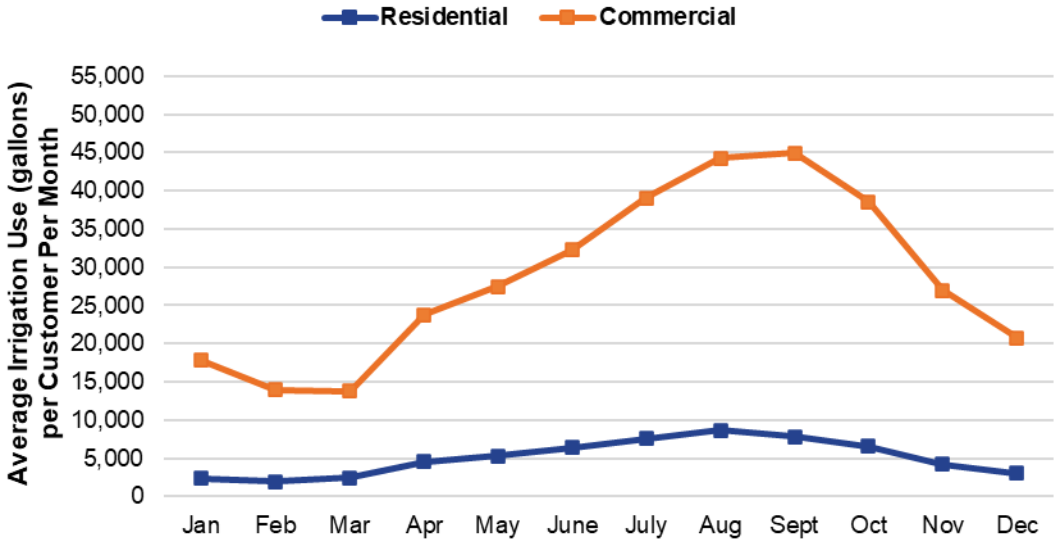


Figure 2-6 Average Monthly Irrigation Usage Based on Data from Customers with Separate Irrigation Meters (2018-2022)

2.4 Non-Revenue Water

Non-revenue water (NRW) is the total volume of distributed water which is not billed to customers. This volume can be due to actual water lost in the distribution system, such as due to a main break or theft; unmetered water such as that used for firefighting or flushing; or data errors such as those caused by inaccurate water meters. NBU has an interdepartmental team that focuses on reducing non-revenue water. Based on data from 2019 to 2021, the volume of non-revenue water for NBU's system ranged from 820 to 860 million gallons annually. Of this volume, 480 to 640 million gallons were due to actual water losses, which translates to about 12 to 17 gallons per capita per day.

The Texas Water Development Board recently established new non-revenue water thresholds for Texas water systems. Above the actual water loss (real loss) threshold of 30 gallons per connection per day, utilities must use a portion of any financial assistance received to further reduce non-revenue water. In 2022, NBU's system had 50 gallons lost per connection per day. There is potential to further reduce non-revenue water volumes.

Further, conservation initiatives focused on reducing non-revenue water are attractive as they require no changed behavior by customers, provide long-term savings, and support overall utility priorities. However, even the most optimized water systems have some unavoidable water losses, and some reduction strategies can be expensive or require a high level of effort to implement.

3 NBU’s Water Conservation Program

Since 2007, NBU has been proactively implementing water conservation programs. NBU has a dedicated Water Conservation Team (Conservation and Customer Solutions) that directs these programs, which cover a range of conservation approaches including incentives, ordinances, and outreach and education. Over the last five years, NBU has implemented sixteen conservation strategies, which are described in detail in the subsequent sections. NBU continuously evaluates the effectiveness of these conservation strategies to track impact and ensure maximum return on investment. Review of potential savings, costs, and customer participation helps determine whether each program should be continued or even expanded in the next year.

Figure 3-1 summarizes estimated water savings for five of the ongoing conservation initiatives since NBU began this tracking method in 2014. Calculations incorporate the number of customers participating, the average savings observed per customer, and industry guidance. The savings for satellite leak detection are currently being calculated for the years 2021 and 2022; total savings for those years will be significantly higher once those estimates are added.

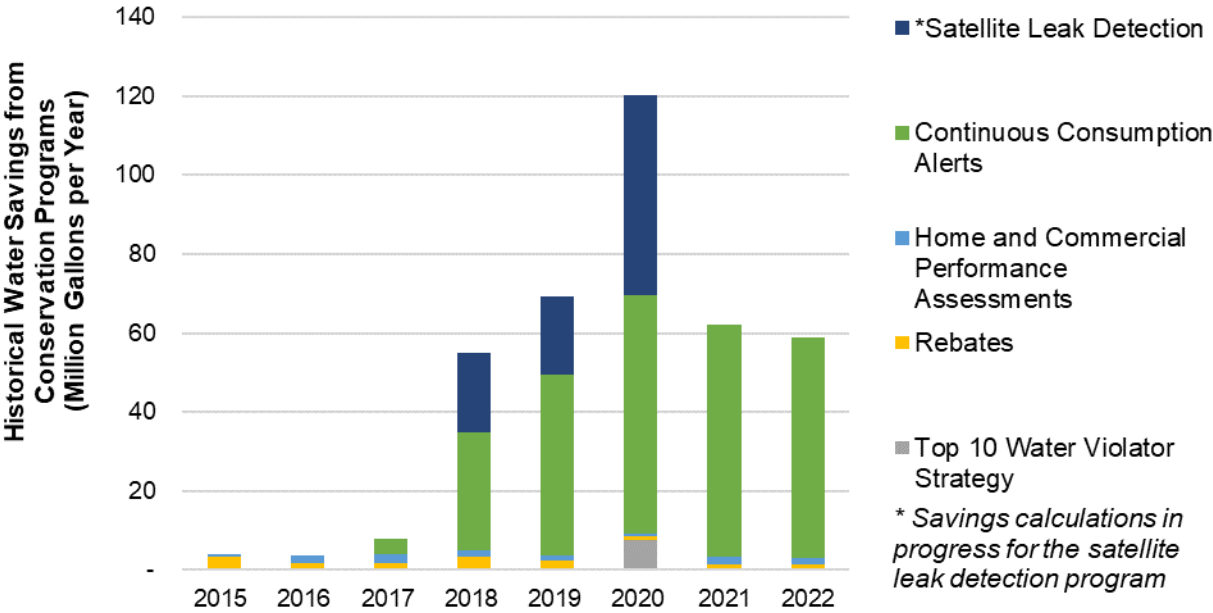


Figure 3-1 Water Savings by Conservation Strategy from 2014 to 2022

It is difficult to estimate water savings for the remaining conservation strategies, such as outreach and education, as changes in customer behavior are difficult to track to a single educational event and may require multiple points of contact before changes are realized. Thus, for other programs NBU tracks alternative measures, such as the number of NBU customers reached each year. In 2022, NBU conducted 41 outreach events, reaching 3,000 customers.

While per person water usage has decreased since inception of these conservation strategies (**Figure 2-4**), NBU has a goal to further reduce water use per person to stretch existing water supplies. Achieving further reduction will require re-evaluation of priorities and increased investment in conservation strategies. Thus, as part of this

new five-year Conservation Plan, NBU conducted an industry scan of over 50 potential conservation strategies to identify additional initiatives to implement over the next five years.

Figure 3-2 summarizes the process applied to select conservation strategies to initiate between 2024 and 2029. First, potential strategies not currently implemented by NBU were identified based on industry guidance and experience by other utilities. This long list was narrowed down by applying the five screening criteria shown in **Figure 3-2**. These criteria were selected by NBU to prioritize applicability, diversification, and effectiveness. Fourteen strategies were identified through this screening; these were further evaluated relative to resource requirements, potential benefits, and utility priorities to develop a balanced portfolio of conservation strategies to include in the Conservation Plan.

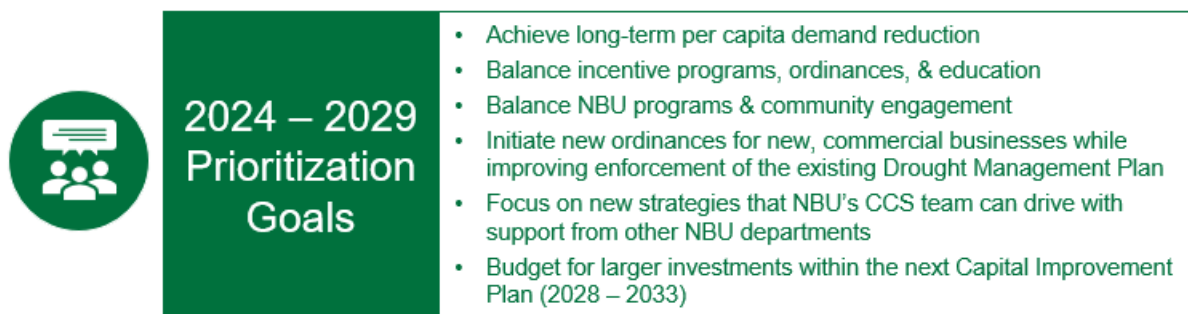
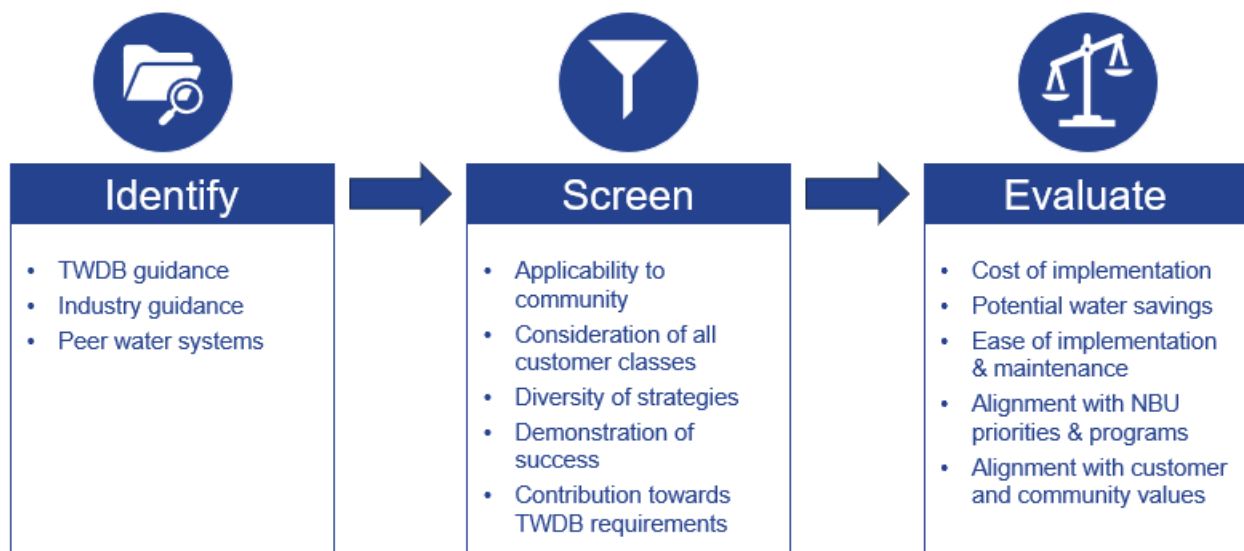


Figure 3-2 NBU's Roadmap in Reducing Water Consumption

This approach outlined in **Figure 3-2** ensured that NBU's portfolio of existing, expanded, and new conservation strategies aligned with NBU's goals and priorities for the next 5 years. Evaluation criteria and prioritization goals were established with a broad range of stakeholders including directors and managers from multiple departments, the conservation team, and NBU Executive Leadership. The resulting conservation strategies fit into six conservation priority programs for NBU:

New Braunfels Utilities
Water Conservation Plan

- **Conservation Data Management (Section 3.1):** Implementation of digital tools to provide automated and actionable data to drive effective decision-making.
- **Water Conservation Rate Structure (Section 3.2):** Continue recommending water services pricing that encourages and rewards water conservation, while also ensuring that utility costs are adequately covered.
- **Non-Revenue Water Program (Section 3.3):** Reduction of water lost including through the distribution system.
- **Landscape Water Transformation Program (Section 3.4):** Expansion and optimization of rebates, ordinances, and inspections that focus on reduction of outdoor water use.
- **Indoor Water Use Rebate (Section 3.5):** Continuation of rebates intended to increase use of water-efficient appliances and fixtures.
- **Outreach and Education (Section 3.6.2):** Development and implementation of an enhanced outreach and education program, including tailored outreach to high volume users and new community partnerships.

The remainder of this section describes existing and planned NBU initiatives in these categories. All ongoing activities will be continued, and those that will be added or expanded are indicated with a water droplet (💧).

3.1 Conservation Data Management

The availability of automated and actionable data is critical to efficiently evaluate the effectiveness of conservation programs and make informed decisions about resource allocation. NBU annually calculates various conservation-related metrics including average customer usage, estimated water savings from conservation programs, and water loss. However, currently these processes are largely manual and information collection and analysis is very labor intensive. Thus, over the next year, NBU will implement a new data analytics and visualization solution that will provide continuous consumption data and automated reports and dashboards for analysis. In addition, over the next five years, opportunities to better leverage data from NBU's advanced metering infrastructure (AMI) will be incorporated.

3.1.1 💧 Conservation Data Analytics and Visualization Solution

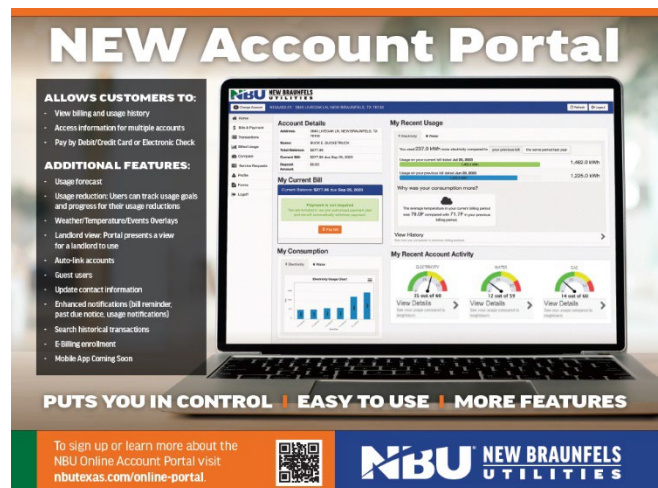


Figure 3-3 New Billing System Dashboard

NBU is implementing a new billing system (**Figure 3-3**) that will provide tools to manage water demand and conservation. For customers, the software provides easy-to-use interfaces and alerts for tracking water usage and opportunities for savings.

New Braunfels Utilities
Water Conservation Plan

In addition, this software will provide NBU staff information they need to analyze customer usage in real time to support conservation planning and efforts. For example, targeted outreach could be sent to users with high or increased water usage. As a result, the database will allow NBU to keep track of programs that have been widely accepted by their customers and restart programs that were previously too laborious to conduct without automated data analytics.

3.1.2 Advanced Metering Infrastructure

Traditionally, water usage has been captured by meter readers who physically view and document usage information – typically once a quarter. Over the last 10 years, NBU has undergone an extensive effort to get more timely usage information. They have installed Advanced Metering Infrastructure (AMI) registers at 85% of customer meters to date, which provide near-real-time meter readings. An additional 14% of customers have Automated Meter Reading (AMR) which allows for automated collection of data, but not as frequently as AMI (AMR meters are generally read monthly).

An important application of these data for the conservation program are Continuous Consumption Alerts (**Section 3.6.2**). Continuous water usage often indicates an issue, such as a running toilet or break in the customer water line, and real-time customer notification allows them to investigate and address the issue and minimize water wasted. USEPA estimates that a single leaky fixture can waste 180 gallons of water per month². Over the next 5 years, NBU will be investigating additional opportunities to leverage AMI for water conservation and evaluating the feasibility of reaching 100% AMI throughout the system. Grant funding that could support full AMI implementation will also be considered.

3.2 Water Conservation Rate Structure

NBU initiated a new water rate structure beginning August 1, 2023 that varies rates for fiscal years 2024 and 2025 based upon customer water use. This rate structure was developed based on feedback from NBU's first Rate Advisory Committee (**Figure 3-4**). The Committee of 18 community members was appointed by the NBU Board of Trustees and each member represents a constituency across NBU's service territory. The Rate Advisory Committee was replaced with the Community Advisory Panel (CAP) in 2023. The CAP will be engaged in future rate structure updates.

The approved rate structure maintains the best practice of encouraging and rewarding water conservation, while also ensuring that utility costs are adequately covered. This was accomplished with an increasing block



Figure 3-4 Rate Advisory Committee

² <https://www.epa.gov/watersense/residential-toilets>

rate system which—in addition to the flat fee for fixed costs—includes a variable rate for volume of water consumed, with higher rates as water consumption increases. There are four cost rate blocks or tiers for residential customers summarized in **Figure 3-5** based on the volume of water used.

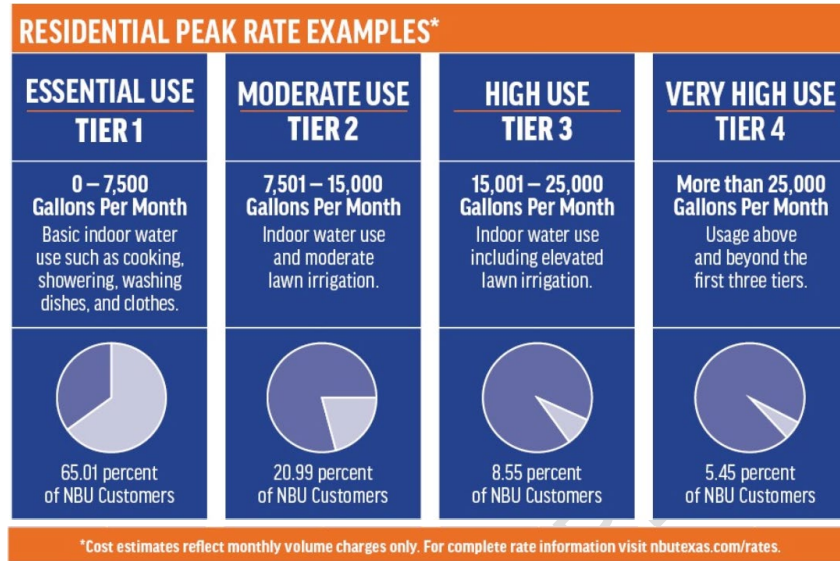


Figure 3-5 Example Rate Tier Structure for Residential Users

3.3 Non-Revenue Water Program

NBU has developed an interdepartmental approach to managing non-revenue water. Non-revenue water (NRW) is the total volume of distributed water which is not billed to customers, such as due to a main break, firefighting, or meter inaccuracies. This team is successfully implementing innovative technologies to reduce water loss, including advanced metering infrastructure (**Section 3.1.2**), satellite leak detection, and meter testing, and is focusing on increasing investment in asset management. They perform annual audits to evaluate quantities and trends in overall water loss and its components, as described **Section 2.4**. Additionally, NBU manages the distribution system pressure based on the procedures in NBU’s Distribution System Operations Manual.

NBU serves as both an electric and water provider. Thus, continuing to evaluate both NBU electric and water infrastructure for opportunities to reduce water (and electric) usage will also be an important component of NBU’s long-term management of non-revenue water.

3.3.1 Satellite Leak Detection

NBU began using satellite leak detection technology in 2018 to reduce water losses. This technology uses satellite images to identify areas that have high soil moisture which could indicate a drinking water leak. The NBU service area is scanned on a quarterly basis and NBU field crews are dispatched to areas



Figure 3-6 Leak Detection Equipment

identified as potential leaks to verify the leaks and conduct any needed repairs. **Figure 3-6** shows an interface that field staff use to identify leaks. Annual water savings due to this program have been estimated to range from 20 to 50 million gallons (**Figure 3-1**). NBU will continue this program to identify and correct new or growing leaks.

3.3.2 Meter Testing Program

Meter testing is an important component of water conservation as malfunctioning meters often underread usage and result in misidentification of actual water usage as water loss. NBU has active meter testing programs for both production meters and customer meters. Production meters measure and account for water pumped into the NBU distribution system from NBU's water supplies. NBU will continue a testing and calibration program for all production meters. Additionally, all new and existing customers are required to have a meter. NBU will continue a testing customer meters, as-needed or as requested, and replacing meters that are under-registering. NBU is also establishing a framework for future meter testing programs.

3.3.3 💧 Increase Investment in Asset Management

The threat of leaks and breaks increases as infrastructure ages, and in the next 10 years, 20% of NBU's water mains will be nearing the end of their estimated useful life. Timely repair and replacement of failing or aging assets are critical aspects of utility management that help minimize risk of failure, prevent disruptions to water service, and continue to minimize water loss. NBU is currently developing an Aging Infrastructure Plan which will provide a long-term investment plan with recommended budgets per year to achieve NBU's target level of risk and service, in alignment with the utility-wide asset management program being expanded. This plan will then inform the budgets requested in the FY 2029 – 2033 Capital Improvement Plan (CIP) for water main repair and replacement. NBU currently has \$48 million budgeted for infrastructure repair and replacement for fiscal years 2024 through 2028; projects include, but are not limited to, water meters, tank decommission, water tank rehabilitations, and infrastructure replacement packages.

3.4 Landscape Water Transformation Program

Over half of average water use by NBU customers is associated with landscape irrigation and other outdoor water use (52% of residential water use and 67% of commercial water use across the last five years as shown in **Figure 2-5**). Thus, NBU is designing a new, more comprehensive Landscape Water Transformation Program. This enhanced program will provide a combined portfolio of incentives and requirements to reduce outdoor water use in New Braunfels.

3.4.1 💧 Drought Management Plan and Enforcement

The City of New Braunfels has a Water Conservation and Drought Management Ordinance (No. 2019-17), which is enforced by NBU. Year-round landscape watering for all customers is limited to two days per week based on the last digit of the address and cannot be conducted between 10:00 am – 8:00 pm. During a drought, landscape watering is restricted further, as summarized in **Table 3-1**, based on the drought stage declared by the City. The ordinance includes additional restrictions depending on the drought. For example, installation of turfgrass is limited in Stage 3, and the refilling of ornamental lakes or fountains with potable water is prohibited during all drought stages. Additionally, park and athletic fields are required to submit water conservation plans. The ordinance further encourages additional voluntary reductions by all customers in all industries, such as only

serving water to customers at restaurants upon request. For a complete list of activities prohibited during a drought, visit [NBU Ordinance 2019-17](#).

Table 3-1 NBU Water Restrictions in Drought Stages

Drought Stage	Landscape Irrigation with a Hose-End Sprinkler or In-Ground Irrigation System is Allowed: (during designated times)	Landscape Irrigation with a Soaker Hose, Handheld Hose, Drip Irrigation System, or Bucket is Allowed:
Year-Round	Two days per week	Any day at any time
I	One day per week	
II	One day per week	Any day during designated times
III	One day every two weeks	

NBU plans to update the Drought Management Plan and increase investment for drought management to allow for more complete enforcement of the plan. Engagement of the CAP is recommended, and discussion should include potential opportunities for improving both drought and year-round irrigation watering restrictions to support the long-term conservation goal of delaying the need for additional water supply. For example, peer systems (e.g., Austin, San Antonio) have implemented year-round restrictions for watering to one day a week. Case studies^{3,4} have shown that restricting watering to one day a week can decrease water use for irrigation even further, especially for high volume users, when supplemented by an active outreach and enforcement campaign.

3.4.2 Irrigation System Inspection Program

Since 2007, NBU has required all new irrigation systems for single-family residences and small commercial buildings with a site plan of 10,000 square feet or less to have separate irrigation meters. However, it wasn't until 2019 that the water connection policy was made enforceable by connecting it to the City's Drought Management Ordinance. This has correlated with an increase in NBU's number of residential irrigation meters from approximately 6,000 in 2018 to over 10,000 in 2021 (an increase of 78%). Similarly, commercial irrigation meters increased from approximately 650 to over 800 during the same period (an increase of 16%). Other irrigation system ordinance requirements include the use of rain sensors to avoid watering during and following rain events, zonal systems to irrigate each landscape zone according to its water needs, and a minimum irrigation area and flow direction requirements to avoid watering adjacent impervious surfaces.

Inspection of new irrigation systems is currently performed by the City of New Braunfels (not NBU). However, to help support the increasing number of new irrigation meters, especially for unincorporated areas outside of the City's permitting authority, NBU plans to increase resources for irrigation meter inspections through the

³ Warner, Laura A., et al. "Insights from residents under year-round irrigation restrictions to improve water conservation impacts." *AWWA Water Science*, vol. 5, no. 4, 2023, <https://doi.org/10.1002/aws2.1348>.

⁴ Mackenzie, J. Boyer, et al. "Water Conservation Benefits of Long-Term Residential Irrigation Restrictions in Southwest Florida." *Journal AWWA*, vol. 110, no. 2, 2018, <https://doi.org/10.5942/jawwa.2018.110.0019>.

Conservation Resource Inspection Program. These additional resources would allow for streamlining the inspection process by having a single inspector licensed to complete backflow prevention inspections, irrigation inspections, and customer service inspections. Further, the increase in resourcing would provide more holistic enforcement of and education on (in collaboration with **Section 3.6.2**) existing irrigation system codes.

3.4.3 💧 Home & Commercial Irrigation Assessments with Rebates

Currently, NBU provides free irrigation assessments to both residential and commercial customers upon request. Common recommendations from these assessments include installing smart irrigation controllers, adding high efficiency sprinkler nozzles, and repairing leaks in customer lines or outdoor faucets. However, the NBU Conservation Team recognizes the opportunity to increase the impact. Over the next five years, this program will be expanded by:

- Ensuring that assessments incorporate all best practices for reduction of water usage
- Increasing outreach and education to increase the number of customers participating
- Introducing customizable rebates for customers that complete an assessment, providing incentive to implement the water-saving opportunities identified through the assessment
- Improving program tracking

3.4.4 💧 Water-Wise Landscape Rebates

Currently, NBU supports the following water-wise landscape rebates: Drought Tolerant Tree, Rain Barrel, Irrigation Zone Removal, Grass Removal, Healthy Soil, Gardening Guide, and Custom Commercial rebates. NBU is planning to develop a streamlined rebate program that combines all existing rebate options. Instead of customer applying separately for various rebate types and receiving a standard amount, the rebate can be tied to water savings expected from recommended water-saving activities. This makes applying easier for customers, more effectively ties utility investment to anticipated benefit, and allows for consideration of water-wise landscape projects beyond those specifically listed. NBU could also provide rebates through this program for installation of low impact development landscaping, such as the conversion of impervious pavement to pervious rock cover, to reduce runoff and promote recharge of our water supplies.

In collaboration with **Section 3.6.7**, NBU is planning to partner with the irrigation vendors and provide them training on various irrigation rebate programs that NBU currently enforces to their customers. As a result, when customers reach out to vendors, they can inform about the specific customer-focused irrigation rebate programs. This collaboration will assist NBU to attract more customers to adopt their rebate programs.

3.4.5 💧 New Development Ordinance Revisions

Over the next five years, NBU plans to pursue ordinance revisions that promote the use of water-wise landscaping for new residential and commercial customers. Similar ordinances by other Central Texas communities have required new customers to limit the use of turf grass, use only drought-tolerant plants and grass, and use pervious ground covers to reduce runoff and promote recharge of our water supplies. NBU will research requirements implemented by other communities and will engage community stakeholders to discuss potential requirements for the New Braunfels community. This engagement is already underway as the City of New Braunfels considers updates to the Land Development Ordinance, to be finalized by the end of 2024

3.5 Indoor Water Use Reduction Program

NBU has an existing program to support existing and new customers with reducing water use inside homes and commercial businesses. NBU staff provide support in identifying opportunities to reduce water use and also provide rebates for upgrading indoor appliances.

3.5.1 Home and Commercial Assessment for Indoor Use

NBU provides free water assessments to both its residential and commercial customers. During assessments, NBU reviews historical data use trends, inspects the inside and exterior of the home or business for possible leaks, and provides suggestions on how to better conserve water and energy while lowering costs. Customers can go to the NBU website to schedule their assessment or contact NBU Customer Service or Conservation and Customer Solutions (CCS) to schedule over the phone.

3.5.2 Indoor Water Use Rebates

NBU continues to offer rebates to customers for improving indoor water use efficiency. Indoor rebates are available to residential customers for upgrading to ultra-high efficiency toilets and ultra-high efficiency washing machines. Additionally, NBU offers a custom commercial rebate to provide a financial incentive for commercial customers to improve indoor water use.

3.6 Outreach and Education Program

NBU outreach and education programs provide information to new and existing customers to promote water conservation and efficient use. Educational materials highlight NBU's existing conservation programs, educate the community about drought stages, provide tips for water savings and identification of leaks, and provide customers with utility contact information. NBU uses a variety of outreach formats and delivery methods including text and phone alerts, mailed brochures, emailed newsletters, hand-delivered flyers, online videos, workshops and hands-on activities such as at the Headwaters at the Comal facility (**Figure 3-7**), checklists, bill inserts, and social media posts. **Figure 3-8** shows examples of NBU'S social media posts emphasizing water conservation. NBU has four specific outreach strategies that have been and will continue to be implemented, and NBU will be evaluating three new potential outreach strategies as part of a new Water Conservation Education and Outreach Plan that will be developed. These strategies are described in the following subsections.

New Braunfels Utilities
Water Conservation Plan

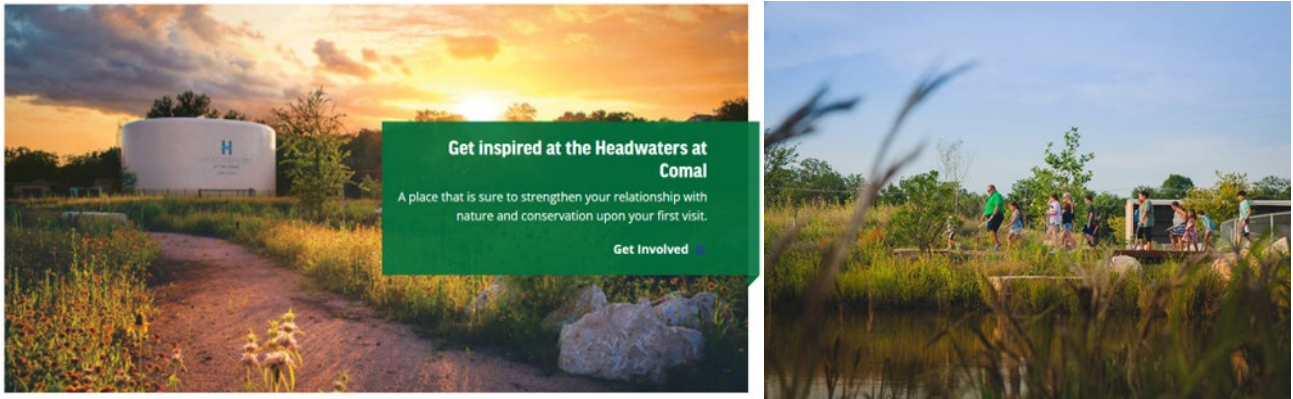


Figure 3-7 NBU Partners with Fisher Park Nature Education Center, Headwaters at the Comal, West Side Community Center, and New Braunfels Food Bank to Provide Education on Water Conservation to the Community



Figure 3-8 Example NBU Social Media Posts on Conservation

NBU has four specific outreach strategies that have been and will continue to be implemented, and NBU will be evaluating three new potential outreach strategies as part of a new Water Conservation Education and Outreach Plan that will be developed. These strategies are described in the following subsections.

3.6.1 Continuous Consumption Alerts

NBU sends alerts via automated phone calls or text messages to customers if they have continuous water consumption for 48 hours indicating that a leak is occurring. These messages provide guidance to customers on locating and repairing leaks, and customers can contact NBU for assistance in fixing the leak. Since the inception of leak alerts in 2017, NBU estimates savings of 250 million gallons of water due to continuous consumption alerts.

NBU was awarded [the 2020 Texas Environmental Excellence Award for Water Conservation](#) for its customer leak awareness outreach campaign by the Texas Commission on Environmental Quality.

3.6.2 Utility Consumption Reports

Upon request through the [NBU Utility Consumption Report webpage](#), NBU also provides customers with a report (**Figure 3-9**) that charts indoor and irrigation water use and compares it to the neighborhood average. This educational tool tracks conservation progress and helps customers identify additional opportunities for water savings.

3.6.3 Top 30 Water User Report

This strategy was implemented a few years ago, but paused as it was labor intensive to generate this list of customers using the prior billing software system. Thus, following completion of the new data analytics software (**Section 3.1.1**), NBU will re-launch the Top 30 Water User Report. The new software will automatically generate a list of the 30 customers using the most water each month. NBU will then contact each customer to discuss strategies for reducing demand and usage.



Figure 3-9 Utility Consumption Reports

3.6.4 Top 10 Water Violator Strategy

This strategy was also implemented a few years ago, but paused as it was labor intensive to generate this list of customers using the prior billing software system. Thus, following completion of the new data analytics software (**Section 3.1.1**), NBU will re-launch the Top 10 Water Violator Strategy. The new software will automatically generate a weekly list of the 10 customers with the greatest out of compliance usage (i.e., a leak or watering on the incorrect day). The top ten violators will be notified via courtesy letter or phone call.

3.6.5 💧 Water Conservation Education and Outreach Plan

Over the next couple of years, NBU will be reviewing the existing outreach and education program and developing a new Education and Outreach Plan that prioritizes the Landscape Transformation Program and aligns with the One Water New Braunfels Program. This evaluation will consider updates to messaging, outreach approaches and forums, and educational materials to align with current goals. To optimize use of resources, the Plan will also identify target audiences for tailored communication, including but not limited to, large water users, high water use areas, businesses, and low-income residents. Specific initiatives that will be prioritized include:

- Enhancing the water use assessment program (**Sections 3.4.3 and 3.5**) with new materials and resources to increase customer participation
- Enhancing the water-wise landscape rebate program (**Section 3.4.4**) with new educational materials to increase customer participation
- Developing an internal training program to increase the literacy of NBU and City staff on the existing and new water conservation programs and the role each department plays in supporting conservation

3.6.6 💧 Engage Local Officials and Community Stakeholders

NBU will enlist feedback and input from key stakeholder groups and community members on water conservation strategies. Priority discussion topics for this group will include the New Commercial Business Landscape Ordinance as well as providing feedback on new outreach and education materials developed. NBU will also be engaging with local officials, including City Council, to provide education and updates on implementation of the conservation plan as well as guidance on ways local officials can support and elevate the conservation plan.

3.6.7 💧 Establish Water Conservation Partnerships with Local Trade Organizations

Local trade organizations and professionals, such as landscapers, plumbers, and irrigators, serve a critical role in making recommendations to customers on landscaping and building improvements. Thus, NBU is planning to establish new partnerships with local trade organizations to provide education on water conservation approaches, the importance of helping customers implement conservation strategies, and the current NBU water conservation programs. On a case-by-case basis, partnerships may also include providing hands-on support for implementing business changes to better support implementation of conservation initiatives (e.g., advice on changes recommended to materials provided to customers or additional in-the-field training for local businesses).

4 Five-Year Water Conservation Implementation Plan

NBU has identified a portfolio of existing, expanded, and new conservation programs for implementation during calendar years 2024 through 2028 (**Section 3**). These strategies were selected through a multi-phased screening process to prioritize applicability, diversification, and effectiveness and were evaluated considering resource requirements, potential water savings, and other utility priorities. Strategies include new incentive programs, enhanced education and outreach, and new/updated ordinances and address both indoor and outdoor water use. However, as analysis of historical water use data (**Section 2**) demonstrated that irrigation water use accounts for over half of total water use, NBU will be prioritizing allocation of additional resources over the next five years to strategies reducing irrigation water consumption. Long-term, these strategies will reduce water demand per user, which will ultimately protect water resources and promote long term water supply sustainability for NBU customers. The following sections summarize the action plan for implementing both the existing and new/expanded conservation strategies over the next five years.

- **Implementation Plan (Section 4.1)** summarizes the timeline for implementing the new and expanded water conservation strategies as well as the budgets required, expected savings, and roles and responsibilities.
- **Water Conservation Program Metrics (Section Error! Reference source not found.)** presents metrics that will be used to track implementation progress and ensure conservation programs are effective.
- **Per Capita Demand Goals (Section 4.2)** summarizes targets for the next 5 and 10 years.
- **Approval and Distribution of the Conservation Plan (Section 4.3)** documents approval of this plan and lists the recipients of the final conservation plan.
- **Adaptive Implementation (Section 4.4)** outlines the process for regular evaluation of progress and updates to the implementation plan.

4.1 Implementation Plan

Over the next five years, NBU will continue implementation of all existing conservation programs, expand existing programs that prioritize reduction of water use for landscape irrigation, and add new programs. Conservation programs will engage both residential and commercial customers. The proposed implementation timeline, budget, savings, and roles and responsibilities for the new and expanded strategies (**Table 4-1**) are summarized below.

Table 4-1 List of New and Expanded Water Conservation Strategies

New Conservation Strategies	Expanded Conservation Strategies
<ul style="list-style-type: none"> • Conservation Data Analytics and Visualization • Irrigation System Inspection Program • New Development Ordinance Revisions • Water Conservation Education and Outreach Plan • Engage Local Officials and Community Stakeholders • Establish Water Conservation Partnerships with Local Trade Organizations 	<ul style="list-style-type: none"> • Advanced Metering Infrastructure • Increased Investment in Asset Management • Drought Management Plan and Enforcement • Home and Commercial Irrigation Assessments with Rebates • Water-Wise Landscape Rebates

New Braunfels Utilities
Water Conservation Plan

Timeline: Figure 4-1 represents key milestones that are planned to be achieved each year. The first year will focus on updating the Drought Management Plan, completing the Water Aging Infrastructure Plan, and developing a new Water Conservation Outreach and Education Plan. During 2024, NBU will also complete implementation of the new data analytics software and develop the new landscape transformation conservation strategies. In 2025, NBU plans to launch the new Landscape Transformation program, including expanded and customizable rebate programs. Then, in 2026, new outreach and education strategies will be launched to engage the community in these new conservation strategies and to engage stakeholders in development of the new commercial customer landscape ordinance, which is planned to be presented to the NBU Board and City Council for approval in 2028.

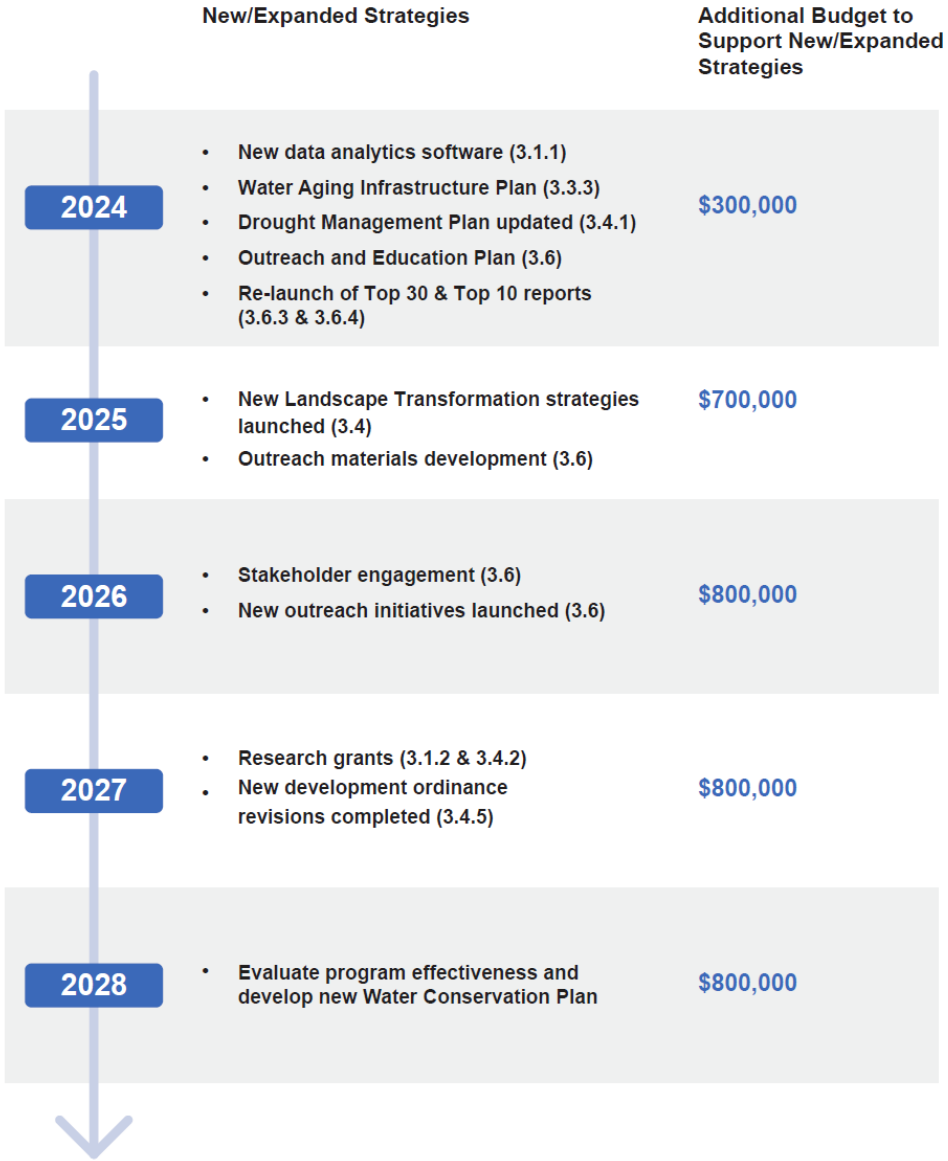


Figure 4-1 Implementation Timeline and Budget for New and Expanded Water Conservation Strategies (in addition to continuing to implement and fund the existing water conservation strategies)

New Braunfels Utilities
Water Conservation Plan

Five-Year Water Savings⁵: While estimated water savings were calculated for only seven of the twenty strategies, implementation is estimated to result in a minimum of 850 million gallons of water savings over the next five years (170 million gallons per year, on average). Of strategies that were measured, the greatest measurable water savings are expected to come from continuing continuous consumption alerts and satellite leak detection. Although the new conservation strategies proposed are not anticipated to result in an immediate increase in measurable water savings, they will contribute to long-term water consumption reduction and long-term cost savings, including:

- **Delayed New Water Supply Costs:** For example, if the new development ordinance revisions are approved by 2025, the number of customers impacted each year will increase such that by 2063, when NBU is projected to need another new water supply, a savings of over 200 million gallons per year is anticipated for commercial customers alone. In 2063, this would correlate with a demand reduction of 2 gallons per capita (person) per day without requiring any change by residents at home. Similar revisions to the residential ordinances for new developments will increase these savings greatly. By reducing demand, we delay the need for developing a new water supply, which could cost hundreds of millions of dollars.
- **Lower Water Use Costs:** Over this five-year implementation period, the average cost per volume of water saved for the new and expanded conservation programs is estimated to be lower than the cost NBU has calculated for NBU's newest water supply, the Gonzalez-Carrizo Water Supply Project, which is coming online in 2024.

The conservation strategies identified vary in cost and expected outcomes. Incentive / rebate programs encourage community buy-in, increase education, and reward conservation efforts. However, water savings are limited by a relatively small number of participants and these programs require greater investment to fund rebates. On the other hand, usage ordinances result in greater water savings since all relevant customers must participate, with only minor costs for staff time for enforcement.

- **Avoided Costs:** These conservation strategies will also assist NBU and the community by increasing the avoided costs that would have otherwise been incurred, had conservation strategies not been implemented. Avoided costs can include reduced water treatment and wastewater treatment costs, reductions in water losses through distribution, and reduced staff hours.

Five-Year Budget: A modest budget of \$3.4 Million over the next five years (in addition to continuation of budgets allocated for existing conservation programs) is required to implement the recommended new initiatives effectively. The budget supports hiring new employees to support additional conservation work (e.g., additional inspections and assessments), hiring external engineering consultants and legal support, rebates to incentivize customers, and community outreach and education. None of the conservation programs selected have large traditional capital cost expenditures due to the goal of focusing on low-cost strategies for the next five years. However, annual investment in staff and incentives for customers will be needed to make these programs successful. Several utilities have moved to capitalizing rebate costs and NBU will research and investigate the

⁵ Savings and cost estimates are based on a set of assumptions that will be verified during program implementation.

New Braunfels Utilities
Water Conservation Plan

opportunity to do so for these costs. Additionally, staff will research grant programs to identify potential funding available in support of these new strategies.

Roles and Responsibilities: NBU's Conservation and Customer Solutions team will oversee implementation of the water conservation implementation plan. However, effective implementation will require participation by multiple departments across NBU and coordination with the City of New Braunfels. The lead department responsible for implementation of each conservation program is shown in **Table 4-2**.

DRAFT FOR INTERNAL REVIEW ONLY

New Braunfels Utilities
Water Conservation Plan

Table 4-2 Water Conservation Program Responsible Teams and Proposed Metrics

Water Conservation Program	Responsible NBU Team(s)	Metrics
Overall Program Management	Conservation and Customer Solutions	<ul style="list-style-type: none"> Tracking of total per capita demand (Appendix A) Tracking of residential per capita demand (Appendix A) Tracking of average use per account per customer type
Conservation Data Management	Conservation and Customer Solutions, Resource Strategy, Water Operations, and Data Strategy	<ul style="list-style-type: none"> New internal data management system and dashboard live (% complete) Continue implementation of AMI for all new customers (% customers)
Rate Structure	Finance	<ul style="list-style-type: none"> Use of an inclining block rate structure for single family customers (y/n) Effectiveness of inclining block rate structure Incorporation of peak and off-peak rates to encourage conservation among commercial and multi-family rate structures (y/n) Inclusion of a strategy for maintaining revenue stability while incentivizing conservation and efficiency (y/n)
Non-Revenue Water Program	Water Operations, Engineering, and Production	<ul style="list-style-type: none"> Tracking of number of leaks detected (y/n) Tracking of estimated water savings (y/n) Tracking of unit annual water losses (y/n) Number of breaks per mile of pipe Infrastructure Leakage Index
Landscape Water Transformation Program	Conservation and Customer Solutions	<ul style="list-style-type: none"> Decreasing trend in average irrigation water use per customer for customers with separate irrigation meters Number of water-wise landscape rebates approved per year Number of irrigation assessment rebates approved per year Area of turf removed (sf) Percent of conservation team positions filled (%) Enforcement program for each component of the updated Drought Management Plan (% of components) Percent of identified violators receiving a warning (%)

New Braunfels Utilities
Water Conservation Plan

Water Conservation Program	Responsible NBU Team(s)	Metrics
		<ul style="list-style-type: none">• Approval of the New Development Ordinance revisions (y/n)
Indoor Water Use	Conservation and Customer Solutions	<ul style="list-style-type: none">• Number of indoor rebates approved per year• Tracking of estimated water savings (y/n)
Education and Outreach Campaign	Conservation and Customers Solution and Communications Team	<ul style="list-style-type: none">• Implementation of outreach plan activities (% complete)• Tracking of number of customers reached per year (y/n)• Tracking of estimated water savings based on engagement with top water users and top violators (y/n)

DRAFT FOR INTERNAL REVIEW ONLY

4.2 Water Conservation Program Metrics

Water conservation program metrics assist in tracking and maintaining records of implementation progress, evaluating program effectiveness, allocating time and resources, and identifying areas for further investment and further improvement in programs. Metrics may be quantifiable (e.g., the number of water-wise landscape projects) or qualitative (e.g., percent complete of a new initiative). Regardless of type, metrics selected should align with implementation priorities, be attainable, and provide actionable triggers for increased investment or resource allocation. While this plan provides an initial slate of metrics to evaluate implementation progress and conservation effectiveness over the next five years (**Table 4-2**), staff will continue amending and improving these after plan adoption.

4.3 Approval and Distribution of the Water Conservation Plan

Implementation of an effective and sustainable water conservation plan requires commitment and engagement from the community. Thus, after NBU's Conservation and Customer Solutions team has drafted the water conservation plan, with input from the NBU Executive Leadership team and NBU departments engaged in implementation of the plan, the plan is presented to the NBU Board of Directors for review and approval. Upon approval by the NBU Board of Directors, the water conservation plan is then presented to the New Braunfels City Council for review and approval. Approval by both of these bodies ensures community buy-in to the proposed conservation strategies and that support and sufficient funding are allocated to ensure the success of the conservation implementation plan. This Water Conservation Plan was approved by the City Council on **[insert date after approval]** (**Appendix F**).

Upon approval by City Council, this Water Conservation Plan was delivered to the South-Central Texas Regional Water Planning Group (Region L) and submitted to the Texas Water Development Board and Texas Commission on Environmental Quality. Additionally, the plan was made available to the public on [NBU's Water Conservation Webpage](#).

4.4 Adaptive Implementation

NBU has an ongoing commitment to long-term water conservation that extends existing water supplies and delays the need to purchase additional supplies. NBU's Conservation and Customer Solutions team will review program metrics annually to evaluate program progress and effectiveness, and reallocate resources, as needed, in alignment with the conservation plan goals and priorities. Thus, the long-term success of the conservation program is highly dependent on the configuration and implementation of the new conservation data analytics software to allow for effective decision making.

During the last year of this implementation plan, NBU will prepare a similar roadmap for future implementation activities. Although capital and operational budgets for the current five years were already accounted for at the time of drafting this conservation plan, NBU plans to increase investment in conservation programs to support future water conservation plans. Thus, the success of this plan (and future plans) in delaying the need for additional water supplies will depend on the commitment of NBU and City leadership to increase investment in

New Braunfels Utilities
Water Conservation Plan

conservation, further grow an internal conservation culture, and ensure that communication internally and externally aligns with this commitment.

DRAFT FOR INTERNAL REVIEW ONLY

Appendix A: Per Capita Demand Goals

Continuing the existing conservation strategies will allow for maintaining NBU’s current per capita demand, while savings from the new and expanded conservation strategies are expected to reduce per capita demand. As reported to TWBD, NBU’s current per capita demand targets for water savings are summarized in **Table 1**. While estimated water savings were calculated for only seven of the twenty strategies in the plan (**Section 4.1**), implementation is estimated to result in a minimum of 850 million gallons of water savings over the next five years (170 million gallons per year, on average), a per capita demand reduction of 2 gallons per capita per day over five years (2028). However, as discussed in **Section 2.1**, there are many other factors that can also impact per capita demand from year to year including weather and climate changes, economic conditions, regulations, and even pandemics like COVID-19. Achieving the ten-year per capita demand goal listed through water conservation will require significantly greater investment in water conservation during the subsequent five-year period (2028-2032).

Table 1 Normal-Weather Targets for Water Savings

Per Capita Demand (gallons per capita per day)	Current 5-Year Average (2018 – 2022)	5-Year (2028 5-Year Average)	10-Year (2032 5-Year Average)
Total*	137	135	130
Residential	82	81	77

* In coordination with NBU’s Water Resources Plan, NBU calculates the total per capita demand based on the water pumped from water supplies as opposed to the water produced by treatment plants.

Appendix B: TWDB and TCEQ Water Conservation Plan Requirements

The TWDB provides a list of conservation strategies in the *TWDB Water Conservation Plan Guidance Checklist 2020*. The TCEQ also provides a list of conservation plan components in the Texas Administrative Code (30 TAC §202.B). The location of these components within this Conservation Plan is summarized in the table below.

TWDB Checklist	TCEQ Checklist	Section
Utility Profile	Utility Profile	Appendix D
Conservation Coordinator	-	1.2
Inclusion of 5-year and 10-year targets	Specific, quantified 5- and 10-year targets	Appendix A
Schedule for plan implementation	-	4.1
Tracking implementation and effectiveness of plan	Record management system	3.1 & 4.2
Master meter	Metering device	3.3.2
Universal metering for meter testing, repair and periodic replacement	Universal metering	3.3.2
Measures to determine and control water loss	Measures to determine and control water loss	3.3
Program for leak detection, repair, and water loss accounting	Leak detection and repair	3.3.1
Continuing education and information regarding water conservation	Continuing public education and information	3.6
Water rate structure	Non-promotional water rate structure	3.2
Implementation and enforcement evidenced by plan adoption (Signed Official Ordinance)	Enforcement procedure and plan adoption	4.3 and Appendix F & G
Furnish water or wastewater services to another supplying entity (Wholesale or Contract)	Contract requirements	N/A
Regional Water Planning Group Notification	Coordination with Regional Water Planning Groups	Appendix E
Drought Contingency Plan	-	3.4.1
Adoption	-	Appendix F
Reporting responsibility	-	4.3
-	Operation of any reservoirs	N/A

Appendix C: TWDB and TCEQ Conservation Strategies

The TWDB provides a list of conservation strategies in the *TWDB Water Conservation Best Management Practices and Best Management Practices for Municipal Water Users 2020*. The of these strategies within this Conservation Plan are summarized in the table below.

TWDB Category	TWDB Listed Conservation Strategies	Section
Conservation Analysis and Planning	• Conservation Coordinator	1.2
	• Cost-Effectiveness	4.1
	• Water survey for single and multi-family customers	2.2
Financial	• Water Conservation Pricing	3.2
	• Wholesale Agency Assistance Program	N/A
System Operations	• Metering of all new connections and retrofit of existing connections	3.3.2
	• System water audit and water loss control	3.3
Landscaping	• Athletic Field Conservation	3.4.1
	• Golf Course Conservation	3.4.1
	• Landscape Irrigation Conservation and Incentives	3.4.3 & 3.4.4
	• Park Conservation	3.4.1
	• Residential Landscape Irrigation Evaluation	3.4.2 & 3.4.3
Education and Public Awareness	• Public Information	3.6
	• School Education	3.6
	• Partnerships with Non-Profit Organizations	3.6.7
Rebate, Retrofit, and Incentive Programs	• Conservation programs for ICI account	3.4.3 - 3.4.5
	• Residential Clothes Washer Incentive Program	3.5
	• Residential Toilet Replacement Program	3.5
	• Showerhead, Aerator and Toilet Flapper Retrofit	3.5
Conservation Technology	• New Construction Graywater	N/A ¹
	• Rainwater Harvesting and Condensate Reuse	3.4.3
	• Water Reuse	N/A ¹
Regulatory Enforcement	• Prohibition on Wasting Water	3.4.1
	• Conservation Ordinance Planning and Development	3.4.1

1. Planned for future evaluation

The TCEQ also provides a list of conservation strategies in the Texas Administrative Code (30 TAC §288.2). The location these strategies within this Conservation Plan are summarized in the table below.

TCEQ Checklist	Section
Conservation-oriented water rates and rate structure (uniform or increasing block rate schedules)	3.2
Adoption of ordinances, plumbing codes, and/or rules requiring water-conserving plumbing fixtures	City of New Braunfels Plumbing Code Sec. 14-50. - Irrigation systems
Program for replacement or retrofit of water-conserving plumbing fixtures	3.5
Reuse and recycle of wastewater / graywater	N/A ¹
Program for pressure control / reduction in distribution systems	3.3
Program for ordinance for landscape water management	3.4.1 & 3.4.5
Method for monitoring effectiveness and efficiency of water conservation plan	4.2
Water conservation plan prepared according to TWDB	1 - 4
Other water conservation practice, method, or technique to achieve conservation plan goals	3.1, 3.4.2, 3.4.3, 3.4.4 & 3.6

1. Planned for future evaluation

Appendix D: NBU Utility Profile

DRAFT FOR INTERNAL REVIEW ONLY

Appendix E: Distribution to Water Planning Groups

DRAFT FOR INTERNAL REVIEW ONLY

Appendix F: City Council Adoption of the Water Conservation Plan

DRAFT FOR INTERNAL REVIEW ONLY

Appendix G: NBU Board Approval of the Water Conservation Plan

DRAFT FOR INTERNAL REVIEW ONLY

DRAFT FOR INTERNAL REVIEW ONLY



Meeting Date: March 28, 2024 **Agenda Type:** Action Items

From: Jacob Tschoepe
Program Portfolio Manager **Reviewed by:** Shawn Schorn
Director of Business Planning

Submitted by: Shawn Schorn **Approved by:** Ryan Kelso
Director of Business Planning Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Authorizing CEO or His Designee to Negotiate and Execute an AIA Standard Form of Agreement Between Owner and Construction Manager as Constructor with SpawGlass, Contractors, Inc. for the Construction of the Proposed NBU Headquarters Facility Project Located on a 76-acre Tract of Property at the Intersection of Engel Road and IH-35

BACKGROUND

On November 1, 2023, New Braunfels Utilities (“NBU”) closed on a 76-acre tract of property located at IH-35 and Engel Road, to be used as NBU’s Headquarters Facility. The facility consists of the construction of multiple buildings, including up to a 200,000-square-foot office building intended to house up to 800 full-time employees; a 20,000-square-foot climate-controlled warehouse facility with a dock area for fleet vehicle access and separate access for vendor delivery; a 30,000-square-foot equipment-building; a 20,000 square foot vehicle maintenance facility with vehicle lift capability, fluids distribution, overhead lift capabilities, and exhaust evacuation capabilities. The design will include surface parking for approximately 880 vehicles distributed throughout the site for visitor and contractor parking, employee parking, fleet parking, and short-term parking for deliveries (the “Project”).

On November 3, 2023, NBU solicited Construction Manager at Risk (“CMAR”) advertisement documents, and on December 12, 2023, NBU opened five (5) responses to the CMAR solicitation. After reviewing the proposals with the project team, NBU selected to interview two (2) of the respondents based on the weighted selection criteria outlined in the advertisement documents. Upon completion of the interviews and discussions, NBU selected SpawGlass, Contracts, Inc. (“SpawGlass”) as the NBU CMAR for the Project.

The role of the CMAR for the Project is to accomplish and oversee the construction activities of the Project, including but not limited to providing a Guaranteed Maximum Price (“GMP”) for the Project, pre-construction coordinator, and construction phase management and support for the general conditions of construction. Upon sufficient completion of the design, the CMAR will publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of

all major elements of construction work other than the minor work that may be included in the general conditions.

NBU staff requests that the Board of Trustees approve the AIA Standard Form of Agreement between NBU and SpawGlass for the construction of the NBU Headquarters Facility that allows SpawGlass to serve as the CMAR for the Project (the “Agreement”).

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

FINANCIAL IMPACT

The total financial impact of the Agreement with SpawGlass for the Project is \$145,000,000. The Project is budgeted within the fiscal year 2024 through fiscal year 2027 NBU Board approved Capital Improvements Projects budget.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Safety and Security

EXHIBITS

1. SpawGlass AIA Contract

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

AGREEMENT made as of the day of in the year 2024
(In words, indicate day, month, and year.)

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

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

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

SpawGlass Contractors, Inc.
9331 Corporate Drive
Selma, TX 78154

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

New Braunfels Utilities Headquarters
New Braunfels, Texas

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

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

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

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

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The site selected for the new campus is a 76-acre tract located in west New Braunfels between FM 482 and I-35 South at Engel Road. The site is primarily scrub trees. Primary access to the site will be from the I-35 South access road with secondary access from FM 482. NBU desires that the campus utilize the natural site features to organize the design of the campus. NBU desires that the design and construction of the facility emphasize responsible stewardship of resources including water and energy resources. The Project will utilize strategies to manage stormwater discharge, reduce domestic water consumption, and reduce energy consumption that demonstrates NBU's commitment to be a leader in exceeding minimum requirements of the resources it manages. The design will include development of the entire site and

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

multiple buildings, including up to a 200,000 square foot office building intended to house up to 800 full time employees; a 20,000 square foot climate controlled warehouse facility with a dock area for fleet vehicle access and separate access for vendor delivery; a 30,000 square foot equipment building; and a 20,000 square foot vehicle maintenance facility with vehicle lift capability, fluids distribution, overhead lift capabilities and exhaust evacuation capabilities. The design will include surface parking for approximately 880 vehicles distributed throughout the site for visitor and contractor parking, employee parking, fleet parking and short term parking for deliveries.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

\$145,000,000

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

March 2025

.3 Substantial Completion date or dates:

April 2027

.4 Final Completion date: Timely final completion is an essential condition of this contract. Contractor agrees to achieve final completion of the Work within 30 days of the designated or extended Substantial Completion date. Final Completion means actual completion of the Work, including any punch list items, extras or Change Orders reasonably required or contemplated under the Contract Documents other than warranty work that may be required pursuant to Section 3.5 of AIA Document A201-2017, as amended.

.5 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

The parties acknowledge that some early packages of Work may commence during the Design Phase and prior to the Construction Commencement date for the main scope of Work for the Project. For any such early packages of Work, the parties will follow the GMP process outlines herein and will negotiate and enter into a GMP Amendment for each such early packages of Work. A separate commencement date and substantial completion date will be established for such early packages of Work in the GMP Amendment, and a separate notice to proceed will be issued. If this occurs, a subsequent GMP Amendment will be negotiated and entered into for the remaining main scope of Work for the Project in accordance with this Agreement.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Project Director
John M. New, P.E., CCM
Freese and Nichols, Inc.
10431 Morado Circle, Ste 300
Austin, TX 78759

Owner’s Representative
Joel Kokemor
10431 Morado Circle, Ste 300
Austin, TX 78759
210-201-0173 office
210-218-1231 mobile

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:
(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Geotechnical Engineer:
Raba-Kistner
- .2 Civil Engineer:
HMT
- .3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect’s representative:
(List name, address, and other contact information.)

Briant A. Harkiewicz, AIA, Project Principal
1020 NE Loop, 410, Suite 201
San Antonio TX 78209
210-2230-9492

Cody McBrearty, AIA, Project Manager
1020 NE Loop, 410, Suite 201

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.
User Notes: (1450604139)

San Antonio TX 78209
210-2230-9492

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Jason Smith
President, San Antonio Division
210-651-9000 office
210-669-9654

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner may, at its sole discretion, adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Payment and Performance Bonds, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner,

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, as amended, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017, as amended, referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. Any failure by Construction Manager to report known deviations or noncompliance will result in a waiver of any associated claims by the Construction Manager and SHALL REQUIRE THE CONSTRUCTION MANAGER TO INDEMNIFY AND HOLD THE OWNER HARMLESS FOR ANY COSTS ASSOCIATED WITH THE CONSTRUCTION MANAGER'S FAILURE IN THIS REGARD.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

§ 3.1.3.4 The Construction Manager shall review the Contract Documents to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing. Failure to so notify will result in a waiver of any claims for additional time or compensation by the Construction Manager. Further, any claims by the Construction Manager associated with conflicts of the systems addressed in this section 2.1.3 during the construction phase are waived if such conflicts could have been discovered through careful examination of the Contract Documents.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project Schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall coordinate with the Architect to incorporate the Project Schedule previously developed by the Architect. The Project Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project Schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 At the completion of the Schematic Design, Design Development and Construction Documents, and upon written notice of such phase completion by the Architect to the Construction Manager and the Owner, the Construction Manager shall prepare and update estimates of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action to reduce costs and maintain the Project budget.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together and coordinate to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project and may prequalify bidders. Any prequalification or award of subcontracts must conform with section 9.1 and chapter 2269 of the Texas Government Code.

§ 3.1.11.3 The processes described in Article 9 shall apply for bid packages issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 When the Construction Drawings and Specifications are ninety-five percent (95%) complete, upon receipt of notice from the Architect so indicating, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The Guaranteed Maximum Price proposal shall be submitted to the Owner no later than twenty-one (21) days after the ninety-five percent (95%) completion notice.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 The amount of time available to the Owner to accept the Guaranteed Maximum Price, which shall not be more than 60 days, before such time that the Construction Manager may revise proposed pricing;
- .6 A statement that the proposed Guaranteed Maximum Price is not based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis; and
- .7 If Owner requests, Construction Manager shall make available for inspection the documents and information that form the basis of the Guaranteed Maximum Price proposal.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager may include a contingency to cover those costs of the Work included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Construction Manager shall make available for inspection the documents and information that form the basis of the contingency. Contingency shall not be used to fund scope increases manager is entitled to a Change Order or other costs that are the responsibility of the Owner. Unconsumed contingency shall be allocated as saving pursuant to section 6.2.1 of this Agreement.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Owner enjoys tax exempt status as a governmental entity. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Construction Manager for use on the Project. The Construction Manager shall use that certificate to exempt any purchases made for the Work from otherwise applicable taxes. As such, the Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager which are exempted because of the Owner's tax-exempt status. Subject to the above terms, the Construction Manager shall pay sales, consumer, use and similar taxes that are legally enacted, whether yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 In all matters of this Agreement, time is of the essence with respect to the performance of the Work.

§ 3.3.1.2 The date of commencement, as that term is used in the Contract Documents, shall mean the commencement of the Construction Phase. The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager,

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Agreement, subject to adjustment of this Contract Time as provided in the Contract Documents.

§ 3.3.1.4 Claims for Additional Time

The Construction Manager shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. The Construction Manager shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Guaranteed Maximum Price by reason of such delays or disruptions. Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service and/or NOAA:

Average Weather Days per Month											
Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
(4)	(4)	(4)	(3)	(5)	(6)	(4)	(3)	(4)	(4)	(4)	(4)

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner. However, the Construction Manager shall attempt to mitigate such muddy conditions to allow for the progression of the Work at no additional cost to the Owner. Provision of dewatering equipment, rock, and other mitigation measures shall be considered by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal.

Requests for an extension of time pursuant to this subsection shall be promptly submitted to the Owner. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, as amended.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

Init.
/

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.
User Notes:

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article I, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

Init.

/

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

11

§ 4.1.7 During the Construction Phase, the Construction Manager at Risk shall furnish temporary water and power to the site for use by the Construction Manager in the performance of the Work.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions. The authority of the Owner's representative may be restricted or limited because of the Owner's status as a governmental entity that must act by and through its board of trustees. Except as otherwise provided in Section 4.2.1 of A201-2017, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner has retained an Architect to provide services, duties and responsibilities and services that are necessary for the Preconstruction and Construction Phase services under this Agreement. Upon request by the Construction Manager, the Owner will provide the Construction Manager with a copy of the executed agreement between the Owner and the Architect.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Owner shall pay Construction Manager \$150,000. Payment procedures for the Construction Manager's preconstruction Phase fees shall be in accordance with Article 9 of the AIA A201-2017, General Conditions of the Contract for Construction, as amended. If the Construction Phase has not commenced prior to the expiration of one-year from the date of this Agreement, Construction Manager will be entitled to additional compensation of \$12,500 per month until the date of commencement pursuant to section 3.3.2.1 herein. Should this Agreement be terminated prior to the construction phase, Construction Manager shall be entitled to One-Hundred Fifty Thousand Dollars (\$150,000).

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2

(Paragraphs deleted)

Subject to the timeliness and interest provisions of Texas Government Code chapter 2251, payments are due and payable to the Construction Manager 30 days following the certification of an application for payment by the Architect.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Two and one-half (2.5) percent of the Cost of the Work and less any applicable discounts, rebates, refunds, and other amounts received from the sale of surplus materials and equipment.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No. 2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

By written change order subject to approval of the Owner

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Not to exceed 10% - separately, not to exceed 5% for overhead and 5% for profit

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed seventy-five percent (75 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Section 1.1.4.3, plus any extensions thereof allowed in accordance with the Contract Documents. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **One Thousand Five Hundred Dollars (\$1,500)** per calendar day for each day that expires after the time specified in section 1.1.4.3 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **One Thousand Five Hundred Dollars (\$1,500)** per calendar day for each day that expires after the time specified in section 1.1.4.4 for completion and readiness for final payment until the Work is completed and ready for final payment.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

Special Damages:

A. In addition to the amount provided for in liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for additional architectural services, engineering, construction observation, inspection, and administrative services needed after the time specified in section 1.1.4.3 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for additional architectural services, engineering, construction observation, inspection, and administrative services needed after the time specified in section 1.1.4.4 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment

C. The remedies contained in this Article 6 are not exclusive and shall be cumulative to other remedies provided to the Owner in the event of default or breach by the Contractor.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

§ 6.2.1 In the event of any "buy out" transactions, agreements by the Construction Manager with a subcontractor for the subcontractor's cost of its portion of the Work, other savings due to early completion or value engineering after execution of the Guaranteed Maximum Price addendum, or unused contingency, then such savings shall be shared with the Owner in the following percentages: 70% to Owner, 30% to Construction Manager. Said savings shall be memorialized by appropriate change order. Documentation regarding such "buy out" transactions/agreements shall be subject to the Owner's audit and inspection rights set forth in §13.6 of AIA201-2017, General Conditions of the Contract for Construction, as amended.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as amended, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017, as amended, shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a change order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Amounts due for self-performed work shall include in the Cost of the Work a lump-sum cost for work competitively bid and awarded in accordance with the terms of this Agreement. For such scopes, the Construction Manager may not exceed five percent (5%) overhead and five percent (5%) profit in the lump sum amount.

(Paragraph deleted)

§ 7.1.3 For any self-performance of minor work that is not subject to competitive bidding, Section 7.2 will control.

§ 7.1.4 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.5 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3, and provided that such costs are directly attributable to work performed on this Project only and provided further that such costs do not exceed fifty percent (50%) of such wages and salaries for all directly applied (1st Tier) Construction Manager craftsmen and do not exceed sixty percent (60%) of wages and salaries for all directly applied (1st Tier) Construction Manager bi-weekly supervisory personnel.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Construction Manager's property at the completion of the Work, and the actual cost of such excess materials as was originally billed to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

(Paragraphs deleted)

§ 7.6.2 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.3 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017, as amended, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

(Paragraphs deleted)

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's written prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017, as amended.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, Subcontractors, or suppliers and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017, as amended, or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent (10%) in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not to Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase; and
- .10 Construction Manager's fee on all self-performing scopes of work competitively bid and awarded to the Construction Manager.
- .11 Legal, mediation and arbitration costs, including attorneys' fees.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 8.3 Costs from the inspection service or testing lab that are incurred as a result of the failure of the Construction Manager to make the Work ready for an inspection or test scheduled by the Construction Manager if notice of cancellation is not provided shall be credited to the Owner as a deduction from the Cost of the Work.

§ 8.4 Costs from the inspection service or testing lab that are incurred as a result of the failure of the Work to pass an inspection or test shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 All portions of the Work, other than minor work, shall be performed by trade contractors or subcontractors under subcontracts or other appropriate agreements with the Construction Manager, or self-performed by the Construction Manager. For each major scope of work, the performing contractor shall be selected using competitive bids or competitive sealed proposals. The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:

- .1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258; and,
- .3 A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates.

(Paragraph deleted)

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

17

§ 9.1.1 The information required with publication in paragraph 9.1 is not exclusive. The Construction Manager may include other information in such notices at its discretion or as may be required by law.

§ 9.1.2 On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all bids or proposals in a manner compliant with chapter 2269 of the Texas Government Code. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the bids or proposals, in accordance with chapter 2269 of the Texas Government Code. After opening the bids or proposals, the Owner may meet with the Construction Manager to evaluate and rank the bidders or offerors. All bids or proposals shall be made public within seven (7) days after the subcontract is awarded.

§ 9.1.3 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

§ 9.3 The Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law and in accordance with the Owner's record retention requirements.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 The Owner will pay an approved Application for Payment within thirty (30) days after the date such approved Application for Payment is received by the Owner from the Architect. Notwithstanding the foregoing, the Owner shall not be required to pay any disputed amounts that the Owner believes were erroneously approved by the Architect. Timeliness and interest of payments shall be governed by Texas Government Code chapter 2251.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No. 2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

18

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. Construction Manager shall use AIA Document G702 for Application and Certificate for Payments and shall use AIA Document G703 for necessary continuation sheets related to AIA Document G702, or shall use such documents in a similar format approved by the Owner.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Owner.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017, as amended, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, as amended;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017, as amended;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Insurance and Bonds pending a paid invoice(s) is provided.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 Reserved.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

(Paragraphs deleted)

§11.1.13 In conjunction with any application for payment submitted by the Construction Manager, the Construction Manager shall comply with the release, lien waiver and other documentation requirements set forth in, but not limited to, AIA Document A201-2017, as amended, §9.4 and §9.11.2.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, as amended, and to satisfy other requirements, if any, which extend beyond final payment;

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

20

- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner may conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven (7) days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017, as amended. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017, as amended. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017, as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment and in accordance with Texas Government Code chapter 2251.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.2.5 The Contract shall not have been fully performed until all Work required by the Construction Documents has been performed and the Construction Manager provides the following to the Owner:

- .1 record or as-built drawings executed or complete in both ".dwg" and ".tiff" formats;
- .2 executed or complete certificates of documents evidencing warranties and owner-operators manuals;
- .3 all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract;
- .4 insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract; and
- .5 one copy of each item in this section in electronic format.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017, as amended. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, as amended, for Claims arising from or relating to the Construction Manager’s Construction Phase services.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a state district court of competent jurisdiction in Comal County, Texas.
- Other: *(Specify)*

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed, in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

Following execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement, with or without cause, at any time. The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017, as amended.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, as amended, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1;

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages, including any offsets, liquidated damages, attorneys' fees, and expert fees, incurred, or to be incurred, by the Owner.

§ 13.2.3 Termination for Convenience

§ 13.2.3.1 In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs.

§ 13.2.3.2 Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety (90) days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten (10) additional days' written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, equipment, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten-day notice period, the Construction Manager may not terminate this Agreement.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, as amended, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017, as amended, or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.3 Insurance and Bonds

§ 14.3.1 For all phases of the Project, the Construction Manager shall purchase and maintain insurance and bonding as set forth in the Owner's Insurance Requirements of Contractor attached as Exhibit A to the General Conditions, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2017, as amended. The Construction Manager shall maintain at least the following insurance coverage throughout the duration of the Project. Performance and payment bonds on NBU's approved forms shall be provided within 10 days of the execution of the Guaranteed Maximum Price Amendment for any phase of the Project. To comply with statutory obligations in chapters 2269 and 2253 of the Texas Government Code, Construction Manager shall provide proof of bonding capacity in the amount of the Project budget within ten (10) days of execution of this Agreement.

(Paragraphs deleted)

Init.

/

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ten million dollars (\$10,000,000) for each occurrence and ten million dollars (\$10,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owner, and non-owner vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$1,000,000) per accident for bodily injury , death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 14.3.1.3 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee, and one million dollars (\$1,000,000) policy limit.

§ 14.3.1.4 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

§ 14.3.1.5 Excess Liability coverage with policy limits of not less than five million dollars (\$5,000,000 each occurrence and five millions dollars (\$5,000,000) in the aggregate.

(Paragraphs deleted)

(Table deleted)

§ 14.4

(Paragraphs deleted)

Other provisions: The Owners Insurance Requirements in Exhibit A to the AIA 201, as referenced in section 14.3.1, shall only control the Construction Manager's insurance obligations in the event the CCIP addressed in Section 11.1.1.1 of the AIA A201 are not bound by the Construction Manager. The Construction Manager shall provide information, subject to the reasonable approval of the Owner, demonstrating compliance with the CCIP and enrollment of all subcontractors prior to any such subcontractor performing any work at the Project.

(Paragraphs deleted)

§ 14.4.1 Prohibition on Contracts with Companies Boycotting Israel

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

§ 14.4.2 Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited

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

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

B. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Contractor and each of

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1450604139)

Init.

/

its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

§ 14.4.3 Electronic Signatures

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

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 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
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended
- .4 Exhibit A to the General Conditions, Owner’s Insurance Requirements of Contractor

(Paragraph deleted)

- .5 Other Exhibits:
(Check all boxes that apply.)

(Paragraphs deleted)

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

- .6 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above.

NEW BRAUNFELS UTILITIES

SPAWGLASS CONTRACTORS, INC.

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1450604139)

OWNER *(Signature)*

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Jason Smith President, San Antonio Division
(Printed name and title)

Init.

AIA Document A133 – 2019. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 12:08:12 ET on 03/18/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.
User Notes:



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

New Braunfels Utilities Headquarters
New Braunfels, Texas

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

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

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

1

- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.
/

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes: (1920559172)

(Paragraphs deleted)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Standard Form of Agreement between the Owner and Construction Manager as Constructor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, payment and performance bonds, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.1.1 Construction Manager

The Construction Manager is identified in the AIA A133-2019 and shall serve as the Constructor of the Work. Any reference to "Contractor" in this AIA A201-2017 shall mean Construction Manager.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 In the event of a conflict between the provisions of any of the Contract Documents, the terms shall be interpreted in the following order of controlling authority:

- 1) the Agreement,
- 2) Special Conditions,
- 3) General Conditions,
- 4) Specifications & Drawings.

Should the Specifications and Drawings conflict, proposals shall be based on the most expensive combination of quality and quantity of Work indicated. Any Conflicts not resolved by a quality and quantity determination, or conflicts involving priority of controlling authority of the Contract Documents shall be determined by the Initial Decision Maker.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice. Written notice sent or transmitted by electronic transmission or facsimile must be actually received to be

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

considered delivered and to comply with the notice requirements herein. Transmission alone by electronic mail or facsimile does not constitute delivery.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraphs deleted)

ARTICLE 2 OWNER

§ 2.1 General

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraphs deleted)

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner has retained an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

(Paragraph deleted)

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Construction Manager as constructor or the Construction Manager's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. The Contractor waives any rights, claims, or causes of action against Owner as a result of activities or duties of the Architect in the Architect's administration of the Contract or representations made by the Architect in the Instruments of Service.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall

init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor shall take field measurements and verify field conditions, and must carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents, before ordering any material or performing any Work.

(Paragraph deleted)

§ 3.2.4 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.5 If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.7 and request direction before proceeding with the affected Work.

§ 3.2.6 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Sections 3.2.1 through 3.2.5, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense, and all of Contractor's claims relating thereafter are specifically waived.

§ 3.2.7 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 through 3.2.6, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 through 3.2.6, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.8 Contractor, for itself and its subcontractors, acknowledges that the construction premises are restricted and that access is affected by the security at the project, location of the Project, by the Facilities surrounding the Project and by other construction either presently being performed or proposed to be performed during the performance of this Contract. Contractor, for itself and its subcontractors, further acknowledges that such limitations in space and accessibility have been taken into account in the Contractor's proposal, and Contractor waives any claims for additional time or money associated with any such limitations.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 For any such substitutions, the Contractor warrants that modifications suggested by the Contractor will give satisfactory results.

§ 3.4.4 For any such substitutions, the Contractor warrants that substitutions will be equal or superior to the specified item or method unless the Contractor specifically lists shortcomings in its request for making substitution.

§ 3.4.5 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor warrants and guarantees for one (1) year from Final Completion as defined by Section 9.11.1 as the date of issuance of the Architect's final Certificate for Payment, or for a longer period if expressly stated in the Contract Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Contractor must correct any and all defects in material and/or workmanship which may appear during the Warranty and Guarantee period, or any defects that occur within one (1) year of Final Completion even if discovered more than one (1) year after Final Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.

§ 3.5.4 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) included direct and consequential damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 3.5.5 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Final Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work which is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

§ 3.6 Taxes

§ 3.6.1 The Owner enjoys tax-exempt status as a governmental entity. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the Owner by the Contractor. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

§ 3.6.2 The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

§ 3.6.3 The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable timeframe after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

§ 3.6.4 Subject to the terms above, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those

Init.

/

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's approval and information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis, if not more frequently at the Contractor's discretion, to be submitted to the Owner with each Application for Payment.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

10

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available to the Owner and the Architect, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, and the current Construction Schedule, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall display a current Construction Schedule at the site for reference and reliance by the Owner and the Architect.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Should the Contractor perform portions of the Work in contravention of this section, any costs and time associated with the correction, removal, or repair of said Work shall be borne solely by the Contractor.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

11

Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

12

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents and within five (5) days' written notice from the Owner, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S OFFICERS, CONSULTANTS, AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS', EXPERT, OR CONSULTANT FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK. FOR ANY SUCH CLAIM, DAMAGE, LOSS, COST OR EXPENSE THAT IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, CONTRACTOR'S INDEMNITY OBLIGATION APPLIES ONLY IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

§ 3.18.2 THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Architect's or Architect's representative's presence at the Project site shall not imply

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

concurrent or approval of the Work. The Contractor shall call specific items to the Architect's attention in writing if it wishes to obtain the Architect's opinion.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall endeavor include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner, at its sole discretion, may notify the Architect of the substance of any direct communications between the Owner and the Contractor. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Subject to the provisions governing competitive bidding scopes of work in chapter 2269 of the Texas Government Code for Construction Manager at Risk procurement and the applicable terms contained in the AIA A133-2019, as amended and executed by the Parties, and unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume

init.

/

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12. All Separate Contractors will be provided a copy of Construction Manager's site specific safety plan to facilitate the coordination and cooperation required in section 6.1.3 above.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

16

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK**§ 7.1 General**

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 No Work, or portion of the Work, performed by the Contractor in excess or deviation from the Contract Documents will be subject to adjustments in the Contract Sum or Contract Time without prior written authorization as provided in this Article.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum in accordance with the Contract Documents;
and
- .3 The extent of the adjustment, if any, in the Contract Time.

init.

/

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

17

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner or the Architect shall determine the adjustment on the basis of expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Contract Documents. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect and overhead on such deleted work. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 In all aspects of the Work, time is of the essence of the Contract. Additionally, time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 Should the Contractor default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, the Owner may withhold or deduct all costs and damages for compensable delay caused by the Contractor from the Contract Sum. Such costs shall include any attorneys' fees, additional services fees charged by the Architect in addition to the Architect's Basic Services, and all other costs, expenses, and liquidated damages as defined in Agreement.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. The Contract Sum may also be equitably adjusted in accordance with this section 8.3.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 8.3.3 The Contractor shall not be entitled to any financial compensation for delay or hindrance of the Work. In no event shall the Owner be liable to the Contractor for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance. The Contractor's sole remedy for delay or hindrance caused by Contractor, or anyone under its control or direction, shall be an extension of time. Notwithstanding the waiver in this section, the Contractor may request reimbursement of extended general condition costs by equitable adjustment of the Guaranteed Maximum Price for an event of delay caused by the Owner or Architect. The Owner has no obligation to grant a request for equitable adjustment. Owner and Contractor agree to cooperate in any endeavor to mitigate losses of Contract Time or Contract Sums due to events of delay.

§ 8.3.4 In order for the Owner and Architect to award a time extension under this clause, the following conditions must be satisfied.

.1 The weather experienced at the Project site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month.

.2 The unusually severe weather must actually cause a delay to the completion of the Project. The delay must be beyond the control and without the fault of negligence of the contractor.

§ 8.3.5 For the duration of the Contract, the Contractor shall maintain in its daily reports an accurate and contemporaneous record of the occurrence of adverse weather and resultant impact to normally scheduled Work. Delay from adverse weather will not entitle Contractor to a claim for additional time unless Work on the overall Project's critical activities is prevented for 50 percent or more of the Contractor's scheduled work day. The number of actual adverse weather days shall be calculated monthly. If the number of actual adverse weather delay days in a month exceed the number of days for that month as referenced in paragraph 8.3.5 above, the Architect upon notification by the Contractor, will cover any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and a modification shall be issued in accordance with the Contract.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 PREVAILING WAGE REQUIREMENTS

§ 9.2.1 Contractor shall comply with Chapter 2258 of the Texas Government Code governing prevailing wage. The Contractor shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage. The Owner has not independently performed a wage determination in accordance with controlling state and federal statutes. Accordingly, the Contractor must utilize the wage determinations and rates published by the U.S. Department of Labor pursuant to the Davis-Bacon Act.

§ 9.2.2 Certified payrolls demonstrating compliance with the prevailing wage requirements shall be maintained by the Contractor and all Subcontractors performing the Work. The Contractor is required to submit to the Owner a copy of all certified payrolls for any pay period with each Pay Application. Failure to provide certified payrolls may be grounds for withholding of funds and default as provided in Article 13.

§ 9.3 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner and the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner or the Architect. This schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and the Architect and supported by such data to

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

substantiate its accuracy as the Owner and the Architect may require, and unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

(Paragraphs deleted)

§ 9.4 Applications for Payment

§ 9.4.1 The Contractor must submit to the Architect itemized Application for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, partial lien releases, waivers, or other documents, and shall reflect retainage.

§ 9.4.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.4.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.4.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Cost of materials stored off the construction site may be included in Contractor's request at the sole discretion of the Owner for progress payment, if the following submittals are made and conditions are met:

1. Contractor shall submit a written narrative giving location of stored materials, provisions for protection of same, and arrangements for transportation of materials to the job site.
2. Contractor shall submit separate Bills of Sale or Invoices on all materials stored off site.
3. Contractor shall submit suitable written evidence that materials stored off site are covered by insurance protection adequate to cover Owner's interests.
4. Contractor shall store materials in facilities which are suitable to protect same from loss and deterioration. Materials shall be separated from other stored materials and shall be clearly labeled as to description, ownership and project destination. Access to stored materials shall be made convenient for inspection which will be made by Architect's representative prior to the issue of each certificate of payment which includes payment for materials stored off site.
5. Payment for materials stored off site shall not affect warranty period for such materials, which period shall commence upon date of final completion of the Work.

§ 9.4.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.5 Certificates for Payment

§ 9.5.1 The Architect

(Paragraphs deleted)

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

will, within ten (10) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.6.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.6.1.

§ 9.5.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

(Paragraphs deleted)

§ 9.6 Decisions to Withhold Certification

§ 9.6.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.5.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.5.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.6.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.6.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.6.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.6.4 If the Architect withholds certification for payment under Section 9.6.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

(Paragraphs deleted)

§ 9.7

(Paragraphs deleted)

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

Progress Payments

§ 9.7.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.7.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.7.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.7.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.7.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.7.2, 9.7.3 and 9.7.4.

§ 9.7.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.7.7 Payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. However, Contractor shall comply with the provisions of the Texas Trust Fund Act, Chapter 162 of the Texas Property Code.

§ 9.7.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.8 Failure of Payment

Failure of payment by Owner within the time limits proscribed by chapter 2251 of the Texas Government Code shall entitle the Contractor to the remedies contained in that chapter. Further, should the Owner fail to pay the Contractor any sums for which a Certificate for Payment has been issued within sixty (60) days, the Contractor may suspend performance of the Work until such payment of the amount owing has been received. A suspension under this section shall entitle the Contractor to an increase in the Contract Sum for all costs associated with the suspension provided the Contractor files a claim in accordance with Article 15 herein.

(Paragraphs deleted)

§ 9.9 Substantial Completion

§ 9.9.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.9.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of

Init.

/

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.9.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.9.3.1 Inspections required and defined in Paragraphs 9.9.3, and 9.11.1 of the General Conditions are a component of the Architect's Basic Services. Additional inspections which result from the Contractor's failure to complete the Work of the Contract within the specified time are in addition to the Architect's Basic Services and will therefore be the responsibility of the Contractor and said costs shall be deducted by the Owner from the Contractor's Application for Payment. Costs deducted will be based on the Architect's invoices for these additional services. Costs related to additional inspections which results from the Contractor's repeated failure to correct defective or incomplete Work are the responsibility of the Contractor, costs for the additional inspections of the Architect shall be deducted by the Owner from the Contractor's Application for Payment. Costs deducted will be based on the Architect's invoices for cost of additional services and inspections.

§ 9.9.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.9.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.10 Partial Occupancy or Use

§ 9.10.1 The Owner may occupy or use any completed or partially completed portion of the Work provided such occupancy or use is authorized by public authorities having jurisdiction over the Project.

§ 9.10.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.10.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

(Paragraphs deleted)

§ 9.11 Final Completion and Final Payment

§ 9.11.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. The Contractor's written notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1920559172)

constitute a further representation that conditions listed in Section 9.11.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.11.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits the following to the Architect:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied;
- .2 a release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier;
- .3 a certificate evidencing that the Contractor's liability insurance will remain in effect after final payment and will not be cancelled or allowed to expire prior to the period required by these contract documents;
- .4 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .5 consent of surety to final payment;
- .6 other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
- .7 a certified building location survey and as-built site plan in the form and number required by the Contract Documents;
- .8 all warranties and bonds required by the Contract Documents.

§ 9.11.3 If the Contractor is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER FOR ANY AND ALL COSTS INCURRED BY THE OWNER IN ADDRESSING, REMOVING, DISCHARGING OR OTHERWISE SETTLING A SUBCONTRACTOR OR SUPPLIER PAYMENT CLAIM, INCLUDING ALL ATTORNEYS' FEES.

§ 9.11.4 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.11.5 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner after final payment.

§ 9.11.6 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

- .1 all persons at the site and other persons who may be affected by the Work or other operations of the Contractor;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. **In the event the Contractor encounters on the Site material reasonably believed to be a Hazardous Material (other than those for which the Contractor may have specific responsibility for remediation under the Agreement), and the Contractor's reasonable precautions will be inadequate to prevent foreseeable damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Material, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and the Architect, in writing, within 24 hours of discovery.**

§ 10.3.2 Upon receipt of notice of suspected Hazardous Materials, Owner will cause an investigation to be made to verify the presence and extent of such materials, to determine whether such materials are in fact hazardous, and the steps necessary for their removal, containment or remediation.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 10.3.3 If the Owner's investigation confirms the presence of Hazardous Materials which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of Hazardous Material by the Owner, (ii) upon the removal, containment or remediation of the Hazardous Materials, or (iii) upon the establishment of appropriate safety precautions.

§ 10.3.4 The Contractor may request a change in the Contract Sum or Contract Time if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate Hazardous Materials which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Agreement. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of discovery of any Hazardous Materials, which has not been rendered harmless, pursuant to Articles 7 and 15 herein.

§ 10.3.5 THE CONTRACTOR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.

(Paragraph deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance Requirements

§ 11.1.1 The Contractor's insurance requirements are contained in Exhibit A to these General Conditions and are incorporated verbatim as if printed herein. Contractor's insurance obligations in article 14 of the AIA A133 and below take precedence over Exhibit A.

§ 11.1.1.1 Alternate Contractor's insurance and bonding requirements are contained in Exhibit B. Contractor intends to comply with the requirements through implementation of a contractor Controlled Insurance Program (CCIP), which will include Commercial General Liability, Automobile Liability, Excess Liability and Worker's Compensation insurance as set forth in Exhibit B. Additional coverage for 'Of-Site' work and non-CCIP covered claims shall also be provided, as described in Exhibit B, including Professional Liability, Pollution Liability, and Builder's Risk coverage. If the Contractor fails to purchase and maintain or require to be purchased and maintained, any insurance required under the Agreement, the Owner may, but shall not be obligated to, upon five (5) days written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall in addition to all other rights available to Owner under the Contract and/or law, be entitled to be reimbursed by the Contractor upon demand.

(Paragraphs deleted)

§ 11.2 Owner's Insurance

The Owner is self-insured and is not required to purchase or maintain liability insurance.

(Paragraphs deleted)

§ 11.3 Property Insurance. The Owner is self-insured and is not required to purchase or maintain property insurance.

(Paragraph deleted)

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Contractor shall provide performance and payment bonds in accordance with chapter 2253 of the Texas Government Code.

Init.

/

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect and upon written approval by the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request, subject to written approval by the Owner, to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the

init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

Work pursuant to the warranties provided, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 VENUE

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

(Paragraphs deleted)

§ 13.3 Successors and Assigns

§ 13.3.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as in whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract and the attempted assignment shall be of no legal force or effect as to the other party.

(Paragraph deleted)

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

(Paragraphs deleted)

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections, and approvals. The Contractor must first obtain the Owner's written approval of any independent testing laboratory that will sample and test any materials at the Project as may be required by the Contract Documents. The Contractor must inform the Owner of all scheduled tests. All tests, inspections or specific approvals required by law or the Contract Documents must be scheduled, coordinated and performed in a manner so as to avoid any delay in the Work. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 13.5.3 If procedures for testing, inspection, or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 In addition to the tests required by this Section 13.5, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

§ 13.6 Document Retention and Audit Provisions

The Contractor shall account for all materials, equipment and labor entering into the Work and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract Documents for a period of four years after final payment. Furthermore, the Owner has the right to examine the Contractor's and its Subcontractors' and suppliers' records directly or indirectly pertaining or relating to the Work or the Agreement and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for four years after final payment.

§ 13.7 Texas Public Information Act Requests

A. The Contractor recognizes that this Project is publicly owned and the Owner is subject to the disclosure requirements of the Texas Public Information Act ("TPIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights in section 13.6.

B. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of the Owner. The Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to Owner for the duration of the Contract; (2) promptly provide to Owner any contracting information related to the contract that is in the custody or possession of the entity on request of Owner; and (3) on completion of the contract, either:

- (A) provide at no cost to Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- (B) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to Owner.

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be

(Paragraphs deleted)
stopped.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on such work, profit on unperformed work, and direct job costs incurred by reason of such termination.

(Paragraph deleted)

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate the Contractor's right to perform under the Contract and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, attorneys' fees and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.2.5 In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement, emergency, and other applicable exemptions pursuant to sections 262.003 and 262.024 of the Local Government Code. In the event of a claim by Owner for completion costs following termination by the Owner or abandonment by the Contractor, the exercise of Owner's rights under this section shall not be grounds for challenging the reasonableness of the costs incurred or the Owner's damages.

§ 14.2.6 In the event of a termination for cause pursuant to this section and a demand by Owner on the Contractor's performance bond surety and guarantor to take-over and complete the Work, said surety must commence performance within thirty (30) days of the termination.

§ 14.2.7 In the event of a determination by a court or other authority to whom a dispute between the Parties has been submitted that a termination for cause under this section 14.2.2 was either wrongful, improper, or unjustified for any reason, the termination shall automatically be deemed a termination for convenience pursuant to section 14.4.5 below and the Contractor's remedy for such termination shall be limited to the recoveries allowed pursuant to section 14.4.3.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall not include additional profit. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice, and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; direct job costs incurred by reason of the termination, including costs attributable to termination of Subcontracts.

ARTICLE 15 CLAIMS AND DISPUTES**§ 15.1 Claims****§ 15.1.1 Definition**

A Claim is a written demand by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker. Notice of claims should be provided contemporaneously with the events giving rise to the claim or concurrent to the time the claimant recognizes the condition giving rise to the claim. Failure to provide timely notice and preserve conditions and records to substantiate a claim may result in the diminishment or denial of a claim. Failure to provide notice required by the Contract Documents and this Section 15.1.3 within ninety (90) days of the occurrence or event giving rise to the claim shall constitute an express waiver and complete bar to recovery for any adjustment to the Contract Time, Contract Sum, or other damages and accommodations.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.8 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Failure to provide written notice of a Claim in accordance with section 15.1.3 and other applicable provisions of the Contract Documents constitutes an express waiver by the Contractor of any right of recovery on such Claim.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes:

- .1 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, bonding capacity, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.8 LIMITATION OF DAMAGES

The Contractor expressly acknowledges, to the exclusion of all other damages, the total amount of money awarded in an adjudication brought against the Owner for breach of this Contract shall be limited to the following:

- .1 The balance due and owed by the Owner under this Contract as it may have been amended;
- .2 The amount owed for approved change orders or additional work the Contractor was directed to perform by the Owner in connection with this Contract;
- .3 Reasonable and necessary attorney's fees that are equitable and just; and
- .4 Interest as allowed by law, including interest as calculated under the Texas Government Code Chapter 2251.

§ 15.1.9 Notwithstanding any other limitation of damages set forth in this Contract, the total amount of damages awarded in an adjudication brought against the Owner arising under this Contract shall not include:

- .1 Consequential damages, including those waived under Section 15.1.7;
- .2 Exemplary damages;
- .3 Damages for unabsorbed home office overhead; or

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

.4 Damages not expressly permitted under Paragraph 15.1.8.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3 and 10.4, shall be referred to the Initial Decision Maker for initial decision. Unless expressly waived by the Parties, in writing, the provisions of this Section 15.2 shall be a condition precedent to any further dispute resolution or adjudication of claims. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraphs deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to filing suit.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing.

§ 15.3.3 The parties shall select a mediator, as well as the time and location for the mediation, by agreement. Should the parties be unable to agree upon a mediator, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement.

init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 13:10:37 ET on 03/15/2024 under Order No.2114449710 which expires on 08/15/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1920559172)



New Braunfels Utilities Construction Manager as Constructor

- Action Item

- March 28, 2024

Agenda

- Introduction
- Background
- Staffing projections
- CM solicitation timeline
- CM Selection Criteria
- Final Scoring
- SpawGlass qualifications
- Project overview
- Risk management
- Financial impact
- Next steps
- Schedule
- Summary
- Questions

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

- **Headquarters Need**
 - The 2017 Facility Master Plan identified a need for larger administration, operational, training, and maintenance facilities
 - Desire to consolidate staff at one location to improve collaboration and communication
 - Multiple staffing studies indicated substantial growth of the Utility over the next 20 years and a need to decrease the number of customers per employee
 - The existing Main Plaza facility is old and has issues with parking, physical security, and alterations would require upgrades for building, fire, and ADA code compliance
 - The existing Service Center facility is at capacity, FM 306 traffic makes building access difficult and unsafe, existing site is not large enough to accommodate NBU needs based on staffing studies
 - Determined that the acquisition of additional property was needed to accommodate a single consolidated Headquarters Facility
- **Action Item Purpose**
 - Seek approval from the Board of Trustees to move forward with the selected Construction Manager (CM) to construct the new headquarters facility

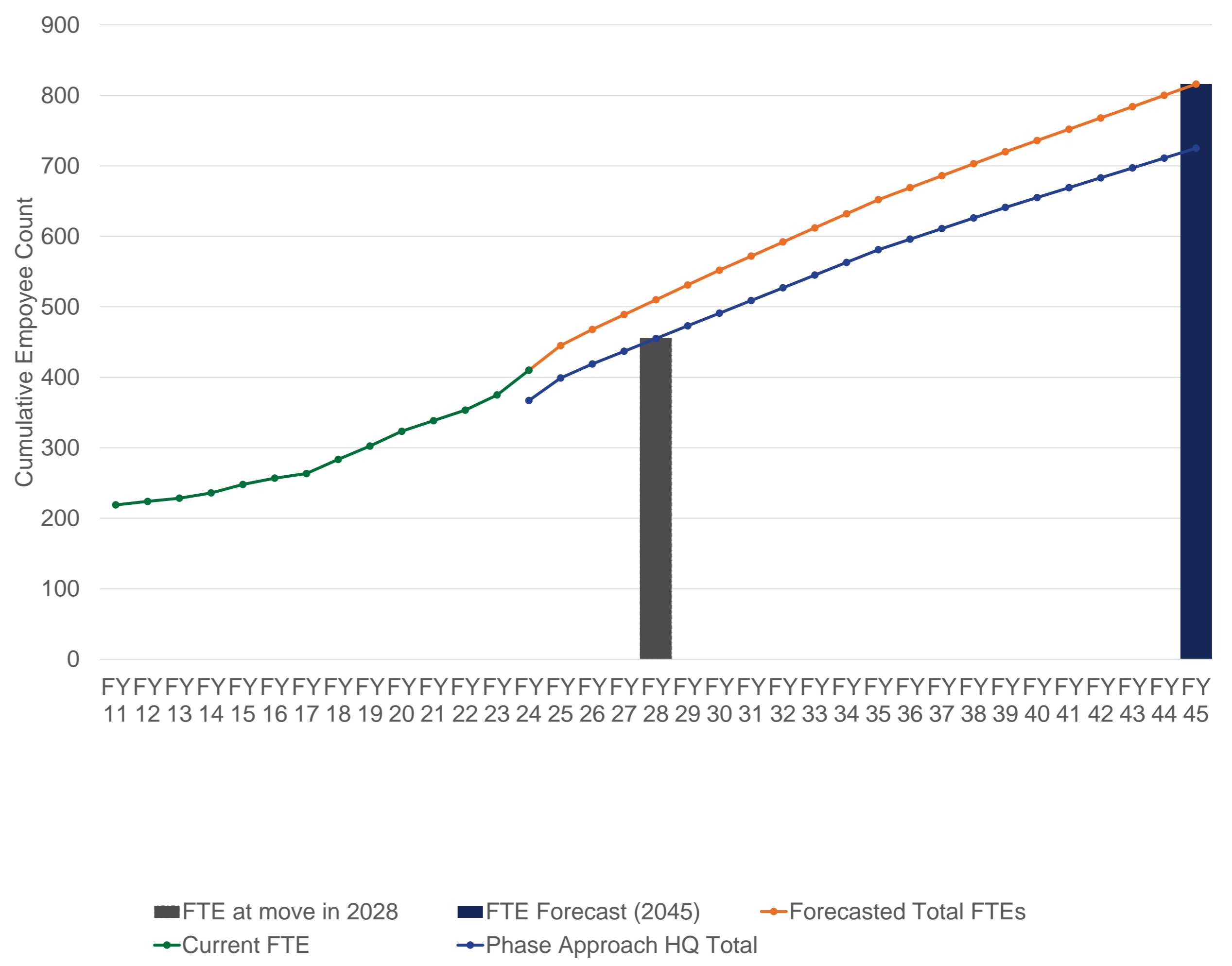


Background



Staffing Projections for HQ

- **CM solicitation originally issued for up to 800 FTEs**
- **NBU staff evaluated three staffing models and projected 725 FTEs at the HQ location in the year 2045.**
- **725 number was presented and approved at January 18th Strategic Board Retreat**
- **Staff at move-in to HQ FY 2028 – 455**
- **Staff at HQ in FY 2045 - 725**



CM Solicitation Timeline

- **November 3 - New Braunfels Utilities (NBU) Solicited for a Construction Manager at Risk (CMAR)**
- **November 21 - NBU hosted a pre-bid meeting**
- **November 29 - NBU hosted a site visit**
- **December 12 - NBU opened five proposals**
 - Cadence McShane
 - Flintco LLC
 - Joeris General Contractors
 - Morganti Texas
 - SpawGlass Contractors
- **January 2 – NBU evaluation team met and shortlisted the top two contractors**
 - Joeris General Contractors
 - SpawGlass Contractors
- **January 9 – NBU interviewed two short-listed contractors**

CADENCE
MC SHANE
CONSTRUCTION

FLINTCO

JOERIS
General Contractors

MORGANTI
A SOLID FOUNDATION

SpawGlass

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


NBU NEW BRAUNFELS
UTILITIES

Selection Criteria

- Criterion One - Respondent's pricing and delivery proposal (35 Points)
- Criterion Two - Respondent's experience and past performance on similar projects (25 Points)
- Criterion Three - Respondent's project planning and scheduling for this project (25 Points)
- Criterion Four - Respondent's estimating and cost control measures for this project (10 Points)
- Criterion Five – References (5 Points)
- Criterion Six – Interviews (15 Points)
- Total Possible Score = 115 Points

Final Scoring

	Scores
Pre-Interview Ranking	96
Interview Score	15
Final Score	111

	Scores
Pre-Interview Ranking	100
Interview Score	15
Final Score	115

Spawglass

- **Ranked #1** after scoring and interview process
- **Lowest cost by \$1,012,000 in CM fees**
- **Proposed project, plan, and cost met parameters within RFP**
 - Total contract cost = \$145,000,000
- **Experienced staff**
 - Project Executive - 33 years of experience
 - Project Manager -15 years of experience
 - Superintendent 1 - 33 years of experience
 - Superintendent 2 - 12 years of experience
- **References (All positive)**
 - Frost Bank
 - Bill Miller
 - NuStar Energy
 - San Antonio Water Systems
 - Guadalupe Valley Electric Company



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

Spawglass (Continued)

- **Experience with similar sized projects and cost**
 - One Frost Corporate Headquarters - Four-level, 434,270 SF Class A office building and a 546,656 SF parking garage
 - Bill Miller Bar-B-Q Campus Headquarters – Multi-level, 280,000 SF Class A facility
 - NuStar Energy L.P. New Corporate Campus - Six-level, 300,000 SF Class A facility
 - San Antonio Water Systems New Operations Center – Multiple building campus to include the design and construction of two new service centers on separate sites. Total building area was 47,806 SF
 - City of San Antonio Northwest and Southeast Service Centers - Multiple building campus to include the design and construction of 10 new buildings



Project Overview

- **Property**

- 76-acre property located at IH-35 and Engel Road

- **Headquarters Facility**

- 200,000 SF office building to house 725 employees
- 20,000 SF climate controlled warehouse facility with a dock area for fleet vehicle access
- 30,000 SF equipment building
- 20,000 SF vehicle maintenance facility with vehicle lift capability, fluids distribution, and exhaust evacuation capabilities
- 880 total parking spaces for customers, employees, fleet, and deliveries
- Bulk storage yard
- Training and testing facilities
- Water ground storage tank and pump station
- Access roads off of IH 35 and FM 482 and required signalization



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

Risk Management

- **Use of a Construction Manager by way of a Construction Manager at Risk contract decreases possible risks**
 - Risk Allocation: CMAR shifts more of the construction risks from the owner to the CM. The CM is responsible for managing these risks,
 - Cost overruns
 - Schedule delays
 - Coordination issues
 - Contractual issues with subcontractors
 - Cost Control: The CMAR provides a Guaranteed Maximum Price (GMP) early in the process, allowing the owner to have cost certainty.
 - If costs exceed the GMP due to unforeseen circumstances, it's the CMAR's responsibility.

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

Financial Impacts

- **Total contract cost to include fees: \$145,000,000**
 - Disbursements to come from the Capital Projects fund for fiscal years 2024 – 2027
- **Alternative funding sources**
 - Sale of Main Office
 - Reimbursements from the sale of the Service Center after relocation
 - Possible sale of NBU Annex
- **Considered phasing options**
 - Future cost of construction out weighed current savings
 - Safety and security issues

Next Steps

1

Annexation

Currently working to get the entire property inside city limits to be considered at March 25 and April 8 City Council Meetings.

SD Completion

Schematic Design is the high level spatial design considering programming and site considerations.

2

3

DD Start

Design Development is the phase where the ideas from SD start to take shape in size and materials.

4

GMP Development

Guaranteed Maximum Price development is the how and how much packages.

Mission

Strengthening our community by providing resilient essential services



Vision

Be a trusted community partner dedicated to excellence in service



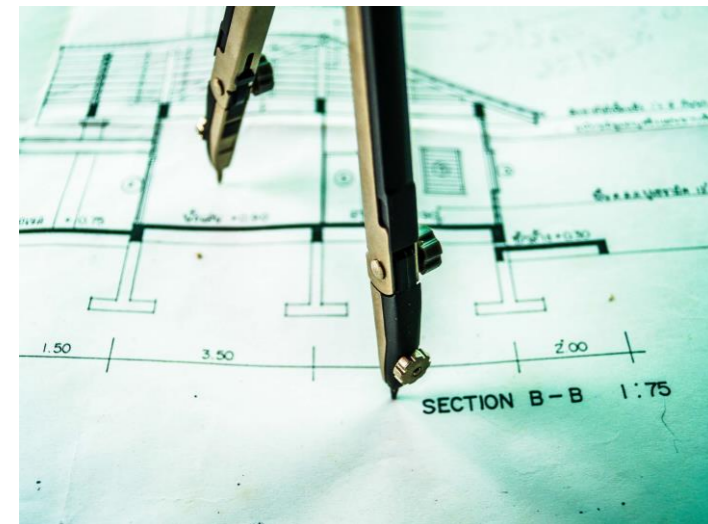
Core Values

Safety, Team, Integrity, Culture, and Stewardship

Anticipated Schedule



Move-in 3/2027-5/2027



Design
10/2023-12/2024

Construction
08/2024-4/2027



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

Summary

- The applicable State laws for solicitation were followed
- Five proposals were submitted evaluated and ranked
- Two respondents were interviewed
- Based on 6 criteria SpawGlass ranked first among all respondents with a perfect score of 115 points
- Staff requests the Board's approval to proceed with SpawGlass for the construction of the new headquarters.

Questions?

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



Meeting Date: March 28, 2024 **Agenda Type:** Presentation

From: Ashley Van Booven **Reviewed by:** Dawn Schriewer
 Director of Finance Chief Financial Officer

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

RECOMMENDED ACTION: Presentation on the Future Population Growth and Economic Outlook in the Texas Area from Real Estate Research Firm, Zonda Intelligence Corporation

BACKGROUND

Real Estate Research Firm, Zonda Intelligence Corporation, will provide a New Braunfels Housing Market Update.

The presentation will include information on the Mortgage Rate and Homebuyer Backdrop, Economy, Housing Demand, and Housing Supply.

FINANCIAL IMPACT

N/A

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

EXHIBITS

1. New Braunfels Housing Market Update Presentation

New Braunfels Utilities Board of Trustees

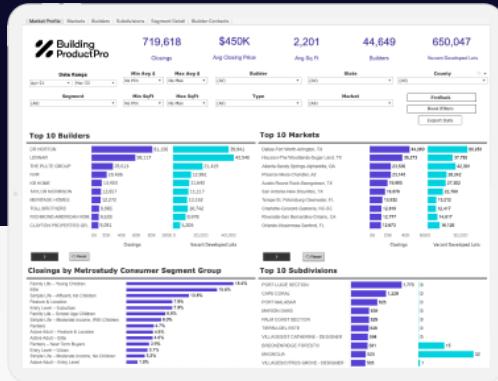
New Braunfels Housing Market Update



3/28/2024

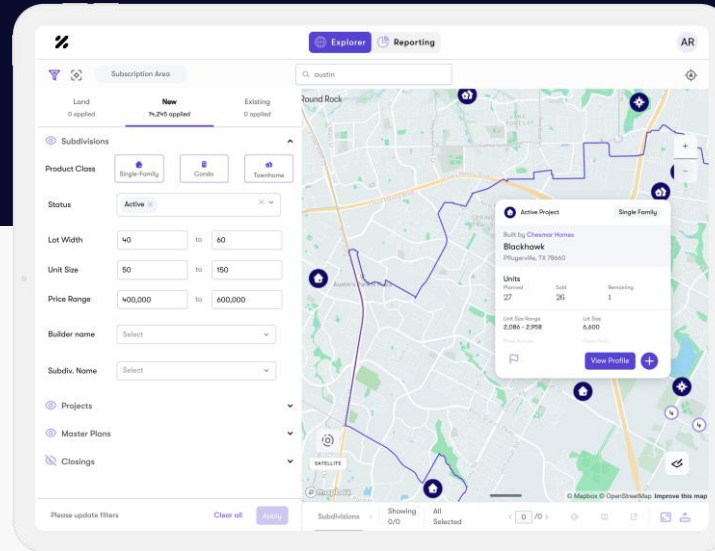
Bryan Glasshagel
Senior Vice President, Advisory
bglasshagel@zondahome.com

#1 provider in new home construction data solutions



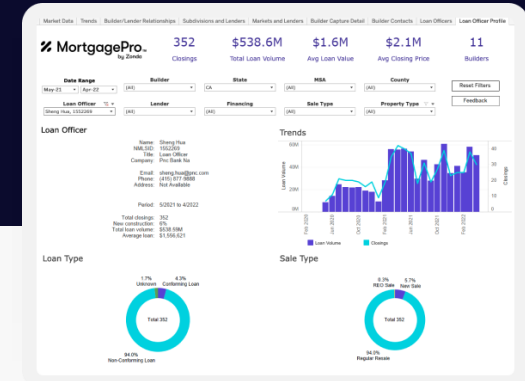
BuildingProductPro

Essential housing insights for building product suppliers



Enterprise

The complete data solution for home builders



MortgagePro

Helping mortgage lenders secure builder business

Today's Agenda

1. Mortgage Rate Backdrop
2. Economy
3. Housing Demand
4. Housing Supply
5. Final Thoughts



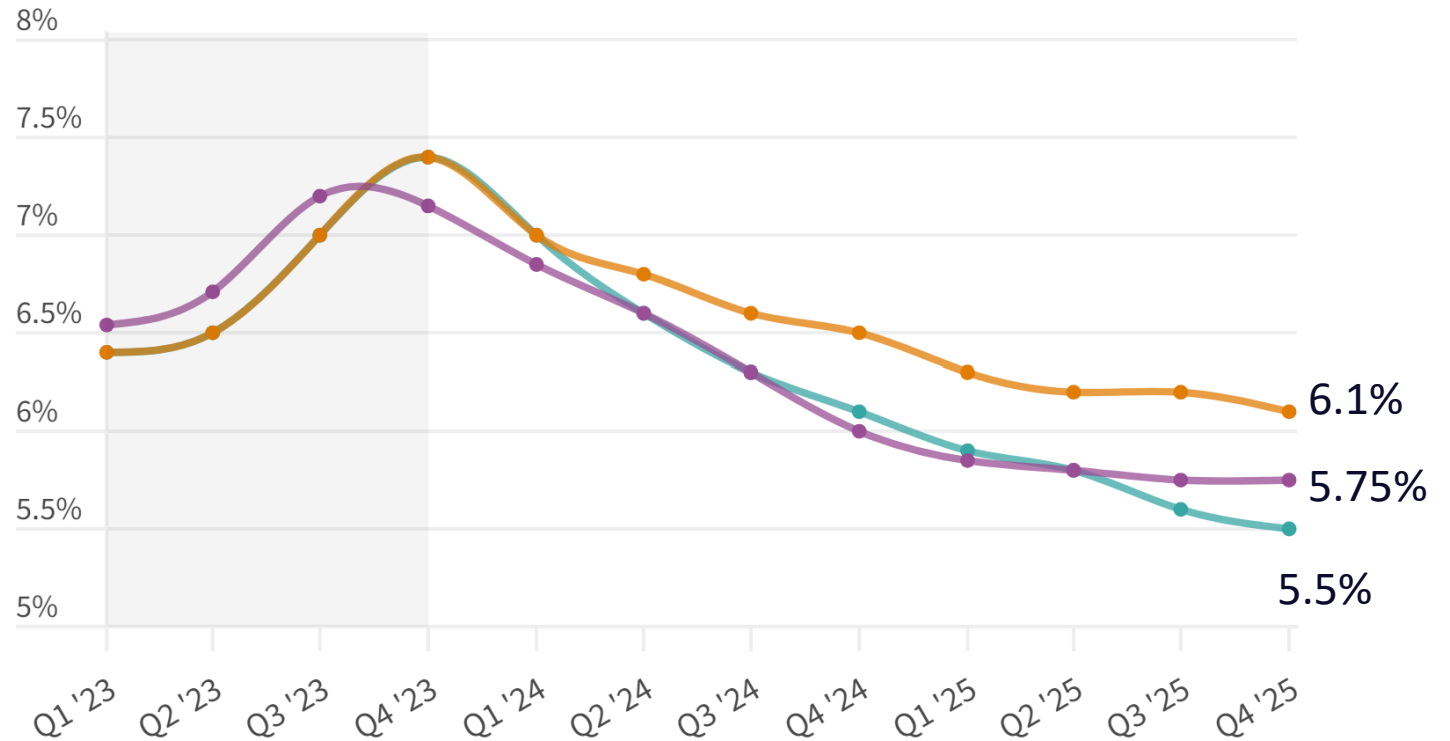
Mortgage Rate & Homebuyer Backdrop

Rates will likely be tricky for a while...

Future rate cuts. Mortgage rates are historically already down ~20% from peak at the start of the cuts (with a ~6 month lead time) and then hold relatively flat for the next year

Normalizing of spread. If the spread were to normalize back to the historical average, we would be looking at mortgage rates in the 5.0s/low 6.0s

30-Year Fixed Mortgage Rate Forecasts
 Fannie Mae, Mortgage Bankers Association, Wells Fargo



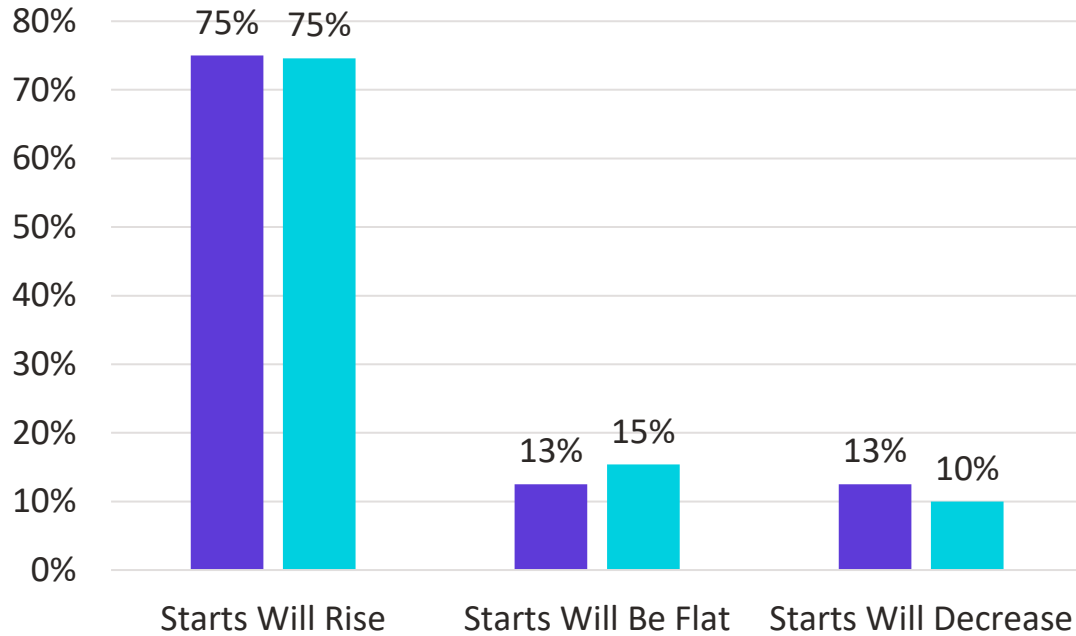
Sources: Fannie Mae, MBA, Wells Fargo • Shaded areas represent actuals.



Builder Outlook for 2024 is Improving

What is your plan for housing starts in 2024?

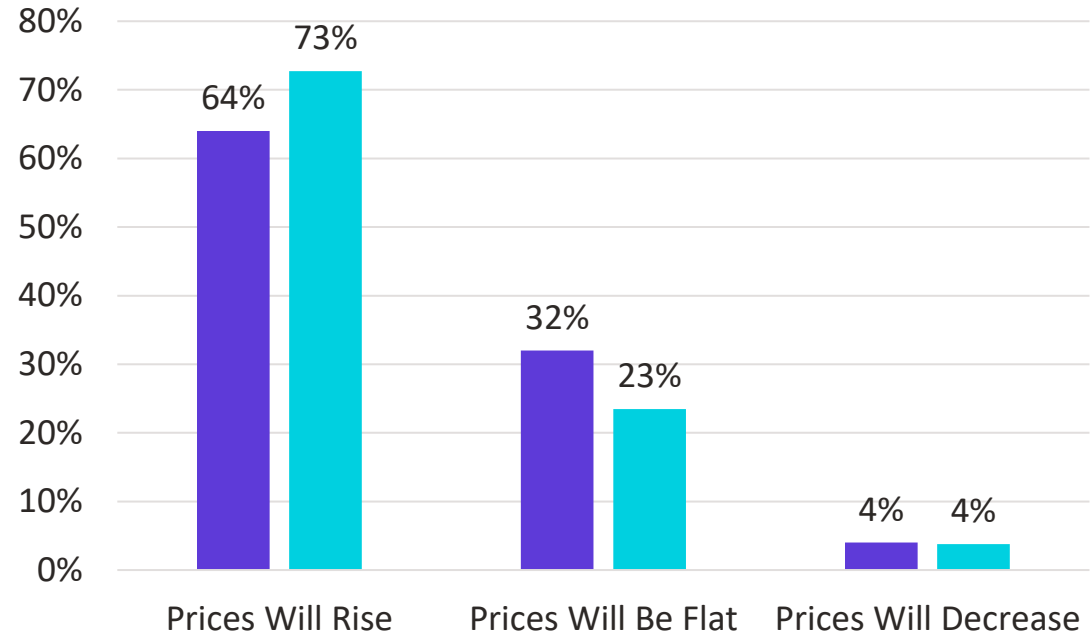
■ Texas ■ National



Texas Consensus: Up 10%+ in 2024

What do anticipate happening to home prices in 2024?

■ Texas ■ National



Texas Consensus: Up 1% to 5% in 2024

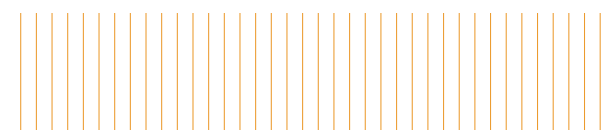
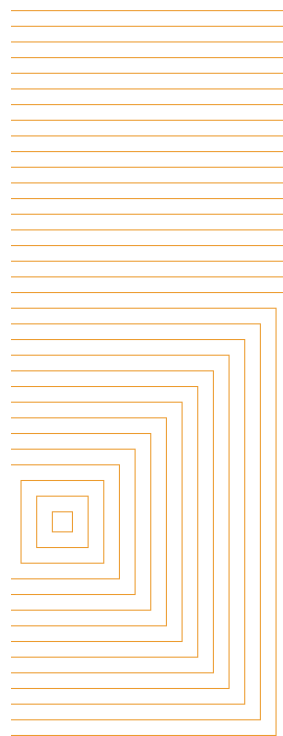
But Some Buyer Headwinds Remain in Texas

What are the biggest hurdles related to demand? (percentage of respondents)

1. Current mortgage rates (88%)
2. People choosing to wait and see (56%)
3. Consumer confidence (40%)
4. Buyers with credit issues (36%)
5. Homes prices (32%)

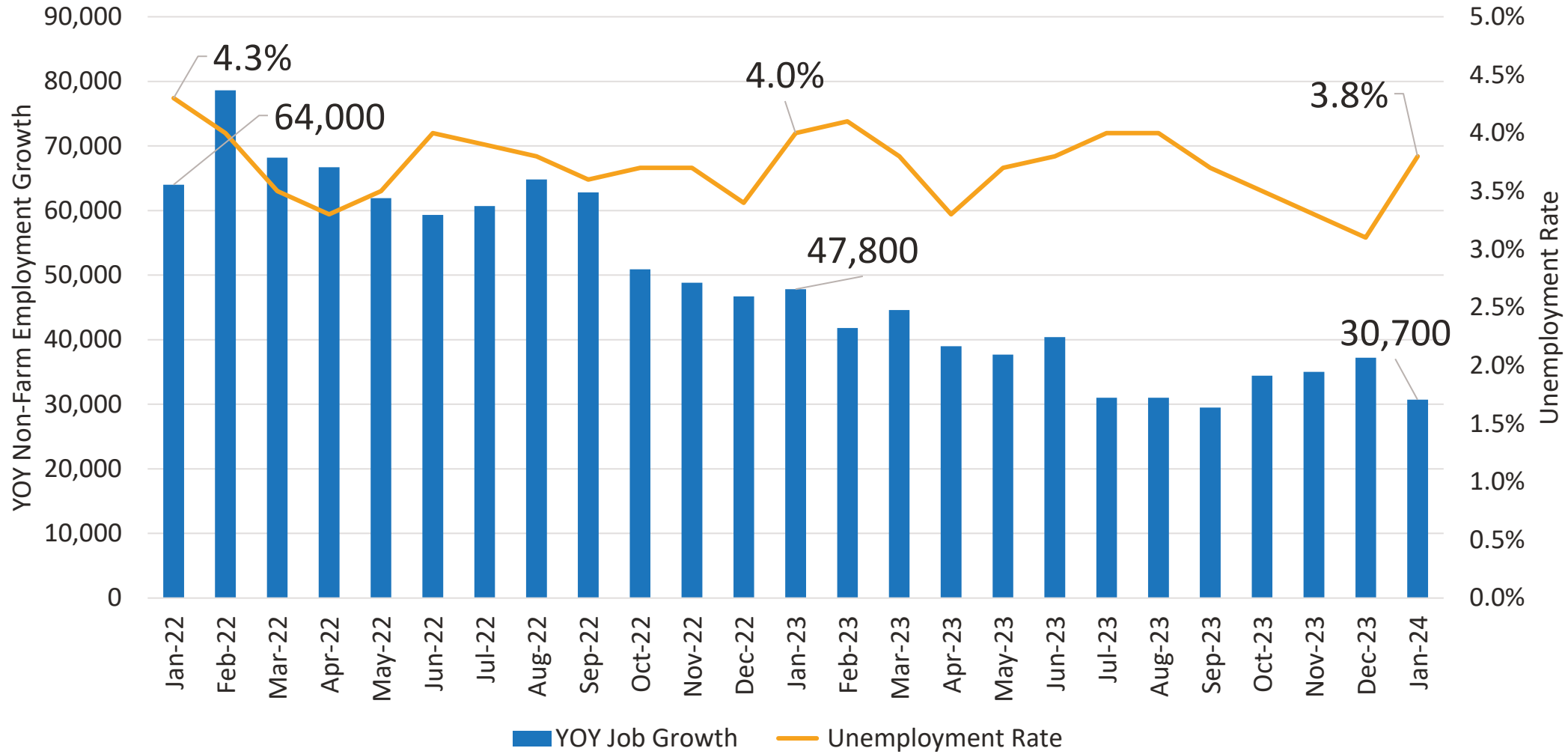
In response to higher rates/prices, buyers are... (percentage of respondents)

1. Stretching their budgets (80%)
2. Looking at smaller homes (68%)
3. Looking at different locations (52%)
4. Needing to pay down debt to qualify (36%)
5. Putting less money down (28%)

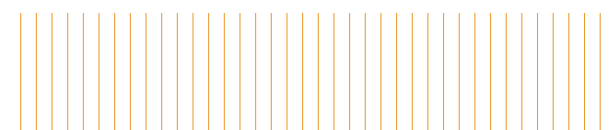
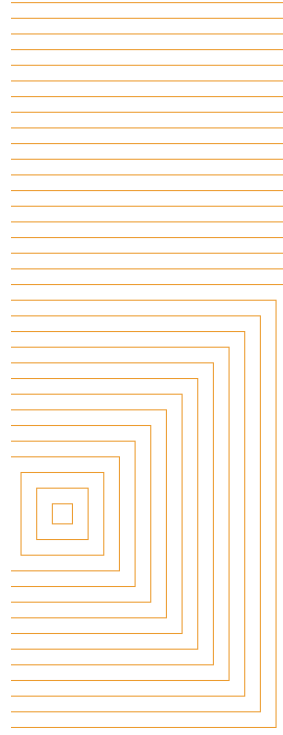
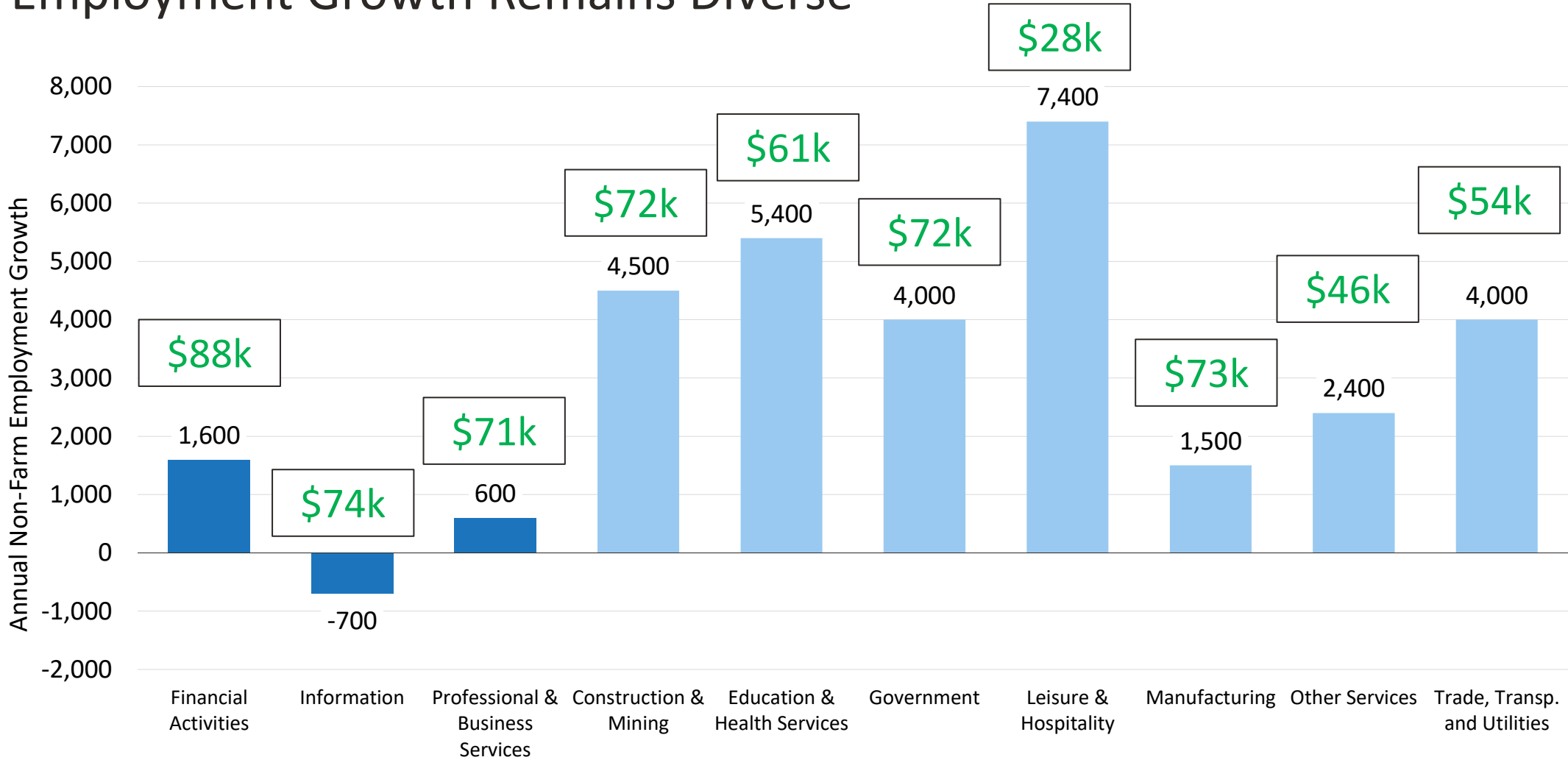


San Antonio Economy

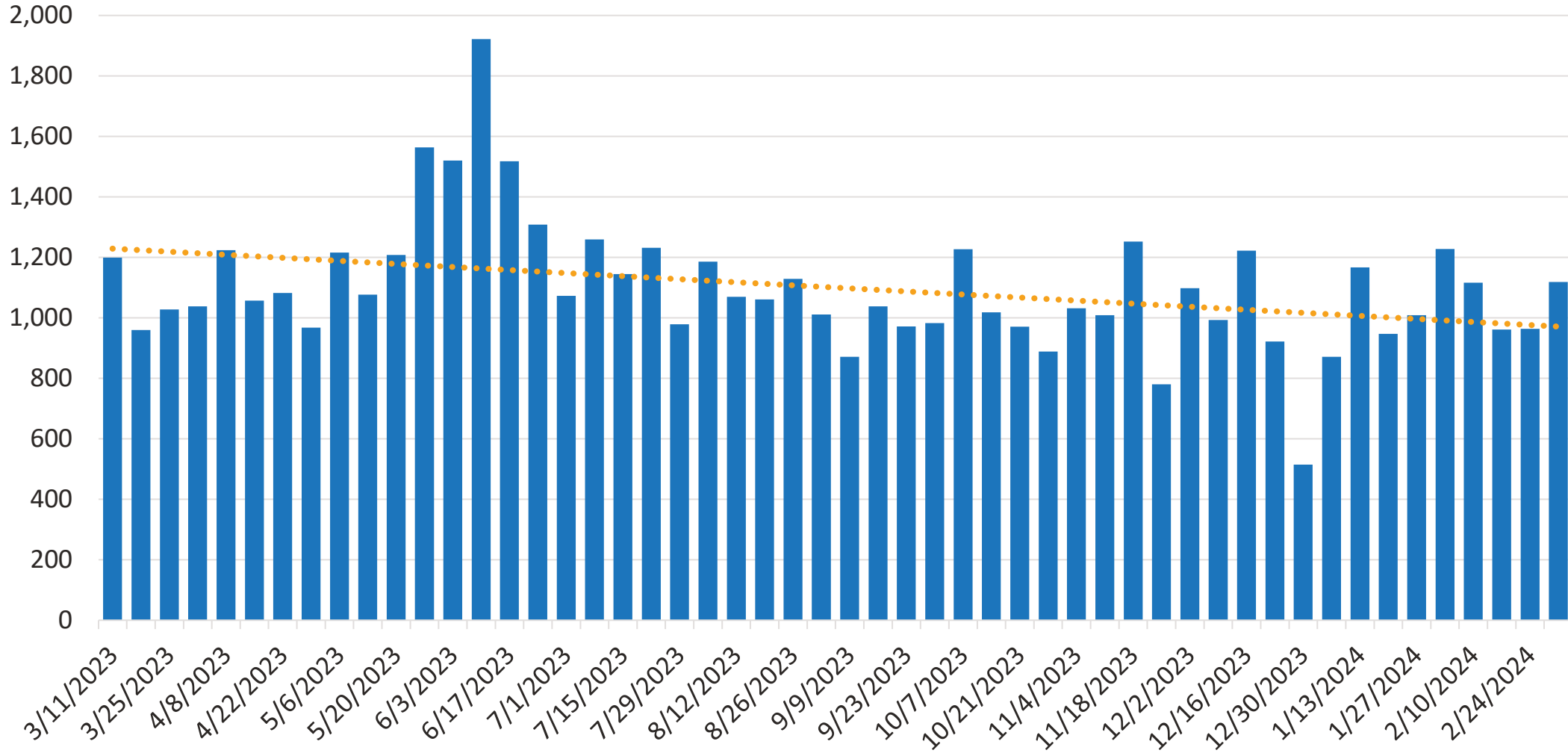
Job Growth Levels are Pulling Back With Near Full Employment



Employment Growth Remains Diverse

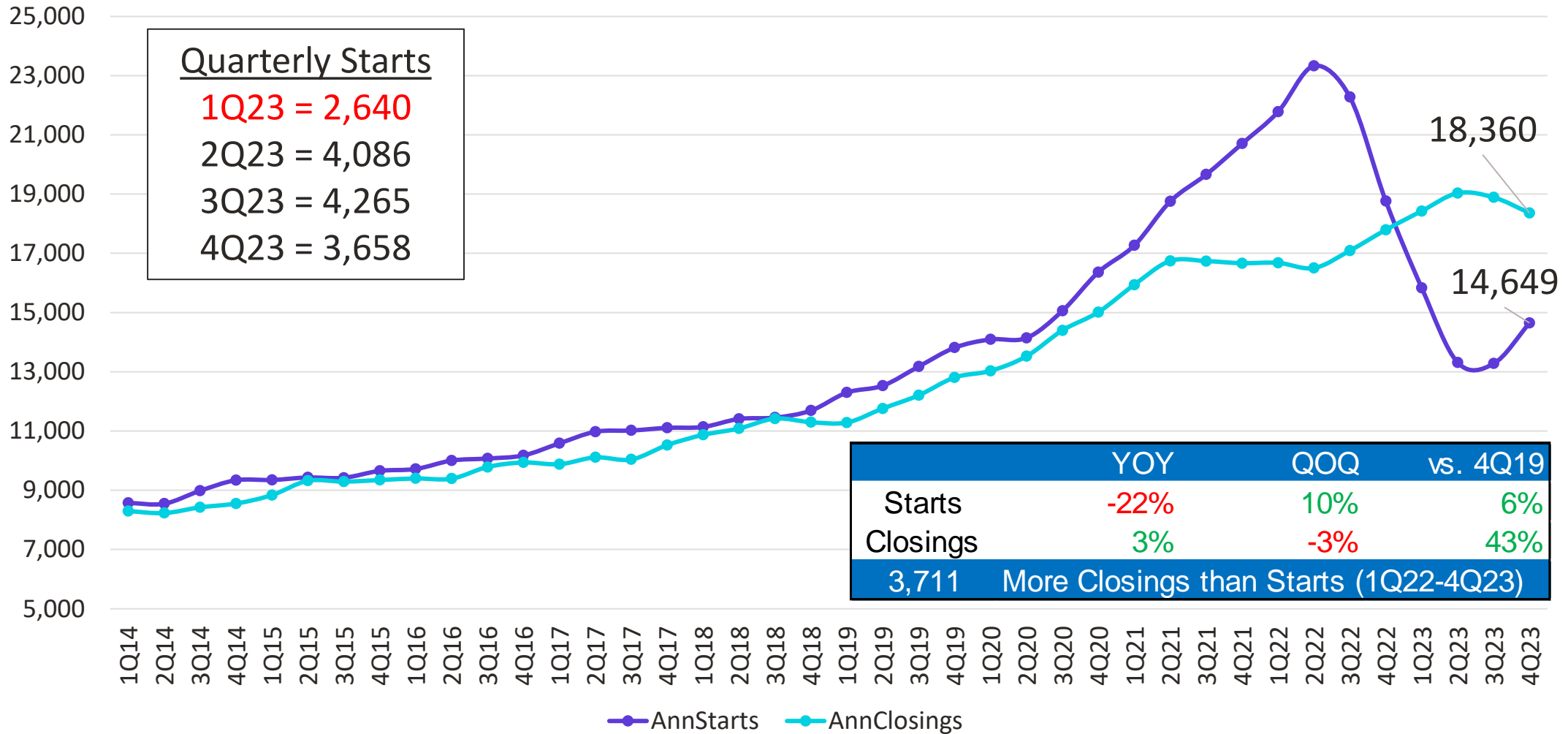


Initial Unemployment Claims Showing No Signs of Trouble

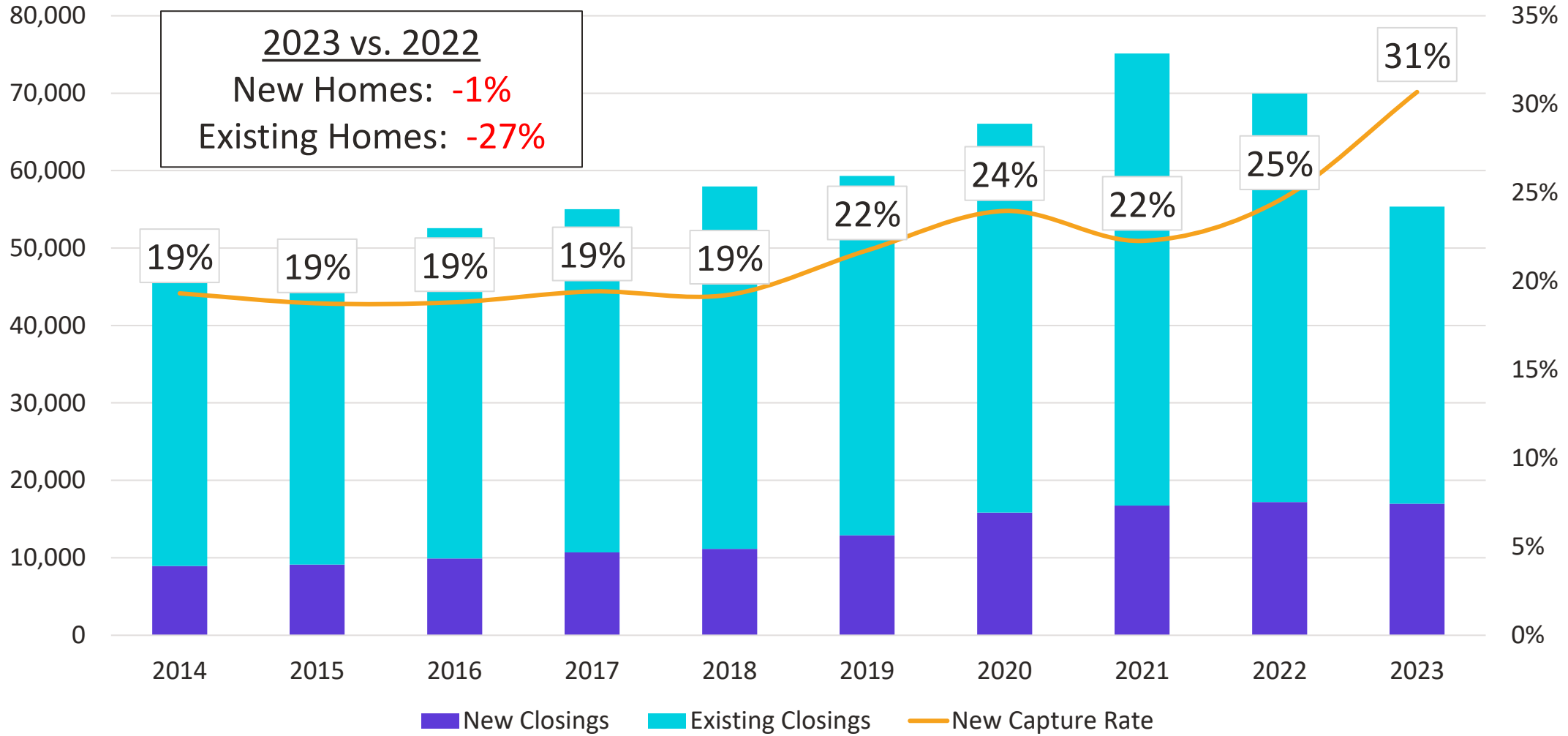


Housing Demand

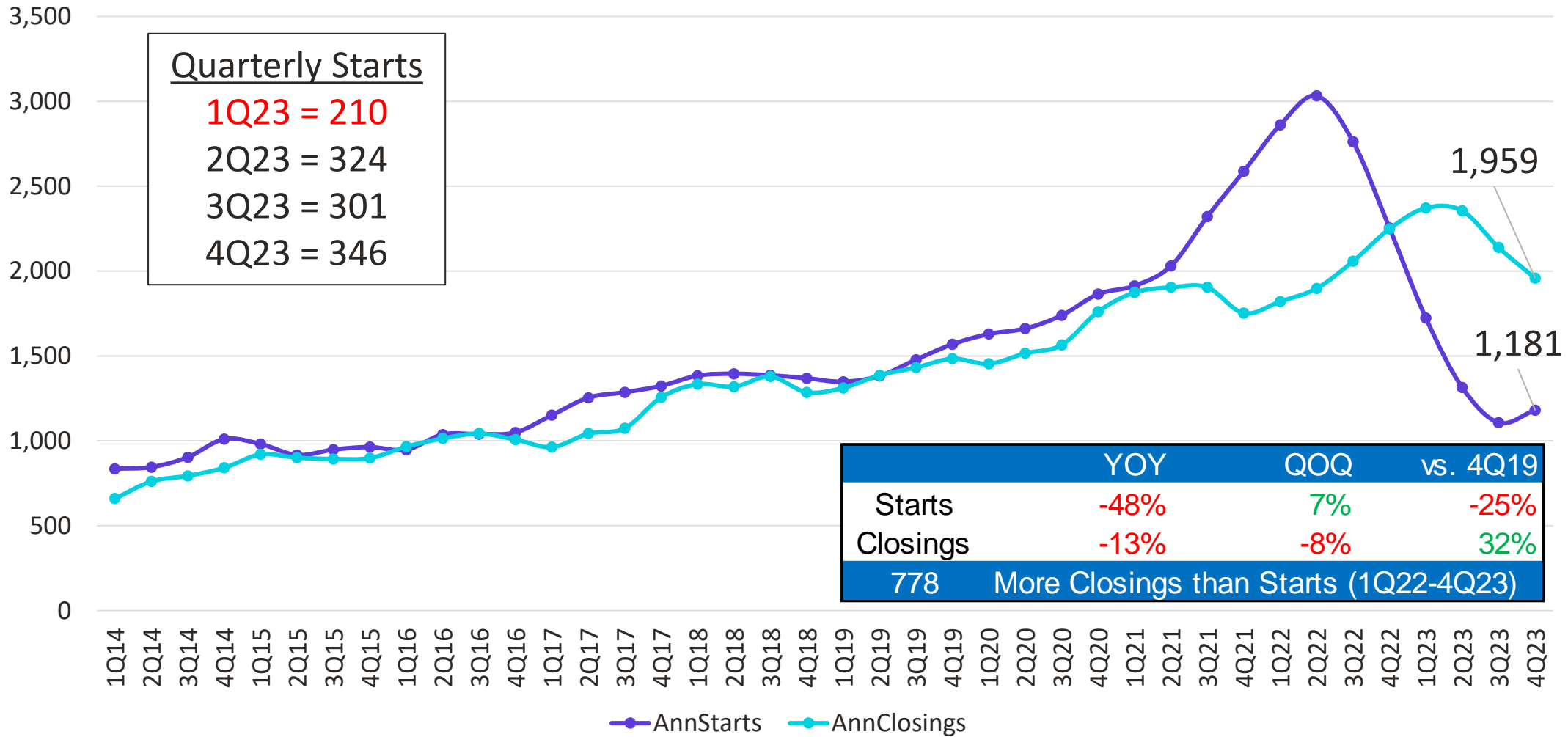
New Home Starts (San Antonio MSA)



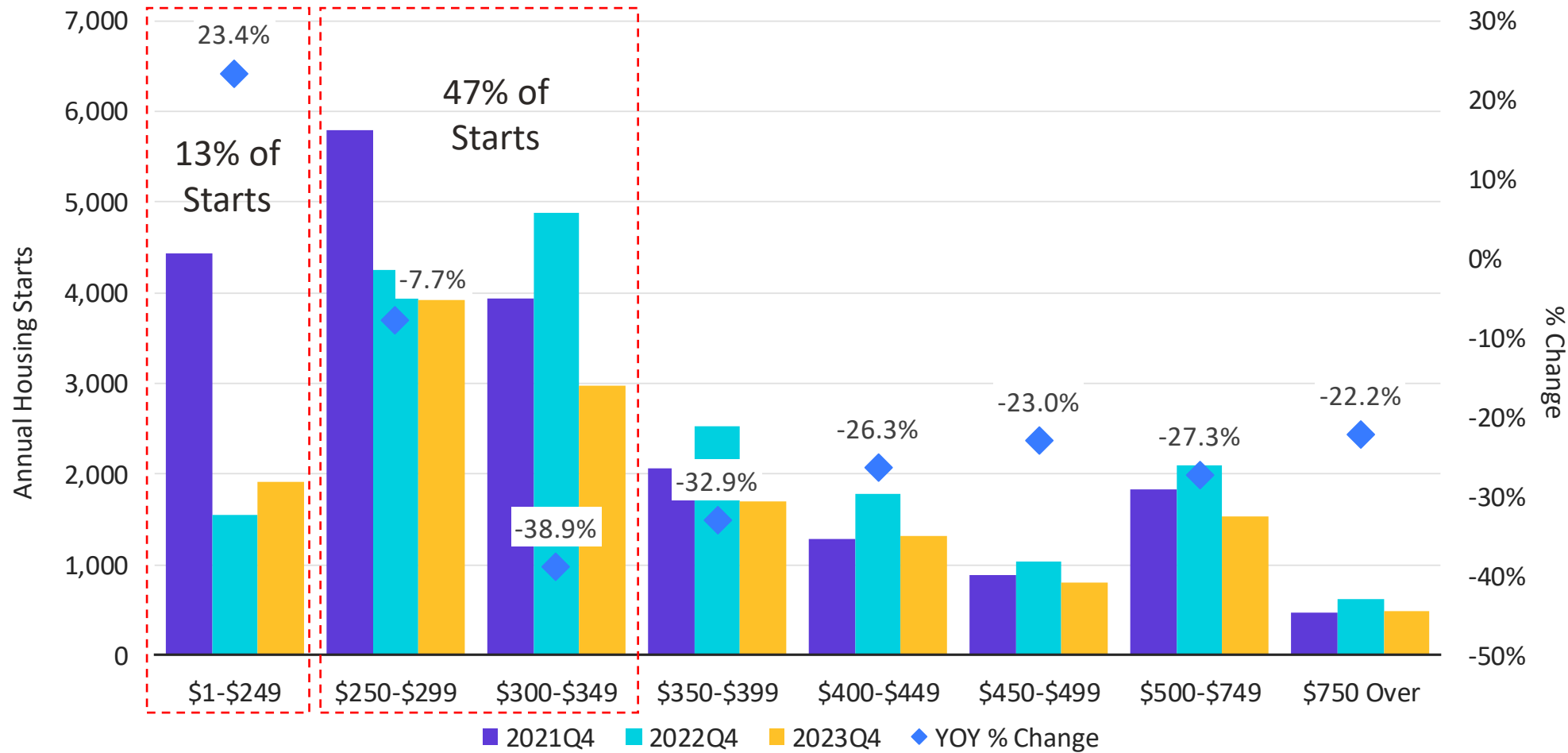
New Home Market Captured 31% of Total Closings in 2023



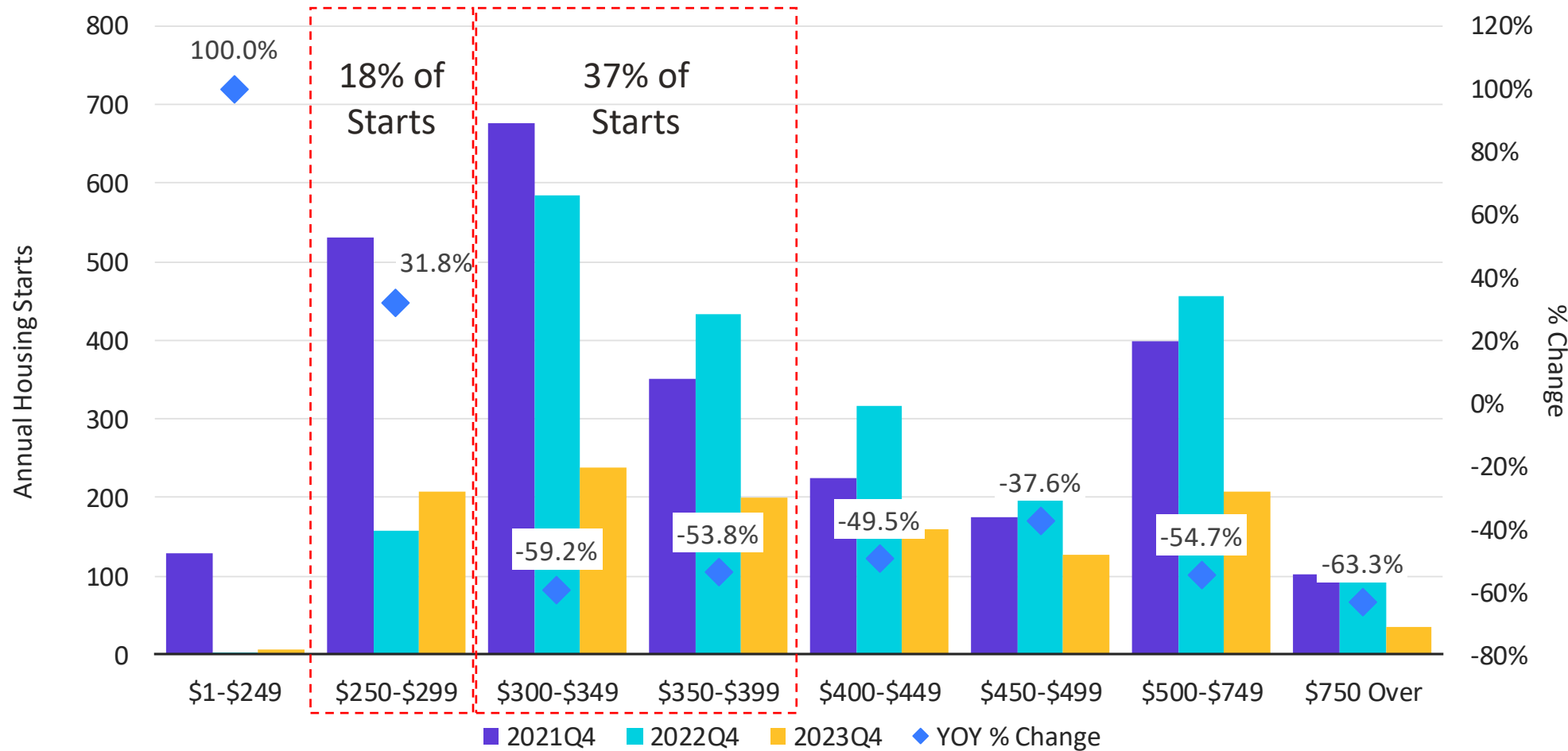
New Home Starts (NBU Electric Service Area)



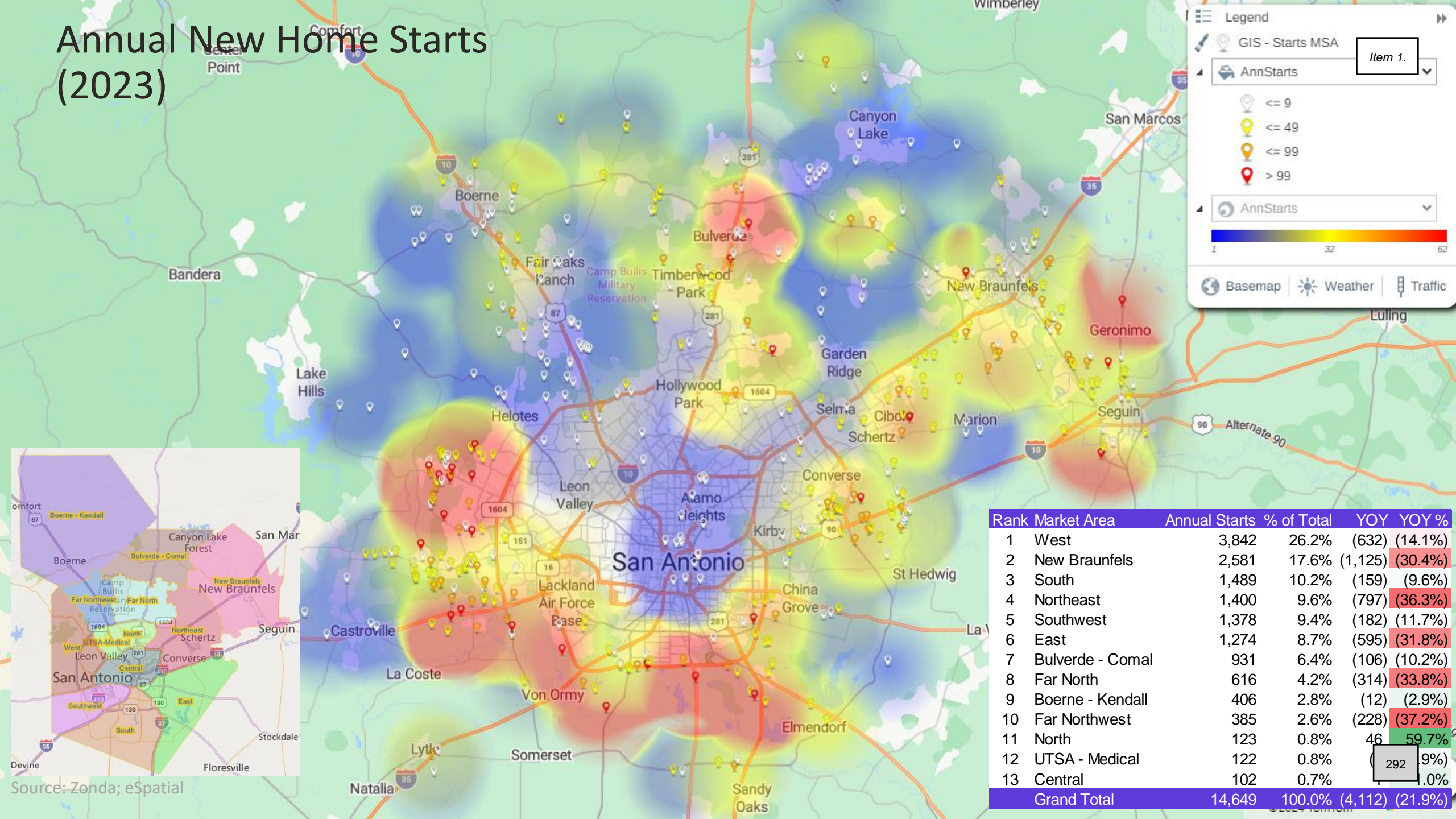
New Home Starts by Price Range (San Antonio MSA)



New Home Starts by Price Range (NBU Electric Service Area)



Annual New Home Starts (2023)



Legend

GIS - Starts MSA

Item 1.

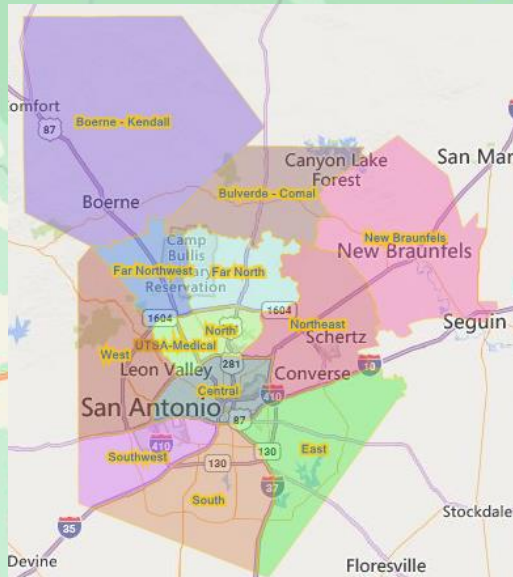
AnnStarts

- <= 9
- <= 49
- <= 99
- > 99

AnnStarts

Basemap Weather Traffic

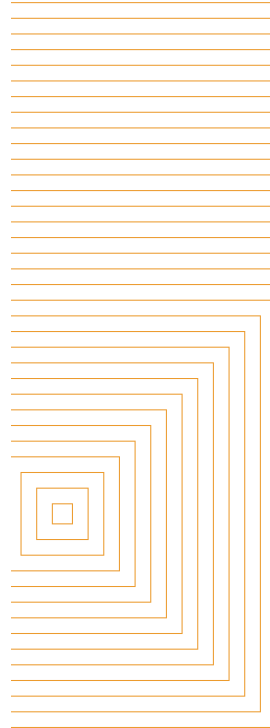
Rank	Market Area	Annual Starts	% of Total	YOY	YOY %
1	West	3,842	26.2%	(632)	(14.1%)
2	New Braunfels	2,581	17.6%	(1,125)	(30.4%)
3	South	1,489	10.2%	(159)	(9.6%)
4	Northeast	1,400	9.6%	(797)	(36.3%)
5	Southwest	1,378	9.4%	(182)	(11.7%)
6	East	1,274	8.7%	(595)	(31.8%)
7	Bulverde - Comal	931	6.4%	(106)	(10.2%)
8	Far North	616	4.2%	(314)	(33.8%)
9	Boerne - Kendall	406	2.8%	(12)	(2.9%)
10	Far Northwest	385	2.6%	(228)	(37.2%)
11	North	123	0.8%	46	59.7%
12	UTSA - Medical	122	0.8%	(292)	(9%)
13	Central	102	0.7%		1.0%
	Grand Total	14,649	100.0%	(4,112)	(21.9%)



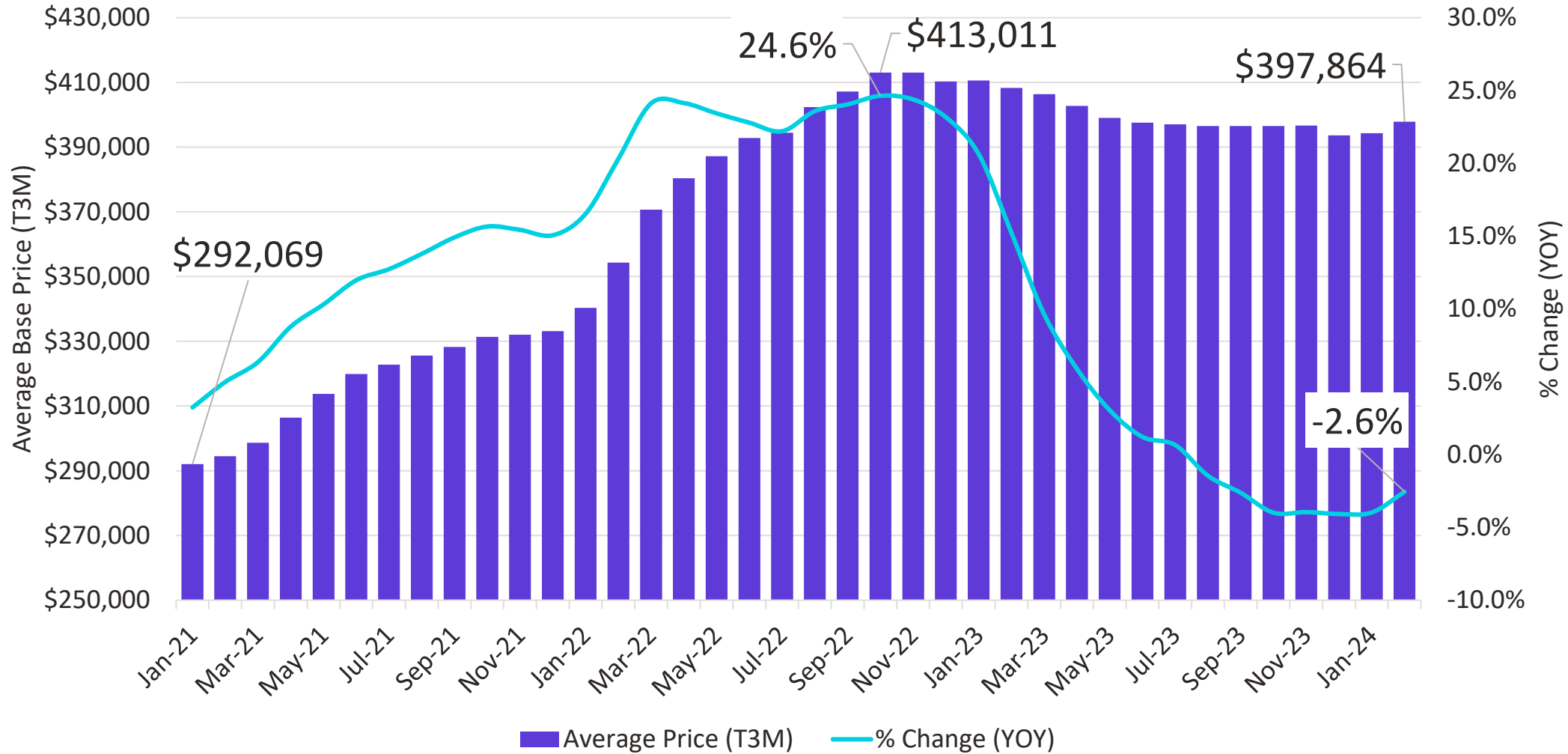
Source: Zonda; eSpatial

New Home Starts Are Down in Most Locations Across the Market

Rank	Market Area	Annual Starts	% of Total	YOY	YOY %
1	San Antonio	8,016	54.7%	(1,935)	(19.4%)
2	New Braunfels	1,483	10.1%	(1,061)	(41.7%)
3	Seguin	1,090	7.4%	(63)	(5.5%)
4	Converse	1,062	7.2%	(688)	(39.3%)
5	Bulverde	706	4.8%	(157)	(18.2%)
6	Boerne	593	4.0%	(53)	(8.2%)
7	Cibolo	401	2.7%	(129)	(24.3%)
8	Von Ormy	207	1.4%	9	4.5%
9	Spring Branch	184	1.3%	58	46.0%
10	Castroville	159	1.1%	41	34.7%
11	Marion	151	1.0%	24	18.9%
12	Saint Hedwig	150	1.0%	(83)	(35.6%)
13	Elmendorf	109	0.7%	(15)	(12.1%)
14	Schertz	101	0.7%	(82)	(44.8%)
15	Lytle	62	0.4%	(25)	(28.7%)
16	Pleasanton	53	0.4%	50	-
17	Canyon Lake	33	0.2%	(13)	(28.3%)
18	Bergheim	26	0.2%	20	333.3%
19	Universal City	21	0.1%	13	162.5%
20	Atascosa	13	0.1%	13	-
21	Helotes	10	0.1%	(30)	(75.0%)
22	Blanco	9	0.1%	6	200.0%
23	Mico	9	0.1%	(5)	(35.7%)
24	Adkins	1	0.0%	(7)	(87.5%)
Grand Total		14,649	100.0%	(4,112)	(21.9%)



San Antonio Detached New Home Base Prices Are Stabilizing



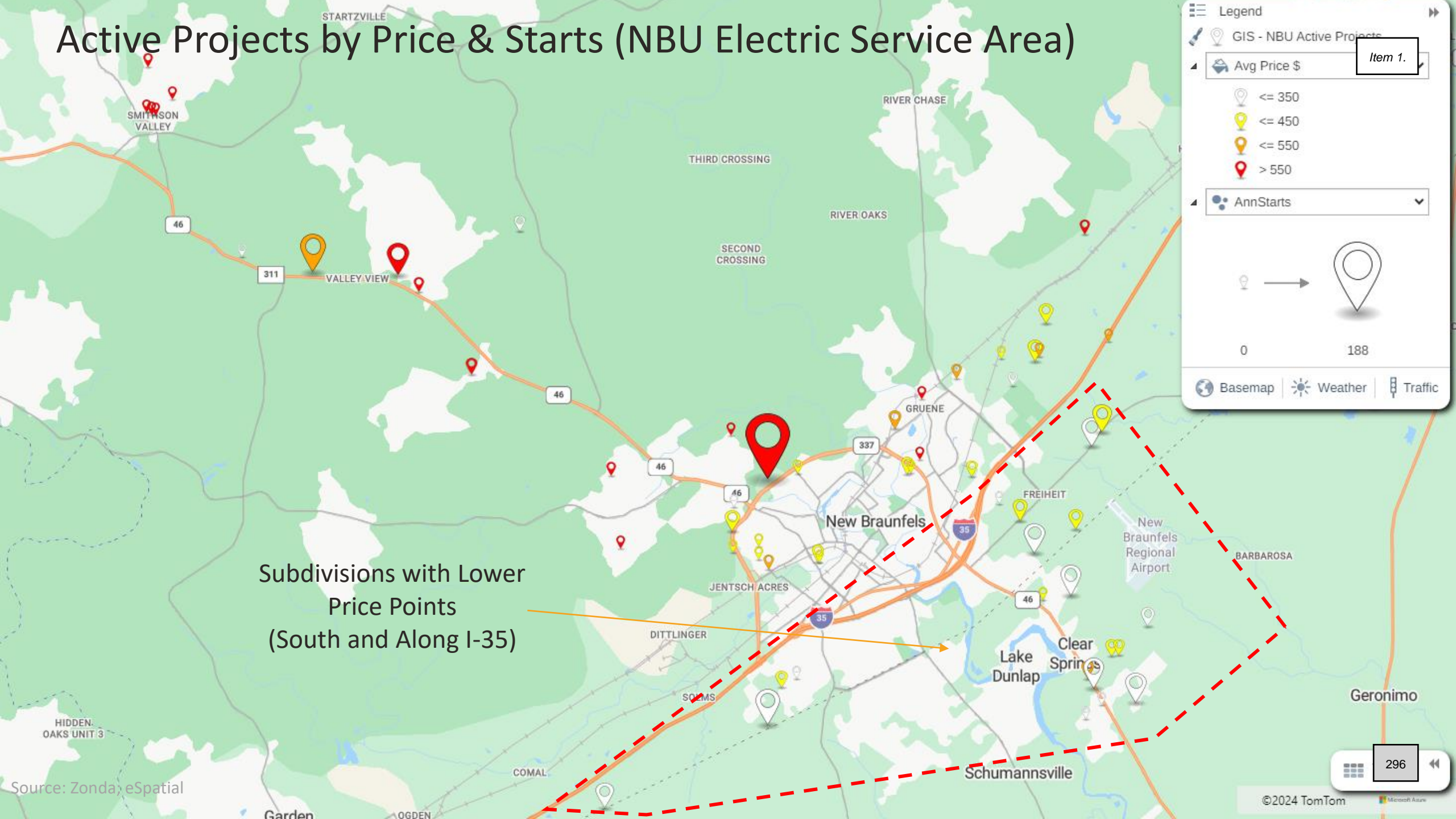
Base Prices Continue to Stabilize in New Braunfels

Price Trend	November 2023	December 2023	January 2024	Jan '24 vs. June '22
Increase (Avg. Change)	19% (+1.3%)	18% (+1.1%)	14% (+0.7%)	18% (+5.8%)
Flat (Avg. Change)	67% (0.0%)	66% (0.0%)	72% (0.0%)	0% (0.0%)
Decrease (Avg. Change)	14% (-3.4%)	15% (-3.1%)	14% (-2.1%)	82% (-10.4%)
Floorplans:	181	155	229	148

Base Prices ↔ + Mortgage Rate Buydowns ↑ + Impact Fees ↑ + Borrowing Costs ↑ + Sticky Land Prices ↔

Margin Compression

Active Projects by Price & Starts (NBU Electric Service Area)



Subdivisions with Lower Price Points (South and Along I-35)

Legend

GIS - NBU Active Projects

Item 1.

Avg Price \$

- <= 350
- <= 450
- <= 550
- > 550

AnnStarts

0 188

Basemap Weather Traffic

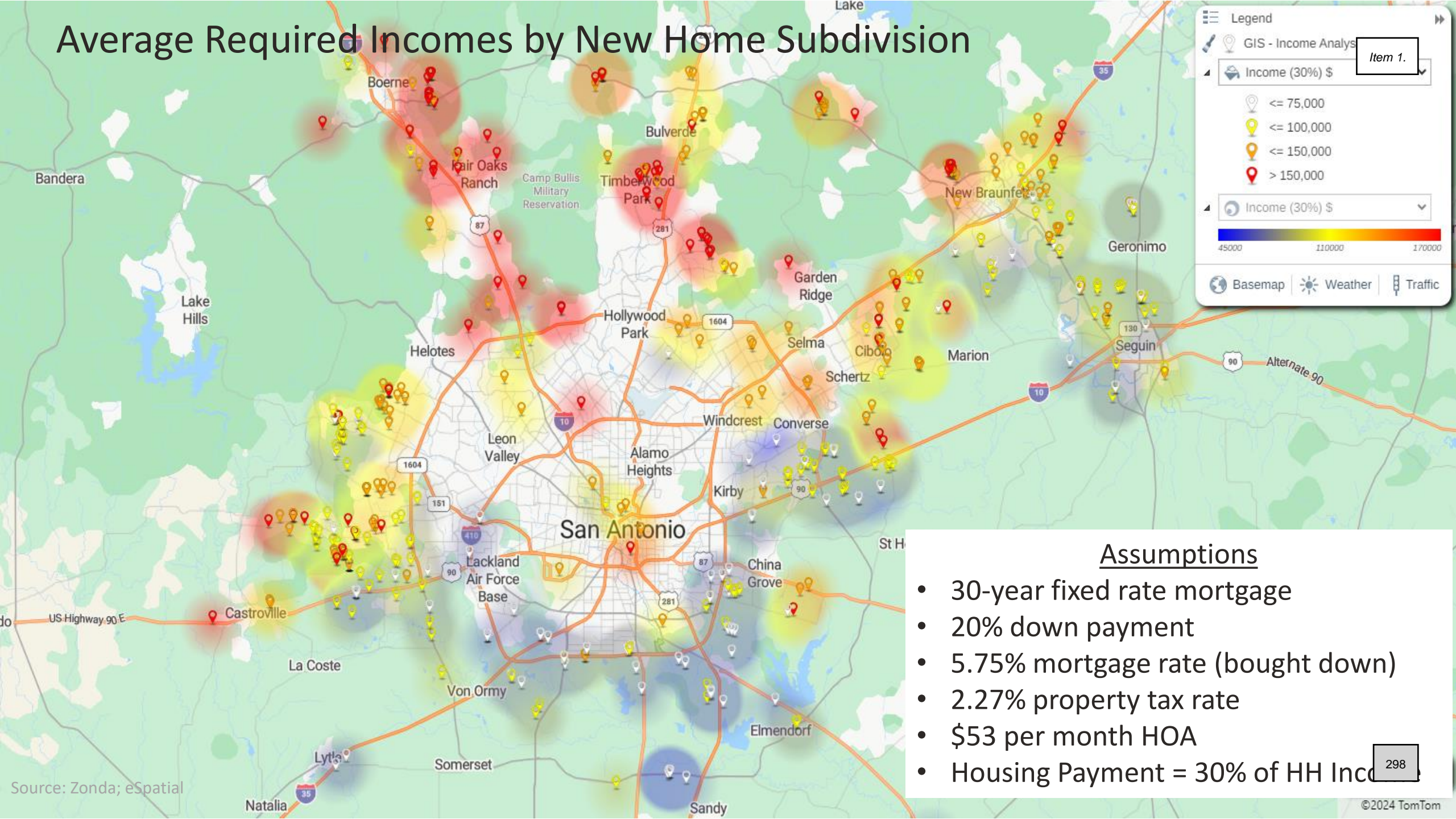
Impact Fee As a Percentage of Average New Home Base Prices

Rank	Subdivision	Annual Starts	Avg. New Home Base Price (\$000s)	Impact Fee (% of Base Price)
1	ZCE-Vintage Oaks at the Vineyard	68	\$898.5	2.9%
2	ZCE-Copper Ridge	11	\$725.0	3.5%
3	Veramendi/	188	\$593.5	4.3%
4	Meyer Ranch	92	\$529.0	4.9%
5	Legacy at Lake Dunlap	20	\$519.5	4.9%
6	Gruene Villages	19	\$471.0	5.5%
7	Wasser Ranch	31	\$423.5	6.1%
8	August Fields	30	\$419.0	6.1%
9	Casinas at Gruene/Detached	15	\$415.5	6.2%
10	Highland Grove	11	\$411.5	6.2%
11	Willowbrook	14	\$406.0	6.3%
12	Lark Canyon	28	\$397.5	6.5%
13	Meyer's Landing	25	\$373.0	6.9%
14	Cloud Country	26	\$364.0	7.1%
15	Overlook at Creekside	53	\$356.5	7.2%
16	Town Creek/NB	16	\$351.0	7.3%
17	Dauer Ranch	22	\$350.0	7.3%
18	The Parklands	43	\$338.0	7.6%
19	Saengerhalle Meadows	62	\$337.5	7.6%
20	Morningside Trails	12	\$332.5	7.7%
21	Steelwood Trails	80	\$308.5	8.3%
22	Parkside/NB	59	\$304.0	8.5%
23	Deer Crest/NB	62	\$285.0	9.0%
24	Spring Valley	59	\$285.0	9.0%
25	Creekside Terrace	55	\$284.5	9.0%
Top 25 Totals/Averages:		1,101	\$419.2	6.1%

Rank	City	Impact Fee (\$000s)	Avg. New Home Base Price (\$000s)	Impact Fee (% of Base Price)
1	Frisco	\$4.5	\$1,030.5	0.4%
2	Universal City	\$4.5	\$536.5	0.8%
3	Celina	\$6.0	\$700.3	0.9%
4	Round Rock	\$6.0	\$521.0	1.2%
5	Austin	\$7.7	\$662.1	1.2%
6	Dripping Springs	\$8.2	\$667.5	1.2%
7	Boerne	\$7.6	\$607.0	1.3%
8	San Marcos	\$6.5	\$439.6	1.5%
9	Buda	\$7.1	\$404.6	1.8%
10	Hutto	\$11.6	\$422.1	2.8%
11	Kyle	\$12.5	\$452.7	2.8%
12	Georgetown	\$17.1	\$555.5	3.1%
13	Aubrey	\$16.4	\$508.3	3.2%
14	Pflugerville	\$29.8	\$507.5	5.9%
15	NBU Electric Service Area	\$25.7	\$419.2	6.1%



Average Required Incomes by New Home Subdivision

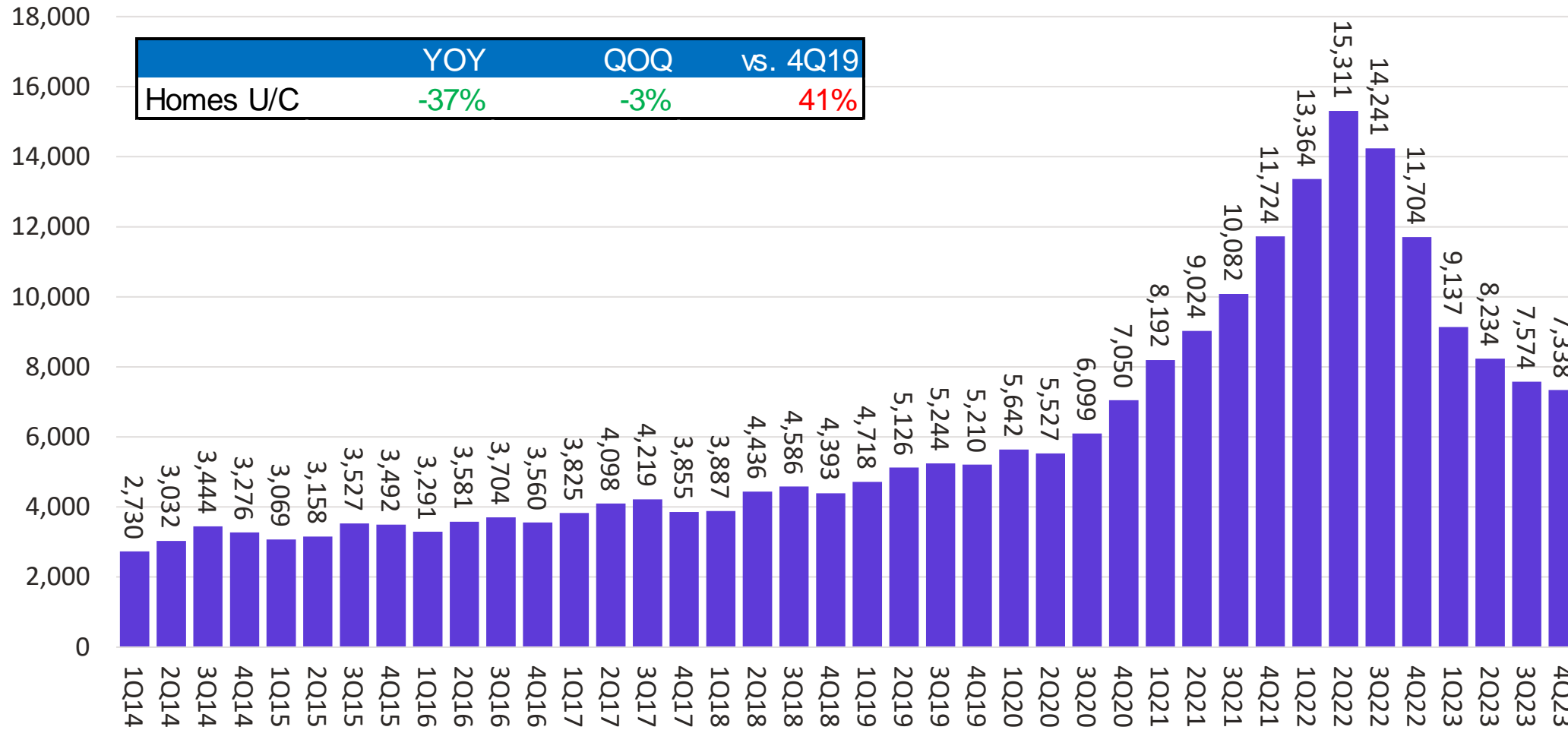


Assumptions

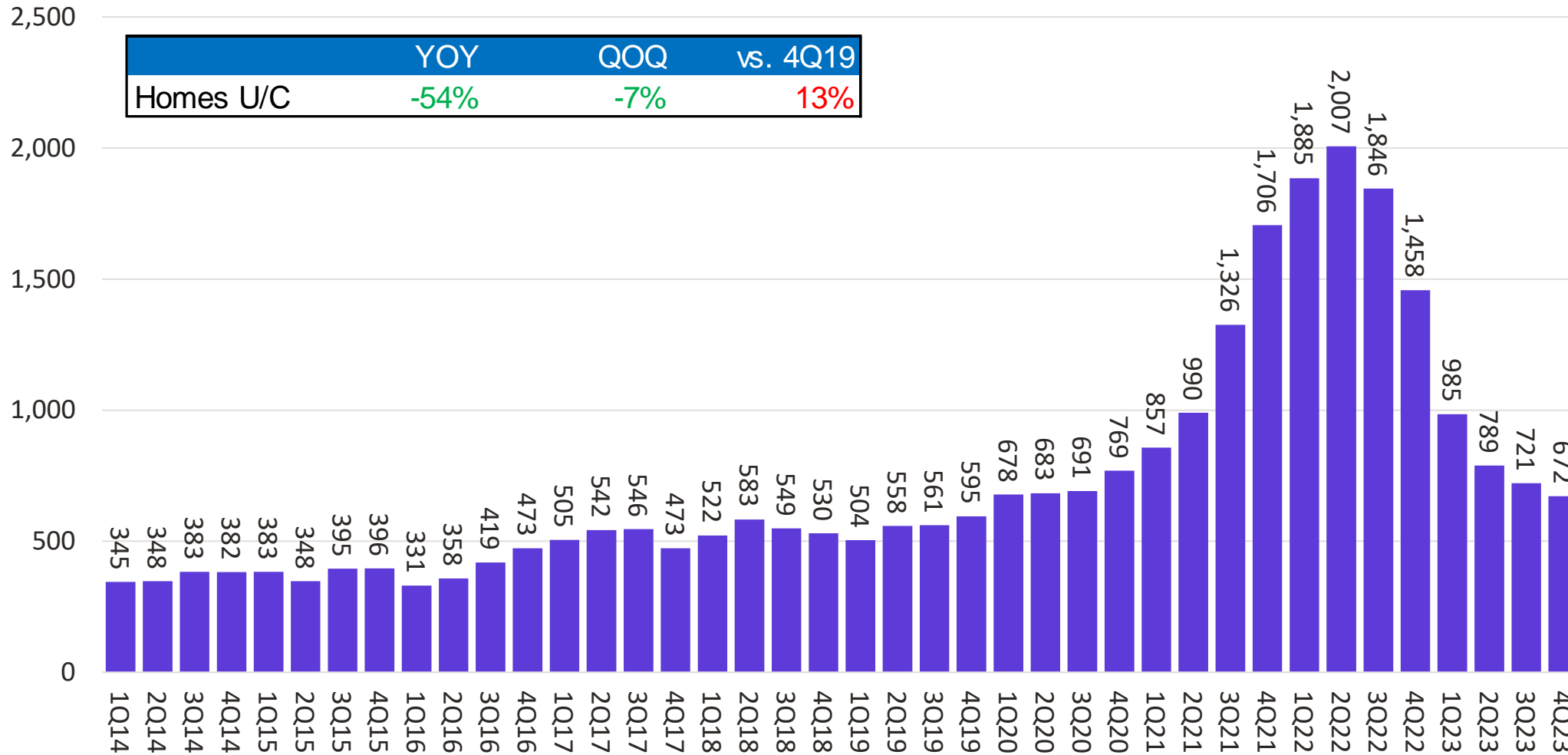
- 30-year fixed rate mortgage
- 20% down payment
- 5.75% mortgage rate (bought down)
- 2.27% property tax rate
- \$53 per month HOA
- Housing Payment = 30% of HH Income

Housing Supply

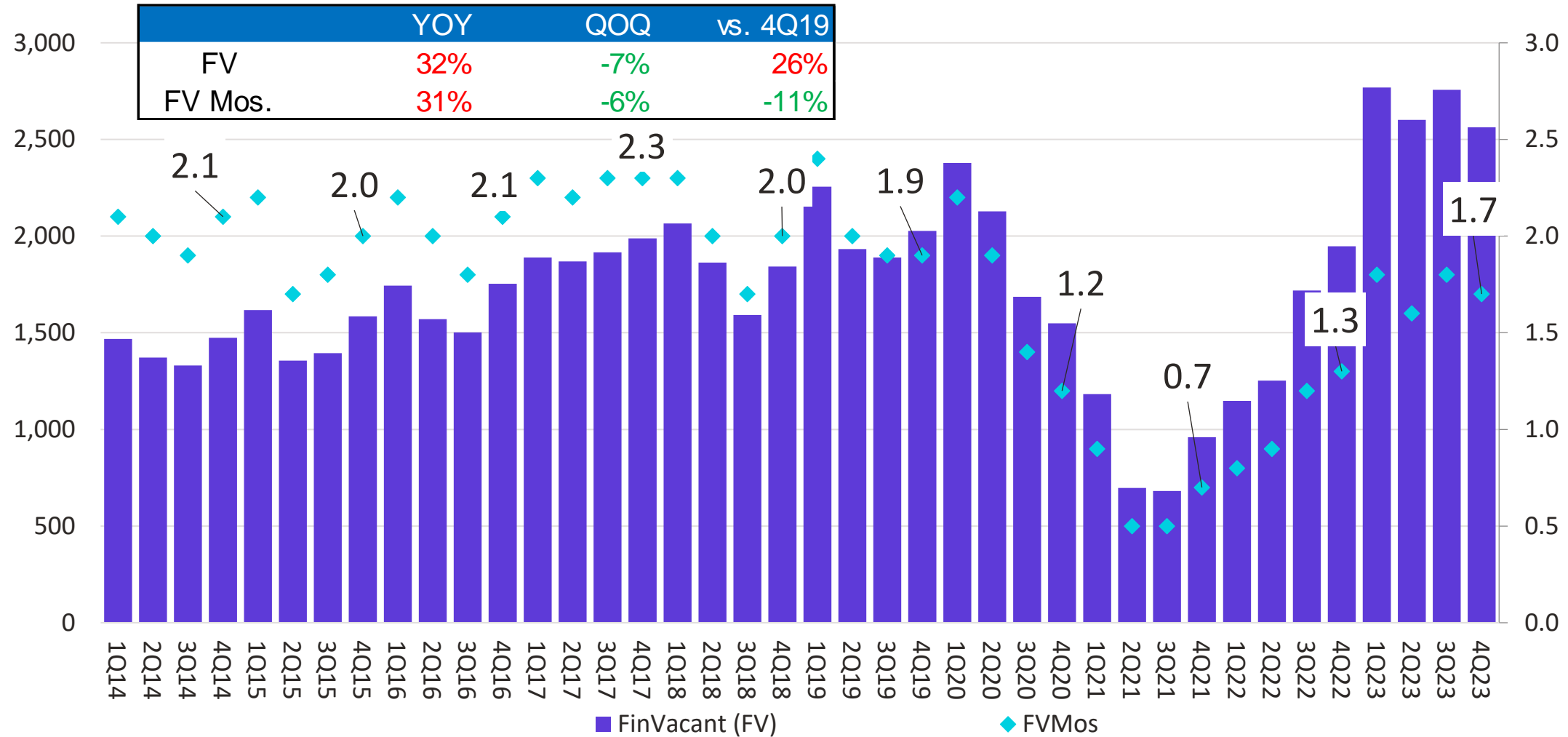
Homes Under Construction (San Antonio MSA)



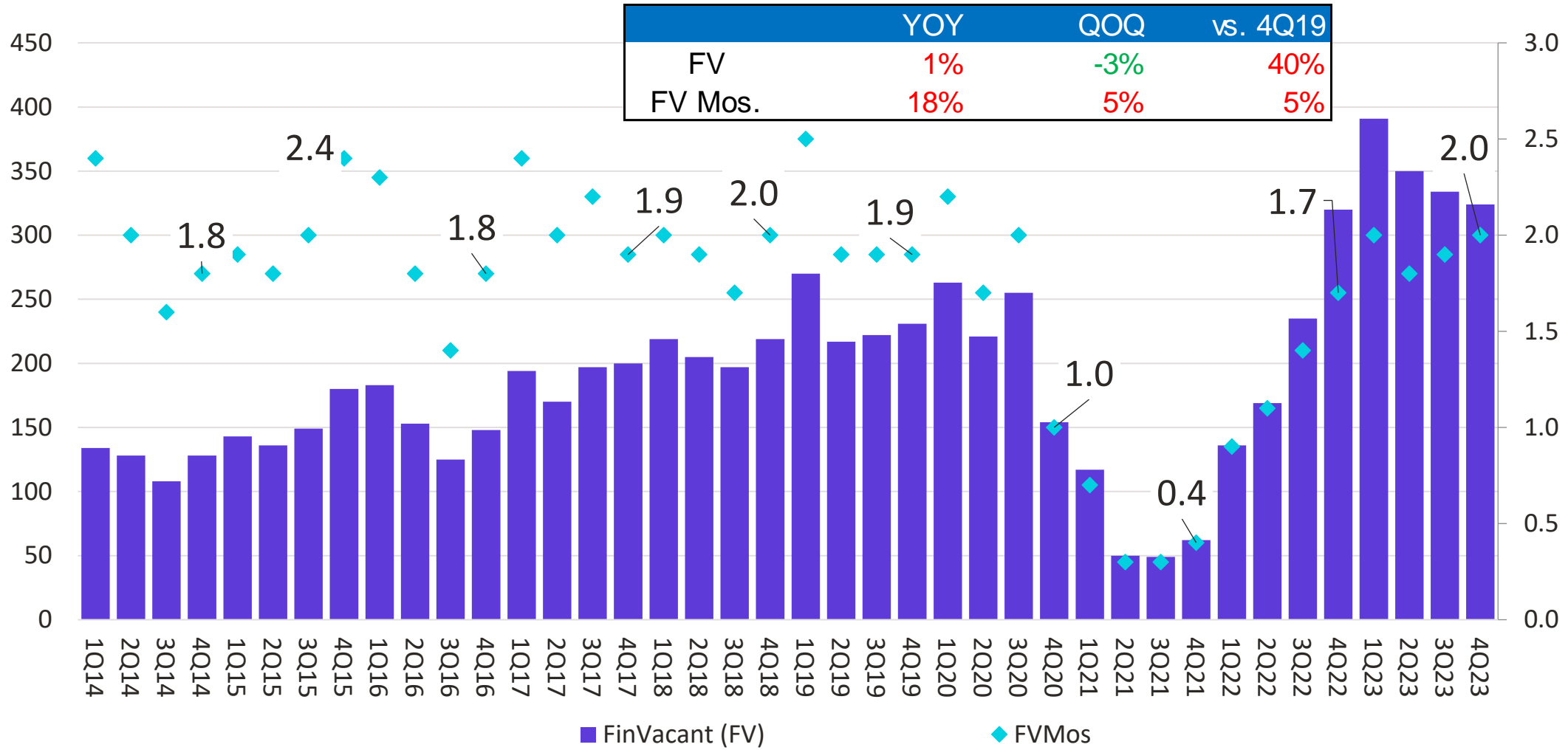
Homes Under Construction (NBU Electric Service Area)



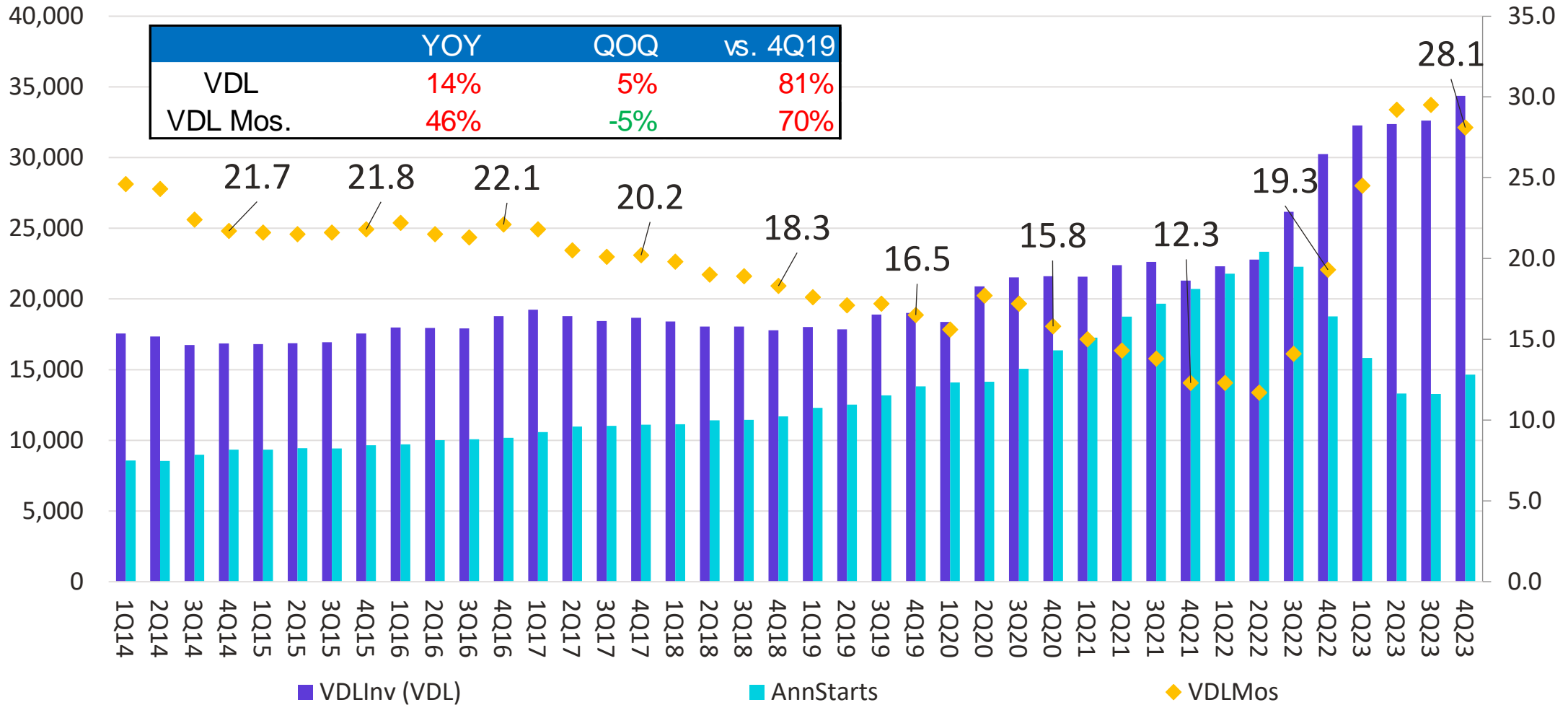
Finished Vacant Inventory (San Antonio MSA)



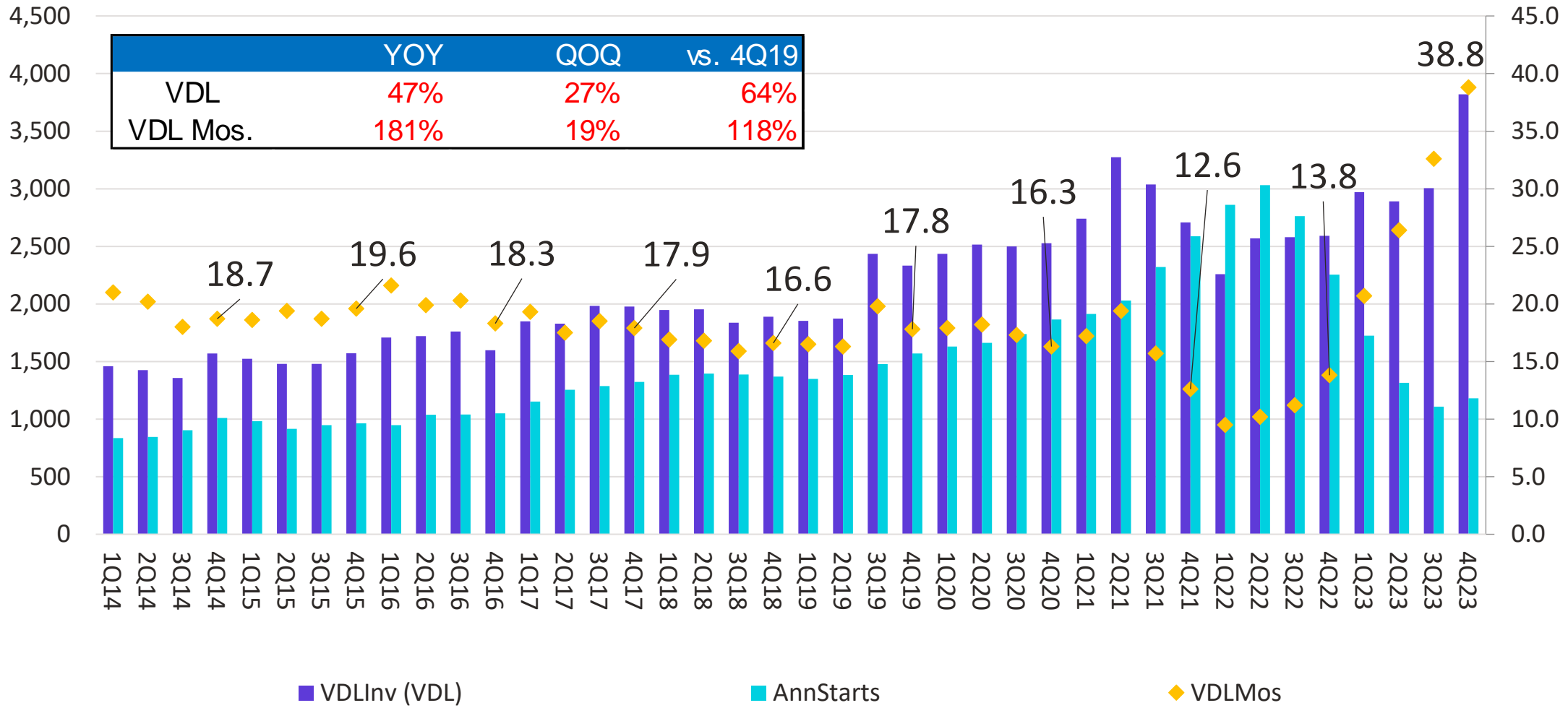
Finished Vacant Inventory (NBU Electric Service Area)



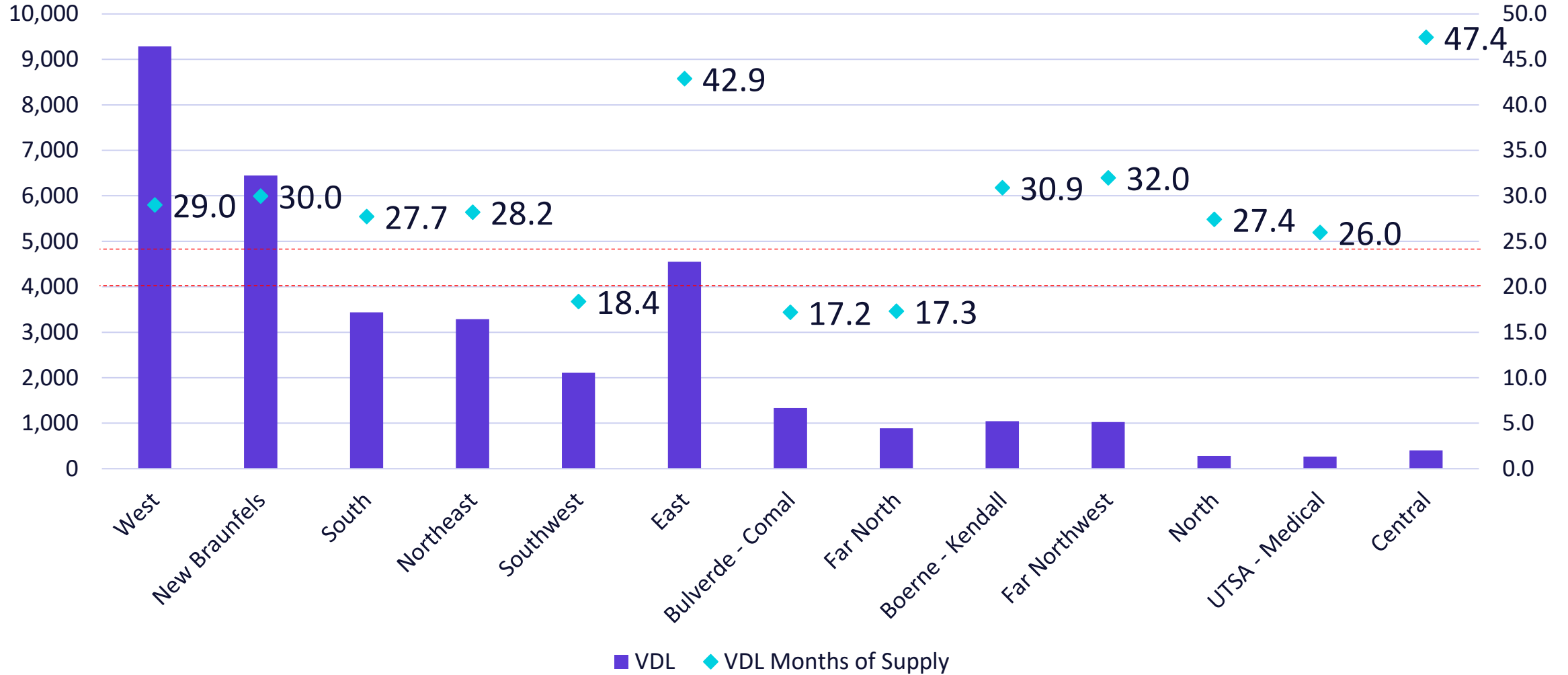
Vacant Developed Lot Supply (San Antonio MSA)



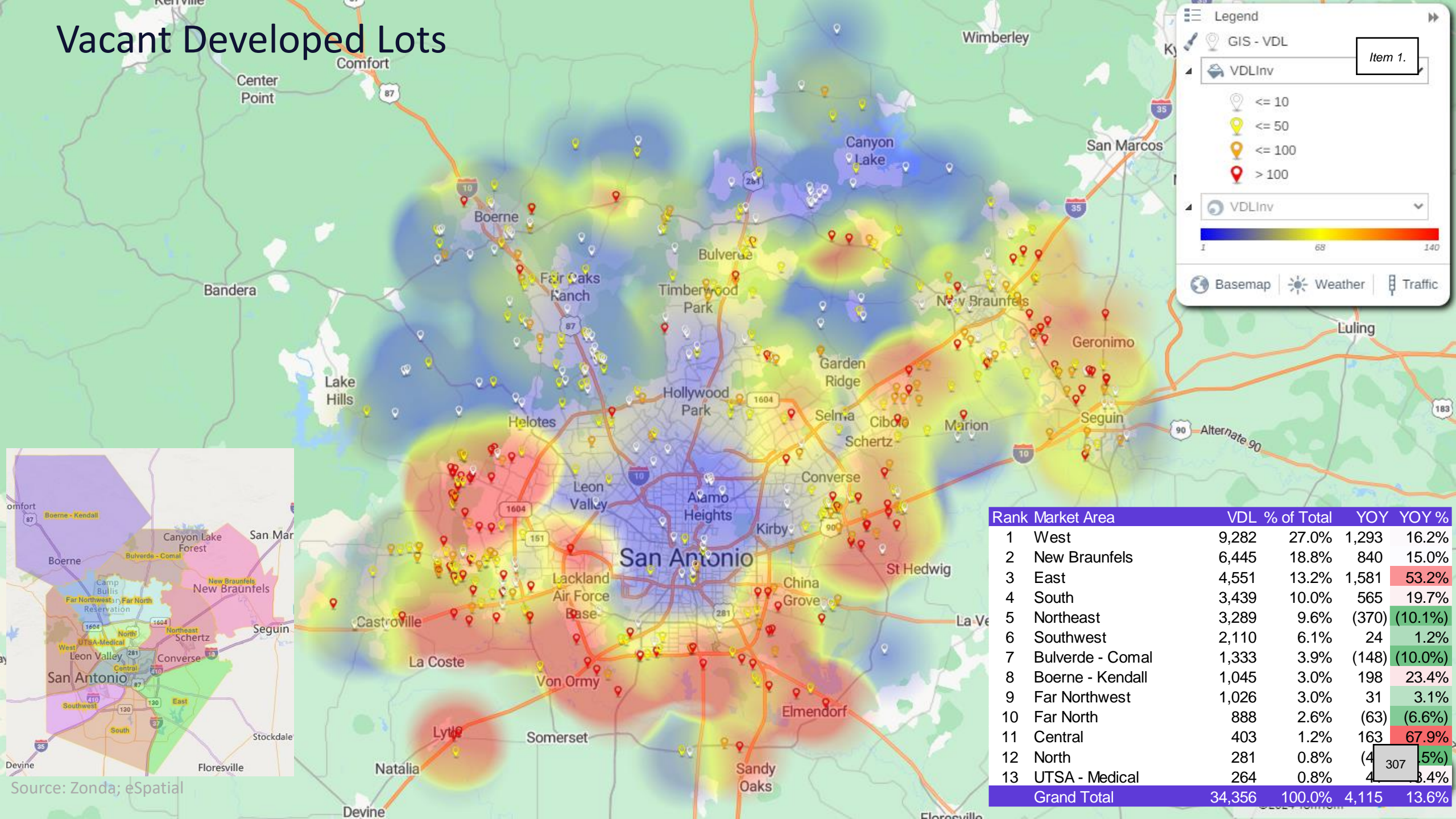
Vacant Developed Lot Supply (NBU Electric Service Area)



VDL Months of Supply is Above Equilibrium in Most Market Areas



Vacant Developed Lots



Legend

GIS - VDL

Item 1.

VDLInv

- Pin: <= 10
- Pin: <= 50
- Pin: <= 100
- Pin: > 100

VDLInv

1 68 140

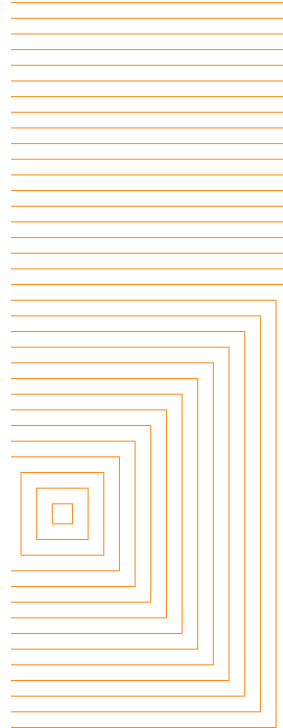
Basemap Weather Traffic

Rank	Market Area	VDL	% of Total	YOY	YOY %
1	West	9,282	27.0%	1,293	16.2%
2	New Braunfels	6,445	18.8%	840	15.0%
3	East	4,551	13.2%	1,581	53.2%
4	South	3,439	10.0%	565	19.7%
5	Northeast	3,289	9.6%	(370)	(10.1%)
6	Southwest	2,110	6.1%	24	1.2%
7	Bulverde - Comal	1,333	3.9%	(148)	(10.0%)
8	Boerne - Kendall	1,045	3.0%	198	23.4%
9	Far Northwest	1,026	3.0%	31	3.1%
10	Far North	888	2.6%	(63)	(6.6%)
11	Central	403	1.2%	163	67.9%
12	North	281	0.8%	4	5%
13	UTSA - Medical	264	0.8%	4	8.4%
Grand Total		34,356	100.0%	4,115	13.6%

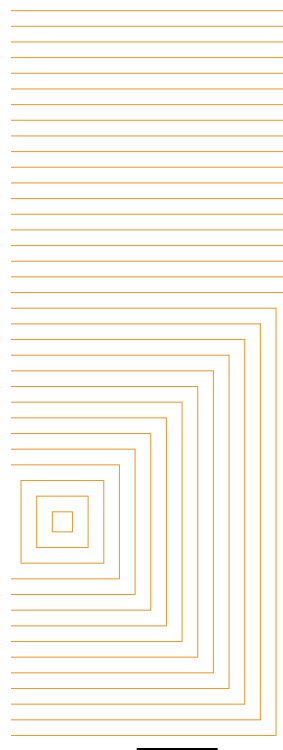
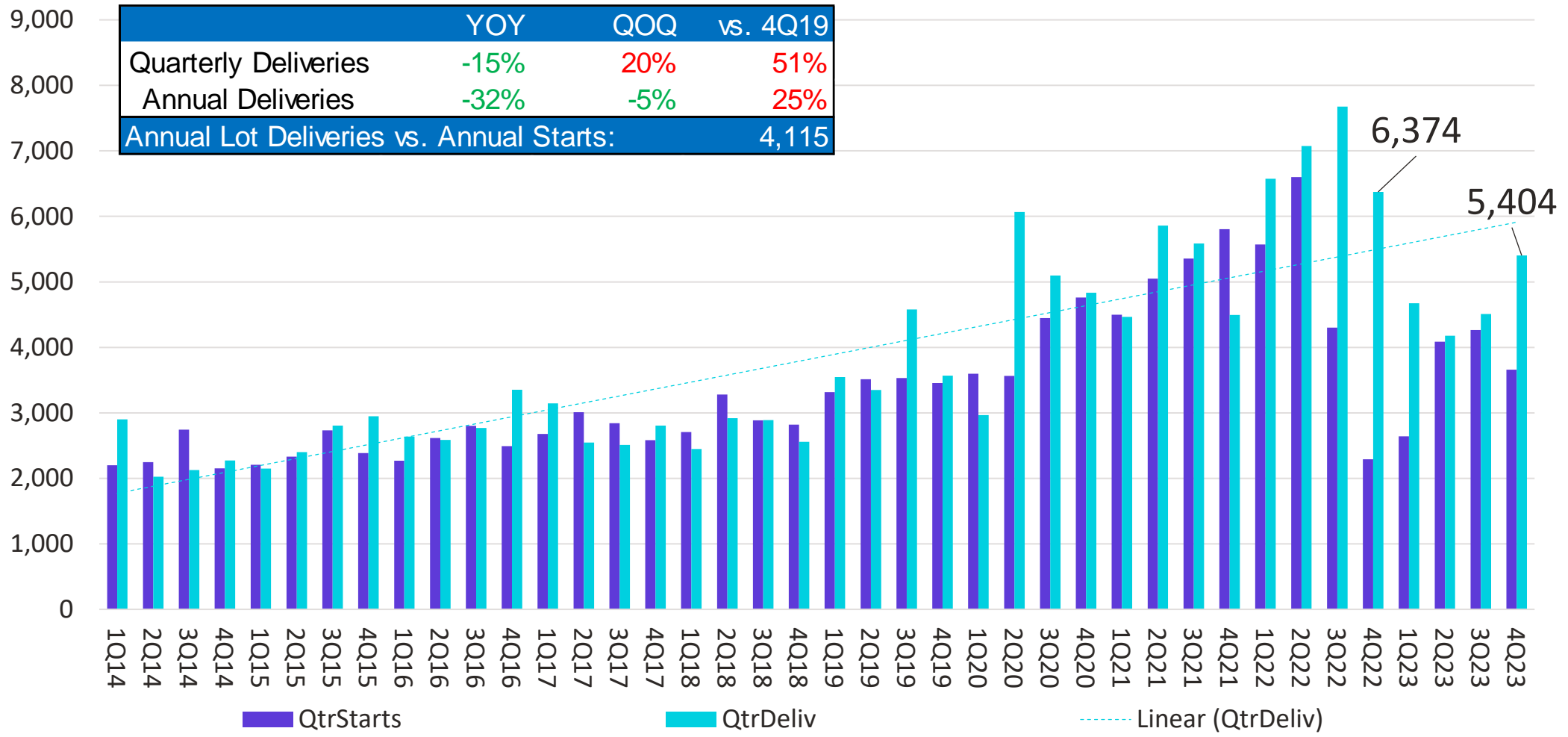
Source: Zonda; eSpatial

Vacant Developed Lots Continue to Climb in New Braunfels

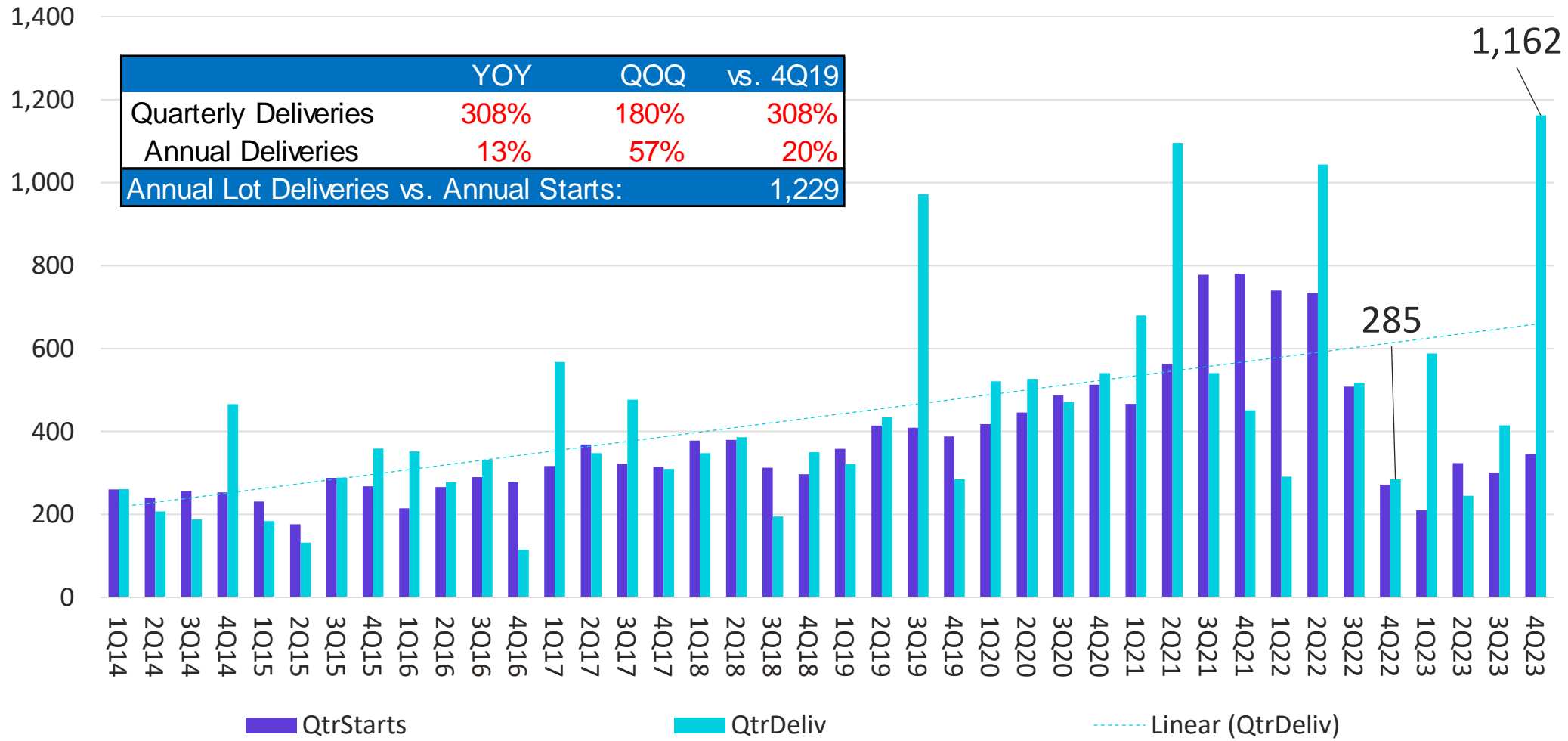
Rank	Market Area	VDL	% of Total	YOY	YOY %
1	San Antonio	16,773	48.8%	1,354	8.8%
2	New Braunfels	4,434	12.9%	1,383	45.3%
3	Converse	2,311	6.7%	125	5.7%
4	Seguin	1,976	5.8%	(411)	(17.2%)
5	Castroville	1,301	3.8%	341	35.5%
6	Boerne	1,295	3.8%	146	12.7%
7	Cibolo	1,063	3.1%	(38)	(3.5%)
8	Bulverde	955	2.8%	(177)	(15.6%)
9	Von Ormy	809	2.4%	394	94.9%
10	Elmendorf	733	2.1%	216	41.8%
11	Adkins	547	1.6%	537	-
12	Schertz	472	1.4%	32	7.3%
13	Marion	427	1.2%	(127)	(22.9%)
14	Lytle	405	1.2%	297	275.0%
15	Saint Hedwig	222	0.6%	124	126.5%
16	Spring Branch	179	0.5%	(89)	(33.2%)
17	Pleasanton	113	0.3%	(17)	(13.1%)
18	Helotes	112	0.3%	(6)	(5.1%)
19	Canyon Lake	76	0.2%	0	0.0%
20	Mico	54	0.2%	0	0.0%
21	Atascosa	44	0.1%	44	-
22	Universal City	25	0.1%	(21)	(45.7%)
23	Bergheim	22	0.1%	8	57.1%
24	Blanco	8	0.0%	0	0.0%
Totals:		34,356	100.0%	4,115	13.6%



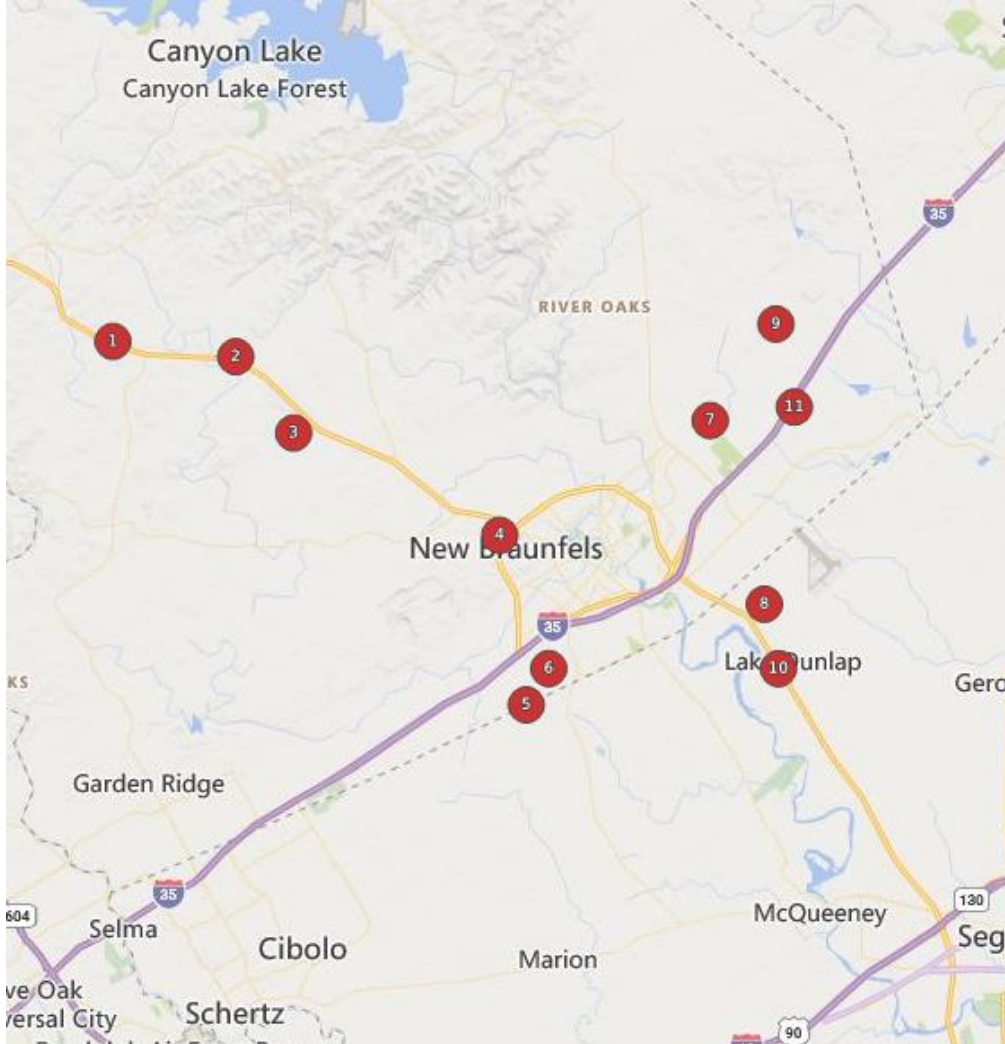
Quarterly Lot Deliveries (San Antonio MSA)



Quarterly Lot Deliveries (NBU Electric Service Area)

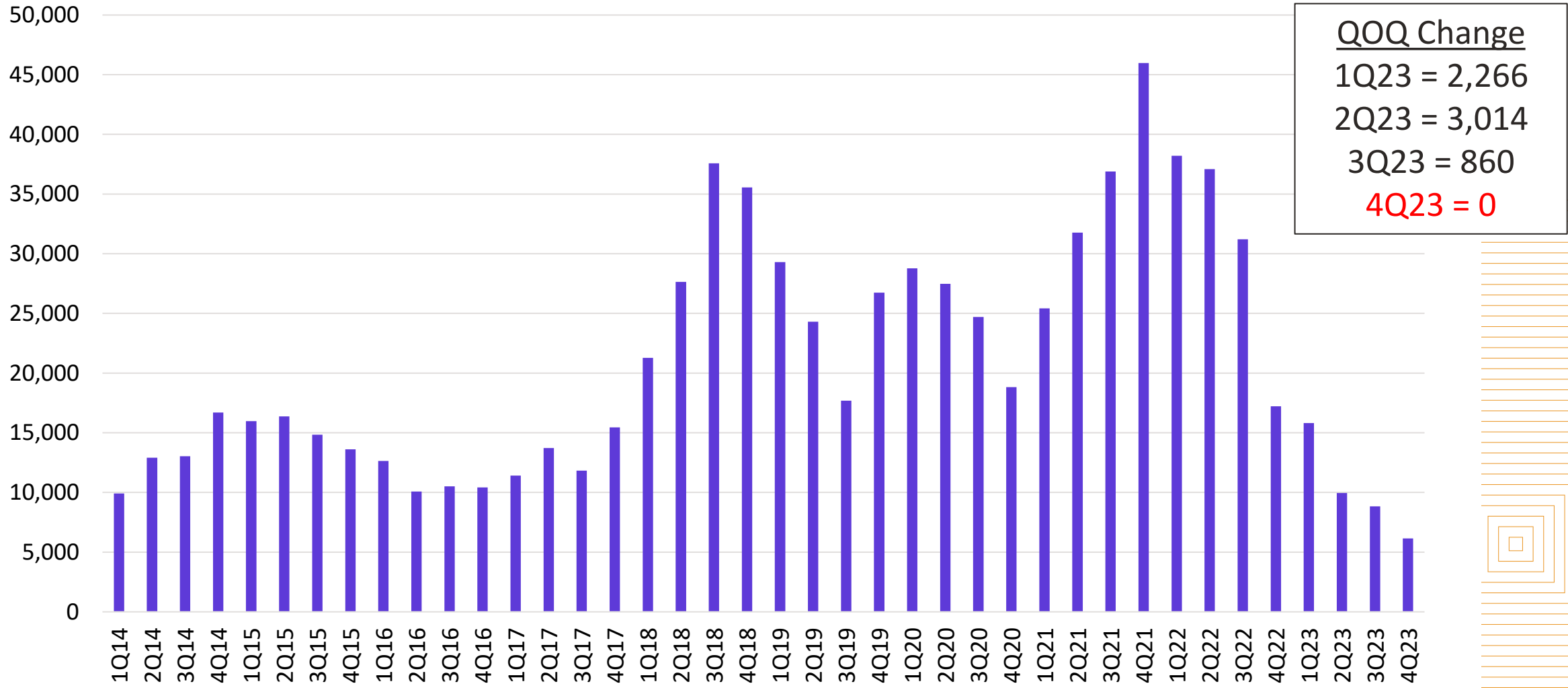


4Q23 Lot Deliveries (NBU Electric Service Area)

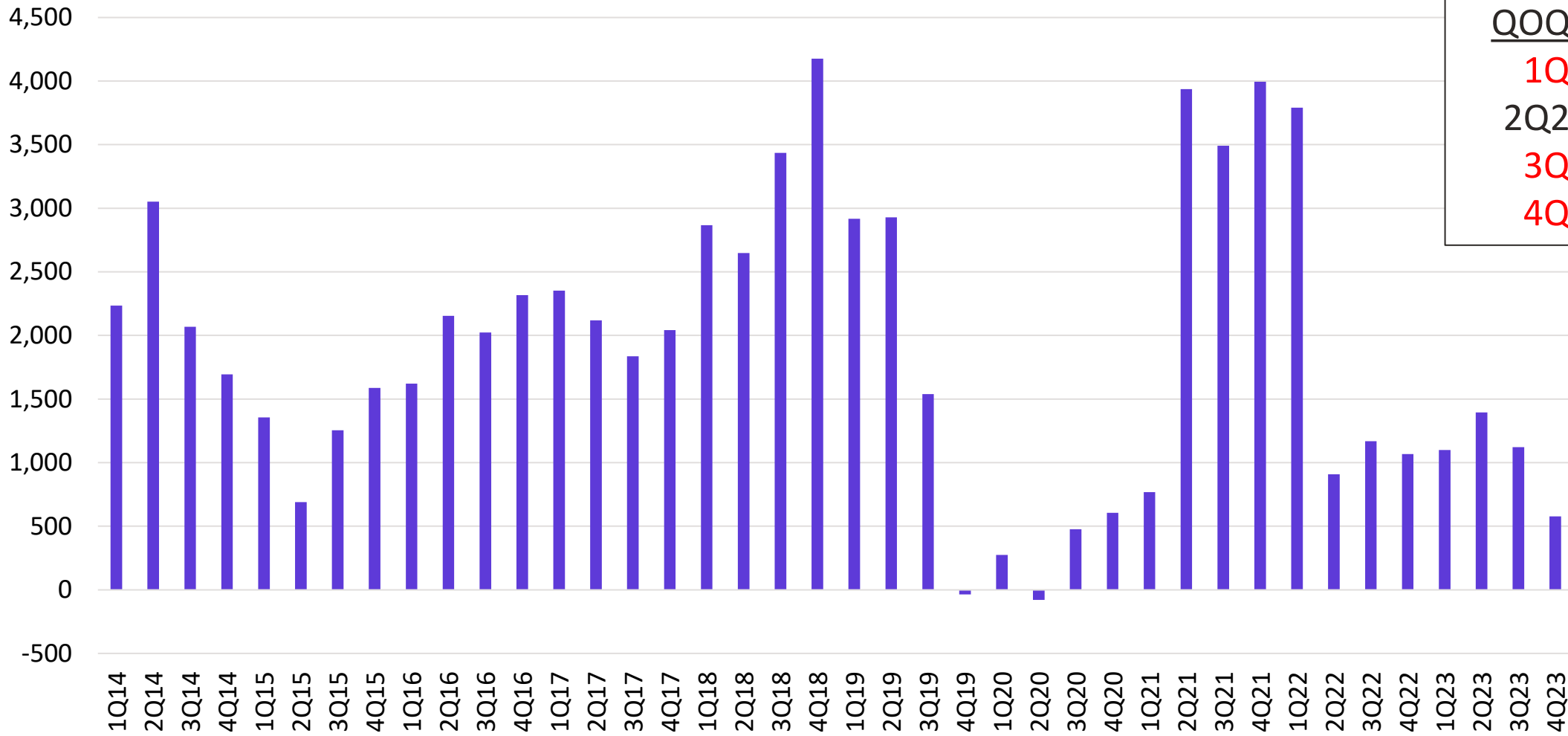


#	Subdivision	Developer	4Q23 Lot Deliveries
10	Legacy at Lake Dunlap	Heartwood Development	232
7	Sunflower Ridge	Aspen Grove Realty	195
11	Mayfair	SouthStar Communities	191
5	Steelwood Trails	Lennar Homes/Mosaic/Yantis	152
8	Saengerhalle Meadows	D.R. Horton Inc	136
1	Bigbee Tract	Ashton Woods Homes	118
6	Sunset Ridge	Scanio Development	52
4	Equinox	Grocapitus Investments LLC	47
2	Vintage Oaks at the Vineyard	SouthStar Communities	31
3	Copper Ridge	Southerland Communities	5
9	Havenwood at Hunter's Crossing	SouthStar Communities	3
Totals:			1,162

Total Tracked Housing Units YOY Change (San Antonio MSA)

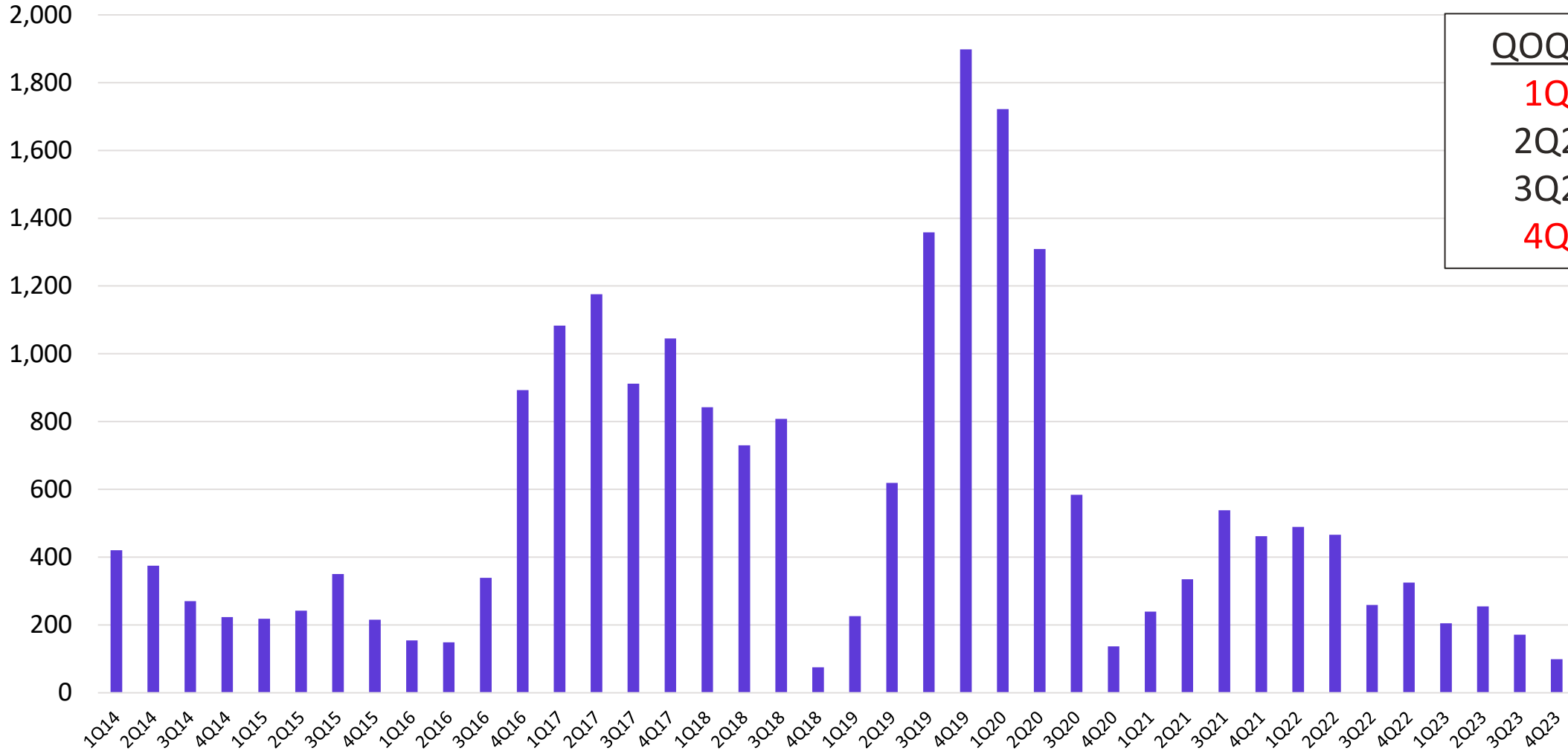


Total Tracked Housing Units YOY Change (NBU Electric Service Area)

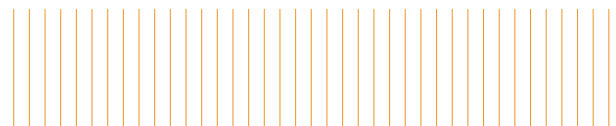
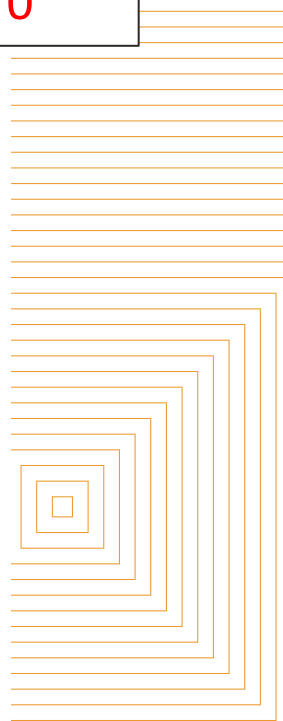


QOQ Change
 1Q23 = 0
 2Q23 = 577
 3Q23 = 0
 4Q23 = 0

Total Tracked Housing Units YOY Change (City of Pflugerville)



QOQ Change
1Q23 = 0
2Q23 = 84
3Q23 = 15
4Q23 = 0



Final Thoughts

Final Thoughts

- Market wide start activity should transition from a sizable decline in 2023 (-20%) to a double digit increase in 2024 (+10% or more)
- Given the steep decline in start activity in the NBU Electric Service in 2023 (-48%), activity should move off the lows in 2024
- High mortgage rates will continue to push demand to the new home market (“unlock” of existing homes is coming though)
- Employment growth is slowing – heading for a soft landing, but watch this moving forward
- Monitor signs of being an outlier – highest impact fees as percentage of base prices, outsized start declines, limited new plat filings, etc.

Thank You!



Meeting Date: March 29, 2024 **Agenda Type:** Presentation Items

From: Ryan Kelso **Reviewed by:** Ryan Kelso
Chief Executive Officer Chief Executive Officer

Submitted by: Ryan Kelso **Approved by:** Ryan Kelso
Chief Executive Officer Chief Executive Officer

RECOMMENDED ACTION: Presentation Regarding the Transfer of Real Property Located at 263 Main Plaza, New Braunfels, Texas (the “Property”) from NBU to the City of New Braunfels (the “City”) and Lease of the Property from the City to NBU