



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

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

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

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

BACKGROUND

On January 27, 2022, the New Braunfels Utilities (“NBU”) Board of Trustees approved a Utility Construction Cost Sharing Agreement (the “Agreement”) with Southstar at Mayfair, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC (collectively, the “Developer”) to define the responsibilities of both NBU and the Developer regarding new development construction.

On May 23, 2023, NBU approved a First Amendment to the Utility Construction Cost Sharing Agreement (the “First Amendment”). The First Amendment allowed for a change in the phasing of a required Interim Waste Water Treatment Facility (“IWWTF”) to be constructed by the Developer including; (i) combining the initial Phase 1 and Phase 2 construction efforts of the IWWTF; and (ii) retitling Phase 3 of the IWWTF to be Phase 2.

On December 14, 2023, NBU approved a First Amended and Restated Utility Construction Cost Sharing Agreement (the “First Restated”). The First Restated contained several significant modifications to include, but not limited to; (i) changing Phase 1 and Phase 2 IWWTF as described in First Amendment; (ii) establishing the payment of fixed Sewerage Development Fee by the Developer for each LUE associated with each recorded platted lot based on the difference between the anticipated pro rata cost of both the McKenzie WWTP Expansion and the McKenzie Interceptor Upgrades and the anticipated collection of wastewater impact fees for the remaining 4,949.18 LUEs associated with the not yet platted lots or with any transferred un-platted land; (iii) removing impact fee rebates for any wastewater contributions; (iv) bifurcating the 16-Inch IH 35 Crossing improvements into the 16-Inch IH 35 Crossing

Short Segment and the 16-Inch IH 35 Crossing Long Segment; (v) adjusting the milestone dates, resequencing of projects, and adjusting the LUEs associated with the individual projects to reflect the Developer’s needs; (vi) and revising Exhibits F, L, U, and V as needed.

Starting on April 11, 2024, and over weeks, the Developer made several requests from NBU to consider modifications to the First Restated. The requested modifications included; (i) changing the timing of bonding to be required before a plat approval and not prior to plan approval to better align with the requirements from the City of New Braunfels; (ii) better defining “developer new infrastructure” to exclude internal subdivision work; (iii) changing the milestones to allow for the required construction of Phase 2 IWWTF to be based on actual flows as opposed to LUEs; (iv) changing the conservation requirements to allow for standalone covenants for commercial properties as opposed to establishing a Property Owner’s Association.

The Second Amended and Restated Cost Sharing Agreement (Second Restated) contains several modifications to include, but not limited to; (i) better defining “developer new infrastructure” to exclude internal subdivision work; (ii) changing the milestones to allow for the required construction of Phase 2 IWWTF to be based on actual flows; (iii) changing the conservation requirements to allow for standalone covenants for commercial properties; extending the milestone dates for the McKenzie Interceptor Main to July 14, 2027, and extending the McKenzie Wastewater Treatment Plant to January 27, 2028, both a full year from the original Agreement.

Staff recommends approval of the Second Restated, providing clarification to “developer new infrastructure” to simplify bonding and submittals, revising the timing needed for the Phase 2 IWWTF, eliminating the need for a POA on commercial properties, and allowing more time for NBU to complete improvements. This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved.

FINANCIAL IMPACT

The financial impact of the Second Amended and Restated Cost Sharing Agreement, when compared to the First Amended and Restated Agreement is not significant. The Second Amended and Restated Cost Sharing Agreement does not change any financial terms found within the Agreement.

LINK TO STRATEGIC PLAN

Customers and Community

Financial Excellence

Stewardship

EXHIBITS

1. Second Amended and Restated Utility Construction Cost Sharing (without all Exhibits)
2. Revised Exhibit F and V