

## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **FREESE AND NICHOLS, INC.**, a Texas corporation (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as set forth herein.

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

Section 2. Scope of Services.

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

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

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

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

Section 3. Compensation.

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

(B) Billing Period. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

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

#### Section 4. Changes to the Services; Additional Work.

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

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

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

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

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

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

Section 9. Indemnification.

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

- i. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY THE**

**PROFESSIONAL, ITS AGENT, EMPLOYEE, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;**

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

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

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

Section 10. Insurance.

(A) General.

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

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

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

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

- i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers,

and Board of Trustees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

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

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

#### Section 11. Termination.

(A) For NBU’s Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days’ written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the

Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

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

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

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or



indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

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

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

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

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

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

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

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

and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

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

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

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

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

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

(M) Offset.

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

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

If to NBU:

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

With copy to:

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

If to the Professional:

Freese and Nichols, Inc.  
5900 Balcones Drive, Suite 100  
Austin, TX 78731

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

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

pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

## Section 16. Information Technology

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

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

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

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

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

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly or majority owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended.

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

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

<https://comptroller.texas.gov/purchasing/publications/divestment.php>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and excludes the Professional and each of its parent company, wholly or majority owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

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

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

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

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

The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. “Affiliate,” with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

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

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

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

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Professional understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

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



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

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

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

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

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

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the Effective Date.

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

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

**PROFESSIONAL:**  
**FREESE AND NICHOLS, INC.,**  
a Texas corporation

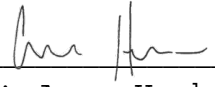
By:  \_\_\_\_\_  
Name: Anne Hoskins  
Title: Principal  
Date: 10/29/2024

Exhibit A  
Scope of Services

The Professional shall provide all labor, material, and equipment necessary to provide project management services, preliminary engineering phase services, final design phase services, field services, permitting & stakeholder services, bid phase services, and construction phase services for the Loop Ground Storage Tank (“GST”) Site Project and Well 6 Site Improvements Project (collectively the “Project”). The Project shall consist of improvements more fully described herein to the facilities associated with (i) the Loop GST pump station located at the Loop 337 GST site behind the Loop 337 power substation (the “Loop GST Site”), and (ii) the Well 6 site located at 14 Rock Moss in New Braunfels, Texas (the “Well 6 Site”) (the Loop GST Site and Well 6 Site are also referenced herein as a “Project Site”).

**I. SUMMARY OF PROJECT SERVICES**

A. The Loop GST Site Improvements are summarized in this Section I.A.

1. The Services relate to rehabilitation of a 1.10 million gallons per day (“MGD”) water pump station, including pumps, motors, variable frequency drives, motor control center, piping, valves, electrical equipment, new electrical service, pump station building, electrical equipment and control/supervisory control and data acquisition (“SCADA”) room. The pump station shall include heating, ventilation, and air conditioning (“HVAC”), architectural, structural, plumbing, fire protection, electrical, instrumentation, and controls as required.
2. Site improvements shall include site piping, valves, flowmeter(s), site power distribution, site lighting, fencing, grading and drainage, roads and parking, landscaping, site water and wastewater utilities, potable water lines, and field instrumentation.
3. The pump station improvements shall include communication facilities including fiber optic lines, or a cellular solution if fiber is not available nearby, to connect the proposed SCADA cabinet to the overall SCADA system. The pump station shall include security facilities including fencing, access control, and cybersecurity.

B. The Well 6 Site Improvements are summarized in this Section I.B.

1. The Well 6 Site Services relate to replacement of the existing Well 6 building and equipment improvements, excluding the well, well pump, and variable frequency drive. The improvements include a bypass for the variable frequency, piping, valves, electrical equipment, new electrical service, new wellhouse building, new chemical building, bulk chemical storage, electrical equipment, and SCADA equipment. The Professional shall include a bathroom if space allows. The

wellhouse and the chemical building shall include HVAC, architectural, structural, plumbing, electrical, instrumentation, and controls as required.

2. Site improvements shall include site piping, valves, flowmeter(s), site power distribution, site lighting, fencing, grading and drainage, access roads and parking, landscaping, and field instrumentation.
3. The Well 6 Site shall include a back-up electric generator and an automatic transfer switch (“ATS”). The Professional shall evaluate diesel power with onsite fuel storage and containment structures for this site. The Professional will not evaluate natural gas generators for this site.
4. The Well 6 Site improvements shall include security facilities including fencing, access control, and cameras.

## **II. SERVICES BY TASK**

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

### **Task 1. Project Management**

1. The Professional shall provide the following project management services for both Project Sites as described in this Section.
  - 1.1. **SCHEDULE.** The Professional shall develop a baseline design schedule for the Project using MS Project and prepare updated design schedules for the Project on a monthly basis on or before the 25<sup>th</sup> day of each month, for NBU to monitor progress and identify design submittal dates. Schedules shall be provided to the NBU project manager (“Project Manager”) via email in PDF format.
  - 1.2. **QUALITY CONTROL.** The Professional shall develop a quality assurance/quality control program for the Project, which shall be explained in detail via a written document and provided to NBU’s Project Manager via email within thirty (30) days of notice to proceed (“NTP”).
  - 1.3. **PROGRESS REPORTS.** The Professional shall provide NBU with electronic monthly Project progress reports and submit written invoices on or before the 25<sup>th</sup> day of each month for the previous month’s effort. Progress reports shall be provided to the NBU Project Manager via email.
  - 1.4. **MEETING AGENDA/MINUTES.** The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the summary meeting minutes and action item logs to NBU’s Project Manager within one (1) week after meetings. Meeting agendas, minutes, and action item log will be provided to the NBU Project Manager in PDF format via email. The Professional will provide updates on the action item logs with its monthly progress reports identified in Section 1.3.
  - 1.5. **PROJECT CONTROLS.** The Professional shall manage Project integration, scope,

schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, performing the following tasks:

- 1.5.1. assigning a senior advisor to oversee quality assurance;
- 1.5.2. developing an engineer's opinion of probable construction cost ("OPCC") using recent bid tabs from similar projects or vendor prices;
- 1.5.3. using MS Project (or similar software) to manage the schedule;
- 1.5.4. coordinating communication with sub consultants through emails and meetings;
- 1.5.5. assisting with cash flow monitoring upon NBU's request; and
- 1.5.6. assisting with maintaining a risk register log provided by NBU.

## **Task 2. Preliminary Engineering Phase**

2. Upon NBU providing NTP to the Professional, the Professional shall perform the preliminary engineering phase services described in this Section.
  - 2.1. MEETINGS. Both Project Sites will be discussed at each of the meetings listed in this Section 2.1. The Professional shall attend the following meetings and provide meeting agendas and summary meeting minutes to NBU for the following meetings in accordance with the requirements listed in Section 1.4:
    - 2.1.1. Project kick-off meeting with NBU (one (1) meeting);
    - 2.1.2. monthly progress status meetings (up to three (3) meetings);
    - 2.1.3. preliminary engineering report ("PER") review meeting (one (1) meeting);
    - 2.1.4. 30% design review meeting (one (1) meeting);
    - 2.1.5. meetings with franchise utilities (two (2) meetings);
    - 2.1.6. meetings with the City of New Braunfels ("CoNB") (four (4) meetings); and
    - 2.1.7. meetings with additional stakeholders (two (2) meetings).
  - 2.2. PUMP STATION ANALYSIS. The Professional shall analyze the design requirements for each Project Site as described below.
    - 2.2.1. With respect to the Loop GST Site, the Professional shall determine pump station system capacity and head requirements over the study period, determine system operations protocols in conjunction with NBU, and prepare a hydraulic model of the pumping station, pipeline, and related facilities.
    - 2.2.2. The Professional shall determine preferred location of facilities based upon hydraulic conditions, ease of operations, and site conditions for each Project Site.
    - 2.2.3. The Professional shall determine the electrical equipment required, create a layout of the required equipment, and provide a one-line diagram for each Project Site. The Professional shall create an overall process diagram for each Project Site.
    - 2.2.4. The Professional will size the generator for the existing Well 6 pump according to the firm capacity and supporting loads it will serve at the Well 6 Site.

- 2.2.5. The Professional shall determine size and capacity of pump station, pipelines and related facilities, such as pump air valves, drains, etc. for each Project Site.
- 2.2.6. The Professional shall perform a storm water and overflow analysis for each Project Site as follows:
  - 2.2.6.1. evaluate site drainage for pre-Project and Project conditions runoff rates;
  - 2.2.6.2. prepare preliminary design/sizing of necessary onsite drainage improvements to accommodate increase in discharge due to additional impervious cover; and
  - 2.2.6.3. verify that offsite drainage infrastructure is adequately sized to convey site runoff without adversely impacting adjacent parcels or infrastructure. If offsite improvements are required, they shall be included in a recommendation for improvements, but design of offsite improvements is not included.
- 2.2.7. The Professional shall determine security requirements for each Project Site, including fencing, crash barriers at gates, access control, cameras, and cybersecurity.
- 2.2.8. The Professional shall determine SCADA requirements for each Project Site, including fiber optic lines, or a cellular solution if fiber is not available nearby. The Professional shall provide a network diagram and overall process diagram for each Project Site.
- 2.2.9. The requirements for deliverables in this Section 2.2 are more specifically described in Section 2.5.
- 2.3. **30% DESIGN DOCUMENTS**
  - 2.3.1. The Professional shall perform up to four (4) site visits (two (2) for each Project Site) during the 30% preliminary design phase timeframe described in Table 1 to gather Project information.
  - 2.3.2. The Professional shall collect and review existing data, reports, mapping, and records from NBU for each Project Site. The Professional shall provide analyses of NBU's requirements for the Project, including planning, surveys, site evaluations, and comparative studies of prospective sites and solutions for each Project Site.
  - 2.3.3. The Professional shall prepare 30% design drawings for each Project Site, including plan views of all proposed infrastructure within each Project Site.
  - 2.3.4. The Professional shall prepare a Class 3 engineer's OPCC (one (1) for each Project Site) based on 30% design drawings.
- 2.4. **PRELIMINARY ENGINEERING REPORT.** The Professional shall prepare one (1) PER for each Project Site. Each PER will include 30% design drawings and describe the scope of the project for final designs, permitting, constructability, OPCCs, and schedules. Each PER shall include project implementation, phasing and packaging for all portions of the project. The Professional shall submit a draft PER for each Project Site for NBU

review and comment, as well as a final PER for each Project Site incorporating all NBU comments. NBU comments shall be collected in part during a 4-hour half day review workshop. The final PER for each Project Site will be submitted within 30 days of receiving comments from NBU.

- 2.5. DELIVERABLES. The Professional shall provide the following preliminary engineering phase deliverables to NBU during the 30% preliminary design phase timeframe described in Table 1:
  - 2.5.1. Loop GST Site pump station analysis - a map with the pump station location, facility locations, a basic piping and instrument diagram, and Class 3 engineer's OPCC;
  - 2.5.2. Well 6 Site well site analysis - a map with the tank location, facility locations, a security layout, and a Class 4 engineer's OPCC for the Well 6 Site;
  - 2.5.3. Loop GST Site PER – one (1) PDF electronic file; and 30% design drawings including Class 3 engineer's OPCC – one (1) PDF electronic file; and
  - 2.5.4. Well 6 Site PER – one (1) PDF electronic file; and 30% design drawings including Class 3 engineer's OPCC – one (1) PDF electronic file.

### **Task 3. Final Design Phase**

3. Upon NBU's written approval of the PER and 30% design documents, the Professional shall perform the final design phase services described in this Section.
  - 3.1. MEETINGS. Both Project Sites will be discussed at each of the meetings listed in this Section 3.1. The Professional shall attend the following meetings and provide meeting agenda and meeting minutes to NBU in accordance with requirements listed in Section 1.4:
    - 3.1.1. 60% design review meeting (4-hour half-day workshop);
    - 3.1.2. 90% design review meeting (4-hour half-day workshop);
    - 3.1.3. monthly design meetings (up to six (6) meetings);
    - 3.1.4. meetings with property owners (up to two (2) meetings);
    - 3.1.5. meetings with NBU staff to review process controls (up to four (4) meetings);
    - 3.1.6. permitting meeting with the CoNB (up to four (4) meetings); and
    - 3.1.7. meetings with additional stakeholders (up to two (2) meetings).
  - 3.2. 60% DESIGN DOCUMENTS. The Professional shall prepare 60% plans, specifications and engineer's OPCC based on decisions made in the preliminary design phase for each Project Site. The 60% design documents shall include:
    - 3.2.1. plan view and/or site layout of the proposed facilities;
    - 3.2.2. lighting layouts;
    - 3.2.3. electrical one-line diagrams;
    - 3.2.4. security layouts;
    - 3.2.5. electrical drawings to include major electrical duct bank and conduit;
    - 3.2.6. major electrical equipment layouts;

- 3.2.7. profile view of water pipelines greater than twelve (12) inches in diameter;
- 3.2.8. mechanical drawings and process diagrams to include major design components;
- 3.2.9. call outs for major design items;
- 3.2.10. standard details;
- 3.2.11. specification for all major equipment and piping, at a minimum;
- 3.2.12. table of contents for all required specifications and specifications that are provided by the Professional with the exception of NBU's standard; and
- 3.2.13. a Class 2 engineer's OPCC based on 60% design documents.
- 3.3. 90% DESIGN DOCUMENTS. Upon approval of 60% design documents, the Professional shall prepare 90% plans, specifications and engineer's OPCCs for each Project Site. The 90% design documents shall include:
  - 3.3.1. call outs for all design items on the plan sheets;
  - 3.3.2. complete specifications; and
  - 3.3.3. Class 1 engineer's OPCCs based on 90% design documents and specifications.
- 3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon NBU's written approval of 90% design documents and specifications, the Professional shall prepare 100% plans, specifications and engineer's OPCC for each Project Site. The 100% drawings and specifications for each Project Site shall include the following:
  - 3.4.1. final signed and sealed set of construction drawings and specifications for each Project Site based on decisions made in the 90% design phase;
  - 3.4.2. Project files to include: .dwg, .mxd, and .kmz;
  - 3.4.3. preparation of the bid forms for each Project Site; and
  - 3.4.4. a Class 1 engineer's OPCC based on 100% design documents for each Project Site.
- 3.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU for each Project Site in accordance with the timelines listed in Table 1:
  - 3.5.1. 60% design – for each Project Site, the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 2 engineer's OPCC;
  - 3.5.2. 90% design – for each Project Site, the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 1 engineer's OPCC; and
  - 3.5.3. 100% design – for each Project Site, the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, and one (1) PDF electronic file of a Class 1 engineer's OPCC for each Project Site.

#### **Task 4. Field Services**

- 4. The Professional shall perform the field services described in this Section.
  - 4.1. TOPOGRAPHIC SURVEY. The Professional shall obtain a topographic, utility, and boundary survey for each Project Site as described below. The extent of each survey shall



include areas offsite as required, such as extending to allow for drainage design. The surveys shall include a minimum of two (2) benchmarks within 1,000 feet of each Project Site.

- 4.1.1. For each Project Site, the Professional shall meet the requirements in this Section 4.1.1 and shall tie in all existing surface topographic features and structures within the survey limits shown in Figure 1. This shall include, but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges and flow line), channels and drainage ways (tops, toes and flow line), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits, and visible valves, meters, clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits), mailboxes, etc. Trees shall be tagged and tabulated by size and species specific in compliance with the CoNB Tree Preservation Ordinance as defined in the CoNB Zoning Ordinance Chapter 5.3-5i. The survey limits shall extend approximately 100 feet on intersecting streets. The Professional shall provide sufficient ground shots to create one (1) foot contours for each Project Site.
- 4.1.2. The Professional shall conduct a utility survey and locate existing utilities for each Project Site as shown within the boundaries in Figure 1 and shall meet the requirements in this Section 4.1.2. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipally owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey. The Professional shall bear all costs for the services associated with utility locates.
- 4.1.3. For the Well 6 Site only, the Professional shall locate up to two (2) geotechnical borings and field locate the borings by survey to match the Project survey (if applicable) provided by NBU.
- 4.1.4. For each Project Site, the Professional shall set and install, or update and verify control points, and/or benchmarks as required for the survey. The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on each survey drawing.
- 4.1.5. The Professional shall coordinate right of entry (“ROE”) for the Loop GST Site in accordance with the requirements in this Section 4.1.5. The Professional shall

contact private property owners, and attempt to obtain permission to enter and perform field services within private properties. If the Professional cannot obtain permission to enter private property, the Professional shall notify NBU and NBU shall coordinate with property owners to assist with ROE. The Professional shall compile a list of property owners which may be impacted by the Project, request current contact information from NBU, develop a notification of ROE request letter, deliver letters to property owners, follow up with phone contact, and manage receipt and communication regarding responses to the ROE request.

- 4.1.6. For each Project Site, the Professional shall research and review adjoining plats and deeds along the survey corridor. The Professional shall locate property corners and identify (or verify) existing right of way (“ROW”) along the survey corridor, based on found monuments and record documents.
- 4.2. SUBSURFACE UTILITY ENGINEERING. The Professional shall perform subsurface utility engineering (“SUE”) for the Well 6 site as described in this Section.
  - 4.2.1. The Professional shall provide SUE “Quality Level B” as defined by the American Society for Civil Engineers utility locates. Level B includes two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods providing horizontal positioning of subsurface utilities to within approximately one (1) foot.
- 4.3. GEOTECHNICAL DATA REPORT. The Professional shall conduct a geotechnical investigation to complete a Geotechnical Data Report (“GDR”) for the Well 6 Site only as described in this Section.
  - 4.3.1. Field Exploration:
    - 4.3.1.1. The Professional shall determine the required boring locations on the Well 6 Site. The Professional shall provide a Project site boring location map that shows the exploratory borings within the vicinity of the proposed improvements and along the proposed water main alignments.
    - 4.3.1.2. The Professional shall coordinate with NBU, CoNB, and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.
    - 4.3.1.3. The Professional shall drill exploratory borings for the proposed Well 6 improvements according to the schedule provided below:
      - 4.3.1.3.1. two (2) borings to a maximum depth of 35 feet below existing grade.
    - 4.3.1.4. The boring method conducted on the Well 6 Site shall be advanced using standard rotary drilling equipment with continuous-flight augers or rotary wash methods. Subsurface samples shall be collected using 2-inch diameter split-spoon sampler in conjunction with the standard penetration test (“SPT”). Intermittent 3-inch diameter Shelby tube samples shall be collected in between the SPTs.

- 4.3.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.
- 4.3.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.
- 4.3.1.7. The Professional shall patch borings drilled through pavement with like material (asphalt or concrete) upon completion of backfilling.
- 4.3.1.8. The Professional shall have personnel experienced in logging borings, directing the drilling, and handling and transporting the samples. The Professional shall provide visual classification of the subsurface stratigraphy in general accordance to the American Society for Testing and Materials, standard number D2488 and the Unified Soil Classification System during drilling and sampling.
- 4.3.2. The Professional shall provide laboratory testing to include the following:
  - 4.3.2.1. testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials;
  - 4.3.2.2. laboratory tests assigned for the specific subsurface materials encountered during exploration on the Project Site, but which are expected to include the following number and type of tests:
    - 4.3.2.2.1. Atterberg limits tests (up to a two (2) tests);
    - 4.3.2.2.2. percent passing the #200 sieve (up to two (2) tests);
    - 4.3.2.2.3. sieve analysis (gradation) tests (up to two (2) tests);
    - 4.3.2.2.4. moisture content tests (up to two (2) tests); and
    - 4.3.2.2.5. unconfined compressive strength tests (with unit weights; up to two (2) tests).
- 4.3.3. The Professional shall prepare a GDR that includes the following information and recommendations, as applicable:
  - 4.3.3.1. a summary of the field and laboratory sampling and testing program;
  - 4.3.3.2. boring logs and laboratory testing results;
  - 4.3.3.3. a review of general site conditions, including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered;
  - 4.3.3.4. general discussion of expected construction related issues; and
  - 4.3.3.5. earthwork related recommendations for use during development of plans and specifications.
- 4.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the timelines listed in Table 1:
  - 4.4.1. ROE list of property owners for the Loop GST site - one (1) Excel file electronic copy submitted with 30% design deliverables per Project Site. The Professional shall update and manage the list as ROE is obtained and services are completed;
  - 4.4.2. signed and sealed boundary verification survey - one (1) PDF electronic copy

- submitted with 60% design deliverables per Project Site;
- 4.4.3. GDR - one (1) PDF electronic copy submitted with 60% design deliverables for the Well 6 Site.

### **Task 5. Permitting & Stakeholders**

5. The Professional shall coordinate with the following stakeholders/agencies as described in this Section as needed for each Project Site.
  - 5.1. UNITED STATES ARMY CORP OF ENGINEERS (“USACE”). The Professional shall prepare and provide a coordination letter to obtain a USACE Section 404 permit.
  - 5.2. TEXAS HISTORICAL COMMISSION (“THC”). The Professional shall coordinate with the consultant hired directly by NBU to prepare and provide a coordination letter and desktop review to the THC, and to coordinate areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys.
  - 5.3. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”). The Professional shall prepare and submit permit applications to TCEQ for approval of all design documents. The permit applications include the following:
    - 5.3.1. variance letter (if required); and
    - 5.3.2. approval letter for pump station.
  - 5.4. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit permit applications to the CoNB to obtain permits for:
    - 5.4.1. floodplain permit;
    - 5.4.2. public infrastructure permit;
    - 5.4.3. building permit; and
    - 5.4.4. electrical permit.
  - 5.5. TEXAS DEPARTMENT OF TRANSPORTATION (“TxDOT”). The Professional shall prepare and submit a permit application for all work within the TxDOT ROW at the Loop GST site only.
  - 5.6. DELIVERABLES. The Professional shall provide the following deliverables to NBU in accordance with the times specified in this Section:
    - 5.6.1. TCEQ permit/ approval letter no later than the bid advertisement date - one (1) PDF electronic copy;
    - 5.6.2. CoNB permit no later than the bid advertisement date - one (1) PDF electronic copy; and
    - 5.6.3. TxDOT permit no later than the bid advertisement date (if needed) - one (1) PDF electronic copy.

### **Task 6. Bid Phase Services**

6. Upon completion of the final design, the Professional shall proceed with the bid phase services described in this Section. Separate bid phases will be conducted for each Project Site.

- 6.1. **PREBID CONFERENCE.** The Professional shall attend one (1) pre-bid conference per Project Site (two (2) total) to be administered by NBU. The Professional shall assist NBU with preparation of the agenda, provide NBU with a meeting summary, and coordinate conference responses with NBU. The Professional shall provide NBU with written responses to issues identified at each of the pre-bid conferences, and shall be in the form of addenda issued for each Project Site after the conferences and prior to bid opening.
- 6.2. **INTERPRET BID DOCUMENTS.** The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare up to four (4) addenda, two (2) per Project Site, to the bid documents, if requested by NBU.
- 6.3. **BID EVALUATION.** The Professional shall attend one (1) bid-opening conference for each Project Site (two (2) total) to be administered by NBU. The Professional shall assist NBU in the opening and analyzing of the bids received for each Project Site. This includes researching contractor qualifications and references. The Professional shall recommend award of contract or other actions, as appropriate, to be taken.
- 6.4. **CONFORMED CONSTRUCTION DOCUMENTS.** The Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications for each Project Site.
- 6.5. **DELIVERABLES.** The Professional shall deliver the following to NBU:
  - 6.5.1. up to four (4) addenda, two (2) per Project Site, between advertisement and bid opening - one (1) PDF electronic copy each to NBU and bidders per Project Site; and
  - 6.5.2. conformed construction documents by NTP - one (1) PDF electronic copy for each Project Site.

#### **Task 7. Construction Phase Services**

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

- Project Site with the construction contractor and prepare agenda, prepare and provide NBU with separate meeting minutes for each Project Site visit, and coordinate conference responses with NBU in accordance with meeting deliverables timelines specified in Section 1.4;
- 7.2.2. conduct one (1) construction document control workshop for each selected contractor (one (1) for each Project Site);
  - 7.2.3. attend up to a total of fifty-two (52) bi-weekly and twenty-four (24) monthly (twenty-six (26) bi-weekly and twelve (12) monthly per Project Site) construction progress meetings. The Professional shall prepare the agenda, and submit meeting minutes to NBU and the contractor in accordance with the timeline specified in Section 1.4;
  - 7.2.4. attend up to a total of six (6) site visits, three (3) per Project Site, 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 Project Site visit and notify NBU of any non-conforming work performed by the contractor, observed on the site visits;
  - 7.2.5. conduct, with NBU's representatives, two (2) substantial completion inspections, one (1) per Project Site, and punch list reviews of each Project Site for conformance with the design concept of the Project and compliance with the construction contract documents within fourteen (14) days of substantial completion. The Professional shall prepare a list of deficiencies to be corrected by the contractors before recommendations of final payment; and
  - 7.2.6. conduct two (2) final completion inspections, one (1) per Project Site, within seven (7) days of final completion for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make recommendations of final payment.
- 7.3. **SUBMITTAL MANAGEMENT.** The Professional shall conduct submittal management services for each Project Site in accordance with this Section 7.3. The Professional will use FNi Manager, a document management system for construction documents. The Professional shall monitor the processing of contractors' submittals (shop drawings, requests for information, schedules, certified test reports, etc.), provide for filing and retrieval of Project documentation, and verify that the contractors are sending and processing submittals in accordance with the schedules. The Professional shall produce monthly reports and submit to NBU by the 25<sup>th</sup> day of the month indicating the status of all submittals in the review process.
- 7.3.1. **SUBMITTAL REVIEW.** Quantities shown for contractor submittals under this Section are the combined total for both Project Sites. The Professional shall

review all contractor submittals for compliance with the design concepts to include the following:

- 7.3.1.1. shop drawings (up to sixty (60) total);
  - 7.3.1.2. pre-submittal meetings for major equipment (up to seven (7) total);
  - 7.3.1.3. post submittal meetings for major equipment (up to seven (7) total);
  - 7.3.1.4. operation and maintenance manuals (up to twelve (12) total);
  - 7.3.1.5. record data (up to twenty (20) total);
  - 7.3.1.6. requests for information (up to twenty (20) total);
  - 7.3.1.7. schedules (up to forty-eight (48) total);
  - 7.3.1.8. certified test reports (up to twenty (20) total); and
  - 7.3.1.9. miscellaneous submittals (up to twenty (20) total).
- 7.4. CHANGE ORDERS. For each Project Site, the Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project as described in this Section.
- 7.4.1. The Professional shall adhere to the NBU-established procedures and document construction changes required to implement modifications to each project.
  - 7.4.2. The Professional shall process contract modifications and negotiate with the contractor at NBU's direction to determine the cost and time impacts of these changes for each Project Site.
  - 7.4.3. The Professional shall prepare field order and change order documentation for up to five (5) total field orders for minor alterations and up to ten (10) total change orders (combined total for both Project Sites).
  - 7.4.4. The Professional shall evaluate up to five (5) total (combined total for both Project Sites) notices of contractor claims and make initial recommendations to NBU on the merit and value of the claim based on information submitted by the contractor or available Project documentation. The Professional shall negotiate a settlement value with the contractor at NBU's direction.
- 7.5. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for each Project Site for NBU and contractors during the course of construction per the schedule assumed herein.
- 7.6. PAY ESTIMATES. The Professional shall review and comment on monthly and final estimates for payment to the contractors for each Project Site pursuant to the general conditions of the construction contracts during the course of the construction Project per the schedule assumed herein.
- 7.7. RESIDENT REPRESENTATION. The Professional shall provide a full-time (forty (40) hours per week) resident Project representative ("RPR") split between the two Project Sites for the first six (6) months of construction and a part-time (ten (10) hours per week) RPR split between the two Project Sites for the following six (6) months of construction. In addition, the Professional will provide (i) an average of five (5) hours per week of construction management time split between the two Project Sites for twenty-six (26)

weeks during the construction phase, and then three (3) hours per week of construction management time split between the two Project Sites for the following seventy-eight (78) weeks during the construction phase. The duties, responsibilities and the limitations of authority of the RPR, and designated assistants, are as follows:

#### 7.7.1. Communication

- 7.7.1.1. The RPR shall establish the communication procedures for all parties involved in the Project. The communication procedures shall detail the amount of time all parties have to respond to questions, submittals, or other documents, and the most efficient transmission of communication (via email, phone, etc.). These procedures shall be provided in writing and reviewed with NBU, the engineer of record (“EOR”), and the contractor. NBU shall be entitled to approve all communication procedures.
- 7.7.1.2. The RPR shall conduct periodic progress meetings with NBU, EOR, and the contractor to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any Project related issues.
- 7.7.1.3. The RPR shall prepare an agenda prior to the progress meetings and record and distribute the meeting minutes to NBU and the contractor as described in Section 1.4.
- 7.7.1.4. The RPR shall submit monthly reports of the construction progress to NBU by the 25<sup>th</sup> of each month on FNi Manager. The reports shall describe the construction progress and summarize Project costs, cash flow, construction schedule, pending and approved contract modifications, change order status, and outstanding issues.

#### 7.7.2. Quality Assurance

- 7.7.2.1. The RPR shall observe the contractor’s work to determine if the work is proceeding in accordance with the contract. The RPR shall prepare site visit reports to be submitted electronically to NBU documenting the RPR’s observations in accordance with Section 7.7.1.4.
- 7.7.2.2. The RPR shall document when non-conforming work is observed and submit this documentation via email to NBU and the contractor. The Professional shall verify and document when the observed non-conforming work has been corrected and submit documentation to that effect to NBU via email.
- 7.7.2.3. The RPR shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.
- 7.7.2.4. The RPR shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in accordance with



applicable testing and inspection bureaus who set standards for the testing of materials, witness tests, and factory testing.

- 7.7.2.5. The RPR shall provide specifically qualified personnel to conduct specialty observations for structural, mechanical, electrical, and instrumentation systems as requested by NBU.

#### 7.7.3. Document Management

- 7.7.3.1. The RPR shall be responsible for submittal management as described in Section 7.3. The RPR shall perform an initial review of the submittals and electronically send the submittals to the EOR and/or NBU for a detailed review and response.
- 7.7.3.2. The RPR shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties for documents, and of (ii) the EOR in reviewing and responding to submittals. The RPR shall verify that documentation is being processed according to the schedule.
- 7.7.3.3. The RPR shall prepare monthly reports in accordance with Section 7.7.1.4 that monitor the status of all submittals in the review process. The RPR shall submit an electronic copy of the report to NBU once a month.

#### 7.7.4. Schedule Management

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

#### 7.7.5. Cost Management

- 7.7.5.1. The RPR shall review the schedule of values and payment requests prepared by the contractor. The RPR shall establish with NBU and the contractor procedures to review the monthly quantities of work in place and the corresponding payment requests for work completed.
- 7.7.5.2. The RPR shall prepare monthly cash flow requirements based upon information provided by the contractor. The RPR shall update cash flow reports monthly and include these reports with monthly updates to NBU by the 25<sup>th</sup> of each month.
- 7.7.5.3. The RPR shall verify quantities of work in place, review the payment requests and supporting documentation, and provide an opinion of whether the payment requested matches the work completed to NBU via email.

#### 7.7.6. Issues Management

- 7.7.6.1. The RPR shall provide an initial interpretation of the drawings and specifications when questions arise concerning the definition of the drawings and specifications. The RPR shall coordinate a resolution to these

issues based upon a final interpretation of the drawings and specifications by the EOR, NBU, and the contractor.

7.7.6.2. The RPR shall track and document issues, procure a resolution, and notify the EOR, NBU, and the contractor via email promptly.

#### 7.7.7. Change Management

7.7.7.1. The RPR shall be responsible for change management as described in Section 7.4.

7.7.7.2. The RPR shall establish and document procedures for administering changes to the construction contract.

7.7.7.3. The RPR shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's Texas engineering seal affixed.

#### 7.7.8. Project Completion

7.7.8.1. The RPR shall coordinate the start-up and commissioning of the facilities and all of the process systems with the EOR, the contractor, and NBU. Start-up services will include the submittal of a pump station startup checklist, generator startup checklist, uncoupled testing, coupled testing, generator, and transfer switch testing, startup meeting and testing, and SCADA support. Start-up services to be provided by the Professional are described in more detail below:

7.7.8.1.1 start-up checklists per Project Site – the Professional will develop a detailed project specific, start-up checklist for the contractor to follow during testing for each Project Site. Checklists will include items necessary to prove the proper installation and function of pumping equipment and generator equipment and will be a supplement to the start-up plan that is being provided to the contractor.

7.7.8.1.2 uncoupled testing – attend uncoupled testing. This includes services of electrical controls engineers (two (2) days), one (1) day per Project Site

7.7.8.1.3 coupled testing – attend coupled testing. This includes services of a civil/process engineer (three (3) days) and electrical controls engineer (three (3) days), one (1) day for the Well 6 Site and two (2) days for the Loop GST Site.

7.7.8.1.4 generator testing – attend generator and ATS testing. This includes services of an electrical controls engineer (one (1) day) at the Well 6 Site.

7.7.8.1.5 start-up coordination meeting with contractor – attend up to two (2) video conferences, one (1) per Project Site, or similar meeting to coordinate the start-up plan with the contractor.

- 7.7.8.1.6 on-site performance testing – attend on-site performance testing of equipment and system start-up and commissioning activities for the Loop GST Site. This includes services of a civil/process engineer (four (4) days), two (2) days per Project Site, electrical controls engineer (four (4) days), two (2) days per Project Site, and treatment engineer (one (1) day) for the Well 6 Site.
- 7.7.8.1.7 SCADA support services – this includes review of SCADA factory acceptance testing (FAT) plan, SCADA FAT (four (4) days), two (2) days per Project Site, and review of SCADA screens for each Project Site.
- 7.7.8.2. When the contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the RPR shall conduct a review of the Project to determine conformance or non-conformance with the Project design and construction documents. The RPR shall determine if a review of the work is required by the EOR, and if so, shall schedule the reviews of the work with the EOR. The RPR shall prepare a list of deficiencies to be corrected by each contractor before substantial completion is granted and any partial release or reduction of retainage is approved. The RPR shall prepare certificates of substantial completion that include a list of work to be completed prior to issuance of final completion certificates.
- 7.7.8.3. The RPR shall conduct final reviews of the Project for conformance with all of the Project documents. The RPR shall confirm work is complete and in accordance with the Project documents prior to recommending final payments.
- 7.7.8.4. The RPR shall assist NBU in obtaining permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the contractors. The RPR shall review and confirm that the contractors have submitted all required documents to NBU prior to recommending the final payments.
- 7.7.9. Materials Transfer
  - 7.7.9.1. The RPR shall coordinate the transfers of and acceptance by the contractors of any NBU furnished equipment or materials.
  - 7.7.9.2. The RPR shall coordinate the transfers of and acceptance by NBU of any contractor-furnished spare parts, materials, keys, etc.
- 7.7.10. Record Drawings
  - 7.7.10.1. The RPR shall receive and review as-built drawings from the contractor for each Project Site. The RPR shall electronically transmit drawings and other documents to the EOR for the preparation of the record drawings. These drawings shall include notations that reflect as-built Project components and conditions. The record drawings shall include RPR's notes,

contractors' field notes, and NBU's field notes made during the construction process.

7.7.11. Limitations of Authority of RPR

- 7.7.11.1. The RPR shall not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized by the EOR and NBU.
- 7.7.11.2. The RPR shall not exceed limitations of EOR's authority as set forth in Agreement or the contract documents.
- 7.7.11.3. The RPR shall not undertake any of the responsibilities of contractors, subcontractors, suppliers, or contractors' superintendents.
- 7.7.11.4. The RPR shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the contract documents.
- 7.7.11.5. The RPR shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work or any activities or operations of NBU or contractors.
- 7.7.11.6. The RPR shall not accept shop drawing or sample submittals from anyone other than the contractors.
- 7.7.11.7. The RPR shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by NBU.

7.8. CLOSE-OUT DOCUMENTS

- 7.8.1. RECORD DRAWINGS. The Professional shall prepare the record drawings for each Project Site based on the revised redline construction drawings and information furnished by the construction contractors reflecting changes in the Project made during construction for each Project Site. The Professional shall prepare one (1) set of record drawings per Project Site at the completion of the Project and submit them to NBU via email within sixty (60) days of receipt of as-built drawings from the contractors or final completion.
- 7.8.2. ASSET INFORMATION. The Professional shall prepare a memorandum for each Project Site that provides the asset information listed below for all above grade facilities for insurance purposes within thirty (30) days after substantial completion by each contractor. The asset information will include the following:
  - 7.8.2.1. address;
  - 7.8.2.2. year built;
  - 7.8.2.3. description;
  - 7.8.2.4. square footage;
  - 7.8.2.5. building value; and
  - 7.8.2.6. contents value.
- 7.8.3. ADDITION AND RETIREMENT SHEETS. For each Project Site, the Professional shall prepare individual addition and retirement sheets for each piece

of above-ground equipment, and one (1) sheet each for below-ground water and/or wastewater piping. The Professional shall provide the addition and retirement sheets within thirty (30) days after substantial completion by each contractor. Information on each sheet includes, but is not limited to, the following:

- 7.8.3.1. equipment identification;
- 7.8.3.2. location;
- 7.8.3.3. network structure;
- 7.8.3.4. warranty date;
- 7.8.3.5. manufacturer;
- 7.8.3.6. model;
- 7.8.3.7. serial number;
- 7.8.3.8. rated flow (if applicable);
- 7.8.3.9. diameter (if applicable); and
- 7.8.3.10. linear feet and/or number of units.

7.9. DELIVERABLES. The Professional shall provide the following deliverables to NBU for each Project Site:

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

## **SUPPLEMENTAL SERVICES**

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

in the supplemental services agreement or contract amendment, as appropriate.

## TIME OF COMPLETION

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

**Table 1**

| <b>Project Milestones</b> | <b>Start Date</b> | <b>End Date</b> |
|---------------------------|-------------------|-----------------|
| Notice to Proceed         | 01/06/2025        | N/A             |
| 30% Preliminary Design    | 01/07/2025        | 03/24/2025      |
| 60% Final Design          | 03/25/2025        | 06/09/2025      |
| 90% Final Design          | 06/10/2025        | 08/25/2025      |
| 100% Final Design         | 08/26/2025        | 10/13/2025      |
| Permitting                | 10/14/2025        | 01/05/2026      |
| Bid Phase                 | 10/14/2025        | 06/29/2026      |
| Construction Phase        | 06/30/2026        | 07/21/2028      |

Exhibit B

Compensation

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

**Services**

NBU shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$1,898,468 as further described in the table below and made a part of this Agreement.

**Table 2**

| <b>Task</b>                                              | <b>Cost</b>        |
|----------------------------------------------------------|--------------------|
| Task 1: Project Management                               | \$120,224          |
| Task 2: Preliminary Design Phase                         | \$224,380          |
| Task 3 and Task 4: Final Design Phase and Field Services | \$711,444          |
| Task 5: Permitting & Stakeholders                        | \$15,249           |
| Task 6: Bid Phase                                        | \$33,169           |
| Task 7: Construction Phase – General Representation      | \$344,754          |
| Task 7: Construction Phase – Startup Services            | \$152,810          |
| Task 7: Resident Representation                          | \$296,438          |
| <b>Total</b>                                             | <b>\$1,898,468</b> |

**Supplemental Services**

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



Exhibit C

Figure 1

Well 6 Site



Loop GST

