

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(DEVELOPMENT PLAN REVIEW)**

This **SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Second Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **MERRICK & COMPANY**, a Colorado corporation authorized to transact business in the State of Texas (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated August 6, 2021 (the “Original Agreement”), for all labor, material, and equipment necessary to provide engineering support to review construction plans for water and wastewater improvements that are needed for new residential and commercial developments located within NBU’s service area (the “Original Services”) for a term of one (1) year with an automatic renewal for an additional twelve (12) months;

WHEREAS, the Original Agreement did not require Board approval because the cost for the Original Services totaled \$260,000 and did not exceed the \$500,000 threshold for Board approval required by the NBU Purchasing Policy;

WHEREAS, the Parties entered into a First Amendment to Professional Services Agreement on February 8, 2023, to (i) reduce the Professional’s time to provide comments on construction plans; (ii) add a weekly reporting requirement for the Professional regarding the status of construction plan review; (iii) add a Renewal Term (defined therein), thereby extending the completion date to July 31, 2024; and (iv) increase the total not to exceed amount of compensation to be paid to the Professional to \$560,000 (the “First Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, in connection with the NBU Purchasing Policy, the NBU Board of Trustees approved the First Amendment because together the Original Agreement and the First Amendment exceed \$500,000;

WHEREAS, the Parties have identified a need to (i) revise the hourly billing rate structure; (ii) increase the Professional’s construction plan review time; (iii) extend the completion date; and (iv) increase the compensation to be paid to the Professional under the Agreement;

WHEREAS, the Agreement requires the Parties to agree in writing to amend the Agreement;
and

WHEREAS, the Parties desire to amend the Agreement to (i) revise the hourly billing rate structure; (ii) increase the Professional’s construction plan review time; (iii) add two one-year renewal terms, thereby extending the completion date to July 31, 2026; and (iv) increase the total not to exceed amount of compensation to be paid to the Professional under the Agreement to \$850,000.

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

AGREEMENT

Section 1. Amendment to the Agreement. As of the effective date of this Second Amendment, Section 1 of the Agreement is hereby deleted and replaced in its entirety as follows:

Section 1. Term of the Agreement. This Agreement will be effective on the latest date subscribed below, and will remain in full force and effect for a period of one (1) year from August 1, 2021, to July 31, 2022 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referenced herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Term extend beyond July 31, 2026.

Section 2. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this Second Amendment as of the effective date of this Second Amendment.

Section 3. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted and replaced in its entirety by Exhibit B to this Second Amendment as of the effective date of this Second Amendment.

Section 4. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 5. Entire Agreement. This Second Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 6. Binding Effect. This Second Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 7. Severability. If any term or provision of this Second Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Second Amendment shall not be affected thereby, and this Second Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 8. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

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

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ryan Kelso
Title: CEO

THE PROFESSIONAL:

MERRICK & COMPANY,
a Colorado corporation authorized to
transact business in the State of Texas

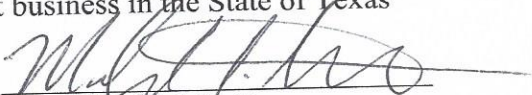
By: 
Name: Michael J. Martin
Title: Sr. Vice President

Exhibit A

Services

NO CHANGE

Task 1. Construction Plan Review

NO CHANGE

- 1.1. NO CHANGE
- 1.2. NO CHANGE
- 1.3. NO CHANGE
- 1.4. The Professional shall provide a letter in Microsoft Word format with written comments to NBU for NBU to submit back to the issuing design engineer within 14 calendar days of receipt of submittal from NBU.
- 1.5. NO CHANGE
- 1.6. NO CHANGE
- 1.7. NO CHANGE
 - 1.7.1 NO CHANGE
 - 1.7.2 NO CHANGE
 - 1.7.3 NO CHANGE
 - 1.7.4 NO CHANGE

Time of Completion

The Professional is authorized to perform the Services upon execution of this Agreement for the period of time described in Section 1 of the Agreement, as amended.

Exhibit B

Compensation

NBU shall pay the Professional for the Services rendered under this Agreement in an amount not to exceed \$850,000 for the duration of the Agreement in accordance with the table below.

Cost Breakdown	Original Agreement Amount	First Amendment	Second Amendment	Total Amount
Initial Term (August 2021 – July 2022)	\$130,000	\$0	\$0	\$130,000
First Renewal Term (August 2022 – July 2023)	\$130,000	\$85,000	\$0	\$215,000
Second Renewal Term (August 2023 – July 2024)	\$0	\$215,000	\$0	\$215,000
Third Renewal Term (August 2024 – July 2025)	\$0	\$0	\$145,000	\$145,000
Fourth Renewal Term (August 2025 – July 2026)	\$0	\$0	\$145,000	\$145,000
Total	\$260,000	\$300,000	\$290,000	\$850,000

The Professional's hourly rates are included below for informational purposes only.



SCHEDULE OF HOURLY BILLING RATES

EFFECTIVE January 1, 2024

ADMINISTRATION & PROCESS CONTROLS:

Admin I	\$100
Admin II	\$120
Admin III	\$140
Admin IV	\$155

DRAFTING:

Designer I	\$100
Designer II	\$120
Designer III	\$140
Designer IV	\$155
Designer V	\$170
Senior Design Consultant	\$200
Design Manager	\$210

PROJECT ENGINEERING:

Project Engineer I	\$120
Project Engineer II	\$140
Project Engineer III	\$155
Project Engineer IV	\$170
Project Engineer V	\$190
Senior Project Engineer	\$200
Practice Leader (Engineering & Technical Design)	\$275
Senior Practice Leader (Engineering & Technical Design)	\$300

PROJECT MANAGEMENT:

Project Manager	\$240.00
Senior Project Manager	\$250.00

OTHER:

Subconsultant	Cost + 10%
Courier	Cost + 10%
Minimum Charge	\$30.00
Personal Vehicle Mileage	Current Allowable IRS Rate
Other Materials or Equipment	Other Materials or Equipment Cost + 10%