

**THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
NORTH KUEHLER 30”/33” SANITARY INTERCEPTOR REPLACEMENT PROJECT**

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

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated September 4, 2018 (the “Original Agreement”), for design, bid, and construction phase services to support two construction contracts in connection with the North Kuehler 30”/33” sanitary sewer interceptor replacement project (the “Project”), with a completion date of November 30, 2020;

WHEREAS, NBU and the Professional entered into an Amendment to Professional Services Agreement dated November 5, 2019, to add design services and consolidate the bidding and construction phase services to support one construction contract for both the 30” sewer line and 33” sanitary sewer line and to extend the completion date of the Services (“Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, due to a fire on the Wurstfest property, NBU and the Professional entered into a Second Amendment to Professional Services Agreement dated April 22, 2020 (effective April 30, 2020), to amend design services and plans for relocation of the 30” sewer line and to add bidding and construction phase services to support two construction contracts to maintain the Project schedule (“Second Amendment” and, together with Amendment and the Original Agreement, the “Agreement”);

WHEREAS, NBU and the Professional have determined that additional design modifications are necessary due to the discovery of unknown utilities during construction of the Project;

WHEREAS, the Project has been delayed further due to stakeholder coordination and easement acquisition with the Schlitterbahn and Wurstfest properties; and

WHEREAS, NBU and the Professional desire to (i) modify supplemental services for design modification and additional stakeholder meetings (the “New Supplemental Services”); (ii) extend the time of completion for the Services and Supplemental Services to reflect the new project timeline; and (iii) reallocate supplemental services funds for the New Supplemental Services.

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

AGREEMENT

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

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

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

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

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

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

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

(The remainder of this page intentionally left blank)

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

THE PROFESSIONAL:

FREESE AND NICHOLS, INC.,
a Texas corporation

By: *Drew Hardin*
Name: Drew Hardin
Title: Vice President

EXHIBIT A – SCOPE OF SERVICES

The Scope of Services of the Professional Services Agreement entered into by NBU and the Professional on September 14, 2018, Amendment to the Professional Services Agreement entered into on November 5, 2019, and Second Amendment to the Professional Services Agreement entered into on April 22, 2020 (effective April 30, 2020), shall be amended as described herein.

Task 1 – Project Management

NO CHANGE

Task 2 – Preliminary Engineering Phase

NO CHANGE

Task 3 – Final Design Phase

NO CHANGE

Task 4 – Bid Phase

NO CHANGE

Task 5 – Construction Phase Services

NO CHANGE

Task 6 – Supplemental Services

Pursuant to Section 4(B) of the Agreement, the Professional shall seek prior approval from NBU before commencing work on any Supplemental Services described in this Section. If NBU agrees to the Supplemental Services, NBU shall execute a supplemental services agreement or contract amendment, as appropriate, requesting the Professional perform the Supplemental Services.

- 1) Supplemental Services shall be performed only as approved in writing by NBU. Potential Services include, but are not limited to:
 - a) DELETED
 - b) DELETED
 - c) DELETED
 - d) NO CHANGE
 - e) NO CHANGE

- f) Additional services during construction for the following:
 - i) Design modifications based on unknown utilities found during construction; and
 - ii) Stakeholder meetings and coordination with various groups including Knights of Columbus, City of New Braunfels, Wurstfest, TxDOT, Town Creek development, and residents within the project limits.

TIME OF COMPLETION: The Professional is authorized to commence work on the Project upon execution of the Agreement and agrees to complete the services in accordance with the following schedule:

Milestone/Deliverable	Completion Date
NTP	NO CHANGE
Preliminary Engineering	NO CHANGE
60% Design	NO CHANGE
90% Design	NO CHANGE
Route Study for Re-Route	NO CHANGE
Field Services for Re-Route & GBR	NO CHANGE
95% Design	NO CHANGE
Easements/Right of Entry	NO CHANGE
100% Submittal	NO CHANGE
TCEQ Review / Advertise	NO CHANGE
NBU Board Approval of Construction Contracts	09/24/2020
Construction NTP	10/06/2020
Construction Completion	03/31/2022

EXHIBIT B - COMPENSATION

NBU shall pay the Professional for the Services and Supplemental Services associated with the Agreement in accordance with the tables below. The total amount of the Agreement shall not exceed \$1,661,466.

Cost Breakdown	Original Contract Amount	Amendment	Second Amendment	Third Amendment
Task 1: Project Management	\$56,614	\$8,187	\$10,526	\$0
Task 2: Preliminary Engineering	\$377,530	\$243,578	\$11,550	\$0
Task 3: Final Design	\$306,598	177,303	\$49,597	\$0
Final Design Credit from FNI	N/A	(\$50,000)		
Task 4: Bid	\$22,063	(\$10,127)	\$10,127	\$0
Task 5: Construction	\$229,865	(\$31,281)	\$31,281	\$0
Sub-Total – Lump Sum	\$992,670	\$337,660	\$113,081	\$0
Task 6 – Supplemental Services (SS)	\$193,056	\$25,000**	\$0	(\$25,000)
<i>SS used for Services</i>	<i>\$193,056 *</i>	<i>\$0</i>		
<i>New SS Authorized under Third Amendment</i>	<i>\$0</i>	<i>\$0</i>	<i>\$0</i>	<i>\$25,000</i>
Total Contract Value	\$1,185,726	\$362,660	\$113,081	\$0

*Approved by NBU

**NBU did not use

Contract Summary Table

Contract Items	Amount
Original Contract	\$1,185,726
Amendment	\$362,660
Second Amendment	\$113,081
Third Amendment	\$0
Total Contract Value	\$1,661,467