

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
IH-35 INTERCEPTOR PROJECT**

This **FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “First Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina 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 July 8, 2020 (the “Original Agreement”), for project management, routing and conceptual design, preliminary design, final design, bid phase services, construction phase services, and permitting services (collectively the “Existing Services”) for the construction of the North Kuehler IH-35 15-, 18-, 21-, and 24-inch interceptor project (the “Project”);

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

WHEREAS, changes in alignment and additional infrastructure require additional project management, routing, design, permitting and easement acquisition services (the “New Services” and, together with the Existing Services, the “Services”) from the Professional that are not included in the Original Agreement; and

WHEREAS, NBU and the Professional desire to amend the Original Agreement to (i) add the New Services, more specifically described in the attached Exhibit A; (ii) extend the time of completion for the Existing Services and add a time of completion for the New Services; (iii) remove supplemental services relating to subsurface utility engineering and easement surveying and reallocate the related compensation in the amount of \$36,000 from the supplemental services to the Services; and (iv) increase the not to exceed amount of compensation for the Services by \$522,000.

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 Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this Amendment as of the effective date of this 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 Amendment as of the effective date of this 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 Amendment, together with the Original Agreement, (collectively referred to as 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 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 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 Amendment shall not be affected thereby, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

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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:

KIMLEY-HORN AND ASSOCIATES, INC.,
a North Carolina corporation authorized to
transact business in the State of Texas

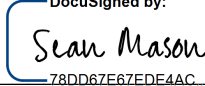
By:  _____
Name: Sean Mason
Title: Associate

EXHIBIT A – SCOPE OF SERVICES

The Professional shall provide all labor, material, and equipment necessary to provide project management, routing and conceptual design, preliminary design, final design, bid phase services, construction phase services, and permitting services (collectively the “Services”) for the construction of the North Kuehler IH-35 15-, 18-, 21-, and 24-inch Wastewater Interceptor Project (the “Project”). The Professional shall design approximately 10,000 linear feet (“LF”) of 12 -, 15-, 18-, 21-, 24-, and 30-inch diameter wastewater interceptor to replace the existing 10- and 12-inch wastewater pipeline along Interstate 35 frontage road and business I-35 between Seville Drive and Highway 46 and the existing 12-, 15-, and 21-inch wastewater pipeline along the Guadalupe River from the private drive name Brooke Ashley to the Rio Bar Screen near the intersection of Rio Dr and Madrid Dr.

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

Task 1 – Project Management

Design Management

NO CHANGES

Data Collection

NO CHANGES

MEETINGS

The Professional shall conduct the following meetings in connection with Task 1:

1. NO CHANGES
2. Progress Meetings:
 - a. the Professional shall conduct up to twenty-four (24) progress meetings with NBU.

DELIVERABLES

The Professional shall submit the following deliverables to NBU in connection with Task 1:

1. NO CHANGES
2. NO CHANGES
3. comment response log for up to three (3) rounds of comments.

Task 2 – Routing and Conceptual Design

Based upon the information obtained from Task 1, the Professional shall perform conceptual design and routing services for the Project as described herein.

1. NO CHANGE
2. NO CHANGE

3. NO CHANGE
4. NO CHANGE
5. NO CHANGE
6. NO CHANGE
7. NO CHANGE
8. The Professional shall perform coordination meetings with the River Place developer and downstream pipe rehabilitation project as follows:
 - a. the Professional shall conduct two (2) coordination meetings with the developer to discuss alignment and schedule.

MEETINGS

The Professional shall conduct the following meetings in connection with Task 2:

1. three (3) review meetings with NBU;
2. NO CHANGE
3. NO CHANGE
4. one (1) review meeting with City of New Braunfels; and
5. Two (2) alignment discussion meetings with the River Place developer.

DELIVERABLES

The Professional shall submit the following deliverables to NBU in connection with Task 2:

1. three (3) hard copies and PDF copy of the draft routing and alignment exhibit with capacity calculations.
2. NO CHANGE
3. NO CHANGE
4. NO CHANGE

ITEMS PROVIDED BY NBU

NO CHANGE

Task 3 – Preliminary Design

The Professional shall perform the preliminary design services of the utility lines as described herein.

1. After route/alignment confirmation with NBU, the Professional shall provide an on-the-ground survey for the proposed alignments, approximately 10,000 LF total, for the design of the pipeline. The Professional shall provide design survey services as described herein.
 - a. NO CHANGE
 - b. NO CHANGE
 - c. NO CHANGE
 - d. NO CHANGE
 - e. NO CHANGE
2. The Professional shall perform a geotechnical analysis of the proposed wastewater line alignments to determine subsurface conditions and make recommendations regarding embedment, backfill, and excavation parameters. The recommendations for embedment and backfill will take into account NBU standards for backfill and embedment. The geotechnical analysis shall include the following:
 - a. subsurface exploration including up to thirteen (13) sample bores at various locations and depths along the proposed line;
 - b. NO CHANGE
 - c. NO CHANGE
 - d. NO CHANGE
3. The Professional shall prepare preliminary construction plans and specifications for the wastewater line. Construction plans shall be prepared on 11"x17" size sheets and in PDF format and shall consist of the following:
 - a. NO CHANGE
 - b. NO CHANGE
 - c. NO CHANGE
 - d. contractor access, staging plan, and easement summary (5 Sheets);
 - e. wastewater plan and profiles sheets 1"=80' (14 Sheets);
 - f. NO CHANGE
 - g. NO CHANGE
 - h. NO CHANGE
 - i. NO CHANGE
 - j. structural detail sheets for two (2) aerial crossings (6 sheets).
4. NO CHANGE

5. The Professional shall perform the following subsurface utility engineering (“SUE”) services to quality level A, B, and D as described below. The following SUE services shall be performed in accordance with the American Society of Civil Engineers Standard 38-02:
 - a. Quality Level A:
 - i. up to sixteen (16) test hole locates to be performed with vacuum excavation equipment;
 - b. Quality Level B:
 - ii. up to nine (9) days of quality Level B within the area to be surveyed (approximately 50-foot width) to be performed with electrical toning equipment; and
 - c. Quality Level D:
 - iii. collect existing utility record information from utility purveyors, municipalities, counties, and other agency suppliers within the area of investigation. Typical utilities included are: primary electric, telephone, cable TV, fiber optic, gas, petroleum, water, sanitary sewer, and storm drain systems.

MEETINGS

NO CHANGE

DELIVERABLES

NO CHANGE

ITEMS PROVIDED BY NBU

NO CHANGE

Task 4 – Final Design

The Professional shall perform the final design services of the utility lines as described herein.

1. The Professional shall prepare construction plans and specifications for wastewater improvements. Construction plans shall be prepared on 11”x17” size sheets and in PDF format and shall consist of the following:
 - a. NO CHANGE
 - b. NO CHANGE
 - c. NO CHANGE
 - d. contractor access, staging plan, and easement summary (5 sheets);
 - e. wastewater plan and profiles sheets 1”=80’ (14 sheets);
 - f. NO CHANGE
 - g. NO CHANGE
 - h. NO CHANGE
 - i. NO CHANGE
 - j. structural detail sheets for two (2) aerial crossings (6 sheets).

2. NO CHANGE
3. The Professional shall prepare a final OPCC for the wastewater interceptor design. The Professional cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its OPCCs.

MEETINGS

NO CHANGE

DELIVERABLES

NO CHANGE

ITEMS PROVIDED BY NBU

NO CHANGE

Task 5 – Bid Phase Services

NO CHANGE

Task 6 – Construction Phase Services

NO CHANGE

Task 7 – Permitting Services and Easement Acquisition Support

The Professional shall perform the permitting and easement acquisition support services required for the Project as described herein.

1. NO CHANGE
2. NO CHANGE
3. The Professional shall meet with the City of New Braunfels personnel to review the design for compliance with City of New Braunfels requirements in order to obtain a capital improvements project permit. Two (2) meetings with the City of New Braunfels are required.
4. The Professional shall support the acquisition of easements and right-of-entry. Services anticipated to include:
 - a. attending up to twenty-seven (27) meetings with property owners;
 - b. preparing preliminary layouts for up to thirty-seven (37) permanent or temporary construction easements; and
 - c. coordinating with the surveyor based on input from property owners and NBU.
5. The Professional shall perform an on the ground survey on a per-easement basis for temporary and permanent utility easements. Assumptions are based on a total of thirty-seven (37) easement documents for temporary or permanent easements for up to twenty-seven (27) parcels. The Professional shall perform the following survey services:

- a. perform deed, plat, and courthouse record research;
- b. request title report from NBU's Consultant and obtain copies of deeds and easement documents;
- c. prepare a metes and bounds description with exhibit for each proposed permanent utility easement and each proposed temporary construction easement. The Professional shall provide separate documents for permanent and temporary easements for each parcel certified by a Professional Land Surveyor, registered in the State of Texas; and
- d. survey SUE Level B, Level A, and geotechnical bore locations for the project.

MEETINGS

The Professional shall conduct the following meetings in connection with Task 7:

1. up to twenty-seven (27) property owner meetings.

DELIVERABLES

The Professional shall submit the following deliverables to NBU in connection with Task 3:

1. up to thirty-seven (37) easement layouts for permanent or temporary easements; and
2. up to thirty-seven (37) easements metes and bounds descriptions with exhibit.

Task 8 – Drainage Study Analysis and Access Improvements Design

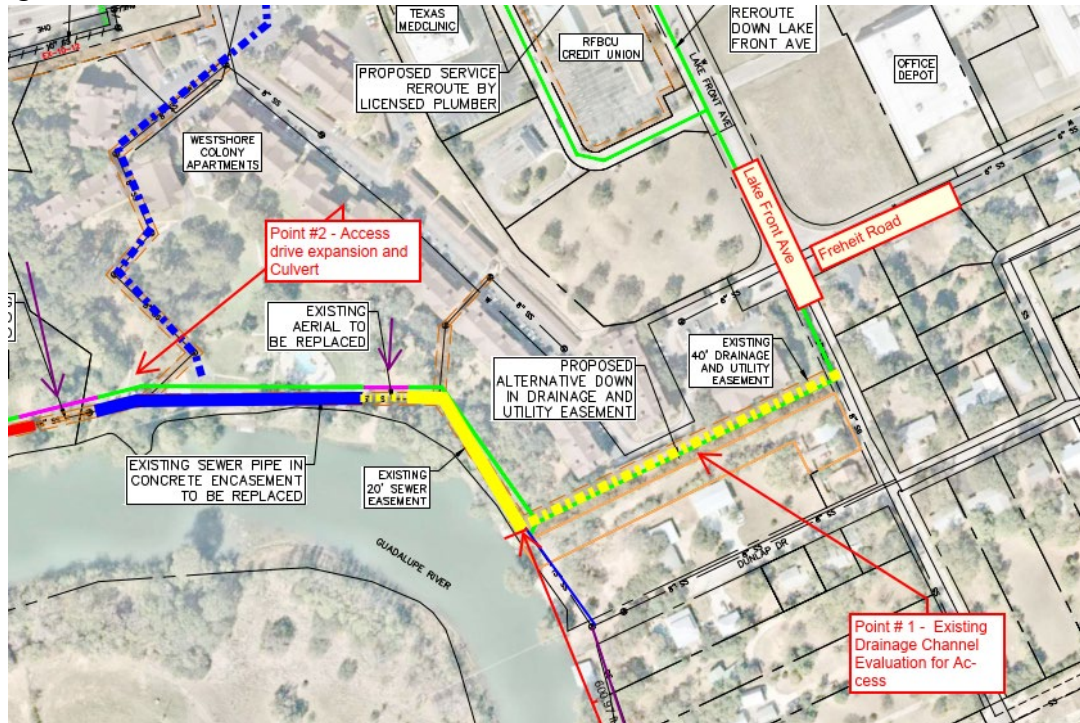
The Professional shall perform a drainage study, analyze, and provide a recommendation and design for implementation of the drainage and access improvements in the section of the proposed wastewater interceptor from Westshore Colony Apartment property to Dunlap Drive (as shown in Figure 1 below). The Professional understands that NBU is considering options for access to the proposed NBU wastewater line for both construction and maintenance. Currently the accessibility to the existing wastewater line is limited by steep grades and private property improvements. The Professional shall follow the City of New Braunfels' drainage criteria manual in performing the drainage analysis.

PRELIMINARY TECHNICAL MEMORANDUM

1. The Professional shall perform a drainage study to analyze the existing drainage channel south of the Westshore Colony Apartment Complex and a Culvert access point in the Westshore Colony Apartment Complex, labeled in Figure 1 below as Point #1 and Point #2. Point #1 begins at an entry to Westshore Apartment complex at Lake Front Ave. This drainage channel captures upstream runoff coming from Freiheit Road and Lake Front Avenue. In its existing state, the drainage has no storm sewer conveyance capacity, it is just conveyed by the street curb and gutter. Between Points #1 and #2 is an existing culvert that captures runoff from the Westshore Apartment Complex site. The Professional will analyze the existing drainage impacts on proposed access routes to the

interceptor alignment to accommodate maintenance and construction access.

2. Figure 1



3. The Professional shall submit the following deliverables:

- i) hydraulic capacity analysis to include:
 - a. existing drainage channel at Point #1;
 - b. existing culvert at aerial crossing between Points #1 and #2;
 - c. proposed drainage channel slope at Point #1;
 - d. proposed culvert at aerial crossing between Points #1 and #2; and
 - e. outfall erosion velocity and recommendations for both locations.
- ii) opinion of probable construction cost (“OPCC”) for the drainage and access improvements;
- iii) an 11”x17” PDF exhibit of proposed improvements that depicts the approximate extent of the construction area for coordination with NBU and the landowner(s); and
- iv) a PDF of the technical memorandum documenting the drainage analysis and design recommendations for the proposed drainage and access improvements.

DESIGN

The Professional shall prepare 90% and 100% design plans, specifications, and OPCCs for the drainage and access improvements. Design plans shall be prepared on 11”x17” size sheets and in

PDF format and shall consist of the following:

1. general notes (1 sheet);
2. site layout and abandonment (1 sheet);
3. drainage area map and calculations (1 sheet);
4. drainage channel and access plan and profile (1 sheet);
5. drainage channel detail (2 sheet);
6. shared use path plan and profile (1 sheet);
7. shared use path details (1 sheet);
8. culvert plan and profile (1 sheet);
9. culvert details and calculations (4 sheet); and
10. culvert outfall plan (1 sheet).

PROFESSIONAL’S DESIGN ASSUMPTIONS:

1. replacement of existing 4’ sidewalk with 700 linear feet of 12’ wide shared access path with a culvert crossing of the existing drainage swale;
2. replacement of 500 linear feet of 16’ wide concrete lined channel in existing channel on south side of apartment complex; and
3. the Professional cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its OPCCs.

MEETINGS

The Professional shall conduct the following meetings in connection with Task 8:

1. up to three (3) meetings with NBU.

DELIVERABLES

The Professional shall submit the following deliverables to NBU in connection with Task 8:

- a. three (3) hard copies and a PDF of the 90% plans, specifications, and OPCC; and
- b. five (5) hard copies and a PDF of the Final plans, specifications, and OPCC.

SUPPLEMENTAL SERVICES

Pursuant to Section 4(B) of the 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 services and the completion date. The Professional acknowledges the contract duration will not increase as a result of engaging the supplemental services.

Supplemental Task 1 – Consulting Services

NO CHANGE

Supplemental Task 2 – Subsurface Utility Engineering

DELETED

Supplemental Task 3 – Easement Survey

DELETED

TIME OF COMPLETION

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

| Task | Beginning Date | Ending Date |
|---|------------------|-------------------|
| Notice to Proceed | August 3, 2020 | |
| Task 1 – Project Management | August 4, 2020 | June 27, 2026 |
| Task 2 – Routing and Conceptual Design | August 18, 2020 | February 26, 2021 |
| Task 3 – Preliminary Design | July 1, 2021 | March 31, 2022 |
| Task 4 – Final Design | April 1, 2022 | March 31, 2023 |
| Task 7 – Permitting Services and Easement Acquisition Support | March 1, 2021 | December 31, 2023 |
| Task 8 – Drainage Study Analysis and Access Improvements Design | November 1, 2021 | March 31, 2023 |
| Task 5 – Bid Phase Services | January 1, 2025 | July 30, 2025 |
| Task 6 – Construction Phase Services | August 1, 2025 | June 27, 2026 |

EXHIBIT B - COMPENSATION

NBU agrees to pay the Professional for the Services and 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 \$856,000.

| Project Phase | Original Agreement Amount | First Amendment | Total Amount |
|--|----------------------------------|------------------------|---------------------|
| Task 1 – Project Management | \$20,000 | \$52,000 | \$72,000 |
| Task 2 – Routing and Conceptual Design | \$31,000 | \$15,000 | \$46,000 |
| Task 3 – Preliminary Design | \$118,000 | \$160,000 | \$278,000 |
| Task 4 – Final Design | \$52,000 | \$40,000 | \$92,000 |
| Task 5 – Bid Phase Services | \$10,000 | \$2,000 | \$12,000 |
| Task 6 – Construction Phase Services | \$58,000 | \$20,000 | \$78,000 |
| Task 7 – Permitting Services and Easement Acquisition Support | \$9,000 | \$190,000 | \$199,000 |
| Task 8 – Drainage Study Analysis and Access Improvements Design | \$0 | \$79,000 | \$79,000 |
| Total | \$298,000 | 558,000 | \$856,000 |

Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement not to exceed \$40,000; provided, however, that NBU must provide written approval in the form of a supplemental services agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.

| Project Phase | Original Contract Amount | First Amendment | Total Amount |
|--|---------------------------------|------------------------|---------------------|
| Supplemental Task 1 – Professional Services | \$40,000 | \$0 | \$40,000 |

| | | | |
|---|----------|------------|----------|
| Supplemental Task 2 – Subsurface Utility Engineering | \$15,000 | (\$15,000) | \$0 |
| Supplemental Task 3 – Easement Survey | \$21,000 | (\$21,000) | \$0 |
| Total | \$76,000 | (\$36,000) | \$40,000 |