

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(GRUENE WASTEWATER AND INVERTED SIPHON IMPROVEMENTS)**

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 **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 February 8, 2021 (the “Original Agreement”), for project management, final design phase, field services, permitting and stakeholder coordination, bid phase services, and construction phase services (the “Original Services”) for the Gruene Wastewater and Inverted Siphon Improvements Project (the “Project”) to be completed by December 20, 2021;

WHEREAS, the Original Agreement included supplemental services for professional engineering services, including but not limited to assistance with geotechnical borings, permitting, and environmental investigation (the “Supplemental Services”);

WHEREAS, the Original Agreement did not require Board approval because the cost for the Services and Supplemental Services totaled \$388,808 and did not exceed the \$500,000 threshold for Board approval required by the NBU Purchasing Policy;

WHEREAS, during design of the Project, NBU and the Professional obtained a new wastewater master plan for projected wastewater flows, which requires additional services related to the Project, including (i) an increase to the existing siphon lines between the existing siphon structure and the outfall at the old Gruene Wastewater Treatment Plant headworks; and (ii) a hydraulic analysis to confirm whether an upsize to the wastewater siphon lines suspended beneath the Gruene Road bridge is required (the “New Services” and, together with the Original Services, the “Services”);

WHEREAS, in addition to including the New Services, the odor control and non-odor control portions of the Project will now be constructed in NBU fiscal year 2023 and fiscal year 2026, respectively, instead of fiscal year 2022 due to NBU funding adjustments;

WHEREAS, the addition of New Services requires an increase in the compensation to the Professional;

WHEREAS, both the addition of the New Services and the change in schedule for the odor control and non-odor control portions of the Project require an extension of the completion date;

WHEREAS, NBU and the Professional also desire to amend the Supplemental Services language to allow for general professional engineering services, and increase the related compensation to correspond with the increase in Project scope;

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

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New Services, (ii) increase the compensation for the Services, (iii) modify the Supplemental Services, (iv) increase the compensation for Supplemental Services, and (v) provide for extended completion dates for both the New Services and the odor control and non-odor control portions of the Project; and

WHEREAS, this First Amendment requires Board approval because the total cost for the Services and Supplemental Services is \$501,416, which exceeds the \$500,000 threshold for Board approval as required by the NBU Purchasing Policy.

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

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

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

Section 4. Entire Agreement. This First Amendment, together with the Original 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 First 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 First 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 First Amendment shall not be affected thereby, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This First 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 First Amendment on this the ____ day of _____, 2022.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: Chief Executive Officer

THE PROFESSIONAL:

FREESE AND NICHOLS, INC.,
a Texas corporation

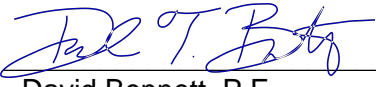
By:  _____
Name: David Bennett, P.E.
Title: Principal

Exhibit A
Scope of Services

The Professional shall provide all labor, material, and equipment necessary to provide project management, final design phase, field services, permitting and stakeholder coordination, bid phase services, and construction phase services (collectively the “Services”) for the Gruene Wastewater and Inverted Siphon Improvements Project (the “Project”) located at (i) the relocated Gruene Reclamation Facility (“relocated Gruene WRF”) (“Project Site 1”); (ii) along Gruene Road south of the Loop 337 bridge (“Project Site 2”); and (iii) the existing inverted siphon along Gruene Road west of downtown Gruene (“Gruene Road Siphon Structure”) (“Project Site 3”). The Project shall include the facilities and improvements described below.

WASTEWATER PIPELINE

PROJECT SITE 1

NO CHANGE

PROJECT SITE 2

NO CHANGE

PROJECT SITE 3

- 1) The Professional shall design approximately 675 LF of new 18-inch wastewater pipeline installed by open-cut methods starting at the existing wastewater inlet structure near the intersection of Gruene Road and New Braunfels Street, running northwest and southwest to an existing manhole on Gruene Road and Hunter Road.
- 2) The Professional shall design approximately 165 LF of 10-inch and 165 LF of 12-inch inverted siphon wastewater pipeline to the southwest of the Gruene Road Siphon Structure to Gruene Road at the northeast corner of the Gruene Road bridge. The existing siphon wastewater pipeline on the Gruene Road bridge shall remain.
- 3) The Professional shall design approximately 1,250 LF of 10-inch and approximately 1,250 LF of 12-inch inverted siphon wastewater pipelines installed by open-cut methods including one (1) manhole, starting on the south side of the Gruene Road bridge, running southwest along Gruene Road, and ending at the outfall at the old Gruene Wastewater Treatment Plant headworks.
- 4) NO CHANGE

GRUENE ROAD SIPHON STRUCTURE

NO CHANGE

SERVICES

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

Task 1. Project Management

NO CHANGE

Task 2. Final Design Phase

2. The Professional shall perform the final design phase services described below.

2.1. MEETINGS. The Professional shall provide meeting agenda and meeting minutes to the NBU Project Manager via email for the following meetings:

2.1.1. NO CHANGE

2.1.2. NO CHANGE

2.1.3. NO CHANGE

2.1.4. NO CHANGE

2.1.5. permitting meeting with City of New Braunfels (two (2) meetings);

2.1.6. meetings with additional stakeholders (two (2) meetings); and

2.1.7. monthly meetings with the NBU Project Manager (four (4) meetings).

2.2. NO CHANGE

2.3. 60% DESIGN DOCUMENTS. The Professional shall prepare and submit 60% plans, specifications, and opinion of probable construction cost (“OPCC”) to the NBU Project Manager via email for review and approval, based on decisions made as part of the Professional’s previous Gruene Wastewater and Inverted Siphon Improvements Preliminary Engineering Report.

2.3.1. The Professional shall perform a hydraulic analysis, utilizing the NBU sewer system model, to confirm that the existing 10-inch and 6-inch diameter wastewater siphon lines suspended beneath the Gruene Road bridge do not need to be upsized.

2.3.2. The Professional shall increase the size of the existing siphon lines from 6-inches and 8-inches to 10-inches and 12-inches between the existing siphon structure and the outfall at the old Gruene Wastewater Treatment Plant headworks.

2.3.3. 60% design documents shall include:

2.3.3.1. profile view of wastewater pipelines;

2.3.3.2. call outs for major design items;

2.3.3.3. permanent odor control design;

2.3.3.4. airflow and concentration determinations for odor control equipment. The Professional shall provide a summary of test results and recommendations for treatment;

2.3.3.5. table of contents for all required specifications with the exception of NBU's standard specifications; and

2.3.3.6. Association for the Advancement of Cost Engineering ("AACE") Class 2 OPCC based on 60% design documents.

2.4. NO CHANGE

2.5. NO CHANGE

2.6. NO CHANGE

Task 3. Field Services

NO CHANGE

Task 4. Permitting and Stakeholder Coordination

4. The Professional shall coordinate with stakeholders and agencies as described herein.

4.1. CITY OF NEW BRAUNFELS. The Professional shall perform the City of New Braunfels (CONB) Permitting and Stakeholder Coordination described herein.

4.11. The Professional shall prepare and submit to CONB the permits required for the construction of the new wastewater pipeline along Gruene Road. The Professional shall attend up to two (2) meetings with the CONB and incorporate up to two (2) rounds of comments from the CONB into the permits and construction plans as needed. Permit fees shall be paid for by NBU. The Professional shall prepare and submit permit applications to the City of New Braunfels for Project Site 3 to obtain permits to include:

4.1.1.1. Storm Water Pollution Prevention Plan and right-of-way excavation;

4.1.1.2. floodplain;

4.1.1.3. traffic control; and

4.1.1.4. tree removal.

4.1.2. The Professional shall provide additional coordination, including attending two (2) meetings, with local property owners and with the Gruene Historic District to inform and answer questions about the wastewater line project.

4.2. TEXAS DEPARTMENT OF TRANSPORTATION. The Professional shall perform the Texas Department of Transportation (TXDOT) Permitting and Stakeholder Coordination described herein.

4.2.1. The Professional shall prepare and submit to TXDOT the permits required for the construction near the Gruene Road Bridge. The Professional will attend up to two (2) meetings with TXDOT and incorporate up to two (2) rounds of comments from TXDOT into the permits and construction plans as needed.

Task 5. Bid Phase Services (for Permanent Odor Control Project Site 3)

NO CHANGE

Task 6. Construction Phase Services (for Permanent Odor Control Project Site 3)

NO CHANGE

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 Supplemental Services shall only include Project specific professional engineering services contemplated by Chapter 2254 of

the Texas Government Code. 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 of the Project upon execution of this Agreement and agrees to complete the Services in accordance with the schedule below.

Project Milestones (Odor Control)	Start Date	End Date
Notice to Proceed	2/15/2021	
Task 1: Project Management	2/15/2021	1/31/2022
Task 2: Final Design Phase	2/15/2021	1/31/2022
Task 3: Field Services	3/27/2021	5/10/2021
Task 4: Permitting and Stakeholder Coordination	6/23/2021	1/31/2022
Task 5: Bid Phase	2/1/2022	6/30/2022
Task 6: Construction Phase	7/11/2022	3/10/2023

Project Milestones (non-Odor Control)	Start Date	End Date
Notice to Proceed	2/15/2021	
Task 1: Project Management	2/15/2021	12/31/2022
Task 2: Final Design Phase	6/15/2022	12/31/2022
Task 3: Field Services	6/15/2022	7/15/2022
Task 4: Permitting and Stakeholder Coordination	6/15/2022	1/31/2023
Task 5: Bid Phase	2/1/2025	6/30/2025
Task 6: Construction Phase	8/1/2025	3/31/2026

Figure 1.



Figure 2

Improvement 3



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 rendered under this Agreement in accordance with the table below and made a part of this Agreement. NBU shall pay the Professional for the Services performed throughout the term of this Agreement in an amount not to exceed \$461,416.

Cost Breakdown	Original Contract Amount	First Amendment	Total
Task 1: Project Management	\$17,931.00	\$0.00	\$17,931.00
Task 2: Final Design Phase	\$221,215.00	\$84,363.00	\$305,578.00
Task 3: Field Services	\$59,950.00	\$17,930.00	\$77,880.00
Task 4: Permitting & Stakeholders	\$6,588.00	\$6,911.00	\$13,499.00
Task 5: Bid Phase	\$5,869.00	\$0.00	\$5,869.00
Task 6: Construction Phase	\$40,659.00	\$0.00	\$40,659.00
Grand Total	\$352,212.00	\$109,204.00	\$461,416.00

Supplemental Services

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$40,000; 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.