

**AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT
SOLMS PUMP STATION PROJECT**

This **AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) 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 the Professional Services Agreement dated November 5, 2019, (the “Original Agreement”), to provide management and administration, preliminary engineering phase, final design phase, bid phase, construction phase, and electrical engineering and SCADA design services for the Solms Pump Station Water Tank Project (the “Project”), to be completed by May 1, 2021;

WHEREAS, NBU has experienced delays in land acquisition for the Project and requires an extension of task completion dates in the Original Agreement;

WHEREAS, NBU desires to extend the time of completion for the Project to August 15, 2023;

WHEREAS, NBU requires modification of project meetings and the addition of development services from the Professional not included in the Original Agreement (the “Additional Services”);

WHEREAS, the Original Agreement requires NBU and the Professional to agree in writing to amend, modify, or supplement the Original Agreement;

WHEREAS, the Parties desire to amend and restate the Original Agreement in its entirety; and

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. 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. The scope of work described in the Services constitutes the “Project.”

(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 Project shall be described in the Services defined 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 Project Work; Additional Work.

(A) Changes to Work. The Professional shall make such revisions to any work 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,

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 order. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by supplemental agreement 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 supplemental agreement 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 deduct from the extent of the scope of work for 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 work and 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 locality 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 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 PROJECT; 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- 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, directors, officials and employees 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, officials, officers and employees 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 commencing any the Services under this Agreement, the Professional shall provide NBU with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Professional's insurance provider(s) as evidence that policies are in place with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the certificates of insurance and declaration page(s) of the insurance policies 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 declaration page(s) to NBU thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement will be identified by referencing this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded.

(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. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees 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. Vehicle Liability. The Professional shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Professional's owned, hired and non-owned vehicles 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, directors, officials and employees 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 a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the declaration page(s) of each insurance policy, 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, including, without limitation, the Original Agreement, which Original Agreement shall be deemed null and void, and of no further force or effect whatsoever following the date hereof. 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, transaction privilege taxes and property taxes, 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:

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

If to the Professional:

Merrick & Company
401 East Sonterra Blvd., Suite 250
San Antonio, TX 78258

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, pending litigation, 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. 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. The Professional agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Professional. It is further agreed 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, the Professional shall notify NBU immediately. **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, does 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 Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. 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/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law 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. 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 acknowledgement and obligation are in addition to and complimentary 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 20. 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.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 20____.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

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

By: _____
Name: Richard M. Myrick
Title: Senior Project Manager

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide management and administration, preliminary engineering phase, final design phase, bid phase, construction phase, and electrical engineering and SCADA design services (collectively the “Services”) for the Solms Pump Station Water Tank Project located at 162 Rusch Lane, New Braunfels, Texas 78132 (the “Project”). The Professional shall design the removal of the existing ground storage tank (“GST”), design the requirements necessary to replace it with a new GST that has a minimum capacity of 1 million gallons, and design the reconfiguration of the pump station (“PS”) supervisory control and data acquisition (“SCADA”) system.

The Professional shall perform the Services as described herein.

TASK 1 MANAGEMENT AND ADMINISTRATION

Subtask 1.01 Project Management and Administration

The Professional shall perform general duties associated with the Project throughout the preliminary design, final design, bidding, and construction phases of the work, including preparing schedules with monthly updates, general correspondence, day-to-day contact with NBU staff, Project administration, and invoicing. The Professional shall provide monthly progress reports, agendas, and meeting minutes to the NBU Project Manager via email.

Subtask 1.02 Project Meetings

The Professional shall meet with NBU staff during the Project to discuss the design, review progress, and resolve issues. The Professional shall conduct and provide agendas and minutes for the following meetings:

1. Project kickoff meeting: The Professional shall meet with NBU staff to introduce the Project team; review project scope, review the schedule, review the budget, and obtain copies of data NBU may have regarding the Project;
2. Preliminary permit coordination meetings: The Professional shall meet with NBU and representatives of the City of New Braunfels and the Texas Commission on Environmental Quality (“TCEQ”) to determine and obtain permits required to complete the Project. The Professional shall meet with the City of New Braunfels and TCEQ up to a total of four (4) times each; and
3. Monthly progress meetings: The Professional shall attend monthly progress meetings at a date, time, and place selected by NBU staff. The Professional shall attend the meeting and prepare the meeting minutes.

DELIVERABLES. The Professional shall submit the following deliverables to NBU:

1. schedules and progress reports, updated and sent to NBU monthly – one (1) electronic copy;
2. agendas for each meeting distributed to all meeting attendees; and
3. meeting minutes prepared after each meeting to document discussions and decisions – one (1) electronic copy within one (1) week of corresponding meetings.

TASK 2 PRELIMINARY ENGINEERING PHASE

Subtask 2.01 Data Acquisition

1. NBU will provide its facility as-built documents, operational logs, maintenance records, and other available data necessary to understand the current physical and operational status of the existing PS and GST.
2. NBU will provide planning data regarding the PS, including:
 - a. the current service area of the PS;
 - b. the last two years of flow data;
 - c. the future service area of the PS; and
 - d. the future flow projections for the PS.

Subtask 2.02 Site Alternatives Evaluation

The Professional shall assist NBU in evaluating the suitability of properties adjacent to the existing pump station to accommodate the new 1,000,000 gallon ground storage tank and associated piping needed to connect the new tank to the existing Solms pump station. Attend up to 5 coordination meetings. The Professional shall evaluate two (2) primary sites: 165 Rusch Ln, New Braunfels, TX 78132, property number 80372 “the Rivera property”, located due north of the existing NBU pump station, and 5514 IH 35S, New Braunfels, TX 78130, property number 71219, “the Snake Farm property”, located south of the existing pump station. Attend up to 2 site visits to each site to determine feasibility. The Professional shall develop preliminary plan views, up to 5 exhibits, that show the tank location and layout of associated piping for the Rivera site and the Snake Farm site. The Professional shall consider land and/or area requirements that may be needed if new pumping equipment is provided. The Professional shall assume that the new pumps will be located outside of the existing pump station on a separate pump slab. The Professional shall meet with NBU staff, as needed, to define the tank requirements, up to 5 coordination meetings. The Professional shall develop conceptual cost estimates for the new tank, piping, and appurtenances using cost data from previous projects and from the cost database “RS Means”, up to 3 cost estimates. The Professional shall present the results of this analysis in a technical memorandum (“TM”) and submit to NBU for review and comment.

Subtask 2.03 Confirmation of Storage Tank Volume

The Professional, in conjunction with NBU, shall identify the service area of the PS and confirm the number of service connections supplied with potable water. The Professional shall obtain planning data from the City of New Braunfels Planning Department. Using this data, the Professional shall develop estimates of the area's future growth rate for the next five (5) years, ten (10) years, twenty (20) years, and fifty (50) years. The Professional shall apply these growth rates to the current connection counts and evaluate their impact on tank size. The Professional shall present the results of this analysis in a TM and submit to NBU for review and comment. The Professional shall address all comments received and revise the TM within one (1) week of receiving comments from NBU.

Subtask 2.04 Water Storage Tank Hydraulic Analysis

The Professional shall conduct a review of the hydraulic conditions affecting the proposed GST and review their impact on the existing pumping systems that provide water to the tank and take water from the tank. This analysis shall be used to confirm tank height and assure that heads imposed by the tank on upstream pumping systems remain within the capacity of those systems and that available suction head created by the tank is sufficient for the existing pumps within the PS. The results of this analysis shall be presented in a TM that shall be submitted to NBU for review and comment. The Professional shall address all comments received and revise the TM within one (1) week of receiving comments from NBU.

Subtask 2.05 Water Storage Tank Siting Analysis

The Professional shall conduct a review of the siting requirements associated with the new GST and provide recommendations on where the tank should be located. Previous site visits to the PS clearly show that the current site will not accommodate a larger GST and that an expansion of the site is needed. Site visits also show that there may be opportunities to purchase adjacent properties and properties located to the south and west of the existing site appear to contain existing buildings that may present opportunities for acquisition. The Professional and NBU shall determine a suitable site for acquisition. NBU shall perform all property acquisition and negotiation services using the Professional's recommendation of the site. Please refer to Figure 1 shown below.

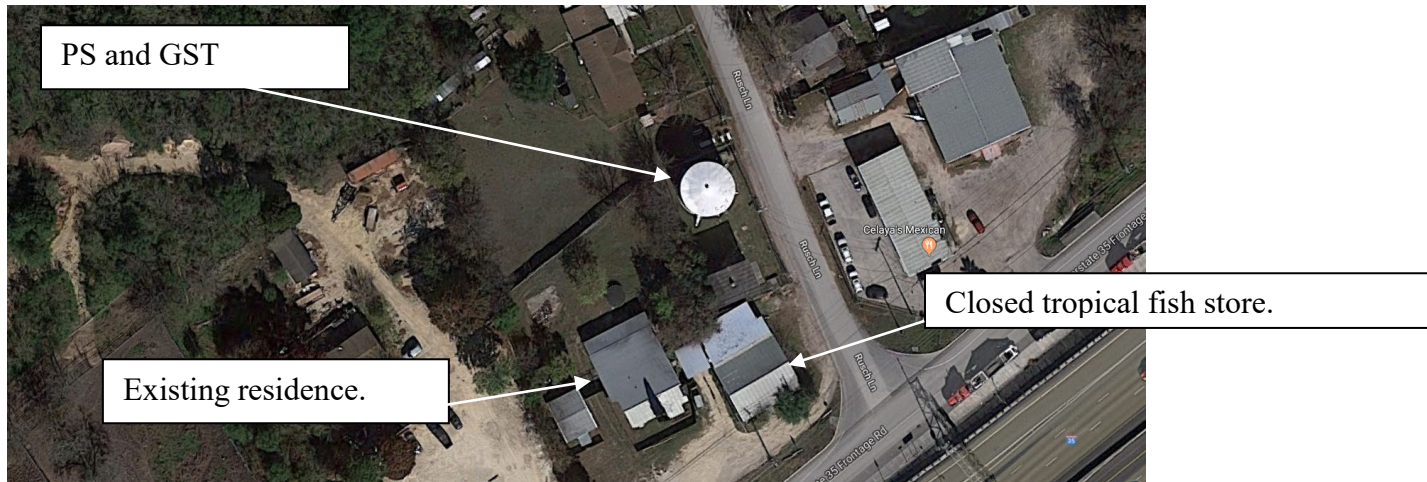


Figure 1. Aerial view of existing PS and GST.

The results of this analysis shall contain recommendations regarding where the new tank can be built and shall be presented in a TM and submitted to NBU for review and comment. The Professional shall address all comments received and revise the TM within one (1) week of receiving comments from NBU.

Subtask 2.06 Electrical and SCADA Review

The demolition of the existing water tank and the construction of a new, larger GST will require modifications be made to the PS's existing electrical, instrumentation, and control systems. The Professional shall review systems within the PS and identify requirements for the following:

1. existing equipment demolition;
2. coordination with NBU for potential electrical service upgrades based on new equipment power requirements;
3. preliminary design of modifications to electrical gear and distribution equipment;
4. preliminary design of new SCADA equipment;
5. preliminary design of control interconnect wiring;
6. instrumentation definition;
7. preliminary design of electrical panels, ground fault interceptor receptacles;
8. preliminary design of additional lighting;
9. preliminary design of modifications to the pump control panel;
10. preliminary design of modifications to the PS control system;
11. preliminary design of modifications to the station/tank grounding system; and
12. preliminary design of modifications to the station's heat trace system for small diameter piping.

The results of this analysis shall be presented in a TM and submitted to NBU for review and comment. The Professional shall address all comments received and revise the TM within one (1) week of receiving comments from NBU.

Subtask 2.07 Opinion of Probable Construction Cost (“OPCC”)

The Professional shall prepare and submit a preliminary OPCC and a preliminary engineer’s estimated construction schedule. The estimate shall be submitted to NBU for review and comment. The Professional shall address all comments received and provide an updated OPCC to NBU within one (1) week of receiving comments from NBU.

Subtask 2.08 Preliminary Engineering Report (“PER”)

The Professional shall compile all previously prepared TMs into a PER. The Professional’s PER shall present the results of the technical investigations and provide improvement recommendations for the civil, mechanical, and electrical/control systems associated with the construction of a larger GST. The Professional’s PER shall also contain the preliminary OPCC. The Professional shall submit the PER to NBU for review and comment. The Professional shall address all comments received and revise the PER within one (1) week of receiving comments from NBU.

Subtask 2.09 60% Design Presentation Meeting

The Professional shall submit a draft set of 60% plans, technical specifications, and OPCC to NBU . The Professional shall conduct a 60% design review workshop with NBU within one (1) week of the delivery of the 60% plans, technical specifications, and OPCC submittal. The Professional shall convey design concepts to NBU staff and review specific aspects of the design. The Professional shall prepare an action items list for the critical design decisions that need to be addressed by NBU staff and distribute the list to the attendees prior to the workshop.

1. The Professional’s plans shall include, but are not limited to the following:
 - a. storage tank at ground level (architectural);
 - b. storage tank roof plan (architectural);
 - c. storage tank elevation, section, and details (architectural);
 - d. storage tank plan at grade level (structural/process mechanical);
 - e. storage tank section (structural/process mechanical);
 - f. storage tank plan (electrical, instrumentation and control); and
 - g. storage tank yard piping plan and profiles (civil).

2. The Professional’s specifications shall include, but are not limited to the following:
 - a. division 1 – general requirements;
 - b. division 3 – cast-in-place concrete;
 - c. division 33 – utilities:
 - i. pipe and fittings; and
 - ii. pre-stressed concrete tank.

DELIVERABLES. The Professional shall submit the following deliverables to NBU:

1. development evaluation TM – one (1) electronic copy;
2. confirmation of storage tank volume TM – one (1) electronic copy;
3. water storage tank hydraulic analysis TM – one (1) electronic copy;
4. water storage tank siting analysis TM – one (1) electronic copy;
5. electrical and SCADA review TM – one (1) electronic copy;
6. preliminary OPCC and preliminary engineer’s estimated construction schedule – one (1) electronic copy;
7. PER – one (1) electronic copy; and
8. 60% design package submittal - one (1) electronic copy;

TASK 3 FINAL DESIGN PHASE

The Professional shall proceed with the final 100% design upon acceptance of the responses to NBU review comments at the 60% design presentation meeting.

Subtask 3.01 Site Survey

The Professional shall conduct a topographic and boundary survey of the approved tank site to establish property boundaries and site ground elevations. The survey shall be used as the base plan for the development of final plans that show the location and elevation of proposed improvements.

Subtask 3.02 Geotechnical Study

The Professional shall conduct a subsurface investigation of the proposed tank site to establish subsurface ground conditions. The Professional shall conduct drilling operations to collect samples that shall be used to determine the relative strength of supporting soils in areas where the tank shall be constructed. The Professional shall present data from this study in a geotechnical data report to NBU that will be issued as part of the construction documents.

Subtask 3.03 Prepare 100% Final Design Package

The Professional shall move forward with preparing the final design package, which shall include the design plans, technical specifications, and the bid form. The Professional shall submit the final design package to NBU for review and comment. The Professional shall address all comments received and revise the final design package within one (1) week of receiving comments from NBU. The Professional’s final design package shall include:

1. Plans:
 - a. cover sheet;
 - b. Project location and general notes;
 - c. storage tank at ground level (architectural);
 - d. storage tank roof plan (architectural);

- e. storage tank elevation, section, and details (architectural);
- f. storage tank plan at grade level (structural/process mechanical);
- g. storage tank section (structural/process mechanical);
- h. storage tank plan (electrical, instrumentation and control); and
- i. storage tank yard piping plan and profiles (civil).

2. Technical Specifications:

- a. division 1 – general requirements;
- b. division 3 – concrete:
 - i. cast-in-place concrete;
- c. division 33 – utilities:
 - i. pipe and fittings; and
 - ii. pre-stressed concrete tank.

3. Bid Form. The Professional shall use the standard NBU bid form template.

Subtask 3.04 Prepare Final OPCC and Engineer’s Estimated Construction Schedule

The Professional shall prepare a final OPCC and submit it to NBU with the plans and specifications. The Professional shall also prepare a final engineer’s estimated construction schedule and submit it to NBU with the project documents. The Professional shall prepare a narrative supporting the schedule that defines the logic used in its development and outlines how the activity durations were derived. The OPCC shall be submitted for NBU review and comment. The Professional shall address all comments received and revise the OPCC and schedule within one (1) week of receiving comments from NBU.

Subtask 3.05 Final (100%) Design Phase Review Workshop

The Professional shall conduct a final (100%) design review workshop with NBU within one (1) week of the delivery of the final (100%) design package. The Professional shall convey the design concepts to NBU staff and review specific aspects of the design. The Professional shall also prepare an action items list for the critical decision items that need to be addressed and distribute the list to the attendees prior to the workshop.

Subtask 3.06 Response to Comments – Final (100%) Design

After the submittal of the final (100%) design package, NBU will review the documents and provide comments in a tabular format, as well as the red-lined submittal. The Professional shall respond in writing to all comments and redlines within one (1) week of receiving NBU comments and shall incorporate the responses to NBU comments into the bid-ready documents.

DELIVERABLES. The Professional shall submit the following deliverables to NBU:

1. five (5) hard copy sets of 24" x 36" plans;
2. five (5) hard copy sets of specifications;
3. five (5) hard copies of the OPCC;
4. five (5) hard copies of the final engineer's estimated construction schedule; and
5. one (1) USB-flash drive containing all of the documents mentioned above.

Sub-task 3.07 Permitting

The Professional shall obtain the necessary construction permits from the City of New Braunfels, Texas Department of Transportation (if needed), and the TCEQ. The Professional shall meet with each agency to confirm the requirements and ensure the plans and specifications are in conformance with each agency's requirements.

TASK 4 BID PHASE

Subtask 4.01 Bid Documents

Upon written notice from NBU, the Professional shall package the signed and sealed final (100%) plans, technical specifications, and bid form as "bid documents." These documents shall then be considered ready for advertisement. The Professional shall submit three (3) hard copies and a USB-flash drive containing .pdf (searchable) files of the signed/sealed bid-ready documents to the NBU Project Manager.

Subtask 4.02 Pre-bid Conference, Addenda, and Bid Review

The Professional shall lead the pre-bid conference to present the Project to prospective bidders and respond to questions. The Professional shall take the meeting minutes from the conference. The Professional shall send a draft of the meeting minutes to the NBU Project Manager electronically within three (3) working days following the conference. After incorporating all comments received by NBU, the Professional shall submit the final minutes electronically to the NBU Project Manager.

Any changes to the bid documents resulting from bidders' questions shall be addressed formally through addenda. Upon receipt of questions from potential bidders, the Professional shall prepare a log of all bidders' questions and provide responses through addenda for distribution to the potential bidders. The Professional shall also prepare addenda in .pdf (searchable) format. All addenda shall be issued to bidders through the NBU Purchasing Department.

The NBU Project Manager shall provide the Professional with the submitted bid packets. The Professional shall tabulate received bids, review the bid packets, determine if the apparent low

bidder is the lowest responsive bidder, and prepare a letter of recommendation of award. At a minimum, the bid packet review shall examine the respondent's previous project history (contact client references), proposed superintendent's work history, financial viability (financial strength, payment performance, credit worthiness, etc.), and Occupational Safety and Health Administration safety record. The Professional shall also assess the bid for balance, which shall reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs. The Professional shall then consult with NBU as to the acceptability of major subcontractors, suppliers, and other entities included in the bid packet.

Subtask 4.03 Conformed Documents

The Professional shall update the bid documents per the addenda by incorporating any changes brought by the addenda. These documents shall then be referred to as the "conformed construction documents" and shall be used in the construction of the Project. The Professional shall sign/seal the conformed construction documents and submit to the NBU Project Manager for review and approval.

DELIVERABLES. The Professional shall submit the following deliverables to NBU:

1. one (1) electronic copy of the pre-bid conference meeting minutes within three (3) days after the pre-bid conference; and
2. conformed contract documents within two (2) weeks after the pre-bid conference including:
 - a. five (5) hard copy sets of half-size (11" x 17") plans;
 - b. five (5) hard copy sets of specifications;
 - c. one (1) USB-flash drive containing .pdf (searchable) files of the plans and specifications; and
 - d. one (1) hard copy set of full-size (24"x 36") plans, if requested by NBU.

TASK 5 CONSTRUCTION PHASE

The Professional shall perform project administration services during the construction phase of this Project. The Professional shall perform the project administration services, which consist of pre-construction assistance, submittal review, periodic site visits, and record drawing development, in addition to the descriptions of the services described herein. Please note that the Professional shall not have the authority to supervise, direct, or control the contractor's work or the means and methods by which the contractor constructs the work. The Professional shall not have the authority or the responsibility for safety precautions or safety programs that are incident to the contractor's work or be responsible for the contractor's failure to comply with laws, regulations, rules, ordinances, codes, or orders applicable to the contractor furnishing and performing the work.

Subtask 5.01 Pre-construction Assistance

The Professional shall attend a preconstruction conference for the Project with representatives of the contractor and NBU to review and discuss the Project scope and Project requirements and attend a construction kick-off meeting.

Subtask 5.02 Submittals

1. The Professional shall review each submittal package (consisting of shop drawings, contractor's schedule, test reports, and operation and maintenance manuals) provided by the contractor as required by the construction contract documents for conformance to Project requirements twice, including an initial review to confirm contract compliance and a second review to determine compliance with the results of the first review.
2. The Professional shall respond to contractor requests for information, interpret information requests in writing, and provide copies to NBU.
3. The Professional shall review up to four (4) potential change orders of the contract documents and develop supporting documentation.
4. The Professional shall observe and analyze equipment performance tests when required by the contract documents.

Subtask 5.03 Site Visits

The Professional shall visit the Project site during construction to observe progress and to assure conformance to contract requirements. The Professional shall perform up to eight (8) site visits that are expected to occur during routine construction meetings and include two meetings at the end of the Project. The first of these meetings shall be the substantial completion meeting and shall focus on identifying remaining work items as the contractor nears completion of the Project. The second meeting shall be the final completion meeting and shall confirm that all previously identified work items have been satisfactorily completed and that the Project functions as intended. After substantial completion of the Project, the Professional shall perform a walk-through along with NBU staff to identify issues. After the walk-through, the Professional shall prepare a punch list of items that must be addressed before the Project can be considered complete. Finally, the Professional shall conduct a final site visit at the completion of the construction activities to determine if the work is finished and conforms to contract requirements.

Subtask 5.04 Record Drawings

Upon completion of the Project, the Professional shall revise the construction drawings to conform to the construction records. These documents shall then be referred to as the "record drawings."

The Professional shall submit the record drawings in AutoCAD format to the NBU Project Manager. The Professional shall also provide a copy in .pdf format. Once record drawings have been reviewed and accepted by NBU, the Professional shall submit one (1) copy in AutoCAD and .pdf format on a USB drive to the NBU Project Manager.

DELIVERABLES. The Professional shall provide the following deliverables to NBU:

1. one (1) electronic copy of the punch list within one (1) week after the substantial completion walk-through; and
2. one (1) hard copy set of 24" x 36" plans, one (1) hard copy set of 11" x 17" plans, and one (1) electronic copy of the record drawings.

SUPPLEMENTAL SERVICES

The Professional shall seek prior written approval from NBU before commencing work on any Supplemental Services described in this section. If the Professional receives written approval in the form of a supplemental letter from NBU to commence work on the Supplemental Services described in this Section, the Professional shall perform the Supplemental Services described herein.

SUPPLMENTAL TASK 1 PRELIMINARY PUMP STATION SITE ANALYSIS

The basic services scope of work assumes that the existing tank site along with properties adjacent to the site will be feasible for the construction of the proposed tank.

If NBU and the Professional determine the adjacent properties are not feasible, NBU may request the Professional to perform preliminary design services for alternative pump station sites.

TIME OF COMPLETION

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

Project Milestones	Start Date	Completion Date
Notice to Proceed	November 14, 2019	
PER	November 14, 2019	January 7, 2022
60% Design	January 10, 2022	February 11, 2022
Final Design Phase	February 14, 2022	May 13, 2022
Bid Phase/Board Approval	May 16, 2022	September 29, 2022
Construction Phase	October 15, 2022	August 15, 2023

The Services and Supplemental Services shall be completed by August 15, 2023.

Exhibit B

Compensation

Services:

NBU agrees to pay the Professional for the Services and the Supplemental 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 not to exceed \$305,317.50.

Services Cost Breakdown	Fee
Task 1: Management and Administration	\$9,391.20
Task 2: Preliminary Engineering Phase	\$128,112.06
Task 3: Final Design Phase	\$84,326.64
Task 4: Bid Phase	\$14,737.80
Task 5: Construction Phase	\$68,749.80
Services Total	\$305,317.50

Supplemental Services:

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement not to exceed \$30,000; however, NBU must provide written approval prior to the Professional performing the Supplemental Services.

Supplemental Services Cost Breakdown	Fee
Supplemental Task 1	\$30,000
Total	\$30,000

Exhibit C

Evidence of Insurance