

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
CASTELL AVENUE WATER MAIN**

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 October 10, 2019 (the “Agreement”), for project management, preliminary design/surveying phase services, final design phase services, bid phase services, and construction phase services in support of a construction contract for Castell Avenue Water Main Project to be completed by July 16, 2021 (the “Project”);

WHEREAS, NBU and the Professional included additional easement, field survey, construction survey, additional geotechnical engineering, additional archeological/cultural services, additional permitting, structural design services, and miscellaneous engineering design services in the Agreement as Additional Services (the “Additional Services”), whereby the Professional would seek prior written approval from NBU prior to performing any Additional Services;

WHEREAS, NBU previously authorized the following Additional Services: (i) additional geotechnical services on November 12, 2019, in the amount of \$4,358.20 (the “Authorization No 1”); (ii) additional subsurface utility engineering services for nine (9) pothole locations on February 25, 2020, in the amount of \$28,463, (the “Authorization No 2”); and (iii) additional construction method evaluation and pipeline design at the intersection of Castell Avenue and San Antonio Street on February 25, 2020, in the amount of \$10,749 (the “Authorization No 3”);

WHEREAS, NBU and the Professional now desire to add additional coordination and meeting services to the Agreement (the “New Services”) and reallocate \$3,000 of the Additional Services fees to the Construction Phase fees in connection with this change;

WHEREAS, NBU also desires to authorize the remaining amount of the Additional Services for additional design services related to unknown utilities discovered during construction and the redesigns needed to accommodate the Landa Golf Course and RV Park during construction, in the amount of \$56,183 (the “New Additional Services”);

WHEREAS, NBU also discovered that the total compensation in Exhibit B for Tasks 1 through Task 4 was added incorrectly and would like to correct the total compensation from \$459,957 to \$459,958; and

WHEREAS, NBU and the Professional agree to amend the Agreement to (i) modify the Services to add the New Services; (ii) reallocate \$3,000 from Additional Services to Construction Phase Services for the New Services; (iii) delete the Additional Services in the Agreement and replace them with the Additional Services from Authorization No. 1, Authorization No. 2, Authorization No. 3, and the New Additional Services under this First Amendment; (iv) authorize the New Additional Services and the related compensation in the amount of \$56,183; (v) extend the time of completion from July 16, 2021, to December 15, 2022; and (vi) correct the compensation total in Exhibit B for Tasks 1 through Task 4.

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

AGREEMENT

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

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

Section 3. Engage New Additional Services; Authorize Compensation. NBU and the Professional hereby agree to engage the New Additional Services described in Exhibit A of this First Amendment and authorize payment of the New Additional Services as described in Exhibit B of this First Amendment.

Section 4. Time of Completion for the New Supplemental Services. NBU and the Professional hereby agree that the Professional shall complete the Construction Phase Services and the New Additional Services by December 15, 2022.

Section 5. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 6. Entire Agreement. This First Amendment, together with Authorization No.1, Authorization No.2, Authorization No. 3., and the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 7. Binding Effect. This First Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 8. 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 9. 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 intentionally left blank)

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

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

THE PROFESSIONAL

FREESE AND NICHOLS, INC.,
a Texas corporation

By: _____
Name: _____
Title: _____

Exhibit A

Scope of Services

NO CHANGE

Project Management

NO CHANGE

Task 1 – Preliminary Design/Surveying Phase

NO CHANGE

Task 2 – Final Design Phase

NO CHANGE

Task 3 – Bid Phase Services

NO CHANGE

Task 4 – Construction Phase Services

Upon completion of the bid phase services, the Professional shall proceed with providing construction phase services. The Professional shall provide the following general construction contract administration services:

1) meetings and site visits:

- a) NO CHANGE
- b) NO CHANGE
- c) NO CHANGE
- d) NO CHANGE
- e) NO CHANGE
- f) NO CHANGE
- g) NO CHANGE

h) The Professional shall perform additional coordination and meetings with stakeholders within the pipeline alignment to include but not limited to the following:

- (1) City of New Braunfels;

- (2) Landa Golf Course;
 - (3) Schlitterbahn;
 - (4) RV Park; and
 - (5) local businesses.
- 2) construction phase services:
- a) NO CHANGE
 - b) NO CHANGE
 - c) NO CHANGE
 - d) NO CHANGE
 - e) the Professional shall review and comment on monthly and final estimates for payment to the contractor pursuant to the general conditions of the construction contract during the course of the construction Project each and every month; and
 - f) NO CHANGE
- 3) the Professional shall provide the following deliverables to NBU:
- a) NO CHANGE
 - b) the Professional shall furnish plan of record drawings by submitting one electronic copy of plans and specifications in PDF format to NBU. The Professional shall provide a geo-referenced AutoCAD file in accordance with NBU standards with features adjusted to the location of GPS points collected in the field by the contractor.

Task 5 – Additional Services

The Professional shall seek prior approval from NBU before commencing work on any services described in this section. If NBU agrees to the supplemental services, NBU shall provide written notice to proceed with the supplemental services as long as the total contract value of the supplemental services is not exceeded. Upon receipt of notice from NBU to proceed, the Professional shall perform the supplemental services described herein.

- 1) The Professional shall provide miscellaneous engineering design for unforeseen items that arise during basic design services. Services shall include but are not limited to:
- a) additional geotechnical services for rock coring and installation of piezometers at the Comal River crossing;
 - b) subsurface utility engineering services for nine (9) pothole locations along the proposed waterline alignment;
 - c) additional construction method evaluation and design services for 120 linear feet 24-inch waterline at the intersection of Castell and San Antonio to include evaluation of open-cut versus trenchless construction methods; and

- d) additional design services to redesign a portion of the proposed pipeline to avoid unknown utilities that have been encountered during construction and redesigns to accommodate the Landa Golf Course and RV Park during construction within the pipeline alignment area.

The Professional is authorized to commence work on Task 1 through Task 5 of the Project upon execution of this Agreement and agrees to complete these Services in accordance with the following schedule:

Project Milestones	Start Dates	End Dates
Notice to Proceed	NO CHANGE	
Preliminary Design/Survey	NO CHANGE	NO CHANGE
60% Design	NO CHANGE	NO CHANGE
90% Design	NO CHANGE	NO CHANGE
Easements	NO CHANGE	NO CHANGE
100% Design	NO CHANGE	NO CHANGE
Permitting	NO CHANGE	NO CHANGE
Bid Phase/Board Approval	NO CHANGE	NO CHANGE
Construction Phase	NO CHANGE	12/15/22
Additional Services	11/12/19	12/15/22

FIGURE 1
NO CHANGE

FIGURE 2

NO CHANGE

EXHIBIT B - COMPENSATION

NBU agrees to pay the Professional for the Services under Task 1 through Task 4 under this Agreement not to exceed \$459,958

The fees for Task 1 through Task 4 are as follows:

Services Cost Breakdown			
Task	Agreement	First Amendment	Revised Contract Amount
Preliminary Engineering Phase:			
Preliminary Engineering	\$83,174	\$0	\$83,174
Environmental	\$21,059	\$0	\$21,059
Survey / S.U.E.	\$88,943	\$0	\$88,943
Geotechnical Investigation	<u>\$42,055</u>	\$0	<u>\$42,055</u>
Total Preliminary Engineering Phase	<u>\$235,231</u>	\$0	<u>\$235,231</u>
Final Design Phase	\$151,760	\$0	\$151,760
Bid Phase	\$9,013	\$0	\$9,013
Construction Phase	\$63,954	\$3,000	\$66,954
Services Totals	<u>\$459,958</u>	\$3,000	<u>\$462,958</u>

NBU shall pay the Professional for the Additional Services for Task 5 in an amount not to exceed \$99,753; however, NBU must provide written notice in accordance with Section 4(B) of this Agreement prior to the Professional performing the Additional Services for Task 5.

Additional Services Cost Breakdown			
Task	Agreement	First Amendment	Revised Amount
Additional Services	\$102,753	(\$3,000)	\$99,753