

## **SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT**

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

### **RECITALS**

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated August 28, 2020 (the “Original Agreement”), for project management, preliminary engineering, final design, permitting and coordination with stakeholders, bid, and construction phase services (the “Original Services”) for the 24-inch Goodwin Lane Water Main Project (the “Project”) to be completed by June 17, 2022;

WHEREAS, NBU and the Professional entered into an Amendment on March 25, 2021, (i) engaging the Supplemental Services, (ii) detailing the Supplemental Services, (iii) authorizing the related compensation, and (iv) defining a time of completion for the Supplemental Services (the “Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, the Amendment did not require additional Board approval because the changes fell within the modification parameters the Board authorized in the terms of the Original Agreement;

WHEREAS, NBU and the Professional have identified a need to add additional final design phase and construction services, more specifically described in Exhibit “A” to this Amendment, (the “New Services” and, together with the Existing Services, the “Services”) that were not contemplated in the Agreement;

WHEREAS, the New Services require an increase in the compensation to the Professional and an extension of the completion date;

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

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) include the New Services, (ii) include additional compensation for the New Services, and (iii) extend the completion time for the New Services to August 15, 2023.

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 Second Amendment as of the effective date of this Second Amendment.

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

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

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

Section 5. Binding Effect. This Second 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 Second 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 Second Amendment shall not be affected thereby, and this Second Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This Second 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 Amendment on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NBU:**

**NEW BRAUNFELS UTILITIES,**  
a Texas municipal owned utility

By: \_\_\_\_\_  
Name: Ian Taylor  
Title: CEO

**THE PROFESSIONAL:**

**ALAN PLUMMER AND ASSOCIATES, INC.,**  
a Texas corporation

By: Mary Portillo  
Name: Mary Portillo  
Title: Principal, South Texas Area Leader

## **Exhibit A**

### **Services**

NO CHANGE

#### **SERVICES**

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

##### **Task 1 – Project Management**

NO CHANGE

##### **Task 2 – Preliminary Engineering Phase**

NO CHANGE

##### **Task 3 – Final Design Phase**

Upon approval of the Preliminary Engineering Report (“PER”) and 30% design documents, the Professional shall perform the final design phase services described herein.

3.1. NO CHANGE

3.2. NO CHANGE

3.3. NO CHANGE

3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare 100% plans, specifications, and an OPCC. 100% design documents shall include:

3.4.1. NO CHANGE

3.4.2. NO CHANGE

3.4.3. NO CHANGE

3.4.4. Surveying and design services to perform revisions to the 100% design documents based on updates made to the design of the Goodwin Conrads street and drainage improvement project.

3.4.5. Surveying and design services to perform revisions to the 100% design documents based on updates made to the design of the Union Pacific Railroad Crossing, including additional pipeline easements, surveying, and permitting services.

3.5. NO CHANGE

**Task 4 – Permitting & Stakeholders**

NO CHANGE

**Task 5 – Bid Phase Services**

NO CHANGE

**Task 6 – Construction Phase Services**

Upon completion of the bid phase services, the Professional shall perform the construction phase administration services described herein.

6.1. MEETINGS AND SITE VISITS. The Professional shall provide the following services for meetings and site visits:

6.1.1. NO CHANGE

6.1.2. NO CHANGE

6.1.3. attend up to a total of 22 bi-weekly construction progress meetings. The Professional shall: 1) prepare agenda and distribute one (1) day prior to meeting; and 2) record and distribute meeting minutes within one (1) week of meeting, via email to the NBU Project Manager and the contractor; and

6.1.4. attend up to a total of 22 bi-weekly site visits during construction of the Project, as distinguished from the continuous services of a resident Project representative, to observe the progress and the quality of work and to determine if the work is proceeding in accordance with the contract documents. Bi-weekly site visits may be scheduled so they are either directly before or after bi-weekly construction progress meetings. The Professional shall prepare and provide NBU with electronic observation reports via email for each site visit and notify NBU of any non-conforming work performed by the contractor, observed on the site visits.

6.1.5. NO CHANGE

6.1.6. NO CHANGE

6.2. NO CHANGE

6.3. NO CHANGE

6.4. NO CHANGE

6.5. NO CHANGE

6.6. DELETED

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

6.7.1. Project Site visit memos and construction progress meeting minutes;

6.7.2. one (1) PDF electronic copy of record drawings plans and specifications and at least one (1) georeferenced .dwg file of record drawings plans in accordance with NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor; and

6.7.3. one (1) PDF electronic copy of Asset Information memorandum.

6.8. RESIDENT PROFESSIONAL REPRESENTATIVE AND CONSTRUCTION MANAGEMENT. The Professional will have a full-time (up to 50 hours per week) Resident Project Representative (RPR) on the Project Site for 11-months and provide an average of eight (8) hours per week of construction management time. The duties, responsibilities and the limitations of authority of the RPR, and designated assistants, are as follows:

6.8.1. RPR is the Professional's agent at the site. The RPR will act as directed by and under the supervision of the Professional's construction manager, and will confer with the Professional regarding RPR's actions. The RPR's dealings in matters pertaining to the on-site work shall in general be with the Professional's construction manager and contractor, keeping owner advised as necessary. The RPR's dealings with subcontractors shall only be through or with full knowledge and approval of contractor. The RPR shall generally communicate with owner with the knowledge of and under the direction of the Professional's construction manager.

6.8.2. Duties and Responsibilities of RPR shall include:

6.8.2.1. Schedules: Review the progress schedule, schedule of shop drawing submittals and schedules of values prepared by contractor and consult with the Professional concerning acceptability;

6.8.2.2. Conferences and Meetings: Attend meetings with contractor, such as preconstruction conferences, progress meetings, job conferences and other Project-related meetings, and prepare and circulate copies of minutes thereof;

6.8.2.3. Liaison:

6.8.2.3.1. Serve as the Professional's liaison with contractor, working principally through contractor's superintendent and assist in understanding the intent

- of contract documents; and assist the Professional in serving as owner's liaison with contractor when contractor's operations affect owner's on-site operations;
- 6.8.2.3.2. Assist in obtaining from owner additional details or information, when requested;
  - 6.8.2.4. Shop Drawings and Samples:
    - 6.8.2.4.1. Record date of receipt of shop drawings and samples;
    - 6.8.2.4.2. Receive Samples which are furnished at the Site by contractor and notify the Professional of availability of Samples for examination;
    - 6.8.2.4.3. Advise the Professional and contractor of the commencement of any work requiring a Shop Drawing or Sample if the submittal has not been approved by the Professional;
  - 6.8.2.5. Review of Work, Rejection of Defective Work, Inspections and Tests:
    - 6.8.2.5.1. Conduct on-site observations of the work in progress to determine if the work is in general proceeding in accordance with the contract documents;
    - 6.8.2.5.2. Based on the information, knowledge and belief of RPR, report to NBU Project Manager whenever RPR believes that any work will not produce a completed Project that conforms generally to the contract documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the contract documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the Professional of work the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval;
    - 6.8.2.5.3. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the contractor maintains adequate records thereof; and observe record and report to NBU Project Manager appropriate details relative to the test procedures and start-ups; and
    - 6.8.2.5.4. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections

and report to NBU Project Manager.

- 6.8.2.6. Interpretation of Contract Documents: Report to NBU Project Manager when clarifications and interpretations of the contract documents are needed and transmit to contractor clarifications and interpretations as issued by the Professional;
- 6.8.2.7. Request for Revisions: Consider and evaluate contractor's suggestions for revisions to Drawings or Specifications and report with RPR's recommendations to the Professional. Transmit to contractor in writing decisions as issued by the Professional;
- 6.8.2.8. Records: Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original contract documents, including all work change directives, addenda, change orders, field orders, written amendments, additional drawings issued subsequent to the execution of the contract, the Professional's clarifications and interpretations of the contract documents, progress reports, submittals and correspondence received from and delivered to contractor and other Project related documents;
- 6.8.2.9. Reports:
  - 6.8.2.9.1. Furnish to the Professional periodic reports as required of progress of the work and of contractor's compliance with the progress schedule and schedule of shop drawings and sample submittals;
  - 6.8.2.9.2. Consult with NBU in advance of scheduled major tests, inspections or start of important phases of the work;
  - 6.8.2.9.3. Draft proposed written amendments, change orders and work change directives, obtaining backup material from contractor and recommend to NBU written amendments, change orders, work change directives, and field orders;
  - 6.8.2.9.4. When known, report immediately to NBU and owner the occurrence of any accident;
- 6.8.2.10. Payment Requests: Review Applications for Payment with contractor for compliance with the established procedure for their submission and forward with recommendations to owner, noting particularly the relationship of the payment



requested to the schedule of values, work completed and materials and equipment at the Site but not incorporated in the work;

6.8.2.11. Certificates, Maintenance and Operation Manuals: During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by contractor are applicable to the items actually installed and in accordance with the contract documents, and have this material delivered to NBU for review and forwarding to owner prior to final payment for the work;

6.8.2.12. Completion:

6.8.2.12.1. Before NBU issues a Certificate of Substantial Completion, submit to contractor a list of observed items requiring completion or correction;

6.8.2.12.2. Observe whether contractor has performed inspections required by laws or regulations, ordinances, codes or order applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work;

6.8.2.12.3. Conduct a final inspection in the company of the Professional, owner and contractor and prepare a final list of items to be completed or corrected;

6.8.2.12.4. Observe whether all items on final list have been completed or corrected and make recommendations to NBU concerning acceptance;

6.8.2.13. Limitations of Authority of RPR:

6.8.2.13.1. Shall not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized by engineer;

6.8.2.13.2. Shall not exceed limitations of engineer's authority as set forth in Agreement or the contract documents;

6.8.2.13.3. Shall not undertake any of the responsibilities of contractor, subcontractor, suppliers, or contractor's superintendent;

6.8.2.13.4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the contract documents;

6.8.2.13.5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work or any activities or operations of owner or contractor;

6.8.2.13.6. Shall not accept shop drawing or sample submittals from anyone other than the contractor; and

6.8.2.13.7. Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by engineer;

#### 6.9.CLOSE-OUT DOCUMENTS

6.9.1. RECORD DRAWINGS. The Professional shall prepare the record drawings based on the revised redline construction drawings and information furnished by the construction contractor reflecting changes in the Project made during construction. The Professional shall prepare one (1) set of record drawings at the completion of the Project and submit to the NBU Project Manager as a PDF via email within 60 days of final completion.

6.9.2. ASSET INFORMATION. The Professional shall prepare a memorandum that provides the asset information for all new and abandoned pipelines and above grade appurtenances for insurance purposes within 30 days after substantial completion.

#### SUPPLEMENTAL SERVICES

NO CHANGE

#### TIME OF COMPLETION

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

Project Milestones	Start Date	End Date
Notice to Proceed	September 15, 2020	
Task 2 – Preliminary Engineering Phase	September 15, 2020	December 11, 2020
Task 3 – Final Design Phase	December 2, 2020	October 31, 2021
Task 4 – Permitting	October 12, 2020	November 31, 2021
Task 5 – Bid Phase	December 11, 2021	June 30, 2022
Task 6 – Construction Phase	July 15, 2022	August 15, 2023

TASK 1: FIGURE 1

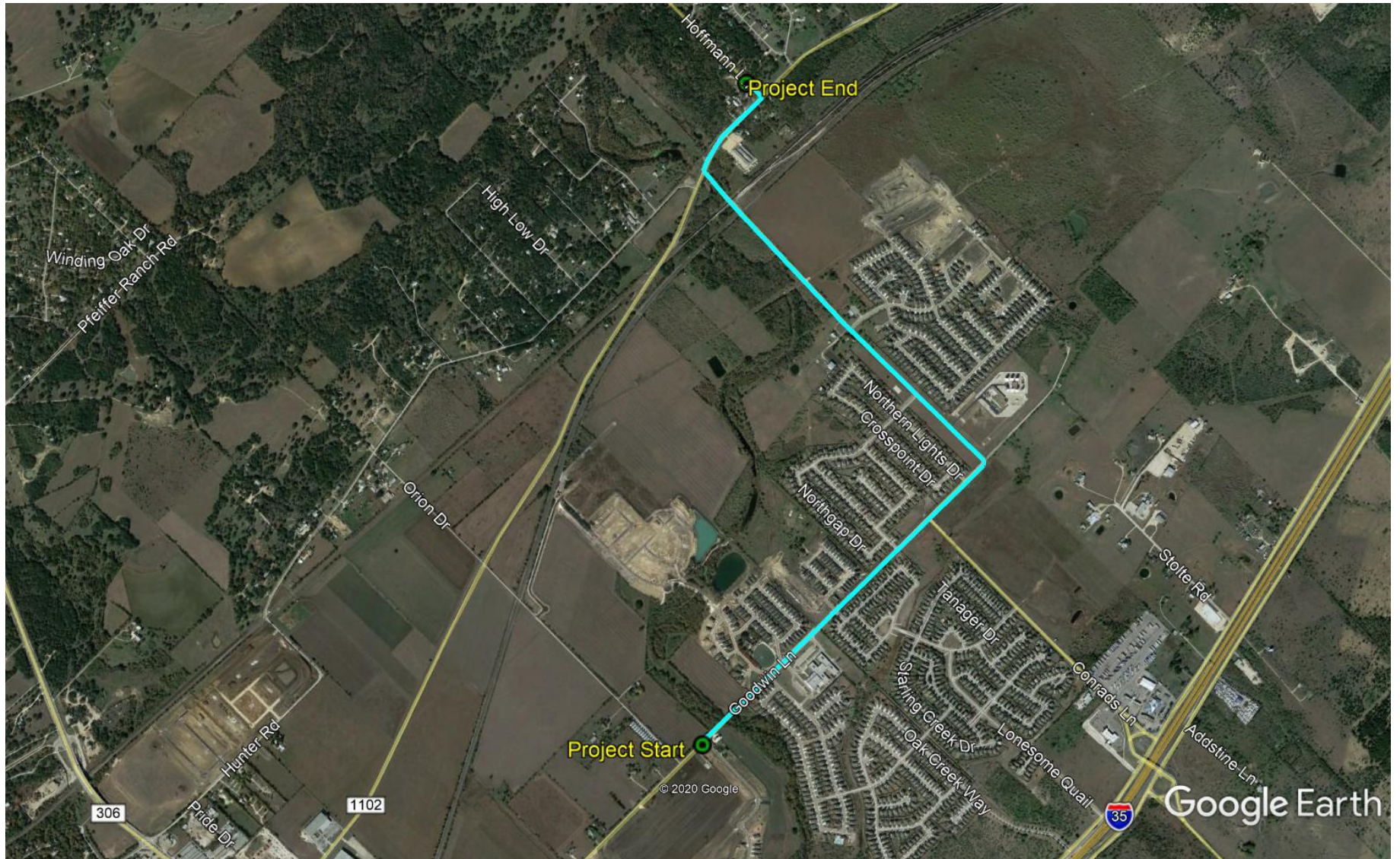


Exhibit B

Compensation

NBU agrees to pay the Professional for the Services and the Supplemental Services rendered under this Agreement in accordance with the tables below and made part of this Agreement.

**Services**

NBU agrees to pay the Professional for the Services rendered under this Agreement in an amount not to exceed \$1,232,476 and in accordance with the table below.

<b>Services Cost Breakdown</b>			
<b>Task</b>	<b>Original Contract</b>	<b>Second Amendment</b>	<b>Revised Contract Amount</b>
Task 1: Project Management	\$71,658	\$0	\$71,658
Task 2: Preliminary Design Phase	\$304,773	\$0	\$304,773
Task 3: Final Design Phase	\$96,252	\$134,536	\$230,788
Task 4: Permitting & Stakeholders	\$9,885	\$0	\$9,885
Task 5: Bid Phase	\$28,912	\$0	\$28,912
Task 6: Construction Phase	\$144,414	\$442,046	\$586,460
<b>Total</b>	<b>\$655,894</b>	<b>\$576,582</b>	<b>\$1,232,476</b>

**Supplemental Services**

NBU agrees to pay the Professional for the Supplemental Services rendered under this Agreement in an amount not to exceed \$65,000 and in accordance with the table below.

<b>Supplemental Services Cost Breakdown</b>	
<b>Task</b>	<b>Cost</b>
Supplemental Task 1: Easement Survey Services	\$0
Supplemental Task 2: Topographic Survey Services	\$13,570
Supplemental Task 3: Geotechnical Engineering Services	\$5,074
Supplemental Task 4: SUE Services	\$12,696
Supplemental Task 5: Pipeline Design Services	\$33,660
<b>Total</b>	<b>\$65,000</b>