

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **FREESE AND NICHOLS, INC.**, a Texas corporation authorized to transact business in the State of Texas (the “Professional”).

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 the RFQ number and title or this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFQ number and 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. 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:

Freese and Nichols, Inc.
4055 International Plaza, Suite 200
Fort Worth, Texas 76109

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:
FREESE AND NICHOLS, INC.,
a Texas corporation

By: _____
Name: _____
Title: _____

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide Texas Water Development Board (“TWDB”) coordination, design, bid, and construction phase Services (collectively the “Services”) for the McKenzie Interceptor Upgrade (the “Project”) located on the East Side of Interstate Highway 35 between Alligator Creek and Avery Parkway (the “Project Site”). The Project shall include the facilities and major components, described below.

- 1) Approximately 33,000 LF of new 36-inch wastewater pipeline installed by open-cut methods including manholes, starting at Alligator Creek on the east side of Interstate Highway 35 and ending at Avery Parkway.
- 2) Approximately 2,300 LF of new 36-inch wastewater pipeline installed by trenchless methods at Seven (7) different locations.
- 3) Up to 32 parcels with permanent and/or temporary easements.
- 4) One (1) TxDOT highway crossing using trenchless construction.
- 5) Two (2) stream crossings using trenchless construction.
- 6) One (1) Guadalupe County and/or City of New Braunfels roadway crossing.
- 7) Permits and approvals from key agencies including: Texas Department of Transportation, (“TXDOT”), City of New Braunfels, TWDB, Guadalupe County, Comal County, and Texas Historical Commission.

SERVICES

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

Task 1. Project Management

1. The Professional shall provide the following project management services described herein.
 - 1.1. SCHEDULE. The Professional shall develop a baseline design schedule for the Project and prepare updated design schedules for the Project on a monthly basis on or before the

25th day of each month for NBU to monitor progress and identify design submittal dates. Schedules shall be provided to the NBU Project Manager via email.

- 1.2. **QUALITY CONTROL.** The Professional shall develop a quality assurance/quality control program for the Project, which shall be explained in detail via a written document and provided to NBU's Project Manager via email within 30 days of notice to proceed ("NTP").
- 1.3. **PROGRESS REPORTS.** The Professional shall provide NBU with electronic monthly project progress reports and submit written invoices on or before the 25th day of each month for the previous month's effort. Progress reports shall be provided to the NBU Project Manager via email.
- 1.4. **MEETING AGENDA/MINUTES.** The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the documented meeting minutes and action item logs to NBU's Project Manager within one (1) week after meetings.
- 1.5. **PROJECT CONTROLS.** The Professional shall manage the Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs the following:
 - 1.5.1. assigning a senior advisor to oversee quality assurance;
 - 1.5.2. developing cost estimates using recent bid tabs from similar projects or vendor prices;
 - 1.5.3. using Microsoft Project to manage the schedule; and
 - 1.5.4. coordinating communication with sub consultants through emails and meetings.

Task 2. Preliminary Engineering Phase

2. Upon receipt of NTP, the Professional shall perform the preliminary engineering phase services described below.
 - 2.1. **MEETINGS.** The Professional shall provide meeting agenda and meeting minutes to NBU for the following meetings:
 - 2.1.1. project kick-off meeting with NBU (one (1) meeting);
 - 2.1.2. monthly progress status meetings (eleven (11) meetings);
 - 2.1.3. 30% design review meeting; and
 - 2.1.4. meetings with additional stakeholders (three (3) meetings).

2.2. ALTERNATIVE ROUTE EVALUATION. The Professional shall perform a maximum of two (2) alternative route evaluations for the proposed interceptor. The purpose of this study shall be to confirm and finalize the interceptor route. The Professional shall perform the following:

- 2.2.1. use existing geographic information system (“GIS”) and as-built information to determine locations of existing utilities on the Project Site;
- 2.2.2. perform preliminary site visits to gather project information;
- 2.2.3. locate all existing wastewater (“WW”) service laterals using as-builts, existing closed-circuit television (“CCTV”) and pipeline assessment certification program (“PACP”) databases provided by NBU;
- 2.2.4. coordinate with appropriate stakeholders to gather all available information on the Project including TxDOT, the City of New Braunfels, Guadalupe County, Comal County, gas companies and electric providers;
- 2.2.5. evaluate up to two (2) potential routes making recommendations of preferred routes based on cost, constructability, right of way (“ROW”)/road requirements, public impact, utility conflicts, etc. The Professional shall produce GIS exhibits showing proposed pipeline alignments and provide maps and hydraulic profiles of up to two (2) potential pipeline routes;
- 2.2.6. provide a Class 5 opinion of probable construction cost (“OPCC”) as specified by the Association for the Advancement of Cost Engineering for each route; and
- 2.2.7. include recommendations for final route in Engineering Feasibility Report (EFR).

2.3. TRENCHLESS CONSTRUCTION METHODS. The Professional shall evaluate the feasibility of trenchless construction in locations that have a depth of more than 25 feet, have surface conflicts or require limited surface disturbance in high traffic areas. The Professional shall determine the preferred method of trenchless construction for up to seven (7) crossings.

2.4. 30% DESIGN DOCUMENTS

- 2.4.1. The Professional shall perform one (1) preliminary site visit to gather project information.
- 2.4.2. The Professional shall perform collection and review of existing data, reports, mapping, and records provided by NBU. The Professional shall review documents

associated with the Project. The Professional shall provide analyses of NBU's requirements for the Project, including planning, surveys, site evaluations and comparative studies of prospective sites and solutions.

2.4.3. The Professional shall prepare 30% design drawings including plan views of all proposed infrastructure within the Project Site.

2.4.4. The Professional shall prepare a Class 5 OPCC based on 30% design drawings.

2.5. ENGINEERING FEASIBILITY REPORT ("EFR"): The Professional shall prepare an EFR in accordance with TWDB Form TWDB-0556 that includes 30% design plans and describes the scope of project for final design, right-of-way requirements, easement requirements, permitting, constructability, OPCC and schedule. The EFR shall include project implementation, phasing and packaging for all portions of the project. It will also include final design flows and interceptor sizing. The Professional shall submit a draft EFR to NBU's Project Manager for review and comment as well as a final EFR incorporating all NBU comments. The final EFR will be submitted within 30 days of receiving comments. The final EFR shall be submitted to TWDB for review. The Professional shall work with TWDB to address all comments and finalize for NBU's approval.

2.6. DELIVERABLES. The Professional shall provide the following Preliminary Engineering Phase deliverables to NBU:

2.6.1. Route Study - maps and hydraulic profiles of up to two (2) potential pipeline routes and a Class 5 OPCC (to be included in EFR);

2.6.2. EFR and Class 5 OPCC – one (1) PDF electronic file; and

2.6.3. 30% design drawings – one (1) PDF electronic file, one (1) electronic Keyhole Markup language Zipped ("KMZ") or shape ("SHP") file and three (3) hard copies of 11x17 size plans.

Task 3. Final Design Phase

3. Upon approval of the 30% design documents, the Professional shall perform the final design phase services described below. Design shall be limited to a single bid package.

3.1. MEETINGS. The Professional shall provide meeting agenda and meeting minutes to NBU for the following meetings:

- 3.1.1. 60% design review meeting;
 - 3.1.2. 90% design review meeting;
 - 3.1.3. monthly design meetings (twelve (12) meetings);
 - 3.1.4. meetings with franchise utilities (two (2) meetings);
 - 3.1.5. permitting meeting with City of New Braunfels (one (1) meeting);
 - 3.1.6. permitting meeting with Comal County (one (1) meeting);
 - 3.1.7. permitting meeting with Guadalupe County (one (1) meeting); and
 - 3.1.8. meetings with additional stakeholders (three (3) meetings).
- 3.2. 60% DESIGN DOCUMENTS. The Professional shall prepare 60% plans, specifications and OPCC based on decisions made in the preliminary design phase. Design documents shall include:
- 3.2.1. plan and profile view of sewer pipelines;
 - 3.2.2. call outs for major design items;
 - 3.2.3. table of contents for all required specifications and specifications that are provided by the Professional with the exception of NBU's standard specifications; and
 - 3.2.4. Class 2 OPCC based on 60% design documents.
- 3.3. 90% DESIGN DOCUMENTS. Upon approval of 60% design documents, the Professional shall prepare 90% plans, specifications and OPCC. 90% design documents shall include:
- 3.3.1. call outs for all design items on the plan sheets;
 - 3.3.2. complete specifications; and
 - 3.3.3. Class 1 OPCC based on 90% design documents.
- 3.4. 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare 100% plans, specifications and OPCC. 100% design documents shall include:
- 3.4.1. final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase. NBU and the Professional's easement acquisition team shall provide the Professional easement requirements for each parcel via email to incorporate into the plans;
 - 3.4.2. project files to include; .dwg, .mxd, and .kmz;
 - 3.4.3. preparation of the bid form; and

3.4.4. Class 1 OPCC based on 100% design documents.

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

3.5.1. 60% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, one (1) PDF electronic file of a Class 2 OPCC and three (3) hard copies of 11x17 size plans and specifications;

3.5.2. 90% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, one (1) PDF electronic file of a Class 1 OPCC and three (3) hard copies of 11x17 size plans and specifications; and

3.5.3. 100% design - the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF, one (1) PDF electronic file of a Class 1 OPCC and three (3) hard copies of 11x17 size plans and specifications.

Task 4. Field Services

4. The Professional shall perform the field services described below.

4.1. TOPOGRAPHIC SURVEY. The Professional shall obtain a topographic, utility and boundary survey as described below.

4.1.1. The Professional shall tie all existing surface topographic features and structures within the survey limits of Project. This shall include, but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges and flow line), channels and drainage ways (tops, toes and flow line), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits. Visible valves, meters, clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits) mailboxes, etc. Trees shall be tagged and tabulated by size and species in compliance with the City of New Braunfels Tree Preservation ordinance as defined in the City of New Braunfels Zoning Ordinance Chapter 5.3-5i. The survey limits shall extend approximately 100 feet on intersecting streets. The

Professional shall provide sufficient ground shots to create one (1) foot contours for the Project.

- 4.1.2. The Professional shall survey across Alligator Creek including the bottom profile within the Project Site.
 - 4.1.3. The Professional shall conduct a utility survey and locate existing utilities within the Project Site boundary. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipal owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey. The Professional shall bear all costs for the Services associated with utility locates.
 - 4.1.4. The Professional shall locate up to twenty-six (26) geotechnical borings and tie them in to the Project survey.
 - 4.1.5. The Professional shall locate up to twenty-one (21) Subsurface Utility Engineering (“SUE”) Potholes and tie them in to the Project survey.
 - 4.1.6. The Professional shall set and install control points and/or benchmarks as required for the survey work (minimum one (1)-foot intervals). The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing.
 - 4.1.7. The Professional shall coordinate right of entry (“ROE”). The Professional shall contact private property owners to ascertain permission to enter and perform field services within private properties.
 - 4.1.8. The Professional shall research and review adjoining plats and deeds along the survey corridor. The Professional shall locate property corners and identify existing right of way (“ROW”), along the survey corridor, based on found monuments and record documents.
- 4.2. EASEMENT DOCUMENTS. The Professional shall prepare metes and bounds descriptions and exhibits for required easements for the Project for up to thirty-two (32) parcels based on the following criteria:
- 4.2.1. the Professional shall perform deed, plat and courthouse record research, request title reports and obtain copies of deeds and easement documents;

- 4.2.2. the Professional shall survey property corners, fences and appurtenant property evidence;
 - 4.2.3. easements shall consist of permanent easements and temporary construction easements. Easement documents shall be signed and sealed by a registered professional land surveyor, currently registered in the State of Texas. Each easement shall have attached to it a copy of the corresponding deed for that property and a closure computation sheet for the easement tract. A draft copy of the easement shall be submitted for review by the Professional to NBU's Project Manager. The Professional shall incorporate comments as appropriate and submit one (1) final copy of the easement and deed to NBU. Each draft metes and bounds exhibit shall be revised one (1) time per NBU's review;
 - 4.2.4. exhibit plat and legal description must meet all the rules of the Texas Board of Professional Land Surveying and the Professional Land Surveying Practices Act and the Manual of Practice for Land Surveying in the State of Texas as published by the Texas Society of Professional Surveyors. The latest revision shall be used;
 - 4.2.5. legal descriptions shall include sufficient information to identify the location, boundaries, monumentation, and area of the described tract, as well as its relationship to the parent tract out of which it is surveyed. Each legal description shall be accompanied by an exhibit plat that depicts the worded description. Legal descriptions and exhibit plats shall be reproduced on 8.5" x 14" size paper. All must be legible. The exhibit plat or legal description should be able to stand alone; and
 - 4.2.6. the Professional shall stake final easement boundaries.
- 4.3. SUBSURFACE UTILITY ENGINEERING. The Professional shall perform SUE as described below.
- 4.3.1. The Professional shall perform SUE "Quality Level A" as defined by the American Society for Civil Engineers, for up to twenty-one (21) pothole locations. Level A includes physically locating the actual utility – often by 'potholing.' Once the utility is potholed it is located horizontally and vertically by survey measurements. This location is typically to the top of pipe, which should be noted on the drawing.
 - 4.3.1.1. The Professional shall provide coordination for all utility locates/clearance

and permitting required to conduct SUE potholes.

4.4. GEOTECHNICAL DATA REPORT AND GEOTECHNICAL BASELINE REPORT.

The Professional shall conduct a geotechnical investigation to complete a Geotechnical Data Report (“GDR”) and Geotechnical Baseline Report (“GBR”) for the Project as described below.

4.4.1. Field Exploration:

4.4.1.1. The Professional shall determine the required boring locations on the Project Site. The Professional shall provide a Project Site boring location map that shows the exploratory borings within the vicinity of the proposed improvements and along the proposed water main alignments.

4.4.1.2. The Professional shall coordinate with NBU, City of New Braunfels, and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.

4.4.1.3. The Professional shall drill exploratory borings for the proposed improvements according to the schedule provided below:

4.4.1.3.1. Up to Twelve (12) borings to a maximum depth of 20 feet below existing grade;

4.4.1.3.2. Up to eight (8) borings to a maximum depth of 30 feet below existing grade; and

4.4.1.3.3. Up to six (6) borings to a maximum depth of 50 feet below existing grade.

4.4.1.4. The borings conducted on the Project Site shall be advanced using standard rotary drilling equipment with continuous-flight augers or rotary wash methods. Subsurface samples shall be collected using two (2)-inch diameter split-spoon sampler in conjunction with the standard penetration test (“SPT”). Intermittent three (3)-inch diameter Shelby tube samples shall be collected in between the SPTs.

4.4.1.5. The Professional shall record groundwater observations within the borings at the time of drilling and at the completion of drilling and sampling.

4.4.1.6. The Professional shall backfill borings with auger cuttings upon completion of drilling and sampling.

- 4.4.1.7. The Professional shall patch borings drilled through pavement with like material (asphalt, concrete) upon completion of backfilling.
- 4.4.1.8. The Professional shall have personnel experienced in logging borings, directing the drilling, and handling and transporting the samples. The Professional shall provide visual classification of the subsurface stratigraphy in general accordance to the American Society for Testing and Materials (“ASTM”), standard number D2488 and the Unified Soil Classification System (“USCS”) during drilling and sampling.
- 4.4.2. The Professional shall provide laboratory testing to include the following:
 - 4.4.2.1. testing on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials;
 - 4.4.2.2. laboratory tests assigned for the specific subsurface materials encountered during exploration on the Project Site, but which are expected to include the following number and type of tests:
 - 4.4.2.2.1. Atterberg Limits tests (up to 60 tests);
 - 4.4.2.2.2. Percent Passing the #200 Sieve (up to 45 tests);
 - 4.4.2.2.3. Sieve Analysis (Gradation) tests with Hydrometer (up to 15 tests);
 - 4.4.2.2.4. Moisture Content tests (up to 60 tests);
 - 4.4.2.2.5. Unit Dry Weight tests (up to 10 tests);
 - 4.4.2.2.6. Indirect Tensile/Brazilian tests (up to 12 tests);
 - 4.4.2.2.7. Slake Durability tests (up to 12 tests)
 - 4.4.2.2.8. Punch Identification tests (up to 12 tests); and
 - 4.4.2.2.9. Unconfined compressive strength tests (with unit weights; up to 60 tests for soil and up to 15 tests for rock).
- 4.4.3. The Professional shall prepare a GDR that includes the following information and recommendations, as applicable:
 - 4.4.3.1. a summary of the field and laboratory sampling and testing program;
 - 4.4.3.2. boring logs and laboratory testing results;
 - 4.4.3.3. a review of general site conditions including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered;

- 4.4.3.4. trenchless water main construction feasibility and recommendations of auger boring and/or horizontal directional drilling;
 - 4.4.3.5. general discussion of expected construction related issues; and
 - 4.4.3.6. earthwork related recommendations for use during development of plans and specifications.
- 4.4.4. the Professional shall prepare a GBR to establish a single source document where contractual statements describe the geotechnical conditions anticipated to be encountered during construction. The Contractor shall use these contractual statements or baselines as the basis for their bid. The GBR shall also emphasize baselines for trenchless construction. GBR shall be prepared in accordance with the guidelines presented in the ASCE Geotechnical Baseline Reports for Construction: Suggested Guidelines.
- 4.4.5. The Professional shall provide the final Geotech Data Report electronically as a 100% design deliverable with the specifications.
- 4.5. ENVIRONMENTAL EVALUATION AND CULTURAL RESOURCE EVALUATION.
- The professional shall perform the environmental and cultural resource investigation as described herein.
- 4.5.1. The Professional shall perform the environmental investigation assuming the project intent is to design and construct the proposed pipeline in accordance with the terms and conditions of a Nationwide Permit (“NWP”) without requiring the preparation and submittal of a Pre-Construction Notification (“PCN”) to the U.S. Army Corps of Engineers (“USACE”). If PCN criteria are met, then the submittal of a PCN to the USACE shall be required. If a PCN or other Section 404 permit authorization from the USACE (e.g., Individual Permit) is required for the proposed project, then those services shall be provided by the Professional as an additional service.
- 4.5.1.1. The Professional shall render the following services, with the development of the Project, as follows:
- 4.5.1.1.1. Gather and Review Existing Information – Prior to conducting a pedestrian survey within the proposed project area, the Professional shall assemble and review data such as aerial photographs, USGS topographic maps, National

Wetlands Inventory (NWI) maps, the USGS National Hydrography Dataset (NHD), and soils data within the area of the proposed project areas.

4.5.1.1.2. Conduct Pedestrian Survey – The Professional shall conduct a site visit to make observations within the proposed project area to document existing environmental conditions and assess potential project impacts. The presence and locations of waters of the U.S., including wetlands, potential threatened/endangered species habitat, and vegetation cover types shall be identified within the area of the proposed project areas.

4.5.1.1.3. Coordination with Project Engineers – Utilizing information gathered during the pedestrian survey, the Professional shall coordinate with the engineer of record (“EOR”) to determine if the proposed project improvements have been designed to meet the terms and conditions of a NWP without requiring notification to the USACE, to determine what requirements may be required under the Endangered Species Act, and to determine what other environmental permit requirements may be required prior to construction.

4.5.1.1.4. Prepare Technical Memorandum - Information gathered during the pedestrian survey, consultation with the THC, and coordination with the design engineers shall be used to prepare a draft pedestrian environmental survey technical memorandum. The draft memorandum shall include discussions of methodologies used, the hydrologic characterization of potential waters of the U.S., and an opinion on their jurisdictional status. The memorandum shall also include a discussion of how the proposed project shall meet the terms and conditions of a NWP without requiring notification to the USACE and an opinion on other environmental permits or authorizations that may be required. The draft memorandum shall be sent to NBU’s Project Manager for review and comment. Once comments are received, a final technical memorandum shall be prepared for NBU’S records.

4.5.1.2. The Professional shall perform Cultural Resources Evaluation as described herein.

4.5.1.2.1. Projects sponsored by a political subdivision of the State that affect a cumulative area greater than five (5) acres or that disturb more than 5,000 cubic yards require consultation with the Texas Historical Commission (THC) according

to Section 191.0525 (d) of the Antiquities Code of Texas. Furthermore, to qualify for NWP authorization, all prospective permittees must comply with the general conditions, and any regional or case-specific conditions, imposed by the division engineer or district engineer. General condition 20 (historic properties) states that non-federal permittees shall submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The Professional shall render the following Professional services, with the development of the Project, as follows:

4.5.1.2.1.1. Initial Coordination with Texas Historical Commission (“THC”) - The Professional shall draft a consultation letter to the THC for NBU’s Project Manager review and comment. The Professional shall incorporate NBU’s Project Manager comments and submit the consultation letter to the THC to determine if there is a potential to affect cultural resources and if a cultural resources survey is recommended.

4.5.1.2.1.2. Archeological Survey - If follow up cultural resources studies are required, the Professional shall prepare a work plan and Antiquities Permit Application to conduct an archeological survey of the proposed project where a field survey is determined warranted. The permit application shall be sent to NBU’s Project Manager to review and sign, and then will be submitted to the THC to acquire the permit. Once the THC issues a permit, the Professional shall conduct an archeological field survey to assess the project area for cultural resources. The survey shall involve visual inspection, shovel testing, and backhoe trenching as appropriate within the project alignment. This scope assumes that up to 120 shovel tests may be excavated supplemented by up to eight (8) backhoe trenches, as warranted. As this Project is expected to involve federal permitting or funding, the survey shall also consider the project’s indirect or visual effect on

eligible or listed non-archaeological cultural resources on properties directly adjacent to the project footprint. The Professional shall prepare a draft archeological survey report that shall summarize cultural background data, previous investigations, current investigation findings, and regulatory recommendations. Following review by NBU's Project Manager, the report shall be submitted to the THC for regulatory review and concurrence with the findings. Once a final draft has been approved, the Professional shall prepare and submit final reports, notes, and photographs for curation at a federally recognized facility.

4.5.2. Not included as part of the environmental and cultural resource investigation services:

- 4.5.2.1. preparation of a Pre-Construction Notification or Individual Section 404 permit application for submittal to the USACE;
- 4.5.2.2. preparation of a Jurisdictional Determination (JD) Evaluation Report;
- 4.5.2.3. conducting a conditional assessment (i.e., TXRAM) on waters of the U.S. potentially impacted by the proposed project;
- 4.5.2.4. presence/absence surveys for federally listed threatened/endangered species;
- 4.5.2.5. application for Texas Parks & Wildlife Department Sand and Gravel Permit;
- 4.5.2.6. application for General Land Office Easement;
- 4.5.2.7. phase I/II Environmental Site Assessment;
- 4.5.2.8. identification of tree species and/or preparation of a tree mitigation plan required due to tree ordinance compliance;
- 4.5.2.9. preparation of a Storm Water Pollution Prevention Plan (SWPPP);
- 4.5.2.10. formal SAL-eligibility testing or mitigation associated with Cultural Resources; and
- 4.5.2.11. other environmental services not specifically defined in this scope of services.

4.6. Environmental Information Document ("EID") PREPARATION. The Professional shall

prepare the EID in connection with TWDB funding as described herein.

4.6.1. The Professional shall prepare an EID as required by the TWDB CWSRF (31 TAC §375, Subchapter E). The EID shall be a stand-alone, self-contained document describing the Project in sufficient detail to allow for resource agency review without reference to an engineering study or other documents. The EID format shall follow the guidelines provided by the TWDB . It is assumed that the preparation of the draft EID shall begin after the Project construction footprint is defined. The following services shall be completed for the EID:

4.6.1.1. Environmental Risk Database Review - The Professional shall review environmental risk database reports to assess the potential for hazardous materials contamination on property being acquired as part of the project. The Professional shall summarize the results of the database review in a technical memorandum and the results will be incorporated into the final EID.

4.6.1.2. Agency Coordination - The Professional shall submit coordination/notification letters and the draft EID to appropriate agencies, as required, including U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, local managers of the Federal Flood Insurance Program, the local council of government, and other regional agencies or local governments that may have jurisdiction. Comments received from the agencies shall be incorporated into the final EID. If necessary, the Professional shall work with NBU's Project Manager to prepare and submit written responses to address state and/or federal resource agency comments. We assume that this project shall be non-controversial and that agency comments shall be minimal. If an unusual level of agency comments may cause the Professional's budget to be exceeded, the Professional will notify NBU's Project Manager for written authorization before proceeding.

4.6.1.3. Preparation of Draft and Final EID - The Professional shall prepare a draft EID following appropriate TWDB guidelines (form TWDB-0801). The draft EID shall be submitted to NBU's Project Manager for review and comment. The Professional shall incorporate NBU comments into the draft EID and submit the revised draft EID to NBU's Project Manager to be made available for public review prior to the TWDB

required public meeting. After the public meeting and agency coordination, the EID shall be finalized by incorporating required changes or comments received into the final document. The Final EID shall be submitted to the TWDB for approval.

4.6.1.4. Public Meeting - The Professional shall assist NBU's Project Manager with holding one (1) Public Meeting, held at a physical location determined by NBU, by preparing a public notice for NBU to submit to local newspaper(s), participating in the public meeting, and summarizing the results of the meeting into the EID. NBU shall be responsible for having the public notice published and all costs associated with the publication and for providing verbatim transcript services, if required.

4.7. CLOSED CIRCUIT TELEVISION (CCTV) INSPECTION – the Professional shall perform CCTV inspection of the existing McKenzie Interceptor as described herein:

4.7.1. The Professional shall perform CCTV inspection for up to 29,950 LF of existing interceptor.

4.7.2. CCTV inspection shall be performed using a robotic camera capable of recording the condition of the pipe.

4.7.3. Footage shall be recorded and data shall be logged in report format to provide information of pipe condition, calling out defects as necessary.

4.8. DELIVERABLES

4.8.1. ROE list of property owners (electronic submission). The list shall be updated and managed as ROE is granted and services are completed;

4.8.2. Signed and sealed metes and bounds (electronic submission);

4.8.3. GDR (electronic submission with 100% design specifications);

4.8.4. GBR (electronic submission with 100% design specifications);

4.8.5. Pedestrian Environmental Survey Technical Memorandum (electronic submission);

4.8.6. Draft and submit Consultation Letter for THC (electronic submission);

4.8.7. Preparation and submission of one (1) EID to TWDB for approval; and

4.8.8. CCTV Inspection footage (DVD format) and report.

Task 5. Permitting & Stakeholders

5. The Professional shall coordinate with the following stakeholders/agencies as described below.

- 5.1. USACE. The Professional shall include in the Pedestrian Environmental Survey Technical Memorandum an opinion of compliance with USACE Nationwide permit terms and conditions.
- 5.2. TEXAS HISTORICAL COMMISSION. The Professional shall provide a coordination letter and desktop review to the Texas Historical Commission (“THC”) and coordinate areas that would potentially require archeological pedestrian surveys and/or historical reconnaissance field surveys.
- 5.3. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY. The Professional shall prepare and submit permit applications to Texas Commission on Environmental Quality for approval of all design documents. The permit applications include the following:
 - 5.3.1. Notification letter for sewer plans.
- 5.4. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit permit applications to the City of New Braunfels to facilitate permits for:
 - 5.4.1. public Infrastructure Permit;
 - 5.4.2. floodplain; and
 - 5.4.3. traffic control.
- 5.5. GUADALUPE COUNTY. The Professional shall prepare and submit a permit application for all work within Guadalupe County ROW.
- 5.6. TEXAS DEPARTMENT OF TRANSPORTATION (“TxDOT”). The Professional shall prepare and submit a permit application for all work within TxDOT ROW.
- 5.7. EASEMENT ACQUISITION. The Professional and their subconsultant shall obtain easements for up to thirty-two (32) parcels. The Professional’s Subconsultant shall be selected using good faith effort solicitation following TWDB Disadvantaged Business Enterprise guidance. The Professional shall provide the following easement acquisition services:
 - 5.7.1. Perform property acquisition meetings with up to thirty-two (32) property owners. Participation of engineering professional (FNI) shall be limited to one (1) meeting per property.
 - 5.7.2. Perform property owner negotiations for up to thirty-two (32) rights of entry.
 - 5.7.3. Perform escrow and title coordination for up to thirty-two (32) properties. Title policy will be paid for by NBU.

5.7.4. Review draft and final easement documents for up thirty-two (32) parcels.

5.8. TWDB COORDINATION. The Professional shall provide the following services associated with the TWDB funding process as described herein.

5.8.1. PRE-APPLICATION PHASE.

5.8.1.1. The Professional shall schedule and attend one (1) scoping meeting with the TWDB to discuss the project, Clean Water State Revolving Fund (“CWSRF”) funding, and funding process needs.

5.8.1.2. The Professional shall prepare and submit to TWDB on behalf of NBU one (1) Project Information Form (“PIF”).

5.8.1.3. The Professional shall schedule and attend one (1) pre-application conference with NBU and TWDB.

5.8.2. APPLICATION PHASE.

5.8.2.1. The Professional shall schedule and attend one (1) application meeting with NBU and other consultants including NBU’s financial advisor and bond counsel to discuss roles and application process. The Professional will be required to submit TWDB-0217.

5.8.2.2. The Professional shall prepare and submit one (1) full application with NBU, NBU’s financial advisor, and NBU’s bond counsel for relevant non-engineering related information.

5.8.2.3. The Professional shall coordinate with TWDB throughout the application review to address comments and provide additional information as necessary.

5.8.2.4. The Professional shall review TWDB’s “Board Memorandum” prior to TWDB staff’s recommendation of funding presentation to TWDB board.

5.8.2.5. The Professional shall attend the TWDB’s Board Meeting where funding request is submitted for TWDB Board commitment of funds.

5.8.2.6. The Professional shall assist, NBU’s financial advisor, and NBU’s bond counsel in the TWDB funding closing process.

5.8.3. POST CLOSING PHASE.

5.8.3.1. The Professional shall schedule and attend one (1) meeting with NBU on Post Closing Phase process and roles for this phase of the Project.

5.8.3.2. The Professional shall prepare the “Outlay” process on behalf of NBU to show the TWDB how funding is being spent, and to request draws on the funding loan.

5.8.3.3. Outlays shall be prepared by the Professional on a monthly basis throughout the TWDB’s review and approval process of the Project’s Environmental Information Document (“EID”) and Engineering Feasibility Report (“EFR”).

5.8.3.4. Outlays shall be prepared by the Professional on a monthly basis during the Construction Phase of the Project.

5.8.4. The Professional shall coordinate internally and with NBU and TWDB to prepare and submit to TWDB on behalf of NBU:

5.8.4.1. One (1) National Environmental Policy Act (“NEPA”) level EID (see additional information in Exhibit A Section 5.6 of this scope of services);

5.8.4.2. One (1) EFR; and

5.8.4.3. Design Plans and Specifications for TWDB Review.

5.8.5. The Professional shall assist NBU with CWSRF federal land acquisition requirements.

5.8.6. While the Project is in the Construction Phase, the Professional shall coordinate with the Contractor and NBU on monthly Davis-Bacon wage requirements certification and American Iron & Steel certification which is to be included in Outlay submissions described above.

5.8.7. The Professional shall submit any change orders on behalf of NBU and coordinate with TWDB for approval.

5.8.8. The Professional shall assist NBU in obtaining a TWDB Certificate of Approval (“COA”).

5.8.9. The Professional shall assist NBU in identification of any remaining, unused funds that might be used for any other NBU wastewater projects.

5.9. DELIVERABLES

5.9.1. Pedestrian Environmental Survey Technical Memorandum for file - one (1) PDF electronic copy;

5.9.2. THC authorization/concurrence letter – one (1) PDF electronic copy;

5.9.3. TCEQ permit/ approval letter -one (1) PDF electronic copy;

5.9.4. City of New Braunfels permit - one (1) PDF electronic copy;

- 5.9.5. Guadalupe County permit - one (1) PDF electronic copy;
- 5.9.6. TxDOT - one (1) PDF electronic copy; and
- 5.9.7. TWDB – deliverables listed in 5.8.4.

Task 6. Bid Phase Services

- 6. Upon completion of the final design, the Professional shall proceed with the bid phase Services described below. The project shall be bid as one (1) package only.
 - 6.1. PRE-BID CONFERENCE. The Professional shall attend a pre-bid conference administered by NBU. The Professional shall assist NBU with preparation of agenda, provide NBU with meeting notes, and coordinate conference responses with NBU. Written responses to issues identified at the pre-bid conference shall be in the form of addenda issued after the conference by NBU.
 - 6.2. INTERPRET BID DOCUMENTS. The Professional shall assist NBU with responding to questions and interpreting bid documents and preparing addenda to the bid documents if necessary.
 - 6.3. BID EVALUATION. The Professional shall attend a bid-opening conference to be administered by NBU. The Professional shall assist NBU in the opening and analyzing of the bids received for the Project. This includes researching contractor qualifications and references. The Professional shall recommend award of contract or other actions as appropriate to be taken by NBU in the form of a letter of recommendation.
 - 6.4. CONFORMED CONSTRUCTION DOCUMENTS. The Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications.
 - 6.5. DELIVERABLES.
 - 6.5.1. Addenda - one (1) PDF electronic copy;
 - 6.5.2. Letter of recommendation - one (1) PDF electronic copy; and
 - 6.5.3. Conformed construction documents - one (1) PDF electronic copy and 3 hard copies.

Task 7. Construction Phase Services

- 7. Upon completion of the bid phase services, the Professional shall proceed with construction phase administration services described below. The Professional shall provide general

construction contract administration services described below for one (1) construction contract only. Construction phase services for multiple bid packages will be an additional service.

7.1 FACILITY INTEGRATION AND OPERATIONS (“FIO”). The Professional shall develop an FIO memorandum that provides specific instructions on how the new facilities should be integrated into the existing wastewater system, as well as special operating instructions. The IOP memorandum shall generally include:

- 7.1.1 Description of New Facilities – major components and equipment, purpose and intent and how new facilities tie to existing infrastructure.
- 7.1.2 Integration Requirements - completion & testing procedures, owner staff required, responsibilities and notifications.
- 7.1.3 Operational & Maintenance Requirements - design settings & controls, operating procedures and maintenance procedures.

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

- 7.2.1 assist NBU in conducting a pre-construction conference with the construction contractor and prepare agenda, prepare and provide NBU with meeting notes and coordinate conference responses with NBU;
- 7.2.2 conduct one (1) construction document control workshop for the contractor;
- 7.2.3 attend up to a total of fifteen (15) monthly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor;
- 7.2.4 attend up to a total of fifteen (15) monthly 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. The Professional shall prepare and provide NBU with electronic observation reports for each site visit and notify NBU’s Project Manager of any non-conforming work performed by the contractor, observed on the site visits;
- 7.2.5 conduct with NBU’s Project Manager one (1) substantial completion

inspections and punch list reviews of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare a list of deficiencies to be corrected by the contractors before recommendation of final payment; and

7.2.6 conduct one (1) final completion inspection of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make recommendation of final payment.

7.3 SUBMITTAL MANAGEMENT. The Professional shall use FNiManager, a document management system for construction documents. The Professional shall monitor the processing of contractor's submittals (shop drawings, requests for information, schedules, certified test reports, etc.), provide for filing and retrieval of Project documentation, and verify that the contractor is sending and processing submittals in accordance with the schedules. The Professional shall produce monthly reports and submit to NBU's Project Manager indicating the status of all submittals in the review process.

7.3.1 SUBMITTAL REVIEW. The Professional shall review all contractor submittals for compliance with the design concepts to include the following:

7.3.1.1 shop drawings (up to fifty-five (55));

7.3.1.2 record data (up to thirty (30));

7.3.1.3 requests for information (up to fifteen (15));

7.3.1.4 schedules (up to fifteen (15));

7.3.1.5 certified test reports (up to eighty (80)); and

7.3.1.6 operation and maintenance manuals.

7.3.2 CHANGE ORDERS. The Professional shall manage the field/change order documents, requests for proposals, and contractor claim process for the Project as described below.

7.3.2.1 The Professional shall establish procedures and document construction changes required to implement modifications to the

Project.

7.3.2.2 The Professional shall process contract modifications and negotiate with the contractor at NBU's direction to determine the cost and time impacts of these changes.

7.3.2.3 The Professional shall prepare field/change order documentation for up to five (5) field orders for minor alterations and up to five (5) change orders.

7.3.2.4 The Professional shall evaluate notices of contractor claims and make initial recommendations to NBU's Project Manager on the merit and value of the claim based on information submitted by the contractor or available Project documentation. The Professional shall negotiate a settlement value with the contractor at NBU's direction.

7.4 INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for NBU and contractor during the course of construction per the schedule assumed herein.

7.5 PAY ESTIMATES. 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 per the schedule assumed herein.

7.6 CLOSE-OUT DOCUMENTS

7.6.1 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 NBU via email within sixty (60) days of final completion.

7.6.2 ASSET INFORMATION. The Professional shall prepare a memorandum that provides the asset information listed below for all above grade facilities for insurance purposes within 30 days after substantial completion:

- Address
- Year Built
- Description
- Square Footage of Building
- Building Value
- Contents Value

7.7 RESIDENT REPRESENTATION. The Professional shall have a full-time (45 hours per week) Resident Project Representative (RPR) on the Site for sixty-eight (68) weeks and provide an average of twelve (12) hours per week of construction management time. The duties, responsibilities and the limitations of authority of the RPR, and designated assistants, are as follows:

7.7.1 Communication

7.7.1.1 The Professional shall establish the communication procedures for all parties involved in the Project. The communication procedures shall detail the amount of time all parties have to respond to questions, submittals, or other documents, and the most efficient transmission of communication (via email, phone, etc.). These procedures shall be provided in writing and reviewed with NBU's Project Manager, EOR, and the contractor. NBU shall approve all communication procedures.

7.7.1.2 The Professional shall conduct periodic progress meetings with NBU, EOR, and contractor to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any Project related issues.

7.7.1.3 The Professional shall prepare and distribute an agenda prior to the progress meetings and record the meeting minutes. The Professional shall email the meeting minutes to NBU.

7.7.1.4 The Professional shall submit monthly reports of the construction progress to NBU's Project Manager. The reports shall describe the construction progress and summarize Project costs, cash flow,

construction schedule, pending and approved contract modifications, change order status, and outstanding issues.

7.7.2 Quality Assurance

7.7.2.1 The Professional shall observe the contractor's work to determine if the work is proceeding in accordance with the contract. The Professional shall prepare daily reports to be submitted electronically to NBU's Project Manager documenting the Professional's observations.

7.7.2.2 The Professional shall document non-conforming work observed at site visits and submit documentation via email to NBU's Project Manager and the contractor. The Professional shall verify and document the observed non-conforming work has been corrected and submit documentation to that effect to NBU's Project Manager via email.

7.7.2.3 The Professional shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.

7.7.2.4 The Professional shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in accordance with applicable testing and inspection bureaus who set standards for the testing of materials, witness tests, and factory testing.

7.7.2.5 The Professional shall provide specifically qualified personnel to conduct specialty observations for structural, mechanical, electrical, and instrumentation systems as requested by NBU.

7.7.3 Document Management

7.7.3.1 The Professional shall establish and maintain an electronic project management information system utilizing the web based FNI Manager System.

7.7.3.2 The Professional shall manage the processing of contractor submittals, including the filing and retrieval of all Project

documentation. The Professional shall receive contractor submittals including requests for information, modification requests, shop drawings, schedules, and other submittals. The Professional shall perform an initial review of the submittals and electronically send the submittals to the EOR and/or NBU for a detailed review and response.

7.7.3.3 The Professional shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties for documents, and of (ii) the EOR in reviewing and responding to submittals. The Professional shall verify that documentation is processed according to the schedule.

7.7.3.4 The Professional shall prepare monthly reports that monitor the status of all submittals in the review process. The Professional shall submit an electronic copy of the report to NBU's Project Manager once a month.

7.7.4 Schedule Management

7.7.4.1 The Professional shall review the baseline, the projected, and the monthly construction progress schedules submitted by the contractor. The Professional shall monitor the progress of the work completed relative to the planned progress and address any identified schedule delays by emailing the EOR, NBU's Project Manager, and the contractor promptly.

7.7.5 Cost Management

7.7.5.1 The Professional shall review the schedule of values and payment requests prepared by the contractor. The Professional shall establish with NBU and the contractor procedures to review the monthly quantities of work in place and the corresponding payment requests for work completed.

7.7.5.2 The Professional shall prepare monthly cash flow requirements based upon information provided by the contractor. The

Professional shall update cash flow reports monthly and include these reports with monthly updates to NBU's Project Manager.

7.7.5.3 The Professional shall verify quantities of work in place, review the payment requests and supporting documentation, and provide an opinion of whether the payment requested matches the work completed to NBU's Project Manager via email.

7.7.6 Issues Management

7.7.6.1 The Professional shall provide an initial interpretation of the drawings and specifications when questions arise concerning the definition of the drawings and specifications. The Professional shall coordinate a resolution to issues based upon a final interpretation of the drawings and specifications by the EOR, NBU's Project Manager, and the contractor.

7.7.6.2 The Professional shall track and document issues, procure a resolution, and notify the EOR, NBU's Project Manager, and the contractor via email promptly.

7.7.7 Change Management

7.7.7.1 The Professional shall establish and document procedures for administering changes to the construction contract.

7.7.7.2 The Professional shall prepare documentation of the requested contract modifications. The Professional shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's Texas engineering seal affixed.

7.7.7.3 The Professional shall process contract modifications and negotiate with the contractor on behalf of NBU to determine the cost and time impacts of these changes. The Professional shall prepare change order documents for approved changes and have them executed by NBU. The documentation of field orders that do not impact cost or schedule shall also be prepared and submitted to NBU's Project Manager.

7.7.7.4 The Professional shall receive and evaluate notices of contractor claims and make recommendations to NBU's Project Manager on the merit and value of the claim.

7.7.8 Project Completion

7.7.8.1 The Professional shall coordinate the start-up and commissioning of the facility and all of the process systems with the EOR, the contractor, and NBU. The Professional shall provide engineering and technical assistance to the contractor during the commissioning process.

7.7.8.2 When the contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the Professional shall conduct a review of the Project to determine conformance or non-conformance with the Project design and construction documents. The Professional shall determine if a review of the work is required by the EOR, and if so shall schedule the reviews of the work with the EOR. The Professional shall prepare a list of deficiencies to be corrected by the contractor before substantial completion is granted and any partial release or reduction of retainage is approved. The Professional shall prepare a certificate of substantial completion that includes a list of work to be completed prior to issuance of a final completion certificate.

7.7.8.3 The Professional shall conduct a final review of the Project for conformance with all of the Project documents. The Professional shall confirm work is complete and in accordance with the Project documents prior to recommending final payment.

7.7.8.4 The Professional shall assist NBU in obtaining legal releases, permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the contractor. The Professional shall review and confirm that the contractor has submitted all required documents to NBU prior to recommending the final payment.

7.7.9 Materials Transfer

7.7.9.1 The Professional shall manage and coordinate the transfer of and acceptance by the contractor of any NBU furnished equipment or materials.

7.7.9.2 The Professional shall manage and coordinate the transfer of and acceptance by NBU of any contractor furnished spare parts, materials, keys, etc.

7.7.10 Record Drawings

7.7.10.1 The Professional shall receive and review as-built drawings from the contractor. The Professional shall electronically transmit drawings and other documents to the EOR for the preparation of the record drawings. These drawings shall include notations that reflect as-built Project components and conditions. The record drawings shall include Professional's on-site representative's notes, contractor's field notes, and NBU's field notes made during the construction process.

7.7.11 Limitations of Authority of RPR

7.7.11.1 The Professional shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by engineer.

7.7.11.2 The Professional shall not exceed limitations of engineer's authority as set forth in Agreement or the Contract Documents.

7.7.11.3 The Professional shall not undertake any of the responsibilities of contractor, subcontractor, suppliers, or contractor's superintendent.

7.7.11.4 The Professional 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.

7.7.11.5 The Professional 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 NBU or contractor.

7.7.11.6 The Professional shall not accept shop drawing or sample submittals from anyone other than the contractor.

7.7.11.7 The Professional shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by engineer.

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

7.8.1 One (1) PDF electronic copy of FIO memorandum;

7.8.2 Project Site visit memos and construction progress meeting minutes;

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

7.8.4 One (1) PDF electronic copy of Asset Information memorandum.

SUPPLEMENTAL SERVICES

Pursuant to Section 4(B) of this Agreement, the Professional shall seek prior written approval from NBU before commencing work on any services described in this Section. If NBU requests the Professional to perform the additional Services, NBU and the Professional shall execute a supplemental agreement or contract amendment, as appropriate, detailing the Services to be performed and the completion date. The Professional acknowledges the contract duration will not

increase as a result of engaging the supplemental services unless noted in the supplemental agreement or contract agreement, as appropriate.

The additional services shall include Project specific professional engineering services as contemplated in Section 2254 of the Texas Government Code, as amended, which may include but are not limited to the following:

- Miscellaneous Engineering - The Professional shall provide up to 500 LF of additional interceptor design due to unforeseen re-alignments or field conditions.

TIME OF COMPLETION

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

Project Milestones	Start Date	End Date
Notice to Proceed Design	5/7/21	
30% Preliminary Design	5/7/21	4/21/22
EFR Preparation and TWDB Approval	5/7/21	12/30/22
EID Preparation and TWDB Approval	7/30/21	12/30/22
60% Design	4/22/22	8/11/22
90% Final Design	1/2/23	4/21/23
100% Final Design	4/24/23	7/14/23
Permitting	4/24/23	10/6/23
TWDB Bid Advertisement Approval	7/17/23	10/6/23
Bid Phase	1/29/24	5/30/24
TWDB Construction Approval	5/31/24	7/25/24
Construction Phase	8/2/24	1/15/26

The Professional shall complete the Services by January 15, 2026.

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 shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$3,096,220.

Task	Cost
Task 1: Project Management	\$224,402
Task 2: Preliminary Design Phase	\$214,032
Task 3: Final Design Phase	\$585,546
Task 4: Field Services	\$628,408
Task 5: Permitting & Stakeholders	\$377,092
Task 6: Bid Phase	\$21,764
Task 7: Construction Phase	\$1,044,976
Total	\$3,096,220

Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$30,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.

Exhibit C
Evidence of Insurance