

**THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(WELTNER ROAD PUMP STATION AND GROUND STORAGE TANK)**

This **THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Third Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **MERRICK & COMPANY**, a Colorado corporation authorized to transact business in the State of Texas (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, the Parties entered into a Professional Services Agreement dated June 15, 2018 (the “Original Agreement”), for design and bidding services, including the preparation of technical specifications, in connection with the development of the Weltner Road Pump Station and Ground Storage Tank Project (the “Project”) to be completed by July 8, 2020;

WHEREAS, the Parties entered into a First Amendment to the Agreement on February 5, 2019, to add design, bid, and construction phase services for a pump station building, an interim pump station, and an interim pump station water supply approach main, to the Project (the “First Amendment”);

WHEREAS, the Parties entered into a Second Amendment to the Agreement on August 29, 2021, to (i) add construction phase services; (ii) extend the completion time for the Project to January 15, 2022; and (iii) modify the related compensation (the “Second Amendment” and together with the First Amendment and the Original Agreement, the “Agreement”);

WHEREAS, the contractor for the Project has failed to timely and adequately pay subcontractors for their services, which has caused delays to the construction schedule;

WHEREAS, due to these delays, construction of the Project will take additional time to complete;

WHEREAS, NBU requires additional construction phase services as a result of the delay in construction (the “New Services”);

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

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

WHEREAS, NBU and the Professional agree to amend the Agreement to (i) add the New Services, (ii) authorize the related compensation for the New Services, and (iii) extend the completion date for the Project to October 15, 2023.

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

AGREEMENT

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

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

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

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

Section 5. Binding Effect. This Third Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 6. Severability. If any term or provision of this Third Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Third Amendment shall not be affected thereby, and this Third Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This Third Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this Third Amendment on this the ____ day of _____, 2023.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ian Taylor
Title: CEO

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

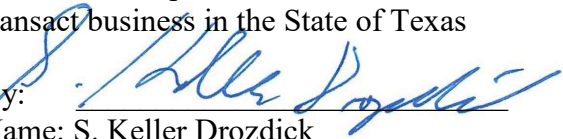
By: 
Name: S. Keller Drozdick
Title: Project Manager

Exhibit A

Services

SCOPE OF SERVICES

NO CHANGE.

PROJECT TASKS

Task 1 - Study and Report Phase

NO CHANGE

Task 2 - Preliminary Engineering Phase

NO CHANGE

Task 3 - Final Design

NO CHANGE

Task 4 - Bidding Phase

NO CHANGE

Task 5 - Construction Phase

5.1 NO CHANGE

5.2 NO CHANGE

5.3 NO CHANGE

5.4 NO CHANGE

5.5 NO CHANGE

5.6 NO CHANGE

5.7 The Professional shall respond to up to 50 requests for information from the Project contractor.

5.8 The Professional shall attend general progress meetings (two per month) for the Project to review construction and prepare meeting minutes for each meeting that is attended.

5.9 NO CHANGE

5.10 NO CHANGE

- 5.11 NO CHANGE
- 5.12 NO CHANGE

Task 6 - Closeout Phase

NO CHANGE

Assumptions – No Change

ADDITIONAL SERVICES:

Task 7, Pump Station Building – NO CHANGE

Task 8, Interim Pump Station Design – NO CHANGE

Task 9, Interim Pump Station Water Supply Approach Main – NO CHANGE

TIME OF COMPLETION: The Professional is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the Services in accordance with the following schedule:

Task No.	Milestone/Deliverable	Completion Date
1	Study and Report Phase	No Change
2	Preliminary Engineering Phase	No Change
3	Final Design Phase	No Change
4	Bidding Phase	No Change
5	Construction Phase	August 15, 2023
6	Closeout Phase	October 15, 2023
7	Pump Station Building	No Change
8	Interim Pump Station Design	No Change
9	Interim Pump Station Water Supply Pipeline	No Change

Exhibit B

Compensation

Services:

NBU shall pay the Professional for the Services rendered under this Agreement in accordance with the table shown below. NBU shall pay the Professional for the Services performed throughout the term of this Agreement in an amount not to exceed \$1,402,577.54.

Project Phase	Original Contract Amount	First Amendment	Second Amendment	Third Amendment	Revised Contract Amount
Project Management	\$35,086.80	\$0.00	\$0.00	\$0.00	\$35,086.80
Task 1: Study and Report Phase	\$178,332.75	\$0.00	\$0.00	\$0.00	\$178,332.75
Task 2: Preliminary Engineering Phase	\$216,834.80	\$0.00	\$0.00	\$0.00	\$216,834.80
Task 3: Final Design Phase	\$159,814.30	\$0.00	\$0.00	\$0.00	\$159,814.30
Task 4: Bidding Phase	\$48,794.50	\$0.00	\$0.00	\$0.00	\$48,794.50
Task 5: Construction Phase	\$228,143.40	\$0.00	\$74,897.92	\$31,009.50	\$334,050.82
Task 6: Closeout Phase	\$21,724.80	\$0.00	\$0.00	\$0.00	\$21,724.80
Subconsultant Markup	\$26,876.12	\$0.00	\$0.00	\$0.00	\$26,876.12
Task 7 -Building Design	\$0.00	\$88,877.65	\$0.00	\$0.00	\$88,877.65
Task 8 - Interim Pump Station Design	\$0.00	\$158,415.00	\$0.00	\$0.00	\$158,415.00
Task 9 – Interim Pump Station Water Supply Main Design	\$0.00	\$133,770.00	\$0.00	\$0.00	\$133,770.00
Totals	\$915,607.47	\$381,062.65	\$74,897.92	\$31,009.50	\$1,402,577.54