

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 (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: Chief Operations Officer
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.
1251 Sadler Drive, Bldg. 1, Suite 1150
San Marcos, TX 78666

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: *Drew Hardin*
Name: Drew Hardin
Title: Vice President

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide project management, pre-construction phase, construction phase, and relocation support services (collectively the “Services”) as the Owner’s Representative (“OR”) for the NBU Headquarters project. Facilities anticipated for the Headquarters project are shown on Attachment 1.

SERVICES

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

Task 1. Project Management

The Professional shall provide the project management services described herein.

1.1. COMMUNICATION.

- 1.1.1. The Professional shall establish 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, Architect of Record (AOR), Engineer(s) of Record and the Construction Manager at Risk (CMAR). NBU shall approve all communication procedures.
- 1.1.2. The Professional shall conduct periodic design progress, pre-construction, construction progress and other required meetings with NBU, AOR, EOR, and the CMAR to exchange information regarding the progress of design and other pre-construction activities, the status of design deliverables and reviews, the status of regulatory and Authorities having jurisdiction reviews, the progress of construction, the status of submittals, project budget and schedule status, the status of outstanding issues, and/or to address any other Project related issues.
- 1.1.3. The Professional shall prepare and distribute an agenda prior to the meetings and record the meeting minutes. The Professional shall email the meeting minutes to the NBU Project Manager in portable document format (“PDF”), within one week after the meeting.
- 1.1.4. The Professional shall submit monthly reports of the design and pre-construction activity progress to NBU in PDF. The reports shall describe the progress and summarize Project costs, cash flow, Project schedule, pending and any other outstanding issues.

- 1.2. SCHEDULE. The Professional shall develop a master schedule and prepare updated schedules on a monthly basis on or before the 25th day of each month for submission to NBU in PDF via email for the purpose of monitoring progress and project milestone dates.
- 1.3. BUDGET. The Professional shall develop a projected spend plan and cash flow curve and prepare updates on a monthly basis on or before the 25th day of each month for submission to NBU in portable document format (“PDF”) via email for the purpose of monitoring overall project budget.
- 1.4. QUALITY CONTROL. The Professional shall develop a quality assurance/quality control (“QA/QC”) program, which shall be explained in detail via a written document and provided to NBU’s Project Manager in PDF within 30 days of the notice to proceed (“NTP”). As part of this QA/QC program, the Professional shall provide pre-construction and construction management/inspector QA/QC oversight. Note these construction management activities are provided as the Owner’s Representative, which is separate than that of the Construction Manager at Risk, who will be responsible for the actual construction of the project as part of a separate agreement with NBU.
- 1.5. PROGRESS REPORTS. The Professional shall provide NBU with electronic monthly Project progress reports and submit written invoices in PDF on or before the 25th day of each month for the previous month’s effort.
- 1.6. PROJECT CONTROLS. The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, communications, risk analysis, and management.

Task 2. Pre-Construction Phase Services

The Professional shall proceed with the pre-construction phase services described herein.

2.1. REVIEW OF DESIGN DELIVERABLES

2.1.1 The Professional shall review the design documents prepared by the AOR at each stage of design development including Schematic Design, Design Development and Construction Document deliverables. Reviews shall be discipline specific including site civil, utilities, structural, architectural, mechanical, plumbing, electrical, fire protection, and building automation systems. Reviews shall verify compliance with quality expectations and project scope. This review shall be coordinated with the concurrent review of these deliverables by the CMAR.

2.1.2 The Professional shall review the AOR Opinion of Probable Cost at each design milestone, compare against budget and facilitate discussions on options to complete project within budget.

2.2. DOCUMENT MANAGEMENT

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

2.2.2. The Professional shall manage the documentation produced during the design of the project and facilitate access by NBU, the AOR, the EOR and the CMAR, including the filing and retrieval of all the Project documentation.

2.3. CMAR PROPOSAL EVALUATION

2.3.1. The Professional shall review all CMAR proposals and provide one composite score reflecting the average of all individual evaluation scores utilizing the evaluation baseline and template provided by NBU.

2.3.2. The Professional shall meet with NBU and the AOR to discuss all evaluation scores and participate in the development of a short list of the highest scoring CMAR respondents.

2.3.3. The Professional shall attend the CMAR short list interview and provide ranking of CMARs that will be combined with those rankings of NBU and AOR staff to identify the most highly qualified respondent.

2.3.4. The Professional shall assist NBU in negotiations of scope and fee with the CMAR.

2.4. CMAR BID PACKAGE REVIEW

2.4.1. The Professional shall review bid packages proposed by CMAR for compliance with project scope, competitive procurement requirements, and for optimal competition.

2.4.2. The Professional shall monitor the bid advertisement process and support the CMAR in the issuance of any addenda or other necessary communication.

2.4.3. The Professional shall support the CMAR in the review of bids received to verify compliance with competitive procurement requirements and the project scope and coordinate the recommendation of award of each bid package with the CMAR and NBU.

2.5. CMAR GUARANTEED MAXIMUM PRICE (GMP) DEVELOPMENT. The Professional shall monitor the development of the GMP by the CMAR and review for compliance to the contract documents and to the overall project objectives of NBU related to cost, schedule, and quality. Professional acknowledges that multiple GMP packages may be developed for early scopes of work.

2.6. STAKEHOLDER/AGENCY COORDINATION. Support NBU and the AOR in obtaining required permits and coordinating design elements with impacted agencies, stakeholders and neighboring projects including:

- City of New Braunfels;
- Texas Commission on Environmental Quality (Water Pollution and Abatement Plan);
- Texas Accessibility Standards (TAS);

- Trinity Water Treatment Plant (“WTP”) Expansion Project; and
- Trinity Well Field Expansion Project.

2.7. DELIVERABLES. The Professional shall provide the Pre-Construction Phase deliverables to NBU listed below.

- 2.7.1. One (1) PDF electronic file of design review comments for each design deliverable.
- 2.7.2. One (1) PDF electronic file of the consolidated scoring sheet for CMAR review and selection.
- 2.7.3. One (1) PDF electronic file of CMAR package review comments for each bid and/or GMP package submitted by CMAR.

Task 3. Construction Phase Services

Upon completion of the competitive procurement process by the CMAR and execution of the GMP Amendment by the CMAR and NBU, the Professional shall proceed with the construction phase services described herein.

3.1 CONSTRUCTION QUALITY MANAGEMENT

- 3.1.1 The Professional shall observe the CMAR’s work to determine if the work is proceeding in accordance with the contract documents. The Professional shall prepare daily reports to be submitted electronically to NBU in PDF documenting the Professional’s observations.
- 3.1.2 The Professional shall document when non-conforming work is observed and submit this documentation via email in PDF to NBU and the CMAR. The Professional shall verify and document when the observed non-conforming work has been corrected and submit to the NBU Project Manager documentation to that effect via email in PDF.
- 3.1.3 The Professional shall review documents submitted by the CMAR, including test reports, equipment installation reports, or other documents required by the contract documents.
- 3.1.4 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 that set standards for the testing of materials, witness tests, and factory testing. The material testing budget is an allowance from Rock Engineering for QCQA testing of soil, concrete cylinders, Site utilities, HMAC, welding, coatings, etc.
- 3.1.5 The Professional shall provide quality assurance level construction materials testing to verify the CMAR’s quality control program is producing complete work that complies with the contract documents.

3.1.6 The Professional shall provide on-site construction management and observation to provide sufficient representation for each stage of construction. For budgeting purposes, the following estimate of off-site and on-site personnel has been included based on an estimated construction period of 78 weeks (18 months):

- Construction Manager – 40 hours per week for 78 weeks
- Site Civil and Utility Inspector – 40 hours per week for 52 weeks
- Building Foundation, Envelope and Finish-Out Inspector – 40 hours per week for 70 weeks
- Code Inspections – 200 hours as needed
- Specialty Inspections (Mechanical, Electrical, BAS, etc.) – 300 hours as needed

3.2 DOCUMENT MANAGEMENT

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

3.2.2. The Professional shall manage the processing of CMAR submittals, including the filing and retrieval of all the Project documentation. The Professional shall receive CMAR submittals including requests for information, modification requests, shop drawings, samples, schedules, and other submittals. The Professional shall both perform a cursory review of the submittals and electronically send the submittals to the AOR or EOR and/or NBU for a detailed review and response

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

3.2.4 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 in PDF to NBU once a month.

3.3 SCHEDULE MANAGEMENT. The Professional shall review the baseline, the projected, and the monthly construction progress schedules submitted by the CMAR. The Professional shall monitor the progress of the work completed relative to the planned progress and address any identified schedule delays by emailing the AOR, EOR, NBU, and the CMAR promptly.

3.4 COST MANAGEMENT

3.4.1 The Professional shall review the schedule of values and payment requests prepared by the CMAR. 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.

- 3.4.2 The Professional shall prepare monthly cash flow requirements based upon information provided by the CMAR. The Professional shall update cash flow reports monthly and include these reports with the monthly updates to NBU.
- 3.4.3 The Professional shall prepare monthly cash flow requirements based upon information provided by the CMAR. The Professional shall update cash flow reports monthly and include these reports with the monthly updates to NBU.
- 3.4.4 The Professional shall verify quantities of work in place, review the payment requests and supporting documentation, and provide NBU via email with an opinion of whether the payment requested matches the work completed.

3.5 ISSUES MANAGEMENT

- 3.5.1 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 these issues based upon a final interpretation of the drawings and specifications by the AOR, EOR, NBU, and the CMAR.
- 3.5.2 The Professional shall track and document issues, procure a resolution, and notify the AOR, EOR, NBU, and the CMAR via email promptly.
- 3.5.3 The Professional shall coordinate closely with the contractor and construction manager for the Trinity WTP and Wellfield Expansion projects to help avoid potential conflicts or impacts to either project.

3.6 CHANGE MANAGEMENT

- 3.6.1 The Professional shall establish and document procedures for administering changes to the construction contract.
- 3.6.2 The Professional shall prepare documentation of the requested contract modifications. The Professional shall coordinate with the AOR and EOR for technical review and approval of any design modifications. All design modification documents shall have the AOR's or EOR's respective Texas Architectural or Engineering Seal affixed.
- 3.6.3 The Professional shall process contract modifications and negotiate with the CMAR 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.
- 3.6.4 The Professional shall receive and evaluate notices of CMAR claims and make recommendations to NBU on the merit and value of the claim.

3.7 PROJECT COMPLETION

- 3.7.1 The Professional shall coordinate the start-up and commissioning of the facility and all the building systems with the AOR, EOR, CMAR, and NBU. The Professional shall provide commissioning related assistance to the CMAR during the commissioning process.
- 3.7.2 When the CMAR 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 AOR or EOR, and if so, shall schedule the reviews of the work with the AOR or EOR. The Professional shall prepare a list of deficiencies to be corrected by the CMAR 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.
- 3.7.3 The Professional shall conduct a final review of the Project for conformance with all the Project documents. The Professional shall confirm work is complete and in accordance with the Project documents prior to recommending final payment.
- 3.7.4 The Professional shall assist NBU in obtaining permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the CMAR. The Professional shall review and confirm that the CMAR has submitted all required documents to NBU prior to recommending the final payment.
- 3.7.5 The Professional shall assist NBU in the preparation of a Substantial Completion Checklist to ensure that all AHJ's (Authorities Having Jurisdiction) have approved the facility for a Certificate of Occupancy.

3.8 MATERIAL TRANSFER

- 3.8.1 The Professional shall manage and coordinate the transfer of and acceptance by the CMAR of any NBU furnished equipment or materials.
- 3.8.2 The Professional shall manage and coordinate the transfer of and acceptance by NBU of any CMAR furnished spare parts, materials, keys, etc.

3.9 RECORD DRAWINGS

- 3.9.1 The Professional shall receive and review as-built drawings from the CMAR. The Professional shall electronically transmit drawings and other documents to the AOR and 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 the Professional's on-site representative's notes, the CMAR's field notes, and NBU's field notes made during the construction process.

3.10 LIMITATIONS OF AUTHORITY OF OWNER'S REPRESENTATIVE

- 3.10.1 The Professional shall not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized in writing by NBU.
- 3.10.2 The Professional shall not exceed the limitations of the AOR's or EOR's authority as set forth in the agreement or the contract documents.
- 3.10.3 The Professional shall not undertake any of the responsibilities of the CMAR, subcontractor, suppliers, or the CMAR's superintendent.
- 3.10.4 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.
- 3.10.5 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 the CMAR.
- 3.10.6 The Professional shall not accept shop drawings or sample submittals from anyone other than the CMAR.
- 3.10.7 The Professional shall not participate in a specialized field, laboratory tests, or inspections conducted by others, except as specifically authorized in writing by NBU and the AOR or EOR.

3.11 DELIVERABLES. The Professional shall provide the Construction Phase deliverables to NBU listed below.

- 3.11.1 Daily Observation Reports in FN*i* Manager.
- 3.11.2 Monthly Report that summarizes construction progress, project cost, cash flow, schedule, change orders and outstanding issues.

Task 4. Commissioning and Close-Out

Upon completion of the construction phase, the Professional shall proceed with the commissioning and close-out phase services described herein.

- 4.1 The Professional shall coordinate the commissioning and acceptance testing of all building systems including HVAC, electrical, lighting, security, fire protection and communication.
- 4.2 The Professional shall coordinate and participate in the determination of substantial completion of the project and participate in final inspections of the work.

- 4.3 The Professional shall coordinate with CMAR for training the NBU staff on various building systems.
- 4.4 The Professional shall facilitate the transfer of closeout documentation including operation and maintenance manuals, warranties, spare parts, as- built drawings and construction contract closeout documents including bonds, liens, affidavits, and insurance.

Task 5. Warranty Services

Upon completion of the commissioning and close-out phase, the Professional shall proceed with the warranty phase services described herein.

- 5.1 The Professional shall coordinate items requiring corrective work with the CMAR during the warranty period.
- 5.2 The Professional shall coordinate the inspection with NBU, AOR and CMAR during the 11th month of the twelve-month warranty and coordinate any corrective work with the CMAR.
- 5.3 The Professional shall verify that warranty work is completed and conduct similar meetings for any corrective work related to extended or special warranties.

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 contract amendment 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 service unless noted in the supplemental agreement or contract amendment, as appropriate.

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

- **RELOCATION PLANNING**
 - Assist NBU in the development of its Relocation Plan
 - Assist NBU with development of internal and external information campaigns
 - Assist NBU in securing packing and moving contracts
 - Assist NBU in facilitating a ribbon cutting ceremony
- **RELOCATION OPERATION**
 - Assist NBU with overseeing the packing and labeling of existing materials to be moved
 - Assist NBU with scheduling the move dates for various staff and the associated materials and equipment
 - Assist NBU with coordinating the moving company

TIME OF COMPLETION

The Professional shall complete the Services by September 30, 2023.

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 to perform the Services described in Exhibit A in an amount not to exceed \$3,141,568 based on the schedule of charges and estimated amounts listed in the tables below.

Task	Cost
T1: Project Management	\$178,420
T2: Pre-Construction Phase Services	\$391,835
T3: Construction Phase Services	\$2,399,229
T4: Commissioning Services	\$94,668
T5: Warranty Phase Services	\$31,580
Subtotal	\$3,095,732
Supplemental Services	\$45,836
Total	\$3,141,568

Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$45,836; provided, however, that NBU must provide written approval in the form of a supplemental services agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.

Exhibit C

Evidence of Insurance