

**AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT
(MCKENZIE WATER RECLAMATION FACILITY EXPANSION PROJECT)**

This **AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **QUIDDITY ENGINEERING, LLC**, a Texas limited liability company **D/B/A JONES & CARTER, INC.** (the “Professional”) (collectively, “the Parties”).

RECITALS:

WHEREAS, NBU and the Professional entered into the Professional Services Agreement dated November 5, 2020, (the “Original Agreement”), to provide design phase services, bid phase services, and construction phase services for the Sam C. McKenzie, Jr. Water Reclamation Facility (“McKenzie WRF”) Expansion Project (the “Project”), to be completed by April 4, 2025;

WHEREAS, NBU desires to modify the scope and delay construction of the Project due to budgetary constraints;

WHEREAS, these budget modifications require changes to the design phase services, bid phase services, and construction phase services from the Original Agreement;

WHEREAS, NBU desires to extend the time of completion for the Project to April 30, 2026;

WHEREAS, the Professional has undergone a merger wherein Quiddity Engineering, LLC, a Texas limited liability company was created and the assumed name under which the professional services will be conducted is Jones & Carter, Inc. (hereinafter referred to as the “Professional”);

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

WHEREAS, the Parties desire to amend and restate the Original Agreement in its entirety as set forth herein.

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. 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 contract amendment. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by contract amendment 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 contract amendment 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- VII 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 (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) 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 the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Evidence of such insurance shall be attached as Exhibit C. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language 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 evidence of insurance to NBU five (5) days prior to the expiration date.

(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. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. 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. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, 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 other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, 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, 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
355 FM 306
New Braunfels, TX 78130

With copy to:

Purchasing Manager
New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

If to the Professional:

Quiddity Engineering, LLC
d/b/a Jones & Carter, Inc.
6330 West Loop South, Suite 150
Bellaire, Texas 77401

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, 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. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. 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 or in the event of a cybersecurity event or breach, 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 Section 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. Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, the Professional represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in the Professional is not held or controlled by:
 - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code, as amended (“designated country”); or
 - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2274 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

Section 20. Prohibition on Contracts with Companies Boycotting Energy Companies. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 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 energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. 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 21. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 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, “discriminate against a firearm entity or firearm trade association” has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. 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 22. 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 23. 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 municipally owned utility

By: _____
Name: Ian Taylor
Title: CEO

PROFESSIONAL:
QUIDDITY ENGINEERING, LLC,
a Texas limited liability company
d/b/a Jones & Carter, Inc.

By: 
Name: Drew Crow
Title: Vice President

Attest: 

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide design phase services, bid phase services, and construction phase services (collectively the “Services”) for the Sam C. McKenzie, Jr. Water Reclamation Facility (“McKenzie WRF”) Expansion Project (the “Project”) located at 400 Elley Lane, New Braunfels, Texas 78130 (the “Project Site”). The Professional shall design an expansion of the McKenzie WRF from a treatment capacity of 2.5 million gallons per day (“MGD”) average daily flow (“ADF”) to 4.9 MGD ADF based on the pollutant discharge limits in NBU’s current Texas Pollutant Discharge Elimination System (“TPDES”) permit WQ0010232004 issued by the Texas Commission on Environmental Quality (“TCEQ”) on October 2, 2017. The McKenzie WRF Expansion Preliminary Engineering Report, completed by the Professional under a separate contract, shall provide additional design specifics for the scope described herein. The Professional assumes that previous approvals of the construction of the McKenzie WRF project from the Texas Historical Commission (“THC”) will provide sufficient support for historical clearance of the Project Site and no work is included in this scope for any work efforts or responses to requests from the THC. The Professional shall coordinate with the Guadalupe Blanco River Authority (“GBRA”) on timing and access to the GBRA hydroelectric canal reconstruction portion to provide NBU with timeframes acceptable to the GBRA for construction.

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

Design Phase Services

- 1) The Professional shall manage project integration, scope, schedule, cost, quality, staff resources, sub-consultants, and communications. The Professional shall develop a baseline schedule for the preparation of the design and prepare updated schedules on a monthly basis. The Professional shall develop the schedule using Microsoft Project and shall provide the schedule to the NBU Project Manager via email on a monthly basis.
- 2) The Professional shall provide progress reports to the NBU Project Manager via email on a monthly basis. The Professional shall submit a draft of the progress report format to NBU for review and approval within two (2) weeks of contract execution.
- 3) The Professional shall provide a meeting agenda to the NBU Project Manager via email no less than one (1) day prior to each meeting, and provide meeting minutes to the NBU Project Manager via email within one (1) week of corresponding meetings for the following meetings:
 - a) Project kickoff meeting;
 - b) 30% design review meeting;

- c) 90% design review meeting;
 - d) up to twenty (20) progress review meetings.
- 4) The Professional shall track and document all action items and decisions made by NBU and the Professional at progress meetings, such as design decisions, tasks to be performed by NBU staff, and any correspondence to be made with other various entities, including email and phone correspondence between NBU or the Professional and permitting agencies, stakeholders, etc. The Professional shall track these items as part of the progress meeting minutes and distribute an electronic copy of the information to all stakeholders identified by NBU via email as required. This information will be included in the progress meeting minutes.
- 5) The Professional shall prepare a Drainage and Water Quality Report (“DWQR”), which provides an evaluation of site drainage and approximate sizing of necessary storm water infrastructure improvements to be completed in accordance with the city of New Braunfels’s (“the City”) Drainage and Erosion Control Design Manual (“DECDM”). The Professional shall provide one (1) digital copy of the DWQR to the NBU Project Manager. The DWQR shall contain the elements described herein.
- a) The DWQR shall determine pre-project and post-project runoff hydrographs and, if necessary, will include approximate sizing of necessary detention facilities. The City plans to incorporate the National Oceanic and Atmospheric Administration’s (“NOAA”) Atlas 14, an updated precipitation frequency study, rainfall depths into their Drainage and Erosion Control Manual by the end of 2020. The Professional shall obtain design rainfall depths for this Project at the centroid of the Project Site drainage area in accordance with NOAA’s Atlas 14 Point Precipitation Frequency standards.
 - b) The Professional shall summarize the DWQR in a memo documenting the hydrologic and hydraulic downstream impact of the Project. The memo shall follow the guidelines for preparation of a Type 3 Drainage Report in accordance with the City’s DECDM. The Professional shall submit the memo and preliminary design to the City engineering staff for review and approval.
 - c) The DWQR shall note that the location of the proposed activities is within the Federal Emergency Management Agency’s flood zone “X” and therefore no floodplain development application is necessary.
 - d) The DWQR shall not include any design features including, but not limited to detention ponds, storm water quality ponds, or outfalls, not anticipated by the Professional to be necessary based on prior experience. Should a design feature be determined as necessary, the Professional shall complete as a supplemental task.
 - e) In completing the DWQR, the Professional shall coordinate and attend up to two (2) drainage analysis coordination meetings with NBU and the City regarding the drainage analysis for the proposed improvements and submit the completed drainage analysis to the City for their review and approval. The Professional shall provide agenda and meeting minutes for up to two (2) meetings to the NBU Project Manager via email.

- 6) The Professional shall obtain field survey data necessary for the design of the proposed improvements. The field survey shall include horizontal and vertical control points adequately documented on the construction plans and necessary to establish Project construction location in the field. All features shall be tied to the City's existing survey control network of existing benchmarks located throughout the New Braunfels area and shall include:
 - a) a field survey of the Project Site indicating property lines (as determined from existing corners located during the time of the field survey and/or deed record research), fences, pavement structures, slabs, buildings, manholes, power poles, etc., within the Project Site; and
 - b) the Professional shall not submit deliverables to NBU's Project Manager, as this information is contained in the plans being prepared.
- 7) The Professional shall perform a geotechnical investigation to include:
 - a) performing a field exploration for up to eight (8) borings, totaling no more than 275 linear feet of depth cumulatively at locations deemed required by the Professional to support the design;
 - b) performing laboratory testing of the samples obtained from the borings to determine the soil classification and pertinent engineering properties of the subsurface materials. Test type and quantity may vary by boring location but are expected to include:
 - i) classification tests;
 - ii) moisture content;
 - iii) dry unit weight;
 - iv) unconfined compressive strength; and
 - v) one-dimensional swell.
 - c) performing an engineering analysis to prepare a geotechnical report that shall include:
 - i) an appendix with boring logs and laboratory test results;
 - ii) a discussion of subsurface conditions;
 - iii) a foundation and site preparation recommendations for the proposed structures;
 - iv) the design and construction considerations that may impact the new structures being built next to the existing structures that are supported upon gravel support pads;
 - v) lateral earth pressures, where appropriate;
 - vi) pavement design recommendations to include pavement subgrade and concrete pavement thickness;
 - vii) earthwork-related recommendations for use during development of the plans and specifications; and
 - d) submitting an electronic copy of the report to the NBU Project Manager.
- 8) The Professional shall prepare 30% plans that will include portions of drawings from the general, mechanical, electrical, and instrumentation disciplines ("30% Design Documents") based on the scope described below in Section 9) and shall submit an electronic copy of the 30% design documents to the NBU Project Manager for review. The Professional shall facilitate the 30% design review meeting within three (3) weeks of submittal of the 30% design

documents.

- 9) The design shall consist of two (2) design packages and shall include:

Design Package No. 1

- a) replacement of existing screening conveyor;
- b) slope repairs within the existing 30-foot permanent utility easement around the existing outfall into the GBRA Hydroelectric Plant canal;

Design Package No. 2

- c) replacement of existing mechanical screens that incorporate the screenings conveyor to be installed as part of a separate bid package;
- d) a new parallel lift station wet well with aerated mixers and increased total firm pumping capacity to 19.6 MGD;
- e) extension of the existing overhead canopy and bridge crane overtop of the lift station;
- f) a new flow split structure upstream of the existing and proposed secondary treatment units;
- g) a new parallel secondary treatment unit sized for 2.5 MGD ADF consisting of a rapid mix basin with mixers, two (2) anaerobic basins with mixers, two (2) anoxic selector basins with mixers, two (2) aeration basins with fine bubble diffusers, two (2) secondary clarifiers with submerged effluent launder systems and gates, progressive cavity pump station for waste activated sludge (“WAS”) transport, and air lifts for return activated sludge (“RAS”) transport;
- h) replacement of the existing WAS transport system at the existing secondary treatment unit with a progressive cavity pump station;
- i) replacement of the existing single drop aeration equipment in the two (2) existing aeration basins with fine bubble aeration equipment;
- j) a new approximately 150 square foot concrete masonry unit (“CMU”) alum building to house a day storage tank and peristaltic alum feed pumps to feed the new secondary treatment unit;
- k) a new alum bulk storage tank and concrete containment structure;
- l) two (2) new dual-media automatic backwash travelling bridge tertiary filters;
- m) replacement of the filter equipment and media in the existing filter basin as a bid alternate design item;
- n) replace existing non-potable water (“NPW”) pumps with two (2) new vertical turbine NPW pumps installed in the existing NPW pumps’ location within the existing NPW wet well structure connected to the tertiary filter structure;
- o) replacement of the existing peristaltic bleach pumps;
- p) addition of new low-pressure high-output ultraviolet (“UV”) disinfection equipment in the existing structure that in combination with the existing UV equipment provide a total treatment capacity of 19.6 MGD;
- q) two (2) new aerobic digester basins with single drop aeration equipment and air lifts for

- sludge transport;
- r) a new membrane thickening (“MBT”) basin located within the footprint of the aerobic digesters including submerged ceramic type membranes and air lifts for sludge transport;
 - s) replacement of the existing submerged membranes with new submerged ceramic membranes including structural modifications to replace and relocate the concrete divider walls;
 - t) replacement of the existing MBT screening equipment and structure with three (3) new fine screens, sized to pass the average daily WAS volume when operated continuously, and associated structural components;
 - u) two (2) new MBT progressive cavity permeate pumps located inside the existing pump building;
 - v) three (3) new positive displacement blowers installed under the existing blower canopy to serve the new treatment units;
 - w) one (1) new positive displacement blower installed under the existing blower canopy to serve the new membrane thickeners;
 - x) a new approximately 1,600 square-foot single-story, metal-framed, and metal-sided storage building (no heating, ventilation, and air conditioning (“HVAC”), furniture, equipment, or shelves are included in this design scope) as a bid alternate design item;
 - y) new 15 kV medium voltage main service switchgear with dual power feeds;
 - z) a new ~1,625 square foot CMU building with HVAC to house the new 15 kV medium voltage gear and automatic transfer switch (“ATS”);
 - aa) HVAC addition to the existing CMU building housing the existing medium voltage switchgear;
 - bb) duct bank, conduit, and wire for four (4) existing pad-mounted transformers and one (1) proposed transformer;
 - cc) conversion of the existing main service switchgear CMU building to a low voltage motor control center (“MCC”) building including the demolition of the existing 15 kV medium voltage switchgear, addition of HVAC, and conduit and wire re-routes;
 - dd) duct bank, conduit, and wire from the converted MCC building to two (2) existing equipment locations;
 - ee) a 1,500-kW diesel 15 kV medium-voltage generator;
 - ff) expansion of MCC 2, modifications to MCC’s 1, and 4, addition of MCC 5, supervisory control and data acquisition (“SCADA”) control panels, lighting, grounding, duct bank, conduit, and wire to provide power to new equipment and buildings; and
 - gg) related site work including site grading, site drainage (no detention facilities are included in this scope), site paving, fencing, and sidewalks.
- 10) The Professional shall prepare an opinion of probable construction cost (“OPCC”) based on the 30% design documents and shall submit an electronic copy of the OPCC to the NBU Project Manager.
- 11) The Professional shall prepare 90% plans and 90% technical specifications (“90% design documents”) for Design Package 1 and 2 that incorporate comments made by NBU in the 30% design review meeting and shall submit an electronic copy of the 90% design documents to

the NBU Project Manager for review. The Professional shall schedule the 90% design review meeting within three (3) weeks of submittal of the 90% design documents.

- 12) The Professional shall prepare one (1) OPCC each for Design Package 1 and 2, based on the 90% Design Documents and shall submit an electronic copy of each OPCC to the NBU Project Manager for review and comment.
- 13) The Professional shall prepare 100% plans and 100% technical specifications (“100% design documents”) for Design Package 1 and 2 that incorporate comments made by NBU in the 90% design review meeting and shall submit an electronic copy of the 100% design documents to the NBU Project Manager for review.
- 14) The Professional shall prepare one (1) OPCC each for Design Package 1 and 2, based on the 100% Design Documents and shall submit an electronic copy of each OPCC to the NBU Project Manager for review and comment.
- 15) The Professional shall attend up to two (2) permitting coordination meetings with the City regarding the proposed building and site drainage and submit the relevant 100% drawings to the City for their permitting review and approval.
- 16) The Professional shall assist in the preparation of the submittal requirements for two (2) separate requests for bid (“RFB”) for the solicitation of the construction of Design Package 1 and 2 as two separate bid packages.
- 17) The Professional shall submit the 90% Design Documents to the TCEQ, the City of New Braunfels, Guadalupe County, and GBRA for review and approval.
- 18) The Professional shall attend up to one (1) meeting with each of the following agencies:
 - a) TCEQ;
 - b) the City;
 - c) Guadalupe County; and
 - d) GBRA.
- 19) The Professional shall prepare and submit a project summary transmittal letter to the TCEQ along with the 90% Design Documents, if requested by TCEQ.
- 20) The Professional shall prepare an aerial exhibit that identifies a recommended access easement from public right-of-way through GBRA’s property to NBU’s easement encompassing the existing outfall and outfall selector box; attend up to two (2) meetings with GBRA; provide NBU with assistance in reviewing a draft easement agreement with GBRA; and prepare a metes and bound description and exhibit.

DELIVERABLES:

- 1) digital copies (PDFs) of a baseline schedule and monthly updated schedules;
- 2) digital copies (PDFs) of monthly progress reports;
- 3) digital copies (PDFs) of meeting agenda and meeting minutes;
- 4) one (1) digital copy (PDF) of the completed DWQR;
- 5) one (1) digital copy (PDF) of the completed geotechnical report;
- 6) one (1) digital copy (PDF) of the 30% design documents and OPCC;

- 7) one (1) digital copy (PDF) of the 90% Design Documents and OPCC for Design Package 1 and 2;
- 8) one (1) digital copy (PDF) of the 100% Design Documents and OPCC for Design Package 1 and 2; and
- 9) one (1) digital copy (PDF) of the exhibits for the access easement with GBRA.

Bid Phase Services

The Professional shall provide bid phase services for Design Package 1 and 2 (“Bid Package”) as described herein.

- 1) The Professional shall attend a pre-bid conference for each Bid Package that NBU administers. The Professional shall provide NBU with meeting notes via email within one (1) week of each pre-bid conference, and coordinate conference responses with NBU for each Bid Package. The Professional shall create addenda with written responses to issues identified at each pre-bid conference and submit to the NBU Project Manager within one (1) week of each pre-bid conference for review. The NBU Purchasing Department will provide final approval of addenda and disseminate the documents to prospective bidders.
- 2) The Professional shall assist NBU with responding to questions, interpreting bid documents, and preparing addenda to the bid documents for each Bid Package.
- 3) The Professional shall assist NBU in analyzing bids received for the Project, including evaluating contractor qualifications and references for each Bid Package.
- 4) The Professional shall create conformed construction documents by incorporating all addenda items into the plans and specifications for each Bid Package.

DELIVERABLES:

- 1) digital copies (PDFs) of meeting notes for the pre-bid conference for each Bid Package;
- 2) digital copies (PDFs) of addenda for each Bid Package; and
- 3) one (1) digital copy (PDFs) of conformed construction documents for each Bid Package.

Construction Phase Services

The Professional shall provide a construction manager (“CM”) for two separate, non-overlapping construction contracts to perform the services for the durations described herein.

Construction Package 1

The Professional shall provide a CM for one construction contract for up to 12 hours per week for 16 weeks of active construction within a 10-month construction phase as described herein.

- 1) The Professional shall conduct the following meetings and provide a meeting agenda and

recorded meeting minutes within one (1) week of corresponding meetings for the following meetings:

- a) pre-construction meeting; and
 - b) construction progress meetings (up to 3 total meetings).
- 2) The Professional shall attend one training session to be facilitated by NBU on the web-based electronic project documentation system.
 - 3) The Professional will not provide a field project representative (“FPR”) for this project. NBU will select an independent third party (“NBU’s FPR”) to perform all FPR services. NBU’s FPR is responsible for observing the daily progress and the quality of the work for compliance with the Contract Documents executed between NBU and the Contractor. NBU’s FPR shall notify the Professional of all non-conforming work, prepare daily site visit reports, including digital photographs and videos, for every day observing daily progress, and submit the daily site visit reports to the Professional web software.
 - 4) The Professional’s CM shall perform 12 site visits during the construction phase of the Project to review the progress and quality of the work with NBU’s FPR, and to observe the visible progress at the time of each visit to assist NBU’s FPR to determine if the work is proceeding in accordance with the Contract Documents. The CM shall prepare site visit reports, including digital photographs and videos, for each visit to the site. The Professional shall submit an electronic copy of each site visit report to the NBU Project Manager.
 - 5) The Professional’s CM shall review the Contractor’s provided documentation for work sequencing, phasing, and shut-downs; review the Contractor’s bi-weekly schedule updates; and provide feedback to the NBU Project Manager on the Contractor’s schedule progress and construction sequencing including service interruptions to existing treatment units.
 - 6) The CM shall coordinate correspondence, pay applications, requests for information (“RFI”), and review the observation site visit reports created by NBU’s FPR. The CM shall notify the NBU Project Manager of Contractor’s non-conforming work noted during any site visit or reported to the CM from NBU’s FPR.
 - 7) The Professional’s CM shall attend up to one (1) Process Control System (“PCS”) start-ups and observe bump tests, loop checking, manufacturer certification of installation, results of performance testing required by individual technical specifications, owner training documentation, and spare parts. The PCS start-up includes:
 - o PCS #1 – Headworks conveyor system.
 - 8) The Professional’s design engineer shall attend up to one (1) PCS start-up and observe bump tests, loop checking, manufacturer certification of installation, results of performance testing required by individual technical specifications, owner training documentation, and spare parts.
 - 9) The Professional shall conduct one substantial completion inspection and punch list review during the construction phase of the Project to review compliance with the construction Contract Documents. Following the field inspection, the Professional shall prepare a list of deficiencies to be corrected by the contractor before issuing a substantial completion. The Professional shall submit an electronic copy of the list of deficiencies to the NBU Project Manager. Substantial completion will be based on this inspection plus any inspection reports

submitted by NBU's FPR during the construction, and the Professional's CM observations while on-site.

- 10) The Professional shall conduct one final completion inspection of the Project for conformance with the design of the Project and compliance with the construction contract documents. The Professional shall prepare the final completion report, submit an electronic copy to the NBU Project Manager, and make a recommendation of final payment.
- 11) The Professional shall establish and maintain the project data consistent with the requirements of the construction Contract Documents. The Professional shall manage the contractor submittal review process for shop drawings, RFIs, schedules, certified test reports, etc., and provide for filing and retrieval of the documentation for the Project. The Professional shall produce monthly reports indicating the status of submittals in the review process and review the following contractor submittals for compliance with the design:
 - a) shop drawings (up to a quantity of 20 including re-reviews);
 - b) RFIs (up to a quantity of five (5));
 - c) schedules (up to a quantity of three (3));
 - d) certified test reports (up to a quantity of two (2));
 - e) operation and maintenance manuals (quantity of two (2) including re-reviews); and
 - f) miscellaneous submittals (up to a quantity of five (5)).
- 12) Field/Change Order Documents: The Professional shall manage the field/change order and claim process.
 - a) The Professional shall establish procedures for documenting construction changes required to implement modifications to the Project.
 - b) The Professional shall prepare field/change order documentation for up to two (2) change order requests and shall provide the NBU Project Manager with a recommendation for each field/change order.
 - c) This scope does not include assistance or evaluation of contractor claims.
- 13) The Professional shall interpret the drawings and specifications for NBU and the contractor during the construction of the Project.
- 14) The Professional shall review the monthly work estimates for payment submitted by the contractor during the construction of the Project. The Professional's review shall include a verification that the contractor's work based on NBU's FPR's reports and the Professionals visual observation of observable work for which payment is requested is complete.
- 15) The Professional shall prepare the record drawings based on the revised redline construction drawings and the information furnished by the construction contractor reflecting changes made during construction and shall submit to the NBU Project Manager.
- 16) 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 to include:
 - a) Address
 - b) Year Built

- c) Description
- d) Square Footage of Building
- e) Building Value
- f) Contents Value

DELIVERABLES:

- 1) digital copies (PDFs) of meeting agenda and meeting minutes;
- 2) digital copies (PDFs) of daily site visit reports;
- 3) digital copies (PDFs) of monthly submittal status reports;
- 4) digital copies (PDFs) of monthly progress reports;
- 5) digital copies (PDFs) of asset sheets;
- 6) one (1) digital copy (PDF) of certificate of substantial completion;
- 7) one (1) digital copy (PDF) of contractor punch lists; and
- 8) one (1) digital copy (PDF) of record drawings.

Construction Package 2

The Professional shall provide a CM for one construction contract for up to 40 hours per week during active construction with a 30-month construction phase as described herein.

- 1) The Professional shall conduct the following meetings and provide a meeting agenda and recorded meeting minutes within one (1) week of corresponding meetings for the following meetings:
 - a) pre-construction meeting; and
 - b) construction progress meetings (up to 30 total meetings).
- 2) The Professional shall attend one training session facilitated by NBU on the web-based electronic project documentation system.
- 3) The Professional will not provide an FPR for this Project. NBU will select an independent third party (“NBU’s FPR”) to perform all FPR services. NBU’s FPR is responsible for observing the daily progress and the quality of the work for compliance with the contract documents executed between NBU and the contractor. NBU’s FPR shall notify the Professional of all non-conforming work, prepare daily site visit reports, including digital photographs and videos, for every day observing daily progress, and submit the daily site visit reports to the Professional.
- 4) The Professional’s CM shall review the progress and quality of the work with NBUs FPR and observe the visible progress at the time of each visit to assist NBU’s FPR to determine if the work is proceeding in accordance with the contract documents. The CM shall prepare site visit reports, including digital photographs and videos, for each visit to the site. The Professional shall submit an electronic copy of each site visit report to the NBU Project Manager.
- 5) The Professional’s CM shall review the contractor’s provided documentation for work sequencing, phasing, and shutdowns; review the contractor’s bi-weekly schedule updates; and provide feedback to the NBU Project Manager on the contractor’s schedule progress and

construction sequencing including service interruptions to existing treatment units.

- 6) The CM shall coordinate correspondence, pay applications, RFIs, and review the observation site-visit reports created by NBU's FPR. The CM shall notify the NBU Project Manager of the contractor's non-conforming work noted during any site visit or reported to the CM from NBU's FPR.
- 7) The Professional's CM shall attend up to fifteen (15) PCS start-ups and observe bump tests, loop checking, manufacturer certification of installation, results of performance testing required by individual technical specifications, NBU training documentation, and spare parts. The PCS start-ups include:
 - a) PCS #1 – Headworks screening system
 - b) PCS #2 – Lift Station
 - c) PCS #3 – Biological Treatment Basins;
 - d) PCS #4 – Clarifiers;
 - e) PCS #5 – Tertiary Filters;
 - f) PCS #6 – Flow Measurement System;
 - g) PCS #7 – NPW Pumping System;
 - h) PCS #8 – UV Disinfection System;
 - i) PCS #9 – Submerged Membrane Thickener System;
 - j) PCS #10 – Digesters;
 - k) PCS #11 – Plant control system; and
 - l) PCS #12 – SCADA system.
- 8) The Professional's design engineer shall attend up to eight (8) PCS start-ups and observe bump tests, loop checking, manufacturer certification of installation, results of performance testing required by individual technical specifications, NBU training documentation, and spare parts.
- 9) The Professional shall conduct one substantial completion inspection and punch list review during the construction phase of the Project to review compliance with the construction contract documents. Following the substantial completion inspection, the Professional shall prepare a list of deficiencies for correction by the contractor before issuing a substantial completion. The Professional shall submit an electronic copy of the list of deficiencies to the NBU Project Manager. Substantial completion is determined from the substantial completion inspection plus any inspection reports submitted by NBUs FPR during the construction, and the Professional's CM observations while on-site.
- 10) The Professional shall conduct one final-completion inspection of the Project for conformance with the design of the Project and compliance with the construction contract documents. The Professional shall prepare the final-completion report, submit an electronic copy to the NBU Project Manager, and make a recommendation of final payment.
- 11) The Professional shall establish and maintain the project data consistent with the requirements of the construction contract documents. The Professional shall manage the contractor submittal-review process for shop drawings, RFIs, schedules, certified test reports, etc. The Professional shall provide for filing and retrieval of the documentation for the Project. The Professional shall produce monthly reports indicating the status of submittals in the review process and review the following contractor submittals for compliance with the design:

- a) shop drawings (up to a quantity of 195 including re-reviews);
 - b) RFIs (up to a quantity of 145);
 - c) schedules (up to a quantity of 60);
 - d) certified test reports (up to a quantity of 100);
 - e) operation and maintenance manuals (quantity of 19 including re-reviews); and
 - f) miscellaneous submittals (up to a quantity of 20).
- 12) The Professional shall manage the field/change order and claim process as described herein.
- a) The Professional shall establish procedures for documenting construction changes required to implement modifications to the Project.
 - b) The Professional shall prepare field/change order documentation for up to 40 change order requests and shall provide the NBU Project Manager with a recommendation for each field/change order.
 - c) This scope does not include assistance or evaluation of contractor claims.
- 13) The Professional shall interpret the drawings and specifications for NBU and the contractor during the construction of the Project.
- 14) The Professional shall review the monthly work estimates for payment submitted by the contractor during the construction of the Project. The Professional's review shall include a verification that the contractor's work based on NBUs FPR reports and the Professional's visual observation of observable work for which the contractor requests payment is complete.
- 15) The Professional shall prepare and deliver a wastewater treatment facility operation and maintenance manual to the NBU Project Manager, as outlined by the TCEQ in 30 TAC Chapter 217.16. This manual will only include the items outlined by the TCEQ. The NBU Project Manager will provide the elements under bullet 3 of the noted regulation pertaining to safety requirements. The Professional shall review a completed draft manual with NBU and address comments from NBU made during that review.
- 16) The Professional shall prepare the record drawings based on the revised redline construction drawings and the information furnished by the construction contractor reflecting changes made during construction and shall submit to the NBU Project Manager via email.
- 17) The Professional shall prepare a memorandum that provides the asset information listed below for all above grade facilities constructed new in this project for insurance purposes within 90 days after substantial completion to include:
- a) Address
 - b) Year Built
 - c) Description
 - d) Square Footage of Building
 - e) Building Value
 - f) Contents Value

DELIVERABLES:

- 1) digital copies (PDFs) of meeting agenda and meeting minutes;
- 2) digital copies (PDFs) of daily site visit reports;
- 3) digital copies (PDFs) of monthly submittal status reports;
- 4) digital copies (PDFs) of monthly progress reports;
- 5) digital copies (PDFs) of asset sheets;
- 6) one (1) digital copy (PDF) of certificates of substantial completion;
- 7) one (1) digital copy (PDF) of contractor punch lists;
- 8) one (1) digital copy (PDF) of record drawings; and
- 9) one (1) digital copy (PDF) of the wastewater treatment facility operations and maintenance Manual.

SUPPLEMENTAL SERVICES

Pursuant to Section 4(B) of this Agreement, the Professional shall seek prior written approval from NBU before commencing work on any Supplemental Services (“Supplemental Services”) described in this Section. If NBU requests the Professional to perform the Supplemental Services, NBU and the Professional shall execute a supplemental services agreement or contract amendment, as appropriate, detailing the Supplemental Services to be performed and the completion date. The Supplemental Services shall only include Project specific professional engineering services contemplated by Chapter 2254 of the Texas Government Code. The Professional acknowledges the contract duration will not increase as result of engaging Supplemental Services unless noted in the supplemental services agreement or contract amendment, as appropriate.

TIME OF COMPLETION

The Professional, authorized to commence work on the Project upon execution of this Agreement, agrees to complete the Services in accordance with the following schedule.

Milestone/Deliverable	Completion Date
Notice to Proceed	November 2, 2020
30% Design Submittal	June 25, 2021
<u>Bid Package 1</u>	-
90% Design Submittal	March 25, 2022
Submit to GBRA	March 25, 2022
100% Design Submittal	May 27, 2022
Anticipated Bid Date	October 3, 2022
Anticipated NBU Board Approval of Construction Contracts	January 26, 2023
Anticipated Construction Notice To Proceed	February 15, 2023
Anticipated Construction Completion	December 30, 2023
<u>Bid Package 2</u>	
90% Design Submittal	March 25, 2022
Submit to City, County, TCEQ, & GBRA	March 25, 2022
100% Design Submittal	July 29, 2022
Anticipated Bid Date	January 31, 2023
Anticipated NBU Board Approval of Construction Contracts	June 25, 2023
Anticipated Construction Notice To Proceed	August 1, 2023
Anticipated Construction Completion	January 30, 2026

Exhibit B

Compensation

NBU shall 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 \$6,218,000 in accordance with the table below and made a part of this Agreement.

Task	Cost
Design Phase Services	\$4,039,000
Bid Phase Services	\$105,000
Construction Phase Services	\$2,074,000
Total	\$6,218,000

Supplemental Services:

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$270,000; 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