

**THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(INTERSTATE HIGHWAY 35 24-INCH WATER LINE DOWNTOWN PROJECT)**

This **THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Third Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation authorized to transact business in the State of Texas (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated October 10, 2019 (the “Original Agreement”), for project management, routing and alignment study, preliminary design phase services, final design phase services, bid phase services, construction phase services, and permitting services (the “Original Services”) for construction of the Interstate Highway 35 24-inch Water Line Downtown Project (“Project”) to be completed by December 31, 2022;

WHEREAS, NBU and the Professional included professional supplemental services, subsurface utility engineering services, and easement survey services in the Agreement as Supplemental Services (the “Original Supplemental Services”) whereby NBU and the Professional would agree in writing to engage such Original Supplemental Services at a later date, if needed;

WHEREAS, NBU and the Professional entered into a First Amendment to the Original Agreement dated February 8, 2021 (the “First Amendment”), to do the following: (i) define the professional supplemental services described in the Original Supplemental Services to include preliminary and final construction plans and specifications for the 2,000 linear feet (“LF”) of 8-inch water and sewer lines; (ii) modify the subsurface utility engineering services described in the Original Supplemental Services; (iii) modify the easement survey services described in the Original Supplemental Services; (iv) add Geotech Supplemental Services in the Agreement; (v) define the completion time for the Original Supplemental Services as modified by the First Amendment (the “Modified Supplemental Services” and, together with the Original Supplemental Services, the “Supplemental Services”); and (vi) adjust the allocation of related compensation among the Supplemental Services;

WHEREAS, NBU and the Professional entered into a Second Amendment to the Original Agreement dated April 28, 2023 (the “Second Amendment” and, together with the First Amendment and the Original Agreement, the “Agreement”), to do the following: (i) add additional final design services, bid phase services, and permitting services, (ii) add additional compensation, and (iii) extend the time of completion to December 29, 2024;

WHEREAS, during the course of construction, NBU and the Professional identified a need to add additional construction phase services to include (i) twelve (12) additional progress meetings, (ii) submittal reviews, (iii) monthly review of survey data, and (iv) record drawing CAD deliverables and overlay, all as more fully described in Exhibit "A" attached hereto (the "New Services" and, together with the Original Services, the "Services") that were not contemplated in the Agreement;

WHEREAS, the addition of the New Services requires an increase in compensation to the Professional;

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

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New Services and (ii) increase compensation to be paid to the Professional.

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

AGREEMENT

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

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

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

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

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

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

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

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this Third Amendment on this the ____ day of _____, 2024.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

THE PROFESSIONAL:

KIMLEY-HORN AND ASSOCIATES, INC.,
a North Carolina corporation
authorized to transact business in the State of Texas

By: SEAN MASON
Name: [Signature]
Title: VICE PRESIDENT

Exhibit A

Scope of Services

NO CHANGE

Task 1 – Project Management

NO CHANGE

Task 2 – Routing and Alignment Study

NO CHANGE

Task 3 – Preliminary Design

NO CHANGE

Task 4 – Final Design

NO CHANGE

Task 5 – Bid Phase Services

NO CHANGE

Task 6 – Construction Phase Services

The Professional shall perform the general construction contract administration services as described herein.

1. Meetings and site visits
 - a. NO CHANGE
 - b. The Professional shall attend up to a total of twenty-eight (28), bi-weekly or monthly progress meetings during construction and prepare agenda at least one (1) day prior to meetings, record meeting minutes, and distribute meeting minutes to all attendees within one (1) week after meetings.
 - c. NO CHANGE
 - d. NO CHANGE
 - e. NO CHANGE
 - f. NO CHANGE
2. Construction Administration
 - a. The Professional shall produce monthly reports indicating the status of submittals in the review process and shall review the following contractor submittals for compliance with the design concepts:

i) NO CHANGE

ii) NO CHANGE

iii) NO CHANGE

iv) NO CHANGE

v) NO CHANGE

vi) NO CHANGE

vii) NO CHANGE

viii) miscellaneous submittals, including up to twenty (20) shop drawing resubmittals.

b. The Professional shall manage the RFI, field/change order, and contractor claim process by performing the following services:

i) NO CHANGE

ii) NO CHANGE

iii) NO CHANGE

iv) NO CHANGE

v) The Professional shall prepare the record drawing CAD deliverables as outlined in the NBU Water and Wastewater Record Drawing/CAD/GPS Deliverables Submission Standards and Requirements document within thirty (30) days after final completion of construction. The Professional shall coordinate with NBU GIS staff on specific formatting preference.

vi) The Professional shall overlay in CAD and plot on the design the surveyed points of the installed water and wastewater lines, provided by the contractor monthly. The Professional will review the plotted data, consult the project inspector on accuracy, and provide comments to the NBU Project Manager via email.

c. NO CHANGE

d. NO CHANGE

e. NO CHANGE

3. Deliverables:

a. NO CHANGE

b. NO CHANGE

c. NO CHANGE

d. NO CHANGE

- e. NO CHANGE
- f. NO CHANGE
- g. eight (8) electronic PDF copies of the surveyed water and wastewater line progress collected in the field by the contractor.

Task 7 – Permitting Services

NO CHANGE

Supplemental Services

NO CHANGE

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

Task	Beginning Date	Ending Date
Notice to Proceed	NO CHANGE	
Task 1 – Project Management	NO CHANGE	NO CHANGE
Task 2 – Routing and Alignment Study	NO CHANGE	NO CHANGE
Task 3 – Preliminary Design	NO CHANGE	NO CHANGE
Task 7 – Permitting Services	NO CHANGE	NO CHANGE
Task 4 – Final Design	NO CHANGE	NO CHANGE
Task 5 – Bid Phase Services	NO CHANGE	NO CHANGE
Task 6 – Construction Phase Services	NO CHANGE	NO CHANGE

Exhibit B

Compensation

Fee and Expenses

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 a part of this Agreement.

Services:

NBU agrees to pay the Professional for the Services during the term of this Agreement in accordance with the table below in an amount not to exceed \$551,000.

Cost Breakdown	Original Agreement	First Amendment	Second Amendment	Third Amendment	Contract Amount
Task 1 – Project Management	\$29,000	\$0	\$0	\$0	\$29,000
Task 2 – Routing and Alignment Study	\$39,000	\$0	\$0	\$0	\$39,000
Task 3 – Preliminary Design	\$261,000	\$0	\$0	\$0	\$261,000
Task 4 – Final Design	\$64,000	\$0	\$10,000	\$0	\$74,000
Task 5 – Bid Phase Services	\$13,000	\$0	\$13,000	\$0	\$26,000
Task 6 – Construction Phase Services	\$79,000	\$0	\$0	\$30,000	\$109,000
Task 7 – Permitting Services	\$9,000	\$0	\$4,000	\$0	\$13,000
Sub-Total	\$494,000	\$0	\$27,000	\$30,000	\$551,000

Supplemental Services:

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$95,000; provided, however, that NBU shall provide written approval in the form of a supplemental agreement or contract amendment prior to the Professional performing the Supplemental Services.

Supplemental Cost Breakdown	Original Agreement	First Amendment	Second Amendment	Third Amendment	Contract Amount
Task 1 - Professional Supplemental Services	\$30,000	\$18,000	\$0	\$0	\$48,000
Task 2 - Subsurface Utility Engineering	\$25,000	\$0	\$0	\$0	\$25,000
Task 3 -Easement Survey	\$40,000	(\$28,000)	\$0	\$0	\$12,000
Task 4 - Geotech	N/A	\$10,000	\$0	\$0	\$10,000
Total Supplemental Services	\$95,000	\$0	\$0	\$0	\$95,000