

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the “Amendment”) is made and entered into by and between NEW BRAUNFELS UTILITIES, a Texas municipal owned utility (“NBU”), and FREESE AND NICHOLS, INC., a Texas corporation (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated September 30, 2020, (the “Agreement”), for project management, preliminary engineering, final design, permitting and coordination with stakeholders, bid phase, and construction phase services (the “Services”) for the Goodwin Elevated Storage Tank (“EST”) Project (the “Project”) to be completed by October 26, 2022;

WHEREAS, NBU and the Professional included miscellaneous project specific engineering supplemental services in the Agreement (the “Supplemental Services”) whereby NBU and the Professional would agree in writing to define and engage such Supplemental Services at a later date, if needed;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to (i) engage the Supplemental Services, (ii) define the Supplemental Services, (iii) authorize the related compensation, and (iv) define a time of completion for the Supplemental Services;

WHEREAS, as a result of the engagement of the Supplemental Services, NBU requires a modification to the Agreement to extend the time of completion for the Services; and

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) define and engage the Supplemental Services, (ii) authorize the related compensation for such Supplemental Services, (iii) define a time of completion for the Supplemental Services, (iv) modify the time of completion for the Services, and (v) extend the completion date of the Agreement to August 1, 2024.

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. Supplemental Services. NBU and the Professional hereby agree (i) to define and engage all of the Supplemental Services described in Exhibit A of this Amendment, as described in the Agreement; (ii) to authorize payment of the Supplemental Services in the amounts described in Exhibit B of this Amendment, as described in the Agreement; and (iii) that the Professional shall complete the Supplemental Services by June 16, 2022.

Section 2. Time of Completion for Services. NBU and the Professional hereby agree to extend the completion date of the Services to August 1, 2024.

Section 3. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this Amendment as of the effective date of this Amendment.

Section 4. Amendment to Exhibit B. Exhibit B to the Agreement is hereby replaced in its entirety by Exhibit B to this Amendment as of the effective date of this Amendment.

Section 5. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 6. Entire Agreement. This 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 7. Binding Effect. This Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 8. Severability. If any term or provision of this 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 Amendment shall not be affected thereby, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 9. Governing Law. This 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 Amendment on this the ____ day of _____, 20__.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: Ian Taylor Digitally signed by Ian Taylor
Date: 2021.08.06 11:13:03 -05'00'
Name: Ian Taylor
Title: CEO

THE PROFESSIONAL:

FREESE AND NICHOLS, INC.
a Texas corporation

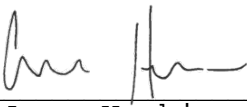
By: 
Name: Anne Hoskins
Title: Associate

Exhibit A

Scope of Services

NO CHANGE

Task 1 – Project Management

NO CHANGE

Task 2 – Preliminary Engineering Phase

NO CHANGE

Task 3 – Final Design Phase

NO CHANGE

Task 4 – Field Services

NO CHANGE

Task 5 – Permitting & Stakeholders

NO CHANGE

Task 6 – Bid Phase Services

NO CHANGE

Task 7 - Construction Phase Services

NO CHANGE

SUPPLEMENTAL SERVICES AGREEMENT

Pursuant to Section 4(B) of the Agreement, the Professional and NBU agree to engage the Supplemental Services. The Supplemental Services shall include the following Project specific services:

- 1) **REPLATTING SERVICES.** The Professional shall perform re-platting services including review of the Title reports for easements of record, completion of Traffic Impact Analysis (“TIA”) Determination Form, Letter of Certification submittals/resubmittals to reviewing agencies, completion of re-plat application checklist, waiver preparation (if necessary), and submittal of re-plat application.
- 2) **CULTURAL DESKTOP EVALUATION:** The Professional shall perform a desktop survey that evaluates the potential for cultural resources to be present in a project area. This effort shall include an establishment of an Area of Potential Effects (“APE”) for archaeological resources defined as the area where construction activities shall cause ground disturbance. The APE is defined in three dimensions, including the project limits, width, acreage, and depth of impacts. The APE encompasses the entirety of the project area to the maximum area of construction. Following the establishment of the APE, the Professional shall review the archeological records available on the Texas Historical Commission (“THC”) Texas Archeological Sites Atlas (“TASA”) is reviewed to determine

if any previously recorded archeological sites or historic properties listed in the National Register of Historic Places (“NHRP”), State Antiquities Landmarks (“SAL”), and Recorded Texas Landmarks (“RTHL”) are located within or adjacent to the proposed APE or within a one-kilometer radius. The Professional shall review the National Resources Conservation Service (“NRCS”) Soils database, Texas Geological Dataset, US Geological Survey (“USGS”) Historical Topographic maps, and Historical aerial imagery to document potential impact to any above ground historic structures and/or surficial or deeply buried cultural material. The professional shall document the results in a report to be included in the Preliminary Engineering Report. The professional shall also submit a letter to THC either to request a concurrence that no effect to historic properties would result from the project, or if further investigations or survey is required.

3) DESIGN SERVICES. The Professional shall perform design services related to unforeseen site conditions and subsurface geotechnical conditions, as described herein.

a) 50% DESIGN DOCUMENTS

- i. The Professional shall perform up to two (2) preliminary site visit to gather project information.
- ii. The Professional shall perform collection and review of existing data, reports, mapping, and records from NBU. The Professional shall review documents associated with the Project. The Professional shall provide analyses of NBU’s requirements for the Project, including planning, surveys, site evaluations and comparative studies of prospective sites and solutions.
- iii. The Professional shall prepare 50% design drawings including plan views of all proposed infrastructure within the Project Site.
- iv. The Professional shall prepare a Class 4 opinion of probable construction cost

b) 90% DESIGN DOCUMENTS. Upon approval of the PER and 50% design documents, the Professional shall prepare 90% plans, specifications and OPCC. 90% design documents shall include:

- i. a plan view and/or site layout of the proposed facilities;
- ii. a lighting layout;
- iii. an electrical site plan, layouts, schematics and one-line diagram;
- iv. a security layout;
- v. a plan and profile view of the water line;
- vi. mechanical drawings to include major design components of the tank;
- vii. call outs for major design items;
- viii. stormwater improvements based on City of New Braunfels (“CoNB”) Engineering Design Manual and Texas Commission on Environmental Quality (“TCEQ”) requirements to include sizing and layout of vegetative

- filter strips or similar water quality controls based on TCEQ calculation spreadsheets;
 - ix. draft technical specifications that are provided by the Professional with the exception of NBU's standard specifications; and
 - x. a Class 1 OPCC based on 90% design documents.
- c) 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare 100% plans, specifications and OPCC. 100% design documents shall include:
- i. final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase. NBU shall provide the Professional easement requirements for each parcel via email to incorporate into the plans;
 - ii. project files in .dwg, .mxd, and .kmz format;
 - iii. preparation of the bid form;
 - iv. Class 1 OPCC based on 100% design documents.

TIME OF COMPLETION

The Professional is authorized to continue work on the Services and commence work on the Supplemental Services upon execution of this Amendment and agrees to complete the Services in accordance with the schedule below.

Project Milestones	Start Date	End Date
Notice to Proceed	09/07/20	
Task 2: Preliminary Engineering Phase	01/20/21	04/02/21
Task 3: Final Design	04/05/21	08/10/21
Task 4: Field Services	01/20/21	04/02/21
Task 5: Permitting and Stakeholders	08/11/21	11/05/21
Task 6: Bid Phase	09/03/22	11/30/22
Task 7: Construction Phase	12/01/22	08/01/24
Supplemental Services	07/15/21	06/16/2022

The Professional shall complete the Services by August 1, 2024, and Supplemental Services by June 16, 2022.

Exhibit B

Compensation

NBU agrees to pay the Professional for the Services and the Supplemental Services rendered under this Agreement in accordance with the tables below and made part of this Agreement.

Services

NBU agrees to pay the Professional for the Services rendered under this Agreement and in accordance with the table below and made a part of this Agreement. NBU shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$792,872.

Services Cost Breakdown	
Task	Cost
Task 1: Project Management	\$57,272
Task 2: Preliminary Design Phase	\$125,857
Task 3: Final Design Phase	\$243,765
Task 4: Field Services	\$60,099
Task 5: Permitting & Stakeholders	\$4,527
Task 6: Bid Phase	\$11,173
Task 6: Construction Phase	\$290,179
Total	\$792,872

Supplemental Services

NBU shall pay the Professional for the Supplemental Services rendered under this Agreement and in accordance with the table below and made a part of this Agreement. NBU shall pay the Professional for the Supplemental Services during the term of this Agreement in an amount not to exceed \$25,054.

Supplemental Services Cost Breakdown	
Task	Cost
Supplemental Task 1: Replatting Services	\$10,750
Supplemental Task 2: Cultural Resource Desktop Evaluation	\$2,038
Supplemental Task 3: Design Services	\$12,266
Total	\$25,054