

**FIRST AMENDMENT TO PROFESSIONAL  
SERVICES AGREEMENT  
(FM 1044 ELEVATED STORAGE TANK PROJECT)**

This **FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “First Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally 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 October 1, 2021 (the “Original Agreement”), for project management, preliminary engineering, final design, field services, permitting and stakeholder coordination, bid phase, and construction phase services (the “Original Services”) for the FM 1044 Elevated Storage Tank Project (“the “Project”) to be completed by May 17, 2024;

WHEREAS, NBU and the Professional included miscellaneous engineering services contemplated by Chapter 2254 of the Texas Government Code in the Original Agreement, to include additional design services due to unforeseen field conditions, as Supplemental Services (the “Supplemental Services”) whereby NBU and the Professional could agree in writing to engage such Supplemental Services at a later date, if needed;

WHEREAS, NBU entered into a Supplemental Services Authorization on July 29, 2022 (i) engaging and defining the Supplemental Services, (ii) authorizing the related compensation, and (iii) defining a time of completion for the Supplemental Services (the “Authorization” and, together with the Original Agreement, the “Agreement”);

WHEREAS, during the course of design, NBU and the Professional identified a need to add additional services due to unanticipated delays in property evaluation and acquisition;

WHEREAS, the additional services include (i) conducting additional feasibility studies of various potential Project sites for the elevated storage tank (“EST”), (ii) preparing figures and exhibits of the EST at a City of New Braunfels (“CoNB”) property, (iii) preparing 50% design drawings for the EST at the CoNB property and another potential Project site, (iv) additional project management, meetings, and design services due to an extended project duration, and (v) additional construction resident Project representative services, 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 Original Agreement;

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

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

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New

Services, (ii) include additional compensation for the New Services, and (iii) extend the Project completion date to October 21, 2026.

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 First Amendment as of the effective date of this First Amendment.

Section 2. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted in its entirety and replaced by Exhibit B to this First Amendment as of the effective date of this First 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 First 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 First 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 First 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 First Amendment shall not be affected thereby, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

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**IN WITNESS WHEREOF**, the Parties hereto, upon lawful approval and authority, have executed this First Amendment on this the \_\_\_\_ day of \_\_\_\_\_, 2024.

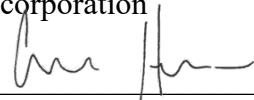
**NBU:**

**NEW BRAUNFELS UTILITIES,**  
a Texas municipal owned utility

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: Chief Executive Officer

**THE PROFESSIONAL:**

**FREESE AND NICHOLS, INC.**  
a Texas corporation

By:  \_\_\_\_\_  
Name: Anne Hoskins, P.E.  
Title: Principal

## **Exhibit A**

### **Services**

NO CHANGE

#### **SERVICES**

NO CHANGE

#### **Task 1. Project Management**

NO CHANGE

#### **Task 2. Preliminary Engineering Phase**

2. NO CHANGE

2.1 MEETINGS. The Professional shall provide meeting agenda and meeting minutes to NBU for the following meetings:

2.1.1 NO CHANGE

2.1.2 monthly progress status meetings (seventeen (17) meetings);

2.1.3 NO CHANGE

2.1.4 NO CHANGE

2.1.5 meetings with property owners (six (6) meetings); and

2.1.6 meetings with additional stakeholders (five (5) meetings).

2.2 STORAGE TANK ANALYSIS.

2.2.1 NO CHANGE

2.2.2 NO CHANGE

2.2.3 analyze eight (8) additional potential storage tank site locations;

2.2.4 analyze and recommend locations of easements for three (3) additional potential EST locations, providing figures and exhibits of the EST to NBU;

2.2.5 identify and provide basic site improvements for the potential EST sites;

2.2.6 identify basic one-line yard piping improvements for the potential EST sites;

2.2.7 NO CHANGE

2.2.8 NO CHANGE

2.2.9 perform a storm water and overflow analysis for the potential EST sites;

2.2.9.1 NO CHANGE

2.2.9.2 NO CHANGE

2.2.9.3 NO CHANGE

2.2.9.4 NO CHANGE

2.3 50% DESIGN DOCUMENTS

2.3.1 The Professional shall perform four (4) preliminary site visits to gather project information.

2.3.2 NO CHANGE

2.3.3 The Professional shall prepare 50% design drawings including plan views of the site improvements and stormwater improvements within the Project Site for two (2) additional potential EST sites.

2.3.4 NO CHANGE

2.4 NO CHANGE

2.5 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**

7.1 NO CHANGE

7.2 NO CHANGE

7.3 NO CHANGE

7.4 NO CHANGE

7.5 NO CHANGE

7.6 NO CHANGE

7.7 NO CHANGE

7.8 RESIDENT REPRESENTATION. The Professional shall provide a part-time Resident Project Representative (“RPR”) on the Site for thirteen (13) months. The RPR effort shall be twenty (20) hours per week. The effort for construction management will be five (5) hours per week.

7.8.1 NO CHANGE

7.8.2 NO CHANGE

7.8.3 NO CHANGE

7.8.4 NO CHANGE

7.8.5 NO CHANGE

7.8.6 NO CHANGE

7.8.7 NO CHANGE

7.8.8 NO CHANGE

7.8.9 NO CHANGE

7.9 NO CHANGE

7.10 NO CHANGE

**Supplemental Services**

NO CHANGE

**TIME OF COMPLETION**

The Professional is authorized to commence work on the Services of the Project upon execution of this Agreement and agrees to complete these Services in accordance with the schedule below.

| <b>Project Milestones</b>     | <b>Start Date</b> | <b>End Date</b> |
|-------------------------------|-------------------|-----------------|
| Notice to Proceed             | NO CHANGE         | -               |
| ROE                           | 10/1/21           | 10/31/23        |
| Survey, Geotechnical Analysis | 11/1/23           | 6/1/24          |
| 50% Preliminary Design        | 12/7/23           | 4/17/24         |
| 90% Final Design              | 4/18/24           | 7/17/24         |
| 100% Final Design             | 7/18/24           | 8/7/24          |
| Permitting                    | 8/8/24            | 10/16/24        |
| Bid Phase                     | 8/8/24            | 1/30/25         |
| Construction Phase            | 2/28/25           | 10/21/26        |

## 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 \$1,191,661.

| Task                              | Cost             | First Amendment  | Total Contract     |
|-----------------------------------|------------------|------------------|--------------------|
| Task 1: Project Management        | \$55,510         | \$27,001         | \$82,511           |
| Task 2: Preliminary Design Phase  | \$140,963        | \$65,014         | \$205,977          |
| Task 3: Final Design Phase        | \$240,957        | \$49,614         | \$290,571          |
| Task 4: Field Services            | \$62,913         | \$12,724         | \$75,637           |
| Task 5: Permitting & Stakeholders | \$11,833         | \$2,958          | \$14,791           |
| Task 6: Bid Phase                 | \$12,337         | \$3,594          | \$15,931           |
| Task 7: Construction Phase        | \$365,102        | \$141,141        | \$506,243          |
| <b>Total</b>                      | <b>\$889,615</b> | <b>\$302,046</b> | <b>\$1,191,661</b> |

#### Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$25,000, as modified below; provided, however, that NBU must provide written approval in the form of a supplemental services agreement prior to the Professional performing the Supplemental Services.

| Task   | Supplemental Services Cost Breakdown |                                     |            |
|--|--------------------------------------|-------------------------------------|------------|
|  | Agreement                            | Supplemental Services Authorization | Balance    |
| Board Approved Funds Available for Supplemental Services | \$25,000                             | (\$25,000)                          | \$0        |
| <b>Total</b>   | <b>\$25,000</b>                      | <b>(\$25,000)</b>                   | <b>\$0</b> |