

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(HEADQUARTERS 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 July 12, 2021 (the “Agreement”), to provide project management, pre-construction phase, construction phase, and close and warranty services (the “Services”) as the owner’s representative for the NBU Headquarters Project (the “Project”) to be completed by September 30, 2023;

WHEREAS, the Agreement included additional relocation planning services and relocation operation services in the amount of \$45,836 as Supplemental Services (the “Supplemental Services”) whereby NBU and the Professional would agree in writing to engage such Supplemental Services at a later date, if needed;

WHEREAS, the Project was delayed briefly to allow for the completion of a staffing study, and upon completion of the study, it was determined that a larger site was required to accommodate the additional staff identified;

WHEREAS, in connection with the staffing study, NBU and the Professional identified a need to (i) add alternate site study services and site due diligence assessment services (the “New Services”) and (ii) reduce the number of meetings related to supplemental services, exclude the requirement for coordination with the Trinity Water Treatment Plant and Wellfield Expansion Project, and remove the reference to Attachment 1 as the services are no longer necessary and Attachment 1 was inadvertently referenced in the Agreement;

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

WHEREAS, NBU and the Professional also desire to engage the Supplemental Services defined in the Agreement, authorize the related compensation, and define a time of completion for the Supplemental Services;

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

WHEREAS, NBU and the Professional desire to (i) amend the Agreement to add New Services; (ii) delete certain services that are no longer needed; (iii) authorize additional compensation for the New Services; (iv) extend the completion time for the Services to December 31, 2028; and (v) engage the Supplemental Services, authorize the related compensation, and define a time of completion for the Supplemental Services of December 31, 2027.

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. Engage Supplemental Services; Authorize Compensation. NBU and the Professional hereby agree to engage the Supplemental Services described in Exhibit A of the Agreement and authorize payment of the Supplemental Services as described in Exhibit B of the Agreement and Exhibit B to this First Amendment.

Section 4. Remaining Terms. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

Section 5. 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 6. Binding Effect. This First Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.

Section 7. 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 8. Governing Law. This First 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 \_\_\_\_\_, 2023.

**NBU:**

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

By: \_\_\_\_\_  
Name: Ryan Kelso  
Title: Interim CEO

**THE PROFESSIONAL:**

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


By:  \_\_\_\_\_  
Name: John M. New  
Title: Vice President

Exhibit A

Services

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

SERVICES

NO CHANGE

**Task 1. Project Management**

The Professional shall provide the project management services described herein.

1.1. COMMUNICATION.

1.1.1. NO CHANGE

1.1.2. NO CHANGE

1.1.3. NO CHANGE

1.1.4. NO CHANGE

1.2. NO CHANGE

1.3. NO CHANGE

1.4. NO CHANGE

1.5. NO CHANGE

1.6. NO CHANGE

**Task 2. Pre-Construction Phase Services**

2.1. REVIEW OF DESIGN DELIVERABLES

2.1.1 NO CHANGE

2.1.2 NO CHANGE

2.2. DOCUMENT MANAGEMENT

2.2.1. NO CHANGE

2.2.2. NO CHANGE

2.3. CMAR PROPOSAL EVALUATION

2.3.1. NO CHANGE

2.3.2. NO CHANGE

2.3.3. NO CHANGE

2.3.4. NO CHANGE

2.4. CMAR BID PACKAGE REVIEW

2.4.1. NO CHANGE

2.4.2. NO CHANGE

2.4.3. NO CHANGE

2.5. CMAR GUARANTEED MAXIMUM PRICE (GMP) DEVELOPMENT. NO CHANGE

2.6. STAKEHOLDER/AGENCY COORDINATION. NO CHANGE

2.7. DELIVERABLES. NO CHANGE

**Task 2A. Alternate Site Study**

2.8. SITE STUDY SERVICES

2.8.1 The Professional shall coordinate and facilitate the identification and evaluation of potential alternative sites for the Headquarters Project.

2.8.2 The Professional's evaluation shall include the development of selection criteria considered necessary for a site to possess along with weighting of that criteria, and it shall include a comparison table with criteria scoring and site ranking when compared to all other evaluated sites.

2.8.3 The Professional shall conduct meetings with NBU, AOR, and the CMAR to facilitate the site evaluation process.

**Task 2B. Site Due Diligence Assessment**

2.9. SITE DUE DILIGENCE ASSESSMENT SERVICES

- 2.9.1 The Professional shall coordinate and facilitate due diligence analysis activities of the site selected through the site evaluation process. Activities conducted by the Professional, the AOR, and the CMAR include the following:
- a. general site observations;
  - b. category 1A TSPS Title Survey;
  - b. environmental research including delineation of Waters of the U.S., habitat assessment for federally listed species, heritage class trees, Phase I Environmental Site Assessment, and Cultural Resources Survey;
  - d. geotechnical analysis;
  - e. development of conceptual site plan;
  - f. water, wastewater, electric service evaluation;
  - g. research of annexation, platting, and zoning options;
  - h. coordination with TxDOT relating to site access points from TxDOT roadways; and
  - i. development of concept level rough order of magnitude unit pricing of major facility components.
- 2.9.2 The Professional shall conduct meetings with NBU, AOR, CMAR, TxDOT, City of New Braunfels, and other entities as needed to facilitate the due diligence evaluation process.
- 2.9.3 The Professional shall prepare a due diligence report documenting the findings of the due diligence evaluation and provide its professional opinion regarding the feasibility of the site for the intended purpose of accommodating the Headquarters campus, dated November 30, 2023.

**Task 3. Construction Phase Services**

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

**3.1 CONSTRUCTION QUALITY MANAGEMENT**

- 3.1.1 NO CHANGE
- 3.1.2 NO CHANGE
- 3.1.3 NO CHANGE
- 3.1.4 NO CHANGE
- 3.1.5 NO CHANGE

3.1.6 The Professional shall provide on-site construction management and observation to provide sufficient representation for each stage of construction. For budgeting purposes, the following estimate of off-site and on-site personnel has been included based on a projected construction and post-construction period of 122 weeks (28 months):

- a. Construction Manager — 40 hours per week for 122 weeks;
- b. Site Civil and Utility Inspector —40 hours per week for 52 weeks;
- c. Building Foundation, Envelope and Finish-Out Inspector — 40 hours per week for 88 weeks; and
- d. Specialty Inspections (Mechanical, Electrical, Plumbing, Building Automation Systems, etc.) — 800 hours as needed.

## 3.2 DOCUMENT MANAGEMENT

3.2.1 NO CHANGE

3.2.2. NO CHANGE

3.2.3 NO CHANGE

3.2.4 NO CHANGE

## 3.3 SCHEDULE MANAGEMENT. NO CHANGE

## 3.4 COST MANAGEMENT

3.4.1 NO CHANGE

3.4.2 NO CHANGE

3.4.3 NO CHANGE

3.4.4 NO CHANGE

## 3.5 ISSUES MANAGEMENT

3.5.1 NO CHANGE

3.5.2 NO CHANGE

3.5.3 DELETE

## 3.6 CHANGE MANAGEMENT

3.6.1 NO CHANGE

3.6.2 NO CHANGE

3.6.3 NO CHANGE

3.6.4 NO CHANGE

3.7 PROJECT COMPLETION

3.7.1 NO CHANGE

3.7.2 NO CHANGE

3.7.3 NO CHANGE

3.7.4 NO CHANGE

3.7.5 NO CHANGE

3.8 MATERIAL TRANSFER

3.8.1 NO CHANGE

3.8.2 NO CHANGE

3.9 RECORD DRAWINGS

3.9.1 NO CHANGE

3.10 LIMITATIONS OF AUTHORITY OF OWNER'S REPRESENTATIVE

3.10.1 NO CHANGE

3.10.2 NO CHANGE

3.10.3 NO CHANGE

3.10.4 NO CHANGE

3.10.5 NO CHANGE

3.10.6 NO CHANGE

3.10.7 NO CHANGE

3.11 DELIVERABLES. NO CHANGE



**Task 4. Commissioning and Close-Out**

4.1 NO CHANGE

4.2 NO CHANGE

4.3 NO CHANGE

4.4 NO CHANGE

**Task 5. Warranty Services**

5.1 NO CHANGE

5.2 NO CHANGE

5.3 NO CHANGE

**SUPPLEMENTAL SERVICES**

NO CHANGE

**TIME OF COMPLETION**

Unless otherwise specified herein, the Professional shall complete the Services by December 31, 2028, and the Supplemental Services by December 31, 2027.

## Exhibit B

### Compensation

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

#### Services

NBU shall pay the Professional to perform the Services described in Exhibit A in an amount not to exceed \$4,539,571 based on the schedule of charges and estimated amounts listed in the table below.

<b>Task</b>	<b>Original Agreement</b>	<b>First Amendment</b>	<b>Balance</b>
T1: Project Management	\$178,420	\$19,283	\$197,703
T2: Pre-Construction Phase Services	\$391,835	\$343,133	\$734,968
T2A: Alternate Site Study	\$0	108,650	108,650
T2B: Site Due Diligence Assessment	\$0	102,750	102,750
T3: Construction Phase Services	\$2,399,229	\$830,154	3,229,383
T4: Commissioning Services	\$94,668	\$0	\$94,668
T5: Warranty Phase Services	\$31,580	\$0	\$31,580
Supplemental Services	\$45,836	(\$5,967)	\$39,869
<b>Total</b>	<b>\$3,141,568</b>	<b>\$1,398,003</b>	<b>\$4,539,571</b>

#### Supplemental Services

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