

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”), and **FREESE AND NICHOLS, INC.**, a Texas corporation (the “Professional”). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

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 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 circumstances and professional license. The Professional shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care 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. 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
263 Main Plaza
New Braunfels, TX 78130

With copy to:

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

If to the Professional:

Freese and Nichols, Inc.
4055 International Plaza, Suite 200
Fort Worth, Texas 76109

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 Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. **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. If the Professional is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, 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 2275.0103 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 2275 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. “Affiliate,” with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

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 2276 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2276.002 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.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the ____ day of _____, 2023.

NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: _____
Name: Ryan Kelso
Title: Interim CEO

PROFESSIONAL:
FREESE AND NICHOLS, INC.,
a Texas corporation

By: Charles Kucherka
Name: Charles Kucherka, P.E.
Title: Vice President

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide project management, final design, field services, permitting and stakeholders, bid, and construction phase services (collectively the “Services”) for the Water Tank Rehabilitation - Phase 1 Project. The Water Tank Rehabilitation - Phase 1 Project will include the rehabilitation and maintenance of the tanks indicated below, located at multiple NBU facilities in New Braunfels, Texas (the “Project”).

The Professional shall perform the Services described in Tasks 1 through 6 for the improvements at the following facilities and the facility improvements described shall be performed by a selected contractor not the Professional:

Facilities with Complete Tank Rehabilitation: Full site plans will be provided for these tank sites.

- a) Loop 337 Ground Storage Tank (GST) - full rehabilitation of interior and exterior coating systems, including structural repairs and replacement of appurtenances as indicated in Attachment A.
- b) County Line Road Standpipe - full rehabilitation of interior and exterior coating systems, including structural repairs and replacement of appurtenances as indicated in Attachment B.

Facilities with Improvements: The scope of these projects will be illustrated using photos and details. Full site plans will not be provided for these tank sites.

- a) Gruene Road Elevated Storage Tank (EST) – replacement of the corroded vent and gaskets on hatches per Texas Commission on Environmental Quality (“TCEQ”) requirements.
- b) Comaltown EST – replacement/modification of the corroded vent and gaskets on hatches per TCEQ requirements. Minor coating repairs may be included to extend the life of the existing coatings.
- c) Seguin Road EST - seal all open penetrations into the tank and replace gaskets on hatches per TCEQ requirements. Minor coating repairs may be included to extend the life of the existing coatings.
- d) Kohlenberg Road Standpipe - replacement/modification of the corroded vent and gaskets on hatches per TCEQ requirements. Minor coating repairs may be included to extend the life of the existing coatings.
- e) Replace gaskets on tank hatches per TCEQ criteria at the following tanks:
 - i) Water Plant GST;
 - ii) Surface Water Treatment Plant GST;
 - iii) Hoffman Lane Standpipe;

- iv) Kerlick EST;
 - v) Mission Hills Ranch EST;
 - vi) Morningside EST;
 - vii) Voss Farms EST; and
 - viii) River Chase EST.
- f) It is assumed that the power and controls at the following sites are in good working order and have the capacity for the following modifications. The Supervisory Control and Data Acquisition (“SCADA”) system and control scheme will not be evaluated or revised other than connecting new instrumentation to existing hardware. Replace instrumentation and provide power for heat tracing as required at the following locations:
- i) Loop 337 GST; and
 - ii) County Line Road Standpipe.

SERVICES

The Professional shall provide the following Services in accordance with the tasks described herein.

Task 1. Project Management

1. The Professional shall provide the following project management services described herein.
 - 1.1. SCHEDULE. The Professional shall develop a baseline design schedule for the Project and prepare updated design schedules for the Project on a monthly basis on or before the 25th day of each month for NBU to monitor progress and identify design submittal dates. The Professional shall provide the schedules to the NBU Project Manager via email.
 - 1.2. QUALITY CONTROL. The Professional shall develop a quality assurance/quality control (“QA/QC”) program for the Project, which shall be explained in detail via a written document and provided to NBU’s Project Manager via email within thirty (30) days of notice to proceed (“NTP”).
 - 1.3. PROGRESS REPORTS. The Professional shall provide NBU with electronic monthly project progress reports and submit written invoices on or before the 25th day of each month for the previous month’s effort. The Professional shall provide progress reports to the NBU Project Manager via email.
 - 1.4. MEETING AGENDA/MINUTES. The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the documented meeting minutes and action item logs to NBU’s Project Manager within one (1) week after meetings.
 - 1.5. PROJECT CONTROLS. The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, the

following:

- 1.5.1. assigning a senior advisor to oversee the QA/QC program;
- 1.5.2. developing cost estimates using recent bid tabs from similar projects or vendor prices;
- 1.5.3. using Microsoft Project or similar to manage the schedule; and
- 1.5.4. coordinating communication with sub-consultants through emails and meetings.

Task 2. Final Design Phase

2. The Professional shall perform the final design phase services described below.
 - 2.1. MEETINGS. The Professional shall provide a meeting agenda one (1) day prior to meetings and provide a copy of the documented meeting minutes and action item logs to NBU's Project Manager within one (1) week after meetings via email for the following meetings:
 - 2.1.1. 90% design review meeting (2 meetings; 1 per bid package);
 - 2.1.2. meeting with franchise utilities (2 meetings; 1 per bid package);
 - 2.1.3. permitting meeting with City of New Braunfels (2 meetings; 1 per bid package);
and
 - 2.1.4. and meeting with additional stakeholders (2 meetings; 1 per bid package).
 - 2.2. 90% DESIGN DOCUMENTS. The Professional shall prepare 90% plans, specifications and Opinion of Probable Construction Cost ("OPCC"). Design documents shall include:
 - 2.2.1. plan view and/or site layout the proposed facilities;
 - 2.2.2. an electrical one-line diagram;
 - 2.2.3. complete specifications including any NBU's standard specifications; and
 - 2.2.4. Class 2 OPCC based on 90% design documents.
 - 2.3. 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare 100% plans, specifications and OPCC. 100% design documents shall include:
 - 2.3.1. a final signed and sealed set of construction drawings and specifications based on decisions made in the 90% design phase;
 - 2.3.2. Project file types to include: DWG, MXD, and KMZ;
 - 2.3.3. preparation of the bid form; and
 - 2.3.4. a Class 1 OPCC based on 100% design documents.

2.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

- 2.4.1. 90% design – the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF of design drawings and specifications, and one (1) PDF electronic file of a Class 2 OPCC; and
- 2.4.2. 100% design - the Professional shall provide one (1) KMZ or SHP electronic file, one (1) PDF electronic file in PDF of design drawings and specifications, bid form in Microsoft Word format, and one (1) PDF electronic file of a Class 1 OPCC.

Task 3. Field Services

3. The Professional shall perform the field services described below.

3.1. COATING SAMPLES

- 3.1.1. Retain a testing laboratory to perform laboratory analysis for lead, beryllium, cadmium, and chromium on both existing tanks and piping coating systems at the site by EPA Method 6010.
- 3.1.2. Obtain a maximum of five (5) coating samples:
 - 3.1.2.1. One (1) sample: Interior coating of tank;
 - 3.1.2.2. Two (2) samples (if required): Exterior coating of tank; and
 - 3.1.2.3. Two (2) samples: Existing structures and piping. Locations to be determined during site evaluation.
- 3.1.3. Soil samples will not be taken.
- 3.1.4. Analysis for Synthetic Precipitation Leaching Procedure (“SPLP”) and/or Toxicity Characteristic Leaching Procedure (“TCLP”) are not included within this scope.

3.2. TOPOGRAPHIC SURVEY. The Professional shall obtain a topographic, utility, and boundary survey as described below. Boundary survey will be acquired for the County Line Standpipe site. For the Loop 337 GST site, the boundary will only be surveyed at the Loop 337 right-of-way to aid in installation of the proposed valve. All other work at the Loop 337 GST is anticipated to be within the NBU property and full boundary survey is not included. No other sites will be surveyed.

- 3.2.1. The Professional shall tie in all existing surface topographic features and structures for the facilities shown in Figures 1 and 2. This shall include but is not limited to: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges, and flow line), channels and drainage ways (tops, toes, and flow line), manholes (rim, flow lines and diameters of pipes, type of material, and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits, visible valves, meters, clean-outs, slabs,

utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits), mailboxes, etc.

- 3.2.2. The Professional shall conduct a utility survey and locate existing utilities within the Project boundary in Figure 1. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipal owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey. The Professional shall bear all costs for the services associated with utility locates.
- 3.2.3. The Professional shall set and install control points and/or benchmarks as required for the survey work. The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum and show the benchmarks on the survey drawing.
- 3.2.4. The Professional shall research and review adjoining plats and deeds for the County Line Standpipe site. The Professional shall locate property corners and identify existing right-of-way along the survey corridor, based on found monuments and record documents.

Task 4. Permitting & Stakeholders

4. The Professional shall coordinate with the following stakeholders/agencies as described below.
 - 4.1. CITY OF NEW BRAUNFELS. The Professional shall prepare and submit a permit application to the City of New Braunfels as required.
 - 4.2. Texas Commission on Environmental Quality (“TCEQ”) – Permitting for construction.
 - 4.3. One (1) Homeowners Association meeting with residents prior to construction for County Line Standpipe rehabilitation, if required.
 - 4.4. Coordination with cellular company for antennas on the County Line Standpipe.
 - 4.5. TCEQ and EDWARDS AQUIFER PROTECTION PLAN – The Loop 337 GST is located within the Edwards Aquifer Recharge Zone and may require a Water Pollution and Abatement Plan (“WPAP”) and Geological Assessment (“GA”); however, the Professional shall coordinate with TCEQ to determine if the small amount of impervious cover could be exempt. The effort to produce a WPAP and GA will be a Supplemental Service if the exemption is not granted. Preparation of a WPAP will require an extension of contract time.

Task 5. Bid Phase Services

5. Upon completion of the final design, the Professional shall proceed with the bid phase services described below. All portions of the Project shall be bid as two bid packages.

- 5.1. PREBID CONFERENCE. The Professional shall attend a pre-bid conference to be administered by NBU. The Professional shall assist NBU with preparation of agenda, provide NBU with meeting notes, and coordinate conference responses with NBU. Written responses to issues identified at the pre-bid conference shall be in the form of addenda issued after the conference.
- 5.2. INTERPRET BID DOCUMENTS. The Professional shall assist NBU with responding to questions and interpreting bid documents and prepare addenda to the bid documents if necessary.
- 5.3. BID EVALUATION. The Professional shall attend a bid-opening conference to be administered by NBU. The Professional shall assist NBU in analyzing the bids received for the Project by researching contractor qualifications and references. The Professional shall participate in the evaluation of bids and draft a letter of recommendation memorializing the evaluation committee's selection.
- 5.4. CONFORMED CONSTRUCTION DOCUMENTS. The Professional shall conform the construction documents by incorporating all addenda items into the plans and specifications.
- 5.5. DELIVERABLES.
 - 5.5.1. Addenda - one (1) PDF electronic copy prior to the addenda deadline stated within the bid documents;
 - 5.5.2. Letter of recommendation - one (1) PDF electronic copy prior to submittal deadline to NBU Purchasing; and
 - 5.5.3. Conformed construction documents - one (1) PDF electronic copy prior to construction NTP.

Task 6. Construction Phase Services

6. Upon completion of the bid phase services, the Professional shall proceed with construction phase administration services described below. The Professional shall provide general construction contract administration services described below. The services below will be provided for each bid package.
 - 6.1. MEETINGS AND SITE VISITS. The Professional shall provide the following services for meetings and site visits:
 - 6.1.1. assist NBU in conducting a pre-construction conference with the construction contractor and prepare agenda, prepare and provide NBU with meeting notes and coordinate conference responses with NBU;
 - 6.1.2. conduct one construction document control workshop for the contractor;
 - 6.1.3. attend up to a total of 15 bi-weekly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor;

6.1.4.attend up to a total of 10 site visits during construction of the Project, as distinguished from the continuous services of a Resident Project Representative (“RPR”), to observe the progress and the quality of work and to determine if the work is proceeding in accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports for each site visit and notify NBU of any non-conforming work performed by the contractor, observed on the site visits;

6.1.5.conduct the following meetings during construction with the Contractor:

6.1.5.1. tank floor inspection meeting;

6.1.5.2. inspection abrasive blast of interior roof and structural steel to determine extent of corrosion;

6.1.5.3. pre-coating meeting prior to surface preparation and coatings; and

6.1.5.4. conduct interior mock structure pre-coating meeting;

6.1.6.conduct two (2) substantial completion inspections and punch list reviews of the Project with NBU’s representatives for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare a list of deficiencies to be corrected by the contractors before recommendation of final payment; and

6.1.7.conduct one (1) final completion inspection of the Project for conformance with the design concept of the Project and compliance with the construction contract documents. The Professional shall prepare final completion reports and make a recommendation of final payment.

6.2. SUBMITTAL MANAGEMENT. The Professional shall use FNiManager, a document management system for construction documents. The Professional shall monitor the processing of contractor’s submittals (shop drawings, requests for information, schedules, certified test reports, etc.), provide for filing and retrieval of Project documentation, and verify that the contractor is sending and processing submittals in accordance with the schedules. The Professional shall produce monthly reports and submit to NBU indicating the status of all submittals in the review process.

6.2.1.SUBMITTAL REVIEW. The Professional shall review all contractor submittals for compliance with the design concepts to include the following:

6.2.1.1. submittals (up to one hundred and twenty (120));

6.2.1.2. requests for information (up to five (5));

6.2.1.3. schedules (up to seven (7)); and

6.2.1.4. operation and maintenance manual.

6.3. CHANGE ORDERS. The Professional shall manage the field/change order documents,

requests for proposals, and contractor claim process for the Project as described below.

6.3.1. The Professional shall establish procedures and document construction changes required to implement modifications to the Project.

6.3.2. The Professional shall process contract modifications and negotiate with the contractor at NBU's direction to determine the cost and time impacts of these changes.

6.3.3. The Professional shall prepare field/change order documentation for up to three (3) field orders for minor alterations and up to three (3) change orders.

6.3.4. The Professional shall evaluate notices of contractor claims and make initial recommendations to NBU on the merit and value of the claim based on information submitted by the contractor or available Project documentation. The Professional shall negotiate a settlement value with the contractor at NBU's direction.

6.4. INTERPRET DRAWINGS AND SPECIFICATIONS. The Professional shall interpret the drawings and specifications for NBU and contractor during the course of construction per the schedule assumed herein.

6.5. PAY ESTIMATES. The Professional shall review and comment on monthly and final estimates for payment to the contractor pursuant to the general conditions of the construction contract during the course of the construction Project per the schedule assumed herein.

6.6. RESIDENT REPRESENTATION ("RPR"). The Professional shall provide a part-time (fifteen (15) hours per week) RPR on the site for seven (7) months and provide an average of five (5) hours per week of construction management time. The duties, responsibilities and the limitations of authority of the RPR, and designated assistants, are as described herein.

6.6.1. Communication

6.6.1.1. The RPR shall establish the communication procedures for all parties involved in the Project. The communication procedures shall detail the amount of time all parties have to respond to questions, submittals, or other documents, and the most efficient transmission of communication (via email, phone, etc.). These procedures shall be provided in writing and reviewed with NBU, engineer of record ("EOR"), and the contractor. NBU shall approve all communication procedures.

6.6.1.2. The RPR shall conduct periodic progress meetings with NBU, EOR, and the contractor to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any Project related issues.

6.6.1.3. The RPR shall prepare an agenda prior to the progress meetings and record and distribute the meeting minutes to NBU, EOR, and the contractor within one (1) week after meetings.

6.6.1.4. The RPR shall submit monthly reports of the construction progress to NBU. The reports shall describe the construction progress and summarize Project costs, cash flow, construction schedule, pending and approved contract modifications, change order status, and outstanding issues.

6.6.2. Quality Assurance

6.6.2.1. The RPR shall observe the contractor's work to determine if the work is proceeding in accordance with the contract. The RPR shall prepare site visit reports to be submitted electronically to NBU documenting the RPR's observations within one (1) week of the site visit.

6.6.2.2. The RPR shall document when non-conforming work is observed and submit this documentation via email to NBU and the contractor. The Professional shall verify and document when the observed non-conforming work has been corrected and submit documentation to that effect to NBU via email.

6.6.2.3. The RPR shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.

6.6.2.4. The RPR shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in accordance with applicable testing and inspection bureaus who set standards for the testing of materials, witness tests, and factory testing.

6.6.2.5. The RPR shall provide specifically qualified personnel to conduct specialty observations for structural, mechanical, electrical, and instrumentation systems as requested by NBU.

6.6.3. Document Management

6.6.3.1. The RPR shall be responsible for submittal management as described in Task 7.3. The RPR shall perform an initial review of the submittals and electronically send the submittals to the EOR and/or NBU for a detailed review and response.

6.6.3.2. The RPR shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties for documents, and of (ii) the EOR in reviewing and responding to submittals. The RPR shall verify that documentation is being processed according to the schedule.

6.6.3.3. The RPR shall prepare monthly reports that monitor the status of all submittals in the review process. The RPR shall submit an electronic copy of the report to NBU via email once a month.

6.6.4. Schedule Management

6.6.4.1. The RPR shall review the baseline, the projected, and the monthly construction progress schedules submitted by the contractor. The RPR shall monitor the progress of the work completed relative to the planned progress and address any identified schedule delays by emailing the EOR, NBU, and the contractor promptly.

6.6.5. Cost Management

6.6.5.1. The RPR shall review the schedule of values and payment requests prepared by the contractor. The RPR shall establish with NBU and the contractor procedures to review the monthly quantities of work in place and the corresponding payment requests for work completed.

6.6.5.2. The RPR shall prepare monthly cash flow requirements based upon information provided by the contractor. The RPR shall update cash flow reports monthly and include these reports with monthly updates to NBU.

6.6.5.3. The RPR shall verify quantities of work in place, review the payment requests and supporting documentation, and provide an opinion of whether the payment requested matches the work completed to NBU via email.

6.6.6. Issues Management

6.6.6.1. The RPR shall provide an initial interpretation of the drawings and specifications when questions arise concerning the definition of the drawings and specifications. The RPR shall coordinate a resolution to these issues based upon a final interpretation of the drawings and specifications by the EOR, NBU, and the contractor.

6.6.6.2. The RPR shall track and document issues, procure a resolution, and notify the EOR, NBU, and the contractor via email promptly.

6.6.7. Change Management

6.6.7.1. The RPR shall be responsible for change management as indicated below.

6.6.7.2. The RPR shall establish and document procedures for administering changes to the construction contract.

6.6.7.3. The RPR shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's Texas engineering seal affixed.

6.6.8. Project Completion

- 6.6.8.1. The RPR shall coordinate the start-up and commissioning of the facility and all of the process systems with the EOR, the contractor, and NBU. The RPR shall provide engineering and technical assistance to the contractor during the commissioning process.
- 6.6.8.2. When the contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the RPR shall conduct a review of the Project to determine conformance or non-conformance with the Project design and construction documents. The RPR shall determine if a review of the work is required by the EOR, and if so, shall schedule the reviews of the work with the EOR. The RPR shall prepare a list of deficiencies to be corrected by the contractor before substantial completion is granted and any partial release or reduction of retainage is approved. The RPR shall prepare a certificate of substantial completion that includes a list of work to be completed prior to issuance of a final completion certificate.
- 6.6.8.3. The RPR shall conduct a final review of the Project for conformance with all of the Project documents. The RPR shall confirm work is complete and in accordance with the Project documents prior to recommending final payment.
- 6.6.8.4. The RPR shall assist NBU in obtaining permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the contractor. The RPR shall review and confirm that the contractor has submitted all required documents to NBU prior to recommending the final payment.

6.6.9. Materials Transfer

- 6.6.9.1. The RPR shall coordinate the transfer of and acceptance by the contractor of any NBU-furnished equipment or materials.
- 6.6.9.2. The RPR shall coordinate the transfer of and acceptance by NBU of any contractor-furnished spare parts, materials, keys, etc.

6.6.10. Record Drawings

- 6.6.10.1. The RPR shall receive and review as-built drawings from the contractor. The RPR shall electronically transmit drawings and other documents to the EOR for the preparation of the record drawings. These drawings shall include notations that reflect as-built Project components and conditions. The record drawings shall include RPR's notes, the contractor's field notes, and NBU's field notes made during the construction process.

6.6.11. Limitations of Authority of the RPR

- 6.6.11.1. The RPR shall not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized by the EOR and NBU.

- 6.6.11.2. The RPR shall not exceed limitations of EOR's authority as set forth in the Agreement or the contract documents.
- 6.6.11.3. The RPR shall not undertake any of the responsibilities of the contractor, subcontractor, suppliers, or contractor's superintendent.
- 6.6.11.4. The RPR shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the contract documents.
- 6.6.11.5. The RPR shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work or any activities or operations of NBU or the contractor.
- 6.6.11.6. The RPR shall not accept shop drawing or sample submittals from anyone other than the contractor.
- 6.6.11.7. The RPR shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by NBU.

6.7. CLOSE-OUT DOCUMENTS

6.7.1. RECORD DRAWINGS. The Professional shall prepare the record drawings based on the revised redline construction drawings and information furnished by the construction contractor reflecting changes in the Project made during construction. The Professional shall prepare one (1) set of record drawings at the completion of the Project and submit to NBU via email within 60 days of final completion.

6.8. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

- 6.8.1. Project site visit memos and construction progress meeting minutes within 60 days of final completion; and
- 6.8.2. one (1) PDF electronic copy and one (1) georeferenced DWG file of record drawings, including plans and specifications in accordance with NBU standards, with features adjusted to the location of GPS points collected in the field by the contractor.

6.9. WARRANTY SERVICES. Inspection of the project(s) at the end of the contractor's warranty period is not included within the scope.

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 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 the Supplemental Services unless noted in the supplemental services agreement or contract amendment, as appropriate.

TIME OF COMPLETION

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

Project Milestones	Start Date	End Date
Notice to Proceed	1/8/2024	01/08/2024
90% Final Design	1/8/2024	7/29/2024
100% Final Design	7/29/2024	1/10/2025
Permitting	1/10/2025	4/10/2025
Bid Phase	4/25/2025	10/1/2025
Construction Phase	10/1/2025	4/29/2026



**New Braunfels Utilities
337 Ground Storage Tank
Site Visit Notes
May 10, 2023**

1. GST is on list to be rehabilitated in 2022 per 2021 report.
2. Tank Work Identified:
 - a. Exterior coating is mostly intact but has many breaks that will continue to expand. Some general corrosion was identified. Project to include replacement of exterior coatings on GST.
 - b. Interior coating has general thinning and corrosion. There is significant corrosion of structural shapes and replacement of rafters and center column support is anticipated. Project to include replacement of interior coatings on GST, and interior structural repairs.
 - c. No issue with isolating the tank identified.
3. Site Work Identified:
 - a. Water ponds on the backside of the tank, need to improve drainage. Drainage improvements will be evaluated.
 - b. Soil is washed over the baseplate on the backside of the tank which can accelerate corrosion of the base plate and facilitate moisture intrusion under the floor. Back stabilization or retaining wall to be included in the design.
 - c. Corrosion identified on existing fence to be repaired using cold galvanizing compound.
 - d. Add curb on overflow discharge slab.
4. Recommended Approach
 - a. Need to address TCEQ violations – Failing vent, holes in roof, etc.
 - b. Clean up weld splatter/buckshot from welds
 - c. Remove and replace exterior coatings with polysiloxane system.
 - d. Remove and replace interior coatings with 100% solids elastomeric polyurethane coating.
5. Install isolation valve at 337 ROW.
6. Work not included within this scope:
 - a. Instrumentation improvements (FNI will remove and replace instrumentation, but not SCADA or other electrical improvements).
 - b. Verify if NBU wants to include the following in this project:
 - c. Upgrades to pumps and motors
 - d. Replace check and gate valves on each pump discharge within vault
 - e. Replace gate valve in vault/recoat piping in vaults
 - f. Provide any coating or other improvements to electrical building



Innovative approaches
Practical results
Outstanding service

**New Braunfels Utilities
County Line Standpipe
Site Visit Notes
May 10, 2023**

1. Indicated to be replaced with an EST in years 2031- 2045 (7 – 21 years)
2. Goal - Provide corrosion repairs and coating improvements to extend the life of the tank ± 21 years, with lower cost coatings to minimize the investment, if the tank is demolished earlier.
3. Tank Items
 - a. Exterior coating is mostly intact but has many breaks that will continue to expand. One cross-cut adhesion test was performed during the site visit and the exterior coatings appeared to be a candidate for overcoating, but overcoating is not anticipated to last ± 21 years. Project to include replacement of exterior coatings on GST.
 - b. Interior coating has some spot corrosion, general thinning of coatings and general corrosion starting. There is some corrosion on structural shapes but did not appear to be widespread based on 2020 report. Project to include replacement of interior coatings on GST, and interior structural repairs.
 - c. No issue with isolating the tank identified.
 - d. Need to coordinate relocation of antennas with T-Mobile. FNI will attend meetings with NBU and Owner(s) of antennas to determine constraints during construction and accommodating reinstallation of antennas after rehabilitation.
4. Site Work Identified:
 - a. Replace rubber expansion joints on inlet piping.
 - b. Replace existing fence to enclose entire site (boundary survey required) – 8’ chain-link with no barbed wire preferred. FNI to coordinate with CoNB on fencing requirements within neighborhood.
 - c. No improvements to the overflow structure or drainage included.
 - d. Replace butterfly valve on outlet piping.
5. Recommended Approach
 - a. Need to address TCEQ violations – Failing vent, holes in roof, replace top hatch, etc.
 - b. Leave existing exterior ladders in place. The top exterior platform may need to be replaced to provide safer access, TBD during design.
 - c. Remove and replace exterior coatings with polysiloxane system.
 - d. Remove and replace interior coatings with 100% solids epoxy or polyurethane coating.
6. Work not included within this scope:
 - a. Instrumentation improvements (FNI will remove and replace instrumentation, but not SCADA or other electrical improvements).





Exhibit B

Compensation

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

Services

NBU agrees to pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$1,280,592.

Task	Cost
Task 1: Project Management	\$111,513
Task 2: Final Design Phase	\$458,508
Task 3: Field Services	\$35,564
Task 4: Permitting and Stake Holders	\$18,460
Task 5: Bid Phase Services	\$40,208
Task 6: Construction Phase Services (including Resident Representation)	\$616,339
Total	\$1,280,592

Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$100,000; 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.