

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
(GRUENE WASTEWATER AND INVERTED SIPHON IMPROVEMENTS)**

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

**RECITALS**

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated February 8, 2021 (the “Original Agreement”), for project management, final design phase, field services, permitting and stakeholder coordination, bid phase services, and construction phase services (the “Original Services”) for the Gruene Wastewater and Inverted Siphon Improvements Project (the “Project”) to be completed by December 20, 2021;

WHEREAS, the Original Agreement included supplemental services for professional engineering services, including but not limited to assistance with geotechnical borings, permitting, and environmental investigation (the “Supplemental Services”);

WHEREAS, the Original Agreement did not require Board approval because the cost for the Services and Supplemental Services totaled \$388,808 and did not exceed the \$500,000 threshold for Board approval required by the NBU Purchasing Policy;

WHEREAS, the Parties entered into a First Amendment to Professional Services Agreement on May 27, 2022, to (i) add additional services related to the Project (defined therein); (ii) increase the compensation; (iii) extend the time for completion of the Original Services; (iv) modify the Supplemental Services to allow for general professional engineering services; and (v) increase the compensation for Supplemental Services (the “First Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, the Parties have identified a need to combine the project milestones relating to the odor control and non-odor control components of the Project and add additional services not contemplated in the Agreement, including final design phase services, field services, and construction phase services (the “New Services” and, together with the Original Services, as amended in the First Amendment, the “Services”);

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

WHEREAS, due to the modification in scope, the Parties have also identified a need to increase the amount of Supplemental Services authorized under the Agreement;

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

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

Services, (ii) extend the time of completion, (iii) authorize additional compensation for the New Services, and (iv) increase the amount of Supplemental Services authorized under the Agreement, all as more fully described in Exhibit A and Exhibit B attached hereto.

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

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

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

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

Section 6. Severability. If any term or provision of this Second 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 Second Amendment shall not be affected thereby, and this Second Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This Second 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 Second Amendment on this the \_\_\_\_ day of \_\_\_\_\_, 2024.

**NBU:**

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

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

**THE PROFESSIONAL:**

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

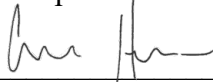
By:  \_\_\_\_\_  
Name: Anne Hoskins  
Title: Principal

Exhibit A

Scope of Services

NO CHANGE

**WASTEWATER PIPELINE**

PROJECT SITE 1

NO CHANGE

PROJECT SITE 2

NO CHANGE

PROJECT SITE 3

NO CHANGE

**GRUENE ROAD SIPHON STRUCTURE**

NO CHANGE

**SERVICES**

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

**Task 1. Project Management**

NO CHANGE

**Task 2. Final Design Phase**

2. The Professional shall perform the final design phase services described below.

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

2.1.1. NO CHANGE

2.1.2. NO CHANGE

2.1.3. 90% design review meeting (two (2) meetings);

- 2.1.4. NO CHANGE
  - 2.1.5. permitting meeting with City of New Braunfels (six (6) meetings);
  - 2.1.6. meetings with additional stakeholders (ten (10) meetings); and
  - 2.1.7. monthly meetings with the NBU Project Manager (twenty (20) meetings).
- 2.2. NO CHANGE
- 2.3. NO CHANGE
- 2.4. NO CHANGE
- 2.5. 100% (FINAL) DESIGN DOCUMENTS. Upon approval of 90% design documents, the Professional shall prepare and submit 100% plans, specifications, and OPCC to the NBU Project Manager via email. 100% design documents shall include:
- 2.5.1. NO CHANGE
  - 2.5.2. NO CHANGE
  - 2.5.3. NO CHANGE
  - 2.5.4. NO CHANGE
  - 2.5.5. additional design document preparation and revisions, as approved by NBU;
  - 2.5.6. additional utility coordination, as approved by NBU; and
  - 2.5.7. additional OPCC preparation, as approved by NBU.
- 2.6. NO CHANGE

**Task 3. Field Services**

3. The Professional shall perform the field services described below.
- 3.1. NO CHANGE
  - 3.2. EASEMENT DOCUMENTS. The Professional shall prepare a metes and bounds description and exhibits for required easements for the Project for up to four (4) parcels approved by NBU.
    - 3.2.1. NO CHANGE
    - 3.2.2. NO CHANGE

3.2.3. NO CHANGE

3.2.4. NO CHANGE

3.2.5. NO CHANGE

3.2.6. NO CHANGE

3.3. NO CHANGE

3.4. NO CHANGE

3.5. NO CHANGE

#### **Task 4. Permitting & Stakeholder Coordination**

NO CHANGE

#### **Task 5. Bid Phase Services**

NO CHANGE

#### **Task 6. Construction Phase Services**

6. The Professional shall proceed with construction phase administration Services described below. The Professional shall provide general construction observation and contract administration services described below.

6.1. MEETINGS AND SITE VISITS. The Professional shall provide the following services for meetings and site visits:

6.1.1. NO CHANGE

6.1.2. NO CHANGE

6.1.3. attend up to a total of eight (8) monthly 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 eight (8) monthly site visits during construction of the Project, as distinguished from the continuous services of a resident Project representative, 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 one (1) substantial completion inspection and punch list review of the Project 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
- 6.1.6. NO CHANGE
- 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 those reports 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. shop drawings (up to twenty (20));
    - 6.2.1.2. NO CHANGE
    - 6.2.1.3. requests for information (up to fifteen (15));
    - 6.2.1.4. schedules (up to twelve (12));
    - 6.2.1.5. certified test reports (up to ten (10));
    - 6.2.1.6. NO CHANGE
    - 6.2.1.7. NO CHANGE
- 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. NO CHANGE
  - 6.3.2. NO CHANGE
  - 6.3.3. The Professional shall prepare field/change order documentation for five (5) field order(s) for minor alterations and three (3) change order(s).
  - 6.3.4. NO CHANGE
- 6.4. NO CHANGE

6.5. NO CHANGE

6.6. NO CHANGE

6.7. RESIDENT REPRESENTATION. The Professional shall have a full-time (forty (40) hours per week) Resident Project Representative (RPR) on all sites for thirty-five (35) weeks and provide an average of ten (10) hours per week of construction management time for forty (40) weeks. The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, are as follows:

6.7.1. NO CHANGE

6.7.2. NO CHANGE

6.7.3. NO CHANGE

6.7.4. NO CHANGE

6.7.5. NO CHANGE

6.7.6. NO CHANGE

6.7.7. NO CHANGE

6.7.8. NO CHANGE

6.7.9. NO CHANGE

6.7.10. NO CHANGE

6.7.11. NO CHANGE

6.8. ABOVE GROUND ASSET INFORMATION. The Professional shall prepare a memorandum that provides the asset information listed below for all above grade facilities for insurance purposes within 30 days after substantial completion by the contractor.

6.8.1. Address

6.8.2. Year Built

6.8.3. Description

6.9. BELOW GROUND ASSET INFORMATION. The Professional shall prepare a memorandum that provides the asset information for all new and abandoned pipelines for insurance purposes within 30 days after substantial completion by the contractor.



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

- 6.10.1. project site visit memorandums and construction progress meeting minutes within seven (7) days after the subject site visit or construction progress meeting;
- 6.10.2. 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 within sixty (60) days after final completion; and
- 6.10.3. one (1) PDF electronic copy of Final Completion memorandum within seven (7) days after final completion walkthrough.

**SUPPLEMENTAL SERVICES**

NO CHANGE

**TIME OF COMPLETION**

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

<b>Project Milestones (Odor Control and non-Odor Control)</b>	<b>Start Date</b>	<b>End Date</b>
Notice to Proceed	NO CHANGE	
Task 1: Project Management	NO CHANGE	1/31/2025
Task 2: Final Design Phase	NO CHANGE	1/31/2025
Task 3: Field Services	NO CHANGE	12/31/2023
Task 4: Permitting and Stakeholder Coordination	9/2/2024	1/31/2025
Task 5: Bid Phase	2/1/2025	6/30/2025
Task 6: Construction Phase	8/1/2025	3/31/2026

Exhibit B

Compensation

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

**Services**

NBU shall pay the Professional for the Services rendered under this Agreement in accordance with the table below and made a part of this Agreement. NBU shall pay the Professional for the Services performed throughout the term of this Agreement not to exceed \$1,086,260.

<b>Cost Breakdown</b>	<b>Original Contract Amount</b>	<b>First Amendment</b>	<b>Second Amendment</b>	<b>Total</b>
Task 1: Project Management	\$17,931	\$0	\$36,670	\$54,601
Task 2: Final Design Phase	\$221,215	\$84,363	\$66,497	\$372,075
Task 3: Field Services	\$59,950	\$17,930	\$23,428	\$101,308
Task 4: Permitting & Stakeholders	\$6,588	\$6,911	\$25,277	\$38,776
Task 5: Bid Phase	\$5,869	\$0	\$20,726	\$26,595
Task 6: Construction Phase	\$40,659	\$0	\$452,246	\$492,905
<b>Grand Total</b>	<b>\$352,212</b>	<b>\$109,204</b>	<b>\$624,844</b>	<b>\$1,086,260</b>

## **Supplemental Services**

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$50,000; provided, however, that NBU must provide written approval in the form of a supplemental agreement, or contract amendment, as appropriate prior to the Professional performing the Supplemental Services.