

PROJECT MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between **FORT BEND COUNTY, TEXAS**, a public body corporate and politic of the State of Texas acting by and through the Fort Bend County Commissioners Court (hereinafter referred to as "County"), and **BINKLEY & BARFIELD, INC.** (hereinafter referred to as "Project Manager").

BACKGROUND INFORMATION

County desires to retain the services of a Project Manager to perform certain Services, as defined hereinafter, for County relating to the management and administrative support services for the 2013 Fort Bend County Mobility Bond Project. County has selected Project Manager as the entity to be engaged as the Project Manager for the project contemplated by County. County and Project Manager desire to execute and enter into this Agreement for the purpose of setting forth their agreement with regard to the foregoing.

STATEMENT OF AGREEMENT

In consideration of the mutual covenants and agreement herein contained, the compensation to be paid to Project Manager hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1. DEFINITIONS

In addition to any other terms which are defined in this Agreement, each of the following terms, when used in this Agreement with an initial capital letter, shall have the following meaning:

1.1 **"Project Management Fee"** means the fee to be paid by County to Project Manager pursuant to Article 8 of this Agreement.

1.2 **"Project"** means the management and administrative support services for the 2013 Fort Bend County Mobility Bond Project.

1.3 **"Service(s)"** means the items described in Article 5 of this Agreement including but not limited to the items described in Exhibit B, "Services to be provided by the Project Managers."

ARTICLE 2. ENGAGEMENT OF PROJECT MANAGER

2.1 Engagement of Project Manager. County hereby engages Project Manager to perform, and hereby grants to Project Manager the right to perform the Services specified in this Agreement, including all attachments and exhibits, subject to and in accordance with the terms and provisions of this Agreement.

2.2 Acceptance by Project Manager. Project Manager hereby accepts its engagement by County, and agrees to perform the Services specified in this Agreement, including all attachments and exhibits, for the benefit of and on behalf of County, subject to and in accordance with the terms and provisions of this Agreement, including all attachments and exhibits.

2.3 County Representative. County hereby designates the County Engineer as its initial authorized representative, except with regard to such matters that require approval of Fort Bend Commissioners Court. County reserves the right to designate additional replacement representatives by written notice to Project Manager. All requests for consent approvals required of County in connection with the Project shall be submitted to the County Engineer. The specific road(s) project from 2013 Fort Bend County Mobility Bond Project, which specific road(s) projects may be changed by the County Commissioners Court, are listed on Exhibit A.

ARTICLE 3. NATURE OF ENGAGEMENT

3.1 Status of Project Manager. In the performance of its duties and obligations under this Agreement, Project Manager is, and shall at all times during the term of this Agreement be, an independent contractor, and not an employee of County. Project Manager shall act solely as the agent of County in the performance of its duties and obligations under this Agreement. All contracts and agreements executed or entered into by Project Manager in connection with the performance of its duties and obligations under this Agreement shall be contracts and agreements on behalf of, and for the account of, County. Project Manager shall obtain County's prior approval of such contracts and agreements.

3.2 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture between County and Project Manager.

ARTICLE 4. TERM OF AGREEMENT

4.1 Term. This Agreement shall not become effective until executed by all parties hereto and shall terminate on September 30, 2018, unless terminated or extended as herein provided.

4.2 Schedule of Services. Project Manager shall provide its Services as described in Exhibit B.

ARTICLE 5. PROJECT MANAGEMENT SERVICES

5.1 Nature of Project Manager's Services and Responsibilities. County acknowledges and agrees that Project Manager's responsibilities under this Agreement consist primarily of advising and consulting with County in connection with the Services. County further acknowledges that Project Manager is not itself preparing any design or engineering plans or specifications for the Project. County agrees that Project Manager shall have no liability for or with respect to professional services rendered by others, plans, designs or specifications provided by others, construction work performed by others, or materials furnished by others in connection with Project Manager's responsibilities under this Agreement. However, Project Manager has certain review functions related to the Services and remains liable for such review functions. Project Manager is not providing legal assistance to County in connection with such negotiations or otherwise. Project Manager will use its best efforts to assist the County in identifying and mitigating any hazardous materials that may exist relative to the Project, but assumes no responsibility to County in so doing. Project Manager is responsible for, and is liable for its performance in accordance with this Agreement of, those Services listed in Exhibit B.

5.2 Project Manager's Team. County hereby authorizes Project Manager to enter into appropriate agreements to procure the services of additional personnel to carry out Project Manager's obligations under this Agreement. The services of any such additional personnel are included within the Project Management Fee.

5.3 Key Personnel. Subject to the following provisions, Project Manager shall select the personnel and provide the Services directly and may reassign personnel if reassignment does not materially impede the performance or schedule of Services. (a) Project Manager represents and warrants that it shall use its best efforts to assign and maintain key personnel to the Project whose qualifications and experience were presented in its written proposal to County, and that all personnel it uses in connection with fulfilling its obligations pursuant to or arising from this Agreement (the "Project Personnel") shall be employees of Project Manager or, if applicable, Project Manager's subcontractor(s) and shall be qualified to perform the tasks assigned them. (b) Project Manager shall provide the resume of any Project Personnel to County upon the written request of County. (c) Project Manager shall notify County of its intent to use any on-site Project Personnel to perform Services under the Agreement and County may refuse the use of such Project Personnel by providing Project Manager notice of such rejection within three (3) business days of notification. (d) The County may, upon written notice to Project Manager, require Project Manager to remove an individual immediately from providing Services for the following reasons: violation of the terms and conditions of this Agreement; violation of the County's work rules and regulations; criminal activity; or violation of state, federal, or municipal statutes. (e) County may, upon ten (10) days

written notice to the Project Manager, require Project Manager to remove an individual from providing Services without cause.

5.4 Project Manager's Services Not Exclusive. The Services to be rendered by Project Manager to County are not exclusive and, during the term of this Agreement, Project Manager and its affiliates may render services similar or identical to those required of it hereunder to other Counties and may itself engage any other activities for its own account or benefit or for others, without any accountability or liability whatsoever to County, provided that County's best interest is represented at all times. Furthermore, any conflict of interest or potential conflict of interest must be disclosed to County prior to the commencement of any Services by Project Manager.

5.5 Project Manager's Cooperation. In performing the Services as identified, the Project Manager shall act diligently and in good faith and shall cooperate fully with the County in all matters relating to the Project. The Project Manager shall act expeditiously on requests by the County regarding Project matters.

ARTICLE 6. COUNTY'S OBLIGATIONS

6.1 Costs and Expenses. Except as expressly set forth in this Agreement to the contrary, County shall bear all costs and expenses of the Project, which are approved by the County. All of the Services performed by Project Manager under this Agreement shall be performed at the cost and expense of, and for the account of, County and shall be included in the Project Management Fee.

6.2 County's Funds; Development Account. County covenants and agrees (without creating any third party beneficiary rights) to make available all funds necessary to pay all Project Management Fees on a current basis.

6.3 County's Cooperation. In performing its functions hereunder, County shall act diligently and in good faith and shall cooperate fully with Project Manager in all matters relating to the Project. County shall act as expeditiously as possible on all requests by Project Manager for approval and execution of any contract, agreement or other document pertaining to the Project. In exercising its rights of approval, County shall act reasonably and in good faith.

ARTICLE 7. BOOKS, RECORDS, REPORTS, FISCAL MATTERS.

7.1 Books. Project Manager shall maintain for County current and complete books of account of all transactions with respect to the Project. Such books of account shall be maintained at Project Manager's office at the Site, or at such other place as the parties shall agree upon, and County and County's accountants and auditors shall have access to such books of accounts at all reasonable times. Project Manager shall maintain said books of account in a safe manner and separate from any books not dealing directly with the Project. Such books of account shall be kept in accordance with sound

accounting practices consistently applied, and otherwise in such manner as shall be reasonably required by County.

7.2 Records. Project Manager shall maintain, in a secure and safe manner, complete and identifiable records on all matters pertaining to Project Manager's activities under this Agreement on behalf of County with respect to the Project.

7.3 Property of County. All such books of account and records shall be and remain the property of County, and, upon the expiration or earlier termination of this Agreement, shall be turned over to County as provided in Article 10 hereof. Such books and records shall thereafter be available to Project Manager at all reasonable times for inspection, audit, examination and transcription for a period of three (3) years from the Expiration Date or earlier date of termination of this Agreement, upon reasonable prior notice to County and at the expense of Project Manager. Any equipment or supplies purchased for County and charged to County by Project Manager, having a usable life at the expiration of this Agreement, shall be the property of the County, and shall be turned over to the County as provided in Article 10.

7.4 Reports. Not later than the tenth (10th) day of each month during the term of this Agreement, with respect to the preceding calendar month, Project Manager shall furnish County a statement of all disbursements recommended to the County by Project Manager in connection with the Project for the preceding calendar month, prepared in such reasonable detail and form as shall be required by County.

7.5 Audit. County shall have the right, during normal business hours, to inspect, copy and audit at any time, and from time to time, all of Project Manager's files, books, records, costs and expenses pertaining to the Project. If County elects to audit Project Manager's files, books, records, costs and expenses pertaining to the Project, and the audit discloses a discrepancy of one percent (1%) or more from the payment applications or invoices, then, in addition to repaying County all sums owing, Project Manager shall pay the cost of the audit.

7.6 No Duty of Project Manager to Provide Funds. Under no circumstances shall Project Manager have any duty or obligation to advance any funds for the account of County, but if Project Manager does, with prior written approval of the County, advance any of its own funds for the account of County, County shall promptly reimburse Project Manager therefor.

ARTICLE 8. COMPENSATION

8.1 Project Management Fee. As compensation for the Services to be rendered by Project Manager pursuant to this Agreement, including all attachments and exhibits, County shall pay to Project Manager a Project Management Fee in an amount not to exceed **\$570,000.00**, including reimbursable expenses. If the scope of the Project or the Services required of Project Manager hereunder decrease, materially decrease,

expand or change, the Project Management Fee shall be equitably changed to reflect the same, upon consent and agreement of County.

8.2 Additional Services. If the scope of the Project or the services required of Project Manager materially expanded from the terms of this Agreement, any attachments and exhibits to this Agreement, any documents incorporated herein, and any written amendments or modifications of this Agreement, the Project Management Fee for such additional services shall be negotiated and subject to a written amendment to this Agreement by the Project Manager and County.

8.3 Payment of Project Management Fee. County and Project Manager shall develop, prior to any payments due to Project Manager, a billing practice by which Project Manager shall submit detailed invoices for payment. The Fort Bend County Engineer shall review all invoices submitted by Project Manager prior to payment. Project Management Fee shall be calculated at hourly rates not to exceed the amounts contained in Exhibit C.

8.4 Reimbursable Expenses. The Project Management Fee for Project Manager's Services, as determined by the method described in Article 8.1 herein, includes out-of-pocket costs of Project Manager for telephone calls (including long-distance and facsimile), postage, cellular phone usage, photo printing, delivery services, parking, mileage at IRS rate and document printing. Travel expenses submitted for reimbursement must be incurred in accordance with County's travel policy. All expenses submitted by Project Manager shall be subject to approval by County prior to reimbursement.

8.5 Time of Reimbursement. Project Manager shall be reimbursed for out-of-pocket costs and expenses, subject to approval by County, on a calendar monthly basis, within thirty (30) days after submission to County of a statement thereof, together with such supporting material and detail as may be reasonably required by County.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 Default by Project Manager. Project Manager shall be in default under this Agreement if Project Manager fails to perform any of its duties and obligations under this Agreement and does not cure or remedy such failure to perform within thirty (30) days after receipt of written notice from County with respect thereto; provided, however, that, if such failure to perform shall necessitate longer to cure than such thirty (30) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if Project Manager commences such cure within thirty (30) days after receipt of written notice from County and thereafter proceeds diligently and in good faith to cure.

9.2 Remedies of County. Upon the occurrence of a default by Project Manager under this Agreement, County may pursue any one or more of the following

remedies, separately or concurrently or in any combination, without further notice or demand whatsoever:

9.2.1 County may terminate this Agreement by giving Project Manager thirty (30) days advanced written notice of such termination, in which event this Agreement shall be terminated at the time designated by County in its notice of termination to Project Manager, subject to the provisions of Article 9 of this Agreement.

9.2.2 With or without terminating this Agreement, County may bring an action against Project Manager to recover from Project Manager all damages, recoverable at law for reason of negligence, suffered, incurred or sustained by County as a result of, by reason of or in connection with such default.

9.3 Default by County. County shall be in default under this Agreement if County fails to perform any of its duties and obligations under this Agreement and does not cure or remedy such failure to perform within thirty (30) days after receipt of written notice from Project Manager with respect thereto; provided, however, that, if such failure to perform shall necessitate longer to cure than such thirty (30) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if County commences such cure within thirty (30) days after receipt of written notice from Project Manager and thereafter proceeds diligently and in good faith to cure.

9.4 Remedies of Project Manager. Upon the occurrence of a default by County under this Agreement, Project Manager may pursue any one or more of the following remedies, separately or concurrently or in a combination, without further notice or demand whatsoever:

9.4.1 Project Manager may terminate this Agreement by giving County thirty (30) days advanced written notice of such termination, in which event this Agreement shall be terminated at the time designated by Project Manager in its notice of termination to County.

9.4.2 With or without terminating this Agreement, Project Manager may bring an action against County to recover from County all damages, recoverable at law, suffered, incurred or sustained by Project Manager as a result of, by reason of or in connection with such default.

9.5 Other Remedies. In the event of the occurrence of a default hereunder, the prevailing party shall, in addition to its other rights and remedies hereunder, have the right to recover from the party in default all reasonable costs and expenses incurred by the prevailing party in enforcing its rights and remedies hereunder, including reasonable attorneys' fees. The termination of this Agreement by either Project Manager or County by reason of default by the other party shall not relieve either party of any of its duties and

obligations theretofore accrued under this Agreement prior to the effective date of such termination.

ARTICLE 10. EXPIRATION, TERMINATION, SUSPENSION OR ABANDONMENT.

10.1 Terminating Events. The engagement of Project Manager hereunder may be terminated upon the happening of any of the following events pursuant to the provisions described below:

10.1.1 Either County or Project Manager defaults under this Agreement and the non-defaulting party elects to terminate this Agreement as provided in Article 9 hereof.

10.1.2 The giving of written notice from County in the event: (i) any receiver, trustee or custodian shall be appointed for all or any substantial part of the property or assets of Project Manager; (ii) Project Manager shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or (iii) an "order for relief" or other judgment or decree by any court of competent jurisdiction is entered against Project Manager in any involuntary proceeding against Project Manager under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against Project Manager and shall continue for a period of ninety (90) days after commencement without dismissal.

10.1.3 The giving of written notice from Project Manager in the event: (i) any receiver, trustee or custodian shall be appointed for all or any substantial part of the property or assets of County; (ii) County shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or (iii) an "order for relief" or other judgment or decree by any court of competent jurisdiction is entered against County in any involuntary proceeding against County under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against County and shall continue for a period of ninety (90) days after commencement without dismissal.

10.1.4 The giving of written notice from County that the Project is being either abandoned or suspended for more than three hundred sixty-five (365) consecutive days.

10.1.5 The giving of written notice from Project Manager if the Project is suspended by County for more than ninety (90) consecutive days.

10.1.6 County may terminate this agreement, without cause, by providing Project Manager thirty (30) days prior written notice.

10.2 Project Manager's Obligations. Upon the expiration or earlier termination of this Agreement, Project Manager shall promptly:

10.2.1 Upon request by County, deliver to County or such other person as County shall designate all materials, supplies, equipment, keys, contracts and documents, all books of account maintained pursuant to Article 7.1 hereof, and all records maintained pursuant to Article 7.2 hereof, pertaining to this Agreement and the Project.

10.2.2 Subject to Project Manager's obtaining any consent of any third party required therefor, assign all existing contracts approved by County relating to the Project to County or such other person or entity as County shall designate. Any contract or agreement that Project Manager negotiates on behalf of County that is subject to this paragraph shall contain a statement that prohibits such third party from unreasonably withholding the requisite consent.

10.2.3 Furnish all such information, take all such other action, and cooperate with County as County shall reasonably require in order to effectuate an orderly and systematic termination of Project Manager's services, duties, obligations and activities hereunder.

10.2.4 Within thirty (30) days after the expiration or termination of this Agreement, cause to be furnished to County a report similar in form and content to Project Manager's monthly reports covering the period from the last previous monthly report to the date of expiration or termination of this Agreement.

10.2.5 Furnish a report of all outstanding orders for services, materials and supplies ordered by Project Manager as a result of its obligations arising under this Agreement at the time of expiration or termination. Such report shall include the status of payment for such services, i.e., whether they have been charged to or paid by Project Manager, and whether they have been charged to or paid by County. Such report shall be furnished no later than thirty days after the date of expiration or termination.

10.3 County's Obligations. Upon the expiration or earlier termination of this Agreement, County shall promptly:

10.3.1 Assume any contracts which may have been entered into by Project Manager in its own name relating to the Project, provided, however, that County has specifically authorized Project Manager to enter into such contract.

10.3.2 Pay the cost of all services, materials and supplies, if any, which may have been ordered by Project Manager as a result of its obligations arising under this Agreement that has not been charged to or paid by Project Manager and reimbursed under this Agreement at the time of expiration or termination, but have since been paid for by Project Manager and were included in the report submitted pursuant to Article 10.2.5; provided, however, that County actually receives such services, materials and supplies in a satisfactory manner or condition; provided further that demand for such payment is in a reasonable and timely manner.

10.4 Suspension. If the Project is suspended by County for more than thirty (30) consecutive days, Project Manager shall be compensated for services prior to notice of such suspension. In the event the Project is resumed, the Project Management Fee shall be equitably adjusted by written amendment to this Agreement to provide for Project Manager's expenses incurred in the interruption and resumption of its services.

ARTICLE 11. INSURANCE.

11.1 Project Manager's Insurance Requirements. Throughout the term of this Agreement, Project Manager shall carry and maintain in force the insurance described in Subsections 11.1.1 through 11.1.4, below.

11.1.1 Commercial General Liability Insurance (including protective liability coverage on operations of independent contractors engaged in construction, blanket contractual liability coverage, products liability coverage, and explosion, collapse and underground hazards coverage) for the benefit of Project Manager, against claims for personal injury, bodily injury and property damage, with a limit of not less than One Million Dollars (\$1,000,000) in the event of personal injury or bodily injury to any number of persons or of damage to property arising out of any one occurrence, and not less than \$1,000,000 in the aggregate applicable to this Project.

11.1.2 Workers' compensation insurance covering all employees of Project Manager employed in, on or about the Project in order to provide statutory benefits as required by the laws of the State of Texas.

11.1.3 Automobile Liability: \$300,000 combined single limit per accident for bodily injury and property damage. County shall be named as Additional Insured for this coverage.

11.1.4 Professional Liability: \$1,000,000 aggregate covering Project Manager in connection with the services to be provided by Project Manager under this Agreement.

11.1.5 Project Manager shall, upon County's request, furnish County with appropriate certificates evidencing the insurance required to be maintained by Project Manager hereunder. If Project Manager for any reason fails to obtain and/or maintain in force any of the insurance required under Subsections 11.1.1 through 11.1.4, above, then Project Manager shall, and Project Manager does hereby agree to, indemnify County against, and hold, save, and defend County harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which County may suffer or incur, or which may be asserted against County, whether meritorious or not, against which County would or should have been insured under any required insurance which Project Manager does not for any reason obtain or maintain in force.

ARTICLE 12. STANDARD OF CARE: LIABILITY: INDEMNITY.

12.1 Standard of Care. In the performance of its duties and obligations under this Agreement, Project Manager shall, subject to budgetary constraints and limitations imposed by County on the Project, perform diligently and in good faith.

12.2 Limitations on Liability. Neither Project Manager nor any agent or employee of Project Manager shall have any liability to County for any reasonable mistakes or errors of judgment, for any reasonable mistakes of fact or of law, or for any act or omissions within the scope of the authority conferred upon Project Manager by this Agreement; provided, however, that the foregoing shall not extend to losses, damages or expenses suffered or incurred by County if and to the extent the same are caused by any gross negligence or willful misconduct of Project Manager or its agents or employees.

12.3 Indemnity. Project Manager shall, and Project Manager does hereby agree to, indemnify County against, and hold and save County harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which County may suffer or incur, or which may be asserted against County, whether meritorious or not, which are caused by any gross negligence or willful misconduct of Project Manager or its agents or employees. Such indemnity shall continue notwithstanding the expiration or earlier termination of this Agreement with respect to any occurrence preceding such expiration or termination. The foregoing notwithstanding, County does not waive any immunity to which it is statutorily entitled.

12.4 Relationship to Insurance In no event shall the indemnification provisions of Sections 12.3 above, diminish, affect, impede or impair, in any manner whatsoever, the benefits to which County may be entitled under any insurance policy with respect to the Project required by this Agreement or otherwise, or under the terms of any waiver of any subrogation contained therein.

12.5 No Third-Party Beneficiaries. None of the duties and obligations of Project Manager under this Agreement shall in any way or in any manner be deemed to create any liability of Project Manager to, or any rights in, any person or entity other than County.

12.6 Independent Contractors. No person who shall be engaged as an independent contractor by either County or Project Manager, or both, shall be considered an employee, servant, agent or other person for whom either County or Project Manager (as the case may be) is responsible for the purposes of Indemnifications in the foregoing Sections of this Article 12.

ARTICLE 13. REPRESENTATIONS AND WARRANTIES.

13.1 Of County. County represents and warrants to Project Manager that: (i) County is a public body corporate and politic, duly organized, validly existing and in good standing under the laws of the State of Texas, is qualified to transact business in the State of Texas, and has the full and complete right, power and authority to enter into this Agreement and perform County's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement; and (ii) County is the true and lawful County of the Project.

13.2 Of Project Manager. Project Manager represents and warrants to County that: (i) Project Manager is a corporation, duly organized, validly existing and in good standing under the laws of the State of Texas, is qualified to transact business in the State of Texas, and has the full and complete right, power and authority to enter into this Agreement and perform Project Manager's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement; and (ii) Project Manager has obtained or will obtain all necessary licenses and permits which are required for Project Manager to perform Project Manager's Services pursuant to this Agreement.

13.2.1 Project Manager warrants to County that: (1) Project Manager possesses the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and Project Manager will use its best efforts to ensure that the Services provided under this Agreement will be performed, delivered, and conducted in accordance with the highest professional standards and in accordance with industry standards, (2) Project Manager will use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of County, and (3) following the date of acceptance of this Agreement, the Services provided by Project Manager to County will conform to the representations contained in this Agreement, including all attachments, schedules and exhibits. All warranties provided by Project Manager in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to County.

13.2.2 Project Manager warrants that the Project shall be completed for an amount not to exceed the proposed Project Management Fee.

ARTICLE 14. GENERAL PROVISIONS.

14.1 Relationship Between Parties. The relationship of the parties shall be limited to the Project. Nothing herein shall be deemed to authorize Project Manager to act as the general agent of County.

14.2 Notices. Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally-recognized commercial courier for next business day delivery, to the addresses set forth below or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile to the number for each party set forth below or to such other numbers as are specified by written notice given in accordance herewith:

COUNTY: Fort Bend County
Attention: Robert E. Hebert, County Judge
401 Jackson Street
Richmond, Texas 77469

**PROJECT
MANAGER:** Binkley & Barfield, Inc.
Attention: David A. Hamilton, P.E.
1710 Seamist Drive
Houston, Texas 77008

Copy to: Fort Bend County Engineering
Attention: Richard W. Stolleis, P.E.
301 Jackson Street
Richmond, Texas 77469

Copy to: Fort Bend County Purchasing
Attention: Gilbert Jalomo
301 Jackson Street
Richmond, Texas 77469

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by facsimile shall be deemed given on the date of facsimile transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address or facsimile number of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the date of facsimile transmittal, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

14.3 Assignment: Binding Effect. The rights of the parties under this Agreement are personal to the parties and may not be assigned without prior written consent of the other party, which consent shall not be unreasonably withheld; This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and permitted assigns.

14.4 Authorized representatives. Any consent, approval, authorization or other action required or permitted to be given or taken under this Agreement by County or Project Manager, as the case may be, shall be given or taken by one or more of the authorized representatives of each. For purposes of this Agreement; (i) the authorized representatives of County shall be any one or more of the following – Robert E. Hebert or designee, (ii) the authorized representatives of Project Manager shall be **David A. Hamilton** or designee. Any party hereto may from time to time designate other or replacement authorized representatives to the other party hereto. The written statements and representations of any authorized representative of County or Project Manager shall be binding upon the party for whom such person is an authorized representative, and the other party hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he proposes to take.

14.5 Headings. The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

14.6 Exhibits, Attachments and Schedules. Each and every exhibit, attachment and schedule referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth verbatim every time it is referred to or otherwise mentioned.

14.7 Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

14.8 Pronouns. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

14.9 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

14.10 Non-Waiver. Failure by either party to complain of any action, non-action or default of the other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by either party of any right arising from any default of the other party shall not constitute a waiver of any other right arising from a subsequent default of the same obligation or for any other default, past, present or future.

14.11 Rights Cumulative. All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

14.12 Time of Essence. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration of this Agreement.

14.13 Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Texas. Venue for any action regarding this agreement shall lie in Fort Bend County, Texas and/or the United States District Court, Southern District of Texas, Houston Division.

14.14 Entire Agreement. This Agreement, including Exhibits A & B, contains the entire agreement of County and Project Manager with respect to the engagement of Project Manager as the Project Manager for the Project, and all representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of no force or effect.

14.15 Modifications. This Agreement shall not be modified or amended in any respect except by a written agreement executed by County and Project Manager in the same manner as this Agreement is executed.

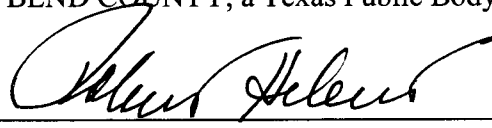
14.16 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, County and Project Manager have caused their respective duly authorized representatives to execute, seal and deliver this Agreement, all as of the day and year first above written.

COUNTY:

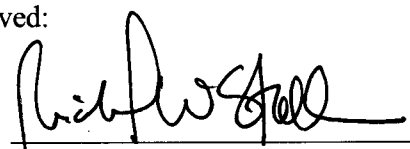
FORT BEND COUNTY, a Texas Public Body

By: 
Robert E. Hebert, County Judge
Fort Bend County Commissioners Court

Date: 9-2-2014

Attest: 
Dianne Wilson, County Clerk

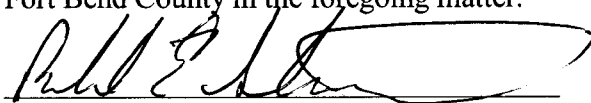


Approved:
By: 
Richard W. Stolleis, P.E.
County Engineer

9/2/14
Date

AUDITOR'S CERTIFICATE

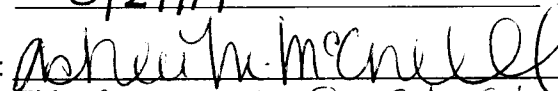
I hereby certify that funds are available in an amount not to exceed \$570,000.00 to accomplish and pay the obligation of Fort Bend County in the foregoing matter.


Robert Ed Sturdivant, County Auditor

PROJECT MANAGER: Binkley + Barfield, Inc.

By: 
David A. Ham, Hon. PE.

Date: 8/27/14

Attest: 
Title: Corporate Secretary

[CORPORATE SEAL]

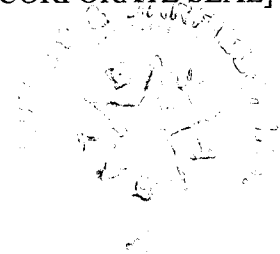


Exhibit A

Binkley & Barfield

Proj #	Name	Limits	Bond Amount
13101	1st Street (Kendleton)	FM 2919 to Crawford Street	\$1,800,000
13102	A Myers Road	Berdett to Royal Lakes Blvd.	\$6,100,000
13105	Doris Road RR Overpass	At KCSRR/US 59	\$6,000,000
13107	Ladonia Street	Compton Street to Brisco Canal	\$2,800,000
13109	Old Needville Fairchild Road	FM 361 to City limit (near SH 36)	\$7,300,000
13110	Powerline Road	S curve to NW of Sunrise Meadow DR.	\$400,000
13111	Sansbury Boulevard	FM 762 to Canyon Lake Drive	\$4,400,000
13112	South Post Oak Road	Hunter Green to Trammel Fresno	\$4,500,000
13113	Sycamore Road	Eaglewood Trail to Rabb Rd.	\$800,000
13115	Willie Melton Boulevard	West of FM 2919	\$1,400,000

10 Projects

Total Bond Amount

\$35,500,000

Project Management Fee

\$570,000

Exhibit B

2013 Mobility Bond Program FORT BEND COUNTY, TEXAS

Services to be provided by
Project Managers

All services provided by the Project Manager (PM) shall be under the direct supervision of the County Engineer. The PM may provide additional services not specifically listed below at the request of the County Engineer.

Project Scoping

The PM will work with the County Engineer to prepare a preliminary project scope which will document and describe in detail the basic elements of the project. The scope will clearly define the engineering consultant's services; establish the project limits, typical sections, specific roadway or structural design issues, hydraulic considerations, environmental/permitting issues and commitments, ROW requirements, and utility coordination requirements. The PM will also provide a preliminary construction estimate and schedule (design through construction). This scope will serve as a starting point for engineering consultant negotiations.

Engineering Consultant Negotiations

Each selected engineering consultant will be provided a scope of services. The PM will assist the County Engineer in reviewing, evaluating and negotiating the fee proposals for each engineering consultant. The PM will provide a recommendation to County Engineer for acceptance or rejection of engineering consultants fee proposals.

Project Documentation

The PM will be responsible for documenting the progress of the project including coordination and communication, monthly progress reporting, contract administration, invoicing and document filing.

Project Kick-Off Meeting

The PM will facilitate a kick-off meeting with each engineering consultant. The purpose of this meeting will be to ensure that consultants and the PM have a thorough understanding of project issues, deliverables, schedules and procedures that will be used on this Project

Engineering Design Management

Each engineering consultant will use the information from the project concept report and Summary of Design Process to prepare a Preliminary Engineering Report (PER). The PM will prepare a PER table of contents and format guidelines to be distributed to the engineering consultants. The PM will review all submitted PERs, including 30% complete plans and provide comments back to the engineering consultants within a two-week period.

The plans, specifications, and estimate (PS&E) will begin once each PER has been approved by the County Engineer. Once PS&E has begun, the PM will monitor engineering consultant work relative to contract requirements and will be responsible for reviewing the engineering consultant's quality assurance/control (QA/QC) plan. The PM will review PS&E at 70%, 95% and 100% final submittal. Each review will include all appropriate disciplines (including a 70% constructability review by the Construction Manager), focusing on consistency in design with the project intent, appropriateness of design solution, and compliance with the Summary of Design Process, design criteria, specifications and standards. The PM will review each submittal and provide comments within two weeks of submission. The PM will facilitate a comment resolution meeting, if needed, to discuss and resolve comments before advancing to the next phase of PS&E.

The PM will facilitate a monthly consultant coordination meeting to evaluate the consultant's progress against baseline schedule of all PS&E activities. Each consultant will be expected to report on progress, identify project issues and bring potential solutions to these meetings. The PM will make reasonable attempts to assist the consultants to ensure schedules are met.

At the request of the County Engineer, the PM will assist with community involvement meetings with select projects. Supporting engineering exhibits will be prepared by the engineering consultants.

Utility Coordination

The PM will prioritize the needs of multiple projects on a program basis. The PM will prepare for and participate in a program wide presentation to utility and pipeline companies. This meeting will be scheduled and facilitated by the County Engineer.

Each engineering consultant will perform an initial investigation and define the utility lines and facilities that could potentially be in conflict with the construction and will issue an initial project notification and preliminary design letter. The engineering consultant will perform thorough records research and meet with the utility companies at a preliminary design meeting.

Actual utility conflicts identification occurs at 30% PS&E. The PM will meet with the utility companies as necessary to discuss the project schedule, utility field verification and to address any concerns associated with the project. The PM will

work with the utility companies to clear the utilities prior to construction. The PM will work closely with the County's ROW acquisition firm to coordinate the utility schedule milestone dates to correlate with ROW acquisition, design, letting and construction dates. All pipeline and utility adjustment agreements will be prepared by County's ROW acquisition firm. Exhibits will be prepared by the engineering consultants and/or pipeline and utility companies.

The PM will continue coordination of known utility and pipeline relocations through construction. New utility and pipeline conflicts identified during construction will be coordinated by the Construction Manager.

ROW Mapping & Acquisition

The PM will assist the County Engineer with the management of the ROW acquisition phase as needed. The PM will monitor, coordinate and report on the status of ROW acquisition activities performed by the County's property acquisition consultant.

Environmental Coordination

The PM will coordinate with the Environmental Consultants regarding any environmental concerns on projects in the program.

Bid and Construction Phase Services

The PM will provide the following bid and construction phase services:

- Facilitate the delivery of bid documents by the Engineering Consultant to the County Purchasing Department
- Attend the pre-bid meeting
- Facilitate the preparation of addenda by the Engineering Consultant for distribution by the County Purchasing Department
- Prepare a bid tabulation for each project
- Participate in a "hand-over" meeting with Construction Manager for each project
- Attend a preconstruction meeting to be facilitated by the Construction Manager

List of Deliverables

The following deliverables will be prepared by the PM and submitted to the County as part of this Project

- Scope of Services for each project. Content and format will be approved by the County Engineer
- Project schedule template
- Monthly progress report template for engineering consultants
- Web based project monthly report
- Preliminary Engineering Report guidelines and format

EXHIBIT C
Binkley & Barfield, Inc.

<u>CLASSIFICATION</u>	<u>2014</u> <u>BILLABLE</u> <u>RATES</u>
Principal (Eng. VII)	\$231.00
Sr. Project Manager (Eng. VI)	\$218.25
Project Manager (Eng. V)	\$185.00
Structural Engineer	\$185.00
Project Engineer (Eng. IV)	\$155.00
Process/Civil/Engineer	\$155.00
Electrical & Instrumentation Engineer	\$155.00
Associate/Staff Engineer (Eng. III)	\$132.00
Graduate Engineer (EIT)	\$105.00
Sr. SUE Designator	\$90.00
Sr. Electrical Designer	\$136.00
Production Manager	\$205.00
Sr. CADD/Designer	\$129.00
CADD/Designer	\$116.00
CADD Operator	\$95.00
Sr. Clerical / Sr. Administrator	\$78.75
Clerical / Administrator	\$72.00

Note:

1. For years past 2014, maximum rates can be determined using an annual escalation rate of five percent, or, will be renegotiated.
2. Subconsultant, reproduction, delivery and other associated expenses shall be reimbursed at cost plus 10%.
3. Mileage shall be reimbursed at the current Federal rate as published by the IRS.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/26/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER John L. Wortham & Son, L.P. P. O. Box 1388 Houston, TX 77251-1388	CONTACT NAME: John L. Wortham & Son, L.P.
	PHONE (A/C, No, Ext): 713-526-3366 FAX (A/C, No): 713-521-1951
	E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE
	INSURER A: Hanover Lloyds NAIC # 41602
	INSURER B: Allmerica Financial Benefit NAIC # 41840
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

INSURED
Binkley & Barfield, Inc.
1710 Seamist Drive, Suite 201
Houston, TX 77008
713-869-3433

COVERAGES**CERTIFICATE NUMBER:** 21341750**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:			ZLDA25157100	3/20/2014	3/20/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS			AWDA25159000	3/20/2014	3/20/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	WLDA23163700	3/20/2014	3/20/2015	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Project Management Agreement for Mobility

CERTIFICATE HOLDER**CANCELLATION**

Fort Bend County
Attn: Robert E. Hebert, County Judge
401 Jackson Street
Richmond TX 77469

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John L. Wortham & Son, L.P.

John L. Wortham & Son, L.P.

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ACORD 25 (2014/01)

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/26/2014

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PRODUCER John L. Wortham & Son, L.P. P. O. Box 1388 Houston, TX 77251-1388	CONTACT NAME: John L. Wortham & Son, L.P.	FAX (A/C, No): 713-521-1951	
	PHONE (A/C, No, Ext): 713-526-3366	E-MAIL ADDRESS:	
INSURED Binkley & Barfield, Inc. 1710 Seamist Drive, Suite 201 Houston, TX 77008 713-869-3433	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Ace American Insurance Company		22667
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES**CERTIFICATE NUMBER:** 21341774**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						
	☐ CLAIMS-MADE ☐ OCCUR						EACH OCCURRENCE \$
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						
	☐ ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per person) \$
	☐ HIRED AUTOS						BODILY INJURY (Per accident) \$
	☐ SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ NON-OWNED AUTOS						\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	☐ OCCUR						AGGREGATE \$
	EXCESS LIAB						\$
	☐ CLAIMS-MADE						\$
	DED ☐ RETENTION \$						PER STATUTE ☐ OTH-ER ☐
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						E.L. EACH ACCIDENT \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☐ N ☐ N/A						E.L. DISEASE - EA EMPLOYEE \$
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability			EONG23662863007	7/12/2014	7/12/2015	\$1,000,000 Each Claim \$1,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

Fort Bend County
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