

**Fort Bend County Engineering**  
FORT BEND COUNTY, TEXAS

Richard W. Stolleis, P.E.  
County Engineer

## MEMORANDUM

March 6, 2018

**TO: Members of the Commissioners Court**

**RE: Binkley & Barfield – Project Management, 2017  
Mobility**

The total cost of the Agreement is \$800,000. The funding will be transferred from the following projects:

| <b>Project No.</b>            | <b>Project Name</b>           | <b>Amount</b>    |
|-------------------------------|-------------------------------|------------------|
| X9                            | Humphrey Way                  | \$50,000         |
| X18                           | Front Street                  | \$50,000         |
| 17102                         | Ransom Road                   | \$20,000         |
| 17103                         | Ransom Road                   | \$120,000        |
| 17105                         | Bamore Road, Seg. 2           | \$120,000        |
| 17108                         | Old Needville-Fairchilds Road | \$70,000         |
| 17110                         | Benton Road, Seg. 1           | \$100,000        |
| 17112                         | Masterson Road                | \$75,000         |
| 17114                         | Intersection Improvements     | \$100,000        |
| 17115                         | Avenue J Extension            | \$10,000         |
| 17116                         | Williams School Road          | \$25,000         |
| 17118                         | Bryan Road                    | \$60,000         |
| <b>Project Management Fee</b> |                               | <b>\$800,000</b> |

## **PROJECT MANAGEMENT AGREEMENT FOR THE 2017 FORT BEND COUNTY MOBILITY BOND PROGRAM**

**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 2017 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 2017 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 2017 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 March 6, 2022, 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 \$800,000.00, 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 Engineering Department  
Attention: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

Copy to: Fort Bend County  
Attention: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

**PROJECT  
MANAGER:** Binkley & Barfield, Inc.  
Attention: Kevin Mineo, P.E.  
1710 Seamist Drive  
Houston, Texas 77008

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 **Kevin Mineo** 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 & C, 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.

14.17 Certain State Law Requirements for Contracts. 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.

14.17.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Contractor verifies Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

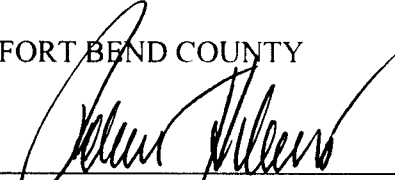
14.17.2. Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

*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

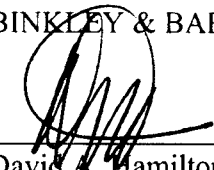
  
Robert E. Hebert, County Judge

Date

3-13-2018

**PROJECT MANAGER:**

BINKLEY & BARFIELD, INC.

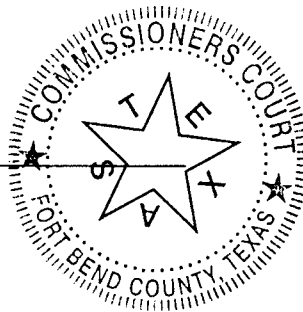
  
David A. Hamilton, P.E.,  
Executive Vice President/Partner

Date

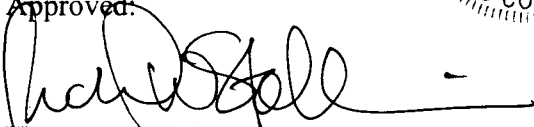
2/28/18

Attest:

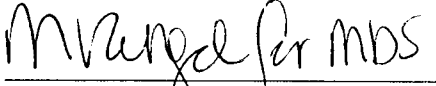
  
Laura Richard, County Clerk



Approved:

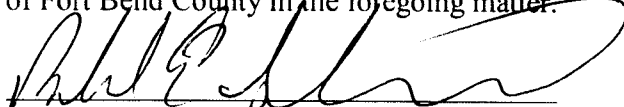
  
Richard W. Stolleis, P.E.  
County Engineer

Approved as to Legal Form:

  
Marcus D. Spencer  
First Assistant County Attorney

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in an amount not to exceed **\$800,000.00** to accomplish and pay the obligation of Fort Bend County in the foregoing matter.

  
Robert Ed Sturdivant, County Auditor

## Exhibit A

**Binkley & Barfield, Inc.**

| <b>Proj #</b> | <b>Name</b>                   | <b>Limits</b>                          | <b>Bond Amount</b> |
|---------------|-------------------------------|----------------------------------------|--------------------|
| x9            | Humphrey Way                  | Braxton Road Bridge to FM 541          | \$0                |
| x18           | Front Street                  | Wheaton Street to FM 762               | \$0                |
| 17102         | Ransom Road                   | FBCLID#10 Levee to SH 99 (DESIGN ONLY) | \$520,000          |
| 17103         | Ransom Road                   | MUD 121 Levee to Williams Way          | \$3,310,000        |
| 17105         | Bamore Road Seg. 2            | Klauke Road to Cottonwood              | \$3,400,000        |
| 17108         | Old Needville-Fairchilds Road | SH 36 to Needville City Limit          | \$1,880,000        |
| 17110         | Benton Road Seg. 1            | FM 762 to Rosenberg City Limit         | \$2,820,000        |
| 17112         | Masterson Road                | FM 521 to Ladonia                      | \$2,100,000        |
| 17114         | Intersection Improvements     | Multiple Locations                     | \$2,840,000        |
| 17115         | Avenue J Extension            | I 69 to First Street (DESIGN ONLY)     | \$180,000          |
| 17116         | Williams School Road          | At FM 360                              | \$730,000          |
| 17118         | Bryan Road                    | Rosenberg City Limit to FM 2977        | \$1,700,000        |

**12 Projects**

**Total Bond Amount    \$19,480,000**

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**Project Management Fee    \$800,000**

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## **Exhibit B**

### **Mobility2017 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 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 Design Consultant's services. PM will provide conceptual documents including:

- Establish the Project Limits
- Typical Sections
- Specific roadway or structural design issues.
- Hydraulic Considerations,
- Environmental permitting issues,
- ROW Requirements,
- Utility Coordination Requirements.
- Provide preliminary construction cost estimate,
- Provide preliminary design and construction schedule.

This scope will serve as a starting point for Design Consultant negotiations.

#### **Engineering Consultant Negotiations**

- The PM will provide a scope of services and schedule to Design Consultant.
- The PM will evaluate and negotiate the fee proposals for each Design Consultant.
- The PM will provide a recommendation to the County Engineer for acceptance or rejection of Design Consultant's fee proposal.
- If accepted by the County, the PM will provide the proposal and contract worksheet needed for the County Attorney to prepare and agreement.

#### **Project Documentation**

The PM will document the progress of the project including:

- coordination and communication,

- monthly progress reporting,
- contract administration,
- Invoicing,
- And document filing.

The four PM's will work together to maintain a consolidated schedule which will be updated monthly. The Schedule will include the original planned schedule and the actual milestone schedule for each project.

## **Project Kick-Off Meeting**

The PM will schedule and conduct a kick-off meeting with each Design Consultant. The purpose of this meeting will be to ensure that the Design Consultant and the PM have a thorough understanding of the project issues, deliverables, schedule, and procedures that will be used for the Project.

## **Engineering Design Management**

PM's responsibility for the Preliminary Engineering Report (PER):

- Each Design Consultant will use the information from the executed contract and Summary of Design Process to prepare a PER.
- The PM will prepare a PER Table of Contents and format guidelines to be distributed to the Engineering Consultants
- The PER should identify utility conflicts and ROW requirements.
- Prior to submitting the PER, the Design Consultant will present the PER information to the County and PM.
- The PM will review all submitted PERs, including the 30% submitted plans and provide comments back to the engineering consultants within a two week period.

## **Plans, Specification and Estimate (PS&E)**

The preparation of PS&E will begin once each PER has been approved by the County Engineer. Once the PS&E phase has begun, the PM will monitor the Design Consultant work relative to the contract requirements.

The PM will review the PS&E at 70%, 95% and 100% submittals. Each review will include all appropriate disciplines, focusing on the consistency in design, compliance with the Summary of Design Process, design criteria, specifications, and design standards.

- The PM will review each design 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.

- If necessary, the PM will facilitate a monthly Design Consultant coordination meeting to evaluate the Design Consultant's progress against the baseline schedule of all PS&E activities.
- Each Design Consultant will be expected to report on progress, identify project issues and bring potential solutions to the meeting.
- The PM will assist the consultants to ensure that schedules are met.

At the request of the County Engineer the PM will assist the County with Community involvement meetings with selected projects. Supporting engineering exhibits will be prepared by the Design Consultants.

## **Invoice Review**

The Design Consultant will submit invoices directly to the County Engineer, and copy the County Engineer's staff person and the PM. The PM will review and approve or comment within 5 days of receipt.

## **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 the utility and pipeline companies.
- The Program-Wide Utility Coordination Meeting will be scheduled and facilitated by the PM with the County Engineer presenting the information.
- Assist in identifying all major utilities within the project limits using available information.
- The PM will distribute this information to the applicable Design Consultant.
- The Design Consultant will be responsible for verifying all utilities and discovering any additional utilities within their project limits.
- Actual conflict identification occurs at the start of the PS&E preparation. 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 lead in expediting utility adjustments/relocations and conflict resolution before and during construction.
- The PM will work closely with the County's ROW acquisition firm to coordinate the utility schedule milestone dates to correlate with the ROW acquisition, design, letting and construction dates.
- All pipeline and utility adjustment agreements will be prepared by the County Attorney using Exhibits prepared by the design consultants and/or pipeline and utility companies.
- The PM will continue coordination of utility and pipeline relocations through the construction phase.

## **ROW Mapping and 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 the acquisition activities performed by the County's property acquisition firm.

## **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 Design Consultant to the County Purchasing Department.
- Attend the Pre-Bid Meeting.
- Facilitate the preparation of Addenda by the Design Consultant for distribution by the County Purchasing Department.
- Prepare the bid tabulation for each project.
- Conduct a Pre-construction 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 the Project:

- Scope of Services for each Project. The Content and format will be approved by the County Engineer.
- Project Schedule updated monthly
- Web base project monthly report.
- Preliminary Engineering Report format and guidelines.
- Facilitate the delivery of a complete Project including Design, ROW, Environmental Permits, Utilities Cleared and approval of other agencies (TxDOT, City, MUD, LID, Etc.)
- And all other tasks as assigned.

The PM will perform other tasks as assigned by Fort Bend County.

## Exhibit C

**Binkley & Barfield, Inc.**  
Billable Fee Schedule  
Effective 2018

| <u>CLASSIFICATION</u>                 | <u>2018<br/>BILLABLE<br/>RATES</u> |
|---------------------------------------|------------------------------------|
| Principal (Eng. VII)                  | \$243.00                           |
| Sr. Project Manager (Eng. VI)         | \$229.00                           |
| Project Manager (Eng. V)              | \$194.00                           |
| Structural Engineer                   | \$194.00                           |
| Construction Manager (Eng V)          | \$194.00                           |
| Project Engineer (Eng. IV)            | \$163.00                           |
| Process / Civil / Engineer            | \$163.00                           |
| Electrical & Instrumentation Engineer | \$163.00                           |
| Associate / Staff Engineer (Eng. III) | \$139.00                           |
| Engineer Technician                   | \$136.00                           |
| Graduate Engineer (EIT)               | \$125.00                           |
| Crew - 2 person                       | \$185.00                           |
| Construction Observer / Sr. Inspector | \$125.00                           |
| Construction Observer / Inspector II  | \$116.00                           |
| Construction Observer / Inspector I   | \$95.00                            |
| Sr. Designator                        | \$105.00                           |
| Designator                            | \$90.00                            |
| Sr. Utility Coordinator               | \$151.00                           |
| Utility Coordinator                   | \$132.00                           |
| Production Manager                    | \$205.00                           |
| Production Technician                 | \$84.00                            |
| Sr. Electrical Designer               | \$143.00                           |
| Sr. CADD / Designer                   | \$135.00                           |
| CADD / Designer                       | \$122.00                           |
| CADD Technician                       | \$100.00                           |
| Sr. Clerical / Sr. Administrator      | \$85.00                            |
| Clerical / Administrator              | \$80.00                            |
| 3D Modeling (Per day)                 | \$788.00                           |

Mileage shall be reimbursed at the current Federal rate as published by the IRS.

**CERTIFICATE OF INTERESTED PARTIES****FORM 1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Binkley & Barfield, Inc.  
Houston, TX United States

**Certificate Number:**  
2018-319992

**Date Filed:**  
02/28/2018

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

**Date Acknowledged:**  
03/13/2018

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

2017 Mobility Bond Project  
Professional Engineering Support Services for the 2017 Fort Bend County Mobility Bond Project, Precinct 1.

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest<br>(check applicable) |              |
|---|--------------------------|------------------------------------------|------------------------------------------|--------------|
|   |                          |                                          | Controlling                              | Intermediary |
|   | Binkley, James Brett     | Houston, TX United States                | X                                        |              |
|   | Barfield, P. E., Larry   | Houston, TX United States                | X                                        |              |
|   | Hamilton, P.E., David    | Houston, TX United States                | X                                        |              |
|   | Laham, P.E., Youssef     | Houston, TX United States                | X                                        |              |
|   | Williams, RPLS, Steven   | Houston, TX United States                | X                                        |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |

**5 Check only if there is NO Interested Party.**☐**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)