

**PROFESSIONAL SERVICES AGREEMENT
FOR
“NTCMUD#5 WATER DISTRIBUTION IMPROVEMENTS PROJECT PHASE 2”**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”) acting by and through its City Manager, pursuant to and Binkley & Barfield, Inc. (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the City Manager and/or his designee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on June 2, 2014 and terminate on June 2, 2016.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in Exhibit A which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager or his designee. The determination made by City Manager and/or his designee shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager and/or his designee. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager



and/or his designee; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager and/or his designee, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed three hundred thousand twenty-seven thousand and five hundred and sixty-nine dollars (\$327,569.00) as total compensation, to be paid to Consultant as further detailed in Exhibit 1.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the Pflugerville City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by CONSULTANT shall be at the City's sole risk and without liability to the CONSULTANT.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 15 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of Pflugerville
Attn: Thomas E. Word, Jr., P.E.
Assistant City Manager
15500 Sun Light Near Way #B/P.O. Box 589
Pflugerville, Texas 78660

If intended for Consultant, to:

Binkley & Barfield, Inc.
Attn: Brian D. Rice, P.E.
Vice President
1611 Chisholm Trail Road, Suite 250
Round Rock, Texas 78681

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled "NTCMUD#5 Water Distribution Improvements Project Phase 2" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

Insurance Requirements

Bidder/Proposer performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Bidder/Proposer shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: Premises/Operations Products/ Completed Operations Independent Contractors Personal Injury Contractual Liability	1,000,000 per occurrence, 2,000,000 general aggregate Or 2,000,000 combined single coverage limit	City to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage City to be provided a waiver of subrogation City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100
A contract will not be issued without evidence of Insurance. We will only accept the ACORD 25
or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville
Capital Improvement Program
P.O. Box 589
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement under terms satisfactory to the City, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 **CONSULTANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability resulting from the negligent or intentional acts or omissions, intellectual property infringement, or failure to pay a subcontractor or supplier of the Consultant, its employees, agents and/or assigns. The acts may include personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONSULTANT'S** activities under this Agreement, including any negligent or intentional acts or omissions of **CONSULTANT**, any agent, officer, director, representative, employee, consultant or subcontractor of **CONSULTANT**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

10.1 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **CONSULTANT** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **CONSULTANT's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONSULTANT** of any of its obligations under this paragraph.

10.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by **CONSULTANT** in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. **CONSULTANT** shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If **CONSULTANT** fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and **CONSULTANT** shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing. This provision is not applicable to and does not extent Professional Liability Insurance coverage held by the contractor to cover professional engineering services, if any, rendered by City employees.

10.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of **CONSULTANT**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or

type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.4 Force Majure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Inland Geodetics, LLC and Holt Engineering, Inc. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision

as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of Pflugerville, Travis County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Attachment "A" Scope of Services including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS CITY CODE PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political

subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

25.5 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

EXECUTED and **AGREED** to as of the dates indicated below.

**CITY OF
PFLUGERVILLE**

**CONSULTANT
Binkley & Barfield, Inc.**

(Signature)



(Signature)

Printed Name: Brandon E. Wade

Printed Name: **Brian D. Rice**

Title: City Manager

Title: **Vice President**

Date: _____

Date: 5/19/14

EXHIBIT "A"



May 12, 2014

Mr. Dan Franz, P.E.
City Engineer
City of Pflugerville
201-B East Pecan Street
Pflugerville, Texas 78691

**RE: Proposal for Professional Services:
NTCMUD#5 Water Distribution Improvements Project Phase 2
Pflugerville, Texas**

Dear Mr. Franz:

Based on the information the City of Pflugerville (City) provided on the subject project, Binkley & Barfield, Inc. (BBI) is pleased to submit this proposal for professional services associated with water improvements in the following project areas:

Project Area #1: Pecan & Heatherwilde PRV

- Install Pressure-Reducing Valve (PRV) on existing water line on Heatherwilde between Pecan and Old Austin Pflugerville/Settlers Valley Drive. It is presumed that the PRV will be placed within existing City ROW/easements and that a pre-cast vault will be used.

Project Area #2: E. Black Locust

- Install approx. 1,750 LF of new 16" waterline along E. Black Locust
- Connect the new 16" waterline to the existing City waterline at the intersection of Swenson Farms Blvd.

Project Area #3: Pflugerville Parkway East of Heatherwilde

- Install approx. 4,055 LF of new 16" waterline along Pflugerville Parkway from Heatherwilde east to Wilke Ridge Lane, and from Wilke Ridge Lane south in a proposed easement to E. Black Locust. This includes approx. 360 LF of waterline bores along Pflugerville Parkway, including one 24" bore at Wilke Ridge Lane, one 12" bore to the north at Heatherwilde, and one 16" bore to the west at Heatherwilde.
- Connect the new 16" line to a proposed 24" line at Wilke Ridge Lane (by others).
- Connect the new 16" line to the proposed 16" line at E. Black Locust.
- Design a manifold system to connect the (1) New 24" at Wilke Lane, (2) New 16" on Pflugerville Parkway to the west, (3) New 16" in the proposed easement to the south, and (4) New 16" tee to the east.

Project Area #4: Pflugerville Parkway West of Heatherwilde

- Install approx. 2,025 LF of new 16” waterline along Pflugerville Parkway from Heatherwilde to Regis Drive, including approx. 100 LF of 12” waterline bore at Pflugerville Parkway & Regis Drive.
- Install approx. 160 LF of new 12” waterline along Regis Drive from Pflugerville Parkway to Dansworth Drive and connect the new line to the existing City line in Regis Drive.

Project Area #5: Mountain View PRV

- Install Pressure-Reducing Valve on existing water line on Mountain View west of 10th Street. It is presumed that the PRV will be placed within existing City ROW/easements and that a pre-cast vault will be used.

Project Area #6: Settlers Valley PRV

- Install Pressure-Reducing Valve on existing water line on Settlers Valley Drive between Wagon Wheel and Settlers Valley Cove. It is presumed that the PRV will be placed within existing City ROW/easements and that a pre-cast vault will be used.

Based on our understanding of your needs at this time and the current status of this project, we propose to provide the following specific services:

SCOPE OF SERVICES

A. Design and Bid Phase

1. Produce all construction drawings and obtain permits necessary for the construction of the improvements described above. Construction drawings are to be produced at the schematic level in order to get final agreement on the placement and alignments of all proposed lines. Once alignments are agreed upon, construction drawings are to be produced at the 60%, 90%, and 100% design stages.
2. Provide all technical specifications necessary for the project at the 60% and 90% design stages.
3. Prepare and update cost estimate at the schematic, 60%, 90%, and 100% design stages.
4. Attend design review meetings (up to 3), as well as public outreach meetings (up to 1) as described below.
5. Perform Subsurface Utility Engineering (SUE) along Pflugerville Parkway to include the following:
 - Quality Level A - Test Holes (only as additional services, only if necessary)
 - Quality Level B - Designating and Mapping
 - Quality Level D - Records Research

Note: Quality Level C services are to be performed by the surveyor and are included in their proposal (Inland Geodetics).

BBI proposes to first perform Quality Level D services, meaning we will contact the owners of all other existing utilities and gather as much record information from them as possible. This will provide the basis of our Quality Level B services.

Once Quality Level D services are performed, BBI proposes to perform Quality Level B services for the most congested areas (Areas 2 – 5) in order to locate horizontally all other utilities. The surveyor will then perform the Quality Level C services by incorporating our Quality Level B information into the survey.

Our goal will then be to design the new waterlines horizontally, such that every effort is exhausted to avoid these other utilities altogether. Once we have determined the best horizontal alignment for the new waterlines, we will then make recommendations for performing test holes (QL A services) only at locations where we have to cross other utilities and where we believe obtaining the vertical elevations of the other utilities are necessary.

More detailed information regarding the proposed SUE services is provided in the following paragraphs.

5.2 Quality Level A Test Hole Services (only as additional services, only if necessary)

Quality Level A (QL-A) locating services are the location and accurate horizontal and vertical position of subsurface utilities by excavating a test hole using vacuum excavation techniques and equipment that is non-destructive to utilities. In performing locating (test hole) services, BBI will:

- a. Provide all equipment, personnel and supplies required to perform locating services. BBI shall determine which equipment, personnel and supplies are required to perform such services.
- b. Conduct appropriate investigation of site conditions and utilize gathered record information.
- c. Excavate test holes to expose the utility to be measured in such a manner that ensures the safety of the excavation and the integrity of the utility to be measured. In performing such excavations, BBI shall comply with applicable utility damage prevention laws. Excavations will be performed using specially developed vacuum excavation equipment that is non-destructive to existing facilities. If contaminated soils are discovered during the excavation process, BBI will so notify the Client.
- d. Investigate, evaluate, measure and record:
 1. Actual depth to top of utility referenced to a survey marker installed directly above the centerline of the exposed utility structure and
 2. Outside diameter of utility and configuration of non-encased, multi-conduit systems.
- e. Furnish and install survey markers directly above the centerline of utility structure.
- f. Backfill around the exposed facility using the excavated materials compacted in six inch lifts.

- g. In grass and landscape areas restoration shall be as reasonably possible to the condition that existed prior to excavation.
- h. In pavement areas restoration shall be with asphaltic cold mix.
- i. Evaluate and compare field information with utility information described in utility records and resolve conflicts.

5.3 Quality Level B SUE Services

Quality Level B (QL-B) is to indicate by marking with paint, the presence and approximate horizontal location of subsurface utilities by use of geophysical prospecting techniques including, without limitations, electromagnetic, sonic, and acoustical techniques. BBI will provide the following designating services to aid the Client in the location of existing utilities:

- a. Provide all equipment, personnel and supplies required for performing designating services. BBI shall determine which equipment, personnel and supplies are required to perform designating services.
- b. Conduct appropriate investigation of site conditions and utilize gathered record information.
- c. Designate the approximate horizontal location of existing utilities within the project limits as described above.
- d. Mark the utility locations on the ground pursuant to the utility identification color as prescribed by APWA, survey utility marks and map collected data.
- e. Markings on the ground are to be used for design and verification purposes and not for construction excavation purposes. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including, but not limited to, giving notification to utility owners or “One-Call Notification Centers” before excavation.
- f. The accuracy of subsurface data can be influenced by factors beyond our control, such as conductivity of materials and their surroundings, soil moisture content, proximity of other underground utilities or structures, depth of utility, etc. Therefore, only the accuracy of data obtained by actual physical verification (through vacuum excavation or otherwise) can be guaranteed to applicable engineering and/or surveying standards.

5.4 Quality Level D Records Research

BBI will perform One-Call research, request the utility records (as built) from the utility companies identified in the public right of way and perform a perimeter reconnaissance to locate and identify utility marker posts. This information will provide the basis of our Quality Level B services.

5.5 Standard of Care

BBI will provide all SUE services to the prevailing standard of care applicable to the standard guidelines of ASCE C-I 38-02 circular for “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data”.

5.6 Data Management

BBI will analyze and correlate all of the SUE field-collected information with the collected record information for ensuring continuity of the information collected.

6. It is our understanding that it will be the contractor's responsibility to prepare the Stormwater Pollution Prevention Plan (SWPPP).
7. Surveying/Easements (Inland Geodetics): Obtain topographic and tree survey information, including all SUE Quality Level B information provided by BBI. Produce easement documentation necessary for 3 permanent easements (see attached proposal from Inland Geodetics for details).
8. Geotechnical Engineering & Construction Materials Testing (Holt Engineering): Obtain soil borings and produce geotechnical data report. Perform construction materials testing during construction (see attached proposal from Holt for details).
9. Environmental Services: Conduct the following pedestrian surveys: vegetation assessment; threatened and endangered species habitat survey; and hydrogeologic setting review. Conclusions developed from this assessment will be reported to the following regulatory agencies as required: Biological Resources - USFWS / TPWD; Cultural Resources - Texas Historical Commission.
10. Aid City in answering contractor questions during the bid phase.
11. Aid City in evaluating contractor bids and qualifications.

Note: It is our understanding that there will be no pre-bid meeting for this project.

B. Construction Phase Services

1. Assumes monthly construction meetings for 6 months. Observe general progress of construction, attend pre-construction meeting, review contractor submittals, review pay applications, and answer contractor Requests for Information (RFI). Note, this does not include construction management, contract administration, or other administrative services. This also does not include site plan corrections as this cannot be foreseen. In any case, it will be the responsibility of the contractor to construct the project per the approved plans and ask questions as necessary.

C. Reimbursables / Reproductions

1. Reproduction of documents, shipping and mailing expenses, travel expenses such as mileage for automobile travel, and any other disbursements, application fees, etc., made on behalf of the Client, shall be invoiced as reimbursed as described in the Professional Services Agreement.

FEE SUMMARY

We propose to provide the specific services described above on a lump sum basis as described below:

Design, Bid, & Construction Phase

Binkley & Barfield, Inc.	
Design & Bid Phase	\$ 204,577.00
Construction Phase	\$ 22,505.00
Subsurface Utility Engineering (SUE) (QL B & QL D)	\$ 30,000.00
Inland Geodetics, LLC (topographic/tree survey, SUE QL C, easement documentation)	\$ 29,505.00
<u>Holt Engineering, Inc. (geotechnical engineering & construction materials testing)</u>	<u>\$ 21,982.50</u>
Subtotal	\$ 308,569.00
Allowance for Reimbursable Expenses – Design Phase:	\$ 3,000.00
<u>Allowance for Reimbursable Expenses – Construction Phase:</u>	<u>\$ 1,000.00</u>
Total Fee for Design, Bid, & Construction Phase:	\$ 312,569.00

Additional Services

Binkley & Barfield, Inc.	
<u> Subsurface Utility Engineering (SUE) (QL A)</u>	<u>\$ 15,000.00*</u>
Total Fee for Design, Bid, & Construction Phase, including SUE QL A	\$ 327,569.00*

*Estimated, only if necessary. Binkley & Barfield will work closely with the City to determine test hole locations prior to any work being done. Includes surveying of test holes.

We appreciate this opportunity to provide professional services for the City of Pflugerville on this project. If you have any questions, please call me at (512) 292-0006.

Sincerely,

BINKLEY & BARFIELD, INC.
Consulting Engineers



Rey Gonzalez, P.E.
Project Manager

NTCMUD#5 WATER DISTRIBUTION IMPROVEMENTS PROJECT PHASE 2

PRELIMINARY SCHEDULE

5/19/14

Task								
	1	2	3	4	5	6	7	5 mos
Survey / SUE / Geotech / Environmental								
Design Phase / Agency Coordination / Easement Acquisition by City								
Bid and Award Phase								
Construction Phase								

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