

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(CASTELL AVE EAST-FORMERLY CASTELL AVENUE 24-INCH WATER MAIN)**

This **SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the “Second Amendment”) is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipal owned utility (“NBU”), and **BINKLEY & BARFIELD, INC.**, a Texas corporation (formerly Urban Civil, LLC) (the “Professional”) (collectively, “the Parties”).

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated October 10, 2019, (the “Original Agreement”) for design, bid, and construction phase services (collectively the “Services”) for the Castell Avenue Rehabilitation Project (the “Project”) to be completed by October 12, 2021;

WHEREAS, NBU and the Professional entered into a Contract Amendment to the Agreement (“First Amendment”) dated May 5, 2020 to (i) define Additional Services in Task 5 to provide geotechnical engineering sampling and analysis to aid the design of the Horizontal Auger Bores (“HAB”) for the installation of steel pipe encased water main pipelines required for the Project (“Additional Services”); (ii) authorize the related compensation for the Additional Services; and (iii) define a time of completion for the Additional Services (the “First Amendment” and, together with the Original Agreement, the “Agreement”);

WHEREAS, the Board was not required to approve the First Amendment because NBU staff engaged previously Board approved services in the Original Agreement;

WHEREAS, Urban Civil, LLC, assigned all of its rights, duties, and obligations to the Agreement to Urban Engineering, LLC;

WHEREAS, Urban Engineering, LLC, subsequently sold its assets and assigned its rights, duties, and obligations to the Agreement to Binkley & Barfield, Inc.;

WHEREAS, pursuant to the letters attached hereto as Exhibit C, NBU consented to such assignments and agreed to allow Binkley & Barfield, Inc. (hereinafter referred to as the “Professional”) to assume all contractual obligations as the Professional under the Agreement and any amendments to the Agreement;

WHEREAS, due to unknown site conditions and contractor performance, NBU and the Professional identified a need to (i) add additional construction phase services, subsurface utility engineering (“SUE”), and surveying services (together, the “New Services”); (ii) increase the compensation to the Professional related to the New Services; and (iii) extend the time to complete construction;

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

WHEREAS, NBU and the Professional desire to amend the Agreement to (i) add the New Services; (ii) include the related compensation for the New Services; and (iii) extend the completion date for the New Services to September 30, 2023.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Amendment to Exhibit A. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this Second Amendment as of the effective date of this Second Amendment.

Section 2. Amendment to Exhibit B. Exhibit B to the Agreement is hereby deleted and replaced in its entirety by Exhibit B to this Second Amendment as of the effective date of this Second Amendment.

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

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

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

Section 6. Severability. If any term or provision of this Second Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Second Amendment shall not be affected thereby, and this Second Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 7. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto, upon lawful approval and authority, have executed this Amendment on this the ____ day of _____, 2023.

NBU:

NEW BRAUNFELS UTILITIES,
a Texas municipal owned utility

By: _____
Name: Ryan Kelso
Title: Interim CEO

THE PROFESSIONAL:

BINKLEY AND BARFIELD, INC.,
a Texas corporation

By: *Steve J. Allert*
Name: August 1, 2023
Title: Vice President - Infrastructure

Exhibit A
Scope of Services

- 1) NO CHANGE
- 2) NO CHANGE
- 3) NO CHANGE
- 4) NO CHANGE
- 5) NO CHANGE

Project Management

- 1) NO CHANGE
- 2) NO CHANGE
- 3) NO CHANGE
- 4) NO CHANGE
- 5) NO CHANGE
- 6) NO CHANGE
- 7) NO CHANGE

Task 1 – Preliminary Engineering Phase

Upon NBU providing notice to proceed to the Professional, the Professional shall perform the preliminary engineering phase Services for the Project as described herein.

- 1) NO CHANGE
- 2) The Professional shall provide a topographic, utility and boundary survey as described herein.
 - a) NO CHANGE
 - b) NO CHANGE
 - c) NO CHANGE
 - d) NO CHANGE
 - e) The Professional shall perform SUE to include the following:
 - i) NO CHANGE
 - ii) NO CHANGE
 - iii) NO CHANGE
 - iv) The Professional shall provide subsurface utility engineering “Quality Level B” as

defined by the American Society for Civil Engineers, utility locates of water, natural gas, communication duct banks, fiber optic, cable television, telephone, and electric along the entire alignment of the pipeline. Level B includes two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods providing horizontal positioning of subsurface utilities to within approximately one (1) foot.

- v) The Professional shall provide subsurface utility engineering “Quality Level C” as defined by the American Society for Civil Engineers, utility locates of wastewater and storm drain facilities along the entire alignment of the pipeline. Level C involves surveying visible utility facilities (e.g., manholes, valve boxes, etc.) and correlating this information with existing utility records.
- vi) The Professional shall provide subsurface utility engineering “Quality Level D” as defined by the American Society for Civil Engineers, utility locates along the entire alignment of the pipeline. Level D includes investigation solely from existing utility records or verbal recollections.

3) NO CHANGE

4) NO CHANGE

Task 2 – Final Design Phase

- 1) NO CHANGE
- 2) NO CHANGE
- 3) NO CHANGE
- 4) NO CHANGE
- 5) NO CHANGE
- 6) NO CHANGE

Task 3 – Bid Phase Services

- 1) NO CHANGE
- 2) NO CHANGE
- 3) NO CHANGE

4) NO CHANGE

Task 4 – Construction Phase Services

Upon completion of the bid phase services, the Professional shall proceed with providing construction phase services. The Professional shall provide the general construction contract administration services described herein.

1) meetings and site visits

a) NO CHANGE

b) The Professional shall attend up to a total of 48 bi-weekly construction progress meetings. The Professional shall prepare agenda, record, and distribute meeting minutes to NBU and the contractor within one week following every meeting.

c) The Professional shall attend up to a total of 48 bi-weekly site visits during construction of the Project, as distinguished from the continuous services of a resident Project representative, to observe the progress and the quality of work and to determine if the work is proceeding in accordance with the contract documents. The Professional shall prepare and provide NBU with electronic observation reports for each site visit within two days and notify NBU of any non-conforming work performed by the contractor on the same day, observed on the site visits.

d) NO CHANGE

e) NO CHANGE

f) NO CHANGE

2) construction phase services

NO CHANGE

3) deliverables to NBU:

NO CHANGE

Task 5 – Additional Services

The Professional shall seek prior approval from NBU before commencing work on any Additional Services described in this section. If NBU agrees to the Additional Services, NBU shall execute a supplemental letter requesting the Professional perform the Additional Services.

The Professional shall provide the following Additional Service as needed for the Project;

1) NO CHANGE

2) NO CHANGE

The Professional is authorized to commence work on Task 1 through Task 4 of the Project upon execution of this Agreement and agrees to complete these Services in accordance with the schedule below:

Project Milestones	Start Date	End Date
Notice to Proceed	NO CHANGE	
Preliminary Design/Survey	NO CHANGE	NO CHANGE
60% Design	NO CHANGE	NO CHANGE
90% Design	NO CHANGE	NO CHANGE
Easements	NO CHANGE	NO CHANGE
100% Design	NO CHANGE	NO CHANGE
Permitting	NO CHANGE	NO CHANGE
Bid Phase/Board Approval	NO CHANGE	NO CHANGE
Construction Phase	4/30/21	09/30/2023

FIGURE 1
NO CHANGE

EXHIBIT B – COMPENSATION

NBU agrees to pay the Professional for the Services under Task 1 through Task 4 under this Agreement not to exceed \$426,192.

The fees for Task 1 through Task 4 are as follows:

Cost Breakdown				
Task	Agreement	First Amendment	Second Amendment	Revised Contract Amount
Task 1: Preliminary Engineering	\$63,750	\$0	\$0	\$63,750
Task 1: Survey/SUE	\$42,800	\$0	\$20,892	\$63,692
Task 2: Final Design Phase	\$163,750	\$0	\$0	\$163,750
Task 3: Bid Phase Services	\$21,000	\$0	\$0	\$21,000
Task 4: Construction Phase Services	\$84,000	\$0	\$30,000	\$114,000
Total	\$375,300		\$50,892	\$426,192

Additional Services

NBU agrees to pay the Professional for the Additional Services during the term of this Agreement in an amount not to exceed \$20,000 as further described below in the Supplemental Services Cost Breakdown; provided, however, that NBU must provide written approval in the form of a supplemental agreement or contract amendment, as appropriate, prior to the Professional performing the Additional Services.

Additional Services Cost Breakdown				
Task	Agreement	First Amendment	Second Amendment	Balance
Additional Services	\$20,000	(\$10,650)	\$0	\$9,350
Total	\$20,000	(\$10,650)	\$0	\$9,350

Exhibit C – Letters Consenting to Assignment

October 30, 2022

New Braunfels Utilities
Attn: Ian Taylor
P.O. Box 310289
New Braunfels, TX 78131-0289

Re: Assignment of that certain Professional Services Agreement, dated effective as of October 10, 2019 (the "Agreement"), between Urban Civil, LLC, a Texas limited liability company ("Urban Civil"), and New Braunfels Utilities, a Texas municipal owned utility.

To Mr. Taylor:

As you may be aware, Urban Civil is expecting to enter into an Asset Purchase Agreement (the "Purchase Agreement") with DCCM North America, LLC, a Delaware limited liability company for the sale of substantially all of the assets of Urban Civil. Effective upon and subject to the closing of the transactions contemplated by the Purchase Agreement, Urban Civil will ultimately assign to Urban Engineering, LLC, a Texas limited liability company ("Urban Engineering") all of its rights, duties and obligations under the Agreement (the "Assignment").

We are providing this letter to notify you of, and to request your consent to, the Assignment of the Agreement to Urban Engineering, and to obtain your acknowledgment that the Agreement will continue in full force and effect after the Assignment and that Urban Engineering shall be substituted for Urban Civil under the Agreement effective upon such assignment.

Please evidence your consent to the Assignment and acknowledge that the Agreement will continue in full force and effect after the Assignment with Urban Engineering being substituted for Urban Civil thereunder by signing below and returning a signed copy of this consent and acknowledgment either by hand delivery or by email in PDF form to chipu@urbaneng.com to the attention of Rhodes C. Urban. Thank you very much for your assistance in this matter.

Sincerely,

Urban Civil, LLC

By: 

Rhodes C. Urban, Manager

Acknowledged, and Agreed to, by

New Braunfels Utilities

By: **Ian Taylor** Digitally signed by Ian Taylor
Date: 2022.12.19 15:02:09
-06'00'
Printed Name: Ian Taylor
Title: CEO

Dated: _____, 2022

February 10, 2023

New Braunfels Utilities
Water Engineering Department
P.O. Box 310289
New Braunfels, TX 78131-0289

Re: Assignment of that certain Agreement for Professional Services, dated effective as of October 10, 2019 (the "Agreement"), between Urban Engineering, LLC, a Texas limited liability company ("Urban Engineering") (as successor by assignment to Urban Civil, LLC, a Texas limited liability company ("Urban Civil")), and New Braunfels Utilities, a Texas municipal owned utility ("NBU").

To whom it may concern:

As you are aware, Urban Civil entered into that certain Asset Purchase Agreement (the "Purchase Agreement") with DCCM North America, LLC, a Delaware limited liability company for the sale of substantially all of the assets of Urban Civil, whereby Urban Civil assigned to Urban Engineering all of its rights, duties and obligations under the Agreement, and, pursuant to that certain letter from Urban Civil, dated December 19, 2022 (the "Letter"), such assignment was consented by you.

Urban Engineering is expecting to enter into a Bill of Sale – Assignment and Assumption Agreement (the "Bill of Sale") with an affiliate, Binkley & Barfield, Inc., a Texas corporation ("BBI"), for the assignment of substantially all of the assets previously assigned to Urban Engineering pursuant to the Purchase Agreement. Effective upon and subject to the closing of the transactions contemplated by the Bill of Sale, Urban Engineering will ultimately assign to BBI all of its rights, duties and obligations under the Agreement (the "Assignment").

We are providing this letter to notify you of, and to request your consent to, the Assignment of the Agreement to BBI, and to obtain your acknowledgment that the Agreement will continue in full force and effect after the Assignment and that BBI shall be substituted for Urban Engineering under the Agreement effective upon such assignment.

Please evidence your consent to the Assignment and acknowledge that the Agreement will continue in full force and effect after the Assignment with BBI being substituted for Urban Engineering thereunder by signing below and returning a signed copy of this consent and acknowledgment either by hand delivery or by email in PDF form to elie.azar@whitewolfcapital.com to the attention of Elie P. Azar. Thank you very much for your assistance in this matter.

Sincerely,

Urban Engineering, LLC

By:  _____
Elie P. Azar, Vice President

Acknowledged, and Agreed to, by

New Braunfels Utilities

By: **Adam Willard**  Digitally signed by Adam Willard
Date: 2023.04.17 08:09:22-05'00'

Printed Name: _____

Title: _____

Dated: _____, 2023