



REQUEST FOR STATEMENTS OF QUALIFICATIONS

POLE ATTACHMENT ENGINEERING SUPPORT PROJECT

Q035-24

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B R O W N S V I L L E
PUBLIC UTILITIES BOARD

**LEGAL NOTICE
AND
REQUEST FOR QUALIFICATION STATEMENTS
Q035-24**

The Brownsville Public Utilities Board (“BPUB”) will accept sealed **Statements of Qualifications for the POLE ATTACHMENT ENGINEERING SUPPORT PROJECT until 5:00 PM, April 3, 2024** in the Brownsville PUB Purchasing Office, 1155 FM 511, Olmito, Texas. **Qualification statements received after this time will not be considered.**

Qualification Statements will be acknowledged on **April 4, 2024** at 11:00 AM. Firms may call in to (956) 214-6020 to listen to the RFQ opening.

Detailed specifications may be obtained at Brownsville Public Utilities Board Purchasing website: https://www.brownsville-pub.com/rfp_status/open/

Please mark on the **outside of the envelope and on any carrier’s envelope**: “**Q035-24 Request for Qualifications for THE POLE ATTACHMENT ENGINEERING SUPPORT PROJECT, APRIL 3, 2024, 5:00 PM**”, and send to the attention of Diane Solitaire, Purchasing Department, 1155 FM 511, Olmito, Texas 78575.

The Brownsville Public Utilities Board will not be responsible in the event that the U.S. Postal Service or any other courier system fails to deliver the sealed qualification statement to the Brownsville Public Utilities Board, Purchasing Office by the given deadline above. **Electronic transmission or facsimile of Qualification Statements will not be acceptable.**

The Brownsville PUB reserves the right to reject any or all responses and to waive irregularities contained therein and to accept any response deemed most advantageous to the Brownsville PUB.

Diane Solitaire
Purchasing & Materials Manager
Brownsville Public Utilities Board
(956) 983-6366

Please submit this page upon receipt.
Acknowledgment Form
Q035-24
REQUEST FOR STATEMENTS OF QUALIFICATIONS FOR THE POLE
ATTACHMENT ENGINEERING SUPPORT PROJECT

For any clarifications, please contact Diane Solitaire at the BPUB, Purchasing Department, at: (956) 983-6366 or e-mail: dsolitaire@brownsville-pub.com

Please e-mail this page upon receipt of the RFQ package or legal notice. If you only received the legal notice and you want the RFQ package mailed, please provide an overnight method of shipment with account number in the space designated below.

Check one:

Yes, I will be able to send an RFQ; obtained RFQ package from BPUB website.

Yes, I will be able to send an RFQ; please email the RFQ package.

Email: _____

Yes, I will be able to send an RFQ; please overnight mail the RFQ package using the carrier & account number listed below:

Carrier: _____ Account: _____

No, I will not be able to send an RFQ for the following reason:

If you are unable to send your **RFQ**, kindly indicate your reason for “No response” above and return this form **via email to dsolitaire@brownsville-pub.com**. This will ensure you remain active for future potential BPUB work on our vendor list.

Date _____

Company: _____

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Fax: _____

Email: _____

IF SPECIFICATIONS ARE DOWNLOADED FROM WEBSITE PLEASE E-MAIL THIS PAGE

SECTION 2 - INTRODUCTION

2.1 GENERAL

The Brownsville PUB (BPUB) is requesting Statement of Qualifications from professional engineering service firms who can adequately demonstrate they have the resources, experience and qualifications to provide the BPUB with quality professional engineering, consulting, and technical services. The purpose of this solicitation is to select one firm to work with the BPUB to perform **THE POLE ATTACHMENT ENGINEERING SUPPORT PROJECT**. Only firms submitting for this RFQ and meeting qualifications based on the scoring results from the selection committee will be considered for the project.

The BPUB is a component unit of the City of Brownsville, Texas and is 92.91% participant of the Southmost Regional Water Authority (SRWA). The BPUB was formed in 1960 to provide electrical, water, and wastewater services to its customers in the Brownsville area, and the SRWA provides treated water to various areas of the lower Cameron County. Pursuant to the City's Charter, management, operation, and control of the City's combined water, wastewater, and electric utilities system is delegated to the BPUB, and the SRWA has a mutual agreement with the BPUB authorizing the BPUB to manage all accounting and reporting functions. The BPUB is comprised of seven members, six of whom are appointed by the City Commission for four-year terms, and the seventh member being the City's Mayor serving ex-officio. The Board appoints a General Manager and Chief Executive Officer who is responsible for the management of all BPUB employees and for administering all affairs of the BPUB.

The SRWA is comprised of all of the territory contained within the City of Brownsville, the City of Los Fresnos, the Town of Indian Lake, Brownsville Navigation District of Cameron County, and Valley Municipal Utility District No. 2 of Cameron County.

2.2 BPUB ELECTRIC SYSTEM

The Electric System provides retail electric service through its electric facilities to consumers inside and outside the city limits. The existing customer service area of the electric facilities encompasses approximately 133 square miles of Cameron County, including substantially the entire City (estimated by the Board as over 96%). BPUB is a municipally owned utility provider with 54,118 electrical customers and serves a peak load of 293.43 Megawatts. This includes 47 miles of transmission lines and 15 substations helping to provide electrical service to the City of Brownsville.

2.3 SUBMITTAL DEADLINE

The BPUB will accept Qualification Statements until **5:00 PM, April 3, 2024**.

2.4 BPUB CONTACTS

Any questions or concerns regarding this Request for Qualifications shall be directed to:

Diane Solitaire
Purchasing Department
Brownsville Public Utilities Board
1155 FM 511
Olmiteo, Texas 78575
dsolitaire@brownsville-pub.com

Unauthorized Communications:

After release of this solicitation, Firm's contact regarding this RFQ with members of the RFQ evaluation, interview or selection panels, and employees of the BPUB or officials of the BPUB other than the Purchasing Manager or Purchasing Staff is prohibited and may result in disqualification from this procurement process. No officer, employee, agent or representative of the Firm shall have any contact or discussion, verbal or written, with any members of the BPUB Board of Directors, members of the RFQ evaluation, interview, or selection panels, BPUB staff, or directly or indirectly through others, seek to influence any BPUB Board member, BPUB staff regarding any matters pertaining to this solicitation, except as herein provided. If a representative of any Firm violates the foregoing prohibition by contacting any of the above listed parties with whom contact is not authorized, such contact may result in the Firm being disqualified from the procurement process.

2.5 INQUIRIES AND INTERPRETATIONS

Responses to inquiries which directly affect an interpretation or change to this RFQ will be issued in writing by addendum and mailed to all parties recorded by the BPUB as having received a copy of the RFQ. All such addenda issued by the BPUB prior to the time that submittals are received shall be considered part of the RFQ, and the Respondent shall be required to consider and acknowledge receipt of such in its submittal. Firms receiving this RFQ other than directly from the BPUB are responsible for notifying the BPUB that they are in receipt of a submittal package and are to provide a name and address in the event an addendum is issued.

Only those inquiries the BPUB replies to which are made by formal written addenda shall be binding. Oral and other interpretations or clarification will be without legal effect. The Respondent must acknowledge all addenda by signing and returning such document(s) or by letter. Such acknowledgment must be received prior to the hour and date specified for receipt of SOQs, or shall accompany the submittal. Addenda may also be posted on the BPUB website.

2.6 PUBLIC INFORMATION

The BPUB considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non-proprietary nature and therefore shall be subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after a contract is awarded.

Respondents are hereby notified that the BPUB strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ information.

2.7 OBJECTIVE

This RFQ intends to identify a Professional Engineering firm to assist BPUB with a Pole Attachment Engineering Support Project.

2.8 SCOPE OF WORK

The scope of this project includes a review of permit packages from fiber and other joint users for attachment on BPUB electric distribution and transmission infrastructure in accordance with the NESC Code. It is estimated that BPUB will receive pole attachment applications including 12,000 poles for review in the next 8+ months with an average of 1,500 per month.

Scope of Work

Inspection and reporting, Engineering Firm will:

- Review permit applications including 1,500 poles per month
- Review O-Calc Models and Reports provided by attaching entities
- Review the attachment application summary provided by attaching entities
- Perform a field review of 10% of the poles
- Verify, by field inspection, all road crossings
- Create make-ready work service requests and work orders

Schedule

The Engineering Firm should complete 1,500 pole attachment application reviews per month

Coordination Requirements

Engineering Firm will coordinate with BPUB staff and other stakeholders as needed throughout the course of this project including:

- Attend virtual meetings as required
- Complete site visits to the BPUB service territory as required to complete field reviews
- Respond to BPUB's questions or comments as required
- Assist BPUB to respond to questions or issues from vendors and/or subcontractors

Deliverables

- Engineering Firm will provide a letter/email to BPUB confirming package completeness using BPUB process criteria.
- Provided that funding and remote connectivity are available, Engineering Firm is to complete service requests and make ready work orders using Cityworks and ArcMap.
- Engineering Firm will provide a detailed engineering design using BPUB standards. Design must be sealed by a professional engineer for each pole location that requires make-ready work.
- Engineering Firm will provide a detailed description of the service requests needed for each pole location that requires adjustment to meet minimum clearances required.

- Engineering Firm will provide a summary report for each permit application showing the approval status of each pole attachment.
- Once permits are reviewed and approved by the Engineering Firm, Engineering Firm will provide an engineer-sealed approval letter to BPUB per each permit application. Including permit number, number of poles approved, BPUB pole numbers, and a list of make-ready work required.

SECTION 3 - SOQ REQUIREMENTS

3.1 GENERAL INSTRUCTIONS

- A. Respondents should carefully read the information contained herein, and submit a complete response to all requirements and questions as directed.
- B. Submittals and any other information submitted by Respondents in response to this RFQ shall become the property of BPUB.
- C. The BPUB will not provide compensation to Respondents for any expenses incurred by the Respondents for submittal preparation or for any demonstrations that may be made, unless otherwise expressly stated or required by law. Respondents submit SOQs and other submittal information in response to this RFQ at their own risk and expense.
- D. Submittals which are qualified with conditional clauses, or alterations, or items not called for in the RFQ documents, or irregularities of any kind are subject to disqualification by the BPUB, at its option. **OWNER RESERVES THE ABSOLUTE AND UNCONDITIONAL RIGHT TO BE SOLE DETERMINANT OF WHAT IS DEEMED "AN IRREGULARITY" AND TO WAIVE OR INTERPRET ANY IRREGULARITY TO ITS BENEFIT, IN ITS SOLE DISCRETION.**
- E. Each submittal should be prepared simply and economically, providing a straightforward, concise description of your firm's ability to meet the requirements of this RFQ. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the BPUB's needs.
- F. The BPUB makes no guarantee that an award will be made as a result of this RFQ and reserves the right to accept or reject any or all submittals, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ or contract when deemed to be in the BPUB's best interest. Representations made within the SOQs submittal will be binding on responding firms. The BPUB will not be bound to act by any previous communication or submittal submitted by the firms other than this RFQ.
- G. Firms wishing to submit a “No-Response” are requested to return the Acknowledgement Form. The returned form should indicate your company's name

and include the words “No-Response” in the right-hand column.

- H. Failure to comply with the requirements contained in this RFQ may result in a finding that the respondent is not qualified and is ineligible to submit a proposal or subsequent contract.
- I. Only individual firms or formal joint ventures may apply. Two firms may not apply jointly unless they have formed a joint venture. Any associates will be disqualified. This does not prohibit a firm from having sub-consultants.
- J. When ten related projects are requested, do not list more than ten. When up to three project examples are requested, do not list more than three.

BROWNSVILLE PUB RIGHTS

- 1. If only one or no RFQ is received by “submission date”, the BPUB has the right to reject, re-purpose, accept and/or extend the RFQ by up to an additional two (2) weeks from original submission date.
- 2. The right to reject any/or all RFQs and to re-issue the RFQ as may appear to be advantageous to the Brownsville Public Utilities Board.
- 3. The right to hold RFQ for 90 days from submission date without action, and to waive all formalities in RFQ.
- 4. The right to extend the total RFQ beyond the original 90-day period prior to an award if agreed upon in writing by both parties and if RFQ holds firm.
- 5. The right to terminate all or any part of the unfinished portion of the work resulting from this solicitation within thirty (30) days written notice; upon default by the firm, for delay or non-performance by the firm or if it is deemed in the best interest of BPUB for convenience.
- 6. The BPUB reserves the right to request additional information or to meet with representatives from responding organizations to discuss points in the RFQ before and after submission, any and all of which may be used in forming a recommendation.
- 7. The BPUB reserves the right to reject any and all qualification statements, and to accept the RFQ it considers in its best interest based upon the requirements and descriptions outlined in this RFQ.

Reference Checks

The BPUB will contact prospective firm’s references by telephone or email. Complete the enclosed “Previous Customer Reference Worksheet” for each reference provided.

House Bill 89 Verification

Subtitle F, Title 10 of Local Government Code Chapter 2270 requires all vendors doing business with the Brownsville Public Utilities Board to complete the HB 89 Verification Form

and have it notarized. This form verifies that your company does not boycott Israel currently and that your company will not boycott Israel during the terms of this contract. The HB 89 Verification Form is included in this RFQ packet.

3.2 PREPARATION AND SUBMITTAL INSTRUCTIONS

A. Respondents must complete, sign and return the attached Acknowledgement Form as part of their SOQ submittal response. Submittals must be signed by Respondent's company official(s) authorized to commit such submittals. **FAILURE TO SIGN AND RETURN THESE FORMS WILL SUBJECT YOUR SUBMITTAL TO DISQUALIFICATION.**

B. Responses to this RFQ should consist of the requested descriptions in Section 4. It is not necessary to repeat the topic in your response; however, it is essential that you reference the subsection request number with your response corresponding accordingly. In cases where a question does not apply or if unable to respond, reference the question number and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Briefly explain your reason when responding N/R.

C. Page Size, Binders and Dividers

Submittals must be typed on letter-size (8-1/2" x 11") paper. The BPUB requests that submittals be bound, but no 3-ring binders, please. Preprinted material should be referenced in the submittal and included as labeled attachments. Sections should be divided by tabs for ease of reference. Number each side of each page consecutively, including letter of interest, brochures, licenses, resumes, supplemental information, etc. Submittals are limited to **150 letter size pages** (front and back, for a total of **75 sheets** of information) with minimum font size of 10.

Covers, table of contents and divider tabs will not count as pages, provided no additional information is included on those pages. Provide the number of copies of the submittal specified in the advertisement. **Any submittals exceeding the 150-page limit including all supplemental information will be disqualified.**

D. Table of Contents

Include with the submittal a Table of Contents that includes page number references. The Table of Contents should be in sufficient detail to facilitate easy reference of the sections of the submittal as well as separate attachments (which should be included in the main Table of Contents). Supplemental information and attachments included by your firm (i.e., not required) should be clearly identified in the Table of Contents and provided as a separate section.

E. Pagination

All pages of the submittal should be numbered sequentially within each section in Arabic numerals (1, 2, 3, etc.) Attachments should be numbered or referenced separately.

F. Submission

- (1) Submit five (5) complete copies and one (1) electronic version (PDF format on either USB stick or CD/DVD) of the response. An original signature must appear on the Letter of Interest on at least one (1) submitted copy. Any supplemental printed material referenced with the RFQ, must be submitted and received in the BPUB Purchasing Department on or before the time and date specified, pursuant to the Submittal Deadline (ref. Subsection 2.3) and delivered to:

Brownsville Public Utilities Board
Purchasing Department
1155 FM 511
Olmito, Texas 78575

NOTE: Show the Request for Qualification number and submittal date in the lower left-hand corner of your sealed submittal envelope (box/container).

- (2) The materials submitted must be enclosed in a sealed envelope (box or container); the package must show clearly the submittal deadline; the RFQ number must be clearly visible; and name and the return address of the Respondent must be clearly visible.
- (3) Late submittals properly identified will be returned to Respondent unopened. Late submittals will not be considered under any circumstances.
- (4) Telephone submittals are not acceptable when in response to the Request for Qualifications.
- (5) Facsimile ("FAX") or email submittals are not acceptable when in response to this Request for Qualifications.

3.3 STATEMENT OF QUALIFICATIONS RESPONSE FORMAT

A. Firm (2-page maximum)

1. Executive Summary to include name, address, and telephone number of the firm submitting the proposal, background of the firm and a summary of the firm's interest in this service, and the name of one or more individuals authorized to represent the consultant in its dealings on a contractual basis.
2. Availability and dedication to The BPUB project.

B. Work Categories

1. For the project, respond to the following items:
 - a. Names and qualifications of principals of the firm who will participate and their individual responsibilities, particularly the proposed Project Manager. The Project Manager shall remain the same throughout the duration of the project, unless approval received by the BPUB. An organization chart shall also be included.
 - b. Verifiable experience on similar size and complexity of projects.
 - c. A summary statement identifying your understanding of the project services desired and the manner in which coordination and the exchange of information will be assured between all parties.
 - d. A narrative outline describing the approach and/or methodology to be taken by your firm to represent the interest of the BPUB during this project.
 - e. A narrative describing how your approach is different or superior to other potential respondents and what sets your team apart from the others.

C. Disclosure

1. Any respondent to this RFQ shall disclose all potential conflicts of interest or representation of any firm that could be involved in the proposed program (1-page maximum).
2. The disclosure section of this RFQ must be addressed specifically in your response, even if no conflicts exist. Failure to submit disclosure statement will eliminate your firm from further consideration of the RFQ.

Any questions concerning this project shall be directed to Diane Solitaire, in writing, via email: dsolitaire@brownsville-pub.com. The BPUB will provide additional information concerning this project as requested by the interested consultants through addendum.

All SOQ's must be received by the BPUB Purchasing Department by **5:00 PM, April 3, 2024**. SOQ's received after that time will not be considered. Five (5) copies and one (1) electronic version (PDF format on either USB stick or CD/DVD of the entire SOQ's must be submitted. Please submit SOQ in a sealed envelope marked **"Q035-24 Request for Qualifications FOR POLE ATTACHMENT ENGINEERING SUPPORT PROJECT, APRIL 3, 2024, 5:00 PM"** to:

Diane Solitaire
Purchasing & Materials Manager
Brownsville Public Utilities Board
1155 FM 511
Olmito, Texas 78575

The BPUB reserves the right to terminate this process at any time and no guarantee is expressed or implied that obligates the BPUB to contract any engineering firm for the proposed project. The BPUB shall not be liable to any firm for costs associated with responding to this RFQ, participating in any interviews/presentations, or any costs associated with contract negotiations.

SECTION 4 - EVALUATION PROCESS

4.1 Evaluation Process

All SOQ’s must be completed and all information conveyed as requested in order to be considered responsive. If the SOQ fails to conform to the essential requirements of this RFQ, BPUB alone will determine whether to consider the SOQ acceptable or not acceptable for consideration. Only the information provided with the SOQ, clarifications and subsequent interview, will be used in the evaluation process and award determination. SOQ’s will be evaluated by the BPUB on the basis of the criteria listed below for each pertinent packet for a maximum of 100 points.

- A. Firm - Responsiveness to the Request for Qualifications (40 points)**
 - 1. Background of the firm10
 - 2. Availability and dedication to BPUB projects15
 - 3. Firm registration with the Texas Board of Professional Engineers15

- B. Work Categories (60 points)**
 - 1. Experience, availability, and proximity of Project Manager10
 - 2. Verifiable relevant team experience15
 - 3. Understanding of the project and the BPUB.....15
 - 4. Creativity and thoroughness of proposed approach and/or methodology to providing services in accordance with industry guidance documents.....20

- C. Disclosure (0 points, mandatory firm will be rejected if not included)**
 - 1. Must include statement of conflict of interest (Conflict of Interest Questionnaire), and completed debarment form, and House Bill 89 Verification Form0

It is understood that the BPUB reserves the right to accept or reject any and/or all responses to this RFQ as it shall deem to be in the best interest of the BPUB.

All responses submitted become the property of the BPUB and are subject to the Public Information Act (Texas Government Code Chapter 552). All documentation shall be open for public inspection, except for trade secrets and confidential information so identified by firm as such. All confidential information should be specifically and conspicuously marked as such in red. The BPUB will follow all requirements and procedures in the Public Information Act when responding to requests for disclosure of documents.

4.2 SELECTION PROCESS

A committee made up of members of the BPUB Staff will review, score and rank all the SOQ submittals received based on the criteria specified in Section 4.0 and develop a shortlist of up to three (3) responsive companies. In the event of a tie for 3rd place, the firm with the highest score under the “Work Categories” will prevail.

The short list of firms may be required to make final presentations, which may include an interview, to the BPUB Board. The BPUB Board will make the final selection and authorization for General Manager and CEO and BPUB staff to negotiate a contract and later possible actual contract award.

The BPUB Board exercises its discretion in the final selection of a candidate for contract negotiations, and will not be bound by the BPUB staff recommendation, scoring and ranking. The BPUB staff's preliminary reviews and scoring of submittals merely determines the top ranked firms who are most technically qualified as finalists and are eligible for interviews by the Board.

4.3 ELIGIBLE RESPONDENTS

It is a policy of the BPUB to refuse to enter into a contract or other transaction with an individual, sole proprietorship, joint venture, Limited Liability Company or other entity indebted to BPUB.

The BPUB will contract only with individual firms or formal organizations such as a) joint ventures, b) limited liability corporations, c) partnerships, d) corporations authorized to do business in the State of Texas, or e) firms registered with the Texas Board of Professional Engineers.

4.4 AGREEMENT

The approved selected firm(s) will provide and negotiate a scope and fee proposal. Once the scope and fee proposal is negotiated with the BPUB, the firm(s) must agree to enter into a professional services agreement in substantially the form and terms as included in the enclosed sample agreement. If scope and fee proposal negotiations cannot be attained, the BPUB will move to the next qualified firm until a negotiation is attained.

4.5 MINIMUM INSURANCE

The selected firm shall carry insurance in the following types and amounts for the duration of the Agreement, and furnish certificates of insurance along with copies of policy declaration pages and policy endorsements as evidence thereof. Additional insurance may be required by BPUB based on the type, scope or size of the project awarded.

- A. Engineer agrees to maintain Worker's Compensation and Employers' Liability Insurance to cover all of its own personnel engaged in performing services for BPUB under this Contract in the following amounts:

Workmen's Compensation – Statutory
Employers' Liability -- \$100,000.00

- B. Engineer also agrees to maintain Commercial General Liability, Comprehensive Business Automobile Liability, and Excess Umbrella Liability Insurance covering claims against Engineer for damages resulting from bodily injury, death or property damages from accidents arising in the course of work performed under this Contract in not less than the following amounts:

Commercial General Liability:

Personal injury and property damage -
\$1,000,000.00 combined single limit each occurrence and
\$1,000,000.00 aggregate

Comprehensive Business Automobile Liability for all vehicles:

Bodily injury and property damage -
\$500,000.00 combined single limit each occurrence

Excess Umbrella Liability:

\$1,000,000.00

- C. Engineer shall add the BPUB and the City of Brownsville, together with their respective Commissioners, Board Members and employees, as additional insureds on all required insurance policies, except worker's compensation, employers' liability and any professional errors and omissions insurance. The Commercial General Liability Policy and Umbrella Liability Policy shall be of an "occurrence" type policy.

- D. Additionally, Engineer agrees to maintain professional errors and omissions liability insurance in the amount of not less than one million dollars (\$1,000,000.00) annual aggregate, on a claims made basis, as long as reasonably available under standard policies.

REQUIRED FORMS CHECKLIST

The following documents are to be submitted as a part of the Bid/RFP/RFQ document

NAME	FORM DESCRIPTION	SUBMITTED WITH BID	
		YES	NO
Required Forms (if applicable)	Acknowledgement Form	<input type="checkbox"/>	<input type="checkbox"/>
	Debarment Certificate	<input type="checkbox"/>	<input type="checkbox"/>
	Ethic Statement	<input type="checkbox"/>	<input type="checkbox"/>
	Conflict of Interest Questionnaire	<input type="checkbox"/>	<input type="checkbox"/>
	Residence Certification Form	<input type="checkbox"/>	<input type="checkbox"/>
	House Bill 89 Form	<input type="checkbox"/>	<input type="checkbox"/>
Special Instructions (if applicable)	Bid Schedule/Cost sheet completed and signed	<input type="checkbox"/>	<input type="checkbox"/>
	Cashier Check or Bid Bond of 5% of Total Amount of Bid	<input type="checkbox"/>	<input type="checkbox"/>
	OSHA 300 Log	<input type="checkbox"/>	<input type="checkbox"/>
	Contractor Pre-Bid Disclosure completed, signed and notarized	<input type="checkbox"/>	<input type="checkbox"/>
	Sub-Contractor Pre-Bid Disclosure completed, signed, and notarized	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
References	Complete the Previous Customer Reference Worksheet for each reference provided	<input type="checkbox"/>	<input type="checkbox"/>
Addenda		<input type="checkbox"/>	<input type="checkbox"/>

ETHICS STATEMENT
(Complete and Return this form with Response)

The undersigned firm, by signing and executing this RFQ, certifies and represents to the Brownsville Public Utilities Board that firm has not offered, conferred or agreed to confer any pecuniary benefit, as defined by (1.07 (a) (6) of the Texas Penal Code, or any other thing of value as consideration for the receipt of information or any special treatment of advantage relating to this RFQ; the firm also certifies and represents that the firm has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this RFQ, the firm certifies and represents that firm has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the Brownsville Public Utilities Board concerning this RFQ on the basis of any consideration not authorized by law; the firm also certifies and represents that firm has not received any information not available to other firms so as to give the undersigned a preferential advantage with respect to this RFQ; the firm further certifies and represents that firm has not violated any state, federal, or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that firm will not in the future offer, confer, or agree to confer any pecuniary benefit or other thing of value of any officer, trustee, agent or employee of the Brownsville Public Utilities Board in return for the person having exercised their person's official discretion, power or duty with respect to this RFQ; the firm certifies and represents that it has not now and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent, or employee of the Brownsville Public Utilities Board in connection with information regarding this RFQ, the submission of this RFQ, the award of this RFQ or the performance, delivery or sale pursuant to this RFQ.

THE FIRM SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BROWNSVILLE PUBLIC UTILITIES BOARD, ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDING, COSTS, DAMAGES, AND LIABILITIES, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF FIRM OR ANY AGENT OR EMPLOYEE OF FIRM IN THE EXECUTION OR PERFORMANCE OF THIS RFQ.

I have read all of the specifications and general RFQ requirements and do hereby certify that all items submitted meet specifications.

COMPANY: _____

AGENT NAME: _____

AGENT SIGNATURE: _____

ADDRESS: _____

CITY: _____

STATE: _____ ZIP CODE: _____

TELEPHONE: _____ TELEFAX: _____

FEDERAL ID#: _____ AND/OR SOCIAL SECURITY #: _____

NOTE: QUESTIONS AND CONCERNS FROM PROSPECTIVE CONTRACTORS SHOULD BE RAISED WITH OWNER AND ITS CONSULTANT (IF APPLICABLE) AND RESOLVED IF POSSIBLE, PRIOR TO THE SOQ SUBMITTAL DATE. ANY LISTED DEVIATIONS IN A FINALLY SUBMITTED SOQ MAY ALLOW THE OWNER TO REJECT A SOQ

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS
(Complete and Return this form with Response)**

Name of Entity: _____

The prospective participant certifies to the best of their knowledge and belief that they and their principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency:

Have not within a three year period preceding this RFQ been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, Local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

Have not within a three year period preceding this application/RFQ had one or more public professional service contract transactions (Federal, State, Local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this RFQ or termination of any award. In addition, under 18 USC Section 1001, a false statement may result in a fine up to a \$10,000.00 or imprisonment for up to five (5) years, or both.

Name and Title of Authorized Representative (Typed)

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

THIS FORM MUST BE COMPLETED IN ITS ENTIRETY & SUBMITTED WITH BID RESPONSE

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY Date Received	
1 Name of vendor who has a business relationship with local governmental entity.		
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. <div style="text-align: center; border-top: 1px solid black; width: 50%; margin: 0 auto;"> _____ Name of Officer </div>		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
<p style="text-align: center;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p style="text-align: center;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7		
_____ Signature of vendor doing business with the governmental entity		_____ Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
 - or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;

- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

BROWNSVILLE PUBLIC UTILITIES BOARD
RESIDENCE CERTIFICATION

In accordance with Art. 601g, as passed by the 1985 Texas Legislature, the following will apply. The pertinent portion of the Act has been extracted and is as follows:

Section 1. (a)

(1) "Nonresident bidder" means a bidder whose principal place of business is not in this state, but excludes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

(2) "Texas resident bidder " means a bidder whose principal place of business is in this state, and includes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Section 1. (b)

The state or governmental agency of the state may not award a contract for general construction, improvements, services, or public works projects or purchases of supplies, materials or equipment to a nonresident bidder unless the nonresident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

I certify that _____(Company Name)
is a **resident Texas bidder** as defined in Art. 601g.

Signature: _____

Print Name: _____

I certify that _____(Company Name)
is a **nonresident bidder** as defined in Art. 601g. and our principal place of business is:

_____(City and State)

Signature: _____

Print Name: _____

Organization Name
House Bill 89 Verification

I, _____ (Person name), the undersigned representative
of (Company or Business name) _____

_____ (hereafter referred to as
company) being an adult over the age of eighteen (18) years of age, after being duly sworn by the
undersigned notary, do hereby depose and verify under oath that the company named- above, under
the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract providing that:
 - (1) "company" does not include a sole proprietorship; and
 - (2) the law applies only to a contract that:
 - (a) is between a governmental entity and a company with 10 or more full-time employees; and
 - (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds or the governmental entity

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

DATE

SIGNATURE OF COMPANY REPRESENTATIVE

On this the ____ day of _____, 20____, personally appeared

_____, the above-named person, who after by me
being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL _____

NOTARY SIGNATURE _____

Date

SAMPLE AGREEMENT

PROFESSIONAL CONSULTING AND TECHNICAL SERVICES CONTRACT

This Professional Consulting and Technical Services Contract (“**Contract**”), dated as of _____, 20____ (the “**Effective Date**”), is entered into by and between the PUBLIC UTILITIES BOARD OF THE CITY OF BROWNSVILLE, TEXAS (“**Brownsville PUB**”) and [ENTER VENDOR’S NAME], a [ENTER VENDOR’S STATE & TYPE OF COMPANY, i.e., Texas, Limited Liability Company, Corporation, etc.], with offices located at [ENTER VENDOR’S STREET ADDRESS INCLUDING CITY/STATE/ZIP CODE] (“**Consultant**” and together with Brownsville PUB, the “**Parties**,” and each a “**Party**”).

WHEREAS, Consultant has the capability and capacity to provide [ENTER PROJECT NAME/SERVICES TO BE PROVIDED] as described herein.

WHEREAS, Brownsville PUB desires to engage Consultant to provide the said services under the terms and conditions hereinafter set forth, and Consultant is willing to perform such services.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Scope of Services.

Consultant agrees to perform the professional consulting and technical services (the “**Services**”) described below and in Exhibit “A” Scope of Services attached hereto and incorporated herein for all purposes. The Parties by mutual agreement may provide for additional professional consulting and technical services to be performed under the terms and conditions of this Contract and described under any additional written Work Orders, pursuant to Paragraph 13 “Changes.” Nothing in this Contract shall be construed to prevent Brownsville PUB from performing for itself or from acquiring from other providers services that are similar to or identical to the Services.

2. Compensation.

Brownsville PUB will pay Consultant for the Services as outlined in Exhibit “B” Compensation, not to exceed compensation of [ENTER WRITTEN AMOUNT FOLLOWED BY FIGURES, i.e., One Thousand and 00/100 Dollars (\$1,000.00)].

3. Method of Payment.

A. Monthly statements, in Consultant’s standard format, will be submitted by Consultant to Brownsville PUB, as well as any supporting documentation requested by Brownsville PUB. Statements will be based on Consultant’s Services completed at the end of the preceding month. Brownsville PUB shall have sole discretion in the approval or disapproval of any compensation to Consultant. If Brownsville PUB disapproves of any charge, in whole or in part, it shall provide written notice to Consultant of the reasons

therefor. Brownsville PUB shall make whole or partial payment to Consultant within thirty (30) days of receipt of a statement.

B. Brownsville PUB will reimburse Consultant for all reasonable expenses incurred in accordance with Exhibit A, if such expenses have been pre-approved, in writing by Brownsville PUB, within 30 days of receipt by Brownsville PUB of an invoice from Consultant accompanied by receipts and supporting documentation reasonably acceptable to Brownsville PUB. All Consultant expenses not pre-approved by Brownsville PUB or not otherwise meeting the requirements of this Contract or Exhibit A shall be the sole responsibility of Consultant.

C. The fees set forth in this Contract shall cover and include all sales and use taxes, duties, and charges of any kind imposed by any federal, state, or local governmental authority on amounts payable by Brownsville PUB under this Contract, and in no event shall Brownsville PUB be required to pay any additional amount to Consultant in connection with such taxes, duties, and charges, or any taxes imposed on, or regarding, Consultant's income, revenues, gross receipts, personnel, or real or personal property or other assets.

D. Consultant shall keep accurate records, including time sheets and travel vouchers of all time and expenses allocated to performance of the Services. All such records shall be kept in the offices of Consultant for a period of not less than five (5) years and shall be made available to Brownsville PUB for inspection or copying upon reasonable request during regular business hours at Consultant's offices.

4. Consultant's Standard of Care

Consultant shall perform the Services (A) in accordance with the terms and subject to the conditions set forth in this Contract; (B) using personnel of required skill, experience, and qualifications; (C) in a timely, workmanlike, and professional manner; (D) with the same degree of care, skill, and diligence as is ordinarily provided by a professional services consultant providing similar services and similar circumstances for a project of which this Contract applies; (E) and shall give professional consultations and advice to Brownsville PUB during the performance of the Services; (F) in compliance with all applicable laws and regulations; and (G) to the reasonable satisfaction of Brownsville PUB.

5. Ownership of Documents

A. Consultant assigns to Brownsville PUB, Consultant's entire right, title, and interest in any document, data, studies, surveys, drawings, specifications, field notes, maps, model, photographs, reports, invention, technique, process, device, discovery, improvement, or know-how, whether patentable or not, hereafter made or conceived solely or jointly by Consultant while working for or on behalf of Brownsville PUB, which relate to, is suggested by, or results from Consultant's provisions of the Services or this Contract and depends on either:

- i. Consultant's knowledge of Confidential Information (as defined in Section 6) it obtains from Brownsville PUB; or
- ii. The use of Brownsville PUB's equipment supplies, facilities, information, or materials.

B. Consultant shall disclose any such item described in subsection A of this Section 5 to Brownsville PUB. Consultant shall, upon request of Brownsville PUB, promptly execute a specific assignment of title to Brownsville PUB and do anything else reasonably necessary to enable Brownsville PUB to secure for itself, patent, trade secret, or any other proprietary rights in the United States or other countries. It shall be conclusively presumed that any patent applications related to this Contract, related to trade secrets of Brownsville PUB, or which relate to tasks assigned to Consultant by Brownsville PUB, which Consultant may file within one year after termination of this Contract, shall belong to Brownsville PUB, and Consultant hereby assigns same to Brownsville PUB, as having been conceived or reduced to practice during the term of this Contract.

C. All writings or works of authorship, including, without limitation, program codes or documentation, produced or authored by Consultant in the course of performing services for Brownsville PUB, together with any associated copyrights, are works made for hire and the exclusive property of Brownsville PUB. To the extent that any writings or works of authorship may not, by operation of law, be works made for hire, this Contract shall constitute an irrevocable assignment by Consultant to Brownsville PUB of the ownership of any and all rights of copyright in, such items, and Brownsville PUB shall have the right to obtain and hold in its own name, rights of copyright, copyright registrations, and similar protections which may be available in the works. Consultant shall give Brownsville PUB or its designees all assistance reasonably required to perfect such rights.

D. If for any reason, including incapacity, Brownsville PUB is unable to secure Consultant's signature on any document needed to apply for, perfect, or otherwise acquire title to the intellectual property rights granted to it under this Section 5, or to enforce such rights, Consultant hereby designates Brownsville PUB as Consultant's attorney-in-fact and agent, solely and exclusively to act for and on Consultant's behalf to execute and file such documents with the same legal force and effect as if executed by Consultant and for no other purpose.

E. Consultant owns the discoveries, improvements, inventions, or intellectual property made or conceived by Consultant before the Effective Date and independently of any Confidential Information of Brownsville PUB and this Contract and are expressly reserved and excepted from the provisions of this Contract.

6. Confidentiality and Data Security.

A. All non-public, confidential, or proprietary information of Brownsville PUB ("**Confidential Information**"), including, but not limited to, business plans, specifications, designs, documents, data, business operations, customer lists, customer information,

including personally identifiable information, pricing, and any other business-related information disclosed or made available by Brownsville PUB to Consultant, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Contract is confidential, solely for Consultant's use in performing this Contract and may not be disclosed or copied unless authorized by Brownsville PUB in writing. Confidential Information does not include any information that: (i) is or becomes generally available to the public other than as a result of Consultant's breach of this Contract; (ii) is obtained by Consultant on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; (iii) Consultant establishes by documentary evidence, was in Consultant's possession prior to Brownsville PUB's disclosure hereunder; or (iv) was or is independently developed by Consultant without using any Confidential Information. Upon Brownsville PUB's request, Consultant shall promptly return all documents and other materials received from Brownsville PUB. Brownsville PUB shall be entitled to injunctive relief for any violation of this Section.

B. At all times during the duration of this Contract and for any period of time Consultant accesses, stores, or processes any Confidential Information after the termination of this Contract, Consultant shall have in place appropriate data security processes and procedures as set forth in Exhibit D, the terms of which are incorporated herein by this reference.

7. Insurance.

A. Consultant agrees to maintain Worker's Compensation Insurance and Employers' Liability Insurance to cover all of its own personnel engaged in performing services for Brownsville PUB under this Contract in the following amounts:

Workmen's Compensation – Texas Statutory
Employers' Liability -- \$100,000.00

B. Consultant also agrees to maintain Commercial General Liability, Business Automobile Liability, Umbrella Liability, and Cyber Liability Insurance covering claims against Consultant for damages resulting from bodily injury, death or property damages from accidents arising in the course of work performed under this Contract in the following amounts:

Commercial General Liability

Bodily Injury \$1,000,000.00 each occurrence
Property Damage \$1,000,000.00 each occurrence

Business Automobile Liability for all vehicles:

Bodily Injury \$50,000.00 each person, \$1,000,000.00 each occurrence
Property Damage \$1,000,000.00 each occurrence

Excess Umbrella Liability:

\$1,000,000.00

Cyber Liability:

\$250,000.00

Consultant shall also provide Professional Liability Insurance in the amount of \$1,000,000.00 per claim and annual aggregate.

C. Consultant shall add Brownsville PUB, its Board Members, Officers and employees, and the City of Brownsville, its Commissioners, Officers and employees as additional insureds on all required insurance policies, except workers' compensation/employer's liability. The insurance certificate(s) shall provide for thirty (30) calendar days advance notice to Brownsville PUB and City of any policy cancellation or material change. The Commercial General Liability and Excess Umbrella Liability Policy shall be of an "occurrence" type policy. The Commercial General Liability shall also include protection against claims insured by usual personal injury liability coverage and coverage for contractual liability assumed by Consultant.

D. Consultant shall furnish Brownsville PUB with Insurance Certificate(s) upon Brownsville PUB's reasonable request and at least ten (10) calendar days prior to field work commencement, which confirm that all required insurance policies are in full force and effect.

8. INDEMNIFICATION AND LIMITATION OF LIABILITY.

A. CONSULTANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BROWNSVILLE AND BROWNSVILLE PUB AND THEIR COMMISSIONERS, BOARD MEMBERS, OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, LIABILITIES, OR EXPENSES OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, TO THE EXTENT ARISING OUT OF, OR RESULTING FROM ANY CLAIM OF A THIRD PARTY OR BROWNSVILLE PUB ARISING OUT OF OR OCCURRING IN CONNECTION WITH, THE NEGLIGENT ACTS OR OMISSIONS OF, WILLFUL MISCONDUCT OF, OR BREACH OF THIS CONTRACT BY CONSULTANT OR ITS AGENTS OR EMPLOYEES.

B. EXCEPT FOR CONSULTANT'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SUBSECTION A OF THIS SECTION 8, TO THE EXTENT ALLOWED BY TEXAS LAW GOVERNING PUBLIC ENTITIES, CONSULTANT'S TOTAL LIABILITY TO BROWNSVILLE PUB FOR ANY LOSS OR DAMAGES FROM CLAIMS ARISING OUT OF, OR IN CONNECTION WITH, THIS CONTRACT FROM

ANY CAUSE INCLUDING CONSULTANT'S STRICT LIABILITY, BREACH OF CONTRACT, OR PROFESSIONAL NEGLIGENCE SHALL NOT EXCEED ONE MILLION DOLLARS. TO THE EXTENT ALLOWED BY TEXAS LAW, BROWNSVILLE PUB HEREBY RELEASES CONSULTANT FROM ANY LIABILITY EXCEEDING SUCH AMOUNT.

9. Addresses for Notices and Communications.

BROWNSVILLE PUB

Eli Alvarez, PE
Division Manager
1425 Robinhood Drive
Brownsville, Texas 78521
Phone: (956) 983-6234
Email: ealvarez@brownsville-pub.com

VENDOR

NAME

TITLE

STREET ADDRESS

CITY, STATE ZIP CODE

Phone:

Email:

All notices and communications under this Contract must be in writing and shall be mailed or delivered to Brownsville PUB and Consultant at the above addresses (or to such other address that the receiving Party may designate from time to time in accordance with this Section).

10. Successors and Assignments.

Neither Party shall assign, transfer, delegate, or subcontract any of its rights or obligations under this Contract without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the transferring Party of any of its obligations hereunder. In the event of any assignment, transfer, delegation, or subcontracting, Brownsville PUB and Consultant each binds itself and its successors, executors, administrators and assigns to the other parties of this Contract and to the successors, executors, administrators and assigns of such other parties, in respect to all covenants of this Contract. Nothing herein shall be construed as creating any personal liability on the part of any officer, Board Member, Commissioner, or employee of any public body which is a party and/or indemnitee hereto.

11. Termination of Contract for Cause.

If, through any cause, Consultant shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if Consultant shall violate any of the covenants, agreements, warranties or stipulations in this Contract, Brownsville PUB shall have the

right, without prejudice to any other rights or remedies it may have under this Contract, to terminate this Contract by giving written notice to Consultant of such termination and specifying the date thereof, at least fifteen (15) calendar days before the effective date of such termination. Without prejudice to any other rights or remedies it may have under this Contract, Brownsville PUB shall have the right to terminate this Contract if in its sole opinion the work of the Consultant is not effective for the purpose it is being performed. Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder provided such compensation is approved by Brownsville PUB in its sole discretion. The method of compensation herein shall be as provided in Section 3 of this Contract.

Notwithstanding the above, Consultant shall not be relieved of liability to Brownsville PUB for damages sustained by Brownsville PUB by virtue of any intentional and/or negligent act or omission or any breach of this Contract by Consultant, and Brownsville PUB may withhold any payments to Consultant for the purpose of setoff, until such time as the exact amount of damages due Brownsville PUB from Consultant is determined.

Subject to Section 8, Consultant agrees that Brownsville PUB shall have all rights and remedies afforded to it at law to recover any damages sustained by Brownsville PUB in connection with the work performed by Consultant under this Contract, including regulatory fines and penalties, attorneys' fees and expert witness costs associated with the defense against any cause of action related to this Contract. In addition, Brownsville PUB shall, in addition to any damages to which it is entitled, be entitled to seek immediate injunctive relief against Consultant prohibiting further actions inconsistent with Consultant's obligations under this Contract. Brownsville PUB shall also have all rights and remedies afforded to it in equity to enforce the terms of this Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

12. Termination for Convenience.

Brownsville PUB may terminate this Contract at any time by giving at least thirty (30) calendar days notice in writing to Consultant. If the Contract is terminated by Brownsville PUB as provided herein, Consultant will be paid for the Services provided and approved expenses incurred up to the termination date if such compensation is approved by Brownsville PUB, which approval shall not be unreasonably withheld. Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder, provided such compensation is approved by Brownsville PUB, which shall not be unreasonably withheld. The method of compensation herein shall be as provided in Section 3 of this Contract.

Notwithstanding the above, Consultant shall not be relieved of liability to Brownsville PUB for damages sustained by Brownsville PUB by virtue of any intentional and/or negligent act or omission or any breach of this Contract by Consultant, and Brownsville PUB may reasonably withhold a sufficient portion of any payments to Consultant for the purpose of

setoff until such time as the exact amount of damages due Brownsville PUB from Consultant is determined.

Consultant agrees that Brownsville PUB shall have all rights and remedies afforded to it at law to recover any damages sustained by Brownsville PUB in connection with the work performed by Consultant under this Contract. Brownsville PUB shall also have all rights and remedies afforded to it in equity to enforce the terms of this Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

13. Changes.

Brownsville PUB may, from time to time, request changes in the scope of the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation, which are mutually agreed upon by and between Brownsville PUB and Consultant shall be incorporated in written amendments to this Contract called "Work Orders".

14. Reports and Information.

Consultant, at such times (but not more than once per month unless an emergency situation arises), and in such forms as Brownsville PUB may require, shall furnish Brownsville PUB such periodic reports as they may request pertaining to the work or services undertaken pursuant to this Contract, the cost and obligations incurred or to be incurred in connection therewith, and any other matter covered by this Contract.

15. Civil Rights.

Consultant shall comply with all applicable federal, state, and local laws regarding nondiscrimination and equal employment opportunity, as set forth in Consultant's policy statement which shall be provided to Brownsville PUB upon request.

16. Entire Agreement.

This Contract, including and together with any Work Orders, exhibits, schedules, and attachments, each of which will be attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous agreements and understandings, both written and oral, between the Parties concerning the subject matter of this Contract.

17. Waiver.

The failure or delay on the part of any Party herein at any time to require the performance by any other Party of any portion of this Contract shall not be deemed a waiver, or in any way affect that Party's rights to enforce such provision or any other provision. Any waiver by any Party herein of any provision hereof shall not be taken or held to be a waiver unless

explicitly set forth in writing and signed by the Party so waiving and shall not be a waiver of any other provision hereof or any other breach hereof. No single or partial exercise of any right, remedy, power, or privilege hereunder shall preclude any other or further exercise thereof.

18. Severability.

The invalidity, illegality, or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract or invalidate or render unenforceable such provision in any other jurisdiction. Upon a determination that any provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Contract to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

19. Survival.

Any and all representations, conditions, and warranties made by Consultant under this Contract are of the essence of this Contract and shall survive the execution, delivery and termination of it, and all statements contained in any document required by Brownsville PUB, whether delivered at the time of the execution or at a later date, shall constitute Consultants representations and warranties hereunder.

20. Force Majeure.

No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract, when and to the extent such Party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events (each a "**Force Majeure Event**"): (A) acts of God; (B) flood, fire, earthquake, pandemic, or explosion; (C) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (D) government order, law, or action; (E) national or regional emergency; or (F) other similar events beyond the reasonable control of the Impacted Party. Notwithstanding the foregoing, Consultant's financial inability to perform, changes in cost or availability of materials, components or services, market conditions, or supplier actions or contract disputes will not excuse performance by Contractor under this Section 20.

The Impacted Party shall give notice within three (3) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section 20, the other Party may thereafter immediately terminate this Contract upon written notice.

21. Governing Law.

This Contract is governed by the laws of the State of Texas without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas and all obligations of the Parties under this Contract are performable in Cameron County, Texas.

22. Choice of Forum.

Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Contract, including all exhibits, schedules, attachments, and appendices attached to this Contract, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the state or federal court located in Cameron County, Texas. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the state or federal court located in Cameron County, Texas. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

23. Time for Performance.

The Services shall be completed in accordance with the performance schedule as outlined in Exhibit "C", except to the extent timely performance is prevented by a Force Majeure Event, subject to the terms of Section 20.

24. Attorney's Fees.

If it is necessary for either Party herein to file a cause of action at law or in equity against the other Party due to: (A) a breach of this Contract or (B) any intentional and/or negligent act or omission by the other Party, the non-breaching or non-negligent Party shall be entitled to reasonable attorney's fees and costs, and any necessary disbursements, in addition to any other relief to which it is legally entitled.

25. Cumulative Remedies.

All Parties shall have all rights and remedies afforded to it at law or in equity to recover damages and interpret or enforce the terms of this Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

26. State or Federal Laws.

This Contract is subject to all applicable Federal and State laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

27. No Third-Party Beneficiary.

The Parties are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto.

28. Dispute Resolution.

In the event a dispute arises between the Parties, then as a condition precedent to any legal action by either Party, the Parties shall first refer the dispute to upper management for good faith negotiations for ten (10) calendar days, and if not resolved, then the Parties agree to participate in at least one session of mediation, as needed, in an effort to resolve the dispute. The Parties agree to split the mediator's fees equally, but each Party shall bear its own legal fees for the mediation. The mediation shall be administered by a mutually agreeable mediation service and shall be held in Cameron County, Texas, unless Brownsville PUB agrees to another location.

29. Amendments.

No amendment to, or modification or termination of this Contract is effective unless it is in writing, identified as an amendment to or modification or termination of this Contract, and signed by an authorized representative of each Party.

30. Independent Contractor.

A. It is understood and acknowledged that the Services which Consultant will provide to Brownsville PUB hereunder shall be in the capacity of an independent contractor and not as an employee or agent of Brownsville PUB. Consultant shall control the conditions, time, details, and means by which Consultant performs the Services. Brownsville PUB shall have the right to inspect the work of Consultant solely for the purpose of determining whether the work is completed according to this Contract and any applicable Work Order.

B. Consultant has no authority to commit, act for or on behalf of Brownsville PUB, or to bind Brownsville PUB to any obligation or liability.

C. Consultant shall not be eligible for and shall not receive any employee benefits from Brownsville PUB and shall be solely responsible for the payment of all taxes, FICA,

federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by Consultant hereunder.

31. Counterparts.

This Contract may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 9, a signed copy of this Contract delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Contract.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed as of the Effective Date by their respective officers thereunto duly authorized.

[ENTER VENDOR'S NAME]

By: _____
[NAME OF AUTHORIZED SIGNER]
[TITLE OF SIGNER]

PUBLIC UTILITIES BOARD OF THE
CITY OF BROWNSVILLE, TEXAS

By: _____
Marilyn D. Gilbert, MBA
General Manager and CEO

EXHIBIT “A”

**SCOPE OF SERVICES FOR
PROJECT/TYPE OF SERVICES TO BE PROVIDED**

Refer to **PROJECT/TYPE OF SERVICES** proposal submitted by **[ENTER VENDOR’S NAME]** dated Month/Day/Year, the terms of which are incorporated herein by this reference.

ADD SCOPE OF SERVICES

EXHIBIT “B”

COMPENSATION FOR PROJECT/TYPE OF SERVICES TO BE PROVIDED

Consultant proposes to perform the work and services described above through the **PROJECT/TYPE OF SERVICES TO BE PROVIDED** project. Consultant will establish Project requirements, determine Project policy matters, ensure satisfactory completion of the work and services, and be directly responsible for the Project. Consultant shall not be reassigned away from this engagement without the prior written consent of Brownsville PUB.

Consultant proposes to perform all work and services described in Exhibit “A” Scope of Services, for the estimated cost of **\$XX,XXX.XX**. Invoices will be submitted monthly. Should the work and Services be completed for less than that amount, Brownsville PUB will only be billed for actual work and services completed. All actual out of pocket expenses incurred in the course of this engagement will be billed at actual cost for reimbursement by Brownsville PUB. Consultant is willing to adjust the proposed scope and the related fee to meet the specific needs of Brownsville PUB. Total billings for this work scope shall not exceed the above estimate **without Brownsville PUB’s written approval**.

ADD FEES/OTHER RELATED FEES APPLICABLE TO CONTRACT, i.e., Hourly Rate Schedule

EXHIBIT “C”

**SCHEDULE FOR
PROJECT/TYPE OF SERVICES TO BE PROVIDED**

Consultant understands that the scope of services outlined herein should be completed within. Consultant proposes to initiate the Project after both parties have signed the contract, subject to Brownsville PUB’s written authorization to proceed. It is understood that Consultant’s ability to complete the tasks within the established time frame is dependent, in large part, on the receipt of any existing, available, and necessary data from Brownsville PUB at the beginning of the Project, and Brownsville PUB’s timely response with review comments and input.

The term of this contract shall be from Month/Day/Year through Month/Day/Year.

EXHIBIT "D"

DATA SECURITY REQUIREMENTS

1. Definitions.

Unless defined in the Contract or elsewhere in this Exhibit, capitalized terms used herein shall have the meanings set forth in this Section 1.

"Authorized Employees" means Consultant's employees who have a need to know or otherwise access Personal Information to enable Consultant to perform its obligations under the Contract.

"Authorized Persons" means (A) Authorized Employees; and (B) Consultant's permitted contractors, agents, own service providers, as each is specified on Attachment 1 to this Exhibit D who have a need to know or otherwise access Personal Information to enable Consultant to perform its obligations under the Contract, and who are bound in writing by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of the Contract.

"Highly Sensitive Personal Information" means (A) an individual's government-issued identification number (including social security number, driver's license number, or state-issued identification number); (B) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; (C) biometric, genetic, health, medical, or medical insurance data; (D) geolocation data; or (E) information regarding racial or ethnic origin, religious beliefs, sex life or sexual orientation, union membership, or citizenship or immigration status.

"Personal Information" means information provided to Consultant by or at the direction of Brownsville PUB, information which is created or obtained by Consultant on behalf of Brownsville PUB, or information to which access was provided to Consultant by or at the direction of Brownsville PUB, in the course of Consultant's performance under the Contract that: (A) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (B) can be used to identify or authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or pins, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, health, genetic, medical, or medical insurance data, answers to security questions, an individual's internet activity or similar interaction history, inferences drawn from other personal information to create consumer profiles, geolocation data, an individual's commercial, employment, or education history, and other personal characteristics and identifiers), in case of both subclauses (A) and (B), including, without

limitation, all Highly Sensitive Personal Information. Brownsville PUB's business contact information is not by itself deemed to be Personal Information.

"Security Breach" means (A) any act or omission that compromises either the security, confidentiality, availability, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by Consultant (or any Authorized Persons), or by Brownsville PUB should Consultant have access to Brownsville PUB's systems, that relate to the protection of the security, confidentiality, availability, or integrity of Personal Information, (B) receipt of a complaint in relation to the privacy and data security practices of Consultant (or any Authorized Persons), or (C) a breach or alleged breach of the Contract relating to confidentiality, privacy, and data security practices. Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Personal Information.

2. Standard of Care.

A. Consultant acknowledges and agrees that, in the course of its engagement by Brownsville PUB, Consultant may create, receive, or have access to Personal Information. Consultant shall comply with the terms and conditions set forth in the Contract in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such Personal Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession by all Authorized Persons. Consultant shall be responsible for, and remain liable to, Brownsville PUB for the actions and omissions of all Authorized Persons concerning the treatment of Personal Information as if they were Consultant's own actions and omissions.

Personal Information is deemed to be Confidential Information of Brownsville PUB and is not confidential information of Consultant. In the event of a conflict or inconsistency between this Exhibit and the confidentiality or compliance with law sections of the Contract, the terms and conditions set forth in this Exhibit shall govern and control.

- B. In recognition of the foregoing, Consultant agrees and covenants that it shall:
- i. keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
 - ii. not create, collect, receive, access, or use Personal Information in violation of law;
 - iii. use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of the Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for Consultant's own purposes or for the benefit of anyone other than Brownsville PUB, in each case, without Brownsville PUB's prior written consent; and

iv. not, directly or indirectly, disclose Personal Information to any person other than its Authorized Persons, including any, subcontractors, agents, its own service providers, or auditors (an "**Unauthorized Third Party**"), without Brownsville PUB's prior written consent unless and to the extent required by government authorities or as otherwise, to the extent expressly required, by applicable law, in which case, Consultant shall (a) use best efforts and to the extent permitted by applicable law notify Brownsville PUB before such disclosure or as soon thereafter as reasonably possible; (b) be responsible for and remain liable to Brownsville PUB for the actions and omissions of such Unauthorized Third Party concerning the treatment of such Personal Information as if they were Consultant's own actions and omissions; and (c) require the Unauthorized Third Party that has access to Personal Information to execute a written agreement agreeing to comply with the terms and conditions of the Contract relating to the treatment of Personal Information.

3. Information Security.

A. Consultant represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.

B. Consultant shall implement and maintain a written information security program including appropriate policies, procedures, and risk assessments that are reviewed at least annually.

C. Without limiting Consultant's obligations under section 3(A), Consultant shall implement administrative, physical, and technical safeguards to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of the Contract.

If, in the course of its engagement by Brownsville PUB, Consultant has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, service provider shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("**PCI DSS**") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Consultant's sole cost and expense.

D. At a minimum, Consultant's safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii)

securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment, including the use of multifactor authentication for access to any Personal Information; (vi) encrypting Personal Information stored on any media; (vii) encrypting Personal Information when transmitted; (viii) strictly segregating Personal Information from information of Consultant or its other customers so that Personal Information is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at Consultant's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Consultant's employees.

E. During the term of each Authorized Employee's employment by Consultant, Consultant shall at all times cause such Authorized Employees to abide strictly by Consultant's obligations under the Contract. Consultant further agrees that it shall maintain a disciplinary process to address any unauthorized access, use, or disclosure of Personal Information by any of Consultant's officers, partners, principals, employees, agents, or contractors. Upon Brownsville PUB's written request, Consultant shall promptly identify for Brownsville PUB in writing all Authorized Employees as of the date of such request.

Upon Brownsville PUB's written request, Consultant shall provide Brownsville PUB with a network diagram that outlines Consultant's information technology network infrastructure and all equipment used in relation to fulfilling its obligations under the Contract, including, without limitation: (i) connectivity to Brownsville PUB and all third parties who may access Consultant's network to the extent the network contains Personal Information; (ii) all network connections, including remote access services and wireless connectivity; (iii) all access control measures (for example, firewalls, packet filters, intrusion detection and prevention services, and access-list-controlled routers); (iv) all backup or redundant servers; and (v) permitted access through each network connection.

4. Security Breach Procedures.

A. Consultant shall:

i. Provide Brownsville PUB with the name and contact information for one or more employees of Consultant who shall serve as Brownsville PUB's primary security contact and shall be available to assist Brownsville PUB twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach;

ii. Notify Brownsville PUB of a Security Breach as soon as practicable, but no later than twenty-four (24) hours after Consultant becomes aware of it; and

iii. Notify Brownsville PUB of any Security Breaches by telephone at the following number: [ENTER TELEPHONE NUMBER], with a copy by email to the individual identified in the Notices section of the Contract.

B. Immediately following Consultant's notification to Brownsville PUB of a Security Breach, the Parties shall coordinate with each other to investigate the Security Breach. Consultant agrees to fully cooperate with Brownsville PUB in Brownsville PUB's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing Brownsville PUB with physical access to the facilities and operations affected; (iii) facilitating interviews with Consultant's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by Brownsville PUB.

C. Consultant shall at its own expense use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. Consultant shall reimburse Brownsville PUB for all actual costs incurred by Brownsville PUB in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation pursuant to Section 4(D).

D. Consultant agrees that it shall not inform any third party of any Security Breach without first obtaining Brownsville PUB's prior written consent. Further, Consultant agrees that Brownsville PUB shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in Brownsville PUB's discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.

E. Consultant agrees to maintain and preserve all documents, records, and other data related to any Security Breach.

F. Consultant agrees to fully cooperate at its own expense with Brownsville PUB in any litigation, investigation, or other action deemed necessary by Brownsville PUB to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.

In the event of any Security Breach, Consultant shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

5. Oversight of Security Compliance.

Upon Brownsville PUB's written request, to confirm Consultant's compliance with the Contract, as well as any applicable laws, regulations, and industry standards, Consultant grants Brownsville PUB or, upon Brownsville PUB's election, a third party on Brownsville PUB's behalf, permission to perform an assessment, audit, examination, or review of all controls in Consultant's physical and/or technical environment in relation to all Personal Information being handled and/or services being provided to Brownsville PUB pursuant to the Contract. Consultant shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transports Personal Information for Brownsville PUB pursuant to the Contract. In addition, upon Brownsville PUB's request, Consultant shall provide Brownsville PUB with the results of any audit by or on behalf of Consultant performed that assesses the effectiveness of Consultant's information security program as relevant to the security and confidentiality of Personal Information shared during the course of the Contract, including but not limited to any Service Organization Controls (SOC) Type 2 audit.

6. Return or Destruction of Personal Information.

At any time during the term of the Contract at Brownsville PUB's request or upon the termination or expiration of the Contract for any reason, Consultant shall, and shall instruct all Authorized Persons to, promptly return to Brownsville PUB all copies, whether in written, electronic, or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to Brownsville PUB that such Personal Information has been returned to Brownsville PUB or disposed of securely. Consultant shall comply with all directions provided by Brownsville PUB with respect to the return or disposal of Personal Information.

7. Equitable Relief.

Consultant acknowledges that any breach of its covenants or obligations set forth in this Exhibit D may cause Brownsville PUB irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, Brownsville PUB is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which Brownsville PUB may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

8. Material Breach.

Consultant's failure to comply with any of the provisions of this Exhibit D is a material breach of the Contract. In such event, Brownsville PUB may terminate the Contract

effective immediately upon written notice to Consultant without further liability or obligation to Consultant.

Attachment 1

Consultant's Service Providers