BROWNSVILLE
PUBLIC UTILITIES BOARD

Date: April 3, 2024
To: All Vendors
Subject: Addendum #1

REFERENCE: **P032-24 Implementation of a Capital Planning and Project Management Software**

This Addendum forms part of the contract and clarifies, corrects or modifies original proposal document.

Question 1: Page 9, Section 12, item b. – The solicitation asks for PCI/SOC2 compliance. Our solution has FedRAMP compliance which is considered a more rigorous security certification with 325 security controls. FedRAMP is a US government-wide security program required by any vendors that provide cloud software to federal agencies. Is it acceptable to submit our response with FedRAMP but not SOC 2?

Answer 1: Yes, BPUB will accept FedRAMP certification instead of SOC 2.

Question 2: Page 20 "Proposal Cost Sheet" – Do you have an expected total number of users from BPUB that will need access to the application? Page 3 mentions about 630 total employees; how many will need access to the Capital Planning and Project Management Software?

Answer 2: The estimated number of licenses BPUB may need is 50 to 100.

Question 3: Page 9 "Milestones & Timeline" – The table asks for an estimated duration for various tasks related to Integrations. Page 8 mentions potential integrations with multiple systems including Banner, Laserfiche, ArcGIS and Cityworks. Does BPUB have documented requirements for how you expect the integrations to function, including data mappings, triggers, transformations, error notifications, etc.? Typically, with integrations, there is a Discovery Phase where our team will work with your subject matter experts (SMEs) to define requirements and develop a custom integration plan. However, before having the work products of those discovery meetings, it will be very difficult to estimate tasks such as "Integration Testing". Should we just enter typical durations based on prior experience or how do you recommend we provide our answer?

Answer 3: Partial business process flows exist for distinct areas of the organization. BPUB will need the discovery phase to define requirements and create a more comprehensive integration plan. Typical durations based on prior experience should be provided.

Question 4: General – During the past year, has BPUB received product demonstrations from software vendors? If so, could you provide information on the demonstrated software and the vendors involved?

Answer 4: This information is currently not available.

Question 5: General – Currently we have access to the 30-page PDF document which outlines the solicitation. Just to be clear, there is no accompanying excel document or feature checklist that we are required to submit with our response, correct? Just a written response based on the page 16 proposal format and various required forms listed on page 22.

Answer 5: Correct, there is no accompanying excel document or feature checklist. Written response with the various forms should be included in the RFP response. Additional information specifically requested in the RFP should be provided. Do not include miscellaneous materials not specifically requested in the RFP.

Question 6: Do the references requested have to be in the US or it can be in other markets?

Answer 6: Reference can be global; however, they should be of similar size and market to BPUB (utilities).

Question 7: Does the proposal format have to be in excel format to be able to add different tabs with the information requested in each one as detailed on the RFP?

Answer 7: The proposal response should be written responses, however, excel spreadsheet can be included to provide breakdown, i.e., proposal cost sheet.

Question 8: Tab 8: Certifications, these documents will be added as attachments, correct?

Answer 8: Yes, Tab 8 should be included as an attachment.

Question 9: On the "CIP development & Publication" item, where should the information be available and for whom?

Answer 9: The information should be part of the software package for all users.

Question 10: On the Milestone & Timeline item, full-scale deployment line, can you please provide more info about what full-scale means?

Answer 10: BPUB currently does not have a CIP software. Full scale deployment conveys an operating software for impacted areas. We are starting from zero, therefore, it is important that the software allows us to consolidate our business processes.

Question 11: On the Milestone & Timeline item, can you provide more information for Security and Compliance Monitoring and Disaster Recovery Testing items?

Answer 11:
Security and Compliance Monitoring: This milestone involves continuously monitoring the system for any security breaches or compliance violations. It includes implementing tools and processes to detect and respond to security incidents promptly, as well as ensuring that the system remains compliant with relevant regulations and standards. Regular audits and assessments may be conducted to evaluate the effectiveness of security measures and ensure ongoing compliance.

Disaster Recovery Testing: This milestone focuses on testing the effectiveness of the system's disaster recovery plan and procedures. It involves simulating various disaster scenarios, such as hardware failures, cyber-attacks, or natural disasters, to ensure that the system can recover and resume operations quickly and efficiently. The testing process typically includes assessing backup and recovery mechanisms, failover procedures, and communication protocols to minimize downtime and data loss in the event of a disaster. Results from these tests are used to identify and address any weaknesses in the disaster recovery strategy, ensuring the system's resilience and continuity of operations.

Question 12: How many users will use the system?

Answer 12: See answer to Question 2 above.

Question 13: Will this implementation be on or offsite?

Answer 13: Implementation is preferably onsite although there can be video assisted meetings for specific topics of discussions.

Question 14: Has Brownsville PUB received any demonstrations from software's? If so, what software's have been demonstrated?

Answer 14: See answer to Question 4 above.

Question 15: What system is currently being used by Brownsville PUB?

Answer 15: `Currently, BPUB does not have a capital planning and project management software.

Question 16: What is the annual construction volume/Spend?

Answer 16: As per RFP document, page 6: Fiscal Year 2024, BPUB's Capital Budget is $91,717,365, with the budget for its 5-year CIP totaling $203,299,486. Of that budgeted money, an average of about 36% is actually spent per year.

Question 17: Is Brownsville PUB looking for a Multi-year SaaS agreement?

Answer 17: As per RFP Contract and Term, Page 13: Term of the contract shall be for three years with the option to renew the software subscription for additional years, if the price and services are satisfactory and agreed upon in writing by both parties.

Question 18: What is Brownsville PUB Annual Construction volume/spend outlook for the next 5 years?

Answer 18: See answer to Question 16 above.

Question 19: Is security important and does Brownsville PUB require the solution to be TX-RAMP Level II Certified?

Answer 19: Yes, security is important. BPUB I.T. will request a cybersecurity report to a cybersecurity score card company, which is an independent company that evaluates companies in regards to cybersecurity. Based on the information provided, we will ask for clarifications if pertinent. BPUB requires PCI/ SOC 2 Certification.

Question 20: Does Brownsville PUB have any requirements around need Analytics type dashboards using tools like PowerBI?

Answer 20: Yes, we have need for analytics. Ideally, the software contains dashboard capabilities and reporting.

Question 21: Does Brownsville PUB track multiple fund sources but effectively manage it from a project, program, or organizational level?

Answer 21: Yes. Ideally, BPUB would like to track program/project by:

1) Identification
   a) Program/Project purpose and description
      i) Decision analysis (with do nothing option)
         (1) Cost-benefit analysis
         (2) Cost-effectiveness analysis
      ii) Statutory or regulatory
      iii) Program/Project manager
   b) Program/Project timeline by phase (quarterly)
   c) Program/Project budget by phase
      i) Debt funding
      ii) Cash funding
      iii) CIAC funding
      iv) Grant funding
      v) In lieu of funding (identify project funding originated)
2) Function
   a) Electric
      i) Generation
      ii) Transmission
      iii) Distribution
      iv) Substation
      v) Metering
   b) Water
      i) Supply
      ii) Treatment
      iii) Transmission and distribution
      iv) Metering
   c) Wastewater
      i) Collection
      ii) Pumping
      iii) Treatment
   d) Natural gas

        i) TBD
   e) Resaca
   f) General and Administrative
        i) Information technology
        ii) Facilities
        iii) Fleet
3) Type
   a) CIP Programs
        i) Customer Connections
        ii) Utility Relocations
           (1) Sub-projects by road/right of way
        iii) Vehicle and Equipment Acquisition
        iv) Lift Station Rehabilitation
           (1) Sub-projects by lift station
   b) CIP Projects
4) Status
   a) Concept (not in 5-year CIP)
   b) Active (in the 5-year CIP)
   c) Closed (not in 5-year CIP)
5) Project Phases
   a) Initiation and Planning
   b) Design and Engineering
   c) Procurement
   d) Construction and Development
   e) Commissioning and Testing
   f) Closeout
6) Performance Areas and metrics
   a) Schedule
   b) Quality
   c) Cost
   d) Scope/Effectiveness/Satisfaction

Question 22: Would BPUB be open to a response with Capital Planning solutions from one company and Project Management from another company? Both solutions work well when used alongside each other.

Answer 22: No. Ideally, BPUB would like to have one software that fits our current needs.

Question 23: How many users (internal and external) does BPUB envision using the selected solution?

Answer 23: See answer to Question 2 above.

Question 24: Can BPUB provide more detail regarding the data it wants to migrate from its legacy systems (e.g., the current state of the data, systems on which it is located, export format, quantity, etc.)?

Answer 24: BPUB currently does not have a CIP/ Project Management software. We are starting from scratch. There may be no data migration of CIP information into this new software since we currently aren't using one, however, this may be subject to change. Ideally, we will set a cutover date to begin incorporating new projects into the system and move from there. Nonetheless, we would want to create API connections to existing systems (e.g., Banner and Cityworks) to trigger action to the correct individuals within the organization. We currently rely on traditional file documentation, utilizing tools like Microsoft Word, Excel, Project and Outlook for project tracking.

Question 25: Has BPUB received any demonstrations of the requested software in the last two years? If yes, please provide the names of the vendors and the software that was demonstrated.

Answer 25: See answer to Question 4 above.

Question 26: Will BPUB shortlist the top few vendors and ask them to showcase an onsite or virtual demonstration of the proposed software?

Answer 26: See page 20 of proposal - Evaluation Procedure and Criteria.

Question 27: Is the term "budget planning" mentioned in the "Capital Planning and Forecasting" section synonymous with "cost estimation" mentioned in "Project Management and Tracking" section?

Answer 27: Yes, budget planning conveys cost estimations.

Question 28: Do the functions of Solicitation/Bid, Contract, and Purchase Order typically associated with Procurement need to be managed in the system, including creation, editing, approval, etc.?

Answer 28: No. Currently, all these functions are managed in Banner, our financial management information system. However, we do need a way for these functions to interact with the CIP/Project management software. Hence, why we are pushing for an API between the solution and Banner.

Question 29: What is the relationship between Projects and Contracts/Purchase Orders? Can one project be associated with multiple Contracts/POs, while each Contract/PO is linked to only one project?

Answer 29: A project can be associated with multiple contracts/POs. Multiple contracts can be linked to multiple projects (many to many).

Question 30: Does the Cost Estimation Database only require data storage, or is there a need for data migration as well?

Answer 30: It requires data storage. At this moment, we are uncertain if we will need data migration. See Answer 24.

Question 31: Which functionalities require support for Mobile Application?

Answer 31: Ideally, the all webpage functionalities (e.g., cost estimates, communication, collaboration, dashboarding, reporting) should be equivalent to the mobile interface.

Question 32: In the Risk and Change Management section of the RFP, when referring to change requests, are they pertaining to changes within the project (such as budget adjustments, modifications to project information), or to changes within associated contracts (such as altering contract amounts or contract timelines)?

Answer 32: Both.

Question 33: Approximately how many reports are needed? Could you please provide some report samples?

Answer 33: At this moment, we are uncertain the amount of reports we would need.

Question 34: Are all the integrations mentioned in the RFP mandatory? For example, Banner, Laserfiche, ArcGIS, Cityworks, and Microsoft Dynamics?

Answer 34: Yes.

Question 35: How many users will access the system?

Answer 35: See answer to Question 2 above.

Question 36: How many types of user roles are there in the system?

Answer 36: The number of user types has not been determined.

Question 37: Please provide the number of each user types:
      a) Project Managers
      b) Resource Managers
      c) Other Managers
      d) Team Resources working on projects that are not members of above user types.
      e) Vendors
      f) Others

Answer 37: The number of user types has not been determined.

Question 38: Roughly, how many projects are currently managed annually?

Answer 38: It varies but usually, there are anywhere between 120-170 projects in the 5-year CIP for the entire utility.

Question 39: Identify any vendors for incumbent tools.

Answer 39: The Firm can select the vendors that will provide the required outcome of the software as per RFP requirements.

Question 40: Please provide the budget for this project.

Answer 40: Budget for this project has not been determined.

Question 41: Has BPUB decided on the financial data points needed for their ERP system, such as contracts, budgets, actuals, change management, vendors, etc., or will this decision be made later?

Answer 41: This decision will be made later.

Question 42: Has BPUB established an estimate for the total number of users, including both BPUB staff and external collaborators?

Answer 42: See answer to Question 2 above.

Question 43: The RFP does not require the purchase of construction materials, nor does it require the purchase of supplies, materials, or equipment. Does the Brownsville Public Utilities Board Residence Certification apply to project management software? If not, can the form be removed from the requirements?

Answer 43: The form can be removed from the requirements.

Question 44: On Page 19 it lists the scoring system that will be used when evaluation responses. For example, 30% is based on "Software Functional Requirements and Alignment", 10% is based on "Training, Support, and Documentation", etc. However, page 17-18 shows the format and content in which all proposal must be organized, and it does not specifically call out sections where we should describe our solution, general support, etc. Can you advise on how the evaluation criteria should be incorporated into the required tab format?

Answer 44: Tab 3 can include evaluation criteria 1, 2 and 4. Tab 5 can include evaluation criteria 3. Tab 7 can include evaluation criteria 5.

Question 45: How many users from BPUB will need access to the application? How many external users will need access to the application?

Answer 45: See answer to Question 2 above.

Question 46: The RFP refers to many integrations including BPUB Financial System Banner, ArcGIS, Laserfiche, City Works, and Microsoft Dynamics. Does BPUB have detailed requirements for all integrations including data mapping, triggers, etc.? Also, is there a preference on the order of completing each integration?

Answer 46: No. Only partial business process flows exist. See Answer 3.

1. Cityworks/ArcGIS
2. Banner/Microsoft Dyanmics
3. Laserfiche

Question 47: The RFP references an expected 6-month implementation. On Page 20 "Proposal Cost Sheet" should we include services for implementation as well as services after the initial

implementation is complete (post go-live support and maintenance)? Or does BPUB not expect to need support beyond the implementation phase?

Answer 47: Include both, services for implementation as well as services after the initial implementation is complete (post go-live support and maintenance).

Question 48: Does BPUB have a budget for the capital project management and planning software?

Answer 48: See Answer 40.

Question 49: Where do the subscription fees for the proposed solution get entered on the Proposal Cost Sheet? Would BPUB like the Vendor to add a table to the Cost Sheet that outlines the subscription fees for the initial three years of the contract and for each annual renewal of up to ten years total?

Answer 49: A separate cost sheet can be added to outline subscription fees.

Question 50: What companies have BPUB seen demos from in the past twelve (12) months?

Answer 50: See Answer 4.

Question 51: Is the hosting responsibility for the system to be assumed by the vendor or by BPUB?

Answer 51: Hosting responsibility will be assumed by the vendor.

Question 52: Are there any requirements for data migration? If so, could you please specify the approximate number of rows of data and documents that need to be transferred to the new system?

Answer 52: See Answer 24.

Question 53: What is the expected number of users that are going to use the application? Please provide the count of different user categories.

Answer 53: See answer to Question 2 above.

Question 54: Please confirm whether FedRAMP or State RAMP certification Required?

Answer 54: See answer to Question 1 above.

Question 55: What are the Improvements from the current system BPUB is looking to achieve through the new product implementation?

Answer 55: Move away from traditional file documentation and work within a web-base software solution that allows for efficient project execution, communication, documentation, reporting, and collaboration amongst the various BPUB departments and stakeholders. The solution is expected to cover all aspects of capital improvement projects, including budget tracking, reporting, document management, scheduling, and progress tracking.

Question 56: What are the challenges BPUB facing now with current Capital planning and Project Management process/system in place?

Answer 56: The process is manual and disperse. BPUB relies on traditional file documentation, utilizing tools like Microsoft Word, Excel, Project and Outlook for project tracking. With the increasing complexity of the utility's capital program, there is a need for a centralized and web-based software solution to enhance project management efficiency, streamline communication, and improve overall project visibility.

Question 57: Does BPUB have a defined budget for this project? If there is not a defined budget, please provide a budget range.

Answer 57: See Answer 40.

Question 58: Do you require a specific database for this solution?

Answer 58: Microsoft SQL or Oracle.

Question 59: Based on the integration identified, what level of integration is required? (For example, real time API or flat file transfer?)

Answer 59: Integrations may require both. Ideally, APIs for all systems but we can work with flat file transfers.

Question 60: What are the Integrations BPUB is planning to implement, please provide details?

Answer 60: CIP Software must be able to integrate with our financial management system (Banner), our work management system (Cityworks), our GIS, our document repositories system (Laserfiche), and our fixed assets catalog (Microsoft Dynamics).

Question 61: Please provide the number of users/licenses you estimate BPUB will require to work with the different modules/functionalities required of the software.
   a. Project Management/Coordination/Communication
   b. Project Cost Management/Forecasting
   c. Portfolio Planning
   d. Project Scheduling Users
   e. Project Schedule Update Users
   f. Project Estimating Users

Answer 61: See answer to Question 2 above.

Question 62: Regarding Key Functionality – Item 7: Is the Mobile Interface a requirement for all functionalities such as the cost estimating functionalities, or is it just required for a specific set of functionalities, communication and collaboration?

Answer 62: See Answer 31.

Question 63: Scope of Services 1.a please define "Encumbrance" in this context.

Answer 63: Encumbrance refers mainly to Risk and Change Management. See Section 6.

Question 64: Scope of Services 1.e – please define the term "real-time" in this context. An interpretation of "real-time" is that once data is entered, it is available in the system and for reporting on the same day or sooner; also, users can access and visualize all the available data required for tracking purposes in the system. It is assumed that BPUB is not requesting schedule updates through Artificial Intelligence from onsite webcams, drones, etc., please confirm.

Answer 64: This is confirmed. Once data is entered, it is available in the system and for reporting on the same day or sooner; also, users can access and visualize all the available data required for tracking purposes in the system. BPUB is not requesting updates through A.I. but is open to suggestions.

Question 65: Scope of Services 1.f The requirement to "Add and Retire Assets" needs elaboration. Is this a requirement for Construction Equipment asset management or plant equipment asset management and maintenance?

Answer 65: Usually when BPUB works on a Capital Improvement Project, there are assets that must be captured and/or removed from our books and must be accounted for operation and maintenance. Since Cityworks is our computerized maintenance management system and Microsoft Dynamics is our accounting asset catalog, anything we do for a project must have the capacity to track assets for both accounting and O&M purposes.

Question 66: Scope of Services 2.a - For cost estimating database: Is there a particular commercial database BPUB requires, or is the requirement to create a database based on BPUB's historical costs?

Answer 66: See Answer 58.

Question 67: Scope of Services 3.c - The phrase "real-time" will generally mean overnight for integrated systems. Please confirm that is acceptable.

Answer 67: See Answer 64.

Question 68: Scope of Services 6.c - Features for conducting risk assessments would include forms for documenting risks. Project Management training could be offered to project managers to teach them to conduct risk assessments, which is a project manager function, not a system function.

Answer 68: Training should convey system function not project management.

Question 69: Please provide a sample contract for this work for legal, contract, and insurance review.

Answer 69: Sample contract is attached.

Question 70: Are the 3 operating groups – electric, water, and wastewater – each operating independently and differently, or do they operate under a common process and follow similar approval channels?

Answer 70: Water and wastewater work within one division of the organization while electric is separate. Processes are generally very similar but they vary in approval channels.

Question 71: The systems in use by BPUB requiring integration to the existing system – are they on-premise, on a cloud platform, or SaaS?

Answer 71: Systems in use by BPUB are on-premise.

Question 72: What integration platform does BPUB currently use for its systems? Can that be used for integration with the new systems?

Answer 72: Most integration platforms are built in-house IT platforms but BPUB would like to move away from this and just have direct connections between the systems.

Question 73: Is BPUB agreeable to using the Texas DIR for contracting the software directly, and entering a configuration contract pursuant to this RFP?

Answer 73: BPUB is able to utilized the DIR State Contract for software purchases, however, there is no guarantee we would utilize it for this project.

Question 74: Proposed Qualifications and Background item 15 requests Compliance with BARS and GFOA. Is this requirement about the bidder and bidder's behavior under contract or is this requirement about the system being put in service?

Answer 74: Both. It is a requirement about the bidder's behavior under contract and our systems should reflect this compliance.

Question 75: The RFP document, under the proposal cost sheet, describes the total cost is 'fixed fee'. For delivery and implementation specifically, depending on the timeline, approach, method, is there a consideration for an award of Time and Materials (T&M)?

Answer 75: No, not at this time.

Question 76: Has the Brownsville PUB seen product demonstrations or have experience with any technologies related to the implementation of a Capital Planning and Project Management Software?

Answer 76: See answer to Question 4 above.

Question 77: Does the Brownsville PUB have a budget threshold for total software and delivery services for this RFP?

Answer 77: See question 40.

Question 78: The Brownsville PUB currently leverages Laserfiche for document management. Is the Capital Planning software intended to replace, or just integrate with, Laserfiche as a software and platform? The question is specifically referencing the ability of the platform to overlap with the functionality provided by Laserfiche for document management.

Answer 78: It is intended to integrate with Laserfiche. Laserfiche is our official enterprise record management system.

Question 79: Once a vendor of choice is selected, how will Brownsville PUB procure the solution? Will procurement be through the Texas DIR, another co-operative contract, or directly with the vendor?

Answer 79: Brownsville PUB will select the option most advantageous to Brownsville PUB.

Question 80: Is TX-RAMP certification required?

Answer 80: See Answer 19.

Question 81: How many processes (workflows) do you anticipate needing to be created in the software for this project?

Answer 81: At this moment, we are uncertain of this number.

Question 82: We see BPUB would like integrations with Cityworks, Banner Financials, Laserfiche, Microsoft Dynamics, and Esri ArcGIS. Do you have integration points already planned for specific workflows or will we need to give a price based on our assumptions of integration points?

Answer 82: Integration points have not been planned out. See Answer 3.

Question 83: How many users need to be set up and trained?

Answer 83: See answer to Question 2 above.

The signature of the company agent, for the acknowledgement of this addendum, shall be required. **Complete information below and return via e-mail to: dsolitaire@brownsville-pub.com.**

 I hereby acknowledge receipt of this addendum.

Company: _____

Agent Name: _____

Agent Signature: _____

Address: _____

City: _____ **State:**_____ **Zip:**_____

Phone Number: _____ **E-mail address:**_____

If you have any further questions about the Proposal, call 956-983-6366.

BY: *Diane Solitaire*
     Purchasing

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.   <u>Insurance</u>.

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:

<u>Commercial General Liability</u>
Bodily Injury $1,000,000.00 each occurrence
Property Damage $1,000,000.00 each occurrence

<u>Business Automobile Liability</u> 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
NAME
TITLE
1425 Robinhood Drive
Brownsville, Texas 78521
Phone: (956) 983-XXXX
Email: xxxxx@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. <u>Termination of Contract for Cause</u>.

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. <u>Termination for Convenience</u>.

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. <u>Changes</u>.

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. <u>Reports and Information</u>.

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. <u>Civil Rights</u>.

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. <u>Entire Agreement</u>.

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. <u>Waiver</u>.

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. <u>Severability</u>.

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. <u>Survival</u>.

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. <u>Force Majeure</u>.

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 of 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.   <u>Counterparts</u>.

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
<mark>**PROJECT/TYPE OF SERVICES TO BE PROVIDED**</mark>

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 <mark>Month/Day/Year</mark> through <mark>Month/Day/Year</mark>.

DATA SECURITY REQUIREMENTS

1.   <u>Definitions</u>.

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.

         AUS 3152537.1

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.   <u>Material Breach</u>.

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