

State of Texas §

Count of Webb §

AGREEMENT
Between
OWNER AND CONSULTANT
For
PROFESSIONAL PROJECT MANAGEMENT SERVICES

THIS AGREEMENT is made as of August 8, 2022, between Webb County a Political Subdivision of the State of Texas (herein “Owner”) and Brighton Group, LLC of Edinburg, Texas (herein “Consultant”).

Whereas, Owner intends to contract with Consultant for Project Management Services for Webb County Coronavirus & Local State Recovery Funds (CSLRF) – ARPA Adopted Projects as attached and listed in Exhibit A and Exhibit B in the RFQ 2022-002 for Project Management Services which are located in Webb County, Texas (hereinafter collectively referred to as the “Projects”).

Now therefore, Owner and Consultant, in consideration of their mutual considerations as set forth herein, and in accordance with the terms and conditions set forth in Webb County’s RFQ 2022-002 for Project Management Services, agree as follows:

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ARTICLE 1 INITIAL INFORMATION

1.1 Program overview

Webb County has a steadily growing population of close to 275,000 people; making it the 19th most populous county in Texas out of 254 Counties. Webb County has been allocated \$53.6 million by the United States Department of Treasury to respond and recover from the impacts of the Coronavirus pandemic. The County is looking to contract with a Project Management Firm to ensure all relevant reporting metrics, set forth by the United States Department of Treasury, have been met and appropriate data collected from recipients/ sub-recipients for the duration of the ARPA program projects.

Webb County solicited Statement of Qualifications (SOQ) from experienced Project Management Firms that have expertise in the area of Project Management and Administration of Federal Grant Projects, which includes intricate knowledge of the Federal Office of Management and Budget (OMB)'s Uniform Guidance rules, Title 2 Code of Federal Regulations (CFR), Part 200 federal funding regulations, including but not limited to the U.S. Treasury guidance on interim final rule(s) and Final rule(s) adopted on January 6, 2022, to administer Federal funds under the American Rescue Plan Act 2021 (ARPA). Webb County is the recipient of \$53.6 million dollars with funding allocations to categories for premium pay, Non-Governmental Organizations (Sub-Recipients), Revenue Replacement and Administration, less the allocations, Webb County has designated \$35,240,000.00 towards various eligible ARPA projects. The solicitation and award is intended to comply with the State of Texas Procurement laws and with the Code of Federal Regulations §200.318 - §200.327 (General Procurement Standards).

1.2 The Owner's budget for the Program:

The approved ARPA Program is comprised of multiple projects and their budgets are set forth in the attached Exhibit A incorporated herein by reference for all intents and purposes as if set out in full.

1.3 The Owner's intended procurement or delivery method for design and construction of the Project:

Comply with the State of Texas Procurement laws and with the Code of Federal Regulations §200.318 - §200.327 (General Procurement Standards).

1.4 Anticipated scheduling information:

Compliance to all schedules of reporting and compliance set forth by the U.S. Treasury guidance on interim final rule(s) and Final rule(s) adopted on January 6, 2022, to administer Federal funds under the American Rescue Plan Act 2021 (ARPA) for Webb County's allocated US Department of The Treasury – Coronavirus State & Local Fiscal Recovery Funds. A more detailed schedule and supporting documentation will be developed by the project manager and presented to Webb County for all respective adopted projects and uses.

1.5 Project Team

Prime Consultant:
Brighton Group, LLC
2805 Fountain Plaza Blvd.
Suite A-2
Edinburg, Texas 78539
joseph@brightongroup.org

Sub-Consultant:
ERO Architects
300 S 8th Street
McAllen TX 78501
P. O. Box 720428
McAllen TX 78504
bgodinez@goero.com

Sub-Consultant:
GDJ Engineering
2805 Fountain Boulevard, Suite A-1
Edinburg, Texas 78539
anthony@gdjeng.com

- 1.6 The Owner identifies the following representative in accordance with Section 5.4:

County Judge Tano Tijerina
Webb County
1110 Washington St.
Suite 101
Laredo, Texas 78040

- 1.7 The Project Manager identifies the following representative in accordance with Section 2.5:

Prime Consultant:
Joseph Palacios
Brighton Group, LLC
2805 Fountain Plaza Blvd.
Suite A-2
Edinburg, Texas 78539
joseph@brightongroup.org

- 1.8 The Owner and Project Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Project Manager shall appropriately adjust the schedule, the Project Manager's services, and the Project Manager's compensation.

ARTICLE 2 PROJECT MANAGER'S REPRESENTATIONS AND RESPONSIBILITIES

- 2.1 The Project Manager shall provide the services as set forth in this Agreement.
- 2.2 Related experience in managing federally funded grants and requirements of 2 CFR 200 (Subpart A through Subpart E) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and in compliance with the State of Texas Uniform Grant Management Standards.
- 2.3 The Project Manager shall perform its services consistent with the skill and care ordinarily provided by project manager practicing in the same or similar locality under the same or similar circumstances. The Project Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.
- 2.4 The Project Manager, as soon as practicable after execution of the Agreement, shall confirm in writing to the Owner the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Project Manager's proposed key staff

members, the Owner may reply to the Project Manager in writing stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Project Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Project Manager shall not change its key staff members without the Owner's consent, which shall not unreasonably be withheld or delayed.

- 2.5 The Project Manager shall identify a representative authorized to act on behalf of the Project Manager with respect to the full scope of the services within this agreement.
- 2.6 Except with the Owner's knowledge and consent, the Project Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Project Manager's judgment with respect to this agreement.
- 2.7 The Project Manager shall provide its services in cooperation with the services provided by the Owner and the Owner's consultants and contractors and shall coordinate its services with those services provided by the Owner and the Owner's consultants and contractors. The Project Manager shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants and contractors. The Project Manager shall provide prompt written notice to the Owner if the Project Manager becomes aware of any error, omission, or inconsistency in such services or information.
- 2.8 **Insurance.** The Project Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Project Manager normally maintains, the Owner shall reimburse the Project Manager for any additional cost as set forth in Section 10.6.3.
- 2.8.1 Commercial General Liability with policy limits of not less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage.
- 2.8.2 Automobile Liability covering vehicles owned by the Project Manager and non-owned vehicles used by the Project Manager with policy limits of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.
- 2.8.3 The Project Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.8.1 & 2.8.2
- 2.8.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of not less than one million dollars (\$1,000,000).
- 2.8.5 Professional Liability covering negligent acts, errors, and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.
- 2.8.6 The Owner shall be an additional insured on the Project Manager's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

- 2.8.7 The Project Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.8. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies.

ARTICLE 3 GENERAL SCOPE OF PROJECT MANAGER'S BASIC SERVICES

- 3.1 Provide support for strategic planning and coordination on all approved eligible ARPA projects identified by Webb County Commissioners Court.
- 3.2 The Project Manager shall provide the Owner with a preliminary evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other on all approved eligible ARPA projects.
- 3.3 The Project Manager shall periodically review the development of the design for the eligible ARPA Projects, and provide recommendations to the Owner for systems, materials, equipment, and techniques that may be utilized to achieve design standards for these respective Projects, if any.
- 3.4 The Project Manager shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over the Projects; and shall assist the Owner in connection with the Owner's responsibility for filing documents required for such approvals. The Project Manager shall assist the Owner in obtaining building permits if required and special permits for permanent improvements, except for permits required to be obtained directly by the Contractor. The Project Manager shall verify that the Owner has paid applicable fees and assessments.
- 3.5 The Project Manager shall retain all Project related documents and information it receives. Upon reasonable notice, the Owner shall have access to all such documents and information. Project participants shall have access to such documents and information only as approved by the Owner. The Project Manager shall preserve such documentation and information for a period of one year from the date of Substantial Completion and at that time provide a copy to the Owner.
- 3.6 The Project Manager shall develop and document a Project Management Plan for the approved eligible ARPA projects with recommendations for the Owner's internal management of the Project, including a description of, and requirements pertaining to, the following:
- 3.6.1 Project management approach and organization, including executive, management and team staffing plan and responsibilities;
 - 3.6.2 Project planning and development activities, including strategic planning; prioritizing; and defining scope, schedule, and overall budget for the projects to include elements outside of the project budgets;
 - 3.6.3 Project management controls, including scope, budget/cost, schedule, and quality management plan;
 - 3.6.4 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; procedures for evaluating and approving substitutions; and strategy for affirmative action or diversity planning;
 - 3.6.5 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for project construction procurement, such as award, contracting, notice to proceed, change orders, payment certification; and project closeouts;
 - 3.6.6 Project communication procedures, including systems, meetings, reporting, investigation, and records.

- 3.7** The Project Manager shall implement, maintain, and upgrade as necessary, a web-based File Sharing System to be used to receive and distribute Project Reports, Project Schedules, and other information as agreed by the Owner and the Project manager.
- 3.8** The Project Manager shall implement, maintain, and upgrade as necessary, a web-based Project Management Information System to be used to receive, distribute, and maintain project reports, project schedules, and other information as agreed by the Owner and the Project Manager. Activities under the projects will be scheduled and documented through the Project Management Information System. The Project Management Information System shall organize information by activity or other relevant categories, as determined by the Project Manager and Owner. The Project Manager shall collect information pertaining to the projects, and update the Project Management Information System on a weekly basis unless otherwise agreed. The Project Management Information System shall contain, at a minimum, the current status on contracts, budget, and schedule, and the documents identified in this Section 3.8, including the following:
- 3.8.1** The Contract Documents
 - 3.8.2** Addenda
 - 3.8.3** Change Orders and Construction Change Directives
 - 3.8.4** Modifications
 - 3.8.5** Construction schedules and submittal schedules
 - 3.8.6** Requests for information and any responses, logs, or compilations pertaining to requests for information
 - 3.8.7** Approved Shop Drawings, Product Data, and similar required submittals
 - 3.8.8** Certificates of insurance received from the Contractor
 - 3.8.9** Consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment
 - 3.8.10** Affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens
 - 3.8.11** Minutes for any meeting the Project Manager attends
 - 3.8.12** Project reports and site observations by consultants.
 - 3.8.13** Any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals
 - 3.8.14** Other
- 3.9** The Owner shall have access to all information in the Information Management System. Other project participants shall have access to specific information only as approved by the Owner. The Project Manager shall preserve the documentation and information contained in the Information Management System for a period of one year from the date of Substantial Completion and at that time provide a copy of all documentation and information contained in the Information Management System to the Owner.
- 3.10** The Project Manager shall develop protocols and standards for the exchange and use of information in digital form to be integrated into the Information Management System. The Project Manager shall provide information to the Owner and the Owner's consultants and contractors, as required, regarding the use of the Information Management System.
- 3.11** The Project Manager shall develop and implement a system of budget and cost controls to assist the Owner in the management of project costs for all projects. The Project Manager shall prepare cash flow projections of costs for the projects.
- 3.12** The Project Manager shall report the impact on the project budget of contracts and modifications proposed by the Owner and the Owner's consultants and contractors.

- 3.13** The Project manager shall prepare an overall program and project schedules showing priorities, sequences, durations, and responsible parties, for major design, pricing, construction, and Owner activities. The Project Schedules shall also identify critical milestone dates and schedule contingencies. As the projects progress, the Project Manager shall update the status and expand the level of detail of the Project Schedules. The Project Schedules shall also incorporate or identify:
- 3.13.1** dates for approvals and permits;
 - 3.13.2** the design and construction schedules, including dates of commencement and completion, and other project milestones;
 - 3.13.3** Project components that need to be ordered or procured by the Owner, if any; and
 - 3.13.4** the Owner's occupancy requirements, and any portions of the Project having occupancy priority.
- 3.14** The Project Manager shall monitor and report on the progress of the respective ARPA projects and advise the Owner of observed deviations from the project schedule or key milestones that may impact substantial completion or final completion. The Project Manager shall include the reports in the Project Management Information System if selected in Section 3.3. The Project Manager shall consult with the Owner and the Owner's consultants and contractors and assist the Owner in developing recovery plans when the schedules or objectives are not being met
- 3.15** Review Federal regulations and provide guidance / recommendations on federal contract provisions and general procurement standards to ensure cost recovery and compliance of expenditures using federal funds.
- 3.16** Resolve any requests for information, justification, audit findings and eligibility appeals related to ARPA recovery expenditures.
- 3.17** Streamline reporting process to ensure continued compliance with federal guidelines and provide post-award grant administration.
- 3.18** Provide the County with grant/funding close-out services to ensure funding is retained.
- 3.19** Provide project management services, including project oversight, compliance with project and/or grant requirements, and compliance with general federal and state guidelines related to administrative expenses, accountability, transparency, and contracting.
- 3.20** Provide status reports to Commissioners Court on a monthly basis or as directed by Commissioners Court.
- 3.21** Provide the County assistance in developing appropriate policies and procedures for use of American Rescue Plan Act (ARPA) funds, if required.
- 3.22** Actively search for and share Federal Code of Regulation guidance documentation and interpretations of such guidance as it becomes available.
- 3.23** Respond to formal questions from the County and provide formal opinions regarding the eligibility of specific County expenses to be covered by ARPA funds.
- 3.24** Perform comprehensive and compliance and eligibility reviews of uses of the ARPA funds on a regular basis and in a timely manner to ensure compliance with ARPA guidance and propose corrective actions when necessary.

- 3.25 Provide the County assistance with preparing County quarterly and annual reporting responsibilities related to federal recovery funds, including the annual Plan Performance Report and all interim and quarterly reports.
- 3.26 Provide the County assistance with creating presentations and communications materials for community stakeholders and the public, when required.
- 3.27 Attend relevant meetings with local, state, and federal agencies in conjunction with or on behalf of the County.
- 3.28 Actively search for and share plans and practices from other US counties with regard to the use of ARPA funds.
- 3.29 If applicable, the selected Respondent may be requested to directly audit spending by outside organizations to ensure compliance with federal and state requirements (i.e., Non-Government Organizations (NGO)).

ARTICLE 4 OWNER'S RESPONSIBILITIES

- 4.1 The Owner shall provide and update information regarding requirements for, and limitations on, the Project in a timely manner, including the information in Article 1; information pertaining to other objectives, schedule constraints and criteria, and site requirements; and any other information either described in Article 5 or required for the Project manager to perform its services.
- 4.2 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Project Manager's services.
- 4.3 The Owner shall furnish surveys to describe the physical characteristics, legal limitations, utility locations and written legal description of the Project site. The survey and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to an appropriate benchmark if applicable to the projects.
- 4.4 The Owner shall provide, and shall require that its consultants and contractors provide, prompt written notice to the Project manager if they become aware of any fault or defect in the Projects, including errors, omissions or inconsistencies in any documents produced by, or services provided by, the Project manager.
- 4.5 In the agreements between the Owner and the Owner's consultants or contractors, the Owner shall include a duty that the consultant or contractor cooperate with the Project Manager and provide information and documents reasonably necessary for the Project manager to prepare and update the Project Management Plan or as otherwise required for the Project Manager to perform its services.
- 4.6 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Project Manager's consultants through the Project Manager about matters arising out of or relating to the Project. The Owner shall communicate with its own forces, consultants, and contractors, and coordinate its own internal information and communications that are necessary for the Project. The Owner shall notify the Project Manager of any such communication that affects the Project. The Owner shall promptly notify the Project Manager of any direct communications that may affect the Project manager's services.

- 4.7 The Owner shall provide the Project Manager access to the Project sites and other facilities under the Owner's control and associated with the respective projects. The Owner shall obligate its contractors to provide the Project Manager access to the Project sites wherever work is in preparation or progress.
- 4.8 The Owner shall require contractors to purchase and maintain, or require its contractors to purchase and maintain, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire respective projects at the site on a replacement cost basis without optional deductibles. This policy shall cover reasonable compensation for Project Manager's services and expenses required as a result of such insured loss.

ARTICLE 5 COPYRIGHTS AND LICENSES

- 5.1 The Project Manager assigns to the Owner its rights, including copyright, in its Instruments of Service. The Project Manager shall obtain a similar assignment to the Owner from the Project Manager's consultants consistent with this Agreement. For purposes of this Agreement, Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Project Manager, the Owner, and their consultants and contractors under their respective services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.
- 5.2 The Project Manager and Owner warrant that in transmitting any information, including Instruments of Service, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the respective adopted ARPA projects.
- 5.3 The Owner shall have exclusive ownership of all data in the Information Management System and the Project Management Plan developed or contributed by the Project Manager or the Project Manager's consultants and contractors. Ownership of the data in the Information Management System and the Project Management Plan does not include ownership of any proprietary software developed and owned by the Project Manager and used in connection with the collection, manipulation, or publication of the data in the Information Management System and the Project Management Plan. Unless the Owner pays the licensing fee described in Section 10.6, the Owner's right to use any such proprietary software shall terminate at the time of termination of this Agreement. The Project Manager shall take all steps reasonably necessary to allow the Owner to exercise the Owner's rights to own and utilize the data in the Information Management System and the Project Management Plan after termination of the Owner's rights to use any proprietary software. The Project Manager shall include provisions consistent with the provisions in this Section 6.3 in the Project Manager's agreements with the Project Manager's consultants. If the Project Manager rightfully terminates this Agreement for cause as provided in Section 8.4, the Project Manager's obligations under, and the Owner's rights to further use of proprietary software granted in, this Section 6.3 shall terminate. Ownership of data obtained from, or compiled, developed or contributed by, the Owner's consultants or contractors will be controlled by the terms of the Owner's agreements with those consultants or contractors.

ARTICLE 6 CLAIMS AND DISPUTES

- 6.1 The Owner and Project Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other, arising out of or related to this Agreement, in accordance with the requirements of the method of binding dispute resolution selected in this

Agreement, within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work on the Project. The Owner and Project Manager waive all claims and causes of action not commenced in accordance with this Section 7.1

- 6.2 To the extent damages are covered by property insurance required under Section 5.13, the Owner and Project Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in Section 5.8. The Owner or the Project Manager, as appropriate, shall require of their contractors, consultants, and agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

ARTICLE 7 TERMINATION OR SUSPENSION

- 7.1 If the Owner suspends the respective projects, the program fails to make payments to the Project Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Project Manager's option, cause for suspension of performance of services under this Agreement. If the Project Manager elects to suspend services, the Project Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Project Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Project Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Project Manager's services. The Project Manager's fees for the remaining services and the time schedules shall be equitably adjusted.
- 7.2 If the Owner suspends the respective projects, or the services of the program the Project Manager shall be compensated for services performed prior to notice of such suspension. When the projects resume, the Project Manager shall be compensated for expenses incurred in the interruption and resumption of the Project Manager's services. The Project Manager's fees for the remaining services and the time schedules shall be equitably adjusted.
- 7.3 If the Owner suspends the projects for more than 90 cumulative days for reasons other than the fault of the Project Manager, the Project Manager may terminate this Agreement by giving not less than seven days' written notice.
- 7.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 7.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Project Manager for the Owner's convenience and without cause.
- 7.6 In the event of termination not the fault of the Project Manager, the Project Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all termination expenses as defined in Section 8.7.
- 7.7 Termination Expenses are in addition to compensation for the Project Manager's services and include expenses directly attributable to termination for which the Project Manager is not otherwise compensated.
- 7.8 In the event of termination of this Agreement, the Owner's rights to use information and materials provided by the Project Manager are set forth in Article 6.

ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.1** This Agreement shall be governed by the law of the place where the adopted ARPA projects are located.
- 8.2** The Owner and Project Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Project Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.
- 8.3** If the Owner requests the Project Manager to execute certificates, the proposed language of such certificates shall be submitted to the Project Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Project Manager to execute consents reasonably required to facilitate assignment to a lender, the Project Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Project Manager for review at least 14 days prior to execution. The Project Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.
- 8.4** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Project Manager.
- 8.5** Unless otherwise required in this Agreement, the Project Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.
- 8.6** The Project Manager shall have the right to include photographs of the Project among the Project Manager's promotional and professional materials. The Project Manager shall be given reasonable access to the Project to take photographs. However, the Project Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Project Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Project Manager in the Owner's promotional materials for the Project.
- 8.7** If the Project Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section **9.7.1**.
- 8.8** If the Project Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 9.7.
- 8.9** Inconsistencies. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.
- 8.10** Severability. Each paragraph and provision hereof is severable from the entire Agreement and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

- 8.11** Prohibition against Assignment. There shall be no assignment or transfer of this Agreement without the prior written consent of both parties hereto.
- 8.12** Law of Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be enforced in Webb County, Texas.
- 8.13** Notices. All notices called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or forty eight (48) hours after mailed to each party by certified mail, return receipt requested, postage prepaid to the following addresses:
- | | |
|--|---------------------------|
| Owner | Consultant |
| Webb County | Joseph Palacios |
| Attn: Webb County Judge | Manager |
| 1000 Houston Street, 3 rd Floor | Brighton Group, LLC |
| Laredo, Texas 78040 | 2805 Fountain Plaza Blvd. |
| Suite A | |
| Edinburg, Texas 78539 | |
- 8.14** Entire Agreement. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless signed by both parties and attached hereto and/or embodied herein.
- 8.15** Amendment. No changes to this Agreement shall be made except upon written agreement of both parties.
- 8.16** Headings. The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.
- 8.17** Waiver. The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.
- 8.18** Counterparts. This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.
- 8.19** Terminology and Definitions. All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.
- 8.20** Rule of Construction. The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.
- 8.21** Immunity. Webb County does not waive or relinquish any immunity or defense on behalf of themselves, their trustees, commissioners, offices, employees and agents as a result of the execution of this Agreement and performance of the functions and obligations described herein.

- 8.22** No rights created. This Agreement is not intended and does not create any rights or interest in persons not a party hereto.
- 8.23** Legal Compliance. The parties hereto agree to comply fully with all applicable federal, state and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this agreement. In the event that any of the parties hereto are required by law or regulation to perform any act inconsistent with this agreement, or to cease performing any act required by this agreement, this agreement shall be deemed to have been modified to conform with the requirements of such law, regulation or rule.
- 8.24** Legal Authority.
Consultant Signors. The person or persons signing this Agreement on behalf of Consultant, or representing themselves as signing this Agreement on behalf of the Consultant, do hereby warrant and guarantee that they are authorized to sign this Agreement on behalf of the Consultant and to bind the Consultant validly and legally to all terms, performances, and provisions in this Agreement.
- 8.25** Owner Signors. The person or persons signing this Agreement on behalf of Owner (Webb County), or representing themselves as signing this Agreement on behalf of Owner (Webb County), do hereby warrant and guarantee that the Commissioner's Court for Webb County has approved this Agreement and authorized the County's representative to bind Webb County validly and legally to all terms, performances, and provisions in this Agreement.
- 8.26** Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference for all intents and purposes, provided however that in the event of a conflict between this Agreement and its Exhibits, this Agreement shall control to the extent of such conflict.
- 8.27** Owner's requirements as set forth in its request for qualifications and/or request for proposals shall be deemed incorporated herein by reference, provided, in the event of a conflict between this Agreement, the request for proposals and/or the request for qualifications, this Agreement shall control to the extent of such conflict.
- 8.28** This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

ARTICLE 9 COMPENSATION

- 9.1** For the Project Manager's Basic Services described under Article 3, the Owner shall compensate the Project Manager as follows:
- 9.2** For those construction projects which are initiated with the Project Manager a sum equivalent to 2% of the adopted budget for the ARPA funded project.
- 9.3** For those construction projects which are already in progress, being those projects for which consultant acquisition has commenced prior to the Project Manager's involvement a sum equivalent to 1.5% of the adopted budget for the ARPA funded project.
- 9.4** For those projects which do not contain a construction component (i.e. masterplans, studies, reports) a sum equivalent to 1.5% of the adopted budget for the ARPA funded project.
- 9.5** For those ARPA funded Non-Governmental Organization ARPA funded monetary awards a sum equivalent to 1% of the monetary award.

- 9.6 For purposes of this Article, the ARPA funded project and their budgets are set forth in the attached Exhibit “A” attached hereto and incorporated by reference as if set out in full for all intents and purposes.
- 9.7 The hourly labor cost rates and billing rates for services of the Consultant and the Consultant’s sub-consultants, if any, for any Additional Services are set forth below. The rates shall be adjusted in accordance with the Consultant’s and Consultant’s sub-consultants’ normal review practices
- 9.8 For Owner approved Additional Services, the Owner shall compensate the Project Manager as follows or as otherwise negotiated and set forth in writing:

Architect:	\$200/Hour
Engineer:	\$200/Hour
Senior Project Manager	\$150/Hour
Grant / Project Administrator	\$125/Hour
Project Manager	\$125/Hour
QA/QC Reviewer	\$125/Hour
Cost/Budget Analyst	\$100/Hour
Constructability Reviewer	\$100/Hour
Contracts Administrator	\$125/Hour
Construction Inspector	\$100/Hour

9.9 Compensation for Reimbursable Expenses

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Project Manager and the Project Manager’s consultants directly related to the Project, as follows:

- 9.9.1 Authorized transportation and authorized out-of-town travel and subsistence;
- 9.9.2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- 9.9.3 Fees paid for testing, surveys or other data obtained at the request of the Owner;
- 9.9.4 Printing, reproductions, plots, standard form documents;
- 9.9.5 Postage, handling, and delivery;
- 9.9.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- 9.9.7 Professional photography and presentation materials requested by the Owner;
- 9.9.8 Project Manager’s consultants’ expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Project manager’s consultants;
- 9.9.9 All taxes levied on professional services and on reimbursable expenses;
- 9.9.10 Site office expenses, if authorized in advance by the Owner.

9.10 For Reimbursable Expenses the compensation shall be the expenses incurred by the Project Manager and the Project Manager’s consultants plus zero percent (0 %) of the expenses incurred.

9.11 If the insurance requirements listed in Section 2.7 exceed the types and limits the Project Manager normally maintains and the Project Manager incurs additional costs to satisfy such requirements, the Owner shall reimburse the Project Manager for such costs as set forth below:
None.

9.12 Compensation for Use of Project Manager’s Proprietary Software

If the Owner terminates the Project manager for its convenience under Section 8.5, or the Project Manager terminates this Agreement under Section 8.3, or upon completion of the Project Manager’s services under this Agreement, the Owner shall pay a licensing fee, as compensation for

the Owner's continued use of the Project Manager's proprietary software developed and owned by the Project Manager in accordance with Section 6.3, as follows:
\$400.00 Monthly

9.13 Payments to the Project Manager

Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Project Manager's invoice. Amounts unpaid (30) days after the invoice date shall be paid pursuant to the Texas Prompt Payment Act.

9.14 The Owner shall not withhold amounts from the Project Manager's compensation to impose a penalty or liquidated damages on the Project Manager, or to offset sums requested by or paid to contractors or other consultants for the cost of changes to the Project, unless the Project Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

9.15 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of three years after the termination or completion of this Agreement.

ARTICLE 10 SPECIAL TERMS AND CONDITIONS

10.1 Special terms and conditions that modify this Agreement are as follows:

None.

Webb County

Brighton Group, LLC

OWNER

MANAGER

Tano E. Tijerina
County Judge

Joseph Palacios
Manager

Date: _____

Date: _____

ATTEST:

Margie Ramirez Ibarra
Webb County Clerk

Approved as to Form:

Nathan R. Bratton
General Counsel
Civil Legal Division*

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf Webb County, its client. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Exhibit "A"

Subject to Revision

Subject to Revision