



**Amendment
City of Corpus Christi
Purchasing Division**

Date: November 9, 2017

Service Agreement #/Name: No. 946 - City Performance Reporting System

Amendment No. 2

Service Agreement Current Value: \$49,900 (w/prior amendment)

Amendment No. 2 Value: \$39,600

Service Agreement Total Amended Value: \$89,500

The City of Corpus Christi ("City") and **Brio Services, LLC, dba Brio Consulting, LLC** ("Contractor") entered into the above-referenced agreement ("Agreement") on or about November 4, 2016; executed an amendment to the Agreement on or about January 26, 2017 ("Amendment No. 1"); and now desire to mutually execute this amendment ("Amendment No. 2") in order to reinstate the Agreement and Amendment No. 1 and put into effect the modifications or revisions stated in this instrument, which, by execution below and taken together with the Agreement and Amendment No. 1, constitutes the entire understanding and agreement between the parties.

(A) The Agreement and Amendment No. 1 to the Agreement are reinstated for all intents and purposes by the parties as if the Agreement and Amendment No. 1 had not expired. By execution of this Amendment No. 2, the parties desire to ensure the continuation of annual software hosting and support services for the enhanced and now-functional CPR product.

(B) Section 1 of the Agreement, entitled "Scope," is deleted in its entirety and replaced with language to read as follows:

"1. Scope. Contractor shall provide City Performance Reporting System ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2. Contractor shall also provide annual software hosting and support services ("Hosting") in accordance with Attachment A-1, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety."

(C) Section 2 of the Agreement, entitled "Term," is deleted in its entirety and replaced with language to read as follows:

"2. Term. This Agreement is for a term of approximately 25 months, with performance commencing November 4, 2016, and concluding December 11, 2018. The parties agree that the first Hosting period commences December 12, 2017, subject to approval of the execution of this Amendment No. 2 by the City's City Council, and terminates at midnight December 11, 2018. The parties may mutually extend the term of this Agreement for the provision of Hosting for up to four additional 12-month periods ("Option Period"), provided, the parties do so in writing and prior to the expiration of the initial or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee."

(D) Section 3 of the Agreement, entitled "Compensation and Payment," is amended by deleting only the first sentence and replacing it with language to read as follows:

"3. Compensation and Payment. The total value of this Agreement is \$89,500, subject to approved extensions and changes, including a possible increase in the annual price for Hosting (upon the parties' exercise of an Option Period) but which increase may be

no greater than the average U.S. rate of inflation for the immediately preceding 12-month period elapsed prior to the Option Period. The total value of this Agreement is represented by work to be completed under Attachment A for \$49,900 and annual hosting services to be provided under Attachment A-1 for \$39,600."

(E) Section 4 of the Agreement, entitled "Contract Administrator," is amended by deleting the identified employee and contact information and replacing it with the following employee and contact information:

"Eddie Houlihan, Director
Office of Management & Budget
Phone: 361-826-3792
Email: EddieHo@cctexas.com"

(F) Contractor shall submit updated copies of Contractor's certificate of insurance to the Contract Administrator and Risk Manager, pursuant to the terms of the Agreement.

(G) Contractor agrees to comply with Section 2252.908, Texas Government Code, as it may be amended, and to complete and submit a Form 1295 "Certificate of Interested Parties" upon Contractor's execution of Amendment No. 2.

(H) In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Amendment No. 2 (which reinstates the Agreement and Amendment No. 1) on behalf of the Contractor verifies that the company does not boycott Israel and will not boycott Israel during the term of Amendment No. 2 nor any Option Period pursuant to the Agreement.

(I) The parties acknowledge and agree that the Services (e.g., interface restoration and system upgrades for the CPR product) provided pursuant to the Agreement and Amendment No. 1 have been completed.

(J) A copy of Attachment A-1 is attached to this Amendment No. 2, the content of which attachment is incorporated by reference into this Amendment No. 2 as if fully set out here in its entirety.

The terms and conditions of the reinstated Agreement and Amendment No. 1 not modified or revised by this Amendment No. 2 remain in full force and effect for all intents and purposes of the parties. Upon final execution, the entire content of this Amendment No. 2 supplements the Agreement and Amendment No. 1 and is incorporated by reference into the Agreement as if fully set out in its entirety in the Agreement.

Contractor

City of Corpus Christi

11/15/2017

Nancy B. Lerner
Chief Executive Officer

Date

Maria Pedraza
Procurement Manager

Date

Approved as to legal form: _____

Elizabeth Hundley
Assistant City Attorney
for Miles Risley, City Attorney

ATTACHMENT A-1



Brio Consulting, LLC
11152 Westheimer Road #685
Houston, Texas 77042-3208
713-858-2425
www.brio-consulting.com

August 14, 2017

Kim Baker, Assistant Director of Financial Services
Purchasing Department
City of Corpus Christi
1201 Leopard Street
Corpus Christi TX 78401-2825

Re: Annual Contract for Hosting Services for City Performance Reporting (CPR) System

Dear Ms. Baker:

We are pleased to offer services for ongoing hosting and support of the City Performance Reporting (CPR) System developed under City Service Agreement 946. Pursuant to the recommendations and action plan developed under Service Agreement 946, we offer the following scope, term and fees:

Proposed Scope

Brio will continue to provide the City with access to the CPR as a hosted service under the *General Terms and Conditions for StatWindow® Hosting* attached hereto. This includes a monthly allowance of eight (8) hours of technical services that can be applied to general user support or the development of interfaces or enhancements, at the City's discretion.

Hosting Term and Fee

Brio will provide hosting services for one (1) year for a fee of \$39,600, payable in advance of service. If the City requests services to enhance the CPR and such services fall outside the limits defined in Section 4.3 of the attached *General Terms and Conditions for StatWindow® Hosting*, Brio will provide such additional services on a time and materials basis. Labor rates for additional services are as follows:

Annual hosting fees and rates may increase no more than once per year (at renewal) and by no more than the U.S. rate of inflation.

We look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy B. Lerner", is written over a light blue horizontal line.

Nancy B. Lerner
Chief Executive Officer
Brio Consulting, LLC

c. Frank Bailey, City
Saundra Thaxton, City
Steve Klepper, City

Encl.

Labor Category	Hourly Rate
Principal/Program Manager	\$275
Senior Systems Architect	\$205
Senior Programmer	\$155
Support	\$105

GENERAL TERMS AND CONDITIONS FOR STATWINDOW HOSTING SERVICES

These General Terms and Conditions for Hosting Services for the StatWindow® software (THE SOFTWARE) are in addition to the terms and conditions of the agreement through which the hosting services are procured (the HOSTING AGREEMENT).

1. Parties

- 1.1. The parties to the HOSTING AGREEMENT are referred to herein as the HOST (the party providing access to THE SOFTWARE) and the SUBSCRIBER (the party procuring and using the hosting services for THE SOFTWARE).

2. Rights to Software

- 2.1. Subject to the terms and conditions herein, and subject to full and timely payment of all fees owed under the HOSTING AGREEMENT, the HOST hereby grants to SUBSCRIBER and SUBSCRIBER hereby accepts a limited, non-exclusive, non-transferable, right to access and use THE SOFTWARE to support SUBSCRIBER's business operations and presentation of data directly related to SUBSCRIBER's business operations.
- 2.2. SUBSCRIBER may authorize its employees, contractors or other agents to use THE SOFTWARE to enter and manage data related to SUBSCRIBER's business operations. SUBSCRIBER is responsible for ensuring that its authorized users abide by these Terms and Conditions. SUBSCRIBER is wholly responsible for the data entered, updated or deleted by the individuals SUBSCRIBER authorizes to use THE SOFTWARE.
- 2.3. SUBSCRIBER shall not copy, distribute, sell, lease or grant third party rights to THE SOFTWARE. SUBSCRIBER shall not alter, modify, enhance, adapt, reverse engineer, disassemble, or make works derived from any version of THE SOFTWARE or attempt to generate or access the source code for THE SOFTWARE, whether by converting, translating, decompiling, disassembling or merging any part of THE SOFTWARE with any other software.
- 2.4. HOST shall provide access to THE SOFTWARE via the Internet. Subscriber is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access and use THE SOFTWARE and for paying all third-party fees and access charges incurred while accessing or using THE SOFTWARE, including but not limited to equipment and services needed to provide access to the Internet.

3. Data Ownership and Responsibility

- 3.1. SUBSCRIBER owns the data it enters and manages in THE SOFTWARE, hereafter referred to as PERFORMANCE DATA. The PERFORMANCE DATA include data entered and updated by individual users as well as data that may be added or updated through automated interfaces to SUBSCRIBER's databases.
- 3.2. SUBSCRIBER hereby grants to HOST and HOST hereby accepts a limited, non-exclusive, non-transferable, right to access, process and use the PERFORMANCE DATA for the sole purpose of providing the services defined herein and in the HOSTING AGREEMENT.
- 3.3. SUBSCRIBER has the right to copy, store and use the PERFORMANCE DATA outside THE SOFTWARE.

- 3.4. SUBSCRIBER is wholly and solely responsible for the accuracy of the PERFORMANCE DATA, for protecting the PERFORMANCE DATA against unauthorized access or editing, and for ensuring the PERFORMANCE DATA are legal and suitable for public consumption.
- 3.5. SUBSCRIBER is responsible for managing individual users accounts and for ensuring that authorized users safeguard their passwords. SUBSCRIBER is responsible for deleting user accounts and resetting user passwords as needed.
- 3.6. SUBSCRIBER is responsible for protecting its source data. If THE SOFTWARE includes interfaces to databases outside StatWindow® then SUBSCRIBER is responsible for ensuring the database accounts used by those interfaces have read-only access to the source data and/or provide access to copies of the source data rather than original records.
- 3.7. SUBSCRIBER will adhere to all laws related to the protection of personal data and will ensure the PERFORMANCE DATA are lawful public records.
- 3.8. HOST assumes no responsibility and shall have no liability for the deletion, correction, destruction, damage, loss or failure to store any PERFORMANCE DATA. SUBSCRIBER warrants that the PERFORMANCE DATA is a matter of public record.

4. Software Documentation and Service Levels

4.1. Documentation and Upgrades

- 4.1.1. HOST shall provide SUBSCRIBER with an electronic copy of documentation that explains how to use THE SOFTWARE, including but not limited to documentation of the methods for entering, updating and exporting PERFORMANCE DATA.
- 4.1.2. From time to time, and at HOST's discretion, HOST may apply patches and upgrades to THE SOFTWARE. If upgrades, patches or other planned maintenance will affect access to THE SOFTWARE, then HOST shall schedule such maintenance outside SUBSCRIBER's normal business hours and shall notify SUBSCRIBER of such planned maintenance in advance.

4.2. System Availability, Trouble Reports and General Requests

- 4.2.1. HOST will use commercially reasonable efforts to make THE SOFTWARE available twenty-four (24) hours a day and seven (7) days per week except for planned maintenance.
- 4.2.2. HOST will use commercially reasonable efforts to provide 98% system uptime throughout the term of the hosting period. System downtime excludes outages due to planned maintenance announced in advance by HOST, outages caused by SUBSCRIBER's errors or SUBSCRIBER's infrastructure failures, and causes beyond HOST's reasonable control.
- 4.2.3. HOST will respond to reports of system outages within twenty-four (24) hours of notification by SUBSCRIBER and will target resolution of such issues within forty-eight (48) hours.

- 4.2.4. HOST will respond to other trouble reports, technical inquiries, and requests for enhancement within two business days and will target resolution of problems with THE SOFTWARE within three (3) business days. The schedule for development of enhancements will be negotiated, as will additional fees that may apply for such enhancements.

4.3. Technical and User Support

- 4.3.1. Unless otherwise specified in the Hosting Agreement, HOST will provide up to eight (8) hours per month of user and technical support, which may be applied to development of enhancements or interfaces as well as general support.
- 4.3.2. Technical support hours are not transferable to other parties or agreements and have no cash value to SUBSCRIBER.
- 4.3.3. Time needed to address system outages and issues with THE SOFTWARE that are HOST's responsibility do not count toward the SUBSCRIBER's use of support hours.

4.4. Backup and Recovery

- 4.4.1. HOST will provide nightly backups of SUBSCRIBER's PERFORMANCE DATA and database-controlled configurations of THE SOFTWARE and will retain such backups for up to thirty (30) days.
- 4.4.2. In the event of data loss that is the direct result of HOST action(s) and/or hosting infrastructure failures, HOST will invoke immediate steps to assess the situation to recover and restore the data affected. Recovery point objective (RPO) or the acceptable amount of data loss, is no more than 24 hours and target restoration is within a 24-hour period from when the system crash or data loss occurred.
- 4.4.3. In the event of data loss as a direct result of SUBSCRIBER's action(s) or force majeure, HOST will provide recovery services using technical support hours as defined herein and/or on a Time and Materials basis upon approval from the SUBSCRIBER to proceed with such services.

5. Limited Warranties and Disclaimers.

- 5.1. **Intellectual Property Warranty.** HOST has the right, power and authority to provide access to THE SOFTWARE. To the knowledge of HOST, THE SOFTWARE does not infringe the intellectual property rights of any third party.
- 5.2. **Hosting Services Warranty.** HOST represents and warrants that, during the first sixty (60) days of the term of the HOSTING AGREEMENT, THE SOFTWARE will operate substantially in accordance with the Software Documentation, provided the Subscriber accesses and uses THE SOFTWARE in compliance with such Documentation or other instructions provided by HOST. In the event the Hosting Services fail to satisfy the warranty immediately above, HOST's sole obligation, and SUBSCRIBER's sole remedy for non-conformance of this warranty shall be, at HOST's option, to (a) use reasonable efforts to correct the nonconformity or (b) refund any pre-paid fees paid by SUBSCRIBER for the non-conforming Hosting Services and terminate the HOSTING AGREEMENT.

- 5.3. **Limitations on Warranties.** The limited warranty set forth herein will not apply to any misuse or negligence in the operation or use of THE SOFTWARE by the SUBSCRIBER or any breach by SUBSCRIBER of any of the terms hereof. The limited warranties set forth herein are made for SUBSCRIBER's benefit only. The remedies in this Section 5 are the sole and exclusive remedies for breach of these limited warranties.

- 5.4. **Disclaimer of Warranties.** The express warranties set forth in this section 5 are the only warranties made by HOST with respect to the hosting services, THE SOFTWARE, and any other services provided hereunder. HOST makes no warranty or representation that SUBSCRIBER's access to and use of THE SOFTWARE will be uninterrupted or error-free, and specifically disclaims any and all other warranties, whether written or oral, express or implied, with respect to THE SOFTWARE, including any implied warranties of merchantability or fitness for a particular purpose.

6. Limitation on Liability

- 6.1. HOST shall not be liable to SUBSCRIBER for any indirect, incidental, reliance or special damages or consequential damages arising under or in connection with the HOSTING AGREEMENT, regardless of the form of action, whether in contract, warranty, strict liability or tort, excluding negligence of any kind. To the extent allowed under Texas law, SUBSCRIBER hereby releases HOST and each of its officers, directors, employees and agents from any such claim.
- 6.2. In no event shall the aggregate liability of HOST to SUBSCRIBER arising out of or by reason of the HOSTING AGREEMENT (including by reason of any breaches or failures to perform hereunder) exceed the aggregate amount payable to HOST under the HOSTING AGREEMENT.
- 6.3. Any claims arising out of, related to or in connection with the HOSTING AGREEMENT must be asserted (through the due commencement of legal proceedings) within one year of the date SUBSCRIBER knows or should have known of the existence of such claim.
- 6.4. HOST shall under no circumstances be liable for any claim or demand by any third party based on or related to SUBSCRIBER's use of THE SOFTWARE or errors or alleged errors in THE SOFTWARE, including, without limitation, persons using the facilities or services of SUBSCRIBER or their heirs or dependents.
- 6.5. HOST shall indemnify SUBSCRIBER and its agents against any third party claims, demands, costs, or liabilities alleging that THE SOFTWARE infringes the intellectual property rights of any third party (an "IPR Claim"); provided, however, that HOST will not be obligated to indemnify SUBSCRIBER to the extent the alleged infringement is caused by (a) SUBSCRIBER's breach of any of its obligations hereunder or misuse or modification of THE SOFTWARE, or (b) SUBSCRIBER's use of THE SOFTWARE in combination with any product, process or information not owned, developed or delivered by HOST.

7. Independent Contractor

- 7.1. HOST is an independent contractor and will maintain complete control of and responsibility for its employees, subcontractors, and agents.

- 7.2. Nothing contained in the HOSTING AGREEMENT or these General Terms and Conditions shall be construed to create a partnership, joint venture or agency relationship, and, notwithstanding anything else herein, neither party shall have the right to incur (and will not attempt to incur) any obligation or liability on behalf of the other party.

8. Termination by Host

- 8.1. HOST may suspend, revoke or limit SUBSCRIBER's use of THE SOFTWARE if HOST determines there is a material breach of SUBSCRIBER's obligations, a security breach, or a violation of law or if HOST is directed to suspend, revoke, or limit SUBSCRIBER's use of THE SOFTWARE by a government, regulatory, or law enforcement agency with jurisdiction over HOST or SUBSCRIBER. If the cause of a suspension can reasonably be remedied, the HOST will provide notice of the actions SUBSCRIBER must take to reinstate access to THE SOFTWARE. If the SUBSCRIBER fails to take such actions within a reasonable time, HOST may terminate access to THE SOFTWARE.
- 8.2. Failure to pay is a material breach.
- 8.3. If HOST limits, suspends or terminates SUBSCRIBER's access to THE SOFTWARE for reasons of material breach, security breach, violation of law, or direction of a government, regulatory or law enforcement agency, then SUBSCRIBER shall not be entitled to refund of any prepayments.
- 8.4. HOST may terminate for convenience with sixty (60) days' written notice prior to the termination of the HOSTING AGREEMENT. If HOST terminates for convenience, then SUBSCRIBER is entitled to refund of prepayments for hosting services.

9. Termination by Subscriber

- 9.1. SUBSCRIBER may request termination for cause with thirty (30) days' written notice if HOST fails to provide access to THE SOFTWARE in accordance with the terms herein. If terminating for cause, SUBSCRIBER shall provide documentation of the claimed lapse in service. If HOST remedies the lapse in service or provides evidence that no lapse in service occurred or that the lapse was the result of SUBSCRIBER actions or force majeure, then SUBSCRIBER may choose to (a) continue service or (b) terminate for convenience, and SUBSCRIBER will not be entitled to refund of prepayments. If HOST does not remedy the lapse in service or provide evidence that no lapse in service occurred or that the lapse was the result of SUBSCRIBER actions or force majeure, then SUBSCRIBER will be entitled to refund of prepayments for hosting services scheduled to begin thirty (30) days after the notice of termination for cause.
- 9.2. SUBSCRIBER may request termination for convenience with thirty (30) days' written notice. SUBSCRIBER is not entitled to refund of prepayments if terminating for convenience.

10. Force Majeure

- 10.1. Neither party shall be responsible for delay or disruption in the performance of its obligations under the HOSTING AGREEMENT caused by a force majeure event. This includes delays in SUBSCRIBER's transmittal of payments to HOST and disruption of access to THE SOFTWARE due to an occurrence or circumstance beyond the control of the claiming Party

and may include, but is not limited to, extraordinary weather conditions, electromagnetic disturbances, or other natural catastrophes, war, riots, terrorism, strikes, lockouts, or other industrial disturbances or acts of any governmental agencies.

11. Compliance with Laws

- 11.1. SUBSCRIBER shall comply with, and is solely responsible for compliance with, all applicable laws governing the access to or use of THE SOFTWARE, including without limitation export, import and use regulations of the United States and other countries.

12. Gratuities

- 12.1. HOST warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to SUBSCRIBER's employees, agents, or representatives with a view toward securing the HOSTING AGREEMENT or securing favorable treatment with respect thereto.

13. Successors and Assigns

- 13.1. This HOSTING AGREEMENT is to be binding on the successors and assigns of the Parties hereto but may not be assigned by either Party without first obtaining the written consent of the other.

14. Severability, Survival and Conflicts

- 14.1. If any of the provisions contained in the HOSTING AGREEMENT or in these General Terms and Conditions are held invalid, illegal, or unenforceable, the enforceability of the other remaining provisions shall not be impaired.
- 14.2. Limitations of liability, indemnities, and rights in data, confidentiality, and other express representations shall survive any termination or expiration of the HOSTING AGREEMENT.
- 14.3. In the event of conflict between the HOSTING AGREEMENT and these General Terms and Conditions, the more restrictive terms shall apply.

15. Waivers

- 15.1. No waiver by either Party of any default by the other Party in the performance of any provision of the HOSTING AGREEMENT shall operate or be construed as a waiver of any future default, whether like or different in character.

16. Headers Not Controlling

- 16.1. Headers herein are not controlling.