

STATE OF TEXAS           §  
   §  
 COUNTY OF FORT BEND   §

**PIER PROFESSIONAL CONSULTING  
 SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and PIER Systems, Inc. (hereinafter "Consultant"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Consultant provide consulting services related to the PIER System (hereinafter "Services"); and

WHEREAS, Consultant represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

**Article I. Scope of Services**

Consultant shall render Services to County as defined in the Scope of Services (attached hereto as Exhibit A).

**Article II. Personnel**

2.1 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

### **Article III. Compensation and Payment**

3.1 Consultant's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is eighty thousand dollars and no/100 (\$80,000). In no case shall the amount paid under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County. Payment will be made in accordance with those payment procedures set forth in Section 3.3 below.

3.3 It is understood and agreed that payments will be made to Consultant by County based on the following procedures: Consultant shall submit an invoice to County by the tenth (10<sup>th</sup>) business day of each month for services rendered during the previous calendar month setting forth work accomplished under the Agreement, accompanied by a progress report indicating the percent complete for the tasks included in the Scope of Services, in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Article IV. Limit of Appropriation**

4.1 Prior to execution of this Agreement, Consultant has been advised by County, and Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of eighty thousand dollars and no/100 (\$80,000), specifically allocated to fully discharge any and all liabilities which may be incurred by County.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances, or interpretations thereof exceed eighty thousand dollars and no/100 (\$80,000).

### **Article V. Time of Performance**

It is understood and agreed that the time for performance of the Scope of Services under this Agreement shall begin on April 5, 2012 and end on September 4, 2012. Tasks described in the Scope of Services shall be completed within this time or within such additional time as may be extended by the County.

**Article VI. Modifications**

Any modifications to this Agreement must be in writing and must be signed by both parties.

**Article VII. Termination**

7.1 Termination for Convenience

7.1.1 County or Consultant may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Consultant fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Consultant's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

**Article VIII. Ownership and Reuse of Documents**

Except for the Intellectual Property of Consultant, as defined herein, all documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part

of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. The term "Intellectual Property" means any planning formats, training materials, curriculum, exercises, templates, software, systems, trade secrets, copyrights, patents, and trademarks developed by Contractor independent of, or prior to this Agreement. All such data and material shall be promptly furnished to County on request.

#### **Article IX. Inspection of Books and Records**

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

#### **Article X. Insurance**

10.1 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.4 Professional Liability insurance with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies

including Workers' Compensation written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

**Article XI. Indemnity**

**CONSULTANT SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES, PROVIDED THAT CONSULTANT SHALL NOT INDEMNIFY COUNTY FOR ANY PORTION OF A CLAIM, LIABILITY OR EXPENSE THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF COUNTY, OR ANY OF ITS AGENTS, SERVANTS, OR EMPLOYEES.**

**NEITHER PARTY SHALL BE LIABLE, AND EACH PARTY EXPRESSLY RELEASES THE OTHER PARTY FROM, ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES.**

**Article XII. Confidential and Proprietary Information**

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is furnished by County to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (d) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of

Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Consultant expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

### **Article XIII. Independent Contractor**

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Consultant or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

**Article XIV. Contract Administration**

14.1 All written notices, demands, and other papers or documents to be delivered to County under this Agreement shall be delivered to the Fort Bend County Office of Emergency Management, 307 Fort Street, Richmond, Texas 77469, or at such other place or places as it may from time to time designate by written notice delivered to Consultant. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas 77469, Attention: County Judge.

14.2 All written notices, demands, and other papers or documents to be delivered to Consultant under this Agreement shall be delivered to PIER Systems, Inc., 1204 Railroad Avenue, Suite 200, Bellingham, Washington 98225, or such other place or places as Consultant may designate by written notice delivered to County.

**Article XV. Compliance with Laws**

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Consultant shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Article XVI. Performance Warranty**

16.1 Consultant warrants to County that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Consultant will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Consultant warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

**Article XVII. Assignment**

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

**Article XVIII. Applicable Law**

This Agreement shall be construed under and in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Article XIX. Successors and Assigns**

County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Article XX. Publicity**


Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

**Article XXI. Conflict**

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 14 day of May, 2012.

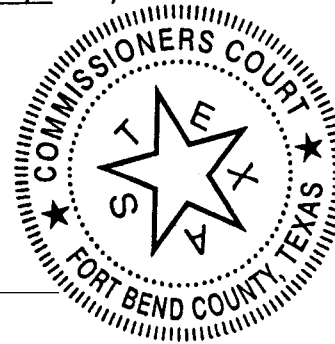
FORT BEND COUNTY

  
\_\_\_\_\_  
Robert E. Hebert, County Judge  
May 22, 2012

PIER SYSTEMS, INC.

  
\_\_\_\_\_  
Authorized Agent- Signature

Kevin Boxx  
\_\_\_\_\_  
Authorized Agent- Printed Name



ATTEST:


  
\_\_\_\_\_  
Dianne Wilson, County Clerk

UP  
\_\_\_\_\_  
Title

5/14/12  
\_\_\_\_\_  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 80,000.<sup>00</sup> to accomplish and pay the obligation of Fort Bend County under this contract.

  
\_\_\_\_\_  
Robert Edward Sturdivant, County Auditor

# EXHIBIT A



PIER Systems, Inc.  
 1204 Railroad Ave., Ste. 200  
 Bellingham, WA 98225  
 360.746.0470

### Services Agreement

This Services Agreement, dated February 29, 2012, is entered into between PIER Systems, Inc. and the Houston UASI region. To initiate professional services, you must execute this Agreement. This Services Order is governed by the Customer Agreement and PIER Systems General Terms.

<b>Client:</b>	<b>Houston UASI</b>
<b>Agreement Number:</b>	
<b>Contact/Site Admin:</b>	Lach Mullen
<b>Job/Project Name:</b>	PIER Custom Programming
<b>Start Date:</b>	4/5/2012
<b>Target Completion Date:</b>	9/4/2012
<b>Billing Information:</b>	See PO
PO Number (required):	

**Scope of Work and Fees:** Developing and upgrading several components of the PIER System:

**1. Contact-oriented List Manager (Subscription Manager)**

Allow contacts to sign up for public Contact Groups

Allow contacts to select which groups to unsubscribe from when they click "Unsubscribe"

Allow contacts to update their contact information

Allow system to ping contacts at set-period to update information

Manage Public/Private Contact groups like Inquiry categories currently

Method for site visitors to authenticate their contact info.

Method for contacts to update contact info. Method for visitors to manage distribution channel subscriptions. Method for users to define distributions channels (predefined distribution workflows basically). Method to configure publishing channel that forward to distribution channels for automatic distribution on publishing.

Manual distributions can select channels and may use current manual distribution method. Est 530 hrs.

**\$80,000.00**



PIER Systems, Inc.  
1204 Railroad Ave., Ste. 200  
Bellingham, WA 98225  
360.746.0470

**Payment Schedule:** Payable net 30. Invoiced month-end after services are completed.

If during the course of this project you request additional Services beyond what is listed in this Service Agreement, PIER Systems Inc. will issue a subsequent Services Agreements containing agreed upon Services and fees.

**Acceptance:**

By: Kevin [Signature]

By: \_\_\_\_\_

Title: UP

Title: \_\_\_\_\_

Date: 5/14/12

Date: \_\_\_\_\_

**PIER Systems, Inc.**

**Houston UASI**



**CERTIFICATE OF LIABILITY INSURANCE**

5/15/2012

<b>PRODUCER:</b>  Aon Risk Services of the Northeast 199 Water Street, 30th Floor New York, NY 10038	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>COMPANIES AFFORDING COVERAGE</b>	
<b>INSURED:</b>  Pier Systems Inc. 1204 Railroad Avenue Bellingham, WA 98225	COMPANY A	STARR INDEMNITY & LIABILITY COMPANY
	COMPANY B	ZURICH AMERICAN INSURANCE COMPANY
	COMPANY C	ARCH INSURANCE COMPANY
	COMPANY D	
	COMPANY E	
	COMPANY F	AXIS SURPLUS INSURANCE COMPANY
	COMPANY G	

**COVERAGES**  
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCES LISTED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS				
A	<b>GENERAL LIABILITY</b>	MASILNY00012312	4/8/2012	4/8/2013	GENERAL AGGREGATE \$ 2,000,000				
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIAB.				PRODUCTS-COMP/OP AGG \$ 1,000,000				
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR.				PERSONAL & ADV INJURY \$ 1,000,000				
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT.				EACH OCCURRENCE \$ 1,000,000				
					FIRE DAMAGE (ANY ONE FIRE) \$ 50,000				
					MED. EXP. (ANY ONE PERSON) \$ 5,000				
B	<b>AUTOMOBILE LIABILITY</b>	BAP 9323983	6/3/2011	6/3/2012	COMBINED SINGLE LIMIT (each) \$ 1,000,000				
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (per person)				
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (per accident)				
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (per accident)				
	<input type="checkbox"/> HIRED AUTOS								
	<input type="checkbox"/> NON-OWNED AUTOS								
	<b>EXCESS/UMBRELLA LIABILITY</b>				EACH OCCURRENCE				
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR.				EXCESS OF				
	<b>U.S. LONGSHORE &amp; HARBOR WORKERS (Compensation Risks)</b>				<table border="1"> <tr> <td>STATUTORY</td> <td>OTHER</td> </tr> <tr> <td>STATUTORY</td> <td>OTHER</td> </tr> </table>	STATUTORY	OTHER	STATUTORY	OTHER
STATUTORY	OTHER								
STATUTORY	OTHER								
C	<b>WORKERS' COMPENSATION AND EMPLOYERS LIABILITY</b>	ZAWC19831700	10/1/2011	10/1/2012	EL EACH ACCIDENT \$ 1,000,000				
	THE PROPRIETOR / PARTNERS / EXECUTIVE OFFICERS ARE:				EL DISEASE - EACH EMPLOYEE \$ 1,000,000				
	<input type="checkbox"/> INCLUDED <input type="checkbox"/> EXCLUDED				EL DISEASE - POLICY LIMIT \$ 1,000,000				
F	<b>PROFESSIONAL LIABILITY/E&amp;O</b>	ECN000038601101	7/27/2011	7/27/2012	LIMIT (ANY ONE OCCURRENCE) \$ 1,000,000				
					AGGREGATE LIMIT \$ 2,000,000				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS:**  
 RE: Fort Bend County is an additional insured on General Liability as respects the operations of Pier Systems. A waiver of subrogation is granted.

<b>CERTIFICATE HOLDER</b>  Fort Bend County Purchasing 301 Jackson Street, Suite 201 Richmond, TX 77469	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE  BY: <i>Sharon Bate</i>