

Goldsmith

SOLUTIONS

Consulting Services Agreement

This CONSULTING SERVICES AGREEMENT (the "Agreement") is hereby executed as of August 15, 2022 (the "Effective Date") by and among Goldsmith Solutions, LLC, a Texas limited liability company (the "Company"), and Brown County, Texas by located at 200 S. Broadway St., Suite 111, Brownwood, Texas 76801 (the "Client"). Company and Client may be individually referred to as a "Party" and jointly as the "Parties." Capitalized words in this Agreement, if not defined elsewhere, have the meaning set forth in the attached Appendix A.

BACKGROUND

1. The Company provides technology consultation, information technology services, including support, hosting, design, hardware, development, and software development.
2. The Client desires to optimize its information technology system by means of hiring information technology coordinators and staff and assessing and developing an updated network and infrastructure.
3. Client desires to enter into an agreement with Company, whereby Company shall provide services to Client on the terms and conditions set forth in this Agreement and any schedules, exhibits or appendices hereto (collectively, the "Agreement").

NOW THEREFORE, for and in consideration of the Services, the mutual promises and covenants contained herein, Company and Client hereby agree as follows:

ARTICLE I SCOPE OF SERVICES

1.01 **General.** This Agreement establishes a framework by which the Company shall provide Client with the Services. The specific Services and Deliverables that the Company will provide to Client will be described in the Statement of Work attached as Exhibit A hereto and incorporated by reference herewith and signed by Company and Client (the "Statement of Work"). In the event of a conflict between the terms of this Agreement and the terms of the Statement of Work, the terms of the Statement of Work control but only with respect to the Services to be performed under such Statement of Work.

1.02 **Scope.** Client engages Company to render Client the Services in connection with advising, consulting, documenting, optimizing, and automating information technology systems of Client. In the event that Client requests additional work not included on the Statement of Work, Company shall notify Client of that fact and the rates, cost and schedule impact thereof, and if Client elects to proceed with such additional work, Client shall be responsible for additional fees at Company's usual rates as disclosed for the type of work requested. Such additional work shall be invoiced in accordance with the payment schedule on an amended and updated Statement of Work. Further, Client agrees that additional work requests may extend or delay any Deliverables or deadlines previously agreed upon in a Statement of Work, to the extent Company discloses such extension or delay prior to Company electing to proceed with such additional work.

1.03 **Amendment to Statement of Work.** In the event that the Parties agree to modify the Statement of Work, they may do so at any time before the date of full completion of the Services to be provided under the Statement of Work. A modification must be in writing and signed by both parties.

1.04 **Affiliates and Subcontractors.** Client acknowledges and agrees that, from time to time, Company may use its affiliates or independent contractors to perform some of the Services or complete some

August 15, 2022 (Exhibit #2)

of the Deliverables under this Agreement. Those affiliates or independent contractors will work under Company's supervision and each shall agree in writing to comply with the terms and conditions of this Agreement. Company shall be responsible for the performance, acts and omissions of each such affiliate or independent contractor.

ARTICLE II PAYMENT

2.01 Payment. Client will pay Company in accordance with the payment details in the applicable Statement of Work. Company may adjust or modify rates at any time during the term of the Agreement, provided such modified rate is mutually agreed in writing at least thirty (30) days prior to becoming applicable. Pre-approved reasonable expenses are reimbursable in accordance with the terms of, and only to the extent provided for in, a Statement of Work. Company shall keep and provide records adequate to verify each statement of expenses. Unless otherwise provided in the Statement of Work, Client will pay invoices within thirty (30) days of receipt.

ARTICLE III TERM AND TERMINATION

3.01 Term. This Agreement shall commence as of the Effective Date and shall conclude as specified in the Statement of Work.

3.02 Termination of Agreement. Client may terminate this Agreement and/or a Statement of Work (a) as specified in the Statement of Work or (b) for Company's material breach uncured after thirty (30) days' written notice. Company reserves the right to suspend Client's access to and/or use of the Services, or terminate this Agreement, upon Client's failure to pay undisputed amounts when due and failure to cure such nonpayment within sixty (60) days of payment due date. Neither Party shall be liable to the other Party or any third party for any suspension of the Services or termination of this Agreement pursuant to this Section 3.02.

3.03 Effects of Termination. Upon termination or expiration of this Agreement, the Parties shall work together in good faith to address any and all post-termination issues concerning this Agreement, including but not limited to retrieval or destruction of client data and each Party's Confidential Information. Unless otherwise provided in the Statement of Work, all licenses granted to Client hereunder with respect to the Services shall automatically terminate and Client shall immediately discontinue its use thereof. Unless otherwise provided in the Statement of Work, any and all unpaid fees and expenses incurred in connection with the Services prior to termination shall become due and payable within thirty (30) days after the date of termination. All fees and expenses paid are non-refundable. Articles VI, VII, and VIII and Sections 3.03, 5.04, 9.02 and 9.03 shall survive any termination or expiration of this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTY DISCLAIMERS

4.01 Mutual Representations and Warranties. Each Party represents and warrants to the other Party the following: (i) it has all requisite power and authority to enter into and perform its obligations under this Agreement; and (ii) it will comply with all applicable laws in connection with its performance hereunder.

4.02 Company Warranty Disclaimers. ALL SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS. FURTHER, COMPANY SHALL NOT BE LIABLE FOR ANY BUSINESS DECISIONS MADE OR IMPLEMENTED BY CLIENT BASED ON CLIENT'S USE OF THE SERVICES.

ARTICLE V
CONDITIONS APPLICABLE TO SERVICE

5.01 **General Terms.** Company shall provide, and Client shall receive, the Services in accordance with this Agreement and the terms of the Statement of Work. The Company will perform the Services and in a timely and professional manner in accordance with generally accepted industry standards and practices and using appropriately skilled and qualified personnel. Subject to Client's responsibilities under Section 5.05 and 5.06, time is of the essence in Company's performance of its obligations hereunder.

5.02 **Replacement of Person(s).** If the Statement of Work has been entered into with the expectation of performance by a particular person, Company shall have the right to replace such person by one or more other persons, provided that the replacement(s) have the necessary qualifications and provided that Client approves of the removal of the particular person (unless that person leaves the Company) and approves the replacements. Also, Company will not charge Client for ramp-down or ramp-up time whenever it replaces anyone providing services to Client. In addition, Client shall have the right to require Company to replace any personnel who are not performing to Client's reasonable standards.

5.03 **Working on Client's Premises.** In the event that Company's employees or contractors perform work on Client's premises, Client shall provide all work spaces that are reasonably needed by those employees or contractors, free of charge.

5.04 **Request of Client Input.** At Company's request, Client will provide Company, at Client's own cost, all cooperation reasonably required in order to complete the Services. Client acknowledges that the start date and the end date of the work described in a Statement of Work as well as between parties via phone, email, chat application, or video conferencing are dependent on the timely receipt of information from Client (subject to Company's timely request therefor) and the timely performance of Client's cooperation obligations (subject to Company's timely request therefor). In case of any delay therein, Company's obligations under the relevant Statement of Work will be suspended for up to the period of the delay to the extent Company cannot reasonably perform its obligations without the requested Input or cooperation.

5.05 **Client Responsibilities.** Client understands and acknowledges that the ability of Company to perform in accordance with this Agreement and the related Statement of Work is dependent upon, among other things, the reasonable access to requested Client resources and information, accuracy of the assumptions and representations made by Client, the timeliness of Client management decisions, and the performance of Client personnel in meeting their obligations in accordance with the Client's responsibilities under the applicable Statement of Work. Client's failure to satisfy its responsibilities may lead to an increase in Company's fees, depending on the extent to which Company has to provide additional effort or reschedule its commitments to provide the Services.

5.06 **Client Security & Infrastructure Obligations.** Client has and will retain sole responsibility for: (a) all client data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Client in connection with the Services; (c) Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Client or through the use of third-party services ("Client Systems"); (d) and all access to and use of the Services and Deliverables. Client shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to securely protect against any unauthorized access to or use of the Services or Deliverables, and to control their use, including processing or use by the Company pursuant to the Statement of Work are any amendments under this Agreement.

5.07 **Provider Systems & Security Obligations.** Company has and will retain sole responsibility for, and shall maintain, all necessary physical, administrative and technical security controls to protect the use, security, confidentiality, and integrity of Confidential Information. Those safeguards will include, but will not be limited to, measures for preventing unauthorized or unlawful access, use, modification or disclosure of Confidential Information, except as may be permitted under Section 7.01.

5.08 **Personal Data.** Company does not store or otherwise process any sensitive, non-public or personally identifying information about Company's personnel or customers or any individuals, including but not limited to any payment card data, Social Security Number, passport number, driver's license or other state identification number, health information, medical or dental identification numbers, health insurance identification numbers, employment information (collectively "Personal Data") in its performance of the Services unless specifically agreed by the Parties in writing under a separate written contract or addendum that includes handling procedures specific to such data. Client shall not transmit Personal Data to Company under this Agreement unless it is accompanied by written consent executed by the Parties for such Personal Data. Each Party represents and warrants to the other Party that it shall comply with all applicable laws, rules, and regulations pertaining to use of the Services, and that it has not disclosed, and Client represents and warrants that it will not disclose to Company either before or after the Effective Date any personal or sensitive information of any individual including without limitation any Personal Data not consented to delivery by both Parties.

ARTICLE VI CONFIDENTIALITY

6.01 **Confidential Information.** From time to time during the term of this Agreement, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "Confidential Information"). Without limiting the foregoing, the Services, Personal Data, and terms of this Agreement shall be considered Confidential Information. Confidential Information does not include information that the receiving Party can demonstrate that, at the time of disclosure is: (a) publicly known; (b) known to the receiving Party; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, agents, contractors, consultants, affiliates and representatives, including its bankers, attorneys and accountants (collectively "Representatives") who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder, and then only under a written confidentiality agreement or other binding confidentiality obligation no less restrictive than this Section 6.01. The receiving Party on behalf of itself and its Representatives agrees that it will treat Confidential Information of the disclosing Party with the same degree of care as it accords to its own confidential information of like sensitivity, but in no event less than a reasonable level of care. The receiving Party further ensures that it and its Representatives will use the disclosing Party's Confidential Information only for the purposes contemplated by this Agreement. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings, but such filings will be under seal to the extent necessary to keep the other Party's Confidential Information confidential, unless the court refuses to allow such filing under seal. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information (other than copies of this Agreement or the terms thereof and other than financial books and records related to fees and expenses paid or received hereunder), or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. In the event the terms of this Agreement conflict or are otherwise inconsistent with terms of any nondisclosure agreement the Parties entered into prior to the Effective Date concerning Confidential Information disclosed during the course of performance under this Agreement, the terms of this Agreement shall control.

**ARTICLE VII
INTELLECTUAL PROPERTY**

7.01 **Company Intellectual Property.** Company owns all intellectual property used for purposes of providing the Services under this Agreement, whether developed prior to the commencement of this Agreement or anytime thereafter (the "Company Properties"). All right, title, and interest in and to the Company Properties and Resultant Data (including, without limitation, all copyright, patent, trade secret, trademark and other intellectual property rights) and any customizations, corrections, updates, adaptations, enhancements, improvements, translations or copies of the foregoing shall remain or vest exclusively with Company.

7.02 **Deliverables.** Except as otherwise set forth in this Agreement or in the Statement of Work, the Deliverables delivered to Client by Company are considered "works made for hire" and upon payment of all fees and expenses due to Company pursuant to this Agreement, such Deliverables shall be owned exclusively by the Client. To the extent that such Deliverables are determined not to constitute "works made for hire" as a matter of law, Company hereby irrevocably assigns and transfers such property, and all right, title and interest therein, including all intellectual property rights, to the Client and its successors and assigns. Notwithstanding the foregoing, "works made for hire" and the Deliverables shall not include Company's Background Technology (as defined in Section 8.04). Nothing contained in this Section 7.02 shall be construed as prohibiting Company from utilizing in any manner any knowledge and experience of a general nature acquired in the performance of Services for Client.

7.03 **Background Technology.** Client acknowledges that Company owns, or is an authorized licensee to use and sublicense, various development tools, routines, subroutines, methodologies for delivery of the Services, proprietary application programs, document templates, working papers, Confidential Information, project tools, or other programs, data, and materials, whether pre-existing or developed or obtained outside of the scope of this Agreement, that Company may use to perform the Services ("Background Technology"). Company retains all right, title, and interest, including all copyright, patent rights, and trade secret rights, in and to the Background Technology.

**ARTICLE VIII
LIMITATION OF LIABILITY & INDEMNIFICATION**

8.01 **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM OR ARISING IN CONNECTION WITH ANY OF THE SERVICES OR THE PERFORMANCE OF OR FAILURE TO PERFORM SUCH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT. THIS DISCLAIMER APPLIES WITHOUT LIMITATION (I) TO CLAIMS ARISING FROM THE PROVISION OF THE SERVICES OR ANY FAILURE OR DELAY IN CONNECTION THEREWITH; (II) TO CLAIMS FOR LOST PROFITS; (III) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE; AND (IV) REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE OR WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY EXCEED THE AMOUNT OF FEES PAID AND OWED BY CLIENT UNDER THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

8.02 **Mutual Indemnification.** Each Party agrees to indemnify, defend, and hold harmless the other Party and its respective directors, officers, agents and employees (each, an "Indemnified Person") from and against any damages, and shall reimburse each Indemnified Person for all reasonable expenses (including reasonable outside attorney's fees) as they are incurred in investigating, preparing or defending any claim, action, proceeding, or investigation, in connection with pending or threatened litigation, arising out of or in connection with (i) any material breach of this agreement or violation of applicable laws by indemnifying Party, or (ii) any grossly negligent acts or willful misconduct by the indemnifying Party in performance of its obligations under this Agreement. Despite the foregoing, the indemnifying Party shall not be responsible for

any damages of any Indemnified Person that have resulted from the gross negligence or willful misconduct of such non-indemnifying Party or any Indemnified Person in connection with any of the advice, actions, inactions, or Services referred to above.

**ARTICLE IX
GENERAL TERMS**

9.01 **Force Majeure.** Neither Party shall be responsible for delays or failures in performance resulting from causes beyond the reasonable control and without the fault or negligence of such Party and/or its subcontractors. Such acts shall include but not be limited to acts of God, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, pandemics, earthquakes, floods or other natural disasters or acts or omissions of the other Party or the other Party's failure to perform in a satisfactory and timely fashion as required by this Agreement (the "Force Majeure Event"). Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates (and the term of this Agreement or the applicable Statement of Work, if appropriate) for a period equal to the duration of such events, provided that the Party whose performance has been impaired on account of a Force Majeure Event has given immediate written notice to the other Party of the occurrence and estimated impact of such Force Majeure Event. If a Force Majeure Event should last more than sixty (60) days, the Party whose performance has not been impaired on account of the Force Majeure Event may, at its option, elect to terminate this Agreement without further liability to either Party.

9.02 **Non-Solicitation.** Each Party agrees not to solicit or hire any personnel of the other Party with whom the first Party has had contact in connection with any Statement of Work, with such prohibition to be effective during the term of and for one (1) year after termination or expiration of such Statement of Work, as applicable; provided that a Party may hire an individual employed by the other Party who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

9.03 **Miscellaneous.** This Agreement shall be governed in all respects by the laws of the State of Texas without regard to any provisions relating to conflict of laws. Venue shall be in the state or federal courts of Brown County, Texas. Except in connection with a change of control or a sale of its relevant assets, neither Party may assign its rights or delegate its obligations hereunder without the prior written consent of the other Party. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the Parties hereto. This Agreement and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement among the Parties and supersede all prior agreements and understandings relating thereto. This Agreement may only be modified or amended by a writing signed by both parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. Neither this Agreement nor any term hereof may be waived, discharged, or terminated other than by a written instrument signed by the Party against whom enforcement of any such waiver, discharge, or termination is sought. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without such provision. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, the remaining provisions of this Agreement shall remain in full force and effect. It is agreed that, in addition to any other remedies a Party may have at law or equity, the Parties shall be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically the terms hereof. Where notices (written or otherwise) are required to be provided to a party under this Agreement, such notices shall be sent by U.S. mail, or overnight courier, AS WELL AS email at the addresses provided hereunder with additional copy to the indicated person:

If to Client: Brown County, Texas
 Attn: County Judge
 200 S. Broadway St.
 Suite 111
 Brownwood, Texas 76801

With a copy to: Brown County, Texas
Attn: Jennifer Broughton, County Attorney
200 S. Broadway St.
Suite 323
Brownwood, TX 76801
jennifer.broughton@browncountytexas.org

If to Company: Goldsmith Solutions
Attn: Samuel R. Goldsmith
PO Box 224984
Dallas, TX 75222
support@goldsmithsolutions.com

With a copy to: Vela | Wood
Attn: Gregory Smith
5307 E. Mockingbird Lane
Suite 802
Dallas, TX 75206
gsmith@velawoodlaw.com

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties as of the Effective Date.

CLIENT: BROWN COUNTY

COMPANY: GOLDSMITH SOLUTIONS LLC



By: Mike Smith

By: Samuel R. Goldsmith

Title: 35th District Court Judge

Title: Owner

Goldsmith
SOLUTIONS
APPENDIX A GLOSSARY

"Deliverables" means any tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, functionality, automation, bots, blueprints, workflows, Workflows, SOPs, case studies, procedures and recommendations that are specifically prepared by Company for Client pursuant to the Statement of Work.

"Input" means any documentation, materials or information provided by one Party to the other under a Statement of Work.

"Resultant Data" means information, data and other content that is derived by or through the Services.

"Services" means the services to be performed by Company for Client (excluding Software) as further detailed in the Statement of Work.

"Statement of Work" means a document in writing signed by both Parties, that: (a) details the scope of work of the Services to be performed by Company under this Agreement, including identification of Deliverables and other materials to be provided to Client, if any; and (b) specifies the applicable payment terms, including the hourly rate or unit rates, for performing the Services as set forth on Exhibit A to this Agreement.



EXHIBIT A: STATEMENT OF WORK

CLIENT DETAILS: Brown County, Texas


- **Name:** by and through Mike Smith, 35th District Judge
- Email:** mike.smith@browncountytexas.org
- Client Address:** 200 S. Broadway St., Suite 212, Brownwood, Texas 76801

SERVICE(S): Consultation for

- **What's Included:** Up to 40 Hours of Tier II Support for Consulting of information technology hirings made by client as well as consulting for updating and upgrading information technology systems of client
 - Consulting through the interview and hiring process
 - Basic Review of all client information technology systems
 - Status Reports to the Technology Committee and/or Commissioners' Court
- **Deliverables:**
 - Report to client of recommendations related to IT hiring process
- **Fees & Expenses:** \$7,800 (consisting of Tier II - \$6,800, Travel & Expenses \$1,000)
 - 50% pre-payment is due within fourteen (14) days of the execution of this Agreement, upon an invoice being provided to the client
 - Pre-approved, documented, reasonable expenses will be invoiced monthly
 - The cost set forth above is based on the following metrics:
 - 40 Hours of Tier II Support
 - In the event the Services take less than the set forth hours any excess shall be credited to Client's account for future use.
- **Terms:**
 - Services will commence on or around August 16, 2022
 - Client or Company may terminate this Agreement and/or Statement of Work upon thirty (30) days' prior written notice to the other. Upon the termination of such Agreement Company shall deliver Client a statement showing work completed and the cost incurred. Any excess shall then be returned to Client.
 - Upon termination or expiration of this Agreement, the Parties shall work together in good faith to address any and all post-termination issues concerning this Agreement, including but not limited to return or destruction of data and each Party's Confidential Information, and Company will deliver all deliverables then completed identified above, including works-in-progress, to Client.
 - Any and all unpaid fees and expenses incurred in connection with the Services prior to termination shall become due and payable within thirty (30) days after the date of termination. All fees and expenses paid are non-refundable.

[signature area follows]

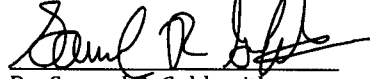
CLIENT: BROWN COUNTY



By: Mike Smith

Title: 35th District Judge

COMPANY: GOLDSMITH SOLUTIONS LLC



By: Samuel R. Goldsmith

Title: Owner