

AMENDMENT TO JETTY MASTER SERVICES AGREEMENT

This AMENDMENT is entered into by and between Fort Bend County, Texas, a body corporate and politic acting herein by and through its Commissioners Court (“Client”), and Jetty Communications Solutions, LLC, doing business as Jetty (“Jetty”), a Texas limited liability company with its principal place of business in Bellingham, Washington.

WHEREAS, Client and Jetty previously executed the JETTY MASTER SERVICES AGREEMENT (“Agreement”) attached hereto as Exhibit 1 on or about January __, 2017;

WHEREAS, the following changes are incorporated as if a part of the original Agreement incorporated by reference in the same as if fully set forth verbatim herein:

Section 4. Fees & Expenses is hereby amended to add the following section:

4.7 Payments by Client Under This Agreement

All payments due to Jetty by Client under this Agreement shall be payable to Jetty or The Response Group.

4.9 Usage Fees

Client will be subject to the following Software License usage fees under this Agreement:

- Usage: Phone usage should not exceed 100,000 minutes, SMS, and MMS (combined).
- Data transfer should not exceed 1 terabyte annually.
- Additional usage: Minutes, SMS, and MMS will cost \$.05 each.
- Additional phone usage: \$.05 per call minute, SMS, and MMS
- Additional data transfer: \$1 per gigabyte

Section 8. Licensing of Software and other Intellectual Property is hereby amended to add the following section:

8.6. Client’s Right to Sublicense Jetty Technology

Subject to the provisions set forth in 8.4. and 8.5. of this Agreement, Jetty grants to Client a nonexclusive, worldwide license and right to sublicense the Final Software to other governmental entities for use of the Final Software. If Client sublicenses the Final Software, the governmental entity (“Sublicensee”) must agree to be bound by the terms of this Agreement. Client may require additional terms under a sublicense agreement so long as those terms do not conflict with Jetty’s rights under this Agreement. Sublicensees may not assign or sublicense the rights the granted under the Jetty Master Services Agreement and Sublicense Agreement. Client will sublicense the Final Software based on the terms and conditions of the Sublicense Agreement attached as Exhibit 2.

The following Section 18. Grant Requirements, is hereby added:

18. Grant Requirements

Client acquired the license to the Final Software under this Agreement through the use of grant funds. Under the terms of the grant, Jetty hereby agrees to abide by the following:

18.1. Child Support

Under Section 231.006, Family Code, Jetty certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

18.2.Civil Rights/Nondiscrimination.

Jetty will comply, with the nondiscrimination requirements which may include the Civil Rights Act of 1964 (42 USC § 2000d); the Civil Rights Act of 1968 (42 USC § 3601 et seq.); the Rehabilitation Act of 1973 (29 USC § 794); the Americans With Disabilities Act (ADA) of 1990 (42 USC § 12131-34); the Education Amendments of 1972 (USC §§ 1681, 1683, 1685-86); Title IX of the Education Amendments of 1972 (Equal Employment in Education Act) (20 USC § 1681 et seq.); the Age Discrimination Act of 1975 (42 USC §§ 6101-07); Titles I, II and III of the Americans with Disabilities Act; the Drug Abuse and Treatment Act of 1972 (PL 92-255); the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (PL 91-616); Sections 523 and 527 of the Public Health Service Act of 1912 (42 USC §§ 290dd-3 and 290ee-3); and 28 CFR 38 (Equal Treatment for Faith-Based Organizations); see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations) and Ex. Order 13559 (fundamental principles and policymaking criteria for partnerships with faith-based and neighborhood organizations).

18.3 Clean Air Act and Clean Water Act

18.3.1 Clean Air Act.

Jetty agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Jetty agrees to report each violation to the County and understands and agrees that County will, in turn, report each violation as required to assure notification to Office of the Governor and U.S. Department of Homeland Security and the appropriate EPA Regional Office. Jetty agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”. Jetty will report violations of use of prohibited facilities to the Office of the Governor and U.S. Department of Homeland Security. Jetty also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Office of the Governor and U.S. Department of Homeland Security.

18.3.2 Clean Water Act.

Jetty agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* Jetty agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to the Office of the Governor and U.S. Department of Homeland Security and the appropriate EPA Regional Office. Jetty agrees it will not use any violating facilities. Jetty will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”. Jetty will report violations of use of prohibited facilities to the Office of the Governor and U.S. Department of Homeland Security. Jetty also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Office of the Governor and U.S. Department of Homeland Security.

18.4 Cooperation with Monitoring, Audits, and Records Requirements

Jetty agrees to comply with the grant monitoring guidelines, protocols, and procedures established by the Office of the Governor and any federal funding agency, and to cooperate with the Office of the Governor and any relevant federal agency generally, including on any compliance review or complaint investigation conducted by the Federal sponsoring agency or the Office of the Governor and on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits.

18.4.1. Monitoring

- (a) Jetty shall maintain adequate records that enable the Office of the Governor and any relevant federal agency to complete monitoring tasks, including to verify all reporting measures, requests for reimbursements, and expenditure of match funds related to this Grant Agreement. Jetty shall maintain such records as are deemed necessary by the Office of the Governor, the State Auditor’s Office, other auditors of the State of Texas, the federal government or such other persons or

entities designated or authorized by the Office of the Governor to ensure proper accounting for all costs and performances related to this Grant Agreement.

- (b) The Office of the Governor may make unannounced monitoring visits at any time but will, whenever practical as determined at the sole discretion of the Office of the Governor, provide Jetty with up to five (5) business days advance notice of any such examination or audit. Any audit of records shall be conducted at Jetty's principal place of business and/or the location(s) of Jetty's operations during Jetty's normal business hours. Jetty shall provide to the Office of the Governor or its designees, on Jetty's premises, private space, office furnishings (including lockable cabinets), telephone services and Internet connectivity, utilities, and office-related equipment and duplicating services as the Office of the Governor or its designees may reasonably require to perform the audits described in this section.

18.4.2 Financial Records

- (a) Jetty agrees to maintain fiscal records and supporting documentation for all expenditures related to this Agreement pursuant to 2 CFR 200.333, UGMS, and state law. Jetty must retain, and will require its subcontractors of all tiers to retain, these records and any supporting documentation for a minimum period of not less than three (3) years after the date of termination or expiration of the Agreement or any litigation, dispute, or audit arising from the performance of the Agreement. Records related to real property and equipment acquired with grant funds shall be retained for three (3) years after final disposition.
- (b) The Office of the Governor may request documented proof of payment. Acceptable proof of payment includes, but is not necessarily limited to, a receipt or other documentation of a paid invoice, a general ledger detailing the specific revenue and expenditures, a monthly bank statement evidencing payment of the specific expenditure, bank reconciliation detail, copies of processed checks, or a printed copy of an electronic payment confirmation evidencing payment of the specific expenditure to which the reimbursement relates.

18.4.3 Audits

- (a) Jetty authorizes the Federal Funding Agency (if applicable), the Office of the Governor, the Texas State Auditor's Office, the Comptroller General of the United States, and any relevant federal agency, and their representatives, the right to audit, examine, and copy all paper and electronic records, books, documents, accounting procedures, practices, and any other requested records, in any form; relevant to this Agreement and will make them readily available upon request. Jetty will similarly permit access to facilities, personnel, and other individuals and information as may be necessary.
- (b) If requested, Jetty shall submit to the Office of the Governor a copy of its most recent independent financial audit. If requested, Jetty shall submit to the Office of the Governor any audited financial statements, related management letters and management responses of Contractor, and financial audit documents or portions thereof that are directly related to Jetty's performance of its obligations under this Agreement.
- (c) In addition to the information contained in the required reports, other information may be required as requested by the Office of the Governor, including the Office of the Governor asking for more information regarding project performance or funds expenditures. In the event the Office of the Governor requires additional information regarding the information or data submitted, Jetty will promptly provide the additional information. Jetty also agrees to assist the Office of the Governor in responding to questions and assisting in providing information responsive to any audit, legislative request, or other inquiry regarding the grant award. Upon the request of the Office of the Governor, Jetty must submit to the Office of the Governor any additional documentation or explanation the Office of the Governor may desire to support or document the requested payment or report submitted under this Agreement.
- (d) If after a written request by the Office of the Governor or a relevant federal agency, Jetty fails to provide required reports, information, documentation, or other information within reasonable deadlines set by the Office of the Governor or the relevant federal agency, as required by this Agreement, or fails to fulfil any requirement in this section, then the Office of the Governor may consider this act a possible default under this Agreement, and Jetty may be subject to sanctions including but not limited to, withholdings and/or other restrictions on the access to funds; referral

to relevant agencies for audit review; designation of Jetty as a high-risk contractor; or termination of awards.

18.5 Fly America Act

Jetty agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Jetty shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Jetty agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

18.6 Government-Wide Disbarment and Suspension

Jetty shall comply and facilitate compliance with the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. A contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

18.7 Health and Human Services, Public Safety or Law Enforcement Agency Compliance

Jetty certifies that it as owner, operator or administrator of a facility has not had any licenses, certificates, or permits revoked by any health and human service agency or public safety or law enforcement agency.

18.8 Lobbying

Jetty certifies, to the best of its knowledge, that:

- (a) It will not use grant funds, either directly or indirectly, in support of the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government, without the express prior approval of the Governor’s Office.
- (b) If any non-grant funds have been or will be used in support of the enactment, repeal, modification, or adoption of any law, regulation or policy, at any level of government, it will notify the Governor’s Office to obtain the appropriate disclosure form.
- (c) It will comply with 31 USC § 1352, as applicable, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.
- (d) It shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

18.9 Fraud, Waste, and Abuse

Jetty understands that in the event County becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from the Office of the Governor that is made against Jetty, the County is required to immediately notify OOG of said allegation or finding and to continue to inform OOG of the status of any such on-going investigations. The County must also promptly refer to OOG any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has: (1) submitted a claim for award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of

laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving award funds. County must also immediately notify OOG in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. County must notify the local prosecutor's office of any possible criminal violations.

18.10 Patents and Intellectual Property Rights

Unless otherwise provided by law, subrecipients are subject to the Bayh-Dole Act, PL No 96-517, as amended, and codified in 35 USC § 200 et seq. Jetty will comply with the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards (37 CFR Part 401) and the standard patent rights clause in 37 CFR § 401.14.

18.11 Political Activities

Jetty is prohibited from using federal funds directly or indirectly for political purposes, including polling, lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get-out-the-vote campaigns. Generally, organizations or entities which receive federal funds by way of grants, contracts, or cooperative agreements do not lose their rights as organizations to use their own, private, non-federal resources for “political” activities because of or as a consequence of receiving such federal funds. These recipient organizations must thus use private or other non-federal money, receipts, contributions, or dues for their political activities, and may not charge off to or be reimbursed from federal contracts or grants for the costs of such activities.

18.12 DHS Seal, Logo, and Flags

Jetty shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

18.13 No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Agreement.

18.14 Trafficking Victims Protection Act

Jetty will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

All terms and conditions of the Agreement, including any addenda, not modified herein shall remain in full force and effect for the term of Agreement. If there is a conflict between this Amendment and the Agreement, the provisions of this Amendment shall prevail with regard to the conflict.

Signatures Follow On Next Page

IN WITNESS WHEREOF, the parties put their hands to this Amendment on the dates indicated below.

Dated: _____

CLIENT: FORT BEND COUNTY

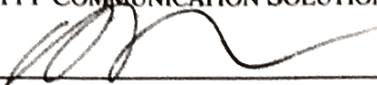
By: Robert Hebert, County Judge
401 Jackson St., Richmond, Texas 77469
(281) 341-8608

ATTEST:

Laura Richard, County Clerk

Dated: 8/2/17 _____

JETTY COMMUNICATION SOLUTIONS, LLC



By: Geoffrey Baron, CEO
2814 40th St.
Bellingham, Washington 98229
(360) 393-0111
geoff@jettyapp.com

Exhibit 1 – Jetty Master Services Agreement

Exhibit 2 – Interlocal Agreement and Software Sublicense

Exhibit 1

JETTY MASTER SERVICES AGREEMENT

INTRODUCTION

Jetty Communications Solutions, LLC, doing business as Jetty (“Jetty”), a Texas limited liability company with its principal place of business in Bellingham, Washington, and Fort Bend County, a body corporate and politic under the laws of the State of Texas (“Client”), enter into this master services agreement as of January ____, 2017 (“Effective Date”).

RECITALS

Jetty is a digital software development company in the business of developing and licensing enterprise software to help clients manage communication with internal and external audiences on various devices by providing interactivity via email, phone, and social media.

Client wishes Jetty to provide its expertise to and for the Client on the terms and conditions set forth in this master services agreement. Therefore, the parties agree to the following.

TERMS OF THE AGREEMENT

1. Engagement & Scope

Client engages Jetty to provide Services under the terms and conditions of this Agreement. This Agreement incorporates any Statement of Work executed pursuant to this Agreement. Jetty is obligated to provide only the Services specified in the Statement(s) of Work that both parties execute.

2. Relationship between the Parties

2.1. Jetty is an Independent Contractor

Jetty is providing Services to Client as an independent contractor. Jetty is not Client’s employee. Jetty’s agents, subcontractors, and employees (if any) are not Client’s employees. This Agreement is neither a partnership agreement, nor a joint venture agreement, nor a joint enterprise agreement. As to one another, the parties are not partners, not joint venturers, and not joint entrepreneurs.

2.2. No Implied Agency

Neither party may act as the other’s agent and neither party may bind the other party in agreements with third parties, unless and to the extent this Agreement or any incorporated Statement of Work *expressly* authorizes agency.

2.3. Jetty’s Discretion over Manner and Means

Jetty will provide Services under Client’s general direction but Jetty will have the sole discretion to determine the manner and means by which it accomplishes these Services.

2.4. Jetty’s Agents

Jetty may engage third party agents, subcontractors, and vendors, as independent contractors in connection with this Agreement. Jetty will ensure that these third parties comply with this Agreement’s terms. Jetty represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the services required under this Agreement and that Jetty shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of Client, to perform the services when and as required and without delays. All employees of Jetty shall

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have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Jetty who, in the reasonable opinion of Client, is incompetent or by their conduct becomes detrimental to the project shall, upon request of Client, immediately be removed from association with the project.

3. Relationship Managers

Each party will appoint and continuously provide an agent as its Relationship Manager to serve as the other party's Relationship Manager's primary point of contact and to manage and effect the terms of this Agreement. Relationship Managers must be officers, principals, or other agents who have actual authority to bind their respective parties. Each party will vest in its Relationship Manager the requisite authority, skill, experience, and qualifications to perform as its Relationship Manager and the capacity to bind its party. Each party may reasonably rely on the decisions and representations of the other party's Relationship Manager. Each party will use reasonable efforts to maintain the same relationship manager throughout the term of the Agreement. The Relationship Managers for Client shall not have binding authority for modifications to the terms of the Agreement or actions that require Client to pay Jetty for any services not described by this Agreement. The Client's Relationship Manager's sole authority under this Agreement is to carry out the terms of the Agreement.

3.1. Jetty's Relationship Manager

Jetty's Relationship Manager is: **Geoff Baron, (360) 393-0111, geoff@jettyapp.com.**

3.2 Client's Relationship Manager

Client's Relationship Manager is: **Lach Mullen, (281) 238-3405, Lach.Mullen@fortbendcountytexas.gov**

4. Fees & Expenses

4.1. Fees

4.1.1. Hourly Rate

If this Agreement or applicable Statements of Work refer to Jetty's Hourly Rate, Jetty's Hourly Rate at the time of execution of this Agreement is: **\$150.00**. The parties, however, may agree to a different hourly rate in any given Statement of Work or change order applicable to any such Statement of Work.

4.1.3. Project Fees

In consideration for Services described in any Statement of Work, Client will pay Jetty the project fees that the Statement of Work specifies according to its schedule. If a Statement of Work does not specify when Client must pay project fees, Client will pay 50% of the project fees as an advance upon execution of the Statement of Work and 50% of the project fees upon Jetty's completion of the project. Express payment terms set forth in any applicable Statement of Work supersede this Section 4.1.3 as to that specific Statement of Work.

4.1.4. Licensing Fees

In consideration for Software licenses that Jetty may provide Client under any Statement of Work, Client will pay the license fees set forth in the Statement of Work.

4.1.5. Maximum Compensation for Each Statement of Work

Each Statement of Work shall set forth a Maximum Compensation (as defined in the Glossary) for that Statement of Work. In no case shall the amounts paid by Client under any Statement of Work exceed

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that Statement of Work's Maximum Compensation without an approved change order. Jetty clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that Client shall have available the total maximum sum equal to the Maximum Compensation, specifically allocated to fully discharge any and all liabilities Client may incur for the applicable Statement of Work, and that the maximum compensation that Jetty may become entitled to and that the maximum compensation Client may become liable to pay Jetty for any Statement of Work shall not exceed the Statement of Work's Maximum Compensation.

4.2. Expenses

Client shall pay directly or reimburse Jetty for the following expenses, if any, so long as they are listed in any applicable Statement of Work: out-of-pocket expenses incurred by Jetty as a result of Services provided in accordance with the Statement of Work; costs directly related to Services provided in accordance with the Statement of Work; and nonlocal travel costs necessary for Jetty to provide Services. Project Fees and Licensing Fees do not include expenses. All travel Expenses incurred by Jetty shall only be paid in accordance with the Client's Travel Policy attached as Exhibit A. Any expenses arising out of unforeseen events not originally contemplated in a Statement of Work shall be reimbursable to Jetty if and only if the parties agree to a change order modifying the Statement of Work.

4.3. Taxes

Project Fees and Licensing Fees do not include Taxes. Client is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.

4.4. Invoices

Upon completion of the Services rendered during each Phase of the Statement of Work, Jetty shall submit to Client two (2) original copies of invoices showing the amounts due for services performed in a form reasonably acceptable to Client. Client shall review such invoices and approve them within fifteen (15) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. Client shall issue payment and mail or issue payment via electronic means such approved payment within fifteen (15) calendar days of approval. Client reserves the right to withhold payment pending verification of satisfactory work performed.

4.5. Unpaid Fees & Expenses

Late payments for amounts due are subject to a late charge in accordance with Chapter 2251 of the Texas Government Code. Late charges shall not apply to amounts in dispute between Jetty and Client.

4.6. Failure to Pay is Material Breach

If Client fails to pay any invoiced amounts within 60 days or fails to remit any advanced fee payment by its respective due date under the applicable Statement of Work, Jetty may elect to treat such failure as material breach, *i.e.*, as sufficient cause for Jetty to terminate this Agreement. Upon provision of notice of Client's material breach for failure to pay, Jetty will not be required to provide any further Services.

In the alternative, Jetty may elect to not terminate this Agreement but cease providing any or all Services to Client until Client pays all amounts due or any part of the amounts due to Jetty's satisfaction. Jetty's election not to terminate this Agreement for the sake of preserving its business relationship with

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Client will not constitute waiver of its overriding right to treat nonpayment as material breach or terminate this Agreement.

4.8. Withholding of Intellectual Property

If any Deliverable or concomitant Statement of Work contemplates the license or transfer of any form of Intellectual Property, Jetty may withhold or revoke such license or delivery and transfer of any ownership, rights, title, and interest in any Deliverable until Client pays all invoices in full. Client's full payment of all outstanding amounts due to Jetty is a condition precedent to the grant of any license or transfer of Intellectual Property that Jetty may grant to Client under this Agreement.

5. Statements of Work

Jetty will provide Services in discrete projects according to one or more Statements of Work that both parties execute according to the requirements of this Agreement. A Statement of Work does not take effect until both parties execute it. Unless a Statement of Work specifies a different project term, Jetty will begin providing Services under that Statement of Work after both parties execute it. A Statement of Work will terminate when both parties have fully performed their obligations under it. This Agreement incorporates by reference all Statements of Work that both parties execute, which are attached to this Agreement.

5.1. Project Managers

Each party will appoint and continuously provide an agent as its Project Manager to manage completion of its obligations under the Statement of Work; and to serve as the other party's Project Manager's primary point of contact for day-to-day communications, consultation, and decision-making regarding the project. Project Managers may be the same persons as the Relationship Managers.

5.1.1. Skill & Responsibility of Project Managers

Each party will vest in its Project Manager the requisite authority, skill, experience, and qualifications necessary to adequately and competently perform as its Project Manager. Each party's Project Manager is responsible for his party's performance under the Statement of Work. Each party may reasonably rely on the decisions and representations of the other party's Project Manager. Each party will use reasonable efforts to maintain the same Project Manager throughout the term of the Statement of Work.

5.1.2. Authority of Project Managers

Project Managers must have the authority to agree to change Deliverable due dates, modify nonmaterial specifications of the project, and approve invoice expenses submitted by Jetty to Client's Auditor. Unless a Relationship Manager is also a party's Project Manager, a Project Manager does not have the authority to bind its party to changes concerning fees, material changes to the project's scope, Intellectual Property, or any other material provision of this Agreement or of any Statement of Work.

5.2. Requirements of Statements of Work

Any Statement of Work will substantially include: the identity and contact information of the parties' Project Managers; a detailed description of the Services Jetty will perform; a schedule of implementation, including all project milestones, corresponding milestone dates, and the parties' respective rights and obligations corresponding to those milestones; the project fees Client will pay Jetty, how the parties will calculate those fees, the project fee due dates, and any other fee-related conditions or terms; any

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Client Materials or Operating Environment necessary for Jetty to complete the project, and any other applicable project conditions or terms.

5.3. Changes to Statements of Work

5.3.1. Material Changes

Material changes to a Statement of Work are changes to the scope of Services under a Statement of Work that Jetty, in its sole reasonable discretion, determines either will require an increase of at least 25% in the time it will take for Jetty to produce any Deliverables; will constitute a 25% or greater increase in the value of Services Jetty provides; or will materially affect Jetty's underlying costs to provide or delivery the Services. If Client requests material changes, Jetty may propose a revised Statement of Work incorporating the material changes and any related changes in fees, deadlines, and other terms and conditions for Client approval. In the meantime, Jetty will continue providing any Maintenance and Support Services, or Software as a Service under the terms of the original Statement of Work, but may cease creation, development, or provision of Deliverables until Client reaffirms the original Statement of Work or the parties execute the revised Statement of Work. Jetty may, in its sole reasonable discretion, extend or modify deadlines for Deliverables under the original Statement of Work pending reaffirmation of the original Statement of Work or execution of the revised Statement of Work.

5.3.2. Minor Changes

Minor changes to a Statement of Work are changes that are not material changes. Unless the applicable Statement of Work states otherwise, Client will pay additional project fees on a time and materials basis at Jetty's hourly rate for minor changes Client requests that are outside the scope of the Services that the Statement of Work specifies. Furthermore, Jetty may reasonably extend or modify any delivery schedule, schedule of implementation, or other deadline in the applicable Statement of Work, to accommodate such minor changes. Prior to performing any minor changes and additional fees being charged to Client, Client and Jetty must execute a change order.

5.3.3. Client Delays

If Jetty fails to timely meet any of its obligations under a Statement of Work where such failure arises out of, relates to, or is in connection with Client's failure to perform its obligations under this Agreement (including failure to pay fees or make advanced payments) or to act when a project under a Statement of Work requires Client action, Jetty may either (a) extend or modify deadlines for Deliverables under the original Statement of Work, according to Jetty's own business needs; or (b) treat such delay as a Material Change under Section 5.3.1. If Client's failure to perform its obligations under this Agreement are due to a dispute between the parties, then Client and Jetty shall agree to extend or modify the deadline after the dispute has been resolved and such event will not be treated as a material change.

6. Client Responsibilities

Client shall:

- (a) Provide Jetty timely access to or possession of Client Materials in a form suitable for reproduction or incorporation into the Deliverables, as specified in any Statement of Work or within a reasonable time after Jetty makes a reasonable request for Client Materials;
- (b) Provide Jetty timely access to the Operating Environment, as specified in any Statement of Work or within a reasonable time after Jetty makes a reasonable request for access;

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- (c) Ensure its Relationship Manager and Project Manager(s) coordinate with Jetty's Relationship Manager and Project Manager(s) as reasonably often and necessary as this Agreement, any Statements of Work, and the nature of the projects under those Statements of Work require;
- (d) Respond timely and reasonably to Jetty's communications or queries;
- (e) Make timely payments; and
- (f) Timely perform all other obligations under this Agreement.

7. Acceptance of Deliverables

Within 5 business days of Jetty's delivery of each Deliverable, Client must give notice to Jetty with reasonable clarity and specificity of any failure of the Deliverable to comply with its Statement of Work's specifications. If Client does not provide notice within 5 business days of receipt of a Deliverable, Client's acceptance of the Deliverable is automatic under this Agreement. Otherwise, Jetty will cure any defect and make corrections in a good faith reasonable and timely manner. Upon Jetty's redelivery of the cured Deliverable, Client again within 5 business days must give notice to Jetty with reasonable clarity and specificity of any further failure of the Deliverable to comply with its Statement of Work's specifications; else, Client automatically accepts the Deliverable.

8. Licensing of Software and other Intellectual Property

No work product, Deliverables, or other Services that Jetty delivers or performs under this Agreement is a work made for hire. The parties agree to the terms in the following subsections with respect to Intellectual Property.

8.1. Client Materials

Client Materials always remain the sole property of Client. Client Materials do not include Third Party Works that have been licensed to Client. Client grants to Jetty a nontransferable, worldwide, nonexclusive, perpetual, royalty-free license to use, reproduce, modify, display, perform, adapt, transmit, distribute, improve, embed, create derivative works upon, and publish Client Materials solely in connection with Jetty's performance of the Services under this Agreement.

8.2. Third Party Works

Third Party Works are the exclusive property of their respective owners. This Agreement does not transfer ownership, rights, title and interest in the Intellectual Property of any Third Party Works to either party of this Agreement. Client may need to license or acquire the Intellectual Property in Third Party Works at Client's sole expense for the purpose of using or deploying Deliverables or Services under this Agreement. If Client fails to properly license Third Party Works, to the extent authorized by the Constitution and the laws of the State of Texas, Client will indemnify and hold Jetty harmless from all damages, liabilities, costs, losses, and expenses arising out of any demand, claim, or proceeding by a third party arising out of Client's failure to obtain rights, title, interest, or licenses in, or releases or permissions with respect to Intellectual Property in Third Party Works.

8.3. Preliminary Works

Jetty exclusively retains all rights, title, and interest in the Intellectual Property to all Preliminary Works which were developed solely by Jetty, except to the extent Preliminary Works may comprise Third Party Works, in which case the appropriate third parties retain their rights, title, and interest to

JETTY MASTER SERVICES AGREEMENT

the Intellectual Property of the Third Party Works. Client will return all Preliminary Works to Jetty within 30 days after Jetty completes Services in an applicable Statement of Work.

8.4. Final Software

Subject to further or different conditions in any applicable Statement of Work, Jetty grants to Client a nonexclusive, worldwide license, conditioned upon full and complete payments by Client to Jetty according to the terms in this Agreement, including any applicable Statement of Work, to use, reproduce, modify, display, and perform the Final Software. To the extent that Final Software may comprise or is a derivative work of Third Party Works, the license of Final Software incorporates a sublicense to the Third Party Works, but only to the extent of Jetty's authority to grant such a sublicense. To the extent that Final Software contemplated by any Statement of Work is actually Software as a Service, Section 8.5 shall supersede this Section 8.4.

8.5. Software as a Service (SaaS)

Jetty grants to Client a nonexclusive, worldwide license, conditioned upon full and complete payments by Client to Jetty according to the terms in this Agreement, and subject to any applicable Statement of Work—which may specify royalties or further constraints on this license—to use, reproduce, modify, display, and perform the SaaS. This license automatically revokes upon the termination of this Agreement by Client or of any applicable Statement of Work for material breach. However, if Jetty terminates this Agreement or any applicable Statement of Work where it is providing SaaS for Client for reasons other than Client's material breach, this license to Client shall become perpetual and no longer be conditioned upon further payments after such termination, and further in such case, Jetty shall provide Client a copy of the most current source code of the SaaS at the time of termination along with its documentation.

8.6. Accreditation or Copyright Notice

All displays or publications of Deliverables will bear copyright notice in—or if copyright is no longer applicable, accreditation of—Jetty's name in the form, size, and location that Jetty incorporated in the Deliverables, or as Jetty may otherwise reasonably direct.

9. Disclaimer

Jetty provides all Services, including all Deliverables, as well as whatever Intellectual Property rights it may convey or otherwise license in this Agreement, on an "as is" basis. Jetty disclaims all warranties including—without limitation—any express warranty, statutory warranty, implied warranty of merchantability, implied warranty of fitness for a particular purpose, implied warranty of title, implied warranty against infringement, and any oral or written representations, proposals, or statements made on or before the effective date of this agreement.

10. Confidentiality

Each party agrees not to use, disclose, sell, license, publish, reproduce, or otherwise make available the Confidential Information of the other party except and only to the extent necessary to perform under this Agreement. Each party agrees it will hold the Confidential Information of the other party in strict confidence and will not use or disclose it without the express written consent of the other party, except as may otherwise be required by law. The obligations of the parties to maintain Confidential Information as confidential will survive the termination of this Agreement. Jetty expressly acknowledges that Client is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq.,

JETTY MASTER SERVICES AGREEMENT

as amended, and notwithstanding any provision in the Agreement to the contrary, Client 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 Client by Jetty 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. The terms and conditions of the Agreement are not proprietary or confidential information.

11. Defect or Breach

In cases of a party's minor defect or breach, that party will have the right to repair or cure the defect or breach within a reasonable time period at its expense. Moreover, in case of Jetty's defect or breach arising out of defective Deliverables, Jetty always retains the right to replace, within a reasonable time period and at its expense, defective Deliverables comprising the Final Software, Software as a Service, or software related to Maintenance and Support Services, as the sole and complete remedy for such defect or breach.

12. Indemnification

Jetty agrees to indemnify, defend, save, and hold harmless Client (including payment of reasonable attorneys' fees) from any and all damages, liabilities, costs, losses, or expenses consequential to any demand, claim, or proceeding by a third party arising out of any breach of Jetty's responsibilities, obligations, representations, or warranties under this Agreement, or of any negligence or willful misconduct on the part of Jetty ("Third Party Claims"). Third Party Claims do not include demands, claims, or proceedings by an entity that accesses the Jetty SaaS through an assignment of rights or other agreement with Client. Prior to accessing the Jetty SaaS, each entity must execute an assignment or similar agreement with Client that obligates each entity to abide by the terms of this Agreement. Client will promptly notify Jetty of any claim or suit subject to indemnification. Jetty will have the sole control of the defense of a claim subject to indemnification. Jetty will provide at its own expense reasonable assistance and information under its control to Client as may be required for Client to defend an indemnified claim.

Jetty's obligations to indemnify Client do not apply if the claim arises out of, relates to, or is in connection with (a) Client's modification of Software, Software as a Service, or other software; (b) Jetty's modification of Software, Software as a Service, or other software at Client's specific request against Jetty's reasonable recommendations or advice; (c) or specifications, parameters, design constraints, or functionality provided by Client to Jetty.

13. Limitation of Liability

13.1. Lost Profits, Consequential Damages, Etc.

Neither party will be liable to the other for lost profits, lost opportunities, special, indirect, incidental, or consequential damages, whether foreseeable or unforeseeable, under any circumstances.

13.2. Liability under Each Statement of Work

Jetty's liability to Client for breach of this Agreement for Services under an applicable Statement of Work is limited to the amounts paid by Client under that particular applicable Statement of Work.

JETTY MASTER SERVICES AGREEMENT

13.3. Liability for Service Arrangements

Damages arising out of, resulting from, or in connection with Maintenance and Support Services, or Software as a Service will be limited to the amounts Client has paid in the twelve (12) months preceding the earlier of the termination of the Statement of Work defining or contemplating those Services, the termination of this Agreement, or the initiation of litigation or formal mediation between the parties.

13.4. Maximum Liability

In all circumstances, the maximum liability of each party, and each party's directors, officers, managers, principals, employees, agents, and affiliates, for damages arising out of, resulting from, or connected with any cause of action, and each party's maximum remedy, irrespective of the form of action, whether in contract, tort, or otherwise, will be limited to the aggregate sums set forth in all Statements of Works Jetty provides under this Agreement.

14. Force Majeure

Neither party will be liable or responsible to the other party—nor deemed to have breached or defaulted under this Agreement—for its failure or delay in performing this Agreement to the extent that failure or delay arises out of, relates to, or is connected with Acts of God; flood, fire, earthquake, or explosion; war, terrorism, invasion, or any act of public enemy; riot, insurrection, rebellion, or other civil unrest; embargoes or blockades in effect on or after the Effective Date of this Agreement; national or regional emergency; strikes, labor disputes, labor stoppages, or industrial disturbances; any local, state, federal, national, or international law, regulation, executive order, legal directive, edict, restraint of princes, or any other action taken by a governmental or public authority; death, illness, or incapacity of Jetty or any of its agents; or any other form of *force majeure* or event beyond the party's control, so long as the party reasonably attempts in good faith to mitigate the effects of the *force majeure*. Upon occurrence of any *force majeure* affecting the obligations of a party, the party will give notice to the other party and will propose reasonable revisions to the schedule for completion of Services.

15. Term & Termination

This Agreement begins on its Effective Date. It remains effective until a party terminates it according to this Section 15 and its subsections.

15.1. Natural Expiration

This Agreement will expire 1 year after Jetty has ceased providing Services under any Statements of Work.

15.2. No Outstanding Statement of Work

If there is no outstanding or pending Statement of Work, either party may terminate this Agreement immediately upon written notice to the other party, subject to fulfillment of its payment obligations through the date of termination.

15.3. Outstanding Statement of Work, Without Cause

If there is an outstanding or pending Statement of Work, Client may cancel that Statement of Work or this Agreement without cause with 30 days' notice, subject to fulfillment of its payment obligations through the date of termination after such appropriate notice.

JETTY MASTER SERVICES AGREEMENT

15.4. Material Defect or Breach

In cases of material defect or breach, either party may terminate the Agreement after 30 days' notice, if the breaching or defective party does not take reasonable corrective action. Section 4.6 supersedes this Section 15.4: if Client does not pay amounts due within 30 days, Jetty's invoice for any amount due constitutes retroactively sufficient notice of material breach.

15.5. Bankruptcy

To the extent allowable by applicable law, either party may terminate this Agreement immediately if the other party files a voluntary petition for bankruptcy or suffers the petition of its creditors for an involuntary case in bankruptcy and does not controvert, or otherwise fails, to procure dismissal of the case.

16. Obligations upon Termination

16.1. Final Payments upon Termination

Upon termination, Client will make final payments as delineated in the following subsections.

16.2. Outstanding Statement of Work

If there is at least one outstanding or pending Statement of Work, Client will compensate Jetty for its Services rendered and amounts due prior to date of termination under each Statement of Work. Client will also reimburse Jetty for all expenses Jetty has incurred pursuant to any applicable Statement of Work through the date of termination.

16.3. Delivery of Deliverables

Conditioned upon Client's payment of all fees and expenses due, Jetty will provide Client all Deliverables, whether complete or incomplete, that Jetty has created as of the date of termination.

16.4. Intellectual Property

In cases where Deliverables may be incomplete due to early termination of this Agreement, and although they may not be in final form, the Deliverables that Jetty provides will be deemed Final Software, as applicable, for the purposes of Intellectual Property rights under Section 8.4. But, in all cases, if this Agreement terminates because of Client's material breach or default, all revocable rights and licenses that this Agreement would otherwise grant to Client will immediately end and be revoked, and Client will immediately cease use of Deliverables or other Services.

16.5. Return of Client Materials

Upon termination of this Agreement, Jetty will promptly return to Client all Client Materials and return and relinquish access to the Operating Environment.

16.6. Confidentiality Survives

Termination will not relieve either party of its duties concerning confidentiality under Section 11. Each party shall maintain its confidentiality obligations under this Agreement for a period of three (3) years after the date of termination.

JETTY MASTER SERVICES AGREEMENT

16.7. Periodic Services through Effective Date of Termination

Where notice is required for either party to terminate this Agreement, Jetty will continue to provide ongoing Maintenance and Support Services, or Software as a Service through the effective date of termination—but only so long as Client prepays or has prepaid any related fees and expenses for the period of those Services until termination.

17. Interpretation of this Agreement

17.1. Notice

All notices under this Agreement must be transmitted in writing by postal mail or electronic mail.

17.2. No Third Party Beneficiaries

This Agreement may not be construed to benefit, give rights to, or bind the parties on behalf of, third parties.

17.3. Governing Law and Forum

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

17.4. Severability

The invalidity or unenforceability of a provision of this Agreement will not affect the validity or enforceability of any other provisions of this Agreement, which will all remain in full force and effect.

17.5. Integration

This Agreement, comprising this document, any Statements of Work executed pursuant to it, any attached or otherwise incorporated exhibits, along with any other documents the parties may execute that incorporate this Agreement by reference, constitute the full and final agreement of the parties and supersedes any other agreements, oral or written, on the same subject matter.

17.6. Definitions

The definitions in the Glossary at the end of this document apply to and control all components of this Agreement, including any Statement of Work or any other document incorporated into this Agreement by reference. The parties may only amend these definitions in writing. The Glossary may not be exhaustive, and this Agreement may include other defined terms applicable in context to specific sections.

17.7. Sections and Subsections

Internal cross-references to Sections include their subsections and vice versa.

GLOSSARY

Agreement

“Agreement” means this master services agreement, including any Statements of Work that the parties execute under it, amendments or modifications to this master services agreement, exhibits that this

JETTY MASTER SERVICES AGREEMENT

master services agreement references or incorporates, and any document that incorporates this master services agreement by reference.

Client Materials

“Client Materials” means all developments, designs, discoveries, documents, drawings, improvements, information, inventions, materials, media content, notes, photography, procedures, products, software, designs underlying trademarks and trade dress, videography, writings, and other related materials that the Client conceived before the Effective Date of this Agreement or conceives during this Agreement, or to which Client owns all rights, title, and interest, and any of which Client provides to Jetty in furtherance of Jetty’s provision of Services. Client Materials do not include any Third Party Works.

Confidential Information

“Confidential Information” means a party’s information about which nonparties do not generally have knowledge, either which is proprietary to or a trade secret of the party, or the disclosure of which would be detrimental to the party. Confidential Information may be oral or written and it does not need to be designated or denominated as “confidential” to retain its status as Confidential Information.

Examples of Confidential Information include, without limitation: algorithms, business information, business models, business opportunities, business plans, corporate opportunities, data, design details and specifications, development, finances, financial models, identity of internal personnel, manner and method of conducting business, marketing, marketing models, processes, products, research, services, software, strategic opportunities, strategic plans, technology trade secrets; and information relating to the party’s agents, employees, clients, customers, vendors, or other contractors.

Confidential Information does not include any information made available to the public without breach of this Agreement; information that a party possesses before the other party discloses it; or information that a third party discloses to a party, so long as the third party does not breach a confidentiality obligation disclosing it

Custom Software

“Custom Software” means all software, technology, abstract methods, know-how, algorithms, technology, system architecture, digital discoveries, digital inventions, digital procedures, software techniques, software code, software products, software solutions, computer programs, and computer procedures, as well as all software-related improvements, developments, drawings, notes, documents, information, and related materials that Jetty (or a third party) develops, conceives, creates, or commissions after the Effective Date on behalf of Client in furtherance of the Services Jetty provides under the terms of this Agreement. Custom Software is mutually exclusive to Third Party Works and Jetty Technology.

Deliverable

“Deliverable” comprises Final Software and any other final custom work product that Jetty licenses or delivers to Client under an applicable Statement of Work to satisfy the obligations of that Statement of Work, in the form that the Statement of Work may specify.

Expenses

“Expenses” have the meaning set forth in Section 4.2.

JETTY MASTER SERVICES AGREEMENT

Final Software

“Final Software” means all Software that Jetty designates expressly or impliedly as final work product and that Jetty licenses or delivers to Client for the purpose of constituting full and final satisfaction of its obligations under any Statement of Work. Final Software only comprises the most recent, final versions of any Software that Jetty actually licenses or delivers to constitute full and final satisfaction of any Statement of Work. Final Software is mutually exclusive to Preliminary Software.

Intellectual Property

“Intellectual Property” means any intellectual property or proprietary rights, including but not limited to copyright rights, moral rights (*droit moral*), patent rights (including patent applications and disclosures), rights of priority, mask work rights, trade secret rights, and trademark, recognized in any jurisdiction around the world.

Jetty Content

“Jetty Content” means all existing non-Software creative media content and design elements, including—without limitation—any and all visual designs, visual elements, graphic design, illustration, photography, animation, videography, sounds, musical works, narratives, works of art, typographic treatments, and text to which Jetty or its suppliers own all rights, title, and interest. Jetty Content may be designated as such in a writing signed by both parties. Failure, however, for the parties to designate intangible items as Jetty Content shall not estop Jetty from reserving, or making claims against violations of, rights, title, and interest in those items as Jetty Content.

Jetty Technology

“Jetty Technology” includes all existing software, technology, abstract methods, know-how, algorithms, technology, system architecture, digital discoveries, digital inventions, digital procedures, software techniques, software code, software products, software solutions, computer programs, computer procedures, and related materials associated with the use, design, development, testing, and distribution of the Software and improvements to existing software and related technology, in any of which Jetty or its suppliers own all rights, title, and interest, and which Jetty uses in the development of Software and the provision of Services under this Agreement. “Jetty Technology” also includes discrete computer program subroutines or methods not specific to the functions of the Deliverables, but which are generally useful generally in Jetty’s business. Jetty Technology may be designated as such in a writing signed by both parties. Failure, however, for the parties to designate intangible items as Jetty Technology shall not estop Jetty from reserving, or making claims against violations of, rights, title, and interest in those items as Jetty Technology. Jetty Technology is mutually exclusive to Custom Software and to Third Party Works.

Licensing Fee

“Licensing Fee” has the meaning set forth in Section 4.1.4.

Hourly Rate

“Hourly Rate” has the meaning set forth in Section 4.1.1.

JETTY MASTER SERVICES AGREEMENT

Maintenance and Support Services

“Maintenance and Support Services” mean the periodic, continual, or ongoing software and maintenance services that a Statement of Work executed under and incorporating this Agreement by reference requires Jetty to provide.

Maximum Compensation

“Maximum Compensation,” as relates to any given Statement of Work entered into pursuant to this Agreement, means the maximum amount to which Client shall be liable to pay Jetty for services rendered and expenses under such Statement of Work.

Operating Environment

“Operating Environment” means all Client’s platforms, environment, digital composition, server integration, network, system architecture, operating software, operating system, kernel, frontend, backend, server(s), software, software configuration, firmware, firmware configuration, hardware, hardware components, hardware configuration, or other digital formulation, abstract layer, any other computational system, and any root or administrator level access to any of these systems or layers that is necessary for Jetty to provide Services under any Statement of Work.

Preliminary Software

“Preliminary Software” means all Software that Jetty does not expressly designate as Final Software or final work product or that Jetty does not deliver to Client. Preliminary Software is mutually exclusive to Final Software.

Preliminary Works

“Preliminary Works” comprise all Preliminary Software or other work product that Jetty does not expressly designate as final work product or that Jetty does not deliver to Client. Preliminary Works are exclusive to Deliverables.

Project Manager

“Project Manager” has the meaning set forth in Section 5.1.

Relationship Manager

“Relationship Manager” has the meaning set forth in Section 3.

Services

“Services” comprises all Deliverables, Software as a Service, Agency of Record Services, and Maintenance and Support Services, and any related services or products that Jetty provides to Client under this Agreement.

Software

“Software” comprises the combination of all Custom Software, all Jetty Technology, and all Third Party Works that Jetty creates, modifies, revises, adds, proposes, or otherwise generates in the software development process in contemplation performing under this Agreement for Client, whether the software is complete or incomplete, rejected or accepted by Client, delivered or undelivered to Client, or merely provided to or actually used by Client. Software may also include Client Materials, to which Client Materials Jetty shall have no right, title, and interest.

JETTY MASTER SERVICES AGREEMENT

Software as a Service (SaaS)

“Software as a Service” or “SaaS” means software that Jetty or its suppliers own, which Jetty provides to Client on an indefinite but revocable and leased or paid-royalty basis. SaaS frequently contemplates that the software and associated data are centrally hosted on servers, often in a cloud computing environment, usually but not necessarily external to the Operating Environment. SaaS comprises Jetty Technology and Third Party Works.

Statement of Work

“Statement of Work” means any document, whether or not designated or denominated as such, that sets forth more specific requirements of both parties and terms and conditions as related to a particular set of Services, provision of Software or Software as a Service, and whether or not executed before or after this Agreement.

Taxes

“Taxes” mean any applicable sales, use, excise, value added (*ad valorem*), or other like taxes, duties, tariffs and charges of any kind that any applicable law may impose on the amounts under this Agreement. Client is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes

Third Party Claims

“Third Party Claims” have the meaning set forth in Section 12.

Third Party Works

“Third Party Works” are proprietary works, which are owned by third parties, including—without limitation—designs, discoveries, inventions, improvements, developments, drawings, notes, documents, information, software, technology, abstract methods, know-how, algorithms, technology, system architecture, digital discoveries, digital inventions, digital procedures, software techniques, software code, software products, software solutions, computer programs, and computer procedures, and non-Software creative media content, design elements, visual designs, visual elements, graphic design, illustration, photography, animation, videography, sounds, musical works, narratives, works of art, typographic treatments, text, and designs underlying trademarks and trade dress.

JETTY MASTER SERVICES AGREEMENT

EXECUTION

Dated: 1/4/17


Jetty:



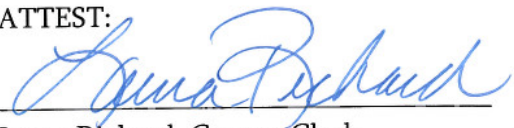
By: Geoffrey Baron, CEO
2814 40th St.
Bellingham, Washington 98229
(360) 393-0111
geoff@jettyapp.com

Dated: 1-10-2017

Client:


By: Robert Hebert, County Judge
401 Jackson St., Richmond, Texas 77469
(281) 341-8608

ATTEST:


Laura Richard, County Clerk



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$297,500.00 to accomplish and pay the obligation of Fort Bend County under this contract.


Robert E. Sturdivant, County Auditor

Statement of Work

Jetty Communications Solutions, LLC (“Jetty”) and Fort Bend County (“Client”), enter into this Statement of Work pursuant to the Master Services Agreement the parties previously executed by the parties.

A. Services. Jetty will provide Services to Client according to the following Project:

FBCOEM Jetty License Agreement (“Proposal”)

B. Fees & Payment.

Client under this Statement of Work shall make payment to Jetty for services rendered. *See Proposal.*

C. Maximum Compensation

Jetty’s fees shall be calculated at the rates set forth in the attached Proposal. The Maximum Compensation specifically allocated to fully discharge any and all liabilities Client may incur to remunerate Jetty for its services and expenses (if any) under this Statement of Work shall be: eighty-six thousand and 00/100 dollars (\$86,000.00). In no case shall the amount paid by Client under this Statement of Work exceed the Maximum Compensation without an approved change order. Client will pay the year one license fee \$86,000.00 upon execution of the agreement. Client will pay the year two license fee upon Client’s renewal of the license. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Client under this Statement of Work, this Statement of Work shall terminate in accordance with the Master Services Agreement.

D. Exceptions.

- Client will be given 180 days’ notice prior service cancellation.
- All client data will be user exportable at any time.

E. Project Managers.

Jetty’s Project Manager for the project under this Statement of Work is:

Geoffrey Baron, CEO, geoff@jettyapp.com, 360.393.0111

Client’s Project Manager for the project under this Statement of Work is:

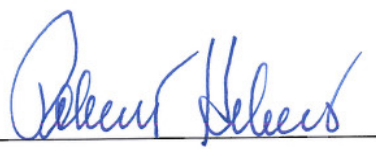
Lach Mullen, Lach.Mullen@fortbendcountytexas.gov, (281) 238-3405

Dated: 1/5/17
Jetty: _____



By: Geoffrey Baron, CEO
2814 40th St.
Bellingham, Washington 98229
(360) 393-0111
geoff@jettyapp.com

Dated: 1-10-2017
Client: _____



By: Robert Hebert, County Judge
401 Jackson St., Richmond, Texas 77469
(281) 341-8608

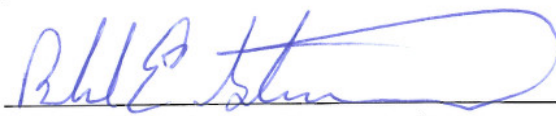
ATTEST:


Laura Richard, County Clerk



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$86,000.00 to accomplish and pay the obligation of Fort Bend County under this contract.



Robert E. Sturdivant, County Auditor



FBCOEM Jetty License Agreement

Fort Bend County, Texas

January 2, 2017

Lachlan Mullen
Regional Emergency Public Information System Administrator Fort Bend County
OEM
307 Fort Street
Richmond, TX 77469

Dear Lachlan,

Jetty Communications Solutions (Jetty) is pleased to offer you this proposal to provide a new web based platform for communicating with stakeholders.

Sincerely,

Geoffrey Baron
Founder/CEO
Jetty Communications Solutions LLC

Summary: Jetty is a web based software solution for managing communication with internal and external audiences. It features an easy to use interface that works on all devices as well as interactivity with email, phone, and social media. Each Jetty includes a password protected administration area as well a public facing website for distributing information. Each Jetty allows for unlimited users.

Annual license: Annual license agreement includes: Hosting, 24/7 customer support, and software updates. Additional single Jetty licenses can be purchased.

Item #1: Jetty 40 Site License (unlimited users): \$86,000

First year license total: \$86,000

Second year license total: \$86,000

Subsequent years subject to maximum 5% increase.

Additional Services

Additional single Jetty license: \$8,000 annually
Response support: \$150 per hour + expenses
Drill support: \$150 per hour + expenses
Additional custom development: \$150 per hour
Additional training: \$150 per hour

Software Usage

Usage: Phone usage should not exceed 100,000 minutes, SMS, and MMS (combined). Data transfer should not exceed 1 terabyte annually.

*Additional usage: Minutes, SMS, and MMS will cost \$.05 each.
Additional phone usage: \$.05 per call minute, SMS, and MMS
Additional data transfer: \$1 per gigabyte*

Proposal Acceptance

If the terms set forth in Proposal # FBCEOM Jetty Software meet with your approval, please complete the following mail or email a copy to our office. An email indicating approval will also be accepted (please include proposal #).

Check or circle the items you would like to accept.

- Item #1 (Jetty Annual License)

Agreed and accepted this _____ day of _____, 2017

Signature

Printed Name

For more information please contact:

Geoffrey Baron
geoff@jettyapp.com
360.393.0111

Statement of Work

Jetty Communications Solutions, LLC ("Jetty") and Fort Bend County ("Client"), enter into this Statement of Work pursuant to the Master Services Agreement the parties previously executed by the parties.

A. Services. Jetty will provide Services to Client according to the following Project:

Regional Emergency Communication Technology Platform Migration ("Proposal")

B. Implementation Schedule

Assuming a start date of January ____

Phase 1 - To be completed by January 17th.

Phase 2 - To be completed by March 15th.

Phase 3 - To be completed by March 28th.

C. Fees & Payment.

Client under this Statement of Work shall make phased payments to Jetty for services rendered after (and only after) Jetty's completion of each phase (Phase 1, Phase 2, and Phase 3). *See Proposal.*

D. Anticipated Expenses

E. Maximum Compensation

Jetty's fees shall be calculated at the rates set forth in the attached Proposal. The Maximum Compensation specifically allocated to fully discharge any and all liabilities Client may incur to remunerate Jetty for its services and expenses (if any) under this Statement of Work shall be: two hundred eleven thousand five hundred and 00/100 dollars (\$211,500.00). In no case shall the amount paid by Client under this Statement of Work exceed the Maximum Compensation without an approved change order.

F. Exceptions.

- Client will be given 180 days' notice prior service cancellation.
- All client data will be user exportable at any time.

G. Project Managers.

Jetty's Project Manager for the project under this Statement of Work is:

Geoffrey Baron, CEO, geoff@jettyapp.com, 360.393.0111

Client's Project Manager for the project under this Statement of Work is:

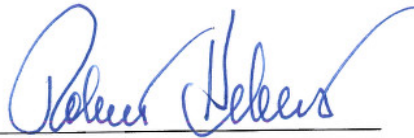
Lach Mullen, Lach.Mullen@fortbendcountytexas.gov, (281) 238-3405

Dated: 1/4/17
Jetty: _____



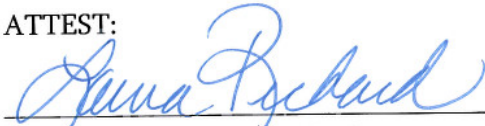
By: Geoffrey Baron, CEO
2814 40th St.
Bellingham, Washington 98229
(360) 393-0111
geoff@jettyapp.com

Dated: 1-10-2017
Client: _____



By: Robert Hebert, County Judge
401 Jackson St., Richmond, Texas 77469
(281) 341-8608

ATTEST:



Laura Richard, County Clerk



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$211,500.00 to accomplish and pay the obligation of Fort Bend County under this contract.



Robert E. Sturdivant, County Auditor



**Regional Emergency Communication Technology
Platform Migration**
Fort Bend County, Texas

January 2, 2017

Lachlan Mullen
Regional Emergency Public Information System Administrator Fort Bend County
OEM
307 Fort Street
Richmond, TX 77469

Dear Lachlan,

Jetty Communications Solutions (Jetty) is pleased to offer you this proposal to:

1. Assist in the migration from the current platform (PIER) to the new platform (Jetty).

We are committed to making this transition as smooth and successful as possible. Please contact me at 360.393.0111 or geoff@jettyapp.com if there are any questions about this.

Sincerely,

Geoffrey Baron
Founder/CEO
Jetty Communications Solutions LLC

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Approach

Overview

Fort Bend County Office of Emergency Management (FBCOEM) operates 40 PIER sites and would like to migrate to Jetty. Jetty will identify work with FBCOEM to:

- 1) Setup the software to replicate the current PIER setup (40 “sites” each with their own admin area and permissions).
- 2) Add users to Jetty with the correct permissions.
- 3) Jetty will create a master theme for the Region and then customize each site to replicate current functionality.
- 4) Import existing inquiries from PIER.

Assumptions

The schedule and estimate for this project are based on the following assumptions:

- 1) FBCOEM will provide a comprehensive list (CSV) of all users and their expected role and user group (each “site” will be considered a user group).
- 2) Jetty will provide one master Jetty website template and will customize each site meet design requirements.
- 3) Jetty implementation staff will work closely with Lach Mullen throughout this process.
- 4) FBCOEM existing inquiries will be provided in single page CSV with everything that is needed to create Jetty inquiries.

Implementation Plan

Phase 1 - Planning

During planning we will prioritize the migration of each PIER site as well as establish a site settings template to be duplicated. This will be determined by input from FBCOEM as well as recommendations by Jetty implementation staff.

Deliverables

Site migration schedule

Jetty site template with standard settings

Theme development plans delivered to development team

Phase 2 - Site Setup

During this phase we will set up the software and launch the necessary sites. We will also import all the users to training sites and begin training. Theme development will also be happening during this time.

Deliverables

40 Jetty Sites

Imported users

Completed UASI Flexible Theme

Basic User Training Started

Phase 3 - Content Migration

During this phase Jetty will work with FBCOEM to migrate existing inquiries into Jetty as well as finalize website implementation while working with FBCOEM admin users. Jetty will also import existing inquiries into Jetty.

Deliverables

Admin Training

Domain transfers

Migrate documents and their corresponding categories/folders

Completed theme development

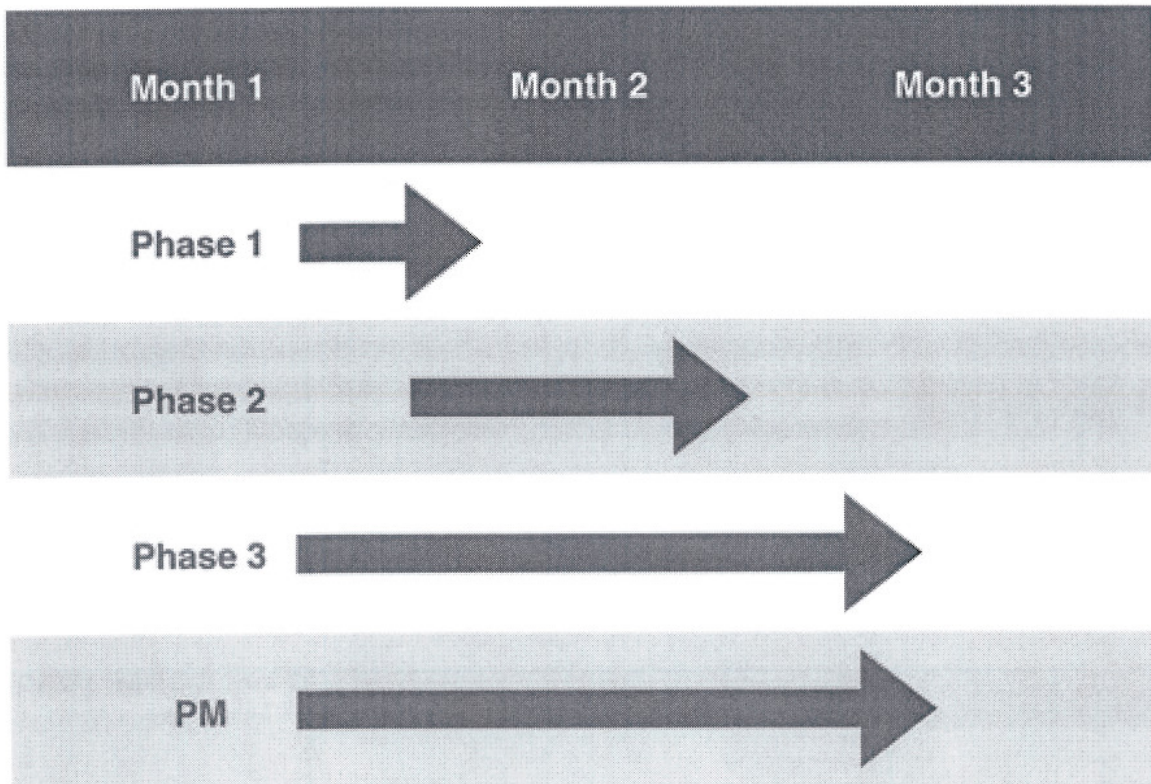
Import of existing inquiries into Jetty

Project Management

Jetty's team managed global migrations that have included multiple languages, themes, hundreds of users, and custom development. We have complete confidence in our ability to deliver on time and within budget. Our rapidly expanding team includes project management specialists and technical support experts.

Schedule

While we believe this entire project can be completed in 4 months we will plan on having mission critical pieces completed before then. The schedule will be subject to change based upon the initial planning phase but it will still follow the basic outline.



Cost Estimate - Item #1 Migration

Work will proceed on a time and materials basis with a not-to-exceed limit set forth in the table below. Work will continue until the team has completed as much functionality as the project budget and schedule allow. Jetty will contact you promptly should we anticipate any task overruns or changes in scope. Travel if needed will require a separate cost estimate.

Phase	Hours	Cost
Planning	380	\$57,000
Setup	290	\$43,500
Migration	520	\$78,000
PM	220	\$33,000
Totals	1410	\$211,500

Additional custom development: \$150 per hour
Additional training: \$150 per hour

Proposal Acceptance

If the terms set forth in Proposal # FBCOEM Jetty Software meet with your approval, please complete the following and fax or mail a copy to our office. An email indicating approval will also be accepted (please include proposal #).

Check or circle the items you would like to accept.

- Item #1 (PIER/Jetty Migration)
-

Milestone and Payment Schedule

Assuming a start date of January 3rd.

Phase 1 - To be completed and invoiced by January 17th.

Phase 2 - To be completed and invoiced by March 15th.

Phase 3 - To be completed and invoiced by March 28th.

Assuming a start date of January 10th.

Phase 1 - To be completed and invoiced by January 27th.

Phase 2 - To be completed and invoiced by March 25th.

Phase 3 - To be completed and invoiced by April 7.

Invoices for phases to be paid within 30 days of receipt.

Agreed and accepted this _____ day of _____, 2017

Signature

Printed Name

For more information please contact:

Geoffrey Baron
geoff@jettyapp.com
360.393.0111

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2016-149212

Date Filed:
12/28/2016

Date Acknowledged:
01/10/2017

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Jetty Communications Solutions LLC
Cypress, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

99999
Managed Communication

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Jetty Communications Solutions LLC	Cypress, TX United States	X	

5 Check only if there is NO Interested Party.

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20_____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

Exhibit 2

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

AGREEMENT

1. **Sublicense.** The rights granted to _____ and the use of the Jetty Software under this Agreement by _____ shall not be inconsistent with the terms and conditions set forth in the Jetty Master Services Agreement executed between County and Jetty, a copy attached hereto in this Agreement as Exhibit "A". County reserves the right to terminate _____'s rights granted under this sublicense for any use of the Jetty Software by _____ that is inconsistent with the Jetty Master Services Agreement or constitutes a breach of the Jetty Master Services Agreement. County hereby sublicenses and grants to _____ six (6) Jetty Software licenses under the following terms, provisions, and conditions which _____ agrees to abide by:
 - a. The Jetty Software shall be used on _____ sites, but in no event shall the Jetty Software be utilized by more than _____ sites.
 - b. There shall be no right by _____ to grant any sublicense or assignment of any of its rights to the Jetty Software.
2. **Fees and Expenses.** Subject to the following, _____ shall pay \$0 for the _____ Jetty Software licenses sublicensed to _____ from County under this Agreement. Under the terms of the Jetty Master Services Agreement, County's failure to pay Jetty for services is a material breach. County acquired a specified number of licenses to the Jetty Software through the Jetty Master Services Agreement and has paid all initial costs associated with the licenses to the Jetty Software. Notwithstanding the foregoing, any additional fees resulting from _____'s use of the Jetty Software in excess of the amount of the Jetty Master Services Agreement and this Agreement are the sole responsibility of _____.
 - a. If Jetty demands payment from County for overage charges specifically attributable to _____'s use of the Jetty Software under this Agreement, _____ will reimburse County for those charges. _____ will reimburse County for any late penalties County incurs due to late payment from _____ for _____'s use of the Jetty Software.
 - b. Failure to pay County such fees, if applicable, in Section 2.a. of this Agreement constitutes a breach of this Agreement and County reserves the right to terminate _____'s access to the Jetty Software until payment has been received by County.
3. **Indemnification and Disclaimers.** COUNTY AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS _____, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "_____") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST _____ ALLEGING THAT _____'S USE OF JETTY SOFTWARE THAT COUNTY FURNISHES TO _____ DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. COUNTY SHALL PAY ALL COSTS (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED. COUNTY SHALL ONLY

INDEMNIFY _____ TO THE EXTENT COUNTY IS INDEMNIFIED BY JETTY UNDER THE JETTY MASTER SERVICES AGREEMENT. THIS AGREEMENT EXPRESSLY EXCLUDES, ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. COUNTY IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, REVENUE, DATA, OR USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS INCURRED BY _____ OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF COUNTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. **Additional Sublicenses.** Under the Jetty Master Services Agreement between County and Jetty, County acquired a specific number of licenses to replace each PIER System site for each individual UASI Region member. Based on the volume purchase of licenses for the Jetty Software under the Jetty Master Services Agreement, County was able to secure a discounted price for the licenses. If _____ desires to acquire more sublicenses to the Jetty Software, then County will assist _____ in acquiring more sublicenses so that _____ may acquire the sublicenses at the discounted rate, if applicable, County receives for purchasing additional licenses. County does not guarantee that Jetty will offer additional licenses at a rate lower than what _____ would be offered if _____ were to contract directly with Jetty, or that Jetty will allow County to purchase more licenses for the purpose of sublicensing to _____. _____ may also acquire additional licenses directly through Jetty.
5. **Disclaimer.** THIS AGREEMENT EXPRESSLY EXCLUDES, ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. COUNTY IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, REVENUE, DATA, OR USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS INCURRED BY _____ OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF COUNTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **Indemnification.** TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, _____ WILL INDEMNIFY AND DEFEND, AND HOLD COUNTY HARMLESS FROM ANY LOSS, ATTORNEY'S FEES, EXPENSES, OR CLAIMS RESULTING FROM _____'S BREACH OF THE TERMS OF THE JETTY MASTER SERVICES AGREEMENT, THIS AGREEMENT, OR THE ATTACHED GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT STATE ADMINISTRATIVE AGENCY HOMELAND SECURITY GRANT PROGRAM PROPERTY TRANSFER RECORD AGREEMENT.
7. **Notice.** Notices, correspondence, and all other communications shall be addressed as follows:

If to **County**:
 Fort Bend County
 Attn: County Judge
 301 Jackson Street
 Richmond, Texas 77469

If to _____:

 Attn: _____

8. **Grant Requirements.** _____ acknowledges that County's initial purchase of the Jetty Software involved the use of Homeland Security Grant Program funds. As such, _____ agrees to use Jetty Software licenses identified in this Agreement solely to provide law enforcement and emergency response communities with enhanced capabilities for detecting, deterring, disrupting, preventing, and responding to potential threats of manmade, natural disasters and acts of terrorism as described in the federal program guidelines, specifically: planning, equipment, training and exercise needs.
9. **Authority.** County represents and warrants to _____ that County has the right to grant a sublicense to _____ for the _____ Jetty Software licenses under this Agreement and that County has not knowingly granted and will not knowingly grant licenses or other rights under the Jetty Software that are in conflict with the terms and conditions in this Agreement. _____ represents and warrants to County that _____ has the requisite authority to enter into this Agreement.
10. **Additional Terms.** As a condition of accepting the sublicenses for the Jetty Software under this Agreement and to the extent reasonably practicable, _____ will meet the following conditions:
 - a. Users and administrators must attend training prior to using the production Jetty site;
 - b. Users and administrators must maintain knowledge and skills in Jetty and attend additional training as needed (can be scheduled with regional administrator as needed);
 - c. Users and administrators must participate in regional Jetty exercises;
 - d. Administrators must perform regular site maintenance, including but not limited removing inactive users, and maintaining regional connections between Jetty sites;
 - e. Administrators must notify the regional administrator of administrator changes;
 - f. Administrators maintain a terrorism nexus in the implementation and use of this software.
 - g. Administrators should participate in regional planning efforts representing their organization when requested.
11. **Definitions.** The defined terms shall mean the definitions as provided in this Agreement. If a defined term is not defined in this Agreement, then the defined term shall mean the definition provided in the Jetty Master Services Agreement in Exhibit "A."
12. **Conflict.** In the event a conflict arises between the rights granted to County under the Jetty Master Services Agreement and the rights granted to _____ under this Agreement, the Jetty Master Services Agreement controls.
13. **Term.** This Agreement shall be in full force and effect from the Effective Date until five (5) years after the Effective Date, unless extended by mutual written agreement or sooner terminated as provided below. Either party may terminate this Agreement upon a failure of the other party to perform a material obligation. The parties may also mutually agree to terminate this Agreement. _____ may terminate this Agreement upon thirty (30) days' prior written notice to the County.

Signatures Follow On Next Page

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement on the dates indicated below.

FORT BEND COUNTY

Robert Hebert, County Judge

BY: _____
(Authorized Signatory Name, Title)

Date

Date

ATTEST:

ATTEST/SEAL:

Laura Richard, County Clerk

(Name, Title)

REVIEWED:

BY: _____

Jeff Braun, OEM

APPROVED:

BY: _____
DEPUTY DIRECTOR, OEM

APPROVED AS TO FORM:

BY: _____
(Name, Title)

EXHIBIT A
JETTY MASTER SERVICES AGREEMENT