

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 Houston and the use of the Jetty Software under this Agreement by Houston 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 Houston's rights granted under this sublicense for any use of the Jetty Software by Houston 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 Houston six (6) Jetty Software licenses under the following terms, provisions, and conditions which Houston agrees to abide by:
 - a. The Jetty Software shall be used on six (6) Houston sites, but in no event shall the Jetty Software be utilized by more than six (6) Houston sites.
 - b. There shall be no right by Houston to grant any sublicense or assignment of any of its rights to the Jetty Software.
2. **Fees and Expenses.** Subject to the following, Houston shall pay \$0 for the six (6) Jetty Software licenses sublicensed to Houston 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 Houston'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 Houston.
 - a. If Jetty demands payment from County for overage charges specifically attributable to Houston's use of the Jetty Software under this Agreement, Houston will reimburse County for those charges. Houston will reimburse County for any late penalties County incurs due to late payment from Houston for Houston'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 Houston'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 HOUSTON, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "HOUSTON") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST HOUSTON ALLEGING THAT HOUSTON'S USE OF JETTY SOFTWARE THAT COUNTY FURNISHES TO HOUSTON 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 HOUSTON 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 HOUSTON 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 Houston desires to acquire more sublicenses to the Jetty Software, then County will assist Houston in acquiring more sublicenses so that Houston 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 Houston would be offered if Houston were to contract directly with Jetty, or that Jetty will allow County to purchase more licenses for the purpose of sublicensing to Houston. Houston 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 HOUSTON 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, HOUSTON WILL INDEMNIFY AND DEFEND, AND HOLD COUNTY HARMLESS FROM ANY LOSS, ATTORNEY’S FEES, EXPENSES, OR CLAIMS RESULTING FROM HOUSTON’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:	If to Houston:
Fort Bend County	City of Houston
Attention: County Judge	Attention: Office of the Mayor
301 Jackson Street	PO Box 1562
Richmond, Texas 77469	Houston, TX 77251
8. **Grant Requirements.** Houston acknowledges that County’s initial purchase of the Jetty Software involved the use of Homeland Security Grant Program funds. As such, Houston 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 Houston that County has the right to grant a sublicense to Houston for the six (6) 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. Houston represents and warrants to County that Houston 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, Houston 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 Houston 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. Houston 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

CITY OF HOUSTON

Robert Hebert, County Judge

BY: _____
MAYOR

Date

Date

ATTEST:

ATTEST/SEAL:

Laura Richard, County Clerk

REVIEWED:

BY: _____
CITY SECRETARY

Jeff Braun, OEM

APPROVED:

BY: _____
DEPUTY DIRECTOR, OEM

APPROVED AS TO FORM:

BY: _____
ASSISTANT CITY ATTORNEY II
L.D. FILE NO. _____

COUNTERSIGNED

BY: _____
CITY CONTROLLER

DATE COUNTERSIGNED

EXHIBIT A
JETTY MASTER SERVICES AGREEMENT