

STATE OF TEXAS

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COUNTY OF FORT BEND

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FIRST AMENDMENT TO INTERLOCAL AGREEMENT AND SOFTWARE SUBLICENSE

This FIRST AMENDMENT TO INTERLOCAL AGREEMENT AND SOFTWARE SUBLICENSE ("Amendment") is entered into by and between Fort Bend County, Texas, a body corporate and politic acting herein by and through its Commissioners Court ("County"), and the City of Houston, Texas ("Houston"), a home rule city of the State of Texas principally situated in Harris County.

WHEREAS, the County and Houston previously executed the INTERLOCAL AGREEMENT AND SOFTWARE SUBLICENSE (the "Agreement," attached hereto as "Attachment A") on or about November 15, 2017 (Houston Contract No. C77399);

WHEREAS, the parties desire to amend the Agreement to increase the number of sublicenses to Houston from six (6) to seven (7);

NOW, THEREFORE, 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:

A. Section 1 of the Agreement is deleted and hereby replaced with the following:

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 seven (7) Jetty Software sublicenses to Houston under the following terms, provisions, and conditions which Houston agrees to abide by:
 - a. The Jetty Software shall be used on seven (7) Houston sites, but in no event shall the Jetty Software be utilized by more than seven (7) 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.

B. The first sentence of Section 2 of the Agreement is deleted and hereby replaced with the following:

2. **Fees and Expenses.** Subject to the following, Houston shall pay \$0 for the seven (7) Jetty Software licenses sublicensed to Houston from County under this Agreement.

C. Section 9 of the Agreement is deleted and hereby replaced with the following:

9. **Authority.** County represents and warrants to Houston that County has the right to grant a sublicense to Houston for the seven (7) 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.

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 have executed this Amendment on the dates indicated below. The parties hereto have executed this Amendment in multiple copies, each of which shall be an original. Each person signing this Amendment represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Amendment. Each party represents and warrants to the other that the execution and delivery of this Amendment and the performance of such party's obligations hereunder have been duly authorized and that the Amendment is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

FORT BEND COUNTY

Robert Hebert, County Judge

Date

ATTEST:

Laura Richard, County Clerk

REVIEWED:

Jeff Braun, OEM

CITY OF HOUSTON

BY: _____
MAYOR

Date

ATTEST/SEAL:

BY: _____
CITY SECRETARY

APPROVED:

BY: _____
DIRECTOR, OEM

APPROVED AS TO FORM:

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

COUNTERSIGNED

BY: _____
CITY CONTROLLER

DATE COUNTERSIGNED

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Amendment.

Robert Ed Sturdivant, County Auditor

Attachment A

STATE OF TEXAS

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COUNTY OF FORT BEND

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INTERLOCAL AGREEMENT AND SOFTWARE SUBLICENSE

This Interlocal Agreement and Software Sublicense ("Agreement") effective on the Countersignature Date (the "Effective Date"), is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code (the "Act") between Fort Bend County, Texas, ("County") a body corporate and politic, acting by and through its Commissioners Court and the City of Houston ("Houston"), a home rule city of the State of Texas principally situated in Harris County.

WITNESSETH

WHEREAS, this Agreement is entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizing local governmental entities, including the County and Houston, to contract with each other to increase the efficiency and effectiveness of local governments;

WHEREAS, Fort Bend County has been awarded grant funding through a federal grant under the Homeland Security Grant Program entitled Urban Areas Security Initiative ("UASI") Program ("Grant") from the United States Department of Homeland Security, Office of Domestic Preparedness, specifically Grant Number 2971902, for the Project - Regional Technology Sustainment;

WHEREAS, Fort Bend County used funding under the Grant to acquire software licenses ("Jetty Software") from Jetty Communications Solutions, LLC ("Jetty") in order to deploy Jetty's communications software for the purpose replacing the PIER System, due to the PIER System's provider no longer supporting the PIER System product;

WHEREAS, Fort Bend County is expressly authorized to sublicense the Jetty Software to members of the UASI Region to be used 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;

WHEREAS, Houston is a member of the Houston UASI Region that desires to obtain six (6) fully paid licenses to the Jetty Software through a sublicense from Fort Bend County; and

WHEREAS, Fort Bend County and Houston have executed a Governor's Division of Emergency Management State Administrative Agency Homeland Security Grant Program Property Transfer Record Agreement, attached hereto as Exhibit 2 and incorporated herein by reference for all purposes, for six (6) licenses; and

WHEREAS, County and Houston believe it is in their best interests to enter into this Agreement to use Jetty's software to facilitate emergency response capabilities of County and Houston.

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

Robert Hebert, County Judge

Date

ATTEST:

Laura Richard, County Clerk

REVIEWED:

Jeff Braun, OEM



CITY OF HOUSTON

BY: Amanda Washington
MAYOR

Date

ATTEST/SEAL:

BY: Cynthia Russell
CITY SECRETARY

APPROVED:

BY: R. A.
DEPUTY DIRECTOR, OEM

APPROVED AS TO FORM:

BY: W. B. M. W.
ASSISTANT CITY ATTORNEY II
L.D. FILE NO. 1211700004001

COUNTERSIGNED

BY: Jeff Braun
CITY CONTROLLER

DATE COUNTERSIGNED



EXHIBIT A
JETTY MASTER SERVICES AGREEMENT

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

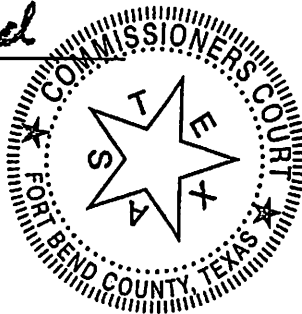
IN WITNESS WHEREOF, the parties put their hands to this Amendment on the dates indicated below.

Dated: 10-3-2017
CLIENT: FORT BEND COUNTY

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

ATTEST:

Laura Richard
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

JETTY MASTER SERVICES AGREEMENT

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

JETTY MASTER SERVICES AGREEMENT

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 deliver 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

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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.

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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.

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: [Signature]

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

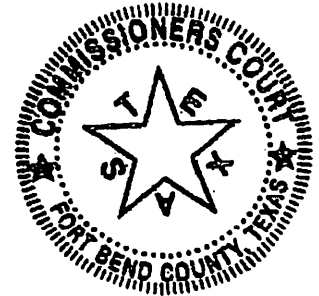
Dated: 1-10-2017

Client: [Signature]

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

ATTEST:

[Signature]
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.

[Signature]
Robert E. Sturdivant, County Auditor