

SECOND AMENDED AND RESTATED MASTER SERVICE AGREEMENT

This Second Amended and Restated Master Service Agreement (this "Agreement") is entered into on _____, 2019 (the "Effective Date") by and between Fort Bend Grand Parkway Toll Road Authority, a local government corporation (the "Authority"), and Remote Monitoring Systems, LLC (the "Contractor").

This Agreement supersedes and replaces the Amended and Restated Master Service Agreement dated July 18, 2018, and any amendments thereto.

RECITALS

WHEREAS, the Authority has determined it is in the Authority's best interest to engage a professional service provider for the services described herein; and

WHEREAS, Authority and Contractor (collectively, the "Parties") have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel;

NOW, THEREFORE, in consideration of the premises, mutual promises, covenants, obligations and benefits herein contained, the Authority and Contractor agree as follows:

I.

SERVICES

Section 1.01. Services. Contractor shall provide and install a flood monitoring system, including flood sensors and related equipment and software licensing, as more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (collectively, the "Services"). Contractor shall be compensated for Services as set forth in Section II of this Agreement. All fees for Services described in this Agreement shall include charges for labor, materials, insurance, equipment and any other items required to perform the Services. Contractor may not deviate from approved Services without the prior written consent of the Board of Directors of the Authority (the "Board") or its designee.

II.

COMPENSATION

Section 2.01. Compensation. In consideration for the Services, the Authority will pay the Contractors as follows:

- A. A Software License and Maintenance Fee in the amount of \$100.00 per month for the following location ("Location 1"): ST. HWY 99/GRAND PARKWAY AT US-90A.
- B. A one-time fee in the amount of \$27,235.00 (the "One-Time Fee"), for installation of the flood monitoring system at the following location ("Location 2"): ST. HWY 99/GRAND PARKWAY AT FM 1093/WESTPARK TOLLWAY.
- C. A Software License and Maintenance Fee in the amount of \$100.00 per month for Location 2.

Section 2.02. Payment for Services. Contractor shall submit invoices (together with any back-up documentation requested) for the Services to the District's bookkeeper:

Contractor shall submit to the District's bookkeeper: (i) a detailed invoice (together with any back-up documentation requested) for the One-Time Fee and (ii) a detailed monthly invoice (together with any back-up documentation requested) for the Software License and Maintenance Fees.

Authority's Bookkeeper:
Kristina Dowling
1950 Lockwood Bypass
Richmond, Texas 77469
kristinadowling@fbctra.com

Payment will be made within forty-five (45) days of the approval of Contractor's invoice by the Authority. Interest shall not be paid on service invoices.

Contractor agrees that upon completion of the work called for hereunder, it will furnish the Authority, with proof, satisfactory to the Authority, that all labor, material and equipment for which Contractor has been paid, have been satisfied and paid, unless the Authority waives such proof. Upon furnishing such proof, or waiver thereof, the amount billed by Contractor will be reviewed by the Authority for approval and all undisputed amounts shall be paid to Contractor in accordance with this Section.

III. GENERAL CONDITIONS

Section 3.01. Contractor's Duties. Contractor covenants with the Authority to furnish its best skill and judgment in performing the Services for the Authority. Contractor agrees to furnish efficient business administration and superintendence and to use its best efforts to furnish at all times an adequate supply of workmen, materials and equipment and to perform the Services in the most expeditious and economical manner. Contractor agrees to exercise reasonable diligence in performing the Services, using the degree of care and skill that a prudent person in the same or similar profession would use.

Section 3.02. Relationship of Authority and Contractor. Contractor has been retained by the Authority for the sole purpose and to the extent set forth in this Agreement. It is understood and agreed that all work so done by Contractor shall meet with Authority approval, but that the detailed manner and method of performing the Services shall be under the control of Contractor. Contractor's relationship to the Authority during the term of this Agreement is that of an independent contractor. The relationship between the Authority and Contractor is not exclusive.

Section 3.03. Insurance and Indemnification. Before commencing any work hereunder, Contractor shall furnish certificates of its insurance and copies of any required endorsements to the Authority evidencing the following insurance coverage, which coverage shall be maintained throughout the term of this Agreement. Certified copies of each policy shall be furnished to the Authority upon the Authority's request. Contractor shall not violate or knowingly permit to be violated any condition of the insurance policies required by this Agreement. Nothing contained in

this Section shall limit or waive Contractor's legal or contractual responsibilities to the Authority or others. Cancellation or expiration of any of said insurance policies shall not preclude the Authority from recovery for any liability arising under this Agreement.

Contractor shall obtain the following insurance from companies having a Best's rating of B+/VII or better and licensed to transact business in the State of Texas:

- A. Workers' Compensation Insurance covering liability arising out of Contractor's employment of workers and anyone for whom the employer may be liable for workers' compensation claims at limits as imposed by statute. Workers' compensation insurance is required, and no alternative forms of insurance shall be permitted.
- B. Employer's Liability Insurance Limitations with limits of not less than \$500,000.
- C. Commercial General Liability Insurance with limits not less than:
 - a. Each occurrence - \$500,000
 - b. General aggregate - \$1,000,000
 - c. Products-Completed Operations Aggregate - \$1,000,000
 - d. Personal & Advertising Injury - \$500,000
- D. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 (combined)

Contractor's insurance shall include the following endorsements:

- A. The Authority and the Authority's agents and employees shall be added as additional insureds to all coverage required under this Agreement for all liability arising out of Contractor's work under this Agreement, except for workers' compensation insurance, as to the full limits of liability provided by each insurance policy (including limits greater than the minimum limits required herein).
- B. All required insurance shall be endorsed to provide that coverages afforded under the policy will not be canceled or modified without at least seven days prior written notice to the Authority. Renewal certificates shall be provided at least 30 days prior to the termination date of the current certificates of insurance during the term of this Agreement.
- C. Inasmuch as Authority and Contractor intend that all of Contractor's insured loss and liabilities fall upon Contractor's insurers, without recourse against Authority, Contractor agrees to cause all of its policies of insurance maintained in force or procured by Contractor to provide, if necessary by endorsement, that each such insurer fully waives subrogation against the Authority and its agents and employees.
- D. All of the aforesaid policies shall be endorsed to provide that the coverage provided to the Authority as an additional insured will be on a primary basis, and not in excess of other insurance coverage available to the Authority, and that neither Contractor nor its insurer will seek contribution or recovery from the Authority or such other insurance available to the Authority.
- E. Contractor shall cause its subcontractors, including all persons hired by Contractor who are not Contractor's employees, who perform any part of the work hereunder, to be added as additional insureds to all coverage required under this Agreement, as to the full limits of liability provided by each insurance policy (including limits greater than the minimum limits required herein).

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND ITS OFFICERS, DIRECTORS, REPRESENTATIVES, AND AGENTS, FROM EVERY LOSS, DAMAGE, INJURY, COST, EXPENSE, CLAIM, JUDGMENT, OR LIABILITY OF EVERY KIND OR CHARACTER (INCLUDING SPECIFICALLY ATTORNEYS' FEES, COURT COSTS AND OTHER EXPENSES INCURRED IN ENFORCING THIS INDEMNITY PROVISION), WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHICH ARISES DIRECTLY OR INDIRECTLY FROM THE CONTRACTOR'S WILLFUL, INTENTIONAL, RECKLESS OR NEGLIGENT (WHETHER ACTIVE, PASSIVE, OR GROSS) ACTS OR OMISSIONS RELATED TO OR ARISING FROM THIS AGREEMENT. THIS INDEMNITY AND HOLD HARMLESS PROVISION WILL APPLY WHETHER SUCH ACTS OR OMISSIONS ARE CONDUCTED BY THE CONTRACTOR OR ANY SUBCONTRACTOR OR AGENT OF THE CONTRACTOR.

THIS INDEMNITY AGREEMENT IS INTENDED TO MEET THE TEXAS "EXPRESS NEGLIGENCE RULE" BECAUSE CONTRACTOR AGREES THAT IT APPLIES AND IS ENFORCEABLE EVEN AS TO LOSSES, DAMAGES, INJURIES, EXPENSES, CLAIMS, CAUSES OF ACTION, JUDGMENTS OR LIABILITIES JOINTLY OR CONCURRENTLY CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF THE AUTHORITY. THE TERM "FAULT" IN THE PREVIOUS SENTENCE INCLUDES THE VIOLATION OR BREACH BY THE AUTHORITY OF ANY COMMON LAW DUTY, ANY TERM OF THIS CONTRACT, OR ANY STATUTE OR REGULATION.

THIS INDEMNIFICATION OBLIGATION IS IN ADDITION TO ALL OTHER LEGAL, EQUITABLE, OR INDEMNIFICATION REMEDIES AVAILABLE TO THE AUTHORITY. THIS INDEMNIFICATION OBLIGATION SURVIVES THE TERMINATION OR EXPIRATION OF THIS CONTRACT.

CONTRACTOR DOES HEREBY WAIVE, RELEASE AND FOREVER RELINQUISH AND DISCHARGE THE AUTHORITY FROM ALL OF CONTRACTOR'S CAUSES OF ACTION ARISING FROM BODILY INJURY OR DEATH OR DAMAGE TO ANY PROPERTY ARISING OUT OF THE SERVICES, REGARDLESS OF WHETHER THE INJURY OR DAMAGE IS CAUSED IN FULL OR IN PART BY THE NEGLIGENCE OR OTHER FAULT OF THE AUTHORITY.

Section 3.04. Term and Termination. Either party may terminate this Agreement at any time, without cause, upon thirty (30) days written notice to the other party. Contractor shall not be entitled to any payment or further payment other than for work performed or material, equipment, or supplies furnished prior to such termination. The Authority does not waive any other remedy allowed under Texas law.

Section 3.05. Agreement Controls. To the extent that there is any inconsistency between the provisions of this Agreement and any attachments or exhibits hereto, the terms of this Agreement shall control. Any terms and conditions described in any attachments, exhibits, or Job Orders that are unrelated to the description of the Services to be performed, duration of performance, the location, and the fees shall have no effect and shall not be considered part of this Agreement.

Section 3.06. Regulatory Requirements. All work will be done in strict compliance with all applicable city, county, state and federal rules, regulations and laws and any codes which may apply to the Services being provided. Contractor will obtain all permits and licenses required to perform the Services and will be responsible for securing inspections and approvals of its work from any entities having jurisdiction over Contractor's Services.

Section 3.07. Safety and Health Standards. Contractor shall observe and comply with all applicable federal, state and local health and safety laws and regulations.

Section 3.08. Inspection. The Authority and its duly authorized representatives shall have the right to inspect all Services being performed hereunder at any time. Contractor agrees to maintain adequate records and documentation satisfactory to the Authority to support the changes and expenses related to all Services performed hereunder and to maintain such records and documentation for at least four years. The Contractor will provide such back-up documentation to the Authority upon request.

Section 3.09. Warranty. In addition to other common law and statutory warranties, whether implied or express, Contractor's warranty applies to materials, parts, labor and workmanship for one year from the date of completion of the Services. Contractor shall transfer all manufacturers' warranties to the Authority.

Section 3.10. Assignability. Contractor shall not assign its rights or obligations or any sum that may accrue to it hereunder without the written consent of the Authority, which shall be granted or denied in the Authority's sole discretion.

Section 3.11. Modifications. This Agreement shall be subject to amendment, change or modification only with the prior mutual written consent of the Authority and Contractor.

Section 3.12. Force Majeure. In the event either party to this Agreement is rendered unable, wholly or in part, by force majeure including an act of God; strikes; lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of government of the United States or the State of Texas or any civil or military district (other than a party to this Agreement); insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; droughts; arrests; civil disturbances; explosions; or other inability similar to those enumerated; to carry out its obligations under this Agreement, it is agreed that party shall give written notice of such act to the other party as soon as possible after the occurrence of the cause relied on and shall, thereafter, be relieved of its obligations, so far as they are affected by such act, during the continuance of any inability so caused, but for no longer.

Section 3.13. Agreement Subject to Applicable Law. This Agreement and the obligations of the parties hereunder are subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any other regulatory agency having jurisdiction.

Section 3.14. Governing Law. This Agreement is governed in accordance with the laws of the State of Texas and shall be enforceable in the county in which the Authority is located.

Any suit arising out of this agreement must be brought in Fort Bend County.

Prior to execution of this Agreement by the Authority, the Contractor will be required to submit a Texas Ethics Commission Form 1295. Please see the below website for details related to this disclosure:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Contractor certifies and agrees that it (i) does not, nor will not so long as the Agreement remains in effect, boycott Israel, as such term is defined in Chapter 808, Texas Government Code, and (ii) is not identified on a list prepared and maintained under Sections 806.051, 807.051 or 2252.153, Texas Government Code.

Section 3.15. Waiver. No waiver or waivers of any breach or default by a party hereto of any term, covenant or condition or liability hereunder of performance by the other party of any duty or obligation hereunder will be deemed a waiver thereof in the future, nor will any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 3.16. Intended Beneficiaries. This Agreement is for the sole and exclusive benefit of the Authority and Contractor and will not be construed to confer any benefit upon any other party.

Section 3.17. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected hereby.

Section 3.18. Notice. Any notice, demand, request, or other instrument authorized or required to be given under this Agreement shall be deemed to have been given only upon receipt. Any required notices may be given by first class mail, postage prepaid, or by overnight delivery service to the address set forth below:

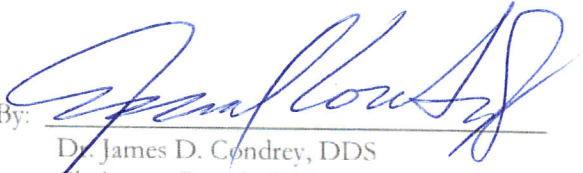
Fort Bend Grand Parkway Toll Road Authority	Remote Monitoring Systems
c/o The Muller Law Group, PLLC	1240 Johnson Ferry Place
202 Century Square Boulevard	STE C5
Sugar Land, Texas 77478	Marietta, Georgia 30068
Attn: Richard Muller	Attn: Ron McMillan

Section 3.19. List of Local Government Officers. In accordance with Section 176.0065, Texas Local Government Code, a list of local government officers of the Authority may be obtained by contacting the Authority's records administrator at (281) 500-6050.

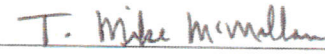
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date set forth on the first page hereof.

[EXECUTION PAGE FOLLOWS]

FORT BEND GRAND PARKWAY TOLL
ROAD AUTHORITY

By: 
Dr. James D. Condrey, DDS
Chairman, Board of Directors

REMOTE MONITORING SYSTEMS

By: 
Print name: T. Mike McMillan
Title: President

EFFECTIVE DATE

THIS AGREEMENT IS EFFECTIVE ON THE DATE IT IS APPROVED BY THE FORT BEND COUNTY COMMISSIONERS COURT, AND IF NOT SO APPROVED SHALL BE NULL AND VOID.

DATE OF COMMISSIONERS COURT APPROVAL: _____

AGENDA ITEM NO.: _____

EXHIBIT A

LOCATION 1: ST. HWY 99/GRAND PARKWAY AT US-90A

SOFTWARE LICENSE & MAINTENANCE

- Authority to pay \$100.00 (per month)
- Users are provided their own proprietary secure website
- Web based software provided by RMS
- RMS will maintain server & pay associated fees
- RMS will manage monthly cellular, satellite & text messaging plans & associated fees
- Unlimited number of users

Remote Monitoring Systems (RMS)

RMS will provide and install 1 flood sensor and related equipment. RMS will attach sensor to back of FBGPTRA "Flood Gauge" sign to be relocated by FBGPTRA. Sensor to be pointed at concrete paving around area storm sewer inlet located behind curb.

RMS will provide and install weatherproof enclosure and solar panel to typical sign assembly to be installed by FBGPTRA.

RMS will modify control switch for solar powered roadside flashing beacon Operate solar powered roadside flashing beacon assembly when 6 or more inches of water are detected above the inlet. Alert emergency contact list when over 12 or more inches of water are detected above inlet.

Program, calibrate, and test flood monitoring sensor and control switches for flashing beacon assembly.

Fort Bend Grand Parkway Toll Road Authority (FBGPTRA)

FBGPTRA to relocate existing "Flood Gauge" sign to location over storm sewer curb inlet and in front of storm sewer area inlet.

FBGPTRA will provide and install 1 typical breakaway small roadside sign for RMS to mount solar panel and weatherproof control box. Roadside sign assembly will be installed minimum of 6 feet behind curb.

FBGPTRA will provide and install 4 advance warning "ROAD MAY FLOOD" signs with solar powered roadside flashing beacon assembly. RMS will modify control switch for flashing beacon assembly to operate only when water is detected on the pavement at level noted above.

FBPTRA will provide shop drawings for the typical roadway illumination assembly and solar powered roadside flashing beacon assembly so RMS can determine best method to modify switches and complete installation.

LOCATION 2: ST. HWY 99/GRAND PARKWAY AT FM 1093/WESTPARK TOLLWAY

SOFTWARE LICENSE & MAINTENANCE

- Authority to pay \$100.00 (per month)
- Users are provided their own proprietary secure website
- Web based software provided by RMS
- RMS will maintain server & pay associated fees
- RMS will manage monthly cellular, satellite & text messaging plans & associated fees
- Unlimited number of users

ITEM 1: ULTRASONIC SENTINEL SYSTEM (system includes Items 2 & 3 below)

Features Include:

- Electronics & internet communications system with satellite backup
- Solar/battery powered
- Nema 4 locking steel enclosure
- Radio gateway & antenna for communication to remote devices

ITEM 2: SENSOR FOR DETECTING WATER LEVEL ON ROAD (Included in Item 1)

Features Include:

- Max Range 50 ft. (15.2 m);
- Deadband typically < 12 inches (30.3 cm)
- Detects flat or curved objects. Surface must reflect ultrasound back to sensor.
- Unaffected by target color, transparency, light, or other optical characteristics
- Case material 316 stainless steel or PVC
- Temperature range -40 to 158 F (-40 to 70C)
- Modbus communication
- Humidity 0 to 100% operating
- Ruggedized piezoelectric transducer
- Temperature compensated
- Safety rating NEMA-4X, NEMA-6P, IP68
- Resolution: Digital: 0.0135 in. (0.3438 mm)
- Repeatability: Nominal 0.2% of range @ constant temperature.
- Update rate is adjustable up to 5 Hz (200 ms)
- Operating power range 10-30 VDC

ITEM 3: STATIONARY CAMERA SYSTEM FOR VIEWING ROAD (included in Item 1 Price)

Features include:

- Infrared sensors for enhanced night viewing
- Operating Temperature -40°F - 140 °F, Humidity 95% or less
- 4MP resolution (2560 x 1440)
- User can view camera live
- User can snap pictures or stream video with a click of the mouse

- All pictures are uploaded to a permanent file for viewing/history

ITEM 4: REMOTE UNIT CONTROL SYSTEM

Note: System for controlling flashing warning signs

Features Include:

- Radio to communicate to ultrasonic sentinel base unit
- Solar/battery powered from sign system power
- Nema 4 locking steel enclosure

SOFTWARE FEATURES

- Provides real time level if water is detected on road
- Provides alerts for high level or any desired level
- Reporting frequency is programmable
- Provides ability to turn warning signs on automatically when inked to levels
- Provides ability to turn warning signs on manually
- Alerts can be sent via text message, e-mail or telephone call
- Software is user programmable so that measurement interval is accelerated if a level change is detected
- Provides ability to monitor voltage/power status on base unit and flashing signs solar/battery systems

SYSTEM INSTALLATION

Note: RMS will coordinate with Florida Traffic Control Devices on the installation.

- Installation of base unit on 4" round pole with base and screw anchor foundation, batteries, flex conduit, connectors, Cat 5 cable and, solar panel & batteries, camera & J Box, cabinet, satellite modem, cell modem, cellular antenna, and radio antenna with necessary mounting hardware.
- 100 Ft. 1" rigid metal conduit between base unit and sensor; includes trench/bore conduit, fittings.
- Installation of radar sensor on flood gauge pole; to be positioned as appropriate
- Installation of (4) each radio systems on existing advanced warning flashing sign assemblies; advanced warning flashing signs to be furnished by the Authority.