

STATE OF TEXAS

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COUNTY OF FORT BEND

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FIFTH ADDENDUM TO GUARDIAN RFID'S AGREEMENT

THIS FIFTH ADDENDUM ("Fifth Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Codex Corporation d/b/a Guardian RFID, ("Guardian RFID"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WITNESSETH

WHEREAS, the parties previously executed the Addendum to Guardian RFID Software License Agreement, effective June 2, 2015; the Second Addendum, effective November 9, 2015; the Third Addendum, effective February 23, 2016; and the Fourth Addendum, effective May 23, 2017 (collectively referred to as the "Agreement") and attached hereto as "Exhibit A" and incorporated by reference as if set forth verbatim;

WHEREAS, County desires to renew the software license and services agreement with Guardian RFID as described in Guardian RFID's System Agreement Renewal, attached hereto as Exhibit "B" and incorporated by reference (the "Services").

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by County, the parties agree the following changes are incorporated as if a part of the Agreement:

AGREEMENT

- 1. Term.** The term of the Agreement is effective October 1, 2020 (the "Effective Date"), and shall expire no later than September 30, 2024, unless terminated sooner pursuant to the Agreement. After the end of this four-year term, this Agreement shall not automatically renew, but may be subsequently renewed in writing upon agreement of the parties.
- 2. Scope of Services.** Guardian RFID will render Services to County as described in Exhibit B and as described in this Fifth Addendum.
- 3. Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County 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. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.
- 4. Limit of Appropriation.** Guardian RFID clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County

shall have available the total maximum sum of One Hundred Forty-One Thousand, Three Hundred, and 00/100 dollars (\$141,300.00), specifically allocated to fully discharge any and all liabilities County may incur. Guardian RFID does further understand and agree, said understanding and agreement also being of the absolute essence of this Fifth Addendum, that the total maximum compensation that Guardian RFID may become entitled to and the total maximum sum that County may become liable to pay to Guardian RFID shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Forty-One Thousand, Three Hundred and 00/100 dollars (\$141,300.00).

Addendum B, Fee Payment Schedule in Exhibit B is hereby removed and restated in its entirety as follows: the total amount of this Agreement is \$141,300.00. Unless terminated pursuant to the Agreement, the total amounts due under this Agreement are as follows:

Fee Type	Expected Payment Date	Amount Due
Extended Term 1 Renewal Fee	First Anniversary of the Effective Date	\$35,325.00
Extended Term 2 Renewal Fee	Second Anniversary of the Effective Date	\$35,325.00
Extended Term 3 Renewal Fee	Third Anniversary of the Effective Date	\$35,325.00
Extended Term 4 Renewal Fee	Fourth Anniversary of the Effective Date	\$35,325.00
Total		\$141,300.00

The above, total amount for this Agreement does not include additional purchases by County from Guardian RFID of additional hardware or licenses for Guardian RFID Software, access and use of the Guardian RFID OnDemand platform, or Third Party Software. In such case of an additional purchase(s) by County, Guardian RFID will provide County with an updated invoice and the parties will agree to negotiate any modification of this Agreement.

5. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Guardian RFID in any way associated with the Agreement.
6. **No Waiver of Jury Trial.** The County does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references to waiver of jury trial are hereby deleted.
7. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending,

indemnifying, holding or saving harmless Guardian RFID for any reason are hereby deleted. Guardian RFID shall Indemnify and defend County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of Guardian RFID, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of Guardian RFID or any of Guardian RFID's agents, servants or employees.

8. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
 - a. Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Guardian RFID verifies Guardian RFID does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - b. Texas Government Code § 2252.252 Acknowledgment: By signature below, Guardian RFID represents pursuant to § 2252.152 of the Texas Government Code, that Guardian RFID is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under § 806.051, § 807.051, or § 2253.153.
9. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, GUARDIAN RFID ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
10. **Confidential Information.** Guardian RFID expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County 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 County by Guardian RFID 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. **County Data.** Nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code.
12. **Use of Customer Name.** Guardian RFID may use County's name without County's prior written consent only in any Guardian RFID's customer lists, any other use must be approved in advance by County.
13. **Usage Seal.** The County may, but is not required, to display the Defended by Guardian RFID™ Seal on the County's website and link the Defended by Guardian RFID™ Seal to the Guardian RFID website.
14. **Compliance with Laws.** Guardian RFID shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or

administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Guardian RFID shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

15. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both Parties.
16. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
17. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
18. **Insurance.** In addition to the insurance requirements listed in § 17 of Exhibit B, Guardian RFID will also maintain Professional Liability insurance with limits not less than \$1,000,000.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Guardian RFID shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

If required coverage is written on a claims-made basis, Guardian RFID warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

19. **Successors and Assigns.**
 - a. This Agreement shall be binding on the heirs, successors and assigns of the parties hereto.
 - b. Guardian RFID shall not assign, sublet or transfer its interest or obligations in and under this Agreement without the prior, written consent of County.
 - c. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County.
20. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
21. **Conflict.** This Fifth Addendum, together with all related Exhibits, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Fifth Addendum, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event there is a conflict between this Fifth Addendum and the attached Exhibits, this Fifth Addendum controls. The parties intend for the express terms and conditions contained in this Fifth

Addendum (including any Exhibits hereto) to exclusively govern and control each of the parties' respective rights and obligations regarding the subject matter of this Fifth Addendum, and this Fifth Addendum is expressly limited to such terms and conditions. The parties have not relied on any statement, representation, warranty, or agreement of the other party or of any other person on such party's behalf, except for the representations, warranties, or agreements expressly contained in this Fifth Addendum.

IN WITNESS WHEREOF, this Fifth Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Fifth Addendum and the exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

CODEX CORPORATION
D/B/A GUARDIAN RFID

KP George
Fort Bend County Judge

Ken Dalley
Authorized Agent - Signature

Date

Ken Dalley
Authorized Agent - Printed Name, Title

ATTEST:

8-11-2020
Date

Laura Richard
Fort Bend County Clerk

Reviewed

Troy E. Nehls
Fort Bend County Sheriff

Exhibit A: Addendum to Guardian RFID Software License Agreement, effective June 2, 2015; the Second Addendum, effective November 9, 2015; the Third Addendum, effective February 23, 2016; and the Fourth Addendum, effective May 23, 2017.

Exhibit B: Guardian RFID's System Agreement Renewal.

AUDITOR'S CERTIFICATE

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

Robert E. Sturdivant, County Auditor

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