

STATE OF TEXAS §
§
COUNTY OF FORT BEND §

ADDENDUM TO FUEL CONTROL SOLUTIONS' AGREEMENT
Pursuant to BuyBoard Contract #673-22

THIS ADDENDUM (“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 Fuel Control Solutions, (“FCS”), a company authorized to conduct business in the State of Texas (hereinafter each referred to as a “party” or collectively as the “parties”).

WHEREAS, subject to the changes herein, the parties have executed and accepted FCS's Estimate (Estimate # 1864), (the "Agreement"), attached hereto as Exhibit "A" and incorporated fully by reference, for the purchase of specified products, installation, and freight services (collectively the "Services"); and

WHEREAS, County desires that FCS provide Services as will be more specifically described in this Agreement; and

WHEREAS, the parties wish to utilize BuyBoard Contract #673-22, incorporated fully by reference for all purposes, for the purchase of the Services; and

WHEREAS, the following changes are incorporated as if a part of the Agreement; and

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

AGREEMENT

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Subject to this Addendum, FCS will render Services to County as described in Exhibit A; and in accordance with the requirements and specifications of BuyBoard Contract # 673-22. Any Services to be performed by FCS for County must be scheduled at least two weeks in advance with the County's Facilities Maintenance Department, or as mutually agreed by the parties. The County's Facilities Maintenance Department may be contacted between the hours of 8:00 a.m. and 5:00 p.m., excluding County holidays or other County closures, at (281) 238-3565 concerning the scheduling of any Services. All performance of the Scope of Services by FCS including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
3. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. FCS may submit invoice(s) electronically in a form acceptable to County via: apauditor@fortbendcountytexas.gov. If County disputes charges related to the invoice submitted by FCS, County shall notify FCS no later than twenty-one (21) days after

the date County receives the invoice. If County does not dispute the invoice, then County shall pay each such approved invoice within thirty (30) calendar days. 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.** FCS 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 Sixty-Three Thousand, Nine Hundred Thirty-Two dollars and 53/100 (\$163,932.53), specifically allocated to fully discharge any and all liabilities County may incur. FCS does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that FCS may become entitled to and the total maximum sum that County may become liable to pay to FCS shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Sixty-Three Thousand, Nine Hundred Thirty-Two dollars and 53/100 (\$169,932.53). In no event will the amount paid by the County for all Services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
5. **Public Information Act and Open Meetings Act.** FCS 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 FCS 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.

FCS expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.

6. **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 FCS for any reason are hereby deleted. FCS 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 FCS, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of FCS or any of FCS's agents, servants or employees.

7. **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 FCS in any way associated with the Agreement.
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. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, FCS hereby verifies that FCS and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
 - a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
 - b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, FCS does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, FCS does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, FCS does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

9. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.
10. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, FCS 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.
11. **Use of Customer Name.** FCS may use County's name without County's prior written consent only in any of FCS's customer lists, any other use must be approved in advance by County.
12. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls. In the event there is a conflict between this Addendum and the terms and conditions of BuyBoard Contract #673-22, then the terms and conditions of BuyBoard Contract #673-22 controls to the extent of the conflict.
13. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
14. **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.
15. **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.
16. **County Data.** Nothing in this Agreement will be construed to waive the requirements of any record retention laws applicable to County.
17. **Personnel.** FCS 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 FCS shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of FCS shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of FCS or agent of FCS who, in the

opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at the County, FCS shall comply with, and ensure that all FCS Personnel comply with, all rules, regulations and policies of County that are communicated to FCS in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

18. **Compliance with Laws.** FCS 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, FCS shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
19. **Confidential Information.** FCS acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by FCS or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by FCS shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by FCS) publicly known or is contained in a publicly available document; (b) is rightfully in FCS's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of FCS who can be shown to have had no access to the Confidential Information.

FCS agrees to hold Confidential Information in strict confidence, using at least the same degree of care that FCS uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. FCS shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, FCS shall advise County immediately in the event FCS learns or has reason to believe that any person who has had access to

Confidential Information has violated or intends to violate the terms of this Agreement and FCS will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or FCS against any such person. FCS agrees that, except as directed by County, FCS will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, FCS will promptly turn over to County all documents, papers, and other matter in FCS's possession which embody Confidential Information.

FCS acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. FCS acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

FCS in providing all Services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

20. **Independent Contractor.** In the performance of work or services hereunder, FCS shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of FCS or, where permitted, of its subcontractors. FCS and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
21. **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.
22. **Insurance.**
 - A. Prior to commencement of the Services, FCS shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. FCS shall provide certified copies of insurance endorsements and/or policies if requested by County. FCS shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. FCS shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of FCS shall contain a waiver of subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.
- C. If required coverage is written on a claims-made basis, FCS 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 2 years beginning from the time the work under this Contract is completed.
- D. FCS shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of FCS.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this 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 Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will. This Addendum is effective upon execution by both parties.

FORT BEND COUNTY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

FUEL CONTROL SOLUTIONS



Authorized Agent – Signature

Brad Kageler

Authorized Agent- Printed Name

Managing Member

Title

4/2/2024

Date

REVIEWED:



Facilities Management and Planning

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 Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: FCS's Estimate (Estimate # 1864)

I:\AGREEMENTS\2024 Agreements\Facilities\Fuel Control Solutions (24-Fac-100528)\Addendum to Agreement with Fuel Control Solutions.docx
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Exhibit A

**FUEL CONTROL SOLUTIONS**

179 Springs Edge Dr.
Montgomery, TX 77356

Phone # 2818504933

Estimate

Date	Estimate #
2/29/2024	1864

Name / Address
Fort Bend County 301 Jackson Richmond, TX 77469

Ship To
Fort Bend County Pct 3 , TX

P.O. No.	Terms	FOB	Project		
	Net 30				
Item	Description	Qty		Rate	Total
Fuel Tank	Fuel Tank - 6000 Gal Fireguard UL2085	1	ea	87,763.16	87,763.16
FFS-STP75-VL2-12	3/4HP Fixed Speed Submersible Pump w/ 12" Riser	1	ea	2,791.07	2,791.07
FFS-STP-CBS	STP-CBS Pump Relay Control	1	ea	234.09	234.09
MOR-710-0150-1V	1-1/2" Solenoid Valve - 110V Normally Closed - NPT	1	ea	1,091.85	1,091.85
AGDS	Above Ground Dispenser Sump	2	ea	1,142.00	2,284.00
OPW-10BF-5725	1-1/2" Single Poppet Shear Valve - FNPT	2	ea	194.11	388.22
OPW-11AP-0400-NUL	3/4" Unleaded Auto Nozzle w/Hold Open Clip - Black	2	ea	105.21	210.42
OPW-241TPS-0241	3/4" Two Plane Swivel	2	ea	50.48	100.96
OPW-68EZR-7575	3/4" Breakaway - Snap Back Reconnectable	2	ea	128.65	257.30
IRP-124301FLFGS	3/4" x 9Ft Curb Pump Hose w/MNPT x MNPT Swivel	2	ea	63.90	127.80
IRP-124021FLFGS	3/4" x 8" Whip Hose w/ MNPT x MNPT Swivel	2	ea	33.88	67.76
OPW-200TG-ENG	Mechanical Tank Gauge	1	ea	755.78	755.78
MOR-346DI-0400-AV	1-1/2" External Emergency Valve w/ Female NPT - Ductile Iron	1	ea	403.06	403.06
MOR-419-02121-TEVR	2" X 12' ALUMINUM DROP TUBE (REPLACED THE 419-0100-1T)	1	ea	139.45	139.45
MOR-715-TT3-2QBB-0	Remote Fill Box - 2" Components w/ Hand Pump	1	ea	2,452.90	2,452.90
MOR-715-S400-AS	4 Leg Stand for Remote Fill Box	1	ea	587.50	587.50
OPW-623V-2203	2" Pressure Vent	1	ea	225.40	225.40
EMC-A0076-005	Stage I Vapor Recovery Adaptor x NPTF	1	ea	130.62	130.62
EMC-A0099-002	Stage I Vapor Cap - Orange	1	ea	59.74	59.74
MOR-346FDI-0200-AV	2" External Emergency Fire Valve - FLANGED	1	ea	514.37	514.37
MOR-9095AA-3300AVEVR	3" Overfill Prevention Valve - 3" NPTF Inlet x 6" NPTF Mount	1	ea	1,527.61	1,527.61
FSQM-2-24	2" NPTM x 2" NPTM QuickClamp x 24" SS Flex Hose	3	ea	220.00	660.00
EVO200D	EVO200 Tank Monitor Console w/ display	1	ea	4,215.15	4,215.15
FMP-LL3-101-I	Tank Probe - 101" (AST Inventory Only)	1	ea	2,464.85	2,464.85
Subtotal					
Sales Tax (8.25%)					
Total					

Signature

**FUEL CONTROL SOLUTIONS**179 Springs Edge Dr.
Montgomery, TX 77356

Phone # 2818504933

Estimate

Date	Estimate #
2/29/2024	1864

Name / Address
Fort Bend County 301 Jackson Richmond, TX 77469

Ship To
Fort Bend County Pct 3 , TX

P.O. No.	Terms	FOB	Project
	Net 30		

Item	Description	Qty		Rate	Total
TSP-ULS	Liquid Sump Sensor	2	ea	458.86	917.72
TS-RA1	Tank Overfill Alarm w/Light & Horn	1	ea	1,216.60	1,216.60
TS-RK	Remote Tank Overfill Alarm Acknowledge Unit	1	ea	825.80	825.80
Crane	Crane	1	ea	4,500.00	4,500.00
Fuel Piping	Fuel Piping	1	ft	3,500.00	3,500.00
Installation	Installation Labor	1		16,500.00	16,500.00
Freight	Freight	1		1,800.00	1,800.00
	Sub-Total				138,713.18
3711SNR-20	Single Hose/Product Electronic Dispenser - High Hose	2	ea	8,758.75	17,517.50
FMU3505PLUS	PLUS PROKEE®/RF MASTER UNIT, 2.4 AIM	1	ea	10,504.00	10,504.00
	Sub-Total				28,021.50
Buyboard	BuyBoard Discount - BuyBoard Contract #673-22			-2,802.15	-2,802.15
		Subtotal		\$163,932.53	
		Sales Tax (8.25%)		\$0.00	
		Total		\$163,932.53 ✓	

Signature _____