

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

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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

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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 delivery 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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the Intellectual Property of the Third Party Works. Client will return all Preliminary Works to Jetty within 30 days after Jetty completes Services in an applicable Statement of Work.

8.4. Final Software

Subject to further or different conditions in any applicable Statement of Work, Jetty grants to Client a nonexclusive, worldwide license, conditioned upon full and complete payments by Client to Jetty according to the terms in this Agreement, including any applicable Statement of Work, to use, reproduce, modify, display, and perform the Final Software. To the extent that Final Software may comprise or is a derivative work of Third Party Works, the license of Final Software incorporates a sublicense to the Third Party Works, but only to the extent of Jetty's authority to grant such a sublicense. To the extent that Final Software contemplated by any Statement of Work is actually Software as a Service, Section 8.5 shall supersede this Section 8.4.

8.5. Software as a Service (SaaS)

Jetty grants to Client a nonexclusive, worldwide license, conditioned upon full and complete payments by Client to Jetty according to the terms in this Agreement, and subject to any applicable Statement of Work—which may specify royalties or further constraints on this license—to use, reproduce, modify, display, and perform the SaaS. This license automatically revokes upon the termination of this Agreement by Client or of any applicable Statement of Work for material breach. However, if Jetty terminates this Agreement or any applicable Statement of Work where it is providing SaaS for Client for reasons other than Client's material breach, this license to Client shall become perpetual and no longer be conditioned upon further payments after such termination, and further in such case, Jetty shall provide Client a copy of the most current source code of the SaaS at the time of termination along with its documentation.

8.6. Accreditation or Copyright Notice

All displays or publications of Deliverables will bear copyright notice in—or if copyright is no longer applicable, accreditation of—Jetty's name in the form, size, and location that Jetty incorporated in the Deliverables, or as Jetty may otherwise reasonably direct.

9. Disclaimer

Jetty provides all Services, including all Deliverables, as well as whatever Intellectual Property rights it may convey or otherwise license in this Agreement, on an "as is" basis. Jetty disclaims all warranties including—without limitation—any express warranty, statutory warranty, implied warranty of merchantability, implied warranty of fitness for a particular purpose, implied warranty of title, implied warranty against infringement, and any oral or written representations, proposals, or statements made on or before the effective date of this agreement.

10. Confidentiality

Each party agrees not to use, disclose, sell, license, publish, reproduce, or otherwise make available the Confidential Information of the other party except and only to the extent necessary to perform under this Agreement. Each party agrees it will hold the Confidential Information of the other party in strict confidence and will not use or disclose it without the express written consent of the other party, except as may otherwise be required by law. The obligations of the parties to maintain Confidential Information as confidential will survive the termination of this Agreement. Jetty expressly acknowledges that Client is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq.,

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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.

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15.4. Material Defect or Breach

In cases of material defect or breach, either party may terminate the Agreement after 30 days' notice, if the breaching or defective party does not take reasonable corrective action. Section 4.6 supersedes this Section 15.4: if Client does not pay amounts due within 30 days, Jetty's invoice for any amount due constitutes retroactively sufficient notice of material breach.

15.5. Bankruptcy

To the extent allowable by applicable law, either party may terminate this Agreement immediately if the other party files a voluntary petition for bankruptcy or suffers the petition of its creditors for an involuntary case in bankruptcy and does not controvert, or otherwise fails, to procure dismissal of the case.

16. Obligations upon Termination

16.1. Final Payments upon Termination

Upon termination, Client will make final payments as delineated in the following subsections.

16.2. Outstanding Statement of Work

If there is at least one outstanding or pending Statement of Work, Client will compensate Jetty for its Services rendered and amounts due prior to date of termination under each Statement of Work. Client will also reimburse Jetty for all expenses Jetty has incurred pursuant to any applicable Statement of Work through the date of termination.

16.3. Delivery of Deliverables

Conditioned upon Client's payment of all fees and expenses due, Jetty will provide Client all Deliverables, whether complete or incomplete, that Jetty has created as of the date of termination.

16.4. Intellectual Property

In cases where Deliverables may be incomplete due to early termination of this Agreement, and although they may not be in final form, the Deliverables that Jetty provides will be deemed Final Software, as applicable, for the purposes of Intellectual Property rights under Section 8.4. But, in all cases, if this Agreement terminates because of Client's material breach or default, all revocable rights and licenses that this Agreement would otherwise grant to Client will immediately end and be revoked, and Client will immediately cease use of Deliverables or other Services.

16.5. Return of Client Materials

Upon termination of this Agreement, Jetty will promptly return to Client all Client Materials and return and relinquish access to the Operating Environment.

16.6. Confidentiality Survives

Termination will not relieve either party of its duties concerning confidentiality under Section 11. Each party shall maintain its confidentiality obligations under this Agreement for a period of three (3) years after the date of termination.

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16.7. Periodic Services through Effective Date of Termination

Where notice is required for either party to terminate this Agreement, Jetty will continue to provide ongoing Maintenance and Support Services, or Software as a Service through the effective date of termination—but only so long as Client prepays or has prepaid any related fees and expenses for the period of those Services until termination.

17. Interpretation of this Agreement

17.1. Notice

All notices under this Agreement must be transmitted in writing by postal mail or electronic mail.

17.2. No Third Party Beneficiaries

This Agreement may not be construed to benefit, give rights to, or bind the parties on behalf of, third parties.

17.3. Governing Law and Forum

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.

17.4. Severability

The invalidity or unenforceability of a provision of this Agreement will not affect the validity or enforceability of any other provisions of this Agreement, which will all remain in full force and effect.

17.5. Integration

This Agreement, comprising this document, any Statements of Work executed pursuant to it, any attached or otherwise incorporated exhibits, along with any other documents the parties may execute that incorporate this Agreement by reference, constitute the full and final agreement of the parties and supersedes any other agreements, oral or written, on the same subject matter.

17.6. Definitions

The definitions in the Glossary at the end of this document apply to and control all components of this Agreement, including any Statement of Work or any other document incorporated into this Agreement by reference. The parties may only amend these definitions in writing. The Glossary may not be exhaustive, and this Agreement may include other defined terms applicable in context to specific sections.

17.7. Sections and Subsections

Internal cross-references to Sections include their subsections and vice versa.

GLOSSARY

Agreement

"Agreement" means this master services agreement, including any Statements of Work that the parties execute under it, amendments or modifications to this master services agreement, exhibits that this

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master services agreement references or incorporates, and any document that incorporates this master services agreement by reference.

Client Materials

“Client Materials” means all developments, designs, discoveries, documents, drawings, improvements, information, inventions, materials, media content, notes, photography, procedures, products, software, designs underlying trademarks and trade dress, videography, writings, and other related materials that the Client conceived before the Effective Date of this Agreement or conceives during this Agreement, or to which Client owns all rights, title, and interest, and any of which Client provides to Jetty in furtherance of Jetty’s provision of Services. Client Materials do not include any Third Party Works.

Confidential Information

“Confidential Information” means a party’s information about which nonparties do not generally have knowledge, either which is proprietary to or a trade secret of the party, or the disclosure of which would be detrimental to the party. Confidential Information may be oral or written and it does not need to be designated or denominated as “confidential” to retain its status as Confidential Information.

Examples of Confidential Information include, without limitation: algorithms, business information, business models, business opportunities, business plans, corporate opportunities, data, design details and specifications, development, finances, financial models, identity of internal personnel, manner and method of conducting business, marketing, marketing models, processes, products, research, services, software, strategic opportunities, strategic plans, technology trade secrets; and information relating to the party’s agents, employees, clients, customers, vendors, or other contractors.

Confidential Information does not include any information made available to the public without breach of this Agreement; information that a party possesses before the other party discloses it; or information that a third party discloses to a party, so long as the third party does not breach a confidentiality obligation disclosing it

Custom Software

“Custom Software” means all software, technology, abstract methods, know-how, algorithms, technology, system architecture, digital discoveries, digital inventions, digital procedures, software techniques, software code, software products, software solutions, computer programs, and computer procedures, as well as all software-related improvements, developments, drawings, notes, documents, information, and related materials that Jetty (or a third party) develops, conceives, creates, or commissions after the Effective Date on behalf of Client in furtherance of the Services Jetty provides under the terms of this Agreement. Custom Software is mutually exclusive to Third Party Works and Jetty Technology.

Deliverable

“Deliverable” comprises Final Software and any other final custom work product that Jetty licenses or delivers to Client under an applicable Statement of Work to satisfy the obligations of that Statement of Work, in the form that the Statement of Work may specify.

Expenses

“Expenses” have the meaning set forth in Section 4.2.

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Final Software

“Final Software” means all Software that Jetty designates expressly or impliedly as final work product and that Jetty licenses or delivers to Client for the purpose of constituting full and final satisfaction of its obligations under any Statement of Work. Final Software only comprises the most recent, final versions of any Software that Jetty actually licenses or delivers to constitute full and final satisfaction of any Statement of Work. Final Software is mutually exclusive to Preliminary Software.

Intellectual Property

“Intellectual Property” means any intellectual property or proprietary rights, including but not limited to copyright rights, moral rights (*droit moral*), patent rights (including patent applications and disclosures), rights of priority, mask work rights, trade secret rights, and trademark, recognized in any jurisdiction around the world.

Jetty Content

“Jetty Content” means all existing non-Software creative media content and design elements, including—without limitation—any and all visual designs, visual elements, graphic design, illustration, photography, animation, videography, sounds, musical works, narratives, works of art, typographic treatments, and text to which Jetty or its suppliers own all rights, title, and interest. Jetty Content may be designated as such in a writing signed by both parties. Failure, however, for the parties to designate intangible items as Jetty Content shall not estop Jetty from reserving, or making claims against violations of, rights, title, and interest in those items as Jetty Content.

Jetty Technology

“Jetty Technology” includes all existing software, technology, abstract methods, know-how, algorithms, technology, system architecture, digital discoveries, digital inventions, digital procedures, software techniques, software code, software products, software solutions, computer programs, computer procedures, and related materials associated with the use, design, development, testing, and distribution of the Software and improvements to existing software and related technology, in any of which Jetty or its suppliers own all rights, title, and interest, and which Jetty uses in the development of Software and the provision of Services under this Agreement. “Jetty Technology” also includes discrete computer program subroutines or methods not specific to the functions of the Deliverables, but which are generally useful generally in Jetty’s business. Jetty Technology may be designated as such in a writing signed by both parties. Failure, however, for the parties to designate intangible items as Jetty Technology shall not estop Jetty from reserving, or making claims against violations of, rights, title, and interest in those items as Jetty Technology. Jetty Technology is mutually exclusive to Custom Software and to Third Party Works.

Licensing Fee

“Licensing Fee” has the meaning set forth in Section 4.1.4.

Hourly Rate

“Hourly Rate” has the meaning set forth in Section 4.1.1.

JETTY MASTER SERVICES AGREEMENT

Maintenance and Support Services

“Maintenance and Support Services” mean the periodic, continual, or ongoing software and maintenance services that a Statement of Work executed under and incorporating this Agreement by reference requires Jetty to provide.

Maximum Compensation

“Maximum Compensation,” as relates to any given Statement of Work entered into pursuant to this Agreement, means the maximum amount to which Client shall be liable to pay Jetty for services rendered and expenses under such Statement of Work.

Operating Environment

“Operating Environment” means all Client’s platforms, environment, digital composition, server integration, network, system architecture, operating software, operating system, kernel, frontend, backend, server(s), software, software configuration, firmware, firmware configuration, hardware, hardware components, hardware configuration, or other digital formulation, abstract layer, any other computational system, and any root or administrator level access to any of these systems or layers that is necessary for Jetty to provide Services under any Statement of Work.

Preliminary Software

“Preliminary Software” means all Software that Jetty does not expressly designate as Final Software or final work product or that Jetty does not deliver to Client. Preliminary Software is mutually exclusive to Final Software.

Preliminary Works

“Preliminary Works” comprise all Preliminary Software or other work product that Jetty does not expressly designate as final work product or that Jetty does not deliver to Client. Preliminary Works are exclusive to Deliverables.

Project Manager

“Project Manager” has the meaning set forth in Section 5.1.

Relationship Manager

“Relationship Manager” has the meaning set forth in Section 3.

Services

“Services” comprises all Deliverables, Software as a Service, Agency of Record Services, and Maintenance and Support Services, and any related services or products that Jetty provides to Client under this Agreement.

Software

“Software” comprises the combination of all Custom Software, all Jetty Technology, and all Third Party Works that Jetty creates, modifies, revises, adds, proposes, or otherwise generates in the software development process in contemplation performing under this Agreement for Client, whether the software is complete or incomplete, rejected or accepted by Client, delivered or undelivered to Client, or merely provided to or actually used by Client. Software may also include Client Materials, to which Client Materials Jetty shall have no right, title, and interest.

JETTY MASTER SERVICES AGREEMENT

Software as a Service (SaaS)

“Software as a Service” or “SaaS” means software that Jetty or its suppliers own, which Jetty provides to Client on an indefinite but revocable and leased or paid-royalty basis. SaaS frequently contemplates that the software and associated data are centrally hosted on servers, often in a cloud computing environment, usually but not necessarily external to the Operating Environment. SaaS comprises Jetty Technology and Third Party Works.

Statement of Work

“Statement of Work” means any document, whether or not designated or denominated as such, that sets forth more specific requirements of both parties and terms and conditions as related to a particular set of Services, provision of Software or Software as a Service, and whether or not executed before or after this Agreement.

Taxes

“Taxes” mean any applicable sales, use, excise, value added (*ad valorem*), or other like taxes, duties, tariffs and charges of any kind that any applicable law may impose on the amounts under this Agreement. Client is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes

Third Party Claims

“Third Party Claims” have the meaning set forth in Section 12.

Third Party Works

“Third Party Works” are proprietary works, which are owned by third parties, including—without limitation—designs, discoveries, inventions, improvements, developments, drawings, notes, documents, information, software, technology, abstract methods, know-how, algorithms, technology, system architecture, digital discoveries, digital inventions, digital procedures, software techniques, software code, software products, software solutions, computer programs, and computer procedures, and non-Software creative media content, design elements, visual designs, visual elements, graphic design, illustration, photography, animation, videography, sounds, musical works, narratives, works of art, typographic treatments, text, and designs underlying trademarks and trade dress.

JETTY MASTER SERVICES AGREEMENT

EXECUTION

Dated: 1/4/17

Jetty:



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

Dated: 1-10-2017

Client:



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

ATTEST:



Laura Richard, County Clerk



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$297,500.00 to accomplish and pay the obligation of Fort Bend County under this contract.



Robert E. Sturdivant, County Auditor

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:

Regional Emergency Communication Technology Platform Migration (“Proposal”)

B. Implementation Schedule

Assuming a start date of January ____

Phase 1 - To be completed by January 17th.

Phase 2 - To be completed by March 15th.

Phase 3 - To be completed by March 28th.

C. Fees & Payment.

Client under this Statement of Work shall make phased payments to Jetty for services rendered after (and only after) Jetty’s completion of each phase (Phase 1, Phase 2, and Phase 3). *See Proposal.*

D. Anticipated Expenses

E. 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: two hundred eleven thousand five hundred and 00/100 dollars (\$211,500.00). In no case shall the amount paid by Client under this Statement of Work exceed the Maximum Compensation without an approved change order.

F. Exceptions.

- Client will be given 180 days’ notice prior service cancellation.
- All client data will be user exportable at any time.

G. 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: 1/4/17
Jetty: _____



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

Dated: 1-10-2017
Client: _____



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

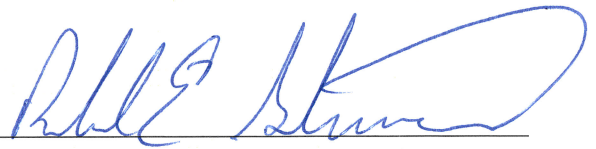
ATTEST:

Laura Richard, County Clerk



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$211,500.00 to accomplish and pay the obligation of Fort Bend County under this contract.


Robert E. Sturdivant, County Auditor

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



FBCOEM Jetty License Agreement

Fort Bend County, Texas

January 2, 2017

Lachlan Mullen

Regional Emergency Public Information System Administrator Fort Bend County
OEM

307 Fort Street

Richmond, TX 77469

Dear Lachlan,

Jetty Communications Solutions (Jetty) is pleased to offer you this proposal to provide a new web based platform for communicating with stakeholders.

Sincerely,

Geoffrey Baron

Founder/CEO

Jetty Communications Solutions LLC

Summary: Jetty is a web based software solution for managing communication with internal and external audiences. It features an easy to use interface that works on all devices as well as interactivity with email, phone, and social media. Each Jetty includes a password protected administration area as well a public facing website for distributing information. Each Jetty allows for unlimited users.

Annual license: Annual license agreement includes: Hosting, 24/7 customer support, and software updates. Additional single Jetty licenses can be purchased.

Item #1: Jetty 40 Site License (unlimited users): \$86,000

First year license total: \$86,000

Second year license total: \$86,000

Subsequent years subject to maximum 5% increase.

Additional Services

Additional single Jetty license: \$8,000 annually

Response support: \$150 per hour + expenses

Drill support: \$150 per hour + expenses

Additional custom development: \$150 per hour

Additional training: \$150 per hour

Software Usage

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

Proposal Acceptance

If the terms set forth in Proposal # FBCEOM Jetty Software meet with your approval, please complete the following mail or email a copy to our office. An email indicating approval will also be accepted (please include proposal #).

Check or circle the items you would like to accept.

- ☐ Item #1 (Jetty Annual License)

Agreed and accepted this _____ day of _____, 2017

Signature

Printed Name

For more information please contact:

Geoffrey Baron
geoff@jettyapp.com
360.393.0111



Regional Emergency Communication Technology Platform Migration

Fort Bend County, Texas

January 2, 2017

Lachlan Mullen

Regional Emergency Public Information System Administrator Fort Bend County
OEM

307 Fort Street

Richmond, TX 77469

Dear Lachlan,

Jetty Communications Solutions (Jetty) is pleased to offer you this proposal to:

1. Assist in the migration from the current platform (PIER) to the new platform (Jetty).

We are committed to making this transition as smooth and successful as possible. Please contact me at 360.393.0111 or geoff@jettyapp.com if there are any questions about this.

Sincerely,

Geoffrey Baron

Founder/CEO

Jetty Communications Solutions LLC

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Approach

Overview

Fort Bend County Office of Emergency Management (FBCOEM) operates 40 PIER sites and would like to migrate to Jetty. Jetty will identify work with FBCOEM to:

- 1) Setup the software to replicate the current PIER setup (40 “sites” each with their own admin area and permissions).
- 2) Add users to Jetty with the correct permissions.
- 3) Jetty will create a master theme for the Region and then customize each site to replicate current functionality.
- 4) Import existing inquiries from PIER.

Assumptions

The schedule and estimate for this project are based on the following assumptions:

- 1) FBCOEM will provide a comprehensive list (CSV) of all users and their expected role and user group (each “site” will be considered a user group).
- 2) Jetty will provide one master Jetty website template and will customize each site meet design requirements.
- 3) Jetty implementation staff will work closely with Lach Mullen throughout this process.
- 4) FBCOEM existing inquiries will be provided in single page CSV with everything that is needed to create Jetty inquiries.

Implementation Plan

Phase 1 - Planning

During planning we will prioritize the migration of each PIER site as well as establish a site settings template to be duplicated. This will be determined by input from FBCOEM as well as recommendations by Jetty implementation staff.

Deliverables

Site migration schedule

Jetty site template with standard settings

Theme development plans delivered to development team

Phase 2 - Site Setup

During this phase we will set up the software and launch the necessary sites. We will also import all the users to training sites and begin training. Theme development will also be happening during this time.

Deliverables

40 Jetty Sites

Imported users

Completed UASI Flexible Theme

Basic User Training Started

Phase 3 - Content Migration

During this phase Jetty will work with FBCOEM to migrate existing inquiries into Jetty as well as finalize website implementation while working with FBCOEM admin users. Jetty will also import existing inquiries into Jetty.

Deliverables

Admin Training

Domain transfers

Migrate documents and their corresponding categories/folders

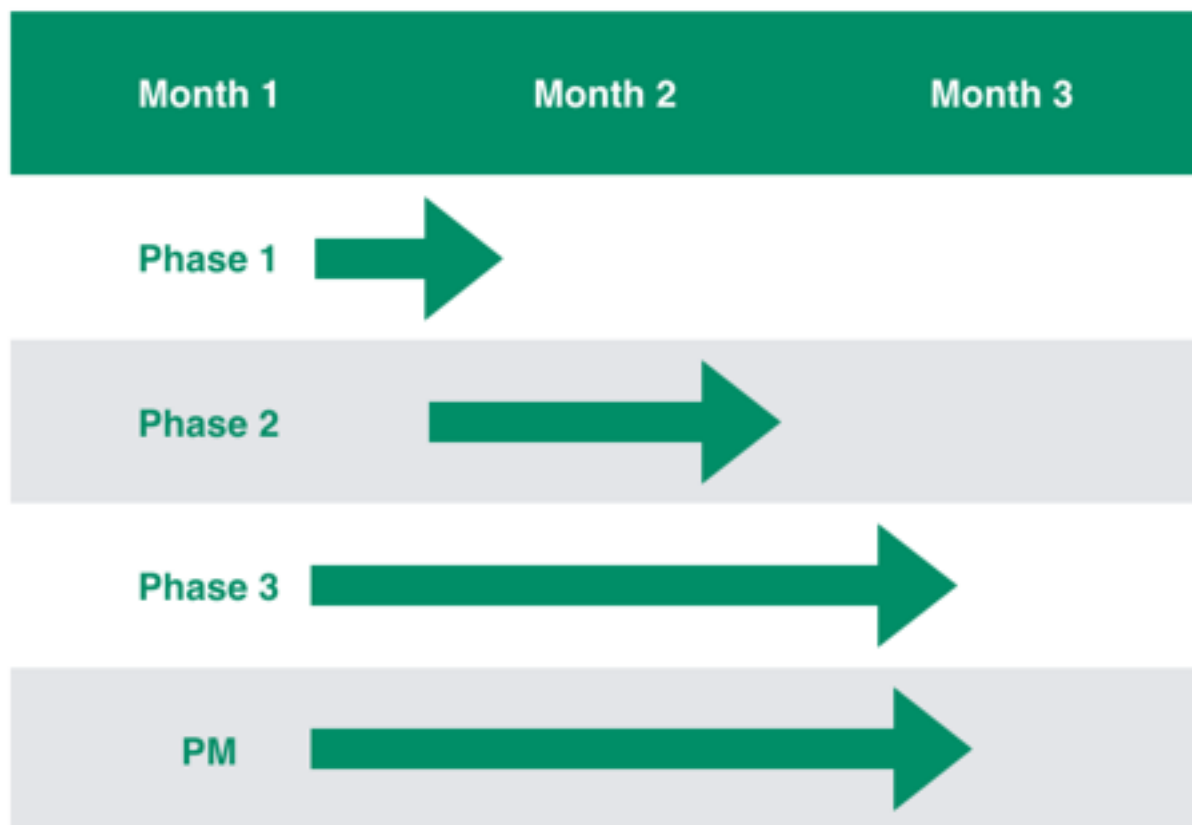
Completed theme development

Project Management

Jetty's team managed global migrations that have included multiple languages, themes, hundreds of users, and custom development. We have complete confidence in our ability to deliver on time and within budget. Our rapidly expanding team includes project management specialists and technical support experts.

Schedule

While we believe this entire project can be completed in 4 months we will plan on having mission critical pieces completed before then. The schedule will be subject to change based upon the initial planning phase but it will still follow the basic outline.



Cost Estimate - Item #1 Migration

Work will proceed on a time and materials basis with a not-to-exceed limit set forth in the table below. Work will continue until the team has completed as much functionality as the project budget and schedule allow. Jetty will contact you promptly should we anticipate any task overruns or changes in scope. Travel if needed will require a separate cost estimate.

Phase	Hours	Cost
Planning	380	\$57,000
Setup	290	\$43,500
Migration	520	\$78,000
PM	220	\$33,000
Totals	1410	\$211,500

Additional custom development: \$150 per hour
Additional training: \$150 per hour

Proposal Acceptance

If the terms set forth in Proposal # FBCOEM Jetty Software meet with your approval, please complete the following and fax or mail a copy to our office. An email indicating approval will also be accepted (please include proposal #).

Check or circle the items you would like to accept.

- ☐ Item #1 (PIER/Jetty Migration)
-

Milestone and Payment Schedule

Assuming a start date of January 3rd.

Phase 1 - To be completed and invoiced by January 17th.

Phase 2 - To be completed and invoiced by March 15th.

Phase 3 - To be completed and invoiced by March 28th.

Assuming a start date of January 10th.

Phase 1 - To be completed and invoiced by January 27th.

Phase 2 - To be completed and invoiced by March 25th.

Phase 3 - To be completed and invoiced by April 7.

Invoices for phases to be paid within 30 days of receipt.

Agreed and accepted this _____ day of _____, 2017

Signature

Printed Name

For more information please contact:

Geoffrey Baron
geoff@jettyapp.com
360.393.0111

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Jetty Communications Solutions LLC
Cypress, TX United States

Certificate Number:
2016-149212

Date Filed:
12/28/2016

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

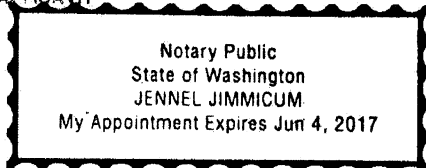
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Managed Communication

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Jetty Communications Solutions LLC	Cypress, TX United States	X	

5 Check only if there is NO interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Geoffrey Baron, this the 30 day of December, 2016, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Jennel Jimmicum

Printed name of officer administering oath

Notary Public

Title of officer administering oath

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Jetty Communications Solutions LLC
Cypress, TX United States

Certificate Number:
2016-149212

Date Filed:
12/28/2016

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

Date Acknowledged:
01/10/2017

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

99999
Managed Communication

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Jetty Communications Solutions LLC	Cypress, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____,
20_____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath