

9089-07

Contract

**AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
NASSAU COUNTY BOARD OF COUNTY COMMISSIONERS
FOR
MANAGEMENT AND CONTROL OF PROPERTY
AND EQUIPMENT ACQUIRED WITH FEDERAL GRANT FUNDS**

THIS AGREEMENT is made and entered into this 1st day of April 2009, by and between the CITY OF JACKSONVILLE, a municipal corporation located in Duval County, Florida, for and on behalf of its Fire and Rescue Department, Emergency Preparedness Division, with street address at 515 North Julia Street, Jacksonville, Florida 32202 (hereinafter collectively referred to as the “City”) and the **Nassau County Board of County Commissioners, an entity of local government, with principal office located at 96160 Nassau Place, Yulee, FL 32097** (hereinafter referred to as the “Recipient”).

WITNESSETH:

WHEREAS, from time to time, the city receives federal grant funding for the purpose of acquiring expendable and non expendable emergency response goods, material and equipment (hereinafter collectively referred to as the “Equipment”); and

WHEREAS, as part of the Urban Area Security Initiative grant program, the City is responsible for providing federal funding and/or equipment purchased from such federal funding to other agencies within and without the City of Jacksonville; and

WHEREAS, federal requirements provide that recipients of such equipment purchased with federal money have certain duties and obligations with respect to use, control , maintenance and repair of such Equipment; and

WHEREAS, it is in the best interest of the City to make and enter into this Agreement to specify and memorialize the duties and obligations of the Recipient with respect to the Equipment; now therefore

IN CONSIDERATION of the mutual covenants herein and for such other good and valuable consideration, the sufficiency of which is acknowledged by the parties, it is agreed, by and between the parties as follows:

1. ***Incorporation by Reference.*** The above stated recitals are true and correct and, by this reference are made a part hereof and are incorporated herein.

2. ***Purchase of Equipment.*** The City shall spend **\$56,000.00**, in funds duly appropriated from a federal grant from Urban Area Security Initiative (UASI) program, for the purchase of Equipment, more specifically described in the “Inventory of Equipment”, attached

hereto and, by this reference, made a part hereof as Exhibit "A". Said monetary amount shall be the City's maximum indebtedness under this Agreement.

3. ***Transfer of Equipment to Recipient.*** The City hereby transfers title of the Equipment to the Recipient for such use by the Recipient as provided herein; provided however, notwithstanding the transfer of title, the Recipient knows, understands and agrees that the federal granting agency has an interest in the location, use and upkeep of the Equipment; and that said federal agency, in its discretion, may request to use the Equipment and shall be allowed to use the Equipment, as provided in Section 5.02, of this Agreement.

4. ***Recipient's Responsibility.*** The Recipient shall be solely and exclusively responsible for the use, maintenance, repair, replacement and control of the Equipment, as specified in this Agreement.

5. ***Use of the Equipment.*** The Recipient shall use the Equipment as follows:

5.01. The Equipment must be used by the Recipient for disaster response, which is the program for which the Equipment was acquired (the "Program"), whether or not the Program continues to be supported by federal funding. As long as the Equipment is needed for the Program, as recommended by the Recipient and approved by the City, it shall be used only for the Program and for no other purpose; *provided however*, when the Equipment is no longer needed by the Program, it may be used in other activities currently or previously supported by a federal agency, subject to prior approval by the City, for such use.

5.02. The Recipient shall make the Equipment available for use on other projects or programs currently or previously supported by the federal government, subject to prior approval by the City; *provided however*, such use does not interfere with the work on the program or programs for which the Equipment was originally acquired. First preference for such other City approved use shall be given to other programs or projects supported by the federal granting agency. The recipient should also consider user fees and treat them as Program income, if appropriate, subject to prior approval by the City.

5.03. Notwithstanding program income, the Recipient shall not use Equipment acquired with federal funds to provide services for a fee to compete unfairly with private companies that produce equivalent services, unless specifically permitted or contemplated by federal law.

5.04. When acquiring replacement equipment, the Recipient may use the Equipment to be replaced, as a trade-in or sell the Equipment and use the proceeds to offset the cost of replacement equipment, subject to the prior written approval of the City.

6. ***Equipment Management/Record Keeping.*** The Recipient must provide procedures for managing the Equipment (including its replacement) and such procedures must, at a minimum, contain the following:

6.01. Recipient must maintain property records, which include:

- 6.01.01. A description of the Equipment;
- 6.01.02. Manufacturer's serial number, model number, federal stock number or other identification number of the Equipment;
 - 6.01.02.1. The source of the Equipment, including the award number;
 - 6.01.02.2. Identification of the title holder;
 - 6.01.02.3. Acquisition date or date received if Equipment is furnished by the federal government;
 - 6.01.02.4. Cost of the Equipment;
 - 6.01.02.5. Percentage (at the end of budget year) of federal participation in cost of the Equipment;
 - 6.01.02.6. Location of the Equipment;
 - 6.01.02.7. Use and condition of the Equipment; and
 - 6.01.02.8. Disposition data, including date of disposal and sales price.
- 6.02. A physical inventory of the Equipment must be taken and the results reconciled with the property records specified in Section 6.01 at least once every six (6) months. The recipient shall, in connection with the inventory, verify existence, current use and continued need for the Equipment. Such physical inventory records and reports shall be submitted to the City semi-annually on June 30 and December 31, of each year of this Agreement.
- 6.03. The recipient must create a control system containing adequate safe guards to prevent loss, damage or theft of the Equipment. Any such loss, damage or theft shall be investigated and fully documented and shall immediately be reported to the City.
- 6.04. Any loss, damage, or theft, with respect to the Equipment, shall be investigated by both the City and the Recipient as appropriate.
- 6.05. The Recipient must provide adequate maintenance procedures to keep the Equipment in good condition. Maintenance records and reports must be submitted to the City semi-annually on June 30 and December 31, of each year of this Agreement.
- 6.06. If the Recipient is authorized to sell the Equipment, it must establish proper sales procedures to ensure the highest possible return for the Equipment. Such sales procedures must be submitted to the City for review and prior approval before Recipient attempts sale of the Equipment

6.07. Notwithstanding any other provision in this Agreement to the contrary, all records and reports and submittals (collectively the "Records") required, under this Agreement shall be kept by the Recipient for a period of five (5) years after disposition of the Equipment. Such Records shall be subject to City inspection at reasonable times at Recipient's offices during the term of this Agreement and the five year retention period.

6.08. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, disposition, of the equipment, subject to the prior approval of the City shall be made as follows:

6.08.01. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of subject to prior approval by the City and all proceeds shall be paid to the City.

6.08.02. Items of equipment with a current per unit fair market value of \$5,000 or greater may be retained or sold and the City shall have a right to an amount at least equal to the current fair market value at the time of disposition of the equipment.

6.08.03. In cases where the Recipient fails to take appropriate disposition actions, the City may direct the Recipient to take disposition actions consistent with this Agreement.

7. *Term of Agreement.* The term of this Agreement shall commence on the day and year first above written and shall continue in full force and effect until June 30, 2009; *provided however*, all requirements for record keeping and to use, maintain, repair, and replace the equipment, as set forth in this Agreement, shall remain in full force and effect until December 31, 2014.

8. *Indemnifications.* The Recipient, for itself and including without limitation, on behalf of its officers, employees, agents, affiliates, assigns, representatives and contractors (hereinafter, in this Section 8, referred to as the "Indemnifying Parties") shall hold harmless, indemnify, and defend the City, including without limitation, the City's officers, directors, members, representatives, affiliates, agents, employees, successors and assigns (the "Indemnified Parties") and will reimburse the Indemnified Parties from and against from and against any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and reasonable expert witness fees to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of the Indemnifying Parties and persons employed or utilized by the Indemnifying Parties, in the performance of this Agreement; *provided however*, if the Recipient is an entity that is subject to the limited waiver of sovereign immunity, in Section 768.28, Florida Statutes, any such indemnification, under this section, shall be subject to the provisions and limitations of Section 768.28, Florida Statutes and if the Recipient is an entity that is subject to the limited waiver of sovereign immunity, in Section 768.28, Florida Statutes, this Section 8.01 is not nor shall it be construed as a further waiver of sovereign immunity than that contained in Section 768.28, Florida Statutes.

Survival of Indemnifications. This section, relating to Indemnification, shall survive the term of this Contract, and any holdover and/or Agreement extensions thereto, whether such term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

9. ***Insurance.*** During the term of this Agreement, the Recipient shall obtain and maintain All-Risk Property Insurance and/or Property Damage Insurance in amounts equal to the full insurable value of the personal property, equipment or vehicles. If Recipient is an entity that is subject to the provisions of Section 768.28, Florida Statutes, such insurance coverage may come from valid self-insurance that is authorized in that statutory section.

10. ***Default.***

10.01. Should either party default in its obligations under this Agreement, the non-defaulting party shall provide written notice, to the defaulting party, of the default. The defaulting party shall be given ten (10) business days, from receipt of the notice of default (or any such other amount of time agreed to by the parties, in writing) to remedy the default. If the default is not remedied within such time frame, the non-defaulting party may terminate this Agreement, by giving ten (10) days advance written notice of such termination to the defaulting party.

10.02. Either party's violation of any the provisions in this Agreement, shall constitute a default of this Agreement, subject to the provisions of this Section 10.

10.03. Notwithstanding any other provision of this Agreement to the contrary, in the event of either party's default, the non-defaulting shall be entitled to all available remedies at law or equity.

11. ***Termination for Convenience.*** Notwithstanding any other provision in this Agreement to the contrary, the parties may terminate this Agreement, at any time, without cause, by giving thirty (30) days advance written notice of such termination.

12. ***Return of Equipment.*** In the event this Agreement is terminated by default or for convenience, the Recipient shall return the Equipment to the City, immediately upon request for the same. Such Equipment shall be returned in as good condition as it was when received by the Recipient, normal wear and tear excepted.

13. ***Nonwaiver.*** Failure by either party to insist upon strict performance of any of the provisions hereof, either party's failure or delay in exercising any rights or remedies provided herein, or any purported oral modification or rescission of this Agreement by an employee or agent of either party, shall not release either party of its obligations under this Agreement, shall not be deemed a waiver of any rights of either party to insist upon strict performance hereof, or of either party's rights or remedies under this Agreement or by law, and shall not operate as a waiver of any of the provisions hereof.

14. **Notice.** All written notices under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

14.01. **As to the City:**

Martin Senterfitt, Chief of Emergency Preparedness
City of Jacksonville Fire and Rescue Department
515 North Julia Street
Jacksonville, Florida 32202

14.02. **As to the Contractor:**

Nancy Freeman_____

Nassau County Emergency Management

P.O. Box 1010_____

Fernandina Beach, FL 32034_____

15. **Governing Law, Venue and Severability.**

15.01. **Governing Law.** The rights, obligations and remedies of the parties as specified under this Agreement shall be interpreted and governed in all aspects by the laws of the State of Florida.

15.02. **Venue.** The venue for litigation of this Agreement shall be in courts, of competent jurisdiction located in Nassau County, Florida.

15.03. **Severability.** Should any article, section, paragraph, sentence or other provision of this Agreement be determined, by the courts, to be unenforceable, for any reason, such article, section, paragraph, sentence or other provision shall be deemed to be severed from this Agreement and shall not affect the other provisions in this Agreement.

16. **Construction.** Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as "*Fortius Contra Preferentum*" shall not be applied to the interpretation of this Agreement.

17. **Section Headings.** Section headings appearing in this Agreement are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

18. **Amendments.** Any and all changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

19. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto for the receipt of the Equipment. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party, or any representative of either party, which is not expressed in this Agreement shall be binding.

IN WITNESS WHEREOF, the parties, by and through their respective authorized representatives, have executed this Agreement ~~on~~ the day and year first above written.

Kerri Stewart
Deputy Chief Administrative Officer
For: Mayor John Peyton
Under Authority of:
Executive Order No. 07-12

ATTEST:



CITY OF JACKSONVILLE

By: *Neil W. McArthur, Jr.*
Neil W. McArthur, Jr., Corporation

By: *Kerri Stewart*
John Peyton, Mayor

In accordance with the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

[Signature]
Director of Administration and Finance
9089-07 *[Initials]*

Form Approved:
[Signature]
Office of General Counsel

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

[Signature]
BARRY V. HOLLOWAY
Its: Chairman

ATTESTATION: ONLY TO AUTHENTICITY
AS TO CHAIRMAN'S SIGNATURE:

[Signature]
JOHN A. CRAWFORD
Its: Ex-Officio Clerk *EBK 4/17/09*

Approved as to form by the
Nassau County Attorney

[Signature]
DAVID A. HALLMAN

EXHIBIT "A"

Contract #	Item #	Description	Price
7678-12	1	Quad Core Xeon E5405 Web Server	\$5,050.00
	2	Quad Core Xeon X5450 Web Server	\$7,200.00
	3	WebEOC Software	\$43,750.00
		TOTAL PURCHASE	\$56,000.00