

CS-12-188
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project

AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
NASSAU COUNTY FLORIDA EMERGENCY MANAGEMENT
FOR
MANAGEMENT AND CONTROL OF PROPERTY
AND EQUIPMENT ACQUIRED WITH FEDERAL GRANT FUNDS

THIS AGREEMENT is made and entered into this 7th **DAY OF DECEMBER 2012** 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 (hereinafter collectively referred to as the "City"), with street address at 515 North Julia Street, Jacksonville, Florida 32202 and **NASSAU COUNTY FLORIDA EMERGENCY MANAGEMENT** with its principal office located at **77150 CITIZENS CIRCLE YULEE FL 32097** (hereinafter referred to as the "Recipient").

RECITALS:

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

WHEREAS, as part of the **FY 2008 ASSISTANCE TO FIREFIGHTERS GRANT (AFG)**, the City is responsible for providing federal funding and/or Equipment purchased from such federal funding to other agencies both within and outside the City of Jacksonville; and

WHEREAS, federal regulations, codified in the Code of Federal Regulations, 44CFR Sec. 13.32 & 13.33, 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 **\$15,342.83**, in funds duly appropriated from a federal grant from **FY 2008 ASSISTANCE TO FIREFIGHTERS GRANT (AFG)**, 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; *provided however*, the above stated monetary amount will not be encumbered by this Agreement. It will be encumbered by one or more subsequently issued purchase orders.

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 in the event of loss or theft, 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 including, but not limited to disaster response training and exercises, 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. Notwithstanding the foregoing, use of the Equipment must support the Program by building or enhancing capabilities that relate to the prevention of, protection from, preparation for or response to disasters in order to be considered eligible.

5.02. The parties recognize that many projects or programs which support disaster preparedness simultaneously support preparedness for other hazards. The Recipient may 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. Recipient must demonstrate the dual-use quality for any activities implemented that are not explicitly focused on disaster preparedness. 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;
 - 6.01.03. The source of the Equipment, including the award number;
 - 6.01.04. Identification of the title holder;
 - 6.01.05. Acquisition date or date received if Equipment is furnished by the federal government;
 - 6.01.06. Cost of the Equipment;
 - 6.01.07. Percentage (at the end of budget year) of federal participation in cost of the Equipment;
 - 6.01.08. Location of the Equipment;
 - 6.01.09. Use and condition of the Equipment; and
 - 6.01.10. 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 multiplied by the City's share 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. ***Federal Equipment.*** In the event the Recipient is provided federally owned equipment:

7.01. Title will remain vested in the federal government.

7.02. Recipient or sub-grantees will manage the Equipment pursuant to federal agency rules and procedures, and must submit an annual inventory listing.

7.03. When the Equipment is no longer needed, the Recipient or subgrantee must request disposition instructions from the federal agency.

7.04. The federal awarding agency may reserve the right to transfer title to the federal government or a third party named by the federal awarding agency when such third party is otherwise eligible under existing statutes

7.05. Such transfers as contemplated in Section 7.04 are subject to the following standards:

7.05.01. The property shall be identified in the grant or otherwise made known to the Recipient in writing.

7.05.02. The federal awarding agency shall issue disposition instructions within 120 calendar days after the end of the federal support of the project for which it was acquired.

7.05.03. If the federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the Recipient shall follow the provisions of 44CFR Sec. 13.32(e)(3)

7.05.04. When title to Equipment is transferred, the Recipient shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the Equipment.

8. **Supplies.** The following shall apply with respect to supplies:

8.01. Title to supplies acquired under a grant or a subgrant will vest, upon acquisition, in the Recipient or subgrantee respectively.

8.02. If there is a residual inventory of unused supplies exceeding \$5,000.00 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs of projects, the Recipient or the subgrantee shall compensate the awarding agency for its share.

9. **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 **DECEMBER 30, 2012**; *provided however*, all requirements for record keeping in this Agreement shall remain in full force and effect until **DECEMBER 30, 2017**.

10. **Indemnification.** Each party shall be solely responsible for the negligent or wrongful acts of their employees and agents. Nothing contained herein shall constitute a waiver by the either party of its sovereign immunity, the liability limits or the provisions of §768.28, Florida Statutes.

11. **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.

12. **Default.**

12.01. Should the Recipient default in its obligations under this Agreement, the City shall provide written notice to the Recipient of the default. The Recipient 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 City may terminate this Agreement by giving ten (10) days advance written notice of such termination to the defaulting party.

12.02. Recipient's violation of any the provisions in this Agreement, shall constitute a default of this Agreement, subject to the provisions of this Section.

12.03. Notwithstanding any other provision of this Agreement to the contrary, in the event of Recipient's default, the City shall be entitled to all available remedies at law or equity.

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

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

15. **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.

16. **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:

16.01. *As to the City:*

**Chief Michael Jacobsen
Director, Duval County Emergency Management
Jacksonville Fire and Rescue Department
515 North Julia Street, 3rd floor
Jacksonville, Florida 32202**

16.02. *As to the Recipient:*

**Danny Hinson
Director, Nassau County Emergency Management
77150 Citizens Circle
Yulee, FL 32097**

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

17.01. ***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.

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

17.03. ***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.

18. ***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.

19. ***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.

20. ***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.

21. ***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.

[Remainder of page is left blank intentionally. Signature page follows immediately.]

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

ATTEST:

CITY OF JACKSONVILLE

By: James R. McCain, Jr.
James McCain, Jr., Corporation Secretary



By: Alvin Brown
Alvin Brown, Mayor

ATTEST:

RECEIPT:

By: John A. Crawford
Signature
Type/Print Name: John A. Crawford
Title: Ex-Officio Clerk

By: Daniel Leeper
Signature
Type/Print Name: Daniel Leeper
Title: Chairman

Cleveland Ferguson, III
Deputy Chief Administrative Officer
For Mayor Alvin Brown
Under Authority of
Executive Order No. 2012-17

MES
02-13-13

Encumbrance & funding information & form approval are on next page.

**Encumbrance and funding information for internal City use:
FREP1F9-FRE053-10-06429**

**Encumbrance by Subsequent Purchase Order(s).
Amount.....\$15,342.83**

This above stated amount is the maximum fixed monetary amount of the foregoing contract. It shall not be encumbered by the foregoing contract. It shall be encumbered by one (1) or more subsequently issued Purchase Order(s) that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such Purchase Order(s) are issued.

In accordance with Section 24.103(e), of 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; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent purchase order[s], as specified above.



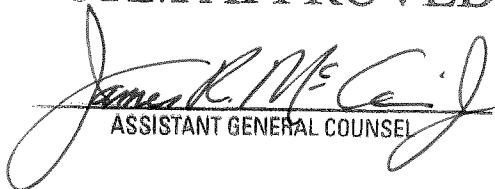
Director of Finance

City Contract # 9094-09



Contract Encumbrance Data Sheet follows immediately.

FORM APPROVED



ASSISTANT GENERAL COUNSEL



EXHIBIT "A" Purchase Order

City of Jacksonville
214 N. Hogan Street, Suite 800
Jacksonville, FL 32202

VENDOR	Vendor Number: 00009033
	Microwave Networks Incorporated
	PO Box 6828
	Hicksville, NY 11802 Phone No: 281-263-6632

PO Date: 08/01/2012
Buyer: Martha Arnett
Phone #: (904) 255 - 8828
FOB: F.O.B., Destination
Terms: Net 30

Purchase Order Number PO206851
Purchase Order
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO	Fire & Rescue
	Emergency Preparedness Division
	515 North Julia Street
	4th Floor
	Jacksonville, FL 32202
Contact CAPT. ESTEP at (904)630-0693	

INVOICE	Finance Services Department
	Accounts Payable
	117 W. Duval Street, Suite 375
	Jacksonville, FL 32202

Department		Bid Number	Requisition Number		Delivery Date				
Fire & Rescue			REQ118515						
Item	Description	Quantity	Unit	Unit Price	Total				
1	BID #SC-0427-12 POINT TO POINT MICROWAVE PROJECT	1.00	EA	\$184,114.00	\$184,114.00				
<table border="1"> <tr> <td>LN / FY / Account Code</td> <td>Dollar Amount</td> </tr> <tr> <td>1 / 12 / FREP1F9-06429--FRE053-10-</td> <td>\$184,114.00</td> </tr> </table>		LN / FY / Account Code	Dollar Amount	1 / 12 / FREP1F9-06429--FRE053-10-	\$184,114.00				
LN / FY / Account Code	Dollar Amount								
1 / 12 / FREP1F9-06429--FRE053-10-	\$184,114.00								
2	ALL WORK MUST BE COMPLETED PER BID SPECIFICATIONS ON SEPTEMBER 1, 2012 DUE TO GRANT REQUIREMENTS. PLEASE INCLUDE THE PO # ON THE INVOICE.								
	8 - DUVAL 1 - CLAY 1 - BAKER 1 - NASSEAU 1 - ST. JOHN'S			122,742.68 15,342.83 15,342.83 15,342.83 15,342.83					
				Subtotal:	\$184,114.00				
				Freight:	\$0.00				
				Discount:	\$0.00				
				TOTAL:	\$184,114.00				

THIS ORDER IS SUBJECT TO THE GENERAL CONDITIONS ATTACHED HERETO.

MANUFACTURER'S FEDERAL EXCISE TAX EXEMPT NO: 59-89-0120K

FLORIDA STATE SALES AND USE TAX EXEMPTION NO: 85-8012621607C-8

Revised Date: 01/14/2008

Approved By Gregory Pease, Chief
Procurement Division