

CS-1422

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(Contract Management Use only)

CONTRACT APPROVAL FORM CONTRACT MANAGEMENT

2014 AUG 12 AM 11:56

CONTRACT TRACKING NO. <u>cm2151</u>

CONTRACTOR INFORMATION

Name: Rapiscan Systems, Inc.

Address: 2805 Columbia St. Torrance CA 90503
City State Zip

Contractor's Administrator Name: Roxanna Ring Title: Service Contracts Administrator

Tel#: 800-258-6684 / 310-349-2341 Fax: 310-349-2641 Email: RRing@rapiscansystems.com

CONTRACT INFORMATION

Contract Name: Rapiscan X-Ray Machine Service Agreement Contract Value: \$4,738.00

Brief Description: Annual Service Agreement for the X-Ray Machine at the Justice Center Asset tag #5312

Contract Dates: From: 10/1/14 to 9/30/15 Status: New Renew Amend# WA/Task Order

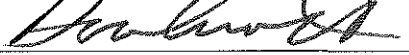
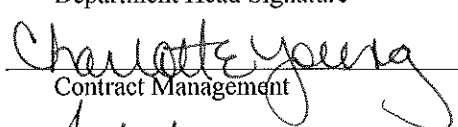
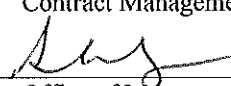
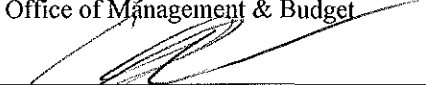
How Procured: Sole Source Single Source ITB RFP RFQ Coop. Other

If Processing an Amendment:

Contract #: _____ Increase Amount of Existing Contract: _____ No Increase

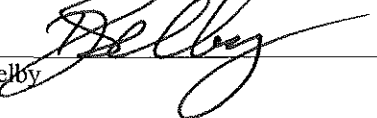
New Contract Dates: _____ to _____ TOTAL OR AMENDMENT AMOUNT: _____

APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

- | | | | |
|----|---|----------------|-------------------------|
| 1. |  | <u>8/11/14</u> | <u>01074712- 546020</u> |
| | Department Head Signature | Date | Funding Source/Acct # |
| 2. |  | <u>8-21-14</u> | <u>2825/14</u> |
| | Contract Management | Date | |
| 3. |  | <u>8-27-14</u> | |
| | Office of Management & Budget | Date | |
| 4. |  | <u>9-15-14</u> | |
| | County Attorney (approved as to form only) | Date | |

Comments: _____

COUNTY MANAGER - FINAL SIGNATURE APPROVAL

 9/17/14
 Ted Selby Date

RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

- Original: Clerk's Services; Contractor (original or certified copy)
- Copy: Department
 Office of Management & Budget
 Contract Management
 Clerk Finance


14 SEP 16 PM 12:58

RECEIVED
COUNTY MANAGERS
OFFICE

RECEIVED
 COUNTY MANAGERS
 OFFICE
 14 AUG 22 AM 10:11
 2014 SEP 17 PM 3:05
 RECEIVED
 CONTRACT MANAGEMENT

Sole Source/Single Source Certification Form

Vendor Name: Rapiscan Systems Inc.
Address: 2805 Columbia St,
Torrance, Ca. 90503
Phone: 310-349-2467
Contact Name: Roxanna Hager

Department: Facilities Maintenance
Department Head Signature: 
Date: 8/11/14
Account: 01074712-546020

Description of Commodity:
Service agreement for Rapiscan X-ray machine.

Check one (1) of the following two (2) choices:

- Sole Source: The required goods or services can only be procured from one vendor.
- Single Source: The required goods or services can be purchased from multiple vendors, but in order to meet certain functional or performance requirements only one economically feasible source exists.

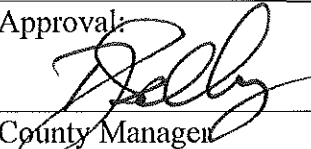
Please check all of the following that apply:

- Purchase can only be obtained from original manufacturer-not available through distributors.
- Only authorized area distributor of the original manufacturer.
- Parts/Equipment are not interchangeable with similar parts of another manufacturer.
- This is the only known source that will meet the specialized needs of this department or perform the intended function.
- This source must be used to meet warranty or service maintenance requirements.
- This source is required for standardization.
- None of the above apply.

Comments/Explanations: (required)

The Rapiscan X-ray machine can only be serviced by Rapiscan as the software and diagnostic tools for the machine are proprietary and are not available to other X-ray service contractors.

Approval:


County Manager

9/17/14
Date:

Rapiscan[®]
s y s t e m s
An OSI Systems Company

January 8, 2014

Valued Customer
To Whom It May Concern:

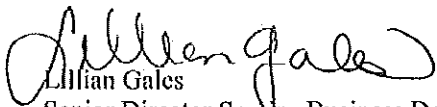
Dear Sir/Madam,

Rapiscan Systems maintains proprietary ownership over all intellectual concepts pertaining to its manufactured products. As such Rapiscan products may only receive service from Rapiscan trained, and authorized individuals. Any service to Rapiscan products by an un-authorized individual will result in voiding of any and all warranty privileges associated with purchase and may result in non-serviceable equipment.

Rapiscan Service Engineers are strategically positioned all over the world to ensure that prompt, quality service solutions are accessible to all Rapiscan Customers.

Please feel free to call me at our toll free number (888) 258-6684 to answer any additional questions and or to schedule your service needs.

Best regards,



William Gales
Senior Director Service Business Development,
Planning and Administration
Phone: 310-349-2341
Fax: 310-349-2641



Service Agreement Number: CS001696

Service Agreement

1. "Date of Agreement"	1 October 2014
2. "Term"	Commencing on the Date of Agreement and ending on 30 September 2015
3. "Rapiscan"	Rapiscan Systems, Inc., a California corporation
4. "Rapiscan Address"	2805 Columbia Street, Torrance, California USA 90503
5. "Customer"	Nassau County Board of Commissioners
6. "Customer Address"	7637 Veteran's Way, Suite 4000, Yulee, FL 32097
7. "Customer Contact"	Bill Howard
8. "Contact Phone"	904-648-4969
9. "Contact Fax"	Bhoward@nassaucountyfl.com
10. "Equipment"	See Equipment List on Appendix "A"
11. "Equipment Location"	See Equipment List on Appendix "A"
12. "Service Plan"	Gold
13. "Annual Charge"	\$4,738.00
14. "Special Terms"	None.

This Service Agreement ("Agreement") is entered into as of the Date of Agreement, by and between Rapiscan and Customer. Customer hereby engages Rapiscan, and Rapiscan accepts such engagement, to perform repair and maintenance services in connection with the Equipment, on the terms of this Agreement.

This Agreement is subject to the Equipment List set forth on Appendix "A," and the Terms and Conditions set forth on Appendix "B", each of which is attached hereto and incorporated herein by reference.

In Witness Whereof, each of Rapiscan and Customer has caused this Agreement to be signed by its duly authorized representative as of the Date of Agreement.

Rapiscan

Customer

Signature: *Roxanna King*
 Name: Roxanna King
 Title: Svc. Cont. Admin

Signature: *Ted Selby*
 Name: Ted Selby
 Title: County Manager

Contact Rapiscan Customer Support
 by calling 1-888-258-6684 (toll free in USA) or +1-310-349-2477
 or by emailing customerservice@rapiscansystems.com

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Appendix "A"
Equipment List

Equipment Location	Model	Serial #
Yulee, FL	RAP 515	60605N12

[End of Appendix "A"]

Appendix "B"

Terms and Conditions of Service Agreement

1. **Defined Terms.** Terms not defined in these Terms and Conditions shall have the meanings given to them in the Service Agreement between Rapiscan and Customer.

2. **Platinum, Gold and Silver Services.** Rapiscan shall provide the following services (collectively "Services") to customers that have selected a Platinum, Gold or Silver Service Plan: (a) Telephone Support, (b) Preventative Maintenance and (c) System Repairs (each as individually defined below).

2.1. **Telephone Support.** "Telephone Support" consists of responding to telephone and email inquiries received by Rapiscan's Customer Service Department (24 hours per day, every day of the year) from the Customer Contact regarding Equipment Errors. The Customer Contact shall report all Equipment Errors to Rapiscan's Customer Service Department by calling 1-888-258-6684 (toll free in US) or +1-310-349-2477 or by emailing customerservice@rapiscansystems.com. "Equipment Errors" means a reproducible failure of the Equipment to operate in accordance with such Equipment's published specifications.

2.2. **Preventative Maintenance.** "Preventative Maintenance" consists of performing, one time per year, visual, electrical, image quality, and radiation checks necessary to confirm that the Equipment is performing, at the time of such checks, in accordance with its technical specifications.

2.3. **System Repairs.** "System Repairs" consists of onsite remedial maintenance performed by Rapiscan to repair Equipment and shall include the furnishing of necessary replacement parts. If Customer has selected the Platinum Service Plan, (a) System Repairs shall be initiated within 24 hours of Customer's request, (b) System Repair work shall be available 24 hours per day, every day of the year, and (c) Rapiscan shall ship replacement parts to the Location by air or ground transportation, whichever is fastest. If Customer has selected the Gold Service Plan or the Silver Service Plan, (a) System Repairs shall be initiated within 48 hours of Customer's request, (b) System Repairs shall be performed between the hours of 8:00a.m. and 5:00p.m. (Location time), Monday through Friday, excluding Rapiscan Holidays, and (c) Rapiscan shall ship replacement parts to the Location by ground transportation. If Customer has selected the Silver Service Plan, Rapiscan shall be entitled to charge Customer for travel (e.g., transportation, meals, lodging) incurred in connection with performing System Repairs at Locations that are more than 100 miles from a Rapiscan service center.

3. **Preventative Maintenance Services.** If Customer has selected the Preventative Maintenance Only Service Plan, the Services shall consist only of Preventative Maintenance and shall not consist of Telephone Support or System Repairs.

4. **Metor Services.** If Customer has selected the Metor Service Plan, the Services shall consist of Telephone Support and Metor Repairs, but shall not consist of System Repairs or Preventative Maintenance. "Metor Repairs" consists of replacement of the MELS Electronics Unit ("MELS Unit") of the Equipment. If, during Telephone Service, Rapiscan determines that the MELS Unit of any item of Equipment requires repair or replacement, Rapiscan shall issue to Customer a return materials authorization ("RMA") number. Following the issuance of an RMA number, Rapiscan shall deliver to Customer, within five business days, a replacement MELS Unit. Delivery shall be DDP Location (Incoterms 2000). Upon receipt, Customer shall carefully remove the replacement MELS unit and then, within two business days of its arrival at the Location, use the same packaging to return the non-working MELS Unit to Rapiscan. Delivery shall be DDP Rapiscan Address

(Incoterms 2000). Customer shall be responsible for installing the replacement MELS Unit. If the non-working MELS Unit is not returned to Rapiscan within five business days of the delivery to Customer of the replacement MELS Unit, Rapiscan shall be entitled to invoice Customer for the replacement MELS Unit (at Rapiscan's then-current spare parts pricing). In addition, if, upon return to Rapiscan, a MELS Unit is found in good working order, Rapiscan shall be entitled to invoice Customer for all shipping and handling expenses incurred by Rapiscan in connection with delivering the replacement MELS Unit, plus a fee of 20% of the MELS Unit price (for testing and re-stocking).

5. **Access to Location(s).** Customer agrees to grant Rapiscan prompt access to enter the Location(s), at any time during the Term, for the purpose of performing the Services. Customer warrants that it is either the owner of the Location(s) or that it has the authority to grant Rapiscan such access. If Customer is not the owner, Customer is responsible for obtaining all necessary approvals from the owner of the Location in order to allow Rapiscan into the Location(s) to perform the Services. Customer shall indemnify, defend and hold harmless Rapiscan, including its affiliates, subcontractors and agents, and its and their officers, directors, managers, and employees, from and against any demand, claim, action, liability, loss (including, without limitation, interest, penalties, attorney fees and expenses) asserted against, relating to, imposed upon or incurred by any of the foregoing by reason of or resulting from any injury to any Rapiscan employee, subcontractor, or other party engaged by Rapiscan to perform Services, if such injury was caused or contributed to by a dangerous condition or event at a Location.

6. **Service Limitation.** Rapiscan reserves the right to refuse to perform any Services if: (i) an item of Equipment was not in good operating condition on the Date of Agreement; (ii) Customer has failed to use the Equipment in accordance with Rapiscan's manuals, instructions and/or other procedures that Rapiscan has made available to Customer or that it makes available to purchasers of the Equipment generally; (iii) Customer has failed to timely report an Equipment Error in accordance with the procedures established by Rapiscan to identify and report Equipment Errors to Rapiscan's Customer Service Department (iv) an item of Equipment is moved from its Location; (v) a Location is not, in Rapiscan's opinion, a safe or clean operating environment; (vi) Rapiscan is not granted prompt access to a Location upon arrival to perform Preventative Maintenance or System Repairs, (vii) an item of Equipment has been modified without Rapiscan's prior written consent; (viii) an item of Equipment has been damaged by neglect, misuse, mishandling, failure of electrical power, user error, liquids, or as a result of any other cause external to the Equipment; (ix) Customer has failed, during the Term, to timely pay, in whole or in part, any invoice issued by Rapiscan; or (x) Customer is in breach of this Agreement or any other agreement with Rapiscan (this statement shall not be construed to limit any other rights or remedies available to Rapiscan for any such breach). Rapiscan also reserves the right to refuse to perform any Services if, due to the age of an item of Equipment, Rapiscan is unable to procure, unable to timely procure, or unable to procure at a reasonable price, through Rapiscan's regular supply channels, the spare parts required to perform a Service. In such event, Rapiscan shall notify Customer and thereupon such item of Equipment shall no longer be deemed Equipment covered by this Agreement. Rapiscan shall also calculate the portion of the Annual Charge attributable to such item of Equipment and shall return to Customer a prorated amount, calculated based on the number of days remaining in such annual period. If such

Service Agreement Number: CS001696

Equipment is the only Equipment covered by this Agreement, this Agreement shall thereupon be deemed to terminate, without further notice. If, on the other hand, such Equipment is not the only Equipment covered by this Agreement, this Agreement shall not be deemed to terminate and the Annual Charge due in future years of the Term shall be automatically reduced by that portion of the Annual Charge that was attributable to such item of Equipment.

7. **Additional Services.** If Rapiscan agrees to perform any services not covered by the Services ("Additional Services"), such Additional Services shall be billable at Rapiscan's then-current time and materials rate in effect for the region in which the Equipment is located. Additional Services include, but are not limited to, performance of Services outside of Rapiscan's regularly-scheduled business hours and performance of any services excluded under Section 6).

8. **Termination.** Either party may terminate this Agreement for material breach following delivery of written notice describing the nature of such breach and giving 60 days' opportunity to cure such breach.

9. **Payment.**

9.1. **Charges.** The Annual Charge shall be due on the Date of Agreement and on each yearly anniversary of the Date of Agreement during the Term. Rapiscan may increase the amount of the Annual Charge on 90 days' written notice. All other amounts charged under this Agreement shall be due within 45 days of date of invoice therefore. Late payments shall accrue at the rate of 1.5% per month, or the maximum rate permitted by law, whichever is lower.

9.2. **Taxes.** Customer shall, in addition to any other amounts payable under this Agreement, pay all sales, use and other taxes, federal, state, local, or otherwise, which are levied or imposed by reason of the Services performed under this Agreement.

9.3. **Notice of Payment Dispute.** Subject to applicable law, if Customer intends to dispute any amount due hereunder, Customer must notify Rapiscan in writing within 30 days of the date such payment is originally due. Customer waives its right to dispute such amounts or to bring or participate in any legal action involving a dispute of such amounts if not reported within such period.

10. **Excusable Delay.** Rapiscan shall not be responsible for any delay or non-performance of its obligations hereunder to the extent and for such periods of time as such delay or non-performance, defective performance or late performance is due to causes beyond its control. Excusable delays include, but are not limited to, acts of God, war, acts of any government in either its sovereign or contractual capacity, fire, explosions, sabotage, the elements, epidemics, quarantine restrictions, strikes, lockout, embargoes, unusually severe weather, delays in transportation, airline schedule, fuel shortages, or delays of suppliers or subcontractors for like causes.

11. **Disclaimer of Warranties.** RAPISCAN'S SOLE OBLIGATION AND CUSTOMER'S SOLE REMEDY UNDER OR IN CONNECTION WITH THIS AGREEMENT IS FOR RAPISCAN TO USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE SERVICES IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. RAPISCAN MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT WILL OPERATE AS REQUIRED WITHOUT INTERRUPTION, DELAY OR ERROR. RAPISCAN DOES NOT WARRANT ANY "UP-TIME" OR "DOWN-TIME" OF THE EQUIPMENT.

12. **Limitation of Liability.** RAPISCAN'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE ANNUAL CHARGE.

13. **No Indirect or Consequential Damages.** RAPISCAN SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

14. **Reciprocal Waiver of Claims.** As the Services may be deployed in defense against or to assist in the detection of an Act of Terrorism (as such term is defined under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002) before it occurs, Rapiscan and Customer each agree to waive all claims against the other (including those of or against their officers, directors, employees, subsidiaries, affiliates, agents, subcontractors or other representatives) for losses, including business operation losses, resulting from or related to such Act of Terrorism.

15. **Miscellaneous Provisions.**

15.1. **Independent Contractors.** Each of Rapiscan and Customer is an independent contractor and neither party's personnel are employees or agents of the other party. Each party assumes sole and full responsibility for the acts and omissions of its own employees, representatives and agents. Except for the specific obligations set forth in this Agreement, nothing hereunder shall be deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership or business entity of any kind, nor shall anything in this Agreement be deemed to constitute either party as the agent or representative of the other.

15.2. **No Third Party Beneficiaries.** It is not the intention of the parties to confer a third party beneficiary right of action upon any third party or entity whatsoever, and nothing in this Agreement will be construed to confer upon any third party other than the parties hereto a right of action under this Agreement or in any manner whatsoever.

15.3. **Customer Contact.** The Customer may change its Customer Contact at any time by delivery of written notice to Rapiscan in accordance with Section 15.4.

15.4. **Notice.** Any notice (other than routine reports regarding Equipment Errors) required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (i) when delivered personally; (ii) two days after deposit with a private industry express courier, for next day delivery, with written confirmation of receipt; or (iii) four days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All notices sent by Rapiscan shall be sent to the Customer Address, ATTN Customer Contact. All notices sent by Customer shall be sent to the Rapiscan Address, ATTN: VP Worldwide Customer Service, with a copy to Senior Director of Service at the same address, or to such other address or person as may be designated by Rapiscan by giving written notice to Customer pursuant to this Section.

15.5. **No Assignment.** Customer shall not be permitted to assign this Agreement, by operation of law or otherwise, without the express written consent of Rapiscan.

15.6. **No Amendment.** This Agreement may not be modified or amended except pursuant to a writing, signed by a duly authorized officer of each of Rapiscan and Customer.

15.7. **No Solicitation; No Hire.** During the Term and for two years thereafter, Customer agrees that it shall not, and will ensure that its affiliates do not, directly or indirectly, hire or solicit or attempt to solicit for employment any persons employed by Rapiscan or its affiliates or any party contracted by Rapiscan to provide Services to Customer.

15.8. **Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Florida, U.S.A., without giving effect to

Service Agreement Number: CS001696

any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Florida to the rights and duties of the parties. This Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

15.9. **Venue.** Except for matters of injunctive relief, for which either party may seek arbitration or initiate proceedings in any court of competent jurisdiction, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be finally and exclusively determined by binding arbitration. The number of arbitrators shall be one. The place of the arbitration shall be Nassau County, Florida. If Customer is headquartered in the United States, the arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. If Customer is headquartered outside of the United States, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International Rules. Judgment on the award rendered by the arbitration proceeding may be entered in any court of competent jurisdiction.

15.10. **Costs of Collection and Other Legal Fees.** If Rapiscan uses a collection agency to collect money owed by Customer, Customer agrees to pay the reasonable costs of collection. These costs include, but are not limited to, collection agency's fees, attorneys' fees, and arbitration or court costs. If any other legal, including, without limitation, an action for arbitration or injunctive relief, is brought relating to this Agreement or the breach hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to the full amount of all reasonable expenses, including all court costs, arbitration fees and attorneys' fees paid or incurred.

15.11. **No Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement

shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

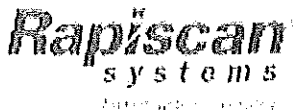
15.12. **Entire Agreement.** These Terms and Conditions, the Agreement to which they relate, and any other Attachment referenced in the Agreement and incorporated therein by reference, constitute the final, complete and exclusive agreement of Rapiscan and Customer with respect to the subject matter hereof and thereof and supersede and merge all prior or contemporaneous proposals, discussions, negotiations, understandings, promises, representations, conditions, communications and agreements, whether written or oral, between the parties with respect to such subject matter and all past courses of dealing or industry custom.

15.13. **Severability.** If the application of any provision of this Agreement to any particular facts or circumstances shall for any reason be held to be invalid, illegal or unenforceable by a court, arbitration panel or other tribunal of competent jurisdiction, then (a) the validity, legality and enforceability of such provision as applied to any other particular facts or circumstances, and the other provisions of this Agreement, shall not in any way be affected or impaired thereby and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties.

15.14. **Construction.** This Agreement has been negotiated by the parties and shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

15.15. **Counterparts.** This Agreement may be executed in counterparts, including by facsimile or other electronic signature.

[End of Appendix "B"]



Service Contract Quote

Nassau County
 Board Of County Commissioners
 Bill Howard
 P.O. Box 4000
 Fernandina Beach, FL 32035
 United States of America

Rapiscan Systems Inc
 2805 Columbia Street
 Torrance, California 90503

Phone No. +1 310-978-1457
 Fax No. +1 310-349-2492

Phone No. 904.548.4969
 E-Mail bhoward@nassaucountyfl.com

Contract Group Code GOLD
Contract No. CS001696
Accept Before 10/31/14
Starting Date 10/01/14
Expiration Date 09/30/15
Invoice Period Year
Next Invoice Date 10/01/14
Annual Amount 4,738.00

Invoice to
 Nassau County
 Board Of County Commissioners
 Bill Howard
 P.O. Box 4000
 Fernandina Beach, FL 32035
 United States of America

Service				Unit of Response Service			
Item No.	Description	Item No.	Serial No.	Measure	Time (Hour)	Period	Line Value
FSI00159	RAPISCAN 515, X-RAY SYST	515115	60605N12	FT	48	1Y	4,738.00

Ship-to Address
 NASSAU COUNTY MAINTENANCE DEPT.
 Bill Howard
 45195 MUSSELWHITE ROAD
 CALLAHAN, FL 32011
 United States of America

Sub-Total 4,738.00
Discount

Total USD: 4,738.00

Prepared by: Roxanna Ring
