

RESOLUTION 2009 - 187

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF AN INTERLOCAL AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND THE CITY OF JACKSONVILLE, IN ORDER TO OBTAIN EQUIPMENT PURCHASED WITH FEDERAL GRANT MONEY FOR THE BENEFIT OF THE PUBLIC; AUTHORIZING THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA TO EXECUTE THE INTERLOCAL AGREEMENT ON BEHALF OF THE COUNTY; AND INSTRUCTING THE CLERK OF THE CIRCUIT COURT TO FILE THE INTERLOCAL AGREEMENT IN THE PUBLIC RECORDS OF ST. JOHNS COUNTY

WHEREAS, Florida Statutes authorize governmental units to cooperate to provide services for mutual benefit; and

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 (UASI)**, 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 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; and

WHEREAS, the governing bodies of each jurisdiction recognize the benefits that may be afforded to the citizens by the Agreement; and

WHEREAS, the County has reviewed the terms, of the Interlocal Agreement (attached hereto, and incorporated herein); and

WHEREAS, the County has determined that accepting terms of the Interlocal Agreement, and executing said Interlocal Agreement will serve the interests of the County.

NOW, THEREFORE BE IT RESOLVED BY THE ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS.

Section 1. The above recitals are incorporated by reference into the body of this Resolution, and such recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the Interlocal Agreement between St. Johns County, Florida, and the City of Jacksonville, and authorizes the Chairman of the Board of County Commissioners of St. Johns County, Florida to execute the Interlocal Agreement on behalf of the County.

Section 3. The Board of County Commissioners hereby authorizes the County Administrator to execute modifications to the Interlocal Agreement, without the necessity of being approved prior by the Board of County Commissioners of St. Johns County, Florida, so long as those modifications do not require any monetary or in-kind payment on the part of the County, or increase the liability of the County with respect to administrative and/or judicial actions.

Section 4. The Clerk of the Circuit Court is hereby instructed to file the Interlocal Agreement in the Public Records of St. Johns County, Florida

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 7th day of July, 2009.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Cyndi Stevenson
Cyndi Stevenson, Chair

ATTEST: CHERYL STRICKLAND, CLERK

By: Pam Halterman
Deputy Clerk

Effective Date: July 7, 2009

RENDITION DATE 7/8/09

**AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
ST JOHNS COUNTY, FLORIDA
FOR
MANAGEMENT AND CONTROL OF PROPERTY
AND EQUIPMENT ACQUIRED WITH FEDERAL GRANT FUNDS**

THIS AGREEMENT is made and entered into this ____ day of July, 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 **St. Johns County, Florida, on behalf of its Fire Rescue Department located at 3657 Gaines Road, St. Augustine, FL 32084-6565** (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 (UASI)** , 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 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 **\$64,950.00**, in funds duly appropriated from a federal grant from **Urban Area Security Initiative (UASI)**, 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;
 - 6.01.03. 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 of subgrantees 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 April 30, 2010; *provided however*, all requirements for record keeping, in this Agreement shall remain in full force and effect until April 30, 2016.

10. **Indemnifications.** To the extent permitted by law, the Recipient, for itself and including without limitation, on behalf of its officers, employees, agents, affiliates, assigns, representatives and contractors (hereinafter, in this Section 10, 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:

10.01. **Tort Indemnification.** 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 10.01, 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 10.01 is not nor

shall it be construed as a further waiver of sovereign immunity than that contained in Section 768.28, Florida Statutes; and

10.02. ***Environmental Indemnification.*** Any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) the Indemnifying Parties', actions or activities that result in a violation on any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Indemnifying Parties' activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Agreement by the Indemnifying Parties at any time on or prior to the effective date, of this Agreement or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Indemnifying Parties. The Indemnified Parties will be entitled to control any remedial action, any proceeding relating to an environmental claim.

10.03. ***Violation of Laws etc. Indemnification.*** Any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, or regulations, by the Indemnifying Parties or those under their control; and

10.04. ***Breach of Representations, Warranties and Contract Covenants.*** To the extent permitted by law, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) which may be incurred by, charged to or recovered from any of the foregoing, arising directly out of (a) any breach of any representation or warranty made by the Indemnifying Parties in connection with this Contract or in any certificate, document, writing or other instrument delivered by the Indemnifying Parties pursuant to this Agreement or (b) any breach of any covenant or obligation of the Indemnifying Parties set forth in this Agreement or any other any certificate, document, writing or other instrument delivered by the Indemnifying Parties pursuant to this Agreement.

10.05. ***No Insurance Limitation.*** This Section 10.05, relating to Indemnification, is separate and apart from, and is in no way limited by, any insurance provided, by the Indemnifying Parties, pursuant to this Agreement or otherwise.

10.06. ***Survival of Indemnifications.*** This Section 10.06, 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.

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 12.02.

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, the City may terminate this Agreement, at any time, without cause, by giving thirty (30) days advance written notice of such termination to the Recipient.

14. **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.

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:*

Martin Senterfitt, Chief
Emergency Preparedness Division
City of Jacksonville Fire and Rescue Department
515 North Julia Street, 4th Floor
Jacksonville, Florida 32202

16.02. *As to the Recipient:*

Chief Johnny Colson
St. Johns County Fire Rescue
3657 Gaines Road
St. Augustine, FL 32084-6565

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 intentionally left blank. 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: _____
Neill W. McArthur, Jr., Corporation Secretary

By: _____
John Peyton, Mayor

ATTEST:

ST. JOHNS COUNTY

By: _____
Signature
Type/Print Name: _____
Title: _____

By: _____
Signature
Type/Print Name: _____
Title: _____

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.

Director of Finance

Form Approved:

Office of General Counsel