STATE OF TEXAS §
§
COUNTY OF FORT BEND §

MEMORANDUM OF UNDERSTANDING BETWEEN FORT BEND COUNTY AND SOUTHEAST TEXAS REGIONAL ADVISORY COUNCIL

This Memorandum of Understanding "(Agreement") is made and entered into by and between Fort Bend County ("Fort Bend"), a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court on behalf of the Fort Bend County Emergency Medical Services Department ("EMS"), and the SouthEast Texas Regional Advisory Council ("SETRAC"), a 501(c)(3) non-profit, tax exempt organization organized under the Texas Department of Health as instructed by the 1989 Omnibus Rural Health Care Rescue Act; hereinafter referred to collectively as "Parties."

RECITALS:

WHEREAS, Fort Bend was the sub-recipient of a sub-award received from the 2007 Homeland Security Grant Program, and with said award Fort Bend purchased certain federally controlled equipment ("equipment"), as defined by FEMA Grants Program Directorate Bulletin No. 407a, which was used by local law enforcement and emergency response agencies of Fort Bend County to enhance the capability of local agencies to prepare for, prevent, respond to, mitigate and recover from threats or incidents of terrorism; and

WHEREAS, Fort Bend desires to dispose of the equipment due to its age and mechanical problems; and

WHEREAS, SETRAC has a current need and use for the equipment and agrees to repair, retain and use the equipment in a manner for which it was originally acquired; and

WHEREAS, given the nature of the federally controlled equipment and the potential impact on communities, the State of Texas has imposed controls on the acquisition, use, transfer and disposition of said equipment in compliance with federal law, 2 C.F.R. Part 200; and

WHEREAS, Fort Bend, as the grant sub-recipient, has been authorized by the State of Texas, Office of the Governor ("OOG"), Homeland Security Grants Division ("HSGD") to dispose of the equipment pursuant to a memorandum of understanding with no further obligation to HSGD; and

WHEREAS, Texas Government Code, Chapter 791, authorizes local government entities to enter into contractual agreements with each other, with the State of Texas, and with administrative agencies of the state for governmental functions and services to increase their efficiency and effectiveness; and

WHEREAS, Fort Bend is a local governmental entity of the state, as defined in Texas Government Code, Section 791.003; and

WHEREAS, and SETRAC is a governmental body, as defined by Texas Government Code, Section 791.003, and as held by the Office of the Attorney General of Texas in general letter ruling #OR2013-05896 (2013), and is a unit within the National Incident Management System ("NIMS") structure; and

WHEREAS, Fort Bend and SETRAC have the authority to enter into this Agreement, and are each entering this Agreement by the action of its governing party in the appropriate manner prescribed by law; and

WHEREAS, the parties desire to enter into an Agreement to coordinate the transfer of the equipment, set forth expectations and responsibilities of the Parties to ensure the respective parties' understanding and acknowledgement of the transfer process, responsibilities of the receiving party, and use and maintenance requirements, and ensure record retention and proper procedure for the return of the equipment to Fort Bend if this Agreement is terminated prior to the consumption of the equipment.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties understand, acknowledge and agree as follows:

1. **Equipment**. The ownership of the following Equipment will be transferred by Fort Bend to SETRAC in accordance with the procedures outlined in this AGREEMENT:

VEHICLE NO. 1:

Description:	2009 Ford F650, White
Vehicle Identification No.:	[redacted]
Fort Bend County Inventory Number: 1018909	
Federal Grant Title:	2007 State Homeland Security Grant Program
Federal Grant Number:	2007-GE-T7-0024
Federal Granting Agency:	Office of Grants and Training Department of Homeland Security (DHS)
Original Acquisition Date:	November 26, 2008
Acquisition Cost:	$49,974.00
Current Fair Market Value:	$14,250.00
Current Condition:	Salvage/Repairable

VEHICLE NO. 2:

Description:	2009 Ford F650, White
Vehicle Identification No.:	[redacted]
Fort Bend County Inventory Number:	1018910
Federal Grant Title:	2007 State Homeland Security Grant Program
Federal Grant Number:	2007-GE-T7-0024
Federal Granting Agency:	Office of Grants and Training Department of Homeland Security (DHS)
Original Acquisition Date:	November 26, 2008
Acquisition Cost:	$49,974.00
Current Fair Market Value:	$14,250.00
Current Condition:	Salvage/Repairable

2. **Responsibilities in Cooperative Effort**.

a. Fort Bend shall provide a copy of an updated Inventory list, which includes the manner of disposition of the equipment, to the Office of the Governor, HSGD and to SETRAC upon transfer of the equipment.

b. SETRAC agrees to pick up the equipment from Fort Bend at the following location: Fort Bend County Sheriff's Office, 1410 Williams Way, Richmond, Texas 77469, within thirty (30) days of the signed AGREEMENT, and Fort Bend will surrender the equipment to the designated representative for SETRAC. At the time of the transfer, the designated Point of Contact for each agency shall sign the PROPERTY TRANSFER RECORD AGREEMENT, attached hereto as EXHIBIT A, and incorporated fully herein, acknowledging transfer and receipt of the equipment.

c. SETRAC understands and acknowledges that upon acceptance of this Agreement, SETRAC will own all equipment delivered to SETRAC hereunder and as specified in the property transfer record attached hereto as Exhibit A.

d. SETRAC acknowledges and agrees that SETRAC will be responsible for all aspects of the equipment including, but not limited to, maintaining the equipment' records, physical inventory, control system, maintenance procedures, disposition, and compliance with any existing grant requirements as set forth in the AGREEMENT.

e. SETRAC agrees that in accepting ownership and responsibility for the equipment, SETRAC is accepting the equipment "AS IS" and shall use the equipment to support homeland security, emergency operations planning activities and/or in any other manner for which it was originally acquired.

f. SETRAC agrees to store equipment in a designated and secure site(s) that are free from weather and other conditions, which degrade equipment and impacts its intended use.

g. SETRAC agrees to maintain a complete and up-to-date equipment inventory and to conduct a semi-annual physical inventory.

h. SETRAC agrees that, upon request, the equipment, equipment inventory and any related documentation shall be made accessible for review, upon request, by ODP, DEM, H-GAC, Fort Bend County OEM, Fort Bend County Auditor's office or other authorities with prior notice when required by existing grant requirements.

i. SETRAC agrees to take such actions as necessary to bring the equipment back into working order and to maintain the equipment in good working order by providing routine monitoring, (day to day) maintenance and any required licensing of equipment to ensure functional use at any time prior to notice.

j. SETRAC agrees to ensure that the deployable equipment will be made available during an event requiring a regional response.

k. SETRAC agrees to follow HSGD grant's disposal procedures, keep all required records on file and to notify Fort Bend when the passed-through equipment is ultimately disposed of by SETRAC, and the method of disposal. These records will be made available as described in Paragraph 15.

l. The Parties shall each retain a copy of the fully executed AGREEMENT, and any records concerning the equipment for at least three (3) years from the date the equipment is disposed, replaced or transferred by said party.

3. Term. This AGREEMENT commences on the date of the last Party's signature of execution and terminates when the equipment is consumed, expended, lost or destroyed, unless terminated earlier by either party as provide in the termination section of this AGREEMENT.

4. **Consumption of Return Equipment**. It is intended that SETRAC will consume the equipment specified in Paragraph 1. during the course of the Activity described in paragraph 2(d).

5. **Loss or Damage of Equipment**. If the equipment is lost, unintentionally destroyed, or damaged beyond repair prior to its intended consumption while in the ownership of SETRAC, SETRAC will issue a certificate of loss/destruction/irreparable damage if required by any existing grant requirements. SETRAC agrees that they are responsible for all equipment provided and agrees to follow the grant's disposal procedures.

6. **Contact Information and Notice**. Each party shall identify contact person(s) for purposes of implementing the terms of this AGREEMENT. All notices and communication under this AGREEMENT shall be in writing and must be delivered by hand, facsimile, or United States registered or certified mail, return receipt requested or delivered by any national overnight express delivery service, to the following addresses:

a. FORT BEND contact:

Deputy Doug Barnes
Senior Planning Coordinator
Fort Bend County
Office of Emergency Management
307 Fort Street
Richmond, Texas 77469-7728
Tel: (281) 238-3417
Fax: (281) 342-4798
Email: Douglas.Barnes@fortbendcountytx.gov

AND

Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

SETRAC contact:

Lori Upton
Regional Director of Emergency
Management Operations
SouthEast Texas Regional Advisory Council (SETRAC)
1111 N. Loop W., #160
Houston, Texas 77008
Tel: (281) 822-4444
Fax: (281) 822-4668
Email: Lori.upton@setrac.org

5. **Termination**. This Agreement may be terminated at any time during its term, for any reason, by either Party by giving thirty (30) days written notice of its intent to terminate to the other Party.

6. **Satisfaction of Grant Requirements**. Fort Bend represents that there are no existing grant requirements that must be satisfied under the 2007 Homeland Security Grant Program and that Fort Bend is no longer receiving federal grant funds concerning the equipment.

7. **Compliance with Laws and Regulations**. The Parties shall observe and comply with all applicable federal, state, local, tribal, and territorial laws, rules, ordinances, and regulations in any manner affecting the performance of any obligations undertaken by this AGREEMENT, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement, and shall entitle Fort Bend and SETRAC to terminate this Agreement immediately upon delivery of written notice of termination.

8. **Non-appropriation.** It is specifically understood and agreed that Fort Bend has not allocated any funds for any services to be provided or obligations to be met pursuant to this AGREEMENT and has no obligation to make any payments hereunder. Any party paying for the performance of governmental functions, services or obligations under this AGREEMENT must make those payments from current revenues available to the paying Party. In the event funds are needed to carry out any purpose of this AGREEMENT, and Fort Bend has not appropriated or allocated such funds to carry out the purpose of this agreement, the sole remedy of Fort Bend is to terminate this AGREEMENT.

9. **Governing Law and Venue**. The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

10. **Relationship of the Parties**. This AGREEMENT is not intended to and shall not create a partnership, joint venture or joint enterprise among the parties. It is understood and agreed by the parties that the personnel of one party shall not be considered employees, agents, partners, joint ventures, or servants of any other party to this AGREEMENT. The parties are undertaking governmental functions or services under this AGREEMENT and the purpose hereof is solely to further the public good, rather than any pecuniary purpose. The party undertaking work under this AGREEMENT shall control the direction, details and managements of such work.

11. **No Third Party Beneficiaries**. The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this AGREEMENT.

12. **Invalid Provision**. If any of the provisions contained in this AGREEMENT are deemed invalid, such invalidity will not affect the other provisions and the AGREEMENT will be construed as if the invalid provision had never been contained in this AGREEMENT.

13. **No Assumption of Liability**. No Party assumes the liability for the equipment under the control of any other Party or for the actions of employees of any other Party. This Agreement is not intended to create any cause of action for the benefit of third parties.

14. **Immunity as a Defense**. No signatory hereto or participating agency has agreed to waive any defense, right, immunity, or other protection under law, including any statutory provision, by entering into this AGREEMENT.

15. **Audit and Inspection of Records**. SETRAC shall permit the authorized representatives as described in paragraph 2(H) to inspect and audit all data and records relating to the equipment referenced in this AGREEMENT. Each party shall keep its books and records available for this purpose for at least three (3) years after this AGREEMENT terminates. In the event any record is needed to support any dispute or legal action, such records shall be maintained for a period of not less than three (3) years following the settlement of any such dispute or legal action.

16. **Confidential Information**. SETRAC expressly acknowledges that Fort Bend County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, Fort Bend County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to Fort Bend County by SETRAC shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

17. **Assignment**. Any assignment or other transfer of this AGREEMENT or any part hereof without the express consent in writing of the other Parties shall be void and of no effect.

18. **Entire Agreement**. The entire understanding and agreement of the Parties is contained herein and no change in or modification, amendment or discharge of this AGREEMENT in any form whatsoever shall be valid or enforceable unless it is in writing and signed by all Parties.

19. **Understanding, Fair Construction**. By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the non-drafting party.

20. **Execution**. This AGREEMENT may be executed in multiple counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each party warrants that the undersigned is a duly authorized representative with the power to execute this AGREEMENT.

{EXECUTION PAGE FOLLOWS}

{REMAINDER INTENTIONALLY LEFT BLANK}

IN WITNESS HEREOF, the parties, or their authorized representatives, have herewith set their signatures as of the date written below. This AGREEMENT is not effective until executed by all necessary parties.

FORT BEND COUNTY

KP George, County Judge

Date

SOUTHEAST TEXAS REGIONAL ADVISORY COUNCIL (SETRAC)

Lori Upton,
Regional Director of
Emergency Management Operations

12/11/18
Date

ATTEST:

By:_____
Laura Richard, Fort Bend County Clerk

APPROVED:

FORT BEND COUNTY
Office of Emergency Management

By: _____
Douglas Barnes,
Senior Planning Coordinator

Date: 2/1/19

SETRAC
Preparedness

By: _____
Chris Collier,
Emergency Services and Response Manager

Date: 12/28/18

EXHIBIT A

GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT

HOMELAND SECURITY GRANT PROGRAM

PROPERTY TRANSFER RECORD AGREEMENT

Governor's Division of Emergency Management
State Administrative Agency
Homeland Security Grant Program
Property Transfer Record Agreement

Transferred From: FORT BEND COUNTY–OFFICE OF EMERGENCY MANAGEMENT
Name of Organization (Homeland Security Grant Sub-Recipient)

307 Fort Street, Richmond, Texas 77469
Street/Mailing Address, City, County, Zip

Douglas Barnes – Senior Planning Coordinator
Printed Name and Title

Doug A Barnes
Signature

2/1/19
Date

Transferred To: SOUTHEAST TEXAS REGIONAL ADVISORY COUNCIL (SETRAC)
Name of Organization (Homeland Security Grant Sub-Recipient)

1111 N. Loop W., #160, Houston, Texas 77008
Street/Mailing Address, City, County, Zip

Chris Collier – Emergency Services and Response Manager
Printed Name and Title

Signature

12/28/18
Date

This is to certify that the property described below was acquired by the expenditure of 2007 HOMELAND SECURITY GRANT PROGRAM funds awarded to the above named Homeland Security Grant Sub-Recipient (Grantor). The jurisdiction/organization receiving the property (Grantee) certifies that they have knowledge of the laws, rules and regulations of the aforementioned grant for the year of the award. The Grantee further certifies that they agree to be bound by all the contract covenants and exhibits to the Grantor's Sub-Recipient agreement and any modifications or amendments to that agreement as if they were written here. The Grantor and Grantee further certify that they are duly authorized and empowered by their governing body to enter into this agreement. The Grantor further certifies that the Grantee has complied with all State and Federal eligibility requirements.

PROPERTY BEING TRANSFERRED – VEHICLE NO. 1:

Item description:	2009 Ford F650, White
Item Control/Inventory Number:	1018909
Serial Number/VIN:	[redacted]
Model Number:	
Acquisition Date:	November 26, 2008
Unit Cost:	$49,970.00

Governor's Division of Emergency Management
State Administrative Agency
Homeland Security Grant Program
Property Transfer Record Agreement

Transferred From: FORT BEND COUNTY–OFFICE OF EMERGENCY MANAGEMENT
Name of Organization (Homeland Security Grant Sub-Recipient)

307 Fort Street, Richmond, Texas 77469
Street/Mailing Address, City, County, Zip

Douglas Barnes – Senior Planning Coordinator
Printed Name and Title

Signature Date 2/1/19

Transferred To: SOUTHEAST TEXAS REGIONAL ADVISORY COUNCIL (SETRAC)
Name of Organization (Homeland Security Grant Sub-Recipient)

1111 N. Loop W., #160, Houston, Texas 77008
Street/Mailing Address, City, County, Zip

Chris Collier – Emergency Services and Response Manager
Printed Name and Title

Signature Date 12/28/18

This is to certify that the property described below was acquired by the expenditure of 2007 HOMELAND SECURITY GRANT PROGRAM funds awarded to the above named Homeland Security Grant Sub-Recipient (Grantor). The jurisdiction/organization receiving the property (Grantee) certifies that they have knowledge of the laws, rules and regulations of the aforementioned grant for the year of the award. The Grantee further certifies that they agree to be bound by all the contract covenants and exhibits to the Grantor's Sub-Recipient agreement and any modifications or amendments to that agreement as if they were written here. The Grantor and Grantee further certify that they are duly authorized and empowered by their governing body to enter into this agreement. The Grantor further certifies that the Grantee has complied with all State and Federal eligibility requirements.

PROPERTY BEING TRANSFERRED – VEHICLE NO. 2:

Item description:	2009 Ford F650, White
Item Control/Inventory Number:	1018909
Serial Number/VIN:	[redacted]
Model Number:	
Acquisition Date:	November 26, 2008
Unit Cost:	$49,970.00