

## **Air Instrumentation Device Supply and Maintenance Agreement**

This agreement is made by and between Air Instrumentation, a division of Safeware, Inc. ("A.I.") 1107 Wonder Dr., Suite 101, Round Rock, Texas 78681 and FORT BEND COUNTY, this the \_\_\_\_ day of \_\_\_\_\_ 2008.

**1. Preliminary Statement.** A.I. is engaged in the business of supplying, calibrating and maintaining portable gas detection units. FORT BEND COUNTY desires to engage A.I. to provide portable gas detection devices and certain services for FORT BEND COUNTY as described on Schedule A (collectively the "Services").

**2. Services.** FORT BEND COUNTY hereby engages A.I. to provide the Services according to the specifications set forth on Schedule A-1 (the "Specifications"). The parties may, from time to time, agree that additional services will be provided. Any additional services requested must be described in a Schedule signed by the parties and which recites by its terms that it is incorporated into this Agreement. Each Schedule will be numbered sequentially as Schedule A-1 (attached), Schedule A-2, etc. Unless expressly stated in a Schedule, the terms of a Schedule will not amend or supersede the terms of another Schedule. Reference to Schedule A in this Agreement means each Schedule which, together with this Agreement, forms a separate contract for services.

**3. Proprietary Ownership.** FORT BEND COUNTY acknowledges and agrees that Deliverables under this Agreement may contain or be created through use of software and other materials used by or useful to A.I. in its business generally, including without limitation various training methods or tools (the "A.I. Materials"). FORT BEND COUNTY acknowledges and agrees that all ownership rights in and to the A.I. Materials shall be the sole and exclusive proprietary property of A.I.

**4. A.I. Warranties.** A.I. represents and warrants to FORT BEND COUNTY that for a period of ninety days after the initial deployment of any portable gas detection devices, such devices shall be free of material defects in workmanship and will conform in all material respects to the functional descriptions contained in the Specifications.

**5. Indemnity.** A.I. SHALL SAVE HARMLESS FORT BEND COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF A.I. OR ANY OF A.I.'S AGENTS, SERVANTS OR EMPLOYEES.

**6. Confidential Information.** Each party agrees that it will not disclose to any person any Confidential Information of the other party, subject to the requirements of the Public Information Act, or use any Confidential Information of the other party, except as expressly provided for under this Agreement. For purposes of this Agreement, the term "Confidential Information" means all technical, business and other information of a party and its affiliates that derives economic value, actual or potential, from not being generally known to others, including,

without limitation, technical or non-technical data, compilations, price and cost information, technical information, financial information, and business process'. For purposes of this Agreement, the A.I. Materials shall be deemed the Confidential Information of A.I., except to the extent made public by A.I.

## **7. Term; Termination.**

(a) Subject to the provisions for termination hereinafter provided, this Agreement shall become effective as of the date and year first above written, and shall continue for a period of twelve (12) months, unless earlier terminated as provided below. This Agreement may be renewed for two (2) additional twelve (12) month periods.

(b) Either party shall have the right to terminate this Agreement immediately upon the occurrence of any one or more of the following events: (i) breach by the other party of any material term or provision of this Agreement, and if capable of cure, failure to cure within 30 days of written notice thereof by the non-breaching party; (ii) any proceeding is instituted by or against the other party under any bankruptcy or similar laws for the relief of debtors; or (iii) the appointment of any trustee or receiver for any of the other party's assets.

(c) A.I. shall have the right to terminate this Agreement immediately upon the failure of FORT BEND COUNTY to pay within thirty (30) days of receipt of invoice any amounts due and payable to it pursuant to the terms of this Agreement as specified in "FORT BEND COUNTY Section I 'Schedule A-1'".

(d) FORT BEND COUNTY shall have the right to terminate this Agreement following 30 days written notice if A.I. fails to provide the level of performance of maintenance, repair, calibration, and replacement of equipment as specified in "A.I. Section 2 of 'Schedule A-1'" (breach of performance standards) providing FORT BEND COUNTY notifies A.I. by certified mail via the U.S. Postal Service that a breach of performance standards has occurred and A.I. fails to cure the breach within a initial 30 day period following notification.

**8. Limitation of Liability.** In no event shall the aggregate liability of A.I. to FORT BEND COUNTY in connection with this Agreement for any and all loss, claim, damage or liability, whether in contract or in tort, or under any other theory (including, without limitation, negligence and strict liability), exceed the amounts paid to A.I. pursuant to this Agreement. UNDER NO CIRCUMSTANCES SHALL A.I. BE LIABLE TO FORT BEND COUNTY FOR INJURY OR DEATH DUE TO IMPROPER OR MISUSE OF SUPPLIED EQUIPMENT. UNDER NO CIRCUMSTANCES SHALL A.I. BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY FORT BEND COUNTY IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF WHETHER OR NOT FORT BEND COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. Insurance.**

(a) A.I. shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.



(b) A.I. shall furnish certificates of insurance to FORT BEND COUNTY evidencing compliance with the insurance requirements hereof. Certificates shall indicate A.I.'s name, name of insurance company, policy number, term of coverage and limits of coverage. A.I. shall provide FORT BEND COUNTY with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. A.I. shall obtain such insurance from such companies having a Bests rating of A-/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

(i) Workers' Compensation insurance in accordance with the laws of the State of Texas.

(ii) Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$2,000,000 annual aggregate limit  
\$1,000,000 each occurrence, combined single limit

(iii) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

(iv) Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.

(v) Employers' Liability insurance with limits not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

(vi) FORT BEND COUNTY and the Fort Bend County Commissioners shall be named as additional insureds to all coverages required above. All policies written on behalf of A.I. shall contain a waiver of subrogation in favor of FORT BEND COUNTY.

#### 10. Miscellaneous.

(a) Subletting. A.I. shall not sublet, assign, or transfer any part of its rights or obligations in this Agreement without the prior written approval of FORT BEND COUNTY.

(b) Force Majeure. Neither party shall be liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments due hereunder) if such default or delay is caused, directly or indirectly by forces beyond such party's control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, interruptions of transportation or communications, supply shortages.

(c) Independent Contractor. The parties acknowledge that the relationship of A.I. to FORT BEND COUNTY is that of an independent contractor, and that nothing contained in this Agreement shall be construed to place FORT BEND COUNTY and A.I. in the relationship of principal and agent, master and servant, partners or joint venturers. A.I. shall not have, expressly or by implication, or represent itself as having, any authority to make contracts or enter into any agreements in the name of FORT BEND COUNTY, or to obligate or bind FORT BEND COUNTY in any manner whatsoever.

(d) Governing Law and Venue. The validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder.

(e) Headings. The headings as to contents of particular articles and sections are inserted only for convenience and are in no way to be construed as part of this Agreement.

(f) Amendments. This Agreement shall not be modified or amended except by another agreement in writing executed by the parties hereto.

(g) Severability. All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

(h) Notices. All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers set forth below their signatures. Either party may change its address or facsimile number for the purpose of this Agreement by notice in writing to the other party as provided herein.

(i) Waiver. No failure or delay on the part of any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

(j) Counterparts. Any number of counterparts of this Agreement may be signed and delivered, each of which will be considered an original and all of which, together, will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

**Air Instrumentation,  
a division of Safeware, Inc.**

By: [Signature]

Name: SAM SUMMERS

Title: MGR

Remit To Address:

P.O. Box 1465

Round Rock, TX 78680

Telephone No.: 512-671-7068

Facsimile No.: 512-238-7679

E-mail Address sales@airmonitors.net

Date: 1/22/08

**Fort Bend County**

By: [Signature]

Name: Robert Hebert

Title: County Judge

Bill To Address:

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Date: 2-5-08



## **Schedule A-1 Maintenance Agreement**

This Schedule is made pursuant to the terms of the Device Supply and Services Agreement dated \_\_\_\_\_, 2008 between FORT BEND COUNTY, and Air Instrumentation ("A.I.").

The following outlines the equipment and services contemplated under this agreement by A.I. in addition to the responsibilities assigned to FORT BEND COUNTY under this agreement.

### **A.I.**

#### **1. List of Equipment to be maintained:**

- (a) Two (2) Guardian Readers
- (b) Five (5) Biosystems Phd Plus 4-gas monitors with O2, LEL, CO and H2S sensors
- (c) Four (4) Ludlum Radiation Detectors Model 2241-3.
- (d) Five (5) Drager Hazmat Kits
- (e) Four (4) CDS Kits with Simultantest Sets
- (f) Two (2) APD 2000
- (g) One (1) Ahura
- (h) Four (4) AreaRAEs with O2, LEL, CO, and CL2 sensor; and a 10.6eV PID lamp; with pump
- (i) Two (2) AreaRAEs with O2, LEL, CO and NH3 sensors; and a 10.6eV PID lamp; with pump

#### **2. List of Supplied Equipment:**

- (a) A.I. will provide up to two (2) 58 liter cylinder of multi-gas mix, and one (1) 34L cylinder of Isobutylene, one (1) 34L cylinder of Ammonia, and one (1) 34L cylinder of Chlorine cal gas per year.
- (b) A.I. will replace expired Immunoassay Test Strips for Guardian Reader (for the following: Anthrax, Ricin, Botulinum, Plague, Tularemia, and Brucella).
- (c) A.I. will replace expired colorimetric tubes for the Drager Hazmat Kits; and CDS Simultantest Sets I and V for the Drager CDS Kits.

#### **3. Service and Maintenance responsibilities: 'Performance Standards'**

- (a) Every 90 days Air Instrumentation will come on site to a specified location to inspect clean, and calibrate the instrumentation outlined in section 1.a.
- (b) A.I. will perform repairs for damage occurring during normal usage of equipment.
- (c) A.I. will maintain all service records and provide a copy of those records to FORT BEND COUNTY upon request.
- (d) A.I. will be responsible for any and all sensor replacement, should a sensor fail to calibrate
- (e) A.I. will provide loaner units for all RAE, Drager, Biosystems and Ludlum products only in the event of unit failure between service intervals.

#### **4. Training**

- (a) Upon execution of this agreement and within a reasonable period of time, A.I. will provide 2 hours minimum of training for the equipment listed in 1a. A.I. will also provide a minimum of 2 hours of annual training on the equipment for the duration of the contract.

### **FORT BEND COUNTY HAZMAT TEAM**


#### **1. Annual Fee for Equipment and Service**

- (a) The annual fee for equipment and service is \$26,961.00 due upon receipt of invoice. If the agreement is terminated by either party, A.I. will refund FORT BEND COUNTY at a rate of \$2,246.75 for each calendar month of the agreement term in which services were not provided. A fee of 1 1/2 % per month will be charged to any invoice outstanding longer than 30 days after receipt by FORT BEND COUNTY.

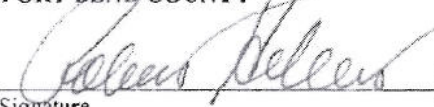
2. **Prompt Return of monitors for calibration and service**
  - (a) FORT BEND COUNTY employees will endeavor to return equipment for service in a timely manner in the supplied containers.
3. **Responsibility for lost, stolen or destroyed equipment**
  - (a) FORT BEND COUNTY agrees to be responsible for the replacement costs of any supplied equipment that is lost, stolen or destroyed while in its possession. A.I. will repair or replace equipment that is damaged in the normal course of use.
4. **Prompt Return of equipment at the termination of this agreement**
  - (a) FORT BEND COUNTY agrees to promptly return ALL of the equipment supplied under the terms of this agreement following the termination of said agreement, whether that occurs at the conclusion of the contract or under the terms in Section 7 of the agreement.

Effective Date: \_\_\_\_\_

**Air Instrumentation**

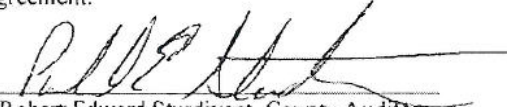
 1/22/08  
Signature Date  
SAM SUMMERS MGR.  
Print Name Title

**FORT BEND COUNTY**

 2-5-08  
Signature Date  
Robert Hebert County Judge  
Print Name Title

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 26,961.00 to accomplish and pay the obligation of Fort Bend County under this Agreement.

  
Robert Edward Sturdivant, County Auditor