

STATE OF TEXAS               §  
  §  
COUNTY OF FORT BEND       §

**ADDENDUM TO DEVICE SUPPLY AND MAINTENANCE AGREEMENT**

THIS ADDENDUM is entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Safeware Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

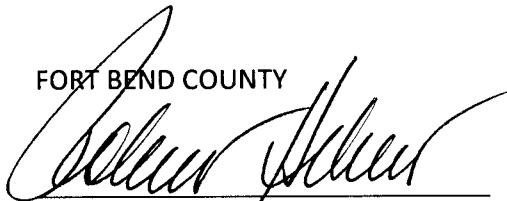
THAT, WHEREAS, the parties have executed and accepted that certain Device Supply and Maintenance Agreement, (hereinafter the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:


1.    **Limit of Appropriation.** Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of forty-one thousand and forty-six dollars and no/100 (\$41,046), specifically allocated to fully discharge any and all liabilities County may incur. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed forty-one thousand and forty-six dollars and no/100 (\$41,046).
2.    **Confidential Information.** Contractor expressly acknowledges that 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, 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 County by Contractor 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.
3.    **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Contractor for any reason are hereby deleted.

4. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with the Agreement.
5. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
6. **Applicable Law.** 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.


FORT BEND COUNTY

  
Robert E. Hebert, County Judge  
10-9-2012

SAFEWARE INC.

  
Authorized Agent- Signature  
THOMAS F. NAIRN JR  
Authorized Agent- Printed Name

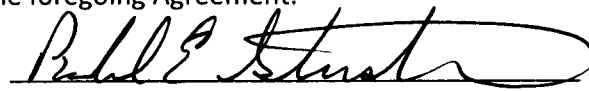
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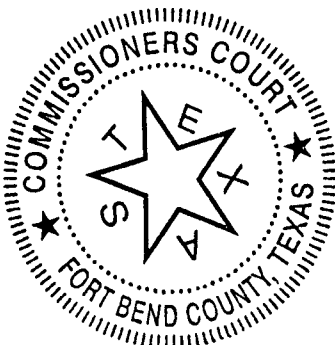
  
Dianne Wilson, County Clerk

VICE PRESIDENT  
Title  
10/3/12  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ 41,046.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

  
Robert Ed Sturdivant, County Auditor



# EXHIBIT A

(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.

**Safeware Inc.**

By: Thomas Nairn

Name: Tommy Nairn  
Title: Vice President of Operations

Remit To Address:  
3200 Hubbard Rd.  
Landover Md. 20785-2005

Telephone No.: 301-683-1234  
Facsimile No.: 301-683-1200  
E-mail Address: tnairn@safewareinc.com  
Date: October 1, 2012

**Fort Bend County**

By: Robert E. Hebert

Name: Robert E. Hebert  
Title: County Judge

Bill To Address:  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Date: 10-9-2012

## **Safeware Inc. Device Supply and Maintenance Agreement**

This agreement is made by and between Safeware Inc.,("S.I.") 3200 Hubbard Road, Landover, MD 20785 and, Fort Bend County, 307 Fort Street, Richmond TX 77469 this the 1<sup>st</sup> day of October , 2012

**1. Preliminary Statement.** S.I. is engaged in the business of supplying, calibrating and maintaining portable gas detection units. Fort Bend County desires to engage S.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 S.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 S.I. in its business generally, including without limitation various training methods or tools (the "S.I. Materials"). Fort Bend County acknowledges and agrees that all ownership rights in and to the S.I. Materials shall be the sole and exclusive proprietary property of S.I.

**4. S.I. Warranties.** S.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. Fort Bend County Warranties.** Fort Bend County agrees to defend, indemnify and hold harmless S.I., its affiliates and their respective present, former and future officers, managers, members, employees and agents, and their respective heirs, legal representatives, successors and assigns (collectively the "S.I. Indemnitees"), from and against any and all losses, costs, liabilities or expenses (including, without limitation, attorneys' fees) which any of the S.I. Indemnities may suffer, incur or sustain resulting from or arising out of any misrepresentation, breach of warranty or nonfulfillment of any covenant or agreement outside the scope of this agreement.

**6. Confidential Information.** Each party agrees that it will not disclose to any person any Confidential Information of the other party, 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 S.I. Materials shall be deemed the Confidential Information of S.I., except to the extent made public by S.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. Upon mutual agreement of the parties, the agreement may be renewed for two (2) consecutive years.

(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) S.I. shall have the right to terminate this Agreement immediately upon the failure of Fort Bend County to pay within thirty (30) days any amounts due and payable to it pursuant to the terms of this agreement as specified in "Fort Bend County Section 1 'Schedule A-1'".

(d) Fort Bend County shall have the right to terminate this Agreement following 30 days written notice if S.I. fails to provide the level of performance of maintenance, repair, calibration, and replacement of equipment as specified in "S.I. Section 2 of 'Schedule A-1'" (breach of performance standards) providing Fort Bend County notifies S.I. by certified mail via the U.S. Postal Service that a breach of performance standards has occurred and S.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 S.I. 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 S.I. pursuant to this Agreement. UNDER NO CIRCUMSTANCES SHALL S.I. BE LIABLE FOR INJURY OR DEATH DUE TO IMPROPER OR MISUSE OF SUPPLIED EQUIPMENT. UNDER NO CIRCUMSTANCES SHALL S.I. BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY UNKNOWN OR ANY OTHER PARTY IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF WHETHER OR NOT SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 9. Miscellaneous.

(a) Arbitration. Any dispute or claim arising out of or in relation to this Agreement or the interpretation, making, performance, breach or termination thereof that cannot be amicably resolved by the parties, shall be finally settled by binding arbitration under the rules of the American Arbitration Association as presently in force ("Rules") and each party will appoint an arbitrator, and the two thus selected to designate a third in accordance with said Rules. The arbitration will be held as promptly as possible in the State of Maryland. Judgment on the award rendered may be entered in any court having jurisdiction thereof. Any monetary award shall be in U.S. dollars and the arbitration shall be conducted in the English language. The arbitrator(s) will not award any exemplary or punitive damages. The losing party shall be responsible for paying all costs of the arbitration, including but not limited to reasonable legal expenses of the winning party. The parties may apply to any court of competent jurisdiction for temporary or permanent injunctive relief, without breach of this Section 10(a) and without any abridgment of the powers of the arbitrator.

(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 S.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 S.I. in the relationship of principal and agent, master and servant, partners or joint venturers. S.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. The validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland.

(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.

## **Schedule A-1**

### **1-Year Maintenance Agreement**

This Schedule is made pursuant to the terms of the Device Supply and Services Agreement dated October 15, 2012, between Fort Bend County and Safeware Inc. ("S.I.").

The following outlines the equipment and services contemplated under this agreement by S.I. in addition to the responsibilities assigned to Fort Bend County under this agreement.

#### **S.I.**

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

- (a) Four (4) Sensit Gold gas monitors with O2, LEL, CO and H2S with pump
- (b) Six (6) Sensit HXG3 gas monitors with LEL only
- (c) Twelve (12) QRAE II gas monitors with O2, LEL, CO and H2S with pump
- (d) Eight (8) MultiRae Plus gas monitors with O2, LEL, CO, H2S and PID with pump
- (e) Four (4) AreaRae gas monitors with O2, LEL, CO, H2S and PID with pump
- (f) One (1) RaeLink II Modem
- (g) Four (4) Qrae II Gas Monitors with O2, LEL, CO and H2S with pump (located at Technical Rescue Facility)

**2. List of Supplied Equipment:**

- (a) S.I. will provide up to seven (7) 116 liter cylinder of multi-gas mix per year for Rae monitors.
- (b) S.I. will provide up to two (2) 66 liter cylinder of multi-gas mixture per year for Rae monitors.
- (c) S.I. will provide up to two (2) 58 liter cylinder of isobutylene gas per year for Rae monitors.
- (d) S.I. will provide up to two (2) 116 liter cylinder of multi-gas mix per year for Sensit monitors.
- (e) S.I. will provide up to four (4) 44 liter cylinder of multi-gas mix per year for Sensit monitors.

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

- (a) Every 90 days S.I. will come on site to a specified location to inspect clean, and calibrate the instrumentation outlined in section 1a through 1g
- (b) S.I. will perform repairs for damage occurring during normal usage of equipment as listed in Section 1a through 1g.. Any repair for damage above \$700.00, excluding sensors, will be considered abuse and will be the responsibility of the owner.
- (c) S.I. will maintain all service records and provide a copy of those records to Fort Bend County upon request.
- (d) S.I. will be responsible for any and all sensor replacement, should a sensor fail to calibrate.
- (e) S.I. will provide loaner units in the event of unit failure between service intervals.
- (f) S.I. will provide 24/7 tech support in the event of an emergency.

#### **Fort Bend County**

- 1. Set-up Fee:** A Separate \$250.00 per unit set up fee will be assessed on (1.b) 6 each Sensit HXG3, (1.e) 4 each Area Rae, (1.f) 1 each Rae link and (1.g) 4 each Qrae II, (located at Technical Rescue facility), for year one of contract term. Total set up fee of \$3750.00 is in addition to the service fee as stated in section 2 below; "Monthly Fee for Equipment and Service". Set up fees for items listed in 1a., 1.c, and 1.d will be waived.

**2. Monthly Fee for Equipment and Service**

- (a) For a total of \$ 3108.00 per month due upon receipt of invoice (can be paid in an annual payment of \$37,296.00. A fee of 1 1/2 % per month will be charged to any invoice outstanding longer than 30 days.

**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.



	<u>Set up Cost</u>	<u>Annual Service Fee</u>	<u>Total cost</u>
Base year	\$3750.00	\$37,296.00	\$41,046.00
Option year 1	\$0	\$37,296.00	\$37,296.00
Option year 2	\$0	\$37,296.00	\$37,296.00

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

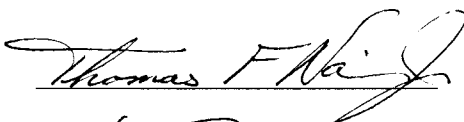
Fort Bend County  
307 Fort Street  
Richmond, TX 77469

 10-9-2012  
Authorized Signature / Date

County Judge Robert E. Hebert  
Title \_\_\_\_\_ Print Name \_\_\_\_\_

Title

This Agreement shall not be binding on Safeware, Inc, until signed by an officer of Safeware, Inc.

By: 

Title: VICE PRESIDENT

Date: 10/1/12

Territory Manager  
Al Pinner  
512-516-2181