

AGREEMENT

THIS AGREEMENT, made and entered into on this _____ day of _____ 2012, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), and the **KENTUCKY STATE POLICE** whose mailing address is 919 Versailles Road, Frankfort, Kentucky 40601 (hereinafter referred to as "CONTRACTOR").

WHEREAS, GOVERNMENT, has been awarded federal funds from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance on behalf of the United States Attorney Eastern District of Kentucky for implementation of the 2009 Project Safe Neighborhoods (Grant # 2010-GP-BX-0095);

WHEREAS, GOVERNMENT has been certified as fiscal agent for the herein described project;

WHEREAS, GOVERNMENT has issued Request for Proposals #51-2010 from law enforcement agencies for participation with various federal law enforcement agencies in a district-wide plan to combat gun and gang related criminal activity;

WHEREAS, CONTRACTOR has submitted a proposal requesting financial assistance for overtime and/or equipment in order to participate in the investigation of fire-arms related criminal activity in the Eastern District of Kentucky.

WHEREAS, the Project Safe Neighborhoods Advisory Committee has selected the CONTRACTOR to receive federal funds for local law enforcement overtime;

WHEREAS, the GOVERNMENT'S responsibility for ensuring compliance with all grant requirements necessitates a written agreement with the CONTRACTOR;

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, pursuant to grant requirements, the parties hereto agree as follows:

I. SCOPE OF SERVICES

A. Scope of Work

CONTRACTOR agrees to provide approximately 328 hours of law enforcement officer overtime to investigate gang-related activity in cooperation with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Office of Immigration and Customs Enforcement, and the Federal Bureau of Investigation, as provided for in the CONTRACTOR'S proposal, made a part of this agreement by reference.

CONTRACTOR agrees to coordinate work with the United States Attorney Eastern District of Kentucky and the Project Safe Neighborhood Task Force.

B. Reporting

The CONTRACTOR shall be responsible for submission of a semiannual progress report to the GOVERNMENT. The CONTRACTOR shall prepare semiannual progress reports that include narrative on the progress made in accomplishing the Scope of Work. Semiannual progress reports are due fifteen days after the end of the reporting periods, which are June 30 and December 31, for the life of the award.

C. Performance Monitoring

The GOVERNMENT may monitor the performance of the CONTRACTOR under the terms of the Agreement. Substandard performance as determined by the GOVERNMENT shall constitute noncompliance with the Agreement. If action to correct such substandard performance is not taken by the CONTRACTOR within a reasonable period of time after being notified by the GOVERNMENT, Agreement suspension or termination procedures will be initiated.

II. **TIME OF PERFORMANCE**

The term of this Agreement shall be July 1, 2012, through June 30, 2013.

III. **USE OF FEDERAL FUNDS**

Federal funds from the Bureau of Justice Assistance/Office of Justice Programs/ U.S. Department of Justice in the amount of \$23,027 is available to provide for approximately 328 overtime hours for law enforcement officers as described in the CONTRACTOR'S proposal, and for purchase of equipment as described in Exhibit A. CONTRACTOR understands that all overtime is exclusively for the purpose of combating gang and gun crime activity in the Eastern District of Kentucky. CONTRACTOR'S proposal is herein referenced and made a part of this Agreement.

IV. **PAYMENT**

It is expressly agreed and understood that the maximum amount to be paid by the GOVERNMENT under this Agreement shall not exceed \$23,027. The CONTRACTOR shall invoice the GOVERNMENT monthly for the reimbursement of actual expenditures incurred. CONTRACTOR'S invoice must be for the expenses in the approved budget. CONTRACTOR'S invoice must include copies of payroll registers and signed timesheets for personnel costs. CONTRACTOR must itemize and provide documentation of the costs of all fringe benefits for which it is requesting reimbursement.

V. **NOTICES**

All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as first set out herein.

VI. **ADMINISTRATIVE REQUIREMENTS**

A. Financial Management

The CONTRACTOR agrees to administer its program in accordance with the guidelines in the OJP Financial Guide, OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments," OMB Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments.," and OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Institutions." All regulations are made a part of this Agreement by reference.

B. Documentation and Record-Keeping

1. **Records to be Maintained**

The CONTRACTOR shall maintain all records required by the federal regulations specified in the OJP Financial Guide, OMB Circulars, and the Terms and Conditions of the Grant Award. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Financial records as required by the OJP Financial Guide.

2. Retention

In accordance with regulations, the CONTRACTOR shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records of non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

3. Close-outs

The CONTRACTOR'S obligation to the GOVERNMENT shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the GOVERNMENT) and determining the custodianship of records.

4. Audits and Inspections

All CONTRACTOR records with respect to any matters covered by this Agreement shall be made available to the GOVERNMENT, grantor agency, their designees or the federal government, at any time during normal business hours, as often as the GOVERNMENT or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the CONTRACTOR within 30 days after receipt by the CONTRACTOR. Failure of the CONTRACTOR to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of the future payments. The CONTRACTOR hereby agrees to have an annual agency audit conducted in accordance with current GOVERNMENT policy concerning CONTRACTOR audits and, as applicable, OMB Circular A-133. Copy of Audit shall be submitted to the GOVERNMENT within 30 days of completion.

C. Procurement

The CONTRACTOR shall procure all materials, property, or services in accordance with the requirements of the OJP Financial Guide and OMB Circular A-110.

VII. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The CONTRACTOR agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR chapter 60).

The CONTRACTOR agrees that no person shall on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, or any other basis prohibited by applicable law be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded

2. Nondiscrimination

The CONTRACTOR agrees to comply with Title VII of the Civil Rights Act of 1964 as amended. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The CONTRACTOR will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Section 504

The CONTRACTOR agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any federally assisted program.

B. Affirmative Action

1. Approved Plan

The CONTRACTOR agrees that it shall be committed to carry out pursuant to the GOVERNMENT'S specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. The GOVERNMENT shall provide Affirmative Action guidelines to the CONTRACTOR to assist in the formulation of such program.

2. W/MBE

The CONTRACTOR will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The CONTRACTOR may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. EEO/AA Statement

The CONTRACTOR will, in all solicitations or advertisements for employees placed or on behalf of the CONTRACTOR, state that it is an Equal Opportunity or Affirmative Action employer.

4. Subcontract Provisions

The CONTRACTOR will include the provisions of Paragraphs VII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors. CONTRACTOR shall also obtain written certification from all its subcontractors that they are in compliance with Executive Order 12549 on Debarment and Suspension.

C. Privacy

CONTRACTOR agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. CONTRACTOR further agrees to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.

VIII. GENERAL CONDITIONS

- A. The CONTRACTOR agrees to comply with the requirements of OJP Financial Guide and also agrees to comply with all other applicable federal, state, and local laws, regulations, and policies governing the operation of hereindescribed grant-supported services.
- B. The CONTRACTOR agrees to be responsible (in the manner and to the extent permitted by law) for all lawfully proven claims, losses, actions, and expenses (including legal expenses), arising from the CONTRACTOR'S performance of the Agreement, pursuant to the provisions and limitations of and in the manner and to the extent provided by KRS 44.072-44.160.
- C. The CONTRACTOR shall provide Workers' Compensation insurance coverage for all its employees involved in the performance of this Agreement.
- D. This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and the CONTRACTOR.
- E. This Agreement, in accordance with 28 CFR 66.43 can be terminated if CONTRACTOR fails to comply with any term of the award. This Agreement may be terminated for convenience in accordance with 28 CFR 66.44 upon written notice by the GOVERNMENT.
- F. GOVERNMENT and the CONTRACTOR each binds himself and his partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the Agreement.
- G. Prohibited Activity

The CONTRACTOR is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

H. Drug Free Workplace

The CONTRACTOR shall administer a policy designed to ensure that the CONTRACTOR is free from the illegal use, possession, or distribution of drugs or alcohol by its employees and beneficiaries.

I. Assignability

The CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of the GOVERNMENT thereto; provided, however, that claims for money due or to become due to the GOVERNMENT under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the GOVERNMENT.

J. Subcontracts

a. Approvals

The CONTRACTOR shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GOVERNMENT prior to the execution of such agreement.

b. Monitoring

The CONTRACTOR will monitor all subcontracted services on a regular basis to assure compliance with this Agreement. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The CONTRACTOR shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The CONTRACTOR shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

K. Hatch Act

The CONTRACTOR agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

L. Conflict of Interest

The CONTRACTOR agrees to abide by the provisions of 45 CFR 74.42 with respect to conflicts of interest, and covenants that it will maintain written standards of conduct governing the performance of its employees engaged in the administration of this Agreement.

M. Lobbying

The CONTRACTOR hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly; and
- d. Lobbying Certification - Paragraph d

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

N. Copyright

If this Agreement results in any copyrightable material or inventions, the GOVERNMENT and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

O. Religious Organization

The CONTRACTOR agrees that funds provided under this Agreement will not be used for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with federal regulations.

P. Suspension and Debarment

The CONTRACTOR certifies, in accordance with Executive Order 12549 (Debarment and Suspension February 18, 1986) that to the best of its knowledge and belief, that it, its principals, and its subcontractors:

Are not presently debarred, suspended, proposed for debarment, declared negligible, or voluntarily excluded from covered transactions or contract

by and Federal department or agency for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended or any other federal law;

- a. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- b. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (a) of this certification; and
- c. Have not within a three-year period preceding this proposal had one or more public (Federal, State, or local) transactions or contracts terminated for cause or default.

IN WITNESS WHEREOF, the parties executed this Agreement the day, month, and year above written.

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

Jim Gray, Mayor

ATTEST:

Clerk of Urban County Council

KENTUCKY STATE POLICE

BY: _____
Authorized Signature

Printed Name

EXHIBIT A

Kentucky State Police Drug Enforcement Special Investigations East Branch

2010 PSN Investment Justification

| | |
|--------------------------------------|---|
| Investment Heading: | Project Safe Neighborhoods Grant FY2010 |
| Applicant Organization: | Kentucky State Police |
| Investment Name: | Gang/DTO Investigation Overtime/Equipment |
| Investment Amount: | \$23,027.00 |
| Investigative Overtime Funds: | \$10,000.00 |
| Investigative Equipment: | \$13,027.00 |

I. Background

Area of Operations:

Eastern District of Kentucky

Points of contact for organization:

Rodney Brewer
Commissioner, Kentucky State Police
919 Versailles Rd.
Frankfort, KY 40601

Primary Point of Contact for management of the project(s):

Eric Walker
Captain, Kentucky State Police Drug Enforcement Special Investigations Branch
5751 Briar Hill Rd. Bldg. #1
Lexington, KY 40516
(859) 293-4240

Ownership or Operation

Kentucky State Police Drug Enforcement Special Investigations Branch

Important Features

The Kentucky State Police has jurisdiction throughout the Commonwealth of Kentucky and coordinates drug and gang related investigative efforts of the Kentucky State Police and of both local and county officers that investigate under the direction and authority of the Kentucky State Police as sworn KSP Drug Task Force Officers.

EXHIBIT A

The Kentucky State Police Drug Enforcement Special Investigations East (KSP DESI East) Branch conducts day to day undercover operations within the Commonwealth of Kentucky, and more specifically within the eastern half of the state. These undercover operations are most often conducted in a covert manner which is imperative to successful intelligence gathering, and more importantly, evidence collection for the successful prosecution of undercover narcotics investigations. These investigations often include; but are not limited to, mid to upper level poly-drug organizations. The specific purposes of these investigations are to disrupt aforementioned drug trafficking organizations (DTO's) and prosecute individuals involved in all aspects of illegal narcotic sales activities throughout the Commonwealth of Kentucky. During the course of these narcotics investigations, the use of specialized covert recording equipment is imperative to ensure quality evidence is collected to document illegal trafficking activities. In addition to officer testimony, combinations of high quality audio, video and other surveillance technology must be utilized for the successful prosecution of every case presented for state or federal prosecution.

In 2010, an investigation was conducted by KSP DESI East with assistance from its local and federal partners which resulted in the successful prosecution of 55 defendants, many of which were involved in a large scale, poly-drug organization. During the course of this particular investigation, a number of equipment issues and deficiencies were identified. Some of the initial obstacles faced were that of outdated, non-functioning, covert recording equipment. Shortfalls of outdated equipment technology and capabilities resulted in several cases having to be more intensely investigated because of multiple equipment failures. These equipment failures resulted in a decrease in investigative efficiency, an expensive increase in the total number of man hours committed to investigating the DTO, and an avoidable increased outlay of funds required for the purchases of illegal narcotics and weapons as physical evidence purchases.

II. Funding Budget Justification

The availability of PSN funding for overtime and specialized covert recording equipment will greatly enhance the current capabilities of the KSP DESI East Branch. The Project Safe Neighborhoods Task Force's funding recommendation with an equipment allocation, as a whole, will facilitate enhanced evidence collection that will ultimately result in: more prosecutorial success, reduction in man hours required per investigation thereby resulting in the ability to conduct more investigations, and providing increased officer safety and safety of cooperating witnesses.

EXHIBIT A

III. Funding and Implementation Plan

| 2010 Project Safe Neighborhoods Grant - <u>Overtime Proposal</u> | | |
|---|----------|--------------|
| Investigative Overtime Funds | Subtotal | \$ 10,000.00 |

2010 Project Safe Neighborhoods Grant - Equipment Proposal

| Item | Cost | Qty. | TOTAL |
|-------------------------------------|-------------------|------|-------------|
| Keyless Entry A/V Key Fob Recorder | \$317.00 | 1 | \$317.00 |
| Raven Recorder | \$6500.00 | 1 | \$6500.00 |
| Color Pinhole Camera Kit with Audio | \$310.00 | 1 | \$310.00 |
| Body A/V Deluxe System | \$1000.00 | 1 | \$1000.00 |
| GPS Tracker Systems | \$1000.00 | 2 | \$2000.00 |
| GPS Concealment | \$900.00 | 1 | \$900.00 |
| Water Bottle Concealment | \$600.00 | 1 | \$600.00 |
| Hat Concealment | \$600.00 | 1 | \$600.00 |
| UL-Versa Camera | \$400.00 | 1 | \$400.00 |
| UL-B&W Versa Camera | \$400.00 | 1 | \$400.00 |
| | Subtotal | | \$13,027.00 |
| | Total Grant Award | | \$23,027.00 |

IV. Timeline for Investment Implementation

| Days | Objectives |
|-------|---|
| 1-10 | Bids for equipment will be sent out. |
| 11-25 | Equipment bids will be reviewed and selected for project. |
| 25-60 | Delivery of equipment. |
| 60-90 | Equipment placed into service. |