



Contract Number: CTN-FN-14-42
Effective Date: 6-27-13
Term Date: 1-31-19
Cost: 346,272. -
Revenue: 346,272. -
Total: NTE:
Action:
Renewal By:
Term: 11-1-18
Reviewed by: 1-31-19

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: September 10, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Equipment Lease-Purchase Agreement between Rural/Metro Corporation and Pima County for payment of \$5,771.20 monthly lease payments for 60 months for total revenue of \$346,272.

Rural/Metro Corporation is an Arizona corporation which provides emergency services to a large section of Pima County either directly or on behalf of several fire districts. Rural/Metro is participating in the Pima County Wireless Integrated Network (PCWIN), through a separate Interoperability Agreement with Pima County by which Rural/Metro will be paying monthly subscription fees for all radios connecting to the PCWIN system.

The County has entered into IGAs with other jurisdictions and has provided radios and equipment at no cost by using bond proceeds to purchase the equipment. Because Rural/Metro is a private entity, this agreement requires that company to pay the County for the equipment. This item is an agreement to sell the necessary equipment to Rural/Metro through a lease-purchase agreement. The radios were originally purchased using General Fund monies and the lease payments will be made to reimburse the General Fund.

Rural/Metro is part of a group of corporations nationally which have filed for Chapter 11 Bankruptcy protection. The County Attorney's Office has advised Finance that the Lease-Purchase Agreement may be entered into as part of the debtor's ongoing operations during the reorganization.

CONTRACT NUMBER (If applicable): CTN-FN-14-42

STAFF RECOMMENDATION(S):

Finance recommends the approval of the Equipment Lease-Purchase Agreement.

CORPORATE HEADQUARTERS: Scottsdale, AZ

FILED 2013 SEP 10 PM 03:14
Pima County Recorder's Dept

*OK for
Agenda
9/10/13*

8/28/13

*To: CHH - 8-28-13 By [Signature]
CoB - 8-29-13*

*Addendum
(1)*

Agenda 9-10-13

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: ____ and/or REVENUE TO PIMA COUNTY: \$ 346,272

FUNDING SOURCE(S): _____

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

| | | | | |
|--|--|-----|---|----|
| | | YES | X | NO |
|--|--|-----|---|----|

Board of Supervisors District:

| | | | | | | | | | | | |
|---|--|---|--|---|--|---|--|---|--|-----|---|
| 1 | | 2 | | 3 | | 4 | | 5 | | All | X |
|---|--|---|--|---|--|---|--|---|--|-----|---|

IMPACT:

IF APPROVED:

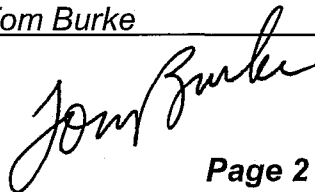
Rural/Metro Corporation will be able to acquire the radios and equipment needed to participate in the Pima County Wireless Integrated System and enhance public safety in the areas served by Rural/Metro.

IF DENIED:

Rural/Metro Corporation would need to find other means to purchase the equipment needed to participate in the PCWIN system or would not be able to participate.

DEPARTMENT NAME: Finance and Risk Management

CONTACT PERSON: Tom Burke TELEPHONE NO.: 724-3030



| | |
|---|--|
| CONTRACT | |
| NO. <u>CTN-FN-14000000000000000042</u> | |
| AMENDMENT NO. _____ | |
| This number must appear on all invoices, correspondence and documents pertaining to this contract. | |

**Rural/Metro Corporation and Pima County
EQUIPMENT LEASE - PURCHASE AGREEMENT**

This Equipment Lease-Purchase Agreement (the "Agreement") is made and entered on this 27 day of June, 2013, by and between the County of Pima, Arizona ("Lessor") and Rural/Metro Corporation, an Arizona corporation ("Lessee") (collectively referred to as the "Parties"). The Parties agree as follows:

RECITALS:

- A. Lessor and multiple other jurisdictions within the Pima County are jointly participating in the Pima County Wireless Integrated Network (PCWIN) designed to deploy and operate a regional public safety voice communications network and improve public safety radio interoperability.
- B. Lessee desires to participate in the PCWIN network. In order to participate in the PCWIN network, Lessee will need certain equipment identified below.
- C. Lessee has requested to lease and purchase this equipment from Lessor under the terms set forth in this Agreement.

AGREEMENT:

- 1. **EQUIPMENT:** Lessor hereby leases to Lessee the equipment identified in Exhibit A hereto (the "Equipment").
- 2. **LEASE TERM:** The lease will commence upon delivery of the Equipment ("Commencement Date"), with the first lease payment due on the first day of the next full month (the "Rent Commencement Date"), and shall continue for a term of five (5) years terminating on the fifth anniversary of the Commencement Date, but not later than January 31, 2019 (the "Lease Term").
- 3. **LEASE PAYMENTS:** Lessee agrees to pay to Lessor as rent for the Equipment the amount of \$5,771.20 ("Rent") each month in advance on the first day of each month for sixty (60) months commencing on the Rent Commencement Date at: Pima County Finance, Revenue Management Division, 33 N. Stone Avenue, Mailstop: DT-BAB6-401, Tucson, AZ 85701, (address for rent payment) or at any other address designated by Lessor. Lessee acknowledges that Lessee, as a PCWIN subscriber, will also be responsible for quarterly payments of subscription fees per radio for ongoing connection to PCWIN, which subscription fees are not included within this Agreement. Any Rent payment not received on or before its due date will bear interest at the rate of 10% per annum. The obligations of Lessee to make Rent payments and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any defects, malfunctions, breakdowns or infirmities in the equipment or any accident, condemnation or unforeseen circumstances, unless caused by Lessor.

4. **PURCHASE AGREEMENT:** The parties agree that upon expiration of the Lease Term, Lessor will transfer all right, title and interest in the Equipment to Lessee, and Lessee shall thereafter own and retain the Equipment. The parties agree and acknowledge that the total rent payable throughout the term of the Agreement represents a \$313,370.83 fair market value of the Equipment together with interest at the rate of four percent (4%) per annum. The parties agree to cooperate in the execution of an Assignment And Bill Of Sale, substantially in the form attached hereto as Exhibit B, and any other associated documentation reasonably required regarding the lease and purchase.
5. **POSSESSION AND SURRENDER OF EQUIPMENT:** Lessee shall be entitled to possession of the Equipment on the Commencement Date of the Agreement. As set forth in Section 4 of this Agreement, upon the expiration of the Lease Term, Lessee shall own and maintain possession of the Equipment. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Equipment from any cause whatsoever, unless caused by Lessor. No such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rent payments or to perform any other obligation under this Agreement.
6. **USE OF EQUIPMENT:** Lessee shall only use the Equipment for its intended purpose. Lessee will comply with all laws, rules, ordinances, statutes and orders regarding the use, maintenance of storage of the Equipment. Lessee shall be responsible for repair or replacement of equipment that has been damaged due to use by Lessee, physical, liquid, and/or chemical damage, accidents, physical abuse or misuse caused by Lessee or force majeure and/or fire damage while in the possession of Lessee,. Lessee shall be required to compensate Lessor for any such damage or any service costs for evaluating whether such equipment is capable of repair as well as the cost of replacing the Equipment if necessary ("Replacement Costs").
7. **CONDITION OF EQUIPMENT AND REPAIR:** Lessee or Lessee's agent will inspect the Equipment upon Commencement of the Agreement and acknowledge that the Equipment is in good and acceptable condition.
8. **DISCLAIMER OF WARRANTIES. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE EQUIPMENT OR AGMNST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.**
9. **MANUFACTURER WARRANTY.** Upon or prior to commencement of this Agreement Lessor will provide Lessee a copy of the Manufacturer Warranty of the Equipment. Lessor acknowledges and agrees that Lessee shall constitute an original end user of Equipment and

shall benefit from any applicable manufacturer warranty, including all express limited warranties, as an original end user and a limited third party beneficiary. Accordingly, in the event of damage or loss covered by any manufacturer warranty, Lessor will cooperate with Lessee to exercise any such warranty rights. Lessee shall be entitled to pursue any resulting warranty claim against the manufacturer or other appropriate party.

- 10. MAINTENANCE, DAMAGE AND LOSS:** Lessee will, at Lessee's sole expense, keep and maintain the Equipment clean and in good working order and repair during the Lease Term. In the event the Equipment is lost or damaged beyond repair, Lessee shall pay to Lessor the then applicable remaining present value of all future Rent payments of the Equipment assuming a four percent (4%) discount rate; in addition, the obligations of this Agreement shall continue in full force and effect through the Lease Term. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Equipment.
- 11. DEFAULTS:** If Lessee fails to perform or fulfill any financial obligation under this Agreement, Lessor may notify Lessee that it is in default of the Agreement. Subject to any statute, ordinance or law to the contrary, Lessee shall have thirty (30) days from the date of written notice of default by Lessor to cure the default. In the event Lessee does not cure a default, Lessor may at Lessor's option (a) cure such default and the cost of such action may be added to Lessee's financial obligations under this Agreement; or (b) declare Lessee in default of the Agreement. In the event of default, Lessor may, as permitted by law, re-take possession of the Equipment. For any amount for which Lessee is in default, Lessee shall pay, as additional rent, interest on the amount due at the rate of ten percent (10%) per annum. Notwithstanding anything to the contrary, Rent as set forth in Paragraph 3 is due and payable without demand and without a period to cure the default before additional interest begins to accrue.
- 12. INSURANCE:** Lessee shall be responsible to maintain insurance on the Equipment with losses payable to Lessor against fire, theft, collision, and other such risks as are appropriate and specified by Lessor in an amount at least equal to the then applicable remaining present value of all future Rent payments of the Equipment assuming a five percent (5%) discount rate. Upon request by Lessor, Lessee shall provide proof of such insurance.
- 13. ENCUMBRANCES, TAXES AND OTHER LAWS:** Lessee shall keep the Equipment free and clear of any liens or other encumbrances, and shall not permit any act where Lessor's title or rights may be negatively affected. Lessee shall be responsible for complying with and conforming to all laws and regulations relating to the possession, use or maintenance of the Equipment. Furthermore, Lessee shall promptly pay all taxes, fees, licenses and governmental charges, together with any penalties or interest thereon, relating to the possession, use or maintenance of the Equipment.
- 14. LESSOR'S REPRESENTATIONS:** Lessor represents and warrants that it has the right to lease and sell the Equipment as provided in this Agreement and that Lessee shall be entitled to quietly hold and possess the Equipment, and Lessor will not interfere with that right as long as Lessee pays the Rent in a timely manner and performs all other obligations under this Agreement.

15. INDEMNITY: Except when caused by the acts, omissions or negligence of Lessor, Lessee will indemnify, protect and hold Lessor harmless for, from and against any liens, damages, losses, or liability claims or expenses (including reasonable attorneys' fees) which result from any activities of Lessee, its agents or employees or which arise out of Lessee's use of the Equipment or out of any breach of Lessee's obligations, warranties and representations to Lessor as contained in this Agreement.

16. MISCELLANEOUS:

16.1. In the event that any term or provision of the Agreement is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the Agreement shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

16.2. The waiver by any Party of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

16.3. Any notice, consent or other communications ("Notice") required or permitted under this Agreement shall be in writing and either delivered in person, or, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed with confirmed receipt as follows:

Pima County: Pima County Finance, Revenue Management Division

Address: 130 W. Congress St, 6th Floor

Tucson, AZ 85701

Telephone: 520-724-3930

Fax: 520-770-4173

Rural/Metro: Division General Manager

Address: 3759 N. Commerce Drive

Tucson, AZ 85705

Telephone: 520-407-4303

Fax: 520-407-4302

With a copy to:

Rural/Metro Corporation

Attn: General Counsel

9221 E. Via de Ventura

Scottsdale, AZ 85258

Telephone: 480-606-3229

Notices shall be deemed received at the time it is personally served, on the day received as confirmed by any commercial air courier or express services, or if mailed, upon the date that registered or certified mail confirms that it was delivered. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either Party may change its mailing address or the person to receive Notice by notifying the other Party as provided in this paragraph.

- 16.4. No term or provision of this Agreement is intended to be, nor shall be, for the benefit of any person not a Party to this Agreement, and no such person shall have any right or cause of action hereunder.
- 16.5. The Parties agree that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a provision of this Agreement is for any reason declared invalid, illegal or unenforceable, that declaration shall not affect the remaining provisions of this Agreement.
- 16.6. This Agreement shall be governed by the laws of the State of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Pima County, Arizona.
- 16.7. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 16.8. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other oral and written representation, understandings or agreements relating to the subject matter hereof. This Agreement may be amended only in writing signed by both of the Parties.
- 16.9. The parties acknowledge and warranty that the persons executing this Agreement has the authority to execute the Agreement on behalf of the party from they are representing.

**THIS CONTRACT IS SUBJECT TO
THE PROVISIONS OF A.R.S. § 82-011"**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

RURAL/METRO

PIMA COUNTY

By



Name: Tom Brandhuber

Title: Division General Manager

Date: June 27 2013

By: _____

Name: _____

Title: _____

Date: _____

5

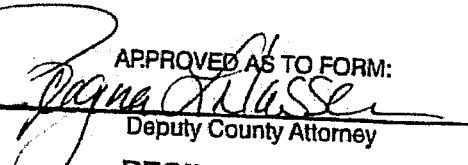

APPROVED AS TO FORM:
Deputy County Attorney
REGINA NASSEN

EXHIBIT A
SCHEDULE OF EQUIPMENT

| Equipment Make | Quantity |
|--|-----------------|
| Motorola APX6000XE: Model H98UCF9PW6N | 36 |
| Impress XE Remote Speaker Microphone | 21 |
| Motorola APX7000XE: Model H98UCF9PW6N | 16 |
| Model XE Remote Speaker Microphone | 8 |
| Batteries NNTN8092 | 98 |
| IMPRES Single Unit Charger WPLN 7080 | 52 |
| Model Motorola APX6500 | 54 |
| Motorola High Tier APX 7500 Digital Mobile – Remote Control Station | 2 |
| Motorola Basic APX 6500 Digital Mobile – Remote Control Station | 1 |

EXHIBIT B

ASSIGNMENT AND BILL OF SALE

TO BE COMPLETED ONLY AFTER FINAL PAYMENT OF RENT

COUNTY OF PIMA, ARIZONA ("Seller"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, paid to it by **RURAL/METRO CORPORATION**, an Arizona corporation ("Buyer"), hereby sells, transfers, assigns, sets over and delivers to the Buyer all of its rights, title and interest in each of the items of "Equipment" as defined in Section 1 of the Equipment Lease & Purchase Agreement, dated _____, 2013, by and among the Seller and Buyer (the "Agreement"). The provisions of this Assignment and Bill of Sale are subject, in all respects, to the terms and conditions of the Agreement and all of the representations and warranties, covenants and agreements of the parties thereto contained therein, all of which shall survive the execution and delivery of this Assignment and Bill of Sale.

IN WITNESS WHEREOF, Seller has executed this Assignment and Bill of Sale as of the _____ day of _____ 2018.

BUYER

SELLER

RURAL/METRO CORPORATION

COUNTY OF PIMA, ARIZONA

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: Chief Financial Officer

Date: _____

Date: _____