

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 05/24/2023

Contract/Lease Control #: C18-2641-AP

Procurement#: SINGLE SOURCE

Contract/Lease Type: AGREEMENT

Award To/Lessee: INFAX, INC.

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 08/01/2023

Expiration Date: 07/31/2024

Description of: DATA FEED AGREEMENT

Department: AP

Department Monitor: STAGE

Monitor's Telephone #: 850-651-7160

Monitor's FAX # or E-mail: TSTAGE@MYOKALOOSA.COM

Closed:

Cc: BCC RECORDS

**PROCUREMENT/CONTRACT/LEASE
INTERNAL COORDINATION SHEET**

Procurement/Contract/Lease Number: <u>C18-2041-RP</u>		Tracking Number: <u>4913-23</u>	
Procurement/Contractor/Lessee Name: <u>Irfa</u>		Grant Funded: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
Purpose: <u>Flightnew Data Feed agreement Renewal</u>			
Date/Term: <u>One year</u>		1. <input type="checkbox"/> GREATER THAN \$100,000	
Department #: <u>4202</u>		2. <input type="checkbox"/> GREATER THAN \$50,000	
Account #: <u>540900</u>		3. <input checked="" type="checkbox"/> \$50,000 OR LESS	
Amount: <u>\$10,220.00</u>			
Department: <u>Airport</u>		Dept. Monitor Name: <u>Sto K</u>	

Purchasing Review	
Procurement or Contract/Lease requirements are met: <u>[Signature]</u>	Date: <u>4-24-23</u>
Purchasing Manager or designee: _____	DeRita Mason, Erin Poole, Amber Hammonds

2CFR Compliance Review (if required)	
Approved as written: <u>no [Signature]</u>	Grant Name: _____
Grants Coordinator: _____	Suzanne Ulloa
Date: _____	

Risk Management Review	
Approved as written: <u>see email attached</u>	Date: <u>4-24-23</u>
Risk Manager or designee: _____	Lydia Garcia

County Attorney Review	
Approved as written: <u>see email attached</u>	Date: <u>5-04-23</u>
County Attorney: _____	Lynn Hoshihara, Kerry Parsons or Designee

Department Funding Review	
Approved as written: _____	Date: _____

IT Review (if applicable)	
Approved as written: _____	Date: _____

DeRita Mason

From: Odessa Cooper-Pool
Sent: Monday, April 24, 2023 2:59 PM
To: DeRita Mason
Cc: Kerry Parsons; Jacqueline Matichuk; Odessa Cooper-Pool; Lynn Hoshihara
Subject: FW: Single Source Renewals - INFAX
Attachments: C18-2642-AP Okaloosa Basic SSA 2023-2024.pdf; C18-2641-AP Okaloosa Flightview 2023-2024.pdf

Hello DeRita,

The attached agreement for INFAX, INC. is approved by Risk Management for insurance purposes with the following corrections.

Infax – Flightview XML Data Feed Agreement

Terms and Conditions

Pg. 6 : Certificate Holder - Okaloosa County BCC and delivered to Okaloosa County BCC

Thanks,
Odessa

From: DeRita Mason <dmason@myokaloosa.com>
Sent: Monday, April 24, 2023 1:39 PM
To: Lynn Hoshihara <lhoshihara@myokaloosa.com>
Cc: Parsons, Kerry <KParsons@ngn-tally.com>; Jacqueline Matichuk <jmatichuk@myokaloosa.com>; Odessa Cooper-Pool <ocooperpool@myokaloosa.com>
Subject: FW: Single Source Renewals - INFAX

Good afternoon,
Please review and approve the attached.
Thank you,

DeRita Mason



DeRita Mason, CPPO, CPPB, NIGP-CPP
Purchasing Manager
Okaloosa County Purchasing Department
5479A Old Bethel Road

DeRita Mason

From: Parsons, Kerry <KParsons@ngn-tally.com>
Sent: Wednesday, May 24, 2023 11:02 AM
To: Allyson Oury; DeRita Mason
Cc: Lynn Hoshihara; Suzanne Ulloa; Kimberly Lyle
Subject: RE: Single Source Renewals - INFAX

These are approved as revised for legal purposes.

Kerry A. Parsons, Esq.

**Nabors
Giblin &
Nickerson**

1500 Mahan Dr. Ste. 200
Tallahassee, FL 32308
T. (850) 224-4070
kparsons@ngn-tally.com

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From: Allyson Oury <aoury@myokaloosa.com>
Sent: Tuesday, May 16, 2023 3:35 PM
To: DeRita Mason <dmason@myokaloosa.com>; Parsons, Kerry <KParsons@ngn-tally.com>
Cc: lhoshihara@myokaloosa.com; Suzanne Ulloa <sulloa@myokaloosa.com>; Kimberly Lyle <klyle@myokaloosa.com>
Subject: RE: Single Source Renewals - INFAX

Good afternoon,

The contractor has accepted all of our requested additions and made a couple revisions based on comments. Everything is still in tracked changes. Please let me know if this meets with legal approval.

Thanks!

Allyson Oury, CPA
Airports Chief Financial Officer
Okaloosa County

From: DeRita Mason <dmason@myokaloosa.com>
Sent: Tuesday, May 16, 2023 1:12 PM
To: Allyson Oury <aoury@myokaloosa.com>; 'Parsons, Kerry' <KParsons@ngn-tally.com>
Cc: Lynn Hoshihara <lhoshihara@myokaloosa.com>; Suzanne Ulloa <sulloa@myokaloosa.com>
Subject: RE: Single Source Renewals - INFAX

Okay, thank you.



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Infax - Flightview XML Data Feed Agreement Terms and Conditions

WHEREAS Okaloosa County on behalf of its Airport, (hereinafter, "CUSTOMER") has purchased an **INFAX Software Service for Flightview XML Data Feed**.

NOW, THEREFORE, in consideration of the following mutual promises, covenants, and conditions, the parties do hereby agree as follows:

1. **INFAX SCOPE:** INFAX will provide Software configuration for a WebFIDS Data Push, as well as a Flightview Interface License and Flightview XML Data Feed to allow for real-time flight information to be displayed on the Destin-Fort Walton Beach Airport website.

2. **CUSTOMER RESPONSIBILITIES:** CUSTOMER is responsible for complying with the following:

- a. Provide Infax with remote access to the Destin-Fort Walton Beach Airport FIDS Server.
- b. Ensure that your website provider incorporates the information provided by Infax into your website including search capabilities, creative development, etc.

3. **FEE:** The annual fee for the Flightview XML data feed is \$10,420.00. The fee may be increased should the Agreement be renewed. Such increase would be placed in any renewal document. All current fees must be paid in order for services to be rendered under this agreement.

4. **LENGTH OF AGREEMENT:** This agreement is for one year beginning August 1, 2023 and expiring July 31, 2024. Upon expiration this agreement may be extended if agreed to by both parties in writing in increments of one year periods at the option of INFAX and CUSTOMER. CUSTOMER understands that the renewal will be at the prices, terms, and conditions then in effect.

5. CANCELLATION AND/OR DEFAULT UNDER THIS AGREEMENT:

Should any invoice under this agreement be unpaid for more than 45 days from due date, CUSTOMER's coverage under this agreement may be cancelled upon written notice from INFAX. INFAX may cancel this agreement upon 30 days written notice to the CUSTOMER prior to the end of any monthly period. Customer may cancel this agreement with written notice to INFAX 30 days prior to any annual invoice date. If third-party software or data feeds are included in this support agreement, cancellation will be subject to terms of the provider, not INFAX. A CUSTOMER who cancels their agreement or who has their agreement cancelled as a result of a breach of this agreement may at a later time renew the agreement and receive benefits of the agreement upon acceptance by INFAX of the payment of the monthly fee for the agreement in effect at the time of renewal. If CUSTOMER does not pay the amounts due hereunder, breaches any other terms of this agreement, ceases doing business as a going concern, has a petition filed by or against it under any of the provisions of the Bankruptcy Code, makes an assignment for the benefit of creditors, or attempts an informal arrangement or composition with creditors, or if a receiver or any officer of the court is appointed to have control of any property, INFAX, in addition to any other legal remedies it may have, may terminate this agreement effective upon written notice. Further, Both parties may terminate this agreement effective upon written notice if the hardware is modified, damaged, or altered or serviced by other than employees or

CONTRACT: C18-2641-AP
INFAX, INC.
DATA FEED AGREEMENT
EXPIRES: 07/31/2024



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Authorized agents of INFAX. FURTHERMORE IT IS EXPRESSLY UNDERSTOOD BY THE PARTIES SUBJECT TO THIS AGREEMENT THAT AFTER CANCELLATION, DEFAULT, OR BREACH OF ANY OF THE CONDITIONS UNDER ANY OF THE TERMS OF THIS AGREEMENT, REINSTATEMENT OF THIS AGREEMENT MUST BE APPROVED BY INFAX.

6. **INVOICING:** The fee due hereunder shall be invoiced in advance.

7. **CONTINGENCIES:** INFAX shall not be responsible for failure to render service due to causes beyond its control, including but not limited to, work stoppages, fires, civil disorders, riots, rebellions, acts of God, and similar occurrences.

8. GENERAL:

A. **TAXES:** CUSTOMER agrees to pay all taxes, including state and local sales or excise taxes, however designated, levied or based on the service charges pursuant to this agreement.

B. **EQUIPMENT OPERATORS:** CUSTOMER shall provide trained equipment operators.

C. **AVAILABILITY OF SERVICE:** The services covered by this agreement are available only at locations within the United States and its possessions.

D. **NOTICES:** All notices provided for under this agreement shall be as follows: to CUSTOMER, at the billing address as shown in Exhibit 1; to INFAX at Corporate Office.

E. **ASSIGNMENT:** Customer cannot assign this agreement without the express written consent of INFAX.

F. **HEADINGS:** The headings and titles of this agreement are inserted only for convenience and shall not affect the interpretation or construction of any of the provisions of this agreement.

G. **GOVERNING LAW:** This agreement shall be governed and construed according to the laws of the State of Florida.

H. **EFFECTIVE DATE:** This agreement shall be effective upon written acceptance by INFAX at its corporate headquarters.

9. **DISCLAIMER:** Other than the obligations of INFAX expressly set forth herein, INFAX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. INFAX SHALL NOT BE RESPONSIBLE FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM THE USE OR PERFORMANCE OF THE SYSTEM OR THE LOSS OR USE OF THE SYSTEM OR ACCESSORIES ATTACHED THERETO.

10. **CHANGE OF LOCATION:** In the event that CUSTOMER shall move the SYSTEM, CUSTOMER must notify INFAX and INFAX must approve the new installation site in order for this agreement to remain in full force and effect.

11. **PUBLIC RECORDS.** Any record created by either party in accordance with this Contract shall be retained and maintained in accordance with the public records law, Florida Statutes, Chapter 119. Contractor must comply with the public records laws, Florida Statute chapter 119, specifically Contractor must:

- a. Keep and maintain public records required by the County to perform the service.
- b. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119 Florida Statutes or as otherwise provided by law.



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- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
- d. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the public agency, upon the request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT OKALOOSA COUNTY RISK MANAGEMENT DEPARTMENT 302 N. WILSON ST., CRESTVIEW, FL 32536 PHONE: (850) 689-5977 riskinfo@myokaloosa.com.

12. Prohibition Against Contracting with Scrutinized Companies. Pursuant to Florida Statutes Section 215.4725, contracting with any entity that is listed on the Scrutinized Companies that Boycott Israel List or that is engaged in the boycott of Israel is prohibited. Contractors must certify that the company is not participating in a boycott of Israel. Any contract for goods or services of One Million Dollars (\$1,000,000) or more shall be terminated at the County's option if it is discovered that the entity submitted false documents of certification, is listed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria after July 1, 2018.

Any contract entered into or renewed after July 1, 2018 shall be terminated at the County's option if the company is listed on the Scrutinized Companies that Boycott Israel List or engaged in the boycott of Israel. Contractors must submit the certification that is attached to this agreement as Exhibit 3. Submitting a false certification shall be deemed a material breach of contract. The County shall provide notice, in writing, to the Contractor of the County's determination concerning the false certification. The Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination was in error. If the Contractor does not demonstrate that the County's determination of false certification was made in error, then the County shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute Section 215.4725.

13. ENTIRE AGREEMENT: This agreement shall become effective only after execution by CUSTOMER and INFAX as indicated below and delivery of a fully executed copy to CUSTOMER. It is expressly understood that no other form of acceptance, verbal or written, will be valid or binding and that this agreement shall constitute the entire agreement between the parties with respect to its subject matter, irrespective of inconsistent or additional terms or conditions in CUSTOMER'S purchase orders, or in any other documents submitted to INFAX by CUSTOMER, or in any representations made by INFAX personnel.



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14. INDEPENDENT CONTRACTOR

Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All services shall be performed only by Contractor and Contractor's employees. Under no circumstances shall Contractor or any of Contractor's employees look to the County as his/her employer, or as partner, agent or principal. Neither Contractor, nor any of Contractor's employees, shall be entitled to any benefits accorded to the County's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation and other insurance as well as licenses and permits usual and necessary for conducting the services to be provided under this Contract.

15. THIRD PARTY BENEFICIARIES

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third party beneficiary under this Contract, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.



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INFAX, INCORPORATED

Signature: *Daniel L. McWilliams*

Name: Daniel L. McWilliams

Title: CFO

Date: 5/24/2023

CUSTOMER

Signature: *DeRita Mason*

Name: DeRita Mason

Title: Purchasing Manager

Date: 5-24-2023



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Flightview XML Data Feed Agreement Exhibit 1, Customer Information

Customer Name Okaloosa County

Service Address 1701 State Road 85 North, Suite 1

City Eglin AFB State FL Zip 32542-1498

Billing Address Same as above

City _____ State _____ Zip _____

Customer Contact Person Jamie Milton Phone 850-651-7160 ext. 1047

Customer Contact Person Carol Arrieta Phone 850-651-7160 ext. 1008

Period Covered by this Agreement: August 1, 2023 - July 31, 2024



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Flightview XML Data Feed Agreement

Exhibit 2, Insurance Requirements

All policies shall include Okaloosa County as an additional insured. In addition, all insurance policies shall include a clause to provide thirty (30) days written notice to County for any changes, cancellations or non-renewal of the policy, with the exception of ten (10) day notice for cancellation due to non-payment of premium. Prior to initial contract and annually upon renewal, Operator shall furnish County a certificate(s) of insurance evidencing all required insurance. The certificate(s) of insurance shall be delivered to Okaloosa County, 5479 A Old Bethel Road, Crestview, FL 32436 and a copy to the Destin Fort Walton Beach Airport, Airport Administration, 1701 State Road 85 North, Suite 1, Eglin Air Force Base, FL 32542-1498. On request, Operator shall deliver an exact copy of the policy or policies including all endorsements. See following.



Federal Provisions for Non-AIP Contracts

The following provisions apply to this Agreement:

GENERAL CIVIL RIGHTS PROVISIONS (49 USC § 47123)

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES (49 USC § 47123 and FAA Order 1400.11)

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq.*).

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:



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1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.