

CITY OF PORTLAND
PARTICIPATING AGREEMENT #3100XXXX
to
PUBLIC PROCUREMENT AUTHORITY MASTER AGREEMENT #1610
with **MUNICIPAL EMERGENCY SERVICES, INC.**
for
SELF-CONTAINED BREATHING APPARATUS (SCBA)

This Participating Agreement ("Agreement") adds the City of Portland (City) as a Participating Agency to the Master Agreement allowing the City to purchase from Public Procurement Authority ("Lead Agency") Agreement #1610: SELF-CONTAINED BREATHING APPARATUS (SCBA).

WHEREAS, on October 26, 2016, Public Procurement Authority, issued Request for Proposals ("RFP") #1605 seeking offers from qualified and responsible proposers to provide SELF-CONTAINED BREATHING APPARATUS (SCBA) (the "Goods") and MUNICIPAL EMERGENCY SERVICES, INC., hereinafter called "Contractor" submitted a proposal and was awarded a contract.

WHEREAS, the City may participate in, sponsor, conduct, or administer a joint cooperative procurement for the procurement of any Goods and may establish a contract or price agreement through a cooperative procurement pursuant to ORS 279A.200 through 279A.225 and City Code 5.33.160 Permissive Cooperative Procurements.

WHEREAS, this Agreement may refer to the City and Municipal Emergency Services, Inc. each as a "Party" or jointly as the "Parties."

NOW THEREFORE, in consideration of the mutual promises and consideration set forth below, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

DEFINITIONS

"Agreement" means the Participating Agreement between the Authorized Purchaser and the Contractor formed by the acceptance of the firm offer of the Contractor by Authorized Purchaser's issuance of a Purchase Order or other means of order to purchase Goods under this Participating Agreement.

"Authorized Bureau" means any bureau, office or agency within the City of Portland authorized to utilize this Agreement.

"Authorized Purchaser" means the City of Portland acting by and through its Bureau of Internal Business Services, that has chosen to purchase Goods under this Participating Agreement.

"Business Day" means a calendar day of twenty-four hours, excluding weekends and City recognized holidays, beginning at midnight and ending at midnight twenty-four hours later.

"Calendar Day" means a calendar day of twenty-four hours, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

"City" means City of Portland, a municipal corporation, by and through its bureaus, offices and agencies.

"Contractor" means the person, organization or firm entering into this Participating Agreement with the City for the purchase of Goods by the City as an Authorized Purchaser.

"Documentation" means user manuals and other written materials in any form that describe the features or functions of the Products and System, including but not limited to published specifications, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Agreement.

"Goods" means the Goods, materials, Equipment, Documentation, and services which may include installation, modification, training, and warranty services.

"Equipment" means any Goods, including hardware, machinery, mechanical and electronic devices, tool, component, or materials, of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the proper execution, installation and acceptable completion of the Project or any Amendment hereunder.

"Master Agreement" means the contract between the Contractor and the Lead Agency.

"Participating Agreement" means this Agreement between the Contractor and the City of Portland together with its attachments, as amended from time to time in accordance with this Agreement for the Goods described within the RFP and resulting Cooperative Agreement, at set prices with no guarantee of a minimum or maximum purchase.

"Services" means both ordinary and professional services as required to be performed by Contractor under this Agreement, including, but not limited to, warranty, maintenance and repair of Goods.

1. SPECIFICATIONS FOR SERVICES: Contractor shall provide Goods and Services for the City of Portland as described in the Master Agreement: SELF-CONTAINED BREATHING APPARATUS (SCBA), Attachment B. The prices shall be as identified in Attachment B.

2. EFFECTIVE DATE AND DURATION: The initial term of this Agreement shall begin on July 1, 2019 and shall expire on May 29, 2023, unless terminated sooner.

3. INCORPORATION OF COOPERATIVE AGREEMENT: The Master Agreement as now or later amended made by the original parties during the Term of this Participating Agreement, is incorporated as if set forth at length. All rights and obligations between the Parties are governed by the terms of the Master Agreement, as amended by this Participating Agreement. To the extent of a conflict in terms between the Cooperative Agreement and this Participating Agreement, the following descending order of precedence shall apply:

Amendment(s) to Participating Agreement

Attachment A – City Specific Terms and Conditions

Attachment B – Master Agreement (including RFP 1610, Contractor's Proposal, and Attachment A, Amendment 1 to the Master Agreement) including attachments B-1, B-2 etc – put the name of the document.

Attachment C – Federal Grant Requirements

4. CONSIDERATION: Interim payments shall be made to the Contractor according to Attachment B. The City agrees to pay Contractor a total not to exceed value of **\$3,500,000** for receipt and acceptance of the Goods as identified in Attachment B.

5. INVOICING: The City of Portland is a tax-exempt governmental agency. Tax exemption certificates will be furnished to Contractor upon request. Prices shall not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. Contractor shall submit billings in a timely fashion via electronic delivery to Michael.wong@portlandoregon.gov.

Contractor is at all times solely responsible for billing accuracy and timeliness; Contractor shall provide invoices for the Goods and Services to the City electronically. Invoices will not be processed for payment until receipt of a properly completed invoice and until all invoice items are received by the City. Invoice payment terms including any offered prompt payment discounts shall start on the date of the invoice.

6. INVOICE PAYMENT: Invoices submitted for payment shall identify the Goods, the unit price, quantity, extended price, order number and invoice total. Billing details may be agreed upon between the Parties. Invoicing for Goods and Services shall at all times be in arrears. Invoices for payment shall be provided to the City within ninety (90) Calendar Days of successful delivery of the billed Goods or Services.

Revised invoices or billing adjustments shall apply only to Goods and Services that can be verified by the City. Requests for such adjustments shall be submitted in writing to the City within six (6) months of acceptance of the Goods or Services, shall reference the original invoice in which the error was made, and contain the level of detail defined in billing detail above. The City shall pay undisputed portions of disputed or incorrect invoices where the City can easily identify the undisputed portion. Failure by the City to pay any portion of or the entire invoiced amount based on Contractor billing errors, Goods or Services that fail to comply with this Agreement, or disputed charges shall not constitute default under this Agreement.

It is the City's policy to pay its vendor invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, vendors shall execute the City's standard ACH Vendor Payment Authorization Agreement.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for Goods or Services rendered directly into vendor accounts with financial institutions. All payments shall be in United States currency.

7. DELIVERY: All Goods shall be delivered to the City of Portland, Oregon, FOB Destination. Should installation or assembly be required, offered prices shall include all costs associated with delivery, assembly, setup, and proper disposal of packaging material. If required by the City, Contractor shall furnish on-site or other Service assistance, as may be required at no additional cost to the City. Acceptance shall not relieve Contractor from its responsibility under any representation or warranty. Contractor must be prepared to deliver Services requested within 48 hours after receipt of an order.

Contractor shall immediately notify the City, in writing, if Service delivery cannot be completed as intended. Contractor shall email such notifications to: Michael Wong, Portland Fire and Rescue, at michael.wong@portlandoregon.gov.

Delivery as required shall not be considered complete until all discrepancies have been corrected. Goods not meeting Agreement specifications shall be provided to Contractor and shall be corrected at Contractor's expense. Goods shall be inspected prior to Acceptance according to the Master Agreement, Article 8 – Inspection and Rejection. Acceptance occurs when the City authorizes payment of the invoice. If the City makes a payment for Goods or Services prior to acceptance of all items on an invoice, or due to a latent defect, the payment does not grant a waiver of any representation or warranty by Contractor.

8. NOTICE: Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

CONTRACTOR:

Municipal Emergency Services, Inc.
Attn: Seth Cosans
7 Poverty Rd 85H Bennett Square
Southbury, CT 06488

CITY:

Portland Fire and Rescue
Attn: Michael Wong
55 Ash St
Portland, OR 97204

If either Party changes its address or if a Party's representative changes, the other Party shall be advised of such a change in writing, in accordance with this section.

9. CITY-SPECIFIC CONSTITUTIONAL AND STATUTORY REQUIREMENTS: City-specific terms and conditions are as set forth in Attachment A as attached hereto and incorporated by this reference.

10. ENTIRE AGREEMENT: This Agreement and its Attachments represent the entire Agreement between the Parties. This Agreement is a final, complete exclusive statement of the terms thereof, and supersedes and terminates any prior Agreement, understanding, or representation between the Parties with respect thereto, whether written or oral.

This Agreement may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

The Parties agree the City and Contractor may conduct this transaction, including any Agreement amendments, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, Contractor and City have caused this Agreement to be executed by their duly authorized representative(s), all on the day and year first above written.

MUNICIPAL EMERGENCY SERVICES, INC.

Signature

Date

Name

Title

PARTICIPATING AGREEMENT NUMBER: 3100XXXX

PARTICIPATING AGREEMENT TITLE: SELF-CONTAINED BREATHING APPARATUS (SCBA)

CITY OF PORTLAND SIGNATURES:

By: _____ Date: _____
Chief Procurement Officer

Approved as to Form:

By: _____ Date: _____
Office of City Attorney

ATTACHMENT A

CITY OF PORTLAND TERMS AND CONDITIONS

Attachment A to this Participating Agreement sets forth the constitutional and statutory requirements for the City of Portland ("Participating City"). To the extent there is any conflict between the terms and conditions set forth in the Participating Agreement and any other agreement, including the Master Agreement, the terms and conditions of this Participating Agreement will control as between the Contractor and the City of Portland and its Authorized Purchasers.

1. STATE OF OREGON STATUTORY REQUIREMENTS: Contractor shall abide by the legal requirements of ORS Chapters 279A and 279B, as applicable.

2. INSURANCE: Contractor shall obtain and maintain in full force at Contractor expense, throughout the duration of the Agreement and any warranty or extension periods, the required insurance identified below. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Agreement.

- A.** Workers' compensation insurance as required by ORS Chapter 656 and as it may be amended. Unless exempt under ORS Chapter 656, the Contractor and all subcontractors shall maintain coverage for all subject workers.
- B.** Commercial General Liability (CGL) insurance covering bodily injury, personal and advertising injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, Products and completed operations, in per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.
- C.** Automobile liability insurance with coverage of not less than \$1,000,000 each accident, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

Subcontractor(s). Contractor shall provide evidence that any subcontractor, if any, performing work or providing Goods or Services under the Contract has the same types and amounts of coverages as required herein or that the subcontractor is included under Contractor's policy.

Additional Insured. The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland, its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Contractor's Services and activities to be performed, or Goods to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

Notice of Cancellation or Change. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) Calendar Days written notice from Contractor or its insurer(s) to the City. Any failure to comply with the reporting provisions of this clause shall constitute a Material Breach of Contract and shall be grounds for immediate termination of this Agreement.

Certificate(s) of Insurance. As evidence of the insurance coverages required by this Agreement, Contractor shall provide proof of insurance through acceptable certificate(s) of insurance and additional insured endorsement form(s) to the City prior to the award of the Agreement if required by the procurement document, but in all events prior to Contractor's commencement of work under this Agreement. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Agreement shall be obtained from insurance companies acceptable to the City of Portland. Contractor shall pay for all deductibles and premiums. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

3. INDEPENDENT CONTRACTOR STATUS: The Contractor is engaged as an independent contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Contractor, its subcontractors, and their employees are not employees of the city and are not eligible for any benefits through the city including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

4. NO THIRD-PARTY BENEFICIARIES: Contractor and City are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

5. SUCCESSORS IN INTEREST: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and approved assigns.

6. SURVIVAL: The terms, conditions, representations, and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

7. COMPLIANCE WITH APPLICABLE LAW: Contractor warrants it is duly authorized to operate and do business in all places where it shall be required to do business under the Agreement; that it has obtained or shall obtain all necessary licenses and permits required in connection with the Agreement, and that it shall fully comply with all laws, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of this Agreement. Contractor warrants it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.

Contractor must comply with the laws regarding conducting business in the City of Portland before an award may be made and shall be responsible for the following:

- A. Certification as an EEO Affirmative Action Employer. Contractor must be certified prior to Agreement execution, as Equal Employment Opportunity Affirmative Action Employers as prescribed by Chapter 5.33.076 of the Code of the City of Portland.
- B. Non-Discrimination in Employee Benefits (Equal Benefits). Contractor must certify prior to Agreement execution, that they do not discriminate by policy or practice in the provision of employee benefits between employees with domestic partners and employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland.
- C. Business License Tax Account. Contractor license #686500 is in compliance with the City of Portland Business License Tax requirements as prescribed by Chapter 7.02 of the Code of the City of Portland and will be maintained throughout the duration of this Agreement.
- D. Notification to State of Nonresident Contractor. If the Agreement Price exceeds \$10,000 and Contractor is a Nonresident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Agreement Price, terms of payment, Agreement duration and such other information as the Department of Revenue may require before final payment can be made on the Agreement. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Agreement (PCC 5.33.695) http://www.oregon.gov/dor/docs/nonresident-bidder_800-020.pdf.
- E. Nondiscrimination. Contractor shall comply with all applicable federal, state and local laws and regulations. Contractor agrees it is currently in compliance with all tax laws. Contractor shall comply with Title VI of the Civil Rights Act of 1964 and its corresponding regulations.

8. GOVERNING LAW / VENUE: The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Agreement shall be brought in the appropriate court in Multnomah County, Oregon. By executing this Agreement, the Contractor agrees to in personam jurisdiction of the Oregon courts.

9. NONDISCRIMINATION: Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS Chapter 659.425, and all regulations and administrative rules established pursuant to those laws.

10. INDEMNITY: Contractor shall hold harmless, defend, and indemnify the City of Portland, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents including intentional acts, or of its subcontractors, agents or employees under this Agreement. Contractor is not responsible for any damages caused by the actions of the City, its officers, employees and agents.

11. SEVERABILITY: In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Agreement, or any provision of this Agreement, is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the Parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

12. FUNDING: In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the Contractor agrees to abide by any such decision including revision or termination of this Agreement.

13. ASSIGNMENT AND SUBCONTRACTING: This Agreement or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City of Portland. In the event of transfer without prior written consent, the purported transfer is void and the Contractor remains liable for performance of the Agreement. The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the prior written approval of the City. Notwithstanding City approval of a

subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

14. LIENS: Contractor shall not permit any claim to be filed or prosecuted against the City or any lien against the Goods purchased in connection with this Agreement and agrees to assume responsibility should such lien or claim be filed.

15. SUSTAINABLE PROCUREMENT: Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, the Contractor is encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or Goods that help to minimize the human health and environmental impacts of City operations. The Contractor is encouraged to incorporate environmentally preferable products or Goods into their work wherever possible. "Environmentally preferable" means products or Goods that have a lesser or reduced effect on human health and the environment when compared with competing products or Goods that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the Contractor for reuse/recycling.

16. FORCE MAJEURE: Neither City nor Contractor shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the party's reasonable control including, but not limited to: acts of God; fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control.

17. AMENDMENTS: All changes to this Agreement, including changes to the scope of work and Agreement amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. The City's Chief Purchasing Officer is authorized to execute amendments to this Agreement without the City's further approval, provided such amendments are in writing, signed by both Parties, and approved by the City Attorney's Office. Contractor understands that City employees have no actual or apparent authority to enter into amendments, except as may be specifically granted by the City Council to the Chief Procurement Officer, or to waive the approval of the City Attorney's office.

18. NON-WAIVER: No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

19. ACCESS TO RECORDS: The Contractor shall maintain professional accounting standards and on a current basis, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request.

20. EMPLOYEES NOT TO BENEFIT: No City employee or elected official of the City shall be admitted to any share or part of this Agreement or to any benefit that may arise there from; but, this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

21. CITY FURNISHED PROPERTY: No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Agreement.

22. NO PURCHASE REQUIREMENT/NON-EXCLUSIVE AGREEMENT: The City is not required to purchase any Goods or Services under this Agreement. Payment shall be made only for Goods actually ordered, delivered, and accepted, or Services performed, whether greater or less than the original estimated quantities. This Agreement does not establish an exclusive arrangement between the City and Contractor, and the City retains the right to purchase the same or similar Goods or Services from other providers.

23. EARLY TERMINATION OF PARTICIPATING AGREEMENT: The City and the Contractor, by mutual written agreement, may terminate the Agreement at any time. The City, on thirty (30) Calendar Days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion. Either the City or the Contractor may terminate this Agreement in the event of a material breach of the Agreement by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice of the breach and the Party's intent to terminate. If the Party has not entirely cured the breach within thirty (30) Calendar Days of the notice, then the Party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

24. SUSPENSION OF THE WORK: The City may at any time give notice in writing, by electronic mail, or by facsimile to the Contractor to suspend this Agreement. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall the Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

25. PAYMENT ON EARLY TERMINATION: In the event of termination under EARLY TERMINATION OF AGREEMENT hereof, the City shall pay the Contractor for Goods received in accordance with the Agreement prior to the termination date and delivered to City provided that such Goods conform to Agreement specifications and are of use to the City. In the event of termination under EARLY TERMINATION OF AGREEMENT hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor for Goods received or Services performed in accordance with the Agreement prior to the termination date subject to set off of excess costs, as provided for in Remedies. In the event of early termination all of the Contractor's work product shall become and remain property of the City. Under no circumstances shall the City be subject to early termination penalties for recurring charges for Goods or Services that the City cancels during the term of this Agreement.

26. REMEDIES: In the event of termination under EARLY TERMINATION OF AGREEMENT by the City due to a breach by the Contractor, then the City may purchase Goods outstanding from another contractor and the Contractor shall be liable for additional re-procurement costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Agreement, the remedies for a breach of this Agreement shall not be exclusive or construed as a limitation on any other equitable and legal remedies that are available or may become available.

27. PERMITS AND LICENSES: The Contractor shall be required to have or obtain, at their expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses), pertaining to the materials and Goods and Services to be provided.

28. WARRANTY: The Contractor shall guarantee its Goods to be free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty. The Contractor shall agree to Service and repair and/or immediately replace without charge (including freight inbound and outbound) to City Users any Goods or part thereof, which proves to be defective or fails within the warranty period as specified.

29. PROPRIETARY AND CONFIDENTIAL INFORMATION: The Oregon Public Records Law, ORS 192.410 et seq. strictly governs the City's treatment of requests for public records pertinent to this Agreement. Contractor agrees to hold in confidence any and all information of the City's it receives while performing any of the contemplated function of the Agreement and shall not disclose any such information to third parties.

30. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS: The Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures, logos, intellectual property, or other representatives of the City, except with prior specific written authorization from the City.

Contractor shall not issue any news release or public announcement pertaining to this Agreement or the project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum of three (3) Business Days' notice is required for a response to a request for such approval. If approval is not issued within the three (3) Business Day period, the request shall be deemed denied.

ATTACHMENT B MASTER AGREEMENT

Amendment to Self-Contained Breathing Apparatus (SCBA) Master Price Agreement

Product Category Adjustment

This Amendment to the Master Price Agreement is effective this 15 day of February, 2018 by the PUBLIC PROCUREMENT AUTHORITY ("Purchaser") and MUNICIPAL EMERGENCY SERVICES, INC/LAWMEN SUPPLY COMPANY ("Vendor") based upon the sales and/or service of Self-Contained Breathing Apparatus (SCBA).

RECITALS

WHEREAS, Purchaser and Vendor entered into a Master Price Agreement on or about May 29, 2017 and by this reference incorporated herein; and

WHEREAS, Vendor responded to Product Category 5 with net pricing in its Proposal; and

WHEREAS, Vendor included Fill Stations and Compressors in its Proposal; and

WHEREAS, Vendor has provided notice, on or about January 24, 2018, that Fill Stations and Compressors are miscategorized in Product Category 4 and are intended to be included in Product Category 5; and

WHEREAS, Vendor desires that the Master Price Agreement shall be amended in part to reflect the correct Product Category for Fill Stations and Compressors; and

NOW, THEREFORE, Purchaser and Vendor enter into the following:

AMENDMENT TO SELF-CONTAINED BREATHING APPARATUS (SCBA) MASTER PRICE AGREEMENT

1. Adjustment to Product Category Structure on Self-Contained Breathing Apparatus (SCBA). Attachment A to the Master Price Agreement shall be amended in its entirety to read as follows:

"ATTACHMENT A

to Master Price Agreement by and between VENDOR and PURCHASER.

PRODUCTS, SERVICES, SPECIFICATIONS AND PRICES

Vendor is offering the following products and discounts. In the event that a manufacturer makes concessions or gives special pricing, Vendor may be able to pass those savings on to the end user when

possible. Certain items may be eligible for trade in credit as well. These credits are determined by product, product conditions, as well as market conditions

PRODUCT CATEGORY	PRODUCT DESCRIPTION	MANUFACTURER	PERCENTAGE % OFF PUBLISHED LIST PRICE
1	SCBA sets NFPA	SCOTT SAFETY	25% off current list price
2	Face pieces	SCOTT SAFETY	25% off current list price
2	Communications and face piece options	SCOTT SAFETY	10% off current list price
1 & 4	Cylinders	SCOTT SAFETY	25% off current list price
4	Air cart	SCOTT SAFETY	10% off current list price
5	Fill stations and compressors	SCOTT SAFETY	Net price on price sheet
6	Rit PAKs	SCOTT SAFETY	10% off current list price
6	SKA PAKs	SCOTT SAFETY	10% off current list price
6	PAK Tracker	SCOTT SAFETY	10% off current list price
5	Service for SCBA air test	SCOTT SAFETY	\$110 per unit
5	Service for SCBA labor per hour for non-warranty	MES SCOTT Tech	\$70 per hour
5	Parts	SCOTT SAFETY	Net price on price sheet

Orders \$7500 and up shipping included and for any orders below that see freight chart.

Shipping Charges to Continental United States			
Subtotal Threshold	FedEx Ground	FedEx 2 nd Day Air	FedEx Next Day Air
\$0 – 24.99	\$4.95	\$16.95	\$28.95
\$25 – 49.99	\$6.95	\$18.95	\$30.95
\$50 – 99.99	\$11.95	\$23.95	\$35.95
\$100 – 149.99	\$13.95	\$25.95	\$37.95
\$150 – 199.99	\$15.95	\$27.95	\$39.95
\$200 – 249.99	\$17.95	\$29.95	\$41.95
\$250 – 299.99	\$19.95	\$31.95	\$43.95
\$300 – 349.99	\$21.95	\$33.95	\$45.95
\$350 – 399.99	\$23.95	\$35.95	\$47.95
\$400 – 449.99	\$25.95	\$37.95	\$49.95
\$450 – 499.99	\$27.95	\$39.95	\$51.95
\$500 – 749.99	\$29.75	\$41.95	\$53.95
\$750 – 999.99	\$31.95	\$43.95	\$55.95
Greater than \$1000	3%	5%	6%

Pricing contained in this Attachment A shall be extended to all NPPGov members upon execution of the Intergovernmental Agreement

2. **Full Force and Effect.** In each and every other respect, the terms of the Master Price Agreement, as amended, entered into between the parties on or about May 29, 2017 shall remain in full force and effect during the term of the agreement and the parties hereto hereby ratify said Master Price Agreement in its entirety, as if fully set out herein, along with the modifications identified herein.

IN WITNESS WHEREOF, the parties have hereto signed this Amendment on the day and year first above written.

PUBLIC PROCUREMENT AUTHORITY:



Date 2/15/18

BY: Tella Leighton
ITS: Contract Manager

MUNICIPAL EMERGENCY SERVICES, INC/LAWMEN SUPPLY COMPANY:



Date 2/15/18

BY: Seth Cosans
ITS: Contract Administrator

PUBLIC PROCUREMENT AUTHORITY
MASTER PRICE AGREEMENT

This Master Price Agreement is effective as of the date of the last signature below (the “Effective Date”) by and between the PUBLIC PROCUREMENT AUTHORITY, an Oregon public corporation under ORS Chapter 190 (“PPA” or “Purchaser”) Municipal Emergency Services, Inc./Lawmen Supply Company (“Vendor”).

RECITALS

WHEREAS, the Vendor is in the business of selling certain Self-Contained Breathing Apparatus (SCBA) and related products and services, as further described herein; and

WHEREAS, the Vendor desires to sell and the Purchaser desires to purchase certain products and related services all upon and subject to the terms and conditions set forth herein; and

WHEREAS, the Vendor was awarded the opportunity to complete a Master Price Agreement with the Public Procurement Authority as a result of its response to Request for Proposal No.1610 for Self-Contained Breathing Apparatus (SCBA); and

WHEREAS, Purchaser and Vendor desire to extend the terms of this Master Price Agreement to benefit other qualified government members of National Purchasing Partners, LLC dba FireRescue GPO, dba Law Enforcement GPO and dba NPPGov;

NOW, THEREFORE, Vendor and Purchaser, intending to be legally bound, hereby agree as follows:

ARTICLE 1 – CERTAIN DEFINITIONS

1.1 “Agreement” shall mean this Master Price Agreement, including the main body of this Agreement and Attachments A-F attached hereto and by this reference incorporated herein, including Purchaser’s Request for Proposal No. 1610 (herein “RFP”) and Vendor’s Proposal submitted in response to the RFP (herein “Vendor’s Proposal”) as referenced and incorporated herein as though fully set forth (sometimes referred to collectively as the “Contract Documents”).

1.2 “Applicable Law(s)” shall mean all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, orders and other governmental requirements of any kind.

1.3 “Employee Taxes” shall mean all taxes, assessments, charges and other amounts whatsoever payable in respect of, and measured by the wages of, the Vendor’s employees (or subcontractors), as required by the Federal Social Security Act and all amendments thereto and/or any other applicable federal, state or local law.

1.4 “Purchaser’s Destination” shall mean such delivery location(s) or destination(s) as Purchaser may prescribe from time to time.

1.5 “Products and Services” shall mean the products and/or services to be sold by Vendor hereunder as identified and described on Attachment A hereto and incorporated herein, as may be updated from time to time by Vendor to reflect products and/or services offered by Vendor generally to its customers.

1.6 “Purchase Order” shall mean any authorized written order for Products and Services sent by Purchaser to Vendor via mail, courier, overnight delivery service, email, fax and/or other mode of transmission as Purchaser and Vendor may from time to time agree.

1.7 “Unemployment Insurance” shall mean the contribution required of Vendor, as an employer, in respect of, and measured by, the wages of its employees (or subcontractors) as required by any applicable federal, state or local unemployment insurance law or regulation.

1.8 “National Purchasing Partners” or “(NPP)” is a subsidiary of two nonprofit health care systems. The Government Division of NPP, herein after referred to as “NPPGov”, provides group purchasing marketing and administrative support for governmental entities within the membership. NPPGov’s membership includes participating public entities across North America.

1.9 “Lead Contracting Agency” shall mean the Public Procurement Authority, which is the governmental entity that issued the Request for Proposal and awarded this resulting Master Price Agreement.

1.10 “Participating Agencies” shall mean members of National Purchasing Partners for which Vendor has agreed to extend the terms of this Master Price Agreement pursuant to Article 2.5 and Attachment C herein. For purposes of cooperative procurement, “Participating Agency” shall be considered “Purchaser” under the terms of this agreement.

1.11 “Parties” shall mean the Purchaser and Vendor.

ARTICLE 2 – AGREEMENT TO SELL

2.1 Vendor hereby agrees to sell to Purchaser such Products and Services as Purchaser may order from time to time by Purchase Order, all in accordance with and subject to the terms, covenants and conditions of this Agreement. Purchaser agrees to purchase those Products and Services ordered by Purchaser by Purchase Order in accordance with and subject to the terms, covenants and conditions of this Agreement.

2.2 Vendor may also add additional products and services provided that any additions reasonably fall within the intent of the original RFP specifications. Pricing on additions shall be equivalent to the percentage discount for other similar products. Vendor may provide a web-link with current product listings, which may be updated periodically, as allowed by the terms of the resulting Master Price Agreement. Vendor may replace or add product lines to an existing

contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products may be added to avoid competitive procurement requirements. PPA may reject any additions without cause.

2.3 All Purchase Orders issued by Purchaser to Vendor for Products during the term (as hereinafter defined) of this Agreement are subject to the provisions of this Agreement as though fully set forth in such Purchase Order. The vendor retains authority to negotiate above and beyond the terms of this agreement to meet the customer or vendor contract requirements. In the event that the provisions of this Agreement conflict with any Purchase Order issued by Purchaser to Vendor, the provisions of this Agreement shall govern. No other terms and conditions, including, but not limited to, those contained in Vendor's standard printed terms and conditions, on Vendor's order acknowledgment, invoices or otherwise, shall have any application to or effect upon or be deemed to constitute an amendment to or to be incorporated into this Agreement, any Purchase Order, or any transactions occurring pursuant hereto or thereto, unless this Agreement shall be specifically amended to adopt such other terms and conditions in writing by the parties.

2.4 Notwithstanding any other provision of this Agreement to the contrary, the Lead Contracting Agency shall have no obligation to order or purchase any Products and Services hereunder and the placement of any Purchase Order shall be in the sole discretion of the Participating Agencies. This Agreement is not exclusive. Vendor expressly acknowledges and agrees that Purchaser may purchase at its sole discretion, Products and Services that are identical or similar to the Products and Services described in this Agreement from any third party.

2.5 In case of any conflict or inconsistency between any of the Contract Documents, the documents shall prevail and apply in the following order of priority:

- (i) This Agreement;
- (ii) Vendor's Proposal; and
- (iii) The RFP.

2.6 Extension of contract terms to Participating Agencies:

- 2.6.1 Vendor agrees to extend the same terms, covenants and conditions available to Purchaser under this Agreement to Participating Agencies, that have executed an Intergovernmental Cooperative Purchasing Agreement ("IGA") as may be required by each Participating Agency's local laws and regulations, in accordance with Attachment C. Each Participating Agency will be exclusively responsible for and deal directly with Vendor on matters relating to ordering, delivery, inspection, acceptance, invoicing, and payment for Products and Services in accordance with the terms and conditions of this Agreement as if it were "Purchaser" hereunder. Any disputes between a Participating Agency and Vendor will be resolved directly between them under and in accordance with the laws of the State in which the Participating Agency exists. Pursuant to the IGA, the Lead Contracting Agency shall not incur any

liability as a result of the access and utilization of this Agreement by other Participating Agencies.

2.6.2 *This Solicitation meets the public contracting requirements of the Lead Contracting Agency and may not be appropriate under or meet Participating Agencies' procurement laws. Participating Agencies are urged to seek independent review by their legal counsel to ensure compliance with all local and state solicitation requirements.*

2.6.3 Vendor acknowledges execution of a Vendor Administration Fee Agreement with NPPGov, pursuant to the terms of the RFP.

2.7 Oregon Public Agencies are prohibited from use of products and services offered under this contract that are already provided by qualified nonprofit agencies for disabled individuals as listed on the Department of Administrative Service's Procurement List ("Procurement List") pursuant to ORS 279.835-.855. See www.OregonRehabilitation.org/qrf for more information. Vendor shall not sell products and services identified on the Procurement List (e.g., reconditioned toner cartridges) to Purchaser or Participating Agencies within the state of Oregon

ARTICLE 3 – TERM AND TERMINATION

3.1 The initial contract term shall be for three (3) calendar years from the effective date of this Agreement ("Initial Term"). Upon termination of the original three (3) year term, this Agreement shall automatically extend for up to three (3) successive one (1) year periods; (each a "Renewal Term"); provided however, that the Lead Contracting Agency and/or the Vendor may opt to decline extension of the MPA by providing notification in writing at least thirty (30) calendar days prior to the annual automatic extension anniversary of the initial term.

3.2 Either Vendor or the Lead Contracting Agency may terminate this Agreement by written notice to the other party if the other party breaches any of its obligations hereunder and fails to remedy the breach within thirty (30) days after receiving written notice of such breach from the non-breaching party.

ARTICLE 4 – PRICING, INVOICES, PAYMENT AND DELIVERY

4.1 Purchaser shall pay Vendor for all Products and Services ordered and delivered in compliance with the terms and conditions of this Agreement at the pricing specified for each such Product and Service on Attachment A, including shipping. Unless Attachment A expressly provides otherwise, the pricing schedule set forth on Attachment A hereto shall remain fixed for the Initial Term of this Agreement; provided that manufacturer pricing is not guaranteed and may be adjusted based on the next manufacturer price increase. Pricing contained in Attachment A shall be extended to all NPPGov, FireRescue GPO and Law Enforcement GPO members upon execution of the IGA.

4.2 Vendor shall submit original invoices to Purchaser in form and substance and format reasonably acceptable to Purchaser. All invoices must reference the Purchaser's Purchase

Order number, contain an itemization of amounts for Products and Services purchased during the applicable invoice period and any other information reasonably requested by Purchaser, and must otherwise comply with the provisions of this Agreement. Invoices shall be addressed as directed by Purchaser.

4.3 Unless otherwise specified, Purchaser is responsible for any and all applicable sales taxes. Attachment A or Vendor's Proposal (Attachment D) shall specify any and all other taxes and duties of any kind which Purchaser is required to pay with respect to the sale of Products and Services covered by this Agreement and all charges for packing, packaging and loading.

4.4 Except as specifically set forth on Attachments A and F, Purchaser shall not be responsible for any additional costs or expenses of any nature incurred by Vendor in connection with the Products and Services, including without limitation travel expenses, clerical or administrative personnel, long distance telephone charges, etc. ("Incidental Expenses").

4.5 Price reductions or discount increases may be offered at any time during the contract term and shall become effective upon notice of acceptance from Purchaser.

4.6 Notwithstanding any other agreement of the parties as to the payment of shipping/delivery costs, and subject to Attachments A, D, and F herein, Vendor shall offer delivery and/or shipping costs prepaid FOB Destination. If there are handling fees, these also shall be included in the pricing.

4.7 Unless otherwise directed by Purchaser for expedited orders, Vendor shall utilize such common carrier for the delivery of Products and Services as Vendor may select; provided, however, that for expedited orders Vendor shall obtain delivery services hereunder at rates and terms not less favorable than those paid by Vendor for its own account or for the account of any other similarly situated customer of Vendor.

4.8 Vendor shall have the risk of loss of or damage to any Products until delivery to Purchaser. Purchaser shall have the risk of loss of or damage to the Products after delivery to Purchaser. Title to Products shall not transfer until the Products have been delivered to and accepted by Purchaser at Purchaser's Destination.

4.9 New products that meet the scope of work may be added to the contract. Pricing shall be equivalent to the percentage discount for other products. Vendor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products may be added to avoid competitive procurement requirements.

ARTICLE 5 – INSURANCE

5.1 During the term of this Agreement, Vendor shall maintain at its own cost and expense (and shall cause any subcontractor to maintain) insurance policies providing insurance of the kind and in the amounts generally carried by reasonably prudent manufacturers in the industry, with one or more reputable insurance companies licensed to do business in Oregon and any other state or jurisdiction where Products and Services are sold hereunder. Such certificates of insurance shall be made available to the Lead Contracting Agency upon 48 hours notice. BY SIGNING THE AGREEMENT PAGE THE VENDOR AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF THIS MASTER PRICE AGREEMENT.

5.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the Lead Contracting Agency. The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Lead Contracting Agency under such policies. Vendor shall be solely responsible for the deductible and/or self-insured retention and the Lead Contracting Agency, at its option, may require Vendor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

5.3 Vendor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Vendor's employees engaged in the performance of the work or services, as well as Employer's Liability insurance. Vendor waives all rights against the Lead Contracting Agency and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Vendor pursuant to this agreement.

5.4 Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty-days (30-days) prior written notice to the Lead Contracting Agency.

ARTICLE 6 – INDEMNIFICATION AND HOLD HARMLESS

6.1 Vendor agrees that it shall indemnify, defend and hold harmless Lead Contracting Agency, its respective officials, directors, employees and agents (collectively, the "Indemnitees"), from and against any and all damages, claims, losses, expenses, costs, obligations and liabilities (including without limitation reasonable attorney's fees), suffered directly or indirectly by any of the Indemnitees to the extent of, or arising out of, (i) any breach of any covenant, representation or warranty made by Vendor in this Agreement, (ii) any failure by Vendor to perform or fulfill any of its obligations, covenants or agreements set forth in this Agreement, (iii) the negligence or intentional misconduct of Vendor, any subcontractor of Vendor, or any of their respective employees or agents, (iv) any failure of Vendor, its

subcontractors, or their respective employees to comply with any Applicable Law, (v) any litigation, proceeding or claim by any third party relating in any way to the obligations of Vendor under this Agreement or Vendor's performance under this Agreement, (vi) any Employee Taxes or Unemployment Insurance, or (vii) any claim alleging that the Products and Services or any part thereof infringe any third party's U.S. patent, copyright, trademark, trade secret or other intellectual property interest. Such obligation to indemnify shall not apply where the damage, claim, loss, expense, cost, obligation or liability is due to the breach of this Agreement by, or negligence or willful misconduct of, Lead Contracting Agency or its officials, directors, employees, agents or contractors. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. The indemnity obligations of Vendor under this Article shall survive the expiration or termination of this Agreement for two years

6.2 LIMITATION OF LIABILITY: IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INJURIES TO PERSONS OR TO PROPERTY OR LOSS OF PROFITS OR LOSS OF FUTURE BUSINESS OR REPUTATION, WHETHER BASED ON TORT OR BREACH OF CONTRACT OR OTHER BASIS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.3 The same terms, conditions and pricing of this Agreement may be extended to government members of National Purchasing Partners, LLC. In the event the terms of this Agreement are extended to other government members, each government member (procuring party) shall be solely responsible for the ordering of goods and services under this Agreement. A non-procuring party shall not be liable in any fashion for any violation by a procuring party, and the procuring party shall hold non-procuring parties or unrelated purchasing parties harmless from any liability that may arise from action or inaction of the procuring party.

ARTICLE 7 – WARRANTIES

Purchaser shall refer to Vendor's Proposal for all Vendor and manufacturer express warranties, as well as those warranties provided under Attachment B herein.

ARTICLE 8 - INSPECTION AND REJECTION

8.1 Purchaser shall have the right to inspect and test Products at any time prior to shipment, and within a reasonable time after delivery to the Purchaser's Destination. Products not inspected within a reasonable time after delivery shall be deemed accepted by Purchaser. The payment for Products shall in no way impair the right of Purchaser to reject nonconforming Products, or to avail itself of any other remedies to which it may be entitled.

8.2 If any of the Products are found at any time to be defective in material or workmanship, damaged, or otherwise not in conformity with the requirements of this Agreement

or any applicable Purchase Order, as its exclusive remedy, Purchaser may at its option and at Vendor's sole cost and expense, elect either to (i) return any damaged, non-conforming or defective Products to Vendor for correction or replacement, or (ii) require Vendor to inspect the Products and remove or replace damaged, non-conforming or defective Products with conforming Products. If Purchaser elects option (ii) in the preceding sentence and Vendor fails promptly to make the necessary inspection, removal and replacement, Purchaser, at its option, may inspect the Products and Vendor shall bear the cost thereof. Payment by Purchaser of any invoice shall not constitute acceptance of the Products covered by such invoice, and acceptance by Purchaser shall not relieve Vendor of its warranties or other obligations under this Agreement.

8.3 The provisions of this Article shall survive the expiration or termination of this Agreement.

ARTICLE 9 – SUBSTITUTIONS

Except as otherwise permitted hereunder, Vendor may not make any substitutions of Products, or any portion thereof, of any kind without the prior written consent of Purchaser.

ARTICLE 10 - COMPLIANCE WITH LAWS

10.1 Vendor agrees to comply with all Applicable Laws and at Vendor's expense, secure and maintain in full force during the term of this Agreement, all licenses, permits, approvals, authorizations, registrations and certificates, if any, required by Applicable Laws in connection with the performance of its obligations hereunder. At Purchaser's request, Vendor shall provide to Purchaser copies of any or all such licenses, permits, approvals, authorizations, registrations and certificates.

10.2 Purchaser has taken all required governmental action to authorize its execution of this Agreement and there is no governmental or legal impediment against Purchaser's execution of this Agreement or performance of its obligations hereunder.

ARTICLE 11 – PUBLICITY / CONFIDENTIALITY

11.1 No news releases, public announcements, advertising materials, or confirmation of same, concerning any part of this Agreement or any Purchase Order issued hereunder shall be issued or made without the prior written approval of the Parties. Neither Party shall in any advertising, sales materials or in any other way use any of the names or logos of the other Party without the prior written approval of the other Party.

11.2 Any knowledge or information which Vendor or any of its affiliates shall have disclosed or may hereafter disclose to Purchaser, and which in any way relates to the Products and Services covered by this Agreement shall not, unless otherwise designated by Vendor, be deemed to be confidential or proprietary information, and shall be acquired by Purchaser, free from any restrictions, as part of the consideration for this Agreement.

ARTICLE 12 - RIGHT TO AUDIT

Subject to Vendor's reasonable security and confidentiality procedures, Purchaser, or any third party retained by Purchaser, may at any time upon prior reasonable notice to Vendor, during normal business hours, audit the books, records and accounts of Vendor to the extent that such books, records and accounts pertain to sale of any Products and Services hereunder or otherwise relate to the performance of this Agreement by Vendor. Vendor shall maintain all such books, records and accounts for a period of at least three (3) years after the date of expiration or termination of this Agreement. The Purchaser's right to audit under this Article 12 and Purchaser's rights hereunder shall survive the expiration or termination of this Agreement for a period of three (3) years after the date of such expiration or termination.

ARTICLE 13 - REMEDIES

Except as otherwise provided herein, any right or remedy of Vendor or Purchaser set forth in this Agreement shall not be exclusive, and, in addition thereto, Vendor and Purchaser shall have all rights and remedies under applicable law, including without limitation, equitable relief. The provisions of this Article shall survive the expiration or termination of this Agreement.

ARTICLE 14 - RELATIONSHIP OF PARTIES

Vendor is an independent contractor and is not an agent, servant, employee, legal representative, partner or joint venturer of Purchaser. Nothing herein shall be deemed or construed as creating a joint venture or partnership between Vendor and Purchaser. Neither Party has the power or authority to bind or commit the other.

ARTICLE 15 - NOTICES

All notices required or permitted to be given or made in this Agreement shall be in writing. Such notice(s) shall be deemed to be duly given or made if delivered by hand, by certified or registered mail or by nationally recognized overnight courier to the address specified below:

If to Lead Contracting Agency:
Public Procurement Authority
25030 SW Parkway Ave.
Suite 330
Wilsonville OR 97070
ATTN: Heidi Arnold

If to Vendor:
Municipal Emergency Services, Inc./Lawmen Supply Company
7 Poverty Rd 85H Bennett Square
Southbury, CT 06488
ATTN: Seth Cosans

Either Party may change its notice address by giving the other Party written notice of such change in the manner specified above.

ARTICLE 16 - FORCE MAJEURE

Except for Purchaser's obligation to pay for products and services delivered, delay in performance or non-performance of any obligation contained herein shall be excused to the extent such failure or non-performance is caused by force majeure. For purposes of this Agreement, "force majeure" shall mean any cause or agency preventing performance of an obligation which is beyond the reasonable control of either Party hereto, including without limitation, fire, flood, sabotage, shipwreck, embargo, strike, explosion, labor trouble, accident, riot, acts of governmental authority (including, without limitation, acts based on laws or regulations now in existence as well as those enacted in the future), acts of nature, and delays or failure in obtaining raw materials, supplies or transportation. A Party affected by force majeure shall promptly provide notice to the other, explaining the nature and expected duration thereof, and shall act diligently to remedy the interruption or delay if it is reasonably capable of being remedied. In the event of a force majeure situation, deliveries or acceptance of deliveries that have been suspended shall not be required to be made upon the resumption of performance.

ARTICLE 17 - WAIVER

No delay or failure by either Party to exercise any right, remedy or power herein shall impair such Party's right to exercise such right, remedy or power or be construed to be a waiver of any default or an acquiescence therein; and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power. No waiver hereunder shall be valid unless set forth in writing executed by the waiving Party and then only to the extent expressly set forth in such writing.

ARTICLE 18 - PARTIES BOUND; ASSIGNMENT

This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties hereto, but it may not be assigned in whole or in part by Vendor without prior written notice to Purchaser which shall not be unreasonably withheld or delayed.

ARTICLE 19 - SEVERABILITY

To the extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is declared invalid or unenforceable, by judicial determination or otherwise, such provision shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of the Parties shall be construed and enforced accordingly.

ARTICLE 20 - INCORPORATION; ENTIRE AGREEMENT

20.1 All the provisions of the Attachments hereto are hereby incorporated herein and made a part of this Agreement. In the event of any apparent conflict between any provision set forth in the main body of this Agreement and any provision set forth in the Attachments, including the RFP and/or Vendor's Proposal, the provisions shall be interpreted, to the extent possible, as if they do not conflict. In the event that such an interpretation is not possible, the provisions set forth in the main body of this Agreement shall control.

20.2 This Agreement (including Attachments and Contract Documents hereto) constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes any and all prior written and oral agreements or understandings relating to such subject matter.

ARTICLE 21 - HEADINGS

Headings used in this Agreement are for convenience of reference only and shall in no way be used to construe or limit the provisions set forth in this Agreement.

ARTICLE 22 - MODIFICATIONS

This Agreement may be modified or amended only in writing executed by Vendor and the Lead Contracting Agency. The Lead Contracting Agency and each Participating Agency contracting hereunder acknowledge and agree that any agreement entered into in connection with any Purchase Order hereunder shall constitute a modification of this Agreement as between the Vendor and the Participating Agency. Any modification of this Agreement as between Vendor and any Participating Agency shall not be deemed a modification of this Agreement for the benefit of the Lead Contracting Agency or any other Participating Agency.

ARTICLE 23 - GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the state of Oregon or in the case of a Participating Agency's use of this agreement, the laws of the state in which the Participating Agency exists, without regard to its choice of law provisions.

ARTICLE 24 - COUNTERPARTS

This Agreement may be executed in counterparts all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year last written below.

PURCHASER:

Signature: Heidi Arnold

Printed Name: Heidi Arnold

Title: Contract Manager
Public Procurement Authority

Dated: May 29, 2017

VENDOR:

Signature: Seth Cosans #1610

Printed Name: Seth Cosans

Title: Contract Administrator
Municipal Emergency Services, Inc./Lawmen Supply Company

Dated: 5/28/17

ATTACHMENT A

to Master Price Agreement by and between VENDOR and PURCHASER.

PRODUCTS, SERVICES, SPECIFICATIONS AND PRICES

Vendor is offering the following products and discounts. In the event that a manufacturer makes concessions or gives special pricing, Vendor may be able to pass those savings on to the end user when possible. Certain items may be eligible for trade in credit as well. These credits are determined by product, product conditions, as well as market conditions

PRODUCT CATEGORY	PRODUCT DESCRIPTION	MANUFACTURER	PERCENTAGE % OFF PUBLISHED LIST PRICE
1	SCBA sets NFPA	SCOTT SAFETY	25% off current list price
2	Face pieces	SCOTT SAFETY	25% off current list price
2	Communications and face piece options	SCOTT SAFETY	10% off current list price
1 & 4	Cylinders	SCOTT SAFETY	25% off current list price
4	Air cart	SCOTT SAFETY	10% off current list price
4	Fill stations and compressors	SCOTT SAFETY	10% off current list price
6	Rit PAKs	SCOTT SAFETY	10% off current list price
6	SKA PAKs	SCOTT SAFETY	10% off current list price
6	PAK Tracker	SCOTT SAFETY	10% off current list price
5	Service for SCBA air test	SCOTT SAFETY	\$110 per unit
5	Service for SCBA labor per hour for non-warranty	MES SCOTT Tech	\$70 per hour
5	Parts	SCOTT SAFETY	Net price on price sheet

Orders \$7500 and up shipping included and for any orders below that see freight chart.

Shipping Charges to Continental United States			
Subtotal Threshold	FedEx Ground	FedEx 2 nd Day Air	FedEx Next Day Air
\$0 – 24.99	\$4.95	\$16.95	\$28.95
\$25 – 49.99	\$6.95	\$18.95	\$30.95
\$50 – 99.99	\$11.95	\$23.95	\$35.95
\$100 – 149.99	\$13.95	\$25.95	\$37.95
\$150 – 199.99	\$15.95	\$27.95	\$39.95
\$200 – 249.99	\$17.95	\$29.95	\$41.95
\$250 – 299.99	\$19.95	\$31.95	\$43.95
\$300 – 349.99	\$21.95	\$33.95	\$45.95
\$350 – 399.99	\$23.95	\$35.95	\$47.95
\$400 – 449.99	\$25.95	\$37.95	\$49.95
\$450 – 499.99	\$27.95	\$39.95	\$51.95
\$500 – 749.99	\$29.75	\$41.95	\$53.95
\$750 – 999.99	\$31.95	\$43.95	\$55.95
Greater than \$1000	3%	5%	6%

Pricing contained in this Attachment A shall be extended to all NPPGov members upon execution of the Intergovernmental Agreement.

ATTACHMENT B

to Master Price Agreement by and between VENDOR and PURCHASER.

ADDITIONAL SELLER WARRANTIES

To the extent possible, Vendor will make available all warranties from third party manufacturers of Products not manufactured by Vendor, as well as any warranties identified in this Agreement and Vendor's Proposal.

ATTACHMENT C

to Master Price Agreement by and between VENDOR and PURCHASER.

PARTICIPATING AGENCIES

The Lead Contracting Agency in cooperation with National Purchasing Partners (NPPGov) entered into this Agreement on behalf of other government agencies that desire to access this Agreement to purchase Products and Services. Vendor must work directly with any Participating Agency concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing, and payment. The Lead Contracting Agency shall not be held liable for any costs, damages, etc., incurred by any Participating Agency.

Any subsequent contract entered into between Vendor and any Participating Agency shall be construed to be in accordance with and governed by the laws of the state in which the Participating Agency exists. Each Participating Agency is required to execute an Intergovernmental Cooperative Purchasing Agreement (“IGA”), as set forth on the NPPGov web site, www.nppgov.com. The IGA allows the Participating Agency to purchase Products and Services from the Vendor in accordance with each Participating Agency’s legal requirements as if it were the “Purchaser” hereunder.

ATTACHMENT D

to Master Price Agreement by and between **VENDOR** and **PURCHASER**.

Vendor's Proposal

(The Vendor's Proposal is not attached hereto.)

(The Vendor's Proposal is incorporated by reference herein.)

ATTACHMENT E

to Master Price Agreement by and between VENDOR and PURCHASER.

Purchaser's Request for Proposal

(The Purchaser's Request for Proposal is not attached hereto.)

(The Purchaser's Request for Proposal is incorporated by reference herein.)

ATTACHMENT F

to Master Price Agreement by and between VENDOR and PURCHASER.

ADDITIONAL VENDOR TERMS OF PURCHASE, IF ANY.

ATTACHMENT C Federal Grant Requirements

This Agreement may be funded, in whole or in part, by Federal funds. In addition to other provisions required by the Federal agency or City, the following provisions shall be covenants of the Agreement, as applicable. These provisions shall be in addition to all other provisions in this Agreement and shall prevail over any conflicting terms.

- (A) **Administrative, contractual, or legal remedies.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, shall include the following provision: In the event of a breach of Contract terms by Contractor, the City may seek any remedies in this Contract, in law, or at equity. Additionally, the City may complete the project or the purchase itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the Project or purchase exceeds the amount the City would have paid Contractor to complete the Project under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.
- (B) **Termination for Cause and Convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. In the event of such termination, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all deliverables accepted by the City, or Services performed by Contractor and accepted by the City, through the effective date of the termination. Additionally, the City may terminate this Contract in the event of a breach of this Contract by Contractor. Prior to such termination, however, the City shall give Contractor written notice to cure the breach and of the City's intent to terminate. If Contractor has not entirely cured the breach within thirty (30) Calendar Days of the notice, then the City shall have the option to: (a) terminate this Contract by giving a written notice of termination, (b) seek any remedies in this Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (c) any combination thereof.
- (C) **Equal Employment Opportunity.** If this Contract meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, it shall incorporate the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (D) **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** In addition to State or Oregon Bureau of Labor and Industries (BOLI) prevailing wage law requirements, if this Contract is a prime construction contract in excess of \$2,000, Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must pay wages not less than once a week. A copy of the current prevailing wage determination issued by the Department of Labor has been included in the solicitation and is also separately available to Contractor upon request to the City. Award of the City contract or subcontract to Contractor is conditioned upon Contractor's acceptance of the wage determination. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Contractor and subcontractor are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. Contractor (or subcontractor) is on notice that all suspected or reported violations of these laws shall be reported to the Federal awarding agency.
- (E) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** In addition to other general provisions in the Contract, if this Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act and shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) **Rights to Inventions Made Under a Contract or Agreement.** As applicable, if this Contract is funded by a Federal "funding agreement," as defined under 37 CFR §401.2(a), then a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement" must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency, and if such contracting is allowed by the City.
- (G) **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** In addition to any applicable State and local environmental laws and regulations and/or provisions elsewhere in the Contract, if this Contract is in excess of \$150,000, then Contractor must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Contractor (or subcontractor) is on notice that the violations of these laws shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) **Debarment and Suspension (Executive Orders 12549 and 12689).** A party shall not be eligible for a contract award (see 2 CFR 180.220) if that party is listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMS guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189 and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. In entering into this Contract with the City, Contractor certifies that Contractor and its subcontractor(s) are not on the SAM Exclusions list; Further Contractor and any subcontractor(s) are on notice that inclusion on the SAM Exclusions list during the term of the Contract shall be a basis for material breach of the Agreement.
- (I) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** In addition to requirements City Code Chapter 2.12 *Regulation of Lobbying Entities*, Contractors that apply or bid for an award exceeding \$100,000 must file the required certification under the "Byrd Anti-Lobbying Amendment." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in

connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) **Compliance with 2 CFR §200.322 Procurement of recovered materials.** In addition to rules, regulations and policies providing for environmentally sound and sustainable procurement, Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.