

PURCHASE AGREEMENT # _____

This Agreement made and entered into this ____ of _____, 2020, by and between the City of Vancouver, a municipal corporation, under the laws of the State of Washington, hereinafter referred to as "City" and Municipal Emergency Services, Inc., hereinafter referred to as "Supplier", whose address is 3801 Fruit Valley Road, Ste C, Vancouver, WA 98660.

WHEREAS, the City desires to engage the Supplier to provide Self Contained Breathing Apparatus (SCBA) Equipment and Accessories and other related services for the Vancouver Fire Department as described in this agreement. Supplier has agreed to offer its goods and services to perform said work; and

WHEREAS, the Supplier has represented by entering into this Agreement and by its response to Request for Proposal # 2-20 (RFP) that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, to the standards required by City,

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

The City hereby agrees to engage the Supplier and the Supplier hereby agrees to perform, in a satisfactory and proper manner, as determined by City, the work hereafter set forth in connection with this Agreement:

1. Scope of Services.

Supplier agrees to provide SCBA equipment, training, and accessories as required by the RFP and the Supplier's proposal by reference made a part of this contract. This shall refer to all necessary components including, but not limited to, the following:

- Complete SCBA assembly:
 - Pack
 - Face piece assembly
 - Two (2) 45 minute capacity cylinders
- Rapid Intervention Team (RIT) pack:
 - First and second stage regulators
 - Face piece assembly
 - Emergency Breathing Support System (EBSS)
 - Universal Air Connection high pressure emergency airline hose
 - RIT bag
 - One (1) 60 minute capacity cylinder
- Supplied Air Respirator (SAR) System:
 - Supplied Air Respirator with ten (10) minute capacity escape cylinder
 - Supplied Air Respirator Kit (manifold/regulators/valves/connection to SCBA cylinders, etc.)
 - Supplied Air Respirator 200 foot hose lines

The Supplier must be able to deliver the SCBA equipment in the desired quantities between 30 and 90 days of the order placement.

The SCBA Equipment required by this contract shall be approved by NIOSH, under 42 CFR, Part 84 for chemical, biological, radiological, and nuclear protection (CBRN) and compliant with all requirements of the NFPA 1981, Standard on Open-Circuit SCBAs for Emergency Services, 2018 edition and NFPA 1982, Standard on Personal Safety Alert Safety Systems (PASS), 2018 edition.

This agreement is a purchase of professional services at the rates attached. Payment for these services shall not exceed \$1,353,870.26 unless authorized in writing by the City, according to section 14 of this Agreement. If additional time is needed, please refer to section 8 of this agreement. A written amendment must be attached.

2. Relation of Parties.

The Supplier, its sub Supplier, agents and employees are independent Suppliers performing professional services for City and are not employees of City. The Supplier, its subsupplier, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, pension, insurance, bonding or any other benefits afforded to City employees. The Supplier, subsupplier, agents and employees shall not have the authority to bind City in any way except as may be specifically provided herein.

3. E-Verify

Supplier shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. Supplier shall ensure all Supplier employees and any sub-supplier(s) assigned to perform work under this Agreement are eligible to work in the United States. Supplier shall provide verification of compliance upon City request. Failure by Supplier to comply with this subsection shall be considered a material breach.

4. Time of Performance.

The term of this contract shall be from March 1, 2020 through February 28, 2025.

5. Order of Precedence

Where there is a conflict among or between any of these documents, the controlling documents shall be the first listed in the following sequence: Amendments to this Agreement; this Agreement; Purchase Orders; Supplier's submitted proposal to RFP No. 2-20; and RFP No. 34-19.

6. General Requirements

The Supplier, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Vancouver City Charter, the Vancouver Municipal Code (VMC), and ordinance of the City of Vancouver; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

7. Purchase Order

Purchases will be authorized via valid Purchase Orders. Purchases shall correspond with the Purchase Order; any unauthorized advance or excess order is returnable at Contractor's expense.

8. Delays and Extensions of Time.

If the Supplier is delayed at any time in the progress of providing services covered by the Agreement, by any causes beyond Supplier's control, the time for performance may be extended by such time as shall be mutually agreed upon by Supplier and City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to City.

9. Compensation and Schedule of Payments.

City shall pay the Supplier at the rates indicated in the proposal, not to exceed the amount set forth in Section 1 for goods and services purchased under the terms of this Agreement. This is the maximum amount to be paid under this Agreement and it shall not be exceeded without City's prior written authorization in the form of a negotiated and executed supplemental agreement. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the project as set forth herein. The Supplier shall submit invoices to City covering goods and services. Payments to Supplier shall be made within thirty (30) days from submission of each invoice.

The City reserves the right to correct any invoices paid in error according to the rates set forth in this agreement. City and Supplier agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract/purchase order (PO) number given on the notice to proceed **must** be referenced on any invoice submitted for payment.

10. Ownership of Work Product.

Any and all work product prepared by the Supplier in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Agreement, the Supplier hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Supplier. Previously owned intellectual property of Supplier, and any know-how, methodologies or processes used by Supplier to provide the services or project deliverables under this Contract shall remain property of Supplier.

11. Termination for Convenience.

The City may terminate this contract for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon "notice of termination" given by the City.

12. Termination for Cause.

In the event the Supplier is, or has been, in violation of the terms of this Contract, including the Invitation to Bid, the City reserves the right, upon written notice to the Supplier, to cancel,

terminate, or suspend this contract in whole or in part for default. Termination shall be effected by serving a notice of termination on the Supplier setting forth the manner in which the Supplier is in default. The Supplier will be paid only the contract price for goods purchased in accordance with the manner of performance set forth in the Contract.

If it is later determined by the City that the Supplier had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Supplier, the City after setting up a new delivery or performance schedule, may allow the Supplier to continue work or treat the termination as a termination for convenience.

13. Opportunity to Cure.

The City at its sole discretion may in lieu of a termination allow the Supplier to cure the defect(s), by providing a "Notice to Cure" to Supplier setting forth the remedies sought by Owner and the deadline to accomplish the remedies. If the Supplier fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within the stated time, the Owner shall have the right to terminate this Agreement without any further obligation to the Supplier. Any such termination for cause shall not in any way operate to preclude the Owner from also pursuing all available remedies against the Supplier and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

14. Prices:

Proposed prices must be valid for one year from the effective date of this Agreement. Price adjustments may be requested for consideration each year thereafter; the City, at its sole discretion, may approve that request. Request for price increases shall be supported by the applicable Consumer Price Index- All Urban Consumers (Seattle-Tacoma-Bremerton) area for the immediate, previous four (4) quarters.

Supplier warrants that prices of materials set forth herein do not exceed those charged by the Supplier to any other customer purchasing the same under similar conditions and in like or similar quantities.

Unless otherwise specified herein, no additional charges by the Supplier will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers; return and re-stocking fees due to vendor error.

15. Performance of Work.

The Supplier shall have the authority to control and direct the performance and details of the work described herein. The Supplier agrees to comply with all relevant, federal, state and municipal laws, rules and regulations.

16. Liability and Hold Harmless.

Supplier agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of

whatsoever kind or nature (including patent infringement or copyright claims) to the extent arising out of, or in connection with, or incident to, the negligent performance or willful misconduct pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the City by an employee of Supplier or subsupplier or agent even if Supplier is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the concurrent negligence of both the City and the Supplier, such cost, fees and expenses shall be shared between the City and the Supplier in proportion to their relative degrees of negligence. Supplier specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Supplier provide the broadest scope of indemnity permitted by RCW 4.24.115. Supplier is an independent Supplier and responsible for the safety of its employees.

17. Insurance.

Commercial and General Liability Insurance:

The Supplier agrees to furnish the City with a current Certificate of Insurance on the standard "ACORD" with the coverage's listed below:

\$1,000,000.00 minimum/general liability per occurrence

\$2,000,000.00 minimum/general aggregate

\$1,000,000.00 minimum/automobile combined single limit (each accident)

City of Vancouver named as additional insured on the commercial general liability policy and an "additional insured" policy endorsement CG2012, CG2026 or equivalent must be included with the certificate of insurance

The certificate shall be made out to the City and be an original; no photocopies shall be accepted. The Certificate of Insurance shall provide the City be given 30 days advance notice of cancellation, non-renewal, or material change in coverage.

18. Notices.

All notices which are given or required to be given pursuant to this Agreement shall be hand delivered or mailed postage paid as follows:

City:

Anna Vogel
City of Vancouver
415 West 6th Street
P O Box 1995
Vancouver WA 98668-1995

Supplier:

Joshua Varner
Municipal Emergency Services, Inc
3801 Fruit Valley Rd, Suite C
Vancouver, WA 98660

19. Amendments.

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall

be mutually agreed upon between City and the Supplier and shall be incorporated in written amendments to this Agreement.

20. Scope of Agreement.

This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Agreement.

21. Clean Air Act and Federal Water Pollution Control Act.

Supplier must agree to 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). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

22. Byrd Anti-Lobbying Amendment.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Suppliers that apply or bid for an award of \$100,000 or more must file the required certification. 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.

23. Procurement of Recovered Materials.

Supplier must 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 during 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.

24. Warranties.

All goods and services shall be warranted against defects or faulty workmanship and materials by the Supplier for one (1) year following inspection and acceptance of the products by the City. Warranty shall include all costs incurred, including shipping, for repair or replacement except that which is damaged by misuse or abuse. This one-(1) year warranty shall in no way affect normal extended or manufacturer's warranty exceeding this one (1) year period. Supplier warrants that all goods and services furnished under this Contract are new, conform strictly to the

specifications herein, are merchantable, good workmanship, free from defect, comply with all applicable safety and health standards established for such products, all goods are properly packaged, and all appropriate instructions or warnings are supplied. If a defect is found, a component failure occurs, or workmanship is found to cause failure, the Vendor shall replace the product at their own expense, including shipping charges. Any replacement product will be warranted for one (1) year from the date it is delivered. All implied and expressed warranty provisions of the Uniform Commercial Code are incorporated into this Contract.

25. Non-Discrimination and Equal Employment Opportunity.

During the term of this Contract, the Supplier agrees as follows: The Supplier will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

26. Ratification.

Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

27. Governing Law/Venue.

This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. The Supplier shall have legal authority to enter into this agreement and be at least 18 years of age. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

[SIGNATURES ON FOLLOWING PAGE]

DATED this _____ day of _____, 2020.

CITY OF VANCOUVER, a municipal
corporation

Supplier:
Municipal Emergency Services, Inc.

By: _____
Eric Holmes, City Manager

Title: _____

Attest:

Date: _____

Natasha Ramras, City Clerk

Approved as to form:

Jonathan J. Young, City Attorney