

CITY OF ROCKLIN EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement ("Agreement") is entered into this ___ day of June, 2019, by and between the City of Rocklin, a municipal corporation organized and operating under the laws of the State of California and North American Rescue LLC, a limited liability company, with its principal place of business in Greer, South Carolina ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is interested in purchasing certain equipment for Fire suppression personnel, and Contractor submitted a quote for the purchase of the equipment, attached hereto as Exhibit "A."

B. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Contractor shall provide the required equipment to City.

AGREEMENT

NOW, THEREFORE, the Parties hereto hereby agree as follows:

Section 1. DEFINITIONS.

A. "Equipment" means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Contractor as specified in Exhibit "A", attached hereto and incorporated herein by reference.

B. "Delivery Date(s)" means that date or dates upon which the Equipment is to be delivered to City, ready for approval, testing and/or use.

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit "A" specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City's written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit "A" as equal to any particular standard, City will decide the question of equality. When requested by City, Contractor will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Equipment.

Section 3. INSPECTIONS, TESTS AND RETURNS.

A. City shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained

in Exhibit "A", then without prejudice to any other rights or remedies, City may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof. Items deemed defective or non-conforming shall be returned to Contractor in new condition, in original packaging to the extent feasible.

- B. No re-stocking fees shall be charged for return of non-conforming or defective items.

Section 4. WARRANTY.

A. Limited Warranty. Contractor warrants the materials and equipment identified in Exhibit "A," are free from manufacturing defects in materials and workmanship. This warranty extends to the City, as the original owner.

B. For any breach of the warranty contained in Section 4.A, Contractor will, promptly after receiving notice from City, at the option of City, and at Contractor's own expense and without cost to City:

1. Repair the defective Equipment;
2. Replace the defective Equipment with conforming Equipment, F.O.B. City's City or other location of City where the Equipment was originally performed or delivered; or
3. Repay to City the purchase price of the defective Equipment.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

C. Contractor all warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

D. Customer warrants that it is appropriately licensed and in compliance with any and all federal and state requirements for the purchase of the products offered, and all individuals using Equipment will be trained in their use. Customer will use reasonable care to cause Equipment to be used in accord with current standards of care applicable thereto.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "A," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. PAYMENTS.

Payment by City to Contractor is required at the time of order. The City shall pay the amount set forth in the quote, attached hereto as Exhibit "A."

Section 7. SCHEDULE FOR DELIVERY.

All in-stock items will ship within two business days of the order. Items out of stock will ship within 30 business days of the order.

Section 8. TAXES.

Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

Section 9. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Equipment. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or City has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment but which does not become a part of the Equipment.

Section 10. INDEMNIFICATION.

A. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and sub-consultants arising out of or in connection with the Equipment or the performance of this Agreement, expenses except such loss or damage which was caused by the negligence or willful misconduct of the City. In no event shall Contractor be liable for incidental, special, or consequential damages.

B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its directors, officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its elected officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its elected officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its elected officials, officers, employees, agents or volunteers.

Section 11. INSURANCE.

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of its obligations under this Agreement.

A. Minimum Scope and limit of Insurance

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. If the Contractor is also the manufacturer of any Equipment, Contractor shall carry *Product Liability and/or Errors and Omissions* Insurance which covers said equipment with limits of not less than \$1,000,000.

Section 12. LIENS.

A. Except for Contractor's right to make, maintain, and execute a lien for unpaid goods provided to the City, the Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Contractor will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 13. TERMINATION OF AGREEMENT

A. Either party may terminate this agreement with written notice to the other Party.

B. On receipt of notice of termination, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise:

1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,
2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and
3. Deliver only such portions of the Equipment which City deems necessary to preserve and protect those portions of the Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.

C. Upon termination, Contractor will refund to City the amount paid for Equipment that was not delivered to City.

Section 14. MISCELLANEOUS PROVISIONS.

A. Contract Documents. This agreement and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract. In the event of any conflict between the terms or conditions of this written

agreement and any terms or conditions of any document prepared or provided by Contractor and made a part of this agreement, including without limitation any document relating to the scope of services or payment therefor, the written terms of this document shall control over those terms or conditions.

B. Severability. If any portion of this agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

C. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

D. Notices. All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

City: William Hack, Fire Chief
City of Rocklin
3401 Crest Drive
Rocklin, CA 95765

Copy to: City Attorney
City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677
Email: LegalNotices@rocklin.ca.us

Contractor: North American Rescue
Attention: Legal Department
35 Tedwall Court
Greer, SC 29650
legal@narescue.com

E. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City. The City has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on Contractor under this agreement. However, claims for money due or to become due Contractor from the City under this Contract may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City.

F. Successors and Assigns. This Agreement shall be binding on the successor and assigns of the Parties.

G. Amendment; Modification. Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

H. Waiver. Neither City's acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach, or condition precedent, shall be construed as a waiver of any provision of this agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

I. Enforcement of Agreement. This Contract shall be interpreted, governed and enforced in accordance with the laws of the State of California. Venue of any action arising out of this Contract shall be brought and maintained in Placer County California, regardless of where else venue may lie. The parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such courts.

J. Attorney's Fees. In any action brought by either party to enforce the terms of this Contract, each party shall bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

K. City's Right to Employ Other Contractors. City reserves its right to employ other contractors in connection with the Equipment.

L. Compliance with Law. Contractor shall comply with all applicable laws and regulations of the federal, state and local government and shall be responsible for obtaining any required licenses, permits or certifications necessary to perform this Agreement. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of its performance of this Agreement.

M. Power and Authority to Enter into Agreement. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Contractor is obligated, which breach would have a material effect hereon.

N. Entire Agreement. This Agreement constitutes the entire agreement between the parties relative to the services specified herein and supersedes whatever oral or written understanding they may have had prior to the execution of this agreement. No alteration or modification of this agreement shall be valid or effective unless and until such modification is evidenced by a writing signed by both parties to this Contract, by persons authorized to act on behalf of the parties. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in the writing.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY OF ROCKLIN

North American Rescue

William Hack,
Chief, Rocklin Fire Department

Will Jamison
Associate General Counsel

Date

Date

Approved As To Form:

Sheri Chapman
City Attorney

EXHIBIT "A"

EQUIPMENT SPECIFICATIONS/ QUOTE