

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A CONTRACT WITH MUNICIPAL EMERGENCY SERVICES, INC. FOR THE PURCHASE OF FIRE TURNOUTS AND FIRE RELATED EQUIPMENT FOR AN INITIAL TERM FROM MARCH 18, 2014 TO JUNE 30, 2015 NOT TO EXCEED \$96,000 AND AUTHORIZING THE CITY MANAGER TO EXERCISE UP TO FOUR (4) ANNUAL OPTIONS WITH ANNUAL FEE INCREASES NOT TO EXCEED 3% PER YEAR, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL

WHEREAS, the City of Milpitas (“City”) may enter into a “piggyback” agreement without going through its own competitive solicitation if the City’s Purchasing Agent makes all of the required findings set forth in Milpitas Municipal Code Section I-2-3.07 (“Piggyback Procurement”); and

WHEREAS, pursuant to Milpitas Municipal Code Section I-2-3.07, the City’s Purchasing Agent must determine that the Piggyback Procurement is in the City’s best interest and find each of the following:

- a. There are no local suppliers or contractors who could provide the product or service at competitive rates;
- b. A copy of the solicitation has been obtained from the originating agency and reviewed for compliance with the City's Purchasing Ordinance;
- c. The specifications of the item or service required by the City are not materially different from those specified in the originating agency's solicitation;
- d. The price of the purchase is lower than that estimated for the purchase if made directly by the City;
- e. The contract resulting from the original solicitation is current;
- f. No more than a ten percent (10%) variation is allowed for customizing the order or for desirable options. In addition, a cost of living adjustment (using San Francisco-Oakland-San Jose Consumer Price Index—All Urban Consumers) can be added for up to two (2) years; and
- g. The City enters into a separate contract with the vendor selected by the originating agency, and incorporates by reference the original solicitation, terms, conditions and prices.

WHEREAS, South Davis Metro Fire Agency located in the State of Utah conducted a nationwide competitive solicitation in 2013 for the purchase of Fire Turnouts and Fire Related Equipment and awarded a contract to Municipal Emergency Services, Inc., through a program administered nationally by Fire Rescue Group Purchasing Organization, a copy of which was obtained and reviewed for compliance with the City’s Purchasing Ordinance by the Purchasing Agent; and

WHEREAS, the City’s Purchasing Agent has conducted a due diligence review and determined there are no local suppliers or contractors who could provide the same range of Fire Turnouts and Fire-Related Equipment at competitive rates; and

WHEREAS, the City’s Purchasing Agent has determined City’s specifications for Fire Turnouts and Fire-Related Equipment are essentially the same as those listed in South Davis Metro Fire Agency’s solicitation; and

WHEREAS, the City’s Purchasing Agent has determined that the price for Fire Turnouts and Fire-Related Equipment under the Municipal Emergency Services, Inc. contract is estimated to be lower than if the City made the purchase pursuant to the City’s Purchasing Ordinance; and

WHEREAS, the South Davis Metro Fire Agency’s solicitation that resulted in the contract with Municipal Emergency Services, Inc. based on national volume pricing which has an annual increase that has been capped at up to three percent (3%) annually for a term through September 22, 2019; and

WHEREAS, the City’s Purchasing Agent has reviewed each of the findings required in Milpitas Municipal Code Section I-2-3.07 and determined the proposed contract with Municipal Emergency Services, Inc., would be in full compliance with the City’s requirements as explained herein; and

WHEREAS, the City’s Purchasing Agent recommends the City Council approve the proposed agreement between the City and Municipal Emergency Services, Inc. for a term from March 18, 2014 to June 30, 2015 (the “Initial Term”) with four (4) one (1) year options to renew, in the amount not to exceed Ninety-Six Thousand dollars (\$96,000) for the Initial Term and subject to appropriation of funds by the City Council each year thereafter;

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves the contract between the City of Milpitas and Municipal Emergency Services, Inc., for the period of March 18, 2014 to June 30, 2015 (the “Initial Term”) with four (4) one-year (1-year) options to renew, in the amount not to exceed Ninety-Six Thousand dollars (\$96,000) for the Initial Term and subject to appropriation of funds for subsequent years. A copy of the contract is attached to this Resolution as **Exhibit A**.
3. The City Manager or designee is authorized to exercise up to four (4) annual option(s) with annual price rate increase for each equipment of up to three percent (3%) as mutually agreed upon by the City of Milpitas and Municipal Emergency Services, Inc., in writing, subject to appropriation of funds by the City Council and without further action by the City Council.

PASSED AND ADOPTED this _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



CITY OF MILPITAS CONTRACT

THIS CONTRACT, made this 18th day of March, 2014 ("Effective Date"), by and between the City of Milpitas, a municipal corporation of the State of California hereafter referred to as "CITY" and **Municipal Emergency Services, Inc**, a Nevada corporation registered to do business in California, hereafter referred to as "VENDOR".

RECITALS

WHEREAS, South Davis Metro Fire Agency located in the State of Utah conducted a nation wide competitive solicitation in 2013 for the purchase of Fire Turnouts and Fire Related Equipment and awarded a contract to VENDOR through a program administered nationally by Fire Rescue Group Purchasing Organization with national volume pricing for a term through September 22, 2019; and

WHEREAS, City may enter into a "piggyback" agreement without going through its own competitive solicitation if the Purchasing Agent makes all of the required findings set forth in Milpitas Municipal Code Section I-2-3.07 (Piggyback Procurement); and

WHEREAS, City may enter into a direct contract with a vendor using a solicitation conducted by another public agency that meets the City's Purchasing Ordinance and is in the City's best interest; and

WHEREAS, the parties desire to enter into this Contract for the purchase of Fire Turnouts and Fire related Equipment based on the terms and conditions set forth herein and the prices from the South Davis Metro Fire Agency – RFP 2013-1 and the City's Purchasing Agent has determine that the South Davis Metro Fire Agency – RFP 2013-1 process meets all of the requirements of the City of Milpitas Purchasing Ordinance;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, City and Vendor hereby agrees as follows:

SECTION 1. TERM OF CONTRACT.

The initial term of this Agreement shall begin on the Effective Date and continue until June 30, 2015 (the "Initial Term"). The City reserves the sole right to extend this Contact on an annual basis thereafter for up to four (4) additional years with an annual price rate increase for each equipment of up to three percent (3%) per year as mutually agreed by the parties by executing the form attached hereto as **Exhibit B**. The form attached as **Exhibit B** shall be completed and fully executed by the parties prior to the expiration of the applicable term.

SECTION 2. COMPENSATION.

VENDOR agrees to offer City the same pricing for all Fire Turnouts and Fire related Equipment as provided under the South Davis Metro Fire Agency – RFP 2013-1. The

amount to be paid from CITY to VENDOR under this Contract shall not exceed Ninety-Six Thousand Dollars (\$96,000.00) for the Initial Term, and be subject to appropriation of funds by the City Council each option year thereafter.

SECTION 3. TERMS AND CONDITIONS.

VENDOR agrees to comply with each of the terms, conditions, and obligations set forth in Exhibit A, attached and fully incorporated herein.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,
A Municipal Corporation

Municipal Emergency Services, Inc.

Thomas C. Williams, City Manager

TSMTBW

Vendor's Authorized Signature

California Regional Vice President - BILL BLACK
Vendor's Authorized Title

Approved As
To Form: _____
Michael J. Ogaz, City Attorney

Approved As
To Content: _____
Chris Schroeder, Purchasing Agent

EXHIBIT A

TERMS AND CONDITIONS

1. **PAYMENT** - Invoices will be paid within thirty (30) days after receipt and acceptance of goods by City.
2. **OVERSHIPMENTS** - Over shipments necessary to adjust quantity ordered to nearest standard pack are acceptable provided such over shipments do not exceed five percent (5%) or Twenty-Five Dollars (\$25.00), whichever is smaller, of the line item involved.
3. **PACKING, SHIPPING AND INSURANCE** - No charges will be allowed for boxing, wrapping or cartage unless so authorized in writing by City. Vendor shall pack or otherwise prepare all articles for shipment so as to secure the lowest transportation rates consistent with timely delivery, meet carrier's requirements and safeguard against damage from weather and transportation. Vendor shall mark the purchase order number provided by City on each container and enclose a packing slip with the order number in an envelope on each container.
4. **TITLE AND RISK OF LOSS** - Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by the Vendor to the City shall pass to the City at the F.O.B. point designated on the face of the order. Cost of all return shipments for whatever reason returned, shall be borne by the Vendor with title and risk passing at the City's facility.
5. **DELIVERY** - Time is of the essence. Delivery must be effected within the time stated in the Vendor's email response to the on-line order and shall not be made later or substantially earlier than the dates shown. If items are delivered substantially in advance of scheduled delivery dates, the City may return them at the Vendor's expense. Unless failure to meet delivery schedule is due to causes beyond the Vendor's control, the City may terminate an order without liability and may purchase elsewhere and charge the Vendor with any loss incurred thereby.
6. **WARRANTIES** - In addition to any warranty implied by fact or law, the Vendor expressly warrants all items covered by this Contract to be free from defects in workmanship and materials, to conform strictly to applicable specifications, drawings and approved samples, if any, and to be fit for the purpose for which purchased. Such warranties, together with all other service warranties of the Vendor, shall run in favor of the City. All warranties shall survive inspection, acceptance and final payment by the City.
7. **ASIGNMENTS** - This Contract shall not be assigned in any manner by the Vendor nor shall a subcontract be made with any other party for the furnishing of any of the completed or substantially completed articles, items, spare parts, work or services covered by this Contract without the City's prior written consent.
8. **TERMINATION** - This Contract may be terminated in whole or in part by City for convenience with seven (7) days notice to Vendor.
9. **TAXES** - All Federal, State or local taxes of any nature which are paid by the Vendor and billed or passed on to the City as part of the price for this Contract and shall be stated separately and clearly designated as such in the Vendor's invoices.

10. LIENS - All items to be delivered hereunder shall be free and clear of any and all liens and encumbrances whatsoever.
11. COMPLIANCE WITH LAWS - The Vendor shall in the performance of this Contract comply with all applicable Federal, State and local laws, government orders and regulations.
12. WAIVERS - The failure of the City to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Contract, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of the Vendor with respect to such future performance shall continue in full force and effect.
13. INDEMNIFICATION AND INSURANCE - If the Vendor's agents, employees or subcontractors enter upon premises occupied by or under the control of the City or any of its customers or suppliers in the course of the performance of this Contract, then Vendor shall take all necessary precautions to prevent the occurrence of any injury (including death) to any person or any damage to any property arising out of any acts or omissions of the Vendor's agents, employees, or subcontractors and except to the extent that any such injury or damage is due solely and directly to the City's negligence or other fault. The Vendor shall also indemnify and hold the City harmless from and against any suits, liabilities, losses, damages, claims, causes of action and expenses (including attorneys fees) arising out of or connected with any act or omission of the Vendor, its agents, employees or subcontractors. The Vendor shall maintain public liability, property damage and worker's compensation insurance policies. Upon request of the City, the Vendor shall furnish the City, certificates of insurance showing that the Vendor carries adequate insurance for such purposes with insurers and in amounts acceptable to the City which the certificates of insurance shall also provide that at least ten (10) days' notice in writing shall be given to the City at the address indicated on the face of this Contract of cancellation or reduction of coverage before such coverage is cancelled or reduced.

EXHIBIT B - NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE and DATE:	
CONTRACTOR Name and Address:	
DATE OF OPTION:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section ____ of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change upon which adjustment is based:	
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Pursuant to Section ____ of the Agreement the Rates of Compensation are hereby adjusted as follows:

(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

City of Milpitas
A Municipal Corporation

Municipal Emergency Services, Inc.

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Title of Authorized Representative