

## FULL RELEASE AND INDEMNITY AGREEMENT

THIS AGREEMENT made on the \_\_\_\_ day of \_\_\_\_\_ 2024, by and between the City of Merced, a California Charter Municipal Corporation, hereinafter called “City,” and Merced College, a Public Community College, whose address of record is 3600 M Street, Merced, California, 95340, hereinafter called “Merced College”.

### RECITALS

WHEREAS, Merced College endeavors to provide enhanced educational opportunities to Merced’s aspiring fire technology students; and,

WHEREAS, Merced College has requested the City donate surplus 86 self-contained breathing apparatus and related equipment and 185 air bottles; and,

WHEREAS, the City does have a surplus self-contained breathing apparatus and equipment that would be suitable for the needs of Merced College, and the City Council has determined that Merced College provides substantial educational opportunities benefiting the City of Merced’s college students which clearly outweighs the value of the 86 surplus self-contained breathing apparatus and related equipment and 185 air bottles;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein recited, hereby agree as follows:

1. CITY RESPONSIBILITIES: City agrees to donate to Merced College the 86 self-contained breathing apparatus and related equipment and 185 air bottles, without warranty.

2. MERCED COLLEGE RESPONSIBILITIES:

A. MERCED COLLEGE accepts the 86 self-contained breathing apparatus and related equipment and 185 air bottles in “as is” condition, without warranty, from the City.

B. MERCED COLLEGE hereby releases and forever discharges City, and shall protect, indemnify, defend, save, keep, and hold harmless, the

City and all officers, employees, and agents thereof from all damages, costs, or expenses, in law or in equity, that may at any time arise or be set up because of personal injury (including the death of any person or persons) or damage to property sustained by any person or persons resulting from the operation of the self-contained breathing apparatus and equipment.

It is understood that the duty of the Merced College to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. The provisions of the preceding sentence shall not impose any liability upon the City and are for the express benefit of the general public.

This obligation to indemnify, protect, defend, and hold harmless City, its officers, employees, and agents as set forth herein is binding on the successors, assigns, transferees, or heirs of the Merced College.

4. **GOVERNING LAW.** The City and Merced College understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement without regard to any applicable conflicts of law, including all matters of construction, validity, and performance.

5. **JURISDICTION AND VENUE.** The parties agree that jurisdiction and venue for any legal challenge to the provisions of this Agreement or the enforcement of the rights or obligations hereunder shall be brought in the Superior Court serving the County of Merced.

6. **PRIOR REVIEW OF AGREEMENT.** This Agreement has been carefully read by each of the parties and the contents hereto are known to and understood by each of the parties. It is signed freely by each party executing this Agreement.

7. **NO AGENCY CREATED.** Each party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any of the other parties in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures, or any other association of any kind or nature between City and Merced College, jointly or severally.

8. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

9. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

10. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

11. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
D. Scott McBride,  
City Manager

ATTEST:  
D. SCOTT MCBRIDE, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:  
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 9/13/2024  
City Attorney Date

ACCOUNT DATA:  
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: \_\_\_\_\_  
Verified by Finance Officer

Merced College  
A Public Community College

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Its: \_\_\_\_\_

ADDRESS: 3600 M Street  
Merced, CA 95340

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_