

# MEMORANDUM OF UNDERSTANDING

Between

City of Merced and City of Atwater

**For Joint Self-Contained Breathing Apparatus Purchase  
Through the 2022 Assistance to Firefighters Grant**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and between the City of Merced, (hereinafter "Merced Fire Department"), and the City of Atwater, (hereinafter "Atwater Fire Department"), individually referred to as "Party" and collectively as "Parties," for the purposes set forth below.

## RECITALS

**WHEREAS**, the Merced Fire Department and the Atwater Fire Department are committed to working together in providing the best emergency services across the urban population of the County of Merced; and

**WHEREAS**, the Parties recognize and agree that decreasing costs and improving interoperability help achieve better services; and

**WHEREAS**, Merced Fire Department desires to submit an application for Fiscal Year 2022 Assistance to Firefighters Grant ("AFG") Program ("Regional Application") for funding, issued by the U.S. Department of Homeland Security, Federal Emergency Management Agency, and Grant Programs Directorate (collectively referred to as "Grantor"), on behalf of itself and Atwater Fire Department to purchase self-contained breathing apparatus ("SCBA") and other supportive equipment for joint department use; and

**WHEREAS**, Merced Fire Department shall be known as the "Lead Agency" that applies for the AFG, and Atwater Department shall be known as the "Partner Agency" to benefit under the AFG; and

**WHEREAS**, an MOU between the Lead Agency and the Partner Agency must be executed and included within the Regional Application for consideration by Grantor.

**NOW, THEREFORE**, in consideration of the promises and mutual agreements herein, the Lead Agency and the Partner Agency agree as follows:

## AGREEMENT

### 1. OBJECTIVE OF MOU

The primary objective of this MOU is to establish a purchasing group (“Purchasing Committee”) for the purpose of replacing SCBAs that are at the end of their service life. The Purchasing Committee will also obtain new Rapid Intervention Team (“RIT”) packs, additional masks, and other maintenance equipment. Specific allocations of equipment and cost estimates, including agency matching requirements, are as follows:

2022 AFG SCBA Grant Count										
Dept	Grant			Cost (including 8.25% tax)				Total	Agency Match	
	Pack	Mask	RIT	Pack	Mask	RIT	Equip		Portion	10%
Merced Fire										
Atwater Fire										

The formation of the Purchasing Committee will achieve critical benefits, such as improved interoperability, increased purchasing power that will lower the unit pricing, better customer support from the manufacturer, and a thorough evaluation of the units in the marketplace. Most importantly, long-term benefits will be the support that the Lead Agency provides to the Partner Agency in servicing units and reducing duplication of equipment.

### 2. OBJECTIVE OF REGIONAL AFG SCBA PURCHASE

The primary objective of the AFG SCBA purchase is to increase the Central Valley’s regional interoperability and to enhance the local capabilities of each community, therefore enhancing national capabilities.

### 3. RESPONSIBILITIES OF THE PARTIES

The Lead Agency agrees to submit the Regional Application for the AFG, to manage the funds from the grant award, to ensure that a competitive and fair purchasing process is followed, and to initiate the purchase with the vendor after receiving direction from the Purchasing Committee.

The Lead Agency further agrees to:

- Provide funding for ten percent (10%) (agency match) of the matching cost for equipment to be purchased.
- Oversee the grant implantation and coordinate with the Grantor.

- Act as the fiscal agent for the grant to:
  - Invoice Partner Agency for cost share of equipment.
  - Arrange payment to vendor.
  - Prepare and submit fiscal and program reports for Grantor.
  - Audit and track grant funds and deliverables.
- Manage grant activities, including but not limited to, project and fiscal reports for Grantor.
- Coordinate with the Partner Agency throughout the grant term.
- Receive input from the Partner Agency before making the final determinations of SCBA equipment to be ordered.
- Coordinate procurement of the SCBA equipment and make final procurement decisions.
- Procure the SCBA equipment in compliance with local and federal procurement laws, policies, and requirements.
- Deliver the SCBA equipment to Partner Agency.
- Maintain documentation of any changes to the award and/or distribution, compared to the original application.
- Ensure payment and compliance of all partners included in the grant.
- Ensure that all other activities conducted under this MOU comply with the applicable terms of this MOU, the Notice of Funding Opportunity (“NOFO”), grant award agreement, federal regulations, laws, and Executive Orders.

The Partner Agency agrees to collaborate with the Lead Agency on a Purchasing Committee that shall be tasked to evaluate different SCBA manufacturers, equipment pricing, and more. The purpose of the Purchasing Committee is to reach a consensus on which vendor receives the winning bid.

The Partner Agency agrees to:

- Provide a required cash match in the amount of ten percent (10%) of the total cost of its requested items as detailed in the Regional Application, and as required under the regional AFG program guidelines.

- Pay the required cash match within thirty (30) days after receipt of an invoice from the Lead Agency, in advance of equipment procurement.
- In the event of a reduced award, accept the reduced amount and provide a ten percent (10%) cash match on the total reduced award amount of its approved items.
- Provide the following assigned liaison(s):
  - Project Lead: Primary point of contact responsible for SCBA equipment.
  - Fiscal Lead: Contact responsible for accounting, fiscal reporting, and payments.
- Promptly provide any additional documentation to Lead Agency, as requested and as necessary in connection with the AFG.
- Ensure all documents demonstrating programmatic completion are completed in a timely manner, are accurate, and forwarded to the designated Lead Agency contact.
- Maintain all SCBA equipment and grant records, files, and supporting documentation in the event of an audit for three (3) years after the expiration of this MOU, as set forth under Section 4.
- Ensure that all activities comply with all applicable terms of this MOU, NOFO, grant award agreement, federal regulations, laws, and Executive Orders.

#### **4. DURATION OF MOU**

This MOU will be in effect from the date of signing until either (i) the Parties receive notification that the grant was not successful or (ii) the grant is received, and the units have been distributed to each agency. It is expected that all work can, and will, be completed within one (1) year of the grant award.

#### **5. TERMINATION**

If a Party wishes to terminate this MOU prior to accepting the grant, the withdrawing Party must provide a written notification to the other Party immediately for consideration due to time restraint. If a Party wishes to terminate this MOU after the grant has been accepted, termination shall be dependent on the restrictions and processes set forth and enforced by FEMA. If termination after grant-acceptance is permitted, the withdrawing Party shall be solely responsible for any and all penalties associated with the withdrawal.

**6. AMENDMENTS**

This MOU may be amended at any time only by written agreement executed by both Parties. Such requests will only be approved if the proposed change(s) is/are consistent with the purpose of this MOU and/or achieve the goals set forth in this MOU.

**7. HOLD HARMLESS AND INDEMNIFICATION**

Each Party to this MOU shall protect, indemnify, and hold harmless the other Party and its officers, agents, and employees from and against any and all claims, costs, and/or issues whatsoever that arise from actions by such Party or its officers, agents, employees, and/or its subcontractors pursuant to this MOU. Each Party shall defend, at its own expense, all claims, demands, suits, penalties, losses, damages, or costs brought forth, arising out of, or incidental to such Party's execution and performance of, or failure to perform under this MOU.

**8. SEVERABILITY**

If any section, subsection, sentence, clause, or phrase of this MOU is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

**9. NOTICES**

All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second (2nd) business day following date of mailing, if properly mailed and addressed. Notices and payments sent via certified or registered mail shall be deemed to have been given on the next day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmarked affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

Any notice required or permitted under this MOU shall be deemed sufficiently given or served if sent to the Parties at the addresses provided below:

**LEAD AGENCY**

Derek Parker  
Fire Chief  
Merced Fire Department  
99 E. 16<sup>th</sup> St.  
Merced, CA 95340  
(209) 388-8541

**PARTNER AGENCY**

Bobby Ayuso  
Battalion Chief  
Atwater Fire Department  
3500 N. Apron Ave.  
Atwater, CA 95301  
(559) 706-8804

**10. ENTIRE AGREEMENT**

This MOU constitutes the entire agreement between the Parties. There are no terms, obligations, covenants, or conditions other than those contained herein. No modifications or amendments of this MOU shall be valid or effective unless evidenced by an agreement in writing signed by all Parties.

**11. COMPLIANCE WITH REGULATIONS AND LAWS**

The Parties shall comply with all applicable laws, rules, and regulations pertaining to them in connection with the matters covered herein. This MOU shall be deemed to be made and construed in accordance with the laws of the State of California. Jurisdiction and venue for any action arising out of this MOU shall be in Merced County, California.

**IN WITNESS WHEREOF**, this MOU is executed by each Party on November 15, 2022.

**CITY OF MERCED**

**CITY OF ATWATER**

EIN: 94-6000371

EIN: 94-6002854

Stephanie Dietz  
Stephanie Dietz, City Manager

Lori Waterman  
Lori Waterman, City Manager

Derek Parker  
Derek Parker, Fire Chief

Bobby Ayuso  
Bobby Ayuso, Battalion Chief

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Frank Splendorio 11/16/22  
City Attorney Date

Frank Splendorio  
Frank Splendorio, City Attorney

302248  
FUNDS/ACCOUNTS VERIFIED

[Signature] 11/13/23  
FINANCE OFFICE DATE

NO funds to encumber. etc 1/11/23  
2/11/23 R 1/13/23

ATTEST:  
CITY CLERK

BY Dejandra Medina  
Assistant/Deputy City Clerk

