

SURPLUS EQUIPMENT PURCHASE AGREEMENT

This Agreement is entered into by and between the City of Merced, a California Charter Municipal Corporation, hereinafter "Seller" and the City of Lathrop, a California General Law Municipal Corporation, hereinafter "Buyer".

For good and valuable considerations, the sufficiency of which is hereby acknowledged by Buyer and Seller, the undersigned do hereby covenant, contract and agree as follows:

1. **AGREEMENT:** Seller hereby sells, conveys and transfers to Buyer all rights, title and interest in and unto the equipment, described as follows: One thousand, four hundred and forty (1440) Orion® SE 2 Endpoints.
2. **DELIVERY AND ACCEPTANCE:** Upon acceptance by Buyer of the equipment, which acceptance shall be identified by Buyer taking possession of the equipment, such acceptance shall acknowledge that the equipment is in good order and condition and that Buyer is satisfied with same and that Seller has made no representation or warranty, express or implied, with respect to the equipment. All of the equipment is sold in an "AS IS" condition.
3. **PURCHASE PAYMENTS:** Buyer agrees to pay unto the seller the sum of \$ 110,207.16 on or before June 30, 2018. Payment shall not be considered paid until received by Seller.
4. **TITLE TO EQUIPMENT:** Seller represents that it owns the equipment described herein free and clear and that such equipment is free of all liens.
5. **MAINTENANCE AND REPAIR:** All maintenance and repair costs for the equipment shall be paid by Buyer and Seller is hereby relieved from any responsibility to maintain or repair said equipment, all said equipment being sold in an "AS IS" condition.
6. **DAMAGE TO, OR LOSS OF, EQUIPMENT:** Notwithstanding any loss, theft, destruction or damage of any of the equipment after Buyer takes possession of the equipment, Buyer shall make the purchase payment described hereinabove.
7. **TAXES AND LICENSES:** All taxes, license fees and other expenses associated with this Agreement and/or the equipment shall be paid by Buyer.
8. **INDEMNIFICATION OF SELLER:** Buyer shall indemnify, protect and hold harmless Seller, its agents, servants, officers, employees, successors and assigns from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses, of whatever nature, arising out of the use, condition, operation, repair or maintenance of

any item of the equipment, regardless of where, how and by whom operated. Buyer shall assume the settling of, and the defense of any suits or other legal proceedings brought to enforce all such losses, damages, injuries, claims, demands and expenses, and shall pay all judgments or awards entered in the suit or other legal proceedings. The indemnification and assumptions of liability and obligation herein provided shall continue in full force and effect notwithstanding the termination of this agreement, whether by expiration of time, by operation of law or otherwise. Should Seller, or anyone acting on their behalf, be required to incur attorney's fees and costs to enforce the terms of this Indemnification clause, Buyer agrees to indemnify, defend and hold them harmless for all such fees and costs.

9. "AS IS" CONDITION OF EQUIPMENT: Seller makes no warranties, express or implied, to Buyer for the sale of the equipment and all equipment described herein is sold in its "AS IS" condition.
10. DEFAULT BY BUYER: Time is of the essence under this Agreement and any of the following events shall constitute defaults on the part of Buyer: (a) failure of Buyer to pay any payment within five (5) days of the due date for payment; (b) any breach of failure of Buyer to perform any of its obligations under this Agreement.
11. ATTORNEY'S FEES: In the event of any lawsuit or other legal proceeding brought to enforce, interpret or remedy any breach of this Agreement, the prevailing party in such lawsuit or other legal proceeding shall be entitled to recover all attorney's fees and costs incurred in connection with such lawsuit or legal proceeding.
12. GOVERNING LAW: This Agreement shall be governed by the laws of the State of California.
13. AMBIGUITIES: This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.
14. VENUE: This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.
15. AMENDMENT: This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

16. 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.
17. 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.
18. 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.

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

CITY OF MERCED (Seller)
A California Charter Municipal
Corporation

BY: _____

City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____

Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  5-9-2018

City Attorney

Date

(Signatures continue on next page)

ACCOUNT DATA:

BY: _____

Verified by Finance Officer

CITY OF LATHROP (Buyer)
A California General Law Municipal
Corporation,

BY: _____

City Manager

ATTEST:

CITY CLERK

BY: _____

Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____

City Attorney

Date

ACCOUNT DATA:

BY: _____

Verified by Finance Officer