



**FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING
BETWEEN THE SOUTH SANTA CLARA COUNTY FIRE DISTRICT
AND THE CITY OF MORGAN HILL
FOR FEMA GRANT # EMW-2014-FR-00084 (TELECOMMUNICATIONS AND OTHER EQUIPMENT)**

This First Amendment to Memorandum of Understanding ("Amendment") is entered into on _____, 2015 by and between the South Santa Clara County Fire District, a fire protection district organized and operating under the Fire Protection District Law of 1987 of the California Health and Safety Code ("DISTRICT") and the City of Morgan Hill a municipal corporation organized and operating under the laws of the State of California ("CITY"). DISTRICT and CITY may be referred to individually as a "Party" and collectively referred to as the "Parties" throughout this Amendment.

WHEREAS, on or about December 8, 2014, DISTRICT and CITY applied for a regional grant through the Federal Emergency Management Agency ("FEMA") Assistance to Firefighters Grant Program under Application # EMW-2014-FR-0084 in order to receive essential equipment for firefighter operations ("Grant"); and

WHEREAS, DISTRICT and CITY executed that certain Memorandum of Understanding entitled Memorandum of Understanding Between the South Santa Clara County Fire District and the City of Morgan Hill for FEMA Grant # EMW-2014-FR-0039 ("MOU"), which is attached hereto as Exhibit A and incorporated herein by this reference, which specified the individual and mutual responsibilities of the participating partners, the participant's level of involvement in the project, and the proposed distribution of all Grant funded assets; and

WHEREAS, DISTRICT and CITY executed the MOU before the Grant award was finalized and agreed, pursuant to Section 1(D), that once the Grant award was awarded, DISTRICT and CITY would finalize in a subsequent amendment how the equipment purchased with Grant funds would be divided; and

WHEREAS, on October 8, 2015, CITY was notified that the full Grant award from FEMA was four hundred eighty four thousand eight hundred thousand eight hundred nineteen dollars (\$484,819.00); and

WHEREAS, the Parties wish to memorialize the final division of the equipment to be purchased using the Grant funds in this Amendment.



THEREFORE, for mutual consideration hereby acknowledged, the Parties agree as follows:

1. The Parties agree that the equipment to be purchased with the Grant funds and the division of the equipment once received shall remain as set forth in the MOU.
2. All terms and conditions contained in the MOU are to remain in full force and effect except as provided for in this First Amendment.

Signatories: The terms and conditions of this Amendment will be considered accepted in their entirety upon the signature by both Parties.

South Santa Clara County Fire District

City of Morgan Hill

Dave Cortese, President Board of Directors
South Santa Clara County Fire District

Steve Rymer, City Manager

Date: _____

Date: _____

ATTEST

ATTEST:

Megan Doyle, Clerk of the Board

Michelle Wilson, Deputy City Clerk

Date: _____

Date: _____

APPROVED AS TO FORM and LEGALITY:

APPROVED AS TO FORM:

Sara J. Ponzio, Deputy County Counsel

Gary Baum, Interim City Attorney

Date: _____

Date: _____

Exhibit A

127-04-15-038



**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MORGAN HILL AND
THE SOUTH SANTA CLARA COUNTY FIRE DISTRICT
FOR FEMA GRANT # EMW-2014-FR-0084 (TELECOMMUNICATIONS AND OTHER EQUIPMENT)**

This Memorandum of Understanding ("MOU") is entered into on August 25 2015 by and between the South Santa Clara County Fire District, a fire protection district organized and operating under the Fire Protection District Law of 1987 of the California Health and Safety Code ("DISTRICT") and the City of Morgan Hill, a municipal corporation organized and operating under the laws of the State of California ("CITY"). DISTRICT and CITY may be referred to individually as a "Party" and collectively as the "Parties" throughout this MOU.

WHEREAS, on or about December 8, 2014, DISTRICT and CITY applied for a regional grant through the Federal Emergency Management Agency ("FEMA") Assistance to Firefighters Grant Program under Application # EMW-2014-FR-0084 in order to receive essential equipment for firefighter operations ("Grant"); and

WHEREAS, the grant application sought to obtain funding for a mobile dual-band repeater, dual-band base station radios, portable dual-band radios, mobile dual-band radios, SCBA fill stations, PPE extractors, and PPE dryer; and

WHEREAS, the total Grant request is two hundred eighty nine thousand two hundred twenty eight dollars (\$289,228.00) with a ten percent (10%) match requirement; and

WHEREAS, FEMA requires the entities named in the Grant application as benefitting from the award to enter into a memorandum of understanding; and

WHEREAS, FEMA requires the MOU to specify the individual and mutual responsibilities of the participating partners, the participant's level of involvement in the project, and the proposed distribution of all grant funded assets; and

WHEREAS, DISTRICT and CITY will benefit from the Grant Award; and

WHEREAS, the Parties wish to set forth in this MOU their respective considerations and obligations for the Grant.

1. PARTIES' OBLIGATIONS

A. CITY is designated as the "host" agency for administration of the Grant.

B. The Grant Award will be deposited into CITY's bank account and CITY will purchase the following equipment with the Grant Award:

- i. One (1) mobile dual-band repeater,
- ii. Four (4) dual-band base station radios,
- iii. Fifty four (54) P25 complaint portable radios,
- iv. Two (2) PPE extractors,

Approved: 08/25/2015

77884

AUG 25 2015 1



- v. One (1) PPE dryer,
 - vi. Two (2) self contained breather apparatus fill stations, and
 - vii. Seven (7) mobile radios.
- C. CITY will distribute the following purchased equipment to DISTRICT:
- i. Two (2) dual-band base station radios,
 - ii. Thirty (30) P25 complaint portable radios,
 - iii. One (1) PPE extractor,
 - iv. One (1) self contained breather apparatus fill station, and
 - v. Three (3) mobile radios.
- D. Once the Grant amount is awarded, DISTRICT and CITY will finalize how the purchased equipment will be divided and will memorialize such division in a subsequent amendment to this MOU.
- E. CITY and DISTRICT agree that each will install, operate, and maintain all equipment received from the Grant.
- F. CITY and DISTRICT agree to inventory all equipment received within their department policies.
- G. CITY and DISTRICT agree to split the ten percent (10%) match requirement according to the final costs of the equipment distributed to CITY and DISTRICT. CITY will bill DISTRICT for the agreed upon percentage and DISTRICT shall pay CITY within thirty (30) days of invoice.

2. TERM

The term of the MOU is effective from the date this MOU is signed to December 31, 2018 ("Termination Date"). The term of the MOU may be extended by mutual consent of the Parties.

3. DOCUMENT REVIEW

CITY agrees to retain all documentation regarding the Grant and the Grant Award for three (3) years following the close out of the Grant Award. CITY will provide FEMA and/or DISTRICT with such documentation upon request. Both Parties agree to participate in any FEMA audit process.

4. NOTICE

Any notice or instrument required or permitted to be given hereunder shall be deemed received upon personal delivery for five (5) days after deposit in any United States mail depository, first class postage prepaid and addressed to the party for whom intended.

For CITY: City Manager
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037

For DISTRICT: South Santa Clara County Fire District
 15670 Monterey Road
 Morgan Hill, CA 95037

5. AMENDMENTS

The MOU may only be amended by written agreement executed by both Parties.

6. ASSIGNMENT

Neither Party is allowed to assign, sublet, or transfer this MOU or any of the rights or interests in this MOU without written consent of the other Party.



7. SEVERABILITY

The partial or total invalidity of one or more parts of this MOU will not affect the intent or validity or remaining parts of this MOU.

8. GOVERNING LAW

This MOU is a contract under the laws of the State of California. Venue shall be in the County of Santa Clara.

9. TERMINATION OF MOU

This MOU may be terminated by either Party hereto for any reason upon thirty (30) days written notice to the other Party.

10. COUNTERPARTS

This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

11. WAIVER

No waiver by either Party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, condition, or provision hereof shall constitute a waiver of any subsequent breach, default, or violation of the same or any other term, warranty, representation, agreement, covenant, condition, or provision thereof. All waivers must be in writing and signed by the Party against whom enforcement of the waiver is sought. All remedies are cumulative, and the election to pursue less than all remedies shall not be a waiver of the right to pursue any remedy.

12. ENTIRE AGREEMENT

This document, including all exhibits and attachments, represents the entire agreement between the Parties.

13. CONFLICTS OF INTEREST

Each Party shall comply, and require its sub-contractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this MOU and is grounds for immediate termination.

In accepting this MOU, both Parties covenant that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this MOU. Both Parties further covenant that, in the performance of this MOU, it will not employ any person having such an interest. Both Parties, including but not limited to employees and sub-contractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this MOU, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.



If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this MOU, both Parties shall, upon execution of this MOU, provide the other with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to employees, agents and sub-contractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of the disclosing Party's performance under this MOU. The disclosing Party shall immediately notify the other Party of the names and email addresses of any additional individuals later assigned to provide such service under this MOU in such a capacity. The disclosing Party shall immediately notify the other Party of the names of individuals working in such a capacity who, during the course of the MOU, end their service to the disclosing Party.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this MOU, both Parties shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this MOU, annually by April 1, and within 30 days of their termination of service pursuant to this MOU.

14. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

Both Parties mutually assign to the other all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the other pursuant to this MOU.

15. NON-DISCRIMINATION

Both Parties shall comply with all applicable Federal, State, and local laws and regulations including all applicable policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Neither Party shall not discriminate against any sub-contractors, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall either Party discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

16. THIRD PARTY BENEFICIARIES

This MOU does not, and is not intended, to confer any rights or remedies upon any person or entity other than the Parties.



17. FORCE MAJEURE

Obligations of either Party under this MOU shall be suspended, and such Party shall not be liable for damages or other remedies while such Party is prevented from complying herewith, in whole or in part, due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, war, fire, acts of God, injunction, compliance with any law, regulation, or order, whether valid or invalid, of the United States of America or any other governmental body or any instrumentality thereof, whether now existing or hereafter created, inability to secure materials or obtain necessary permits, provided, however, the Party so prevented from complying with its obligations hereunder shall promptly notify the other Party thereof.

18. MUTUAL DRAFTING

The Parties agree that this MOU has been mutually drafted and authored by all Parties and that it shall not be construed against any one Party.

19. STANDARD OF CARE/WARRANTIES

Services performed under this MOU will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. Notwithstanding anything to the contrary contained in this MOU, neither Party makes any other warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, and any implied warranties arising under any statute. Except for the warranty expressly set forth in this paragraph, both Parties acknowledge and agree that they have relied on no other representations or warranties and that no other representations or warranties have formed the basis of its bargain hereunder.

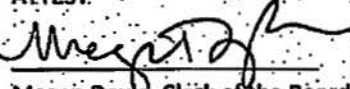
Signatories: The terms and conditions of this MOU will be considered accepted in their entirety upon the signature by these Parties.

South Santa Clara County Fire District


Dave Cortese, President Board of Directors
South Santa Clara County Fire District

Date: AUG 25 2015

ATTEST:


Megan Doyle, Clerk of the Board

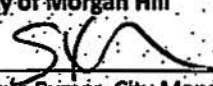
Date: AUG 25 2015

APPROVED AS TO FORM and LEGALITY:


Sara J. Ponzio, Deputy County Counsel

Date: 8/13/2015

City of Morgan Hill


Steve Rymar, City Manager

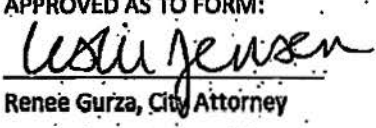
Date: 8/11/15

ATTEST:


Michelle Wilson, Deputy City Clerk

Date: 8/12/15

APPROVED AS TO FORM:


Renee Gurza, City Attorney

Date: 08/11/15

Resolution No 15-186