

Equipment Lease Agreement

This agreement hereinafter called "The Agreement" is made and entered on December 1, 2020 by and between L.N. Curtis and sons ("Lessor") and City of Hayward, CA ("Lessee") collectively referred to as the "Parties".

The Parties agree as follows:

1. **Equipment:** Lessor hereby leases to Lessee the following equipment:
 - a. All equipment listed on October 29, 2020 L.N. Curtis and sons quotation #167464 for MSA brand SCBA Equipment herewith attached. (The "Equipment").
2. **Lease Term:** The lease will start on approximately February 1, 2021 and will end on approximately January 31, 2023. The start date of the lease will be the date that all Equipment is delivered to the Lessee. The end date will be two (2) years after the equipment is delivered and all payments have been received in full by Lessor.
3. **Lease Payments:** Lessee agrees to pay to Lessor \$372,201.37 within 30 days of receiving the equipment and then two (2) additional equal annual payments of \$372,201.37.
 - a. Payments of \$372,201.37 are due:
 - i. February 1, 2022.
 - ii. February 1, 2023
4. **Early Payment:** There is no penalty for early payment. The Lessee may make payments earlier than due. If Lessee desires to pay off lease purchase earlier than scheduled, contact the Lessor for payment amount and instructions. Interest will be recalculated for the interest accrued for the shorter time period.
5. **Late Charges:** If any amount under this agreement is more than ten (10) days late, Lessee agrees to pay a late fee of \$50 per day from the date that the payment was due.
6. **Total Amount:** The total amount to be paid by Lessor is \$1,116,604.11 which includes the equipment price of \$968,584.00, plus Sales Tax of \$94,436.94 plus an additional \$53,583.17 for interest. The interest rate for this lease purchase is approximately 5%.
7. **Delivery:** Lessor is responsible for all expenses and costs associated with delivery of the equipment to the Lessee.
8. **Defaults:** If Lessee fails to perform or fulfill any obligations under this Agreement, Lessee shall be in default of this agreement. Subject to any statute, ordinance or law to the contrary, Lessee shall have ten (10) days from the date of notice of default by Lessor

to cure the default. In the event Lessee does not cure a default, Lessor may at Lessor's option (a) cure such default and the cost of such action may be added to Lessee's financial obligations under this agreement; or (b) declare Lessee in default of the agreement. If Lessee shall become insolvent, cease to operate as a municipality or if a petition has been filed by or against Lessee under the Bankruptcy Act or similar federal or state status, Lessor may immediately declare Lessee in default of this agreement. In the event of default, Lessor may, as permitted by law, re-take possession of the Equipment. Lessor may, at its option, hold Lessee liable for any difference between the amount that would have been payable under this Agreement during the balance of the unexpired term and any money paid by any successive lessee if the Equipment is re-let minus the cost and expenses of such reletting. In the event Lessor is unable to re-let the Equipment during any remaining term of this agreement, after default by Lessee, Lessor may at its option hold Lessee liable for the balance of the unpaid monies under this Agreement if this Agreement had continued in force.

9. **Possession and Surrender of Equipment:** Lessee shall be entitled to possession of the Equipment on the first day of the Lease Term. At the expiration of the Lease Term, Lessee shall own the equipment, assuming all payments due and payable by the Lessee to the Lessor have been received by the Lessor.
10. **Use of Equipment:** Lessee shall only use the Equipment in a careful and proper manner and will comply with all laws, rules, ordinances, statutes, orders and manufacturers' guidelines and instructions regarding the use, maintenance or storage of the Equipment.
11. **Condition of Equipment and Repair:** Upon delivery, Lessee or Lessee's agent will inspect the equipment and acknowledge to the Lessor that the Equipment is in good and acceptable condition.
12. **Maintenance, Damage and Loss:** Lessee will, at Lessee's sole expense, keep and maintain the Equipment clean and in good working order and repair during the Lease Term. In the event the Equipment is lost or damaged beyond repair, Lessee shall pay to Lessor the replacement selling price of the Equipment. In addition, the obligations of this Agreement shall continue in full force and effect through the Lease Term.
13. **Insurance:** Lessee shall be responsible to maintain insurance on the Equipment with losses payable to Lessor against fire, theft, and other such risks as are appropriate. Upon request by Lessor, Lessee shall provide proof of such insurance.
14. **Encumbrances, Taxes and other laws:** Lessee shall keep the Equipment free and clear of any liens or other encumbrances and shall not permit any act where Lessor's title or rights may be negatively affected. Lessee shall be responsible for complying with and conforming to all laws and regulations relating to the possession, use or maintenance of

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the Equipment. Furthermore, Lessee shall promptly pay all taxes, fees, licenses and governmental charges, together with any penalties or interest thereon, relating to the possession, use or maintenance of the Equipment.

15. **Lessors Representations:** Lessor represents and warrants that he/she has the right to lease the Equipment as provided in this Agreement and that Lessee shall be entitled to quietly hold and possess the Equipment, and Lessor will not interfere with that right as long as Lessee pays the Rent in a timely manner and performs all other obligations under this Agreement.
16. **Ownership:** The Equipment is and shall remain the exclusive property of Lessor until such time as all payments due and payable by the Lessee to the Lessor have been received by the Lessor.
17. **Severability:** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
18. **Assignment:** Neither this Agreement nor Lessee's rights hereunder are assignable except with Lessor's prior, written consent.
19. **Binding Effect:** The covenants and conditions contained in the Agreement shall apply to and bind the Parties and their legal representatives, successors and permitted assigns of the Parties.
20. **Governing Law:** This Agreement shall be governed and construed in accordance with the laws of the State of California.
21. **Notice:** Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified, return receipt requested, postage prepaid, or delivered by overnight delivery service to:

Lessor:

L.N. Curtis and sons
185 Lennon Lane, Suite 110
Walnut Creek, CA 94598

Lessee:

City of Hayward
22700 Main Street
Hayward, CA 94541

Either party may change such addresses from time to time by providing notice as set forth above.

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22. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this agreement. There are no other promises, conditions, understandings, or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Lessor and Lessee.
23. **Cumulative Rights:** Lessor's and Lessee's rights under this Agreement are cumulative, and shall not be construed as exclusive of each other unless otherwise required by law.
24. **Waiver:** The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The acceptance of rent by Lessor does not waive Lessor's right to enforce any provisions of this Agreement.
25. **Indemnification:** Except for damages, claims, or losses due to Lessor's acts or negligence, Lessee, to the extent permitted by law, will indemnify and hold Lessor and Lessor's property, free and harmless from any liability for losses, claims, injury to or death of any person, including Lessee, or for damage to property arising from Lessee using and possessing the Equipment or from acts or omissions of any person or persons, including Lessee, using or possessing the Equipment with Lessee's express or implied consent.

This is a mutual indemnification provision. Therefore, except for damages, claims, or losses due to Lessee's acts or negligence, Lessor, to the extent permitted by law, will indemnify and hold Lessee free and harmless from any liability for any claims related to Lessor's duties and obligations under this agreement.

In witness whereof, the parties have caused this Agreement to be executed this day and year first above written. By signing this document, the parties certify that they are duly authorized and have the authority to sign for their respective company and/or agency.

CONSULTANT

Dated:_____

By

Its

CITY OF HAYWARD

Dated:_____

By_____

ATTACHMENT III

Dated:_____

By_____

Approved as to Form and Procedure:

Attest:_____

City Attorney