

**CITY OF MORRO BAY FIRE DEPARTMENT**  
**EQUIPMENT EXCHANGE**

This AGREEMENT FOR DEPARTMENT EQUIPMENT EXCHANGE (“AGREEMENT”) is made and entered into this \_\_\_ day of May, 2024, by and between the City of Morro Bay, a municipal corporation, through its fire department, hereinafter referred to as “MBFD,” and the City of Atascadero, a municipal corporation, through its fire department, hereinafter referred to as “AFD.” Both MBFD and AFD may be referred to individually as “Party” or collectively as “Parties.”

**RECITALS**

A. MBFD owns Fire Department Equipment, 2009 Pierce/Kenworth Heavy Rescue Truck, VIN# 2NKHHN8X6AM262456 (the “Rescue”), which no longer serves MBFD’s current operations.

B. AFD owns Fire Department Equipment, 2001 International/Westmark Model 15 Type 3 Fire Engine, VIN# 1HTSDADN12H507702 ( the “Type 3”), which no longer serves AFD’s current operations.

C. The Parties now desire to enter into a no-cost, item-for-item exchange of the Rescue and the Type 3, such that MBFD would acquire the Type 3 from AFD and AFD would acquire the Rescue from MBFD. The Parties also desire to waive and release any liabilities and warranties arising from the item-for-item exchange.

D. The item-for-item exchange of the Rescue and Type 3 is not inconsistent with any MBFD or AFD policy, or any state, local, and/or federal statute regulating the exchange. This item-for-item exchange is being performed in the public interest of public safety, welfare, and fire safety.

**NOW, THEREFORE, IN CONSIDERATION OF THIS AGREEMENT, THE PARTIES HERETO AGREE AS FOLLOWS:**

1. **Transfer of Vehicles.** Upon the execution of this AGREEMENT, (a) MBFD shall accept the Type 3 from AFD and (b) AFD shall accept the Rescue from MBFD. Each Party shall undertake such steps and execute such further documents as are required to reflect the transfer of title to each vehicle to the other Party.

2. **As-is Condition.** MBFD acknowledges that MBFD has inspected the Type 3, made its own independent assessment of the Type 3, and that AFD is transferring the Type 3 to MBFD in its “as-is” condition, in reliance solely on MBFD’s own inspection of the Type 3. MBFD agrees to take possession and responsibility of the Type 3 in its “as-is” condition and AFD makes no representations or warranties thereto. AFD acknowledges that AFD has inspected the Rescue, made its own independent assessment of the Rescue, and that MBFD is transferring the Rescue to AFD in its “as-is” condition, in reliance solely on AFD’s own inspection of the Rescue. AFD agrees to take possession and responsibility of the Rescue in its “as-is” condition and MBFD makes no representations or warranties thereto.

3. **Indemnification by MBFD.** MBFD agrees to assume ownership of the Type 3 and to assume any and all risks associated with the use of the Type 3, including, but not limited to, risk of injury or death to third persons. MBFD agrees to defend, indemnify, and hold harmless and release AFD, its elected and appointed officials, officers, agents, and employees from any and all liability, losses, claims, administrative proceedings, actions, lawsuits, damages, injuries, awards, and court costs, including reasonable attorneys' fees, whether asserted by MBFD, any of its officers, employees or agents or any third party, arising from any injuries or damages caused by or related to the purchase, ownership, use or care of the Type 3 that may occur on or after the effective date of this AGREEMENT (collectively "AFD CLAIMS"). MBFD further agrees to notify AFD prior to the sale, transfer of possession, or disposal of the Type 3 and agrees any subsequent owner, transferee, or assignee shall be subject to the same obligation as MBFD to defend, indemnify, hold harmless and release AFD and its officials, agents, employees from any AFD CLAIMS. The duties and obligations of MBFD pursuant to this AGREEMENT shall survive any such sale, transfer of possession, or disposal of the Type 3.

4. **Indemnification by AFD.** AFD agrees to assume ownership of the Rescue and to assume any and all risks associated with the use of the Rescue, including, but not limited to, risk of injury or death to third persons. AFD agrees to defend, indemnify, and hold harmless and release MBFD, its elected and appointed officials, officers, agents, and employees from any and all liability, losses, claims, administrative proceedings, actions, lawsuits, damages, injuries, awards, and court costs, including reasonable attorneys' fees, whether asserted by AFD, any of its officers, employees or agents or any third party, arising from any injuries or damages caused by or related to the purchase, ownership, use or care of the Rescue that may occur on or after the effective date of this AGREEMENT (collectively "MBFD CLAIMS"). AFD further agrees to notify MBFD prior to the sale, transfer of possession, or disposal of the Rescue, and agrees any subsequent owner, transferee, or assignee shall be subject to the same obligation as AFD to defend, indemnify, hold harmless and release MBFD and its officials, agents, employees from any MBFD CLAIMS. The duties and obligations of AFD pursuant to this AGREEMENT shall survive any such sale, transfer of possession, or disposal of the Rescue.

5. **Compliance with Law.** MBFD has no knowledge and has received no notice (i) that the Type 3 is in violation of any applicable statutes, ordinances, and regulations, including those related to environmental and health and safety requirements; (ii) of any presently pending or threatened action or proceeding under any environmental or health and safety statutes, ordinances, or regulations; or (iii) of the existence of any present or pending order or directive of any city, county, state, or federal authority, or any agency thereof, requiring that any work or repair, maintenance, improvement, or abatement be performed on the Type 3. AFD has no knowledge and has received no notice (i) that the Rescue is in violation of any applicable statutes, ordinances, and regulations, including those related to environmental and health and safety requirements; (ii) of any presently pending or threatened action or proceeding under any environmental or health and safety statutes, ordinances, or regulations; or (iii) of the existence of any present or pending order or directive of any city, county, state, or federal authority, or any agency thereof, requiring that any work or repair, maintenance, improvement, or abatement be performed on the Rescue.

6. **Notices.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this AGREEMENT or by law to be served in or given to any party to this AGREEMENT shall be in writing and shall be deemed duly served and given

when personally delivered or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid to the following address for each respective party:

**MBFD:** Daniel McCrain, Fire Chief  
City of Morro Bay  
715 Harbor Street  
Morro Bay, CA 93442

**AFD:** Casey Bryson, Fire Chief  
City of Atascadero  
6500 Palma Avenue  
Atascadero, CA 93422

7. **Time of the Essence.** Time is of the essence for this AGREEMENT and each and every term and provision hereof.

8. **Interpretation; Governing Law and Venue.** This AGREEMENT shall be construed as if prepared by both Parties. This AGREEMENT shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this AGREEMENT shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and each Party agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California.

9. **Integration; Amendment.** This AGREEMENT constitutes the entire agreement between the parties relating to the subject matter of this AGREEMENT and supersedes and replaces any other written or oral agreements thereto. No amendment to this AGREEMENT will be effective unless in writing and signed by both parties.

10. **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this AGREEMENT shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining portions of this AGREEMENT shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

11. **Assignment.** Neither Party hereto shall assign its rights under this AGREEMENT without the prior written consent of the other Party, which consent may be given or withheld in such Party's sole discretion.

12. **Counterparts.** This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

13. **Authority.** The persons executing this AGREEMENT on behalf of the Parties hereto warrant (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this AGREEMENT on behalf of said Party, (iii) by so executing this AGREEMENT, such Party is formally bound to the provisions of this AGREEMENT, and (iv) the entering into

this AGREEMENT does not violate any provision of any other AGREEMENT to which said Party is bound.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT on the date set forth opposite their respective signatures below.

**CITY OF MORRO BAY**, a municipal corporation

\_\_\_\_\_  
Yvonne Kimball, City Manager

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Chris Neumeyer, City Attorney

**CITY OF ATASCADERO**, a municipal corporation

\_\_\_\_\_  
By: James R. Lewis, City Manager

ATTEST:

\_\_\_\_\_  
Lara Christensen, City Clerk

**APPROVED AS TO FORM:**

RICHARDS, WATSON & GERSHON

\_\_\_\_\_  
Dave Fleishman, City Attorney