

## **RESOLUTION NO. 2012-0019**

Adopted by the Sacramento City Council

January 22, 2012

### **AUTHORIZING THE DONATION OF SURPLUS AMBULANCE, CITY EQUIPMENT NO. 10564, TO THE CITY OF AGUASCALIENTES, MEXICO**

#### **BACKGROUND:**

- A. The City of Sacramento has available a surplus ambulance, city equipment number 10564.
- B. The City of Sacramento has received a request from the City of Aguascalientes, Mexico to donate a surplus ambulance. The City of Sacramento wishes to foster good public relations between it and the City of Aguascalientes.
- C. Based on the condition and previous auction sales of similar vehicles, the estimated sales value of the subject vehicle is \$3,000. When surplus fleet equipment is sold, the general rule is that the sales proceeds are returned to the owning fund, which in this case is the General Fund (Fund 1001).
- D. In accordance with City Code Section 3.80.030(F), surplus property may be donated to any other public agency or charitable organization exempt under Section 501(c)(3) of the Internal Revenue Code, by resolution of the City Council.
- E. The City of Aguascalientes has agreed to pay for the cost of transporting the ambulance from Sacramento to Aguascalientes.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1: The donation of a surplus City of Sacramento ambulance, city equipment number 10564, to the City of Aguascalientes, Mexico is hereby authorized.
- Section 2: The City Manager, or his designee, is authorized to execute a purchase agreement to transfer the ambulance to the City of Aguascalientes.
- Section 3: The City Manager, or his designee, is authorized to execute such additional documents and to take additional actions necessary to complete the transfer of the ambulance to the City of Aguascalientes.
- Section 4: Exhibit A is a part of this resolution.

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Exhibit A: Purchase Agreement

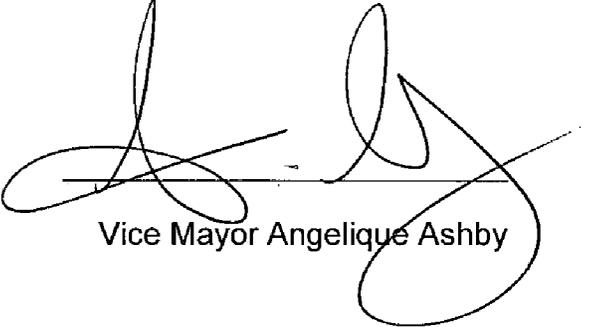
Adopted by the City of Sacramento City Council on January 22, 2013 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, Hansen, McCarty, Pannell,  
Schenirer, and Warren.

Noes: None.

Abstain: None.

Absent: Mayor Johnson.



Vice Mayor Angelique Ashby

Attest:



Shirley Concolino, City Clerk



## PURCHASE AGREEMENT

for City of Sacramento surplus property



Agreement Date: January 22, 2013

Performance Date: February 28, 2013

This purchase agreement is entered into between the City of Sacramento ("City") and the City of Aguascalientes, Mexico ("Aguascalientes"). In consideration of the mutual promises set forth below, the parties agree as follows:

1. City agrees to convey to Aguascalientes and assign to Aguascalientes all City's right(s), title(s), and interest(s) in and to the following described property: Ford E450, Wheeled Coach Body (City Unit 10564) with 166,663 miles ("property").
2. All property conveyed hereunder shall be removed from the City site by the performance date shown above. In the event the property is not so removed, City shall have the unconditional right to sell or donate the surplus property at its convenience, by any method it chooses, and without prior notice to Aguascalientes.
3. All property is conveyed F.O.B. City. Aguascalientes is responsible for all costs and arrangements (including labor and materials) associated with dismantling, loading, transporting, and removing the surplus property from the City. Aguascalientes assumes sole responsibility for safety in securing the load(s).
4. Aguascalientes shall comply with all federal, state, local, and OSHA regulations. Aguascalientes shall comply with all rules which may be imposed by City from time to time.
5. City conveys this surplus property in an "as is" condition, and makes no guarantee, warranty, or representation, express or implied, as to quantity, kind, character, quality, condition, weight, size, or description of any property, its merchantability, its fitness for any use or purpose, or otherwise. Aguascalientes agrees that full opportunity was given to inspect and examine the property. Aguascalientes's failure to inspect will not constitute grounds for any claim against the City.
6. All weights offered, shown, or calculated in respect to the property, other than actual shipping weights, are estimated weights only.

7. Aguascalientes understands and agrees that City will not be required to make available any documentation, reports, drawings, or instruction manuals of the property being sold.

8. The conveyance set forth in paragraph 1 hereof is exclusive of, and Aguascalientes shall be responsible for, all taxes, levies, assessments, and the like arising out of, or in any way connected with, the sale, dismantling, loading, transportation, removal, possession, or use of the surplus property conveyed hereunder.

9. If the property is, at City's discretion, loaded and held for payment, risk of loss shall pass to Aguascalientes upon loading and all demurrage and other costs that may accrue in respect thereof will be paid by Aguascalientes.

10. City shall be excused for any delay or failure in performance due to acts of God, war, riot, acts of civil or military authorities, fires, floods, accidents, strikes, differences with workers, delays in transportation, shortage of fuel, labor, or material, or any other circumstances or cause beyond the control of City in the reasonable conduct of business.

11. Aguascalientes shall not sell or otherwise transfer all or any portion of the property without requiring the transferee to provide the City protection against liability from the sale or transfer of the property which is at least equivalent to that afforded City under this agreement. In the event that Aguascalientes sells or transfers all or any portion of the surplus property contrary to the provisions of this paragraph, Aguascalientes shall be liable for any act or omission of the transferee, and Aguascalientes shall indemnify, defend and hold harmless the City hereunder to the same extent as if no such sale or transfer had taken place.

12. To the fullest extent allowed by law, the Aguascalientes shall indemnify, defend, and hold harmless the City, its directors, officers, agents, and employees from and against all claims, actions, damages, losses, and expenses (including but not limited to attorneys' fees) arising by reason of any act or failure to act by Aguascalientes, anyone directly or indirectly employed by Aguascalientes, or anyone for whose acts or omissions Aguascalientes may be liable hereunder, in connection with or in any way related to the donation, sale, purchase, dismantling, loading, removal and/or transporting of any property hereunder. The aforesaid indemnity and hold harmless shall include any claims, actions, damages, losses and expenses arising from or related to any act or failure to act by any entity or person, including City, its officers, employees and agents, in connection with the inspection, repair, reconditioning, safety or condition of the property.

13. Aguascalientes, for itself, its assigns, transferees, and successors, hereby waives and releases any and all claims of whatever sort or nature which may arise against City, its officers, employees, and agents, in connection with sale of the property hereunder. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code,

which provides that:

A general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, Aguascalientes expressly acknowledges that this agreement is intended to release and extinguish, without limitation, all claims for losses of any sort or nature arising hereunder which Aguascalientes does not know or suspect to exist.

14. There are no understandings between the parties hereto as to the subject matter of this agreement other than as set forth herein. All previous communications about the subject matter of this agreement, either oral or written, are hereby abrogated and withdrawn, and this agreement constitutes the entire agreement between the parties. No terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by both parties hereto.

15. Aguascalientes agrees to adhere to City's Insurance Provisions, attached to this agreement as Exhibit "A" and fully incorporated herein by this reference.

16. Enforcement of agreement. This agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. This agreement is written in English and Spanish, with signed copies of each version given to the parties. If a discrepancy exists between the English and Spanish versions, then the English version will control.

IN WITNESS WHEREOF, the undersigned have executed this bill of sale and agreement as of the agreement date first above written.

Buyer: City of Aguascalientes, Mexico

Address:

Signature: \_\_\_\_\_  
Name/Title: \_\_\_\_\_  
(Please Print) \_\_\_\_\_

City of Sacramento  
Department: Procurement Services Division  
Address: 5730 - 24<sup>th</sup> Street, Bldg. 1  
Sacramento, CA 95822

Signature: \_\_\_\_\_  
Name/Title: Department of General Services

## Exhibit "A"

### INSURANCE PROVISIONS

Prior to the commencement of any work to remove or transport surplus property and until the work is complete, the Aguascalientes or, if agreed to by the City in its sole discretion, Aguascalientes's contractor shall maintain the following insurance against liabilities arising out of activities performed by or on behalf of Aguascalientes.

#### A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence.
- (2) Workers' Compensation Insurance with statutory limits.

#### B. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Aguascalientes or Aguascalientes's Contractor's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Aguascalientes's or Aguascalientes's Contractor's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
- (3) Coverage shall state that Aguascalientes's or Aguascalientes's Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

#### D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the

requirements of this Section must be declared to and approved by the City Risk Management Division in writing prior to execution of this agreement.

E. Verification of Coverage

- (1) Aguascalientes or Aguascalientes's Contractor shall furnish City with certificates evidencing the insurance required. The certificates shall be forwarded to the City representative named in Exhibit A. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The City may cancel this agreement if Aguascalientes or Aguascalientes's contractor ceases to be insured as required herein.

F. Insurance provided by Aguascalientes's Contractor

- (1) The following certification must be completed by Aguascalientes prior to the City's acceptance of insurance provided by the Aguascalientes's Contractor:  
  
"Aguascalientes certifies that neither the Aguascalientes nor person(s) employed by Aguascalientes will perform any work or services under this agreement \_\_\_\_\_ (Aguascalientes's initials)"
- (2) The City's acceptance of insurance from Aguascalientes's Contractor does not effect Aguascalientes's obligation to defend and indemnify City under this agreement.