PRICE AGREEMENT
WITH NASCO, LLC
FOR MSA SAFETY EQUIPMENT FOR THE
SANTA FE COUNTY FIRE DEPARTMENT

THIS AGREEMENT is made and entered into this 12th day of October, 2012, by and between the **County of Santa Fe**, hereinafter referred to as "the County," and **NASCO, LLC,** hereinafter referred to as "the Contractor."

WHEREAS, in accordance with Section 13-1-126 NMSA 1978, the County determined that this is a sole source procurement for an indefinite quantity of MSA Safety Equipment for its Fire Department;

WHEREAS, pursuant to NMSA 1978, § 13-1-63, this Agreement is determined to be an Indefinite Quantity Agreement;

WHEREAS, the County desires to engage the Contractor to provide the self-contained breathing apparatus (SCBA) and other safety products at specified discounted prices from the Manufacturer's Master Price List (Catalog).

NOW, THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

1. DEFINITIONS

A. **"County"** shall mean the County of Santa Fe, New Mexico.

B. **"Using Department or Department"** shall mean the Santa Fe County Fire Department.

C. **"Purchase Order"** shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items and services to be provided by the Contractor.

D. **"Price Agreement"** means this indefinite quantity Price Agreement which requires the Contractor to provide MSA Safety Equipment and SCBA to the Using Department which issues a Purchase Order.

E. **"Price"** means the discounted prices off of list prices as shown on the Master Price List for MSA Safety Equipment and SCBA's as indicated in Attachment A.

2. GOODS TO BE PROVIDED

A. **Purchase.** Attachment A of this Price Agreement indicates the prices for the Contractor's goods. Attachment A also indicates any specifications required for the goods that are subject of this Price Agreement.

B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the goods listed on Attachment A. Any order by the County must be an item described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement 2013-0106-FD/MS.

C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the goods listed on Attachment A. No guarantee or warranty is made or implied that any order for any definite quantity of goods will be issued under this Price Agreement. The Contractor is required to accept a Purchase Order and furnish the item(s).

D. **Specifications.** The goods furnished under this Price Agreement shall meet or exceed the specifications provided in the Information for Bidders, IFB# 2013-0106-FD/MS including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement good(s) and price(s).

E. **Delivery and Billing Instructions.**

1. The Contractor shall deliver the goods in accordance with the Using Department's instructions. The Contractor shall also deliver, with the goods ordered, an invoice listing the order number and the Price Agreement number.
2. Whenever, the Department does not accept any item and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned.
3. The Department will inform the Contractor within five business days that an item is unacceptable by the Using Department.
4. Prices listed in Attachment A, for each item, shall be the fixed prices and rates for the items.

3. PAYMENT. All payments under this Price Agreement are subject to the following provisions:

A. **Inspection.** Final inspection and acceptance of a deliverable shall be made by the Using Department.

B. **Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet specifications and will accept the items if they meet specifications. No payment shall be made for any item until the item is accepted in writing by the Using Department. Unless otherwise agreed upon, between the Using Department and the Contractor within thirty (30) days from the delivery and receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of any item. Unless the Using Department gives notice of partial acceptance or rejection within the time specified in Paragraph 2.E.3 above, the items will be deemed to have been accepted.

C. **Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.

D. **Payment.** County shall pay Contractor on an invoice received from Contractor within thirty (30) days from the date the County approves the invoice.

E. **Taxes.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item on each invoice. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and county tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor written evidence of such exemption(s).

4. TERM OF THIS AGREEMENT. This Price Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Agreement shall be two (2) years from the Effective Date.

5. CANCELLATION.

A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the goods fail to meet the requirements of this Price Agreement.

B. The failure of the Contractor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.

C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.

E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.

6. TERMINATION.

A. For Convenience. Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the Termination date of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.

B. For Cause. Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT. Except for amendment affecting price(s), this Price Agreement may be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

8. ASSIGNMENT. Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Price Agreement.

9. NON-COLLUSION. In signing this Price Agreement, the Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

10. RECORDS. During the term of this Price Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the goods provided. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

11. APPROPRIATIONS. The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Price Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

12. CONFLICT OF INTEREST. The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Price Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosure Act.

13. APPROVAL OF CONTRACTOR'S REPRESENTATIVES. The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

14. SCOPE OF AGREEMENT, MERGER. This Price Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement.

15. NOTICE. The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

16. INDEMNIFICATION. The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the

Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

17. THIRD PARTY BENEFICIARY. This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

18. NEW MEXICO TORT CLAIMS ACT. No provision of this Price Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

19. INSURANCE.

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.

C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.

D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

20. APPLICABLE LAW. This Price Agreement shall be governed by the laws of the State of New Mexico.

21. CHOICE OF LAW. This Price Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

22. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price

Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT. A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Price Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

24. SURVIVAL. The Provisions of the following listed paragraphs shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records; Indemnification; Applicable Law; and Survival.

25. NOTICES. Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:

Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

To the Contractor:

NASCO LLC
1261 Vondel Park Drive
Colorado Springs, CO 80907

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Price Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

26. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. The Contractor hereby irrevocably appoints, Tom Jimenez, a New Mexico resident located at, 6763 Camino Rojo, Santa Fe, New Mexico 87507, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Katherine Miller
Santa Fe County Manager

10 · 12 · 12
Date

APPROVED AS TO FORM

Stephen C. Ross
Santa Fe County Attorney

Sept 21, 2012
Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Director
Santa Fe County Finance Department

10/3/2012
Date

CONTRACTOR

Signature

Date

Print Name and Title

FEDERAL TAX I.D. NUMBER: _____

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SANTA FE COUNTY

_____ _____
Katherine Miller Date
Santa Fe County Manager

APPROVED AS TO FORM

_____ _____
Stephen C. Ross Date
Santa Fe County Attorney

FINANCE DEPARTMENT APPROVAL

_____ _____
Teresa C. Martinez, Director Date
Santa Fe County Finance Department

CONTRACTOR

Susan R. Lester Aug. 13, 2012
Signature Date

Susan R. Lester / owner
Print Name and Title

FEDERAL TAX I.D. NUMBER: 26-0016666

ATTACHMENT A

MSA SAFETY EQUIPMENT CATALOG DISTRIBUTOR FOR THE SANTA FE COUNTY FIRE DEPARTMENT

PRICE DISCOUNTS

1. The County shall pay the Contractor at a price of **Forty Percent (40%)** off list price as shown on the Master Price List for SCBA, Complete Units

2. The County shall pay the Contractor at a price of **Thirty-Two Percent (32%)** off list price as shown on the Master Price List for Thermal Imaging Cameras

3. The County shall pay the Contractor at a price of **Thirty-Two Percent (32%)** off of prices as shown on the Master Price List for Cairns Helmets

4. The County shall pay the Contractor at a price of **Twenty-Five Percent (25%)** off of prices as shown on the Master Price List for all other MSA Safety Products

DELIVERY

1. Delivery needed for each unit ordered: **90 Days ARO**

2. Delivery Proposed for **Thirty (30) to Forty (40) Days**