

**City Council Agenda Item #11A  
Meeting of December 21, 2009**

**Brief Description:** Items regarding the purchase of self contained breathing apparatus (SCBA)

1. Amended joint powers agreement
2. Contract for SCBA on behalf of the joint powers association
3. Purchase of SCBA equipment
4. Amendment to the 2010-14 capital improvement program

**Recommended Action:**

1. Approve the amended joint powers agreement
2. Award the contract to Clarey's Safety Equipment on behalf of the joint powers association
3. Approve the purchase of equipment
4. Amend the 2010-14 capital improvement program

**Background**

On April 7, 2008, the city council approved a joint powers agreement (JPA) to allow participating organizations the ability to lease the same self-contained breathing apparatus (SCBA), to be tested and maintained by the manufacturer, resulting in increased interoperability and life safety. The agreement authorizes one city to act as the lead agency in obtaining bids, but each city would enter into its own contract with the company for the number of units that they need. The JPA operating committee chose Minnetonka to act as the lead agency for obtaining bids, but Minnetonka has worked closely with Eden Prairie staff in this effort.

The specifications were written to allow either a purchase or a lease of the equipment. The city's finance director determined that the city has sufficient cash to purchase the equipment and that this is more cost effective than leasing. This requires an amendment to the JPA to add the ability to purchase equipment. The JPA envisioned only leasing of the equipment.

Bids were received on October 8, 2009 from four vendors. The bids are complicated and reflect a myriad of options. Staff used a typical basic pack with associated components to compare the bids. Staff also included the amount for service during the seven-year life cycle of the purchased equipment. The results were as follows:

<b>Bidder</b>	<b>Amount</b>
Clarey's Safety Equipment (Scott equipment)	\$4,492.20
Fire Safety (Sperion equipment)	\$4,583.50
Metro Fire (MSA equipment)	\$4,588.52
Interspiro equipment (no local dealer)	\$5,087.90

Staff has examined the Clarey/Scott bid and has determined that it meets all of the requirements of the bid specifications. The Scott equipment is high quality and will meet the needs of the various fire departments. The JPA operating committee recommended that Minnetonka award the contract to Clarey's Safety Equipment on behalf of the JPA.

Staff would also like to purchase the following equipment off this contract for a total price of \$349,770.80:

- 69 SCBA with 45 minute bottle and tier 2 service
- 5 rescue SCBA with 60 minute bottle and tier 2 service
- 62 spare 45 minute bottles

Funding for this equipment was included in the 2009-13 capital improvement plan (CIP) but not the 2010-14 CIP. Pending final outcome of the request for bids, staff set up a special general fund reserve of \$350,000 for these costs in the revised 2009 operating budget. Funds from this reserve will finance these costs in 2010, and the 2010-14 CIP should be amended to include this expenditure.

### **Recommendation**

Staff recommends that the council:

1. approve the amended and restated joint powers agreement to authorize the purchase as well as the leasing of SCBA;
2. award the contract for SCBA on behalf of the joint powers group to Clarey's Safety Equipment;
3. approve the purchase of SCBA equipment and related service off this contract in the amount of \$349,770.80;
4. amend the 2010-14 capital improvement plan to add \$350,000 for the purchase of self contained breathing apparatus in 2010 from the capital replacement fund.

Submitted through:

John Gunyou, City Manager  
Merrill King, Finance Director

Originated by:

Joe Wallin, Fire Chief  
Desyl Peterson, City Attorney

**AMENDED AND RESTATED**  
**JOINT & COOPERATIVE AGREEMENT**  
**FOR ~~LEASING~~THE ACQUISITION AND USE OF SCBA**

**1. Purpose**

This Agreement is made pursuant to Minnesota Statutes 471.59 which authorizes the joint and cooperative exercise of governmental powers common to contracting parties. The intent of this Agreement is to make available ~~leased~~ self-contained breathing apparatus (SCBA) to the governmental agencies who are parties to this Agreement- either through purchase or lease. This Agreement replaces and rescinds the prior agreement between the parties that provided for only the leasing of SCBA.

**2. Parties**

The ~~initial~~ parties to this Agreement are the cities of Bloomington, Eden Prairie, Edina, and Golden Valley, Hopkins, Minnetonka, all of which are municipal corporations Mound, Saint Louis Park, and Wayzata, and ~~subdivisions of the state of Minnesota.~~ Excelsior Fire District and West Metro Fire-Rescue District. Additional governmental agencies may become parties to this Agreement by adopting a resolution approving this Agreement and sending an original execution page and a certified copy of the resolution to the secretary of the Operating Committee established below. The secretary of the Operating Committee must maintain a current list of the parties to this Agreement and must notify the contact person for each party whenever there is a change in the parties to this Agreement.

**3. Operating Committee**

**3.1. Creation.**

There will be an Operating Committee (the “Committee”) to administer this Agreement. The Committee will consist of one representative appointed by each of the parties to the Agreement. In the absence of a specific appointment, a party’s representative will be its fire chief. Each member of the Committee is entitled to one vote.

**3.2. Procedural Rules.**

The Committee must adopt procedural rules to govern its operations.

**3.3. Officers.**

The Committee will select from its members a chair to conduct meetings, a vice-chair to act in the place of the chair, and a secretary to keep the records of the Committee.

### 3.4. Powers, Duties.

The Committee has the authority and responsibility to administer this Agreement on behalf of the parties and to take all necessary actions allowed by law to implement its terms.

## 4. Procedures For SCBA

### 4.1. ~~Leasing~~ Acquisition of SCBA.

The Committee will take all ~~of the actions~~ action necessary for ~~leasing~~ obtaining a contract for the purchase or lease of SCBA ~~to serve~~ by its members. The Committee will comply with the Municipal Contracting Law, including the preparation of specifications and request for proposals. The Committee will designate one of the member parties to act as the lead agency for selecting the contractor, based on the recommendation of the Committee.

### 4.2. Contract Terms.

The contract with the selected contractor (the "~~Leasing~~ Contract") must provide that each party to this Agreement will order SCBA directly from the contractor and make payments directly to the contractor. ~~The Leasing Contract must provide a specific number of SCBA to be initially provided to each party and must establish the circumstances under which additional SCBA may be ordered.~~ No party will have any responsibility for paying for the ~~number of~~ SCBA ~~designated for, or~~ ordered by, any other party. The ~~Leasing~~ Contract must ~~provide that~~ include an option for the contractor ~~will own, to~~ maintain, and certify the SCBA ~~and will replace the SCBA as needed.~~ The Leasing. The Contract must provide the terms of payment to the contractor for this service.

### 4.3. Rules for use of SCBA.

The Committee will establish rules and procedures for the use of the SCBA by the parties, including determining the responsibility for damage to, or loss of, the SCBA.

## 5. Responsibility for Employees

All persons engaged in the work to be performed by a party under this Agreement may not be considered employees of any other party for any purpose, including worker's compensation and other claims that may or might arise out of the employment context on behalf of the employees. All claims made by a third party as a result of any act or omission of a party's employees while engaged on any of the work performed under this Agreement are not the obligation or responsibility of any other party. Each party is responsible for injuries or death of its own personnel. Each party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing services under this Agreement. Each party waives the right to sue any other party for any workers' compensation benefits paid to its own

employee or volunteer or their dependants, even if the injuries were caused wholly or partially by the negligence of any other party or its officers, employees, or volunteers.

## **6. Indemnification**

Each party agrees to defend, indemnify, and hold harmless the other parties against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of the party and/or those of its employees or agents. Under no circumstances, however, may a party be required to pay on behalf of itself and another party any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for two or more parties may not be added together to determine the maximum amount of liability for one party. The intent of this paragraph is to impose on each party a limited duty to defend and indemnify each other subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among the parties and to permit liability claims against both parties from a single occurrence to be defended by a single attorney.

## **7. Duration**

This agreement will be in force from the date of execution by ~~at least two~~all of the current parties to the prior agreement and notification to the secretary of the Operating Committee. Any party may withdraw from this Agreement upon 30 days written notice to the other party or parties to the Agreement.

## **8. Execution**

A separate execution page is provided for each party.

[Signature pages follow]

**Execution Page for the**  
**Amended And Restated**  
**Joint & Cooperative Agreement**  
**For Leasingthe Acquisition and Use Of SBCA**

The party listed below has read, agreed to and executed this Agreement on the date indicated.

Date \_\_\_\_\_

Entity \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

And \_\_\_\_\_

Title \_\_\_\_\_