



SERVICE AGREEMENT

RECITALS

This SERVICE AGREEMENT [*as may be amended, supplemented, or restated from time to time*], together with the RELEASE AND WAIVER OF LIABILITY and any Statements of Work (as defined in this Agreement) that may be at any time either concurrently or later attached to this Agreement, is entered into between Patriot Supply Unlimited, Inc., dba The Patriot Group, a California corporation (Provider), and _____ (Client), Lot# _____ as of _____ (Effective Date) on the terms and conditions set forth below:

WHEREAS, Provider has the capability and capacity to provide certain maintenance and removal services; and

WHEREAS Client desires to retain Provider to provide said services, with consideration of payment obligated by a third-party Payor, San Diego Regional Fire Foundation (Payor), whose sole role is to serve as the paying entity and is not involved in performing any services contracted for in this Services Agreement: and

WHEREAS, Provider is willing to perform such services under the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider and Client agree as follows:

ARTICLE 1: Provider Obligations

1.1. **Services.** Provider shall provide to Client the services (the "Services") set out in one or more Statements of Work (each, a "Statement of Work") to be issued by Provider and accepted by Client. The initial accepted Statement of Work is attached hereto as Exhibit B. Additional Statements of Work shall be deemed issued and accepted only if signed by the Provider and Client.

1.2. **Records.** Provider shall maintain complete and accurate records relating to the Services under this Agreement. During the Term, upon Client's written request, Provider shall allow Client or Client's representative to inspect and make copies of such records in connection with the provision of the Services; provided that Client provides Provider with at least five (5) days advance written notice of the planned inspection and any such inspection shall take place during regular business hours.

ARTICLE 2: Client Obligations

2.1. **Obligations.** Client shall: Execute the RELEASE AND WAIVER OF LIABILITY (the "Waiver") attached hereto as Exhibit A.

ARTICLE 3: Fees and Expenses

3.1. **Payment of Fees.** In consideration of the provision of the Services by the Provider and the rights granted to Client under this Agreement, Provider shall receive payment of all fees and reimbursement of expenses in relation to the Services set out in the Statement of Work from Payor.

3.2. **No Obligation of Payment.** In the event Payor refuses or is unable to pay Provider, Provider shall hold harmless Client against any and all fees, losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind for Services.

ARTICLE 4: General Provisions

4.1. **Limited Warranty.** Provider warrants that it shall perform the Services:

- (1) In accordance with the terms and subject to the conditions set forth in the respective Statement of Work and this Agreement.
- (2) Using personnel of commercially reasonable skill, experience, and qualifications.
- (3) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

4.2. **Provider Liability.** Provider's sole and exclusive liability and Client's sole and exclusive remedy for breach of this warranty shall be as follows: Provider shall use reasonable commercial efforts to promptly cure any such breach; provided, that if Provider cannot cure such breach within a reasonable time after Client's written notice of such breach, Client may, at its option, terminate the Agreement by serving a notice of termination in accordance with Section 4.6.

4.3. **Disclaimer.** PROVIDER MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 4.1, ABOVE. ALL OTHER WARRANTIES, EXPRESSED AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

4.4. **Term, Termination, and Survival.** This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work unless sooner terminated pursuant to this Agreement.

4.4.a. **Upon Default.** Either Party may terminate this Agreement, effective upon written notice to the other Party (the "Defaulting Party"), if the Defaulting Party materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within three (3) days after receipt of written notice of such breach.

4.4.b. **Upon Failure of Waiver.** Provider may terminate this Agreement before the expiration date of the Term by written notice if Client fails to execute the Release and Waiver of Liability Agreement attached hereto after two (2) days of this Agreement's execution.

4.4.c. **Upon Failure of Payment.** Provider may terminate this Agreement before the expiration date of the Term by written notice if, for any reason, Payor voids, revokes, nullifies, rescinds, fails or otherwise terminates payment or provides notice thereof and Client agrees to hold Provider harmless in accordance with, inter alia, Section 4.5 of this Agreement.

4.5. **Limitation of Liability.** IN NO EVENT SHALL PROVIDER BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR LOSS OF DATA, OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. PROVIDER SHALL NOT BE LIABLE FOR DELIBERATE OR INTENTIONAL ACTS OF GROSS NEGLIGENCE.

4.5.a. **Aggregate Liability.** IN NO EVENT SHALL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED [] THE AGGREGATE AMOUNTS PAID OR PAYABLE TO PROVIDER PURSUANT TO THIS AGREEMENT AND APPLICABLE STATEMENTS OF WORK.

4.6. **Notice.** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice", and with the correlative meaning "Notify") and provided by Client must be in writing and addressed to Provider at its address set forth below or to such other address that the receiving Provider may designate from time to time in accordance with this Section. Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the Provider and (b) if the Client giving the Notice has complied with the requirements of this Section 4.6.

Notice to Provider: 1860 Sierra Gardens Dr. #607
 Roseville, CA 95661

 Attention: Jeffrey Forbes, Provider

4.7. **Amendments.** No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

4.8. **Waiver.** No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

4.9. **Assignment.** Client shall not assign, transfer, delegate, or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Provider. Any purported assignment or delegation in violation of this Section 4.9 shall be null and void. No assignment or delegation shall relieve the Client of any of its obligations under this Agreement. Provider may not assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Provider's assets without Client's consent.

4.10. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

4.11. **Relationship of the Parties.** The relationship between the Parties is that of a transactional nature between a business and client. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

4.12. **No Third-Party Beneficiaries.** This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

4.13. **Choice of Law.** This Agreement and all related documents including all exhibits attached hereto and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of California, United States of America including its statutes of limitations and Cal. Civ. Code § 1646.5 without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California.

4.14. **Choice of Forum.** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims in any forum other than the US District Court for the Southern District of California or if such court does not have subject matter jurisdiction, the courts of the State of California sitting in San Diego County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the Southern District of California or if such court does not have subject matter jurisdiction the courts of the State of California sitting in San Diego County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

4.15. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 4.10, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

4.16. **Force Majeure.** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": acts of God; flood, fire, earthquake, or explosion; terrorist threats or acts, riot or other civil unrest; government order, law, or action; embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; shortage of adequate power or transportation facilities; and other events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within two (2) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of two (2) days following written notice given by it under this Section, the other Party may thereafter terminate this Agreement upon two (2) days' written notice.

4.17. **Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction; provided, however, that if any fundamental term or provision of this Agreement is invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable. Upon a determination that any term or provision is invalid, illegal,

or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

4.18. **Entire Agreement.** This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. The parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Statement of Work, the terms and conditions of this Agreement shall supersede and control.

IN WITNESS WHEREOF, the parties to this Agreement have executed it on the day and year first above written.

Print: _____

Supervisor for Provider: Patriot Supply
Unlimited, Inc., dba The Patriot Group

Print: _____

Client Name

By: _____

Supervisor Signature

By: _____

Client Signature

For Jeffrey Forbes,
Provider at Patriot Supply Unlimited, Inc.,
dba The Patriot Group
1860 Sierra Gardens Dr #607
Roseville, CA 95661

EXHIBIT A

RELEASE AND WAIVER OF LIABILITY

RECITALS

This Release and Waiver of Liability (the "Waiver"), dated as of _____ (Effective Date), is made by _____ (Client), LOT# _____ in favor of Patriot Supply Unlimited, Inc., dba The Patriot Group, a California corporation (Provider),

WHEREAS, the Parties have entered into a Services Agreement, dated as of _____ (Effective Date), (the "Agreement");

WHEREAS, Provider has contracted to provide certain maintenance and removal services; in exchange for consideration provided on behalf of Client by Payor (San Diego Regional Fire Foundation).

WHEREAS, in consideration for Provider's services, Client has agreed to the terms and conditions set forth in this Waiver:

ARTICLE 1: Terms and Conditions

1.1. **Assumption of Risk.** I am aware and understand the nature of the Services undertaken by Provider for my benefit is an inherently dangerous activity and involve serious risk of personal injury, disability, and/or death, and property damage. I acknowledge that these risks may result from or be compounded by the actions, omissions, or negligence of the Provider, it's employees or others, I understand that, while Provider has implemented measures to reduce the risk by using personnel of commercially reasonable skill, experience, and qualifications the Provider cannot guarantee that I, or my Property, will not be injured or damaged. NOTWITHSTANDING THESE RISKS, I ACKNOWLEDGE THAT I AM VOLUNTARILY RETAINING PROVIDER'S SERVICES WITH FULL KNOWLEDGE OF THE DANGERS INVOLVED. I HEREBY AGREE TO ACCEPT AND ASSUME ALL RISKS OF PERSONAL INJURY, DISABILITY, DEATH, PROPERTY DAMAGE AND/OR FINANCIAL LOSS ARISING THEREFROM, WHETHER CAUSED BY THE ORDINARY NEGLIGENCE OF THE COMPANY OR OTHERWISE.

1.2. **Release.** I hereby expressly waive and release any and all claims, now known or hereafter known, against the Provider and its officers, directors, managers, employees, agents, and affiliates (collectively, "Releasees") on account of personal injury, disability, death, property damage, or financial loss arising out of or attributable to Provider's Services, whether arising out of the ordinary negligence of the Provider or any Releasees or otherwise. I covenant not to make or bring any such claim against the Provider or any other Releasee, and forever release and discharge the Provider and all other Releasees from liability under such claims. This waiver and release does not extend to claims for gross negligence, willful misconduct, or any other liabilities that California law does not permit to be released by agreement.

1.3. **No Modifications.** Nothing contained in this Waiver will be deemed or construed to amend, supplement, or modify the Agreement or otherwise affect the rights and obligations of any party thereto, all of which remain in full force and effect.

1.4. **Successors and Assigns.** This Waiver shall inure to the benefit of and be binding upon each of the Parties and each of their respective permitted successors and permitted assigns.

1.5. **Choice of Law.** This Waiver and all related documents, and all matters arising out of or relating to this Waiver, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of California, United States of America including its statutes of limitations and Cal. Civ. Code § 1646.5, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California.

1.6. **Venue.** Any claim or cause of action arising under this Release may be brought only in the federal and state courts located in San Diego, California and I hereby consent to the exclusive jurisdiction of such courts.

1.7. **Counterparts.** This Waiver may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Waiver electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Waiver.

BY SIGNING, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS RELEASE AND THAT I AM VOLUNTARILY GIVING UP SUBSTANTIAL LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE THE COMPANY.

IN WITNESS WHEREOF, the parties to this Agreement have executed it on the day and year first above written.

Print: _____
Supervisor for Provider: Patriot Supply
Unlimited, Inc., dba The Patriot Group

Print: _____
Client Name

By: _____
Supervisor Signature

By: _____
Client Signature

For Jeffrey Forbes,
Provider at Patriot Supply Unlimited, Inc.,
dba The Patriot Group
1860 Sierra Gardens Dr. #607
Roseville, CA 95661

EXHIBIT B

INITIAL STATEMENT OF WORK PER ATTACHED BID