

BILL NO.: 4502

ORDINANCE NO.: _____

Introduced by: Council Present

AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE ATTACHED AGREEMENT WITH ZOLL MEDICAL CORPORATION FOR EMS CARDIAC MONITORS

Now, Therefore, Be it Ordained by the City Council of the City of Berkeley, Missouri, as follows:

Section 1 The Mayor is hereby authorized to execute the attached ZOLL Medical Corporation agreement to purchase EMS Cardiac Monitors and supplies.

Section 2 The attached agreement is hereby incorporated herein and made a part of this ordinance, as if fully set out herein.

Section 3 This Ordinance shall be in full force and effect from and after the date of its passage.

1st Reading this 07th day of November 2016

2nd Reading this _____ day of _____ 2016

3rd Reading, PASSED and APPROVED, this _____ day of _____ 2016

Theodore Hoskins, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved As To Form:
Donnell Smith, City Attorney

Final Roll Call:

Mayor Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Kirkland	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Mathison	Aye	___	Nay	___	Absent	___	Abstain	___
Councilman-at-Large McDaniel	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Mitchell	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Williams	Aye	___	Nay	___	Absent	___	Abstain	___

STANDARD PROJECT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2016, by and between the ZOLL Medical Corporation (a corporation organized and existing under the laws of the State of Missouri), (a partnership consisting of _____) hereinafter called the "CONTRACTOR" and the City of Berkeley, Missouri.

WITNESSETH: that the Contractor and the City of Berkeley, Missouri for the considerations stated herein agree as follows:

STATEMENT OF WORK: The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, services materials, supplies, etc. needed to perform and complete all work required for **RFP # 856 "Cardiac Monitors"** and any and all required supplemental work for completion of the project in accordance with the Plans, Specifications, and all Contract documents.

The Contractor must either notify the City of Berkeley at least one business day prior to doing work, or provide a schedule and notify the City of Berkeley one business day prior to doing work for any changes in the schedule. The City of Berkeley will then have the option of having an inspector present to inspect the work.

The City of Berkeley will pay the Contractor for the performance of the contract in current funds, for the total quantities of work performed at the unit prices stipulated on the attached bid for the several respective items of work completed subject to additions and deductions mutually agreed upon by both parties of this agreement.

Payments will be made within 30 days after the City approves the final inspection of the project, and the contractor submits a final invoice. The final invoice shall not be deemed as received until after the City approves the completion of the project.

CONTRACT: The executed Contract documents consist of the documents furnished to each bidder and the successful Contractor for this project.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in tow (2) Original copies on the day and year first above written.

Contractor: ZOLL Medical Corporation

City of Berkeley, Missouri:

By: _____

By: _____

Title: _____

Title: Mayor

Street: 269 Mill Road

Street: 8425 Airport Rd

City: Chelmsford, MA 01824

City: Berkeley, MO 63134

Attest

Attest

By: _____

By: _____

Title: _____

Title: _____

Exhibit 2 - Proposal Cost Summary Form

The undersigned, being familiar with the requirements of the City of Berkeley, Request for Proposal, proposes to furnish products to the City of Berkeley in accordance with that request.

The summary below reflects projected City of Berkeley costs for product acquisition. Supporting detail must be attached describing, projected expenses including any discounts and anything else that will lead to a clear understanding of the proposal. Maintenance costs are to be listed separately.

Qty.	Item Description	Unit Price	Total Price
2	Cardiac Monitor including all features and equipment as specified in the bid specifications to reflect any trade in value for 2 Zoll M-Series Monitors	\$28,150.00	\$56,300.00
		\$	
		\$	
		\$	
		\$	
		\$	
	TOTAL	\$ 28,150.00	\$56,300.00

In submitting this proposal, I understand that the City of Berkeley reserves the right to reject any and all proposals.

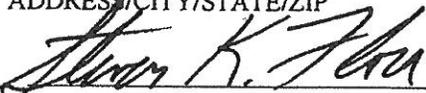
The undersigned further agrees that this proposal is made in good faith and is not founded on, or in consequence of, any collusion, agreement or understanding between his or herself or any other interested party.

ZOLL Medical Corporation

FIRM NAME

269 Mill Road, Chelmsford, MA 01824

ADDRESS/CITY/STATE/ZIP



Signature of Principal

Sr. V.P. of North American Sales

Title

800-348-9011

October 24, 2016

Phone Number

Date



ZOLL Medical Corporation

Worldwide HeadQuarters
 269 Mill Rd
 Chelmsford, Massachusetts 01824-4105
 (978) 421-9655 Main
 (800) 348-9011
 (978) 421-0015 Customer Support
 FEDERAL ID#: 04-2711626

TO: City of Berkeley Fire Department

8425 Airport Road
 Berkeley, MO 63134

Attn: **James Linhardt, Fire Chief**

email: jlinhardt@ci.berkeley.mo.us

Tel: 314-524-3313

**RFP 2016-856 Cardiac Monitors
 Due October 31, 2016 at 10:00am**

QUOTATION 228487 V:1

DATE: October 20, 2016

TERMS: SPECIAL

FOB: Shipping Point

FREIGHT: Prepay and Add

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221011-01	<p>X Series ® Manual Monitor/Defibrillator \$14,995 with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5"(16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display.</p> <p>Accessories Included:</p> <ul style="list-style-type: none"> • Six (6) foot 3- Lead ECG cable • MFC cable • MFC CPR connector • A/C power adapter/ battery charger • A/C power cord • One (1) roll printer paper • 6.6 Ah Li-ion battery • Carry case • Declaration of Conformity • Operator's Manual • Quick Reference Guide <p>• One (1)-year EMS warranty</p> <p>Advanced Options: Real CPR Help Expansion Pack \$ 995 CPR Dashboard quantitative depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) • See - Thru CPR artifact filtering</p> <p>ZOLL Noninvasive Pacing Technology: \$2,550</p>	2	\$37,275.00	\$30,565.50	\$61,131.00 *

This quote is made subject to ZOLL's standard commercial terms and conditions (ZOLL T's + C's) which accompany this quote. Any purchase order (P.O.) issued in response to this quotation will be deemed to incorporate ZOLL T's + C's. Any modification of the ZOLL T's + C's must be set forth or referenced in the customer's P.O. No commercial terms or conditions shall apply to the sale of goods or services governed by this quote and the customer's P.O unless set forth in or referenced by either document.

Page 1 Subtotal **\$61,131.00**

1. DELIVERY WILL BE MADE 60-90 DAYS AFTER RECEIPT OF ACCEPTED PURCHASE ORDER.
2. PRICES QUOTED ARE VALID UNTIL DECEMBER 31, 2016
3. APPLICABLE TAX, SHIPPING & HANDLING WILL BE ADDED AT THE TIME OF INVOICING.
4. ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTABLE BY ZOLL.
5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015 OR EMAIL TO ESALES@ZOLL.COM.
6. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
7. PLACE YOUR ACCESSORY ORDERS ONLINE BY VISITING www.zollwebstore.com.

Jason Fenton
 Sr. EMS Account Executive
 314-757-1974



ZOLL Medical Corporation

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		Masimo Pulse Oximetry				
		SP02 \$1,795 <ul style="list-style-type: none"> • Signal Extraction Technology (SET) • Rainbow SET 				
		NIBP Welch Allyn Includes: \$3,495 <ul style="list-style-type: none"> • Smartcuff 10 foot Dual Lumen hose • SureBP Reusable Adult Medium Cuff 				
		End Tidal Carbon Dioxide monitoring (ETCO2) Oridion Microstream Technology: \$4,995 Order required Microstream tubing sets separately				
		Interpretative 12- Lead ECG: \$8,450 <ul style="list-style-type: none"> • 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set 				
2	8 0 0 0 - 0 3 3 0	SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors (4 ft)	2	\$295.00	\$241.90	\$483.80 *
3	8 0 0 0 - 0 2 9 4	SpO2 LNCS Adult Reusable Sensor (1 each)	2	\$295.00	\$692.90	\$1,385.80 *
4	8 0 0 0 - 0 5 8 0 - 0 1	Six hour rechargeable Smart battery	4	\$495.00	\$405.90	\$1,623.60 *
5	8 2 0 0 - 0 0 0 1 0 0 - 0 1	Single Bay Charger for the SurePower and SurePower II batteries	2	\$945.00	\$708.75	\$1,417.50 *

Page 2 Subtotal **\$66,041.70**

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
6	8000-0895	Cuff Kit with Welch Allyn Small Adult, Large Adult and Thigh Cuffs	2	\$157.50	\$129.15	\$258.30 *
7	8300-0002-02	Dual Lumen Hose, 5 Ft.	2	\$125.00	No Charge	No Charge *
8	4001-9933	ZOLL M-Series Biphasic w/Pacing, 12 lead + 2 parameters (Includes CCT) Trade-In	2		(\$5,000.00)	(\$10,000.00) **

Payment Terms: 50% due NET 30, 50% due July 15, 2017. Applicable tax and shipping & handling will be applied at time of invoicing.

**Trade-In Value valid if all equipment purchased is in good operational and cosmetic condition, and includes all standard accessories. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.

*Reflects Discount Pricing.

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TOTAL \$56,300.00

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Jason Fenton
 Sr. EMS Account Executive
 314-757-1974

ZOLL QUOTATION GENERAL TERMS & CONDITIONS

1. ACCEPTANCE. This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgement by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract") the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

2. DELIVERY AND RISK OF LOSS. Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

3. TERMS OF PAYMENT. Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

4. CREDIT APPROVAL. All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

5. TAXES & FEES. The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

6. WARRANTY. (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect failure of the Equipment to perform any specified function, or any other nonconformance of the Equipment caused by or attributable to (i) any modification of the Equipment by the Customer, unless such modification is made with the prior written approval of ZOLL Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation, or (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL Medical Corporation, or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. SOFTWARE LICENSE. (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the property of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Medical Corporation Software.

8. DELAYS IN DELIVERY. ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

9. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATION'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

10. PATENT INDEMNITY. ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

11. CLAIMS FOR SHORTAGE. Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

12. RETURNS AND CANCELLATION. (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

13. APPLICABLE LAW. This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

14. COMPLIANCE WITH LAWS. (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

15. NON-WAIVER OF DEFAULT. In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

16. ASSIGNMENT. This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

17. TITLE TO PRODUCTS. Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability, to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

VETERAN'S EMPLOYMENT - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

EMPLOYMENT OF HANDICAPPED - If this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

EQUAL OPPORTUNITY EMPLOYMENT - If this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth at 41 CFR 60-1.40.

19. VALIDITY OF QUOTATION. This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

20. GENERAL. Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.

MEMORANDUM

TO: Honorable Mayor Theodore Hoskins &
Honorable City Council Members

FROM: Chief James Linhardt, Berkeley Fire Department

DATE: November 1, 2016

SUBJECT: New Cardiac Monitors



Recommendation: The Fire Department has reviewed all aspects contained in the bids obtained from two leading EMS cardiac monitor companies. In total two bids were received from the following vendors: (Zoll and Phillips).

Prior to the bid process, a vendor from three different monitor companies visited the fire department on each shift and had the opportunity to present and demonstrate their respective monitor. An overwhelming majority of fire personnel that participated in the demonstrations recommended purchasing the Zoll Monitors. The remaining members who did not choose Zoll recommended the Lifepak, but these monitors are traditionally more expensive and the representative for Lifepak did not submit a bid to the city for consideration.

The Zoll bid came in the higher of the two bids, exceeding the lowest bid received by approximately seven thousand eight hundred dollars. The lowest bid received was from Phillips. Phillips did not meet the entire specifications set forth by the fire department. The Phillips bid took exception to the Masimo pulse oximetry that was specified by the fire department and replaced it with inferior proprietary technology and sensors. Additionally the Phillips monitor does not allow the fire department the opportunity to measure CO levels in the blood non-invasively. The Zoll monitor can be upgraded with this technology later if desired.

Fire department personnel reached out to surrounding agencies that either reviewed or are current users of the Phillips monitors. Through our research the agencies that did have the Phillips monitors conveyed it was not their first choice when the various monitors were evaluated and they have experienced problems or issues with EKG lead recognition, pulse oximetry and the monitor-computer software interfaces. In one case, one agency had Zoll monitors, switched to

Phillips because they were the low bidder, and then sent all the Phillips monitors back due to unresolved issues and elected to go back to Zoll. It should also be noted the City of St. Louis EMS division recently elected to go with Zoll monitors after an extensive in-field trial.

Finally, the fire department currently uses older models of the Zoll cardiac monitors. These monitors have provided ten years of reliable service, with only routine maintenance done to the monitors and related components. Fire department personnel are familiar with the features and operation of Zoll technology, this will facilitate a quicker in-service time once the monitors are received with only minimal training on the new features needed. Operationally, the Zoll monitor is half the size and also lighter than the Phillips monitor. The Zoll monitor also can be operated in an AED mode and used on children by basic life support providers. Several of the features and benefits available to the department by electing to go with the Zoll monitors cannot be matched by the low bid monitor that was submitted. Finally, Zoll was the only vendor to offer a trade-in allowance for our current monitors and different financing options.

Background: The City of Berkeley fire department solicited bids for new cardiac monitors. The purpose of the bid was to obtain two (2) new cardiac monitors. These new monitors will replace the existing Zoll monitors that have been in service for ten years, are two generations of cardiac monitor technology old and are nearing the end of their expected life span.

The fire department has the legal right to specify the equipment listed in the bid documents based on the following:

The Fire Department (for the remainder of this section referred to as the "specifier") chooses to exercise its Legal Right to Specify as determined by the U.S. Supreme Court's affirmation of the decision handed down in the case of Whitten Corp. vs. Paddock, by the U.S. District Court of Massachusetts, the First Federal District Court, which in effect states: 1) That as trained professionals, specifiers make informed judgments on products that they feel best serve their needs. Also, that proprietary specifications (if chosen) DO NOT violate any antitrust laws. Technically, very few brands of material or equipment are exactly alike, and if the specifier wants to limit the specification to one source, he/she has the right to do so and enforce it. 2) Only the specifier has the responsibility and judgment for determining whether a proposed substitution is an "or equal". 3)

That from start to finish in the purchasing process, only the specifier can ultimately decide if another desirable product is available in lieu of the specification. 4) Finally, that the courts concluded “the burden is on the supplier or manufacturer, who has NOT been specified, to convince the specifier that their product is equal for the purpose of a particular project”. The specifier has determined that this product specification shall represent the product to which all offerings shall be compared. Due to the fact that firefighting is an ULTRAHAZARDOUS, UNAVOIDABLY DANGEROUS activity, only trained Fire Department personnel with specific knowledge in the area of fire apparatus and equipment shall be allowed to make the final determining decision on the selection of the appropriate product to serve the Fire Department’s needs.

Supporting Documents: See attached bids.

Potential Objection: None foreseen as adequate funds are available in the fire department equipment line item.

Staff Reference: If you have any questions please feel free to contact me at (314) 400.3600 or email Linhardt@ci.berkeley.mo.us or Battalion Chief John Tucker at (314) 400.3602 or email Tucker@ci.berkeley.mo.us