



Amendment No. 4
to
Contract No. GS150000007
for
ResQPODS
between
Zoll Medical Corporation
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective July 16, 2019 to July 15, 2020. One option remains.
- 2.0 The total Contract amount is increased by \$137,526.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
07/16/2015 – 07/15/2018	\$356,643.00	\$356,643.00
Amendment No. 1: Acceptance of Price Increase 08/02/2016	\$0.00	\$356,643.00
Amendment No. 2: Acceptance of Price Increase 07/16/2017	\$0.00	\$356,643.00
Amendment No. 3: Option #1 - Extension 07/16/2018 – 07/15/2019	\$130,977.00	\$487,620.00
Amendment No. 4: Option #2 - Extension 07/16/2019 – 07/15/2020	\$137,526.00	\$625,146.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date: Michael W. Trotter 07/01/2019

Printed Name: Michael Trotter
Authorized Representative VP of EMS Sales

Zoll Medical Corporation
269 Mill Road
Chelmsford, MA 01824

Signature & Date: Erin D'Vincent 7-15-2019

Erin D'Vincent
Procurement Supervisor
City of Austin
Purchasing Office



Amendment No. 3
to
Contract No. GS150000007
for
ResQPODS
between
Zoll Medical Corporation
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective July 16, 2018 to July 15, 2019. Two options remain.
- 2.0 The City hereby accepts the 1.5% price increase on the ResQPOD. Impedance Threshold Device (City of Austin commodity code 46511571123) from \$100.28 each to \$101.53 each. The increase shall be effective July 16, 2018.
- 3.0 The total Contract amount is increased by \$130,977.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
07/16/2015 – 07/15/2018	\$356,643.00	\$356,643.00
Amendment No. 1: Acceptance of Price Increase 08/02/2016	\$0.00	\$356,643.00
Amendment No. 2: Acceptance of Price Increase 07/16/2017	\$0.00	\$356,643.00
Amendment No. 3: Option #1 - Extension 07/16/2018 – 07/15/2019	\$130,977.00	\$487,620.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

Printed Name: Mikhael V. Trotter
Authorized Representative

Zoll Medical Corporation
269 Mill Road
Chelmsford, MA 01824

Signature & Date:

Danielle Lord
Danielle Lord
Procurement Manager
City of Austin
Purchasing Office



**Amendment No. 2
to
Contract No. GS150000007
for
ResQPODS
between
Zoll Medical Corporation
and the
City of Austin**

- 1.0 The City hereby amends the above referenced contract to accept a price increase on the ResQPOD impedance threshold device (City of Austin commodity code 46511571123) from \$97.34/each to \$100.28/each, in accordance with Exhibit A to the contract. The increase shall be effective July 16, 2017.
- 2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 07/16/15 – 07/15/18	\$356,643.00	\$356,643.00
Amendment No. 1: Acceptance of Price Increase 08/02/16	\$0.00	\$356,643.00
Amendment No. 2: Acceptance of Price Increase 07-16-2017	\$0.00	\$356,643.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:



7/10/2017

Printed Name: Michael Trotter
Zoll Medical Corporation
269 Mill Road
Chelmsford, MA 01824

Signature & Date:



Marty James
Procurement Specialist II
City of Austin Purchasing Office



**Amendment No. 1
to
Contract No. GS150000007
for
ResQPODS
between
Zoll Medical Corporation
and the
City of Austin**

- 1.0 The City hereby amends the above referenced contract to accept a price increase on the ResQPOD impedance threshold device (City of Austin commodity code 46511571123) from \$94.50/each to \$97.34/each, in accordance with Exhibit A to the contract. The increase shall be effective July 16, 2016.
- 2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 07/16/15 – 07/15/18	\$356,643.00	\$356,643.00
Amendment No. 1: Acceptance of Price Increase 08/02/16	\$0.00	\$356,643.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.


BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:



Printed Name: Mike Trotter
Zoll Medical Corporation
269 Mill Road
Chelmsford, MA 01824

Signature & Date:

 8-3-16

Roger Stricklin
Corporate Contract Administrator
City of Austin Purchasing Office



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE 02/13/2015

DEPT: Emergency Medical Services

TO: Purchasing Officer or Designee

FROM:

BUYER: Erin D'Vincent

PHONE:

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas; water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

The Office of the Medical Director (OMD), through its System Equipment Committee and the approval of the Medical Director has approved and certified the purchase of Zoll Medical/Advanced Circulatory Systems ResQPod – Impedance Threshold Device as the authorized device for use on patients under the care of any provider in that ATCEMS System. There are no other brands or devices that meet the same specifications or design for use in patients in cardiac arrest. The Texas Medical Board rules under 22 TAC, Part 9, Chapter 197 (§197.3(b)(1)), in part, gives statutory authority to an EMS system medical director to approve and authorize medical care that can be rendered to patients. 25 TAC, Part 1, Chapter 157.11(b)(6) (N), in part, a listing of equipment, supplies and medications approved and signed by the medical director.

4. Please attach any documentation that supports this exemption.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

All field staff are trained on this model and replacement equipment and supplies must be compatible with the existing stock to ensure the interoperability and a uniform standard of training and practice.

The ATCEMS System includes:

- The Austin-Travis County Emergency Medical Services Department, which provides both Basic Life Support and Advanced Life Support response and transport to all areas inside the Travis County boundaries.
- The Austin Fire Department, which provides Basic Life Support first response to areas inside the City of Austin boundaries.
- The Travis County First Responder organizations, which provide both Basic Life Support and Advanced Life Support first response to areas outside the City of Austin boundaries.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Zoll Medical Systems for 36 months w/ three 12-month extension options which will cost approximately \$ 719,518 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Originator

3/26/15
Date

Approved
Certification

Department Director or designee

3/27/15
Date

Assistant City Manager / General Manager
or designee (if applicable)

4/7/15
Date

Purchasing Review
(if applicable)

Buyer

4-22-15
Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

4/29/15
Date

02/26/2013



To: Bill Alderete, Stores Manager
Austin/Travis County EMS Department

From: Jeff Hayes, Chief of Staff
Office of the Medical Director
Austin/Travis County EMS System

RE: **ResQPod – Impedance Threshold Device**

Date: **March 4, 2015**

The Office of the Medical Director (OMD), through its System Equipment Committee and the approval of the Medical Director has approved and certified the purchase of Zoll Medical/Advanced Circulatory Systems **ResQPod – Impedance Threshold Device** as the authorized device for use on patients under the care of any provider in that ATCEMS System. There are no other brands or devices that meet the same specifications or design for use in patients in cardiac arrest. The Texas Medical Board rules under 22 TAC, Part 9, Chapter 197 (§197.3(b)(1)), in part, *gives statutory authority to an EMS system medical director to approve and authorize medical care that can be rendered to patients.* 25 TAC, Part 1, Chapter 157.11(b)(6)(N), in part, *a listing of equipment, supplies and medications approved and signed by the medical director.*

Jeff
Jeff Hayes, MPH, LP
Chief of Staff
Office of the Medical Director
City of Austin/Travis County EMS System
jeff.hayes@austintexas.gov
(512) 978-0002 Office
(512) 563-6738
"Define, Support & Advance Our Clinical Practice of Medicine"



March 2, 2015

William Alderete
Austin-Travis County EMS
124 W. 8th Street Rm 310
Austin, TX 78701

Dear Mr. Alderete:

We appreciate your selection of ZOLL® products for Austin-Travis County EMS. This letter serves as confirmation that as of March 2, 2015, ZOLL® Medical Corporation at 269 Mill Road in Chelmsford, Massachusetts, is the sole manufacturer and source of the following products for your organization:

- ResQPOD® ITD 10
- ResQGARD® ITD 7
- ResQCPR™ Demo Kit
- ResQMAN™ Demonstrator

ZOLL® or Richard Chin, Territory Manager/Clinical Educator, will not sell these products to Austin-Travis County EMS through any vendor or dealer.

Should you have any questions or require additional information please contact me at 800-348-9011 x 9514.

Sincerely,

A handwritten signature in cursive script, reading "Heidi Lekhardt". The ink is dark and the signature is fluid.

Heidi Lekhardt
Contracts Specialist

RES-Q-POD MASTER AGREEMENT ANALYSIS

Commodity Code	Period	Current demand/sales (IN0038)	Current annual	Projected annual requirements and increase in 2015: added fleet and stations (5%)	U.M	Description	Unit Price	Projected Annual cost	
46511571123	2015	94.33	1,140.00	1140	EA1	Circulatory enhancer, ResQPOD, a noninvasive devic	\$94.50	\$107,730.00	
	BASE 3-YEAR 1 2015 - 2016			1197	EA1	Circulatory enhancer, ResQPOD, a noninvasive devic	\$94.50	\$113,116.50	
	BASE 3-YEAR 2 2016 - 2017			1257	EA1	Circulatory enhancer, ResQPOD, a noninvasive devic	\$94.50	\$118,786.50	
	BASE 3-YEAR 3 2017 - 2018			1320	EA1	Circulatory enhancer, ResQPOD, a noninvasive devic	\$94.50	\$124,740.00	\$356,643.00
	YEAR 1 RENEWAL			1386	EA1	Circulatory enhancer, ResQPOD, a noninvasive devic	\$94.50	\$130,977.00	
	YEAR 2 RENEWAL			1455	EA1	Circulatory enhancer, ResQPOD, a noninvasive devic	\$94.50	\$137,525.85	
	YEAR 3 RENEWAL			1528	EA1	Circulatory enhancer, ResQPOD, a noninvasive devic	\$94.50	\$144,402.14	
	GRAND TOTALS:			8143	EA1	Circulatory enhancer, ResQPOD, a noninvasive devic	\$94.50	\$769,547.99	

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
ZOLL Medical Corporation
For
Purchase of ResQPOD ITD's**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Zoll Medical Corporation ("Contractor"), having offices at 269 Mill Road, Chelmsford, Massachusetts 01824-4105.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Darren Dumas, Phone: (800)242-9150 x. 93, Email Address: DDumas@zoll.com. The City's Contract Manager for the engagement shall be William Alderete, (512) 978-0485, Email Address: William.Alderete@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 Contractor shall ship, as requested, the goods as described in Exhibit A herein. Since online ordering is not available, City will send a copy of the purchase document and order sheet via email for all orders. Contractor has set up an account for the City and the account number is 3403. For each order submitted, Contractor shall provide an electronic email or fax copy of the order confirmation sent to the City at (512) 978-0481. Only the following City personnel are authorized to process orders: Tracy Aleman, Phone (512)978-0495, Email: Tracy.Aleman@austintexas.gov; Melanie Acosta, Phone (512)978-0480, Email: Melanie.Acosta@austintexas.gov; and William Alderete, Phone (512)978-0485, Email: William.Alderete@austintexas.gov. No other City employees may place orders against this contract without prior approval of the City's Contract Manager. Orders placed with Contractor shall be processed and received by the City within ten (10) calendar days. If the product is not available, City shall be notified of the delay and the projected availability date in order to assess the overall systemic impact.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** In consideration for the goods to be provided under this Contract, the Contractor shall be paid a not-to-exceed amount of \$356,643 for a term of thirty six (36) months, and an amount not-to-exceed \$130,977 for the first of three twelve (12) month extension options, and \$137,526 for the second extension option, and \$144,403 for the third extension option for a total contract amount not-to-exceed \$769,549.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Emergency Medical Services Department
Attn:	Joanna Cruz-EMS AP
Address	P.O. Box 1088
City, State, Zip Code	Austin, Texas 78767

3.2.3 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 damage to tangible property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.4 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.5 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Final Payment and Close-Out.**

3.5.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.5.2 The making and acceptance of final payment will constitute:

3.5.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.5.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on the date signed by the City and shall remain effective for thirty-six (36) months and may be extended thereafter for up to three (3) additional twelve (12) month periods subject to the approval of the Contractor and the City's Purchasing Officer or his designee.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by either party, the opposite party shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party reasonable satisfaction that such default does not, in fact, exist. In the case of a Contractor default, the City may place Contractor on probation for a specified period

of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 Termination Without Cause. Either party shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 Fraud. Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance: The following insurance requirements apply.

5.1.1 General Requirements.

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, and waiver endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.11 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.13 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Contractor will not cancel or materially change any of the required policies without first providing thirty calendar days written notice to the City of Austin. In addition, should Contractor be notified of an intent to cancel by any of its carriers, Contractor will notify the City of Austin as soon as practicable.

5.1.2.2

5.1.2.2.1 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.2 Contractor To Package Deliverables. The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity, the unit price and the purchase order number is included on the packing list. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists. City shall accept partial shipments of orders. Medical supply orders shall be shipped to: Austin-Travis County EMS, 4201 Ed Bluestein, Dock E, Austin, Texas 78721.

5.3 Shipment Under Reservation Prohibited. The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5.4 Title & Risk of Loss. Contractor shall bear the risk of any loss or damage to the items until they are delivered in conformity with this Order at the F.O.B. shipping point stated herein. Upon such delivery, Contractor's responsibility for loss or damage shall cease, except for loss or damage resulting from Contractor's negligence or fault. Notwithstanding the foregoing, Contractor shall remain responsible for risk of loss of any nonconforming or rejected Work, unless such loss, destruction, or damage results from gross negligence or fault of the City.

5.5 Right Of Inspection And Rejection. The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect within thirty (30) days of receipt of the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables.

5.6 No Replacement Of Defective Tender. Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender, will be given a fifteen (15) day opportunity to cure, upon receipt of written notice provided by Contractor to the City, otherwise it shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

5.7 Special Tools & Test Equipment. If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

5.8 Equal Opportunity.

5.8.1 Equal Employment Opportunity. No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.8.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.9 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so at no cost to Contractor.

5.10 **Delays.**

5.10.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein.

5.10.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.11 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.12 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 **Warranty – Price.**

6.1.1 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.5 **Right To Audit.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, once annually. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including reasonable attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the tangible property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS TO THE EXTENT ARISING DIRECTLY FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Zoll Medical Corporation

ATTN: Contracts Department

269 Mill Road

Chelmsford, Massachusetts 01824-4105

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets,

confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 Waiver. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is

in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 Modifications. The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document provided by either party shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Jurisdiction And Venue. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.23 Invalidity. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular provision or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.24 Holidays. The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

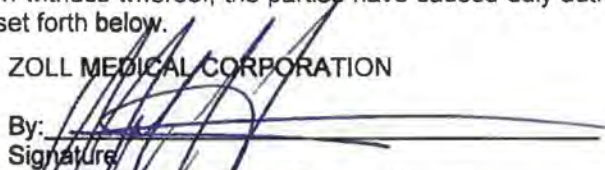
7.25 Survivability of Obligations. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.26 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.27 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

ZOLL MEDICAL CORPORATION

By: 
Signature

Name: Michael Trotter

Printed Name

Title: VP EMS Sales

Date: 7/16/2015

CITY OF AUSTIN

By: 
Signature

Name: Erint Vincent

Printed Name

Title: Vendor Buyer Specialist

Date: 7/16/15

List of Exhibits

Exhibit A	Contractor's Quotation
Exhibit B	Non Discrimination Certification

EXHIBIT A



TO: Austin Travis County Emergency Medical Services

124 W. 8th Street Rm 310
Austin, TX 78701

Attn: William A. Alderete
Manager, Central Supply and Services

email: William.alderete@atceintxas.gov

Tel: (512) 978-0485

Year 2016

ZOLL Medical Corporation

Worldwide Headquarters
269 Mill St
Chelmsford, Massachusetts 01824-4105
(978) 421-6633 Main
(800) 348-1011
(978) 421-0015 Customer Support
FEDERAL ID# 04-2711526

QUOTATION 190472 V:3

DATE: June 05, 2015

TERMS: Net 30 Days

FOB: Shipping Point

PREPAY: Prepay and Add

ITEM	MODEL NUMBER	DESCRIPTION	QTY	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	12-0242-000	ResQPOD ITD 10 (only)	1997	\$110.00	\$94.50	\$183,116.50 *
<p>* Discount pricing is for Year 2016 and is based on signing a sole source agreement for ResQPOD.</p> <p>Pricing of \$94.50 is guaranteed for 1 year.</p> <p>Projected price increase for subsequent years: Year 2016 price increase of 3 % - \$97.34 Year 2017 price increase of 3 % - \$100.28</p>						
TOTAL						\$183,116.50

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.

1. DELIVERY WILL BE MADE 60-90 DAYS AFTER RECEIPT OF ACCEPTED PURCHASE ORDER.
2. PRICES QUOTED ARE VALID FOR 60 DAYS.
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.

Holly Clark
EMS Territory Manager
800-242-9150, x9425

EXHIBIT B
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:


Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 16th day of July, 2015

CONTRACTOR
Authorized
Signature

Zoll Medical Corp.

VP. EMS Sales

ORDER PROCESSING

The contract manager is William Alderete at 512-978-0485.

The following ATCEMS personnel are authorized to process orders:

Primary: Tracy Aleman	tracy.aleman@austintexas.gov	512-978-0495
Secondary: Melanie Acosta	melanie.acosta@austintexas.gov	512-978-0480
Secondary: William Alderete	william.alderete@austintexas.gov	512-978-0485

On line ordering (if available): For vendors offering online ordering, ATCEMS would like to begin processing orders via the vendor's online system. However, it is requested that the ordering system offer only those items approved for purchase under the contract, at the contracted packaging and unit pricing.

For vendors not able to provide online ordering, ATCEMS will send a copy of the purchase document and order sheet via email for all orders. Please set up an account for ATCEMS and provide that account number to the contract manager

For each order submitted, the contracted vendors will provide an electronic, email, or fax copy of order confirmation sent to ATCEMS. The fax number is 512-978-0481.

Absolutely no one else may place orders against this contract without approval from the ATCEMS contract manager.

Orders placed with the contract vendor must be processed and received at ATCEMS within 10 calendar days. The Order and Ship time will be closely monitored. If a product is not available, ATCEMS must be immediately notified of the delay and the projected availability date in order to assess overall system impact.

SHIPPING

Please ship medical supply orders to:

Austin-Travis County EMS
4201 Ed Bluestein Dock E
Austin Texas 78721

EMS will accept partial shipments of orders. Please include a packing slip with each shipment. Please ensure the purchase order number is included on the packing slip. ATCEMS will notify the contracted vendor upon receipt of any damaged or incorrect order shipments for resolution.

Vendor will be contacted resolve shortage and over shipments.

INVOICING

Please mail invoices to:

Austin-Travis County EMS
PO Box 1088
Austin Texas 78767
Attention: Joanna Cruz – EMS AP

Please ensure the invoice meets city purchasing terms and conditions, including the purchase order number, to expedite payment processing. Please ensure an invoice is provided for each shipment.

If the invoices received for orders placed do not match the bid purchasing units of measure, pricing or product, there will be a delay in payment process. Please review this process and notify the point of contact as soon as possible rather than wait until the time of invoicing.

EMS Accounts Payable Contact information:

Accounts Payable: Joanna Cruz 512-972-7212 joanna.cruz@austintexas.gov
Supervisor: Bill Reeves, 512-972-7200 , Bill.Reeves2@austintexas.gov

CITY OF AUSTIN



MBE/WBE UTILIZATION FORM & UTILIZATION PLAN FOR SOLE SOURCE

Project Name: Zoll ResQPOD

Date: April 24, 2015

JUNE 2009

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)

MBE/WBE UTILIZATION FORM

X SOLE SOURCE

Even though no goals have been established for this contract, the Offeror is invited to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Offeror does not perform the service with its own workforce or if supplies or materials are required and the Offeror does not have the supplies or materials in its inventory, the Offeror is encouraged to contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Offeror is also encouraged to make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?


No √

Yes _____ If yes, contact SMBR at (512) 974-7600 to obtain an availability list.

I understand that even though no goals have been established, I am encouraged to comply with the City of Austin's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this Form and Utilization Plan shall become a part of my Contract.

ZOLL Medical Corporation
Company Name

Michael Trotter, VP EMS Sales
Name and Title of Authorized Representative (Print or Type)


Signature

4/28/15
Date

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

____ APPROVAL IS HEREBY GRANTED.

____ APPROVAL IS HEREBY DENIED. CONTACT SMBR FOR ADDITIONAL INFORMATION.

Reviewing Counselor _____ Date _____

UTILIZATION PLAN

(Please duplicate as needed)

PROJECT NAME: Sole Source Purchase of ZOLL ResQPOD


PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	ZOLL Medical Corporation		
Address	269 Mill Road		
City, State Zip	Chelmsford, MA 01824-4105		
Phone	800-348-9011	Fax Number	978-421-0005
Name of Contact Person	Holly Clark (832-349-8788 or hclark@zoll.com)		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I understand that even though no goals have been established, I am encouraged to comply with the City of Austin's MBE/WBE Procurement Program if subcontracting areas are identified. I certify that the information included in this Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract.

Michael Trotter, VP EMS Sales

Name and Title of Authorized Representative (Print or Type)

Signature  Date 4/28/15

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract.

Sub-Contractor/Consultant	N/A		
City of Austin Certified	MBE <input type="checkbox"/>	WBE <input type="checkbox"/>	Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor/Consultant	N/A		
City of Austin Certified	MBE <input type="checkbox"/>	WBE <input type="checkbox"/>	Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Please submit this completed form to:

Erin.DVincent@austintexas.gov

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

____ APPROVAL IS HEREBY GRANTED.

____ APPROVAL IS HEREBY DENIED.

Reviewing Counselor _____ Date _____