



Amendment No. 1
to
Contract No. NS170000057
for
Stryker Repair and Maintenance Services
between
Stryker Corp dba Stryker Sales Corporation
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective September 30, 2020 to September 29, 2021. One option remains.
- 2.0 The total Contract amount is increased by \$765,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 09/30/2017 – 09/29/2020	\$2,295,000.00	\$2,295,000.00
Amendment No. 1: Option 1 - Extension 09/30/2020 – 09/29/2021	\$765,000.00	\$3,060,000.00

- 3.0 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.
- 4.0 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:

9/8/20

Printed Name:

Authorized Representative

JORDAN COSTELLO

Signature & Date:

Erin D'Vincent

Digitally signed by Erin D'Vincent
DN: cn=Erin D'Vincent, o=City of Austin,
ou=Purchasing Office,
email=erin.dvincent@austintexas.gov, c=US
Date: 2020.09.17 08:40:45 -05'00'

Erin D'Vincent, Procurement Supervisor

City of Austin

Purchasing Office

September 17, 2020

Stryker Corp dba Stryker Sales Corporation
3800 E Centre Ave
Portage, MI 49002

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Stryker Corporation, acting through its
Medical Division,
For
Stryker Repair and Maintenance Services
MA 9300 NS170000057**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Stryker Corporation, acting through its Medical Division ("Contractor"), having offices at 3800 E Centre Ave, Portage, MI 49002.

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 accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. 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 as required by this Contract, shall promptly review any written reports submitted by the Contractor which are required by this Contract, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of any progress and task reports required by this Contract.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Will Miller, Phone: (925) 765-7628 Email Address: Will.Miller@stryker.com. The City's Contract Manager for the engagement shall be William Alderete, Phone: (512) 978-0485, Email Address: William.Alderete@austintexas.gov. The City 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 the Services (as that term is defined below) 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 **Tasks.** In order to accomplish the work described herein, the Contractor shall provide the City with the services listed in Exhibit B (collectively, the "Services"). Without limiting the generality of the foregoing, the parties acknowledge and agree that the Services shall include repair and maintenance services for certain Stryker products which are up to twelve (12) years in age on the following service schedule listed below. Products covered include the Power-PRO XT Ambulance Cots, Power-LOAD Cot Fastening Systems, Stair-PRO Stair Chairs, and MX-PRO R3 Bariatric Cots listed on Exhibit B (collectively, "Products").

2.2.1 Products from one (1) to seven (7) years of age are eligible for the Protect + service package which includes parts, labor, travel, batteries, chargers, and one (1) preventative maintenance inspection per year.

2.2.2 Products from eight (8) to twelve (12) years of age can be serviced under the Repair and Inspection service package which includes parts, labor, travel, SMRT batteries, SMRT chargers, and one (1) inspection per year.

2.3 **Reports.** Individual maintenance and inspection reports should be provided by serial number, work order number, and date completed and should be emailed to EMSSupply@austintexas.gov within 10 calendar days of completion of maintenance and inspection.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The contract period shall be for **three (3)** years, with two (2) annual extensions as may be mutually agreed upon between the City and Contractor. In consideration for the Services to be performed under this Contract, and pursuant to projected equipment purchase and maintenance agreements by the City during the term of this agreement, it is anticipated that the Contractor shall be paid an annual amount not to exceed \$765,000 for a total contract amount not-to-exceed \$3,825,000 for all fees and expenses.. Each annual payment shall be made in advance. Promptly following the execution of this Contract, and on each subsequent anniversary of the effective date of this Contract during the term hereof, Contractor shall invoice the City for the annual amount due under this Contract for the following calendar year, and the City shall pay each invoice within 30 days of the date of the applicable invoice.

3.2 **Economic Price Adjustment.**

3.2.1. **Price Adjustments.** Prices shown in this Contract shall remain firm for the term of the Contract.

3.3 **Invoices.**

3.3.1 **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 mailed or emailed to the below address:

	City of Austin
Department	EMS
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State, Zip Code	Austin, TX 78767
Email	EMSAP@austintexas.gov

3.3.2 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.

3.4 **Payment.**

3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the date of the invoice.

3.4.2 **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.**

3.4.3 In the event the City wishes to dispute an invoice or portion thereof, the City must notify the Contractor in writing within thirty (30) days of its receipt of the invoice.

3.4.4 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.

3.4.5 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.

3.5 **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; provided, that any amounts due and owing under this Contract prior to the Contractor's receipt of written notice of non-Appropriation by the City shall not be affected. The City shall promptly 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.

3.6 **Travel Expenses.** Travel expenses are not allowable under this Contract. All prices are inclusive of travel and travel related expenses.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of thirty-six (36) months and may thereafter be extended or renewed by mutual written agreement of the Contractor and the City Purchasing Officer or his designee for up to two (2) additional twelve (12) month terms.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract including, without limitation, the fees payable by the City in consideration of the Services, for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 This is a thirty-six (36) month Contract. Prices for the Services are firm for the term of this Contract.

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 commercially reasonable time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** A party shall be in default under the Contract if it (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 (c) makes a material misrepresentation in any report or deliverable required to be submitted by such party to the other.

4.4 **Termination For Cause.** In the event of a default by either party, the other 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's reasonable satisfaction that such default does not, in fact, exist. 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 non-defaulting party shall be entitled to recover all actual direct damages, costs, losses and expenses, incurred by such party as a result of the other party's default. 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.** The City 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 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 within fifteen (15) days of the receipt of a fully executed copy of this Contract.

5.1.1.3 The Contractor must also forward an updated Certificate of Insurance to the City whenever a previously identified policy period has been materially altered, expires or is cancelled, 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 Certificates of Insurance including the City as additional insured, waivers, and notices of cancellation 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, absent any loss that arises from the sole negligence and/or willful misconduct of the City, its employees and affiliates.

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 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.

5.1.1.11 The Contractor shall be responsible for premiums, deductibles and self-insured retentions.

5.1.2 **Specific Coverage Requirements.** The Contractor shall 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 not intended to limit the responsibility or liability of the Contractor as more fully set out in Sections 6 and 7 below.

5.1.2.1 **Commercial General Liability Insurance.** The 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 The City of Austin listed as an additional insured, or equivalent coverage.

5.1.2.2 **Commercial Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 The City of Austin listed as an additional insured, CG 20 26 04 13 or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation for Workers Compensation ONLY Form **WC 04 03 06**

5.1.2.3.3 Thirty (30) calendar days' Notice of Material Change.

5.1.2.4 **Self-Insurance.** To the extent permitted by applicable laws and regulations, Contractor shall be permitted to meet the above requirements through a program of self-insurance pursuant that such self-insurance meets all requirements outlined in Section 5.1 Insurance.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall knowingly engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. 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.

5.2.1 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

5.4 **Delays.**

5.4.1 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 promptly following 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. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2.1 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, the parties shall discuss as soon as commercially practicable a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 **Rights to Proposal and Contractual Material.** Subject to the confidentiality obligations of the City set forth below, all material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.6 **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 – Services: Limitations of Warranty and Liability.** During the term of this Contract, the Contractor warrants the following:

6.1.1 The Contractor has the experience, capability and resources to perform under this Agreement, and the Contractor further represents and warrants that the Services shall be fully performed in a timely and workmanlike manner and with professional diligence and skill;.

6.1.2 Services will comply with all applicable laws and regulations and all applicable standards set forth by law or ordinance or established by the rules and regulations of any federal, state or local agency, department, commission, association or pertinent governing, accrediting or advisory body, including The Joint Commission having authority to set standards for healthcare facilities;

6.1.3 Services will comply with all rules, regulations and policies of the City applicable to persons performing the services to be performed hereunder, including, but not limited to, all human resource policies and health and drug and alcohol screening policies; provided that the City has provided advance written notification of such rules, regulations and policies to the Contractor;

6.1.4 The Contractor currently has, or prior to the commencement thereof, will obtain, pay for, and maintain any and all licenses, fees, and qualifications required to perform the Services. In addition, if the Services are to be performed on the City's premises, the Contractor represents and warrants that the Contractor shall comply with all applicable safety laws and the City's then current safety and other applicable regulations;

6.1.5 The Contractor will maintain the Products in good working condition. Products and Product components repaired or replaced under this Contract continue to be warranted as described herein during the term of this Contract, but in any event for at least one year from the date the particular product, product component, or service was provided to the City. When Products or any Product component is replaced the item provided in replacement will be the City's property and the replaced item will be the Contractor's property. If a refund is provided by the Contractor, the Product for which the refund is provided must be returned to the Contractor and will become the Contractor's property.

6.1.6 EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT, THE EXPRESS WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES APPLICABLE TO THE SERVICES AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY THE CONTRACTOR, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, COVER, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR ATTORNEYS' FEES OR COSTS FOR ANY ACTIONS UNDER OR RELATED TO THIS AGREEMENT.

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 reasonably be expected to affect performance of the Contractor's obligations under the Contract.

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 performing the Services hereunder and 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.** Each party, 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 its obligations in connection with this Contract, 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.

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 result in the Contractor's discontinuation of the Services for any reason.

7.5 **Audits and Records.**

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 of the Services under this Contract. 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 overpayments disclosed by any such audit.

7.5.1 Records Retention:

7.5.1.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports,

files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.1.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.2 The Contractor shall include sections 7.5.1 and 7.5.2 above 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 reasonably 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.

7.7 **Indemnity.** The Contractor shall indemnify and hold the City harmless from any loss, damage, cost or expense that the City may incur by reason or arising out of any third party bodily injury (including death) or property damage to the extent arising from the negligence, willful misconduct or omissions of the Contractor or its employees, agents, or contractors in the course of providing Services. The foregoing indemnification will not apply to the extent arising from any liability arising from: (i) an injury or damage due to the negligence of any person other than the Contractor's employee, subcontractor, or agent; (ii) the failure of any person other than the Contractor's employee, subcontractor, or agent to follow any instructions outlined in the labeling, manual, and/or instructions for use of the Products; or (iii) the use of any equipment or part not purchased from the Contractor or any Product or part thereof that has been modified, altered or repaired by any person other than the Contractor's employee or agent.

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 affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City promptly 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: Erin D'Vincent, Procurement Specialist IV

P.O. Box 1088

Austin, TX 78767

To the Contractor:

Stryker Corp

ATTN: Will Miller, Contract Manager

3800 East Centre Avenue

Portage, MI 49002

7.10 **Confidentiality.** The Contractor acknowledges that the City is at all times subject to the Texas Public Information act, currently codified at Chapter 552 of the Texas Government Code, and must comply with any confidentiality determination made by the Office of the Texas Attorney General or any court of competent jurisdiction. Subject at all times to the foregoing, any information provided in connection with the work contemplated by this Contract which is treated or designated by a disclosing party ("Disclosing Party") as confidential or which by nature of the information disclosed, the receiving party ("Receiving Party") reasonably should know that such information is confidential, will be held in confidence. The Receiving Party will use at the least the same level of care to prevent any unauthorized use or disclosure of such confidential information as it exercises in protecting its own information of a similar nature, but in no event less than a reasonable standard of care. The Receiving Party will not, without the prior written consent of the Disclosing Party, make use of the confidential information disclosed to it other than for the purposes described in this Contract, or disclose the Confidential Information to any person, party or entity except to such of its officers, employees and consultants to whom disclosure is necessary and who have been made aware that the confidential information is confidential and are bound to treat it as such.

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 the Contractor and/or 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 ensure 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 delivered 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 **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. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of either party to seek and secure injunctive relief from any competent authority as contemplated herein.

7.22 **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 portion 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.

7.23 **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.

7.24 **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.

7.25 **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, to its knowledge, its employees performing under this Contract, as well as 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.

7.26 **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; provided that in the event of any conflict or inconsistency between the terms in the body of this Contract and the Standard Purchase Definitions, the terms in the body of this Contract shall be controlling. The full text versions of this Section are available, on the Internet at the following online address: https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

[Signatures on Following Page]

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

STRYKER CORP. through its Medical Division

By: [Signature]
Signature

Name: Will Miller
Printed Name

Title: Regional Manager

Date: 2/12/2018

Approved By:

CITY OF AUSTIN

By: [Signature]
Signature

Name: Danielle Lord
Printed Name

Title: Corporate Purchasing Manager

Date: 2/13/18

CITY OF AUSTIN

By: [Signature]
Signature

Name: Erin D'Vincent
Printed Name

Title: Procurement Specialist IV

Date: 2.13.18

List of Exhibits

Exhibit A	Non Discrimination Certification, Section 0800
Exhibit B	Price List and Services

EXHIBIT A
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (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, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office 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, 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 City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation 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.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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 and non-retaliation 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 THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy 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 and the Non-Retaliation Policy.

Term:

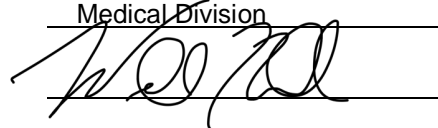
The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees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

Dated this 12 day of February, 2018

CONTRACTOR
Authorized
Signature

Title

Stryker Corporation, through its
Medical Division



Regional Manager

Exhibit B



Sales Account Manager

Jordan Costello

jordan.costello@stryker.com

Cell: 512-673-0636

End User Shipping Address

1153766

CITY OF AUSTIN EMS

4201 ED BLUESTEIN DEPT 930

AUSTIN, TX 78721

Shipping Address

1153766

CITY OF AUSTIN
EMS4201 ED BLUESTEIN
DEPT 930

AUSTIN, TX 78721

Billing Address

1077762

CITY OF AUSTIN EMS DEPT

PO BOX 1088

AUSTIN, TX 78767

Customer Contact	Ref Number	Date	PO Number		
	5436799	1/31/2017	QUOTE		
Line #	Quantity	Item Description	Part #	Unit Price	Item Comments
1	1	Protect Power-LOAD- 7year	77506001	\$5,575.01	POWERLOAD 7 YEAR WARRANTY INCLUDING ALL PARTS, LABOR, TECHNICIAN TRAVEL AND 1 PM/YEAR
2	1	Protect+ Power Cot - 7Year	77110001	\$4,030.60	POWERPRO 7 YEAR WARRANTY INCLUDING ALL PARTS, LABOR, TECHNICIAN TRAVEL, 1 PM/YEAR AND SMRT BATTERIES/CHARGERS
3	1	Protect Stair-PRO 6252- 7year	77306001	\$571.03	STAIRPRO 7 YEAR WARRANTY INCLUDING ALL PARTS, LABOR, TECHNICIAN TRAVEL AND 1 PM/YEAR
4	1	Protect Manual Cot - 7year	77218001	\$1,468.50	MX-PRO R3 BARIATRIC COT 7 YEAR WARRANTY INCLUDING ALL PARTS, LABOR, TECHNICIAN TRAVEL AND 1 PM/YEAR
5	1	ProCare Upgrade Charge	77100003	\$310.00	INSTALLATION CHARGE FOR POWERLOAD COMPATIBILITY KIT OR XPS UPGRADE KIT. INSTALLATION COMPLETED BY STRYKER SERVICE TECHNICIAN.
6	1	Protect Power Cot - 1 Year	77101001	\$793.51	POWERPRO ANNUAL REPAIR AND INSPECTION SERVICE PLAN FOR POWERPROS 8-12 YEARS OLD. INCLUDES ALL PARTS, LABOR, TECHNICIAN TRAVEL AND 1 INSPECTION/YEAR
7	1	Protect Power LOAD - 1 Year	77501001	\$1,320.53	POWERLOAD ANNUAL REPAIR AND INSPECTION SERVICE PLAN FOR POWERLOADS 8-12 YEARS OLD. INCLUDES ALL PARTS, LABOR, TECHNICIAN TRAVEL AND 1 INSPECTION/YEAR
8	1	PM Only - Stair Chair	77301005	\$61.94	STAIRPRO ANNUAL INSPECTION SERVICE FOR STAIRPROS 8-12 YEARS OLD.
9		Pickup & Recycling Service of Expired Equipment		\$0.00	EXPIRED EQUIPMENT WILL BE PICKED UP AND RECYCLED VIA KENCO LOGISTICS LLC PER ATCEMS'S REQUEST

Note:

FY18 PRICESHEET
 REPAIRS TO STRYKER ASSETS NOT COVERED UNDER A SERVICE
 PLAN: LABOR - \$135/HOUR; TRAVEL - \$125/HOUR



Tom Tackabury
Service Marketing

3800 E. Centre Ave
Portage, MI 49002
c: 248.860.3540
tom.tackabury@stryker.com

stryker[®]

Medical

Sole Source Service Memo

To: Austin Travis County EMS
Date: 2/15/17
RE: Sole Source

February 15, 2017

To Whom It May Concern:

Stryker Sales Corporation is the only party authorized to sell Stryker ProCare Protect and Prevent service agreements.

Please feel free to contact me with any questions.

Thank you,

Tom Tackabury
Stryker Service



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 02/27/2017

DEPT: Emergency Medical Services

TO: Purchasing Officer or Designee

FROM: Wesley Hopkins, Division Chief

BUYER: Erin D'Vincent

PHONE: (512) 972-7204

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.

STRYKER Corporation has provided powered ambulance cots and stair chairs for EMS since 2006 and with an integrated ambulance mounted Power-Load cot fastening system directly contributing to reduced medic injuries. STRYKER Corporation is sole provider of the Stryker ProCare Protect and Prevent service plans offering lifetime equipment maintenance and preventative inspection service for all STRYKER assets.

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).

If approved, this request will establish the single provider for all STRYKER maintenance and inspection services which allows for on site equipment repairs, annual preventative inspection services, including a cot life-time battery replacement program and no-cost end of service life asset recycling program, which directly supports the City's sustainability and zero waste policies. The one time service fee covers technician travel, labor and parts for all Power-Load cot fastening systems, powered and non-powered ambulance cots and stair chairs for 7 years. The fee is a best value for the City when compared to a per cost service order which would include travel, labor hours per service request, parts per repair, cost for batteries and cost of disposition for end of service life assets compared to the annualized one time service plan fee charge Power-Load @ \$796.00 annually; ambulance cot @ \$575.80 and stair chair @ \$81.50

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with STRYKER CORPORATION which will cost approximately \$ 764,349.22 / 5 years (Provide estimate and/or breakdown of cost) Contract Not to Exceed 3,825,000.

Recommended
Certification

Wesley Hopkins 5/2/17
Originator Date

Approved
Certification

Kristi King 5/3/17
Department Director or designee Date

R. Full 5/16/17
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Readin 6-1-17 CPH
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Readin 6/14/17
Purchasing Officer or designee Date

02/26/2013

Jamie Witham

Area Director of Field Service - East

3800 E. Centre Avenue

Portage, MI 49002

P 302 464 1076

jamie.witham@stryker.com

Memo

To: Whom it May Concern
From: Jamie Witham
Date: October 5, 2017
Re: Stryker ProCare as a Sole Source Service Provider

The purpose of this memorandum is to confirm that Stryker Medical is the original equipment manufacturer for all Stryker patient care bed and stretcher products, and Stryker ProCare is the sole factory-authorized, full-service contract supplier for all EMS parts and service

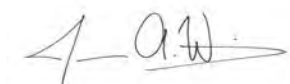
All parts are either manufactured at Stryker Medical or manufactured by an outside supplier specifically for Stryker. Stryker employs its own Field Service Team (ProCare) to perform maintenance on our products, using only new OEM parts for each repair.

In addition, the ProCare Team utilizes proprietary diagnostic tools and software when servicing Stryker powered equipment. All tooling is calibrated, documented, and controlled through Stryker Medical headquarters in Portage, MI. Calibration records and training records are available upon request.

All service repairs are documented, tracked, and reviewed by Stryker Medical's Quality Team for compliance. In addition, the Food & Drug Administration (FDA) & other government agencies audit ProCare records to ensure only the highest level of safety for our customers. PM and service history documentation is available upon request.

Should you have any further questions, please feel free to contact the undersigned at (302)464-1076 for jamie.witham@stryker.com.

Sincerely,



Jamie Witham

Tom Tackabury
Sales Manager -Service
3800 E. Centre Ave.
Portage, MI 49002
C: 248.860.3540
tom.tackabury@stryker.com



Medical

To: Travis County EMS
From: Tom Tackabury
Date: 10/20/16
RE: EMS Service Agreements

To whom this may concern:

The intent of this letter is to clarify that Stryker will provide contract service for products up to twelve (12) years in age on the following service schedule:

- Products from one (1) to seven (7) years of age are eligible for our Protect + service package. This package includes parts, labor, travel, batteries, chargers and one (1) pm inspection per year.
- Products eight (8) to twelve (12) years of age can be serviced on contract under our Repair and Inspection service package. This package includes parts, labor, travel, SMRT batteries, SMRT chargers and one (1) inspection per year.
- Products covered include Power-PRO XT Ambulance Cot, Power-LOAD Cot Fastening System, Stair-PRO Stair Chair and MX-PRO R3 Bariatric Cot.

Best Regards,

Tom Tackabury
Sales Manager

Cc: Manuel Gonzalez
Jordan Costello
Chris Valencia

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Erin D'Vincent 4-3070	PM Name/Phone	Bill Alderete
Sponsor/User Dept.	EMS	Sponsor Name/Phone	978-0485
Solicitation No	N/A	Project Name	Stryker Maintenance and Repair
Contract Amount	\$3,825,000	Ad Date (if applicable)	N/A
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input checked="" type="checkbox"/> Sole Source*			
<input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement			
<input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
Stryker maintenance and repair			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Previous contract was a sole source with no goals. Stryker is the only authorized contractor to provide these services.			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
93856 - 100%			
Erin D'Vincent		6/2/2017	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	6/2/2017	Date Assigned to BDC	6/2/2017
In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input checked="" type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input type="checkbox"/> No Goals	

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|--|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input checked="" type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

N/A

Subcontracting Opportunities Identified

N/A

SMBR Staff	Signature/ Date
SMBR Director or Designee	Date 6/5/17
Returned to/ Date:	