

AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND
STRYKER SALES, LLC

FOR THE PURCHASE AND SERVICE OF CHEST COMPRESSION SYSTEMS.

This Agreement ("Agreement") is made and entered effective this 25th day of JANUARY, 2023 ("the Effective Date"), by and between the City of Sheboygan, Wisconsin, (the "City"), a municipal corporation with offices located at 828 Center Avenue, Sheboygan, Wisconsin, and Stryker Sales, LLC, a Michigan Limited Liability Corporation, with offices located at 11811 WILLOWS RD. NE, REDMOND WA 98052 ("Contractor").

WITNESSETH:

WHEREAS, the City was awarded a Federal Emergency Management Agency ("FEMA") Assistance to Firefighters ("AFG") Grant to fund the purchase of five automatic chest compression devices; and,

WHEREAS, per Grant requirements, a request for sealed bids was issued and two bids were received; and,

WHEREAS, Stryker Sales, LLC is being awarded the contract after approval was granted by FEMA to award the bid for reasons beyond lowest price; and,

WHEREAS, Wisconsin law and the Sheboygan Municipal Code allow the City to award contracts for products and professional services to an entity for reasons beyond lowest price when doing so is most advantageous to the City based on quality, price, and delivery, and when Common Council authorizes such as award.

NOW THEREFORE, the parties hereto agree as follows:

Article 1. Scope of Services.

Contractor shall provide the City with five LUCAS 3.1 Automatic Chest Compression Systems ("Product") as set forth in the attached bid submission marked as Exhibit 1 and incorporated as if fully set forth herein, assistance with set-up and equipment commissioning, and five annual inspection visits following commissioning ("Service").

- 1.1. **Shipping and Delivery.** Delivery shall be F.O.B. origin, prepaid, and added to the invoice. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. Delivery dates are approximate. Contractor shall not be liable for any loss or damage of any kind due to delays in delivery or from non-delivery resulting from an event of Force Majeure. Any such delay shall not be considered a breach by Contractor and City's Agreement and deliver dates shall be extended for the length of such delay.
- 1.2. **Inspections.** Within thirty days of receipt of a shipment, City will notify Contractor of any claim for Product damage or nonconformity. Contractor, at its sole option and discretion, may repair or replace a Product to bring it into conformity.

- 1.3. **Returned Product.** Contractor will accept the return of any Product under the following circumstances:

- The Product is shipped in error;
- The product is shipped after the Product's expiration date;
- The Product is received by City in a damaged, defective, or nonconforming condition;
- Contractor specifically authorizes the return of the Product; or
- The Product is recalled and must be removed from the market.

Contractor will accept the return of any Product for a full credit if City returns the Product to Contractor (a) within thirty business days from the date City received the Product; (b) within thirty business days from the date the City receives notice of a recall, if applicable. City acknowledges that Products have varying shelf lives and that certain restrictions and/or restocking charges may apply to Products returned after the applicable 30-day time period.

City acknowledges that if it desires to return a Product, it must contact Contractor as set forth in this Agreement; must clearly identify a Returned Material Authorization number on the carton of such returned Product; and must return the Product in its original packaging, unopened and undamaged except for Products being returned due to a damaged, defective, or nonconforming condition. City understands that it may not return a non-defective and conforming Product if the security seal on said Product is broken.

- 1.4. **Authorized Distributor.** City may make purchases under this Agreement through an authorized distributor. Should City elect to do so, it shall identify the distributor in writing to Contractor. Contractor shall extend the terms of this Agreement to the Distributor if it agrees in writing to (a) identify on a purchase order or other written document its purchases for City, (b) to ship such Product(s) only to City, and (c) to otherwise accept the terms of this Agreement.
- 1.5. **No Resale.** City agrees that it will not resell Products purchased pursuant to this Agreement to third parties or to reship to any persons or places prohibited by the laws of the United States of America.
- 1.6. **Loaners.** If City's Product(s) must be removed from service to complete repairs, Contractor will provide City with a loaner device, if one is available, until the Product(s) is returned. City assumes complete responsibility for the loaner and shall return same at City expense to Contractor in the same condition as received, upon the earlier of the return of the removed Product or Contractor's request.
- 1.7. **Product Training and Support.** Contractor shall make appropriate training and education available to City staff regarding the safe and effective use of Contractor's Products as mutually agreed upon by the parties.

- 1.8. **Material Safety Data Sheet.** If any item(s) on an order(s) resulting from this Agreement is a hazardous chemical, as defined under 29 C.F.R. 1910.1200, Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

Article 2. Term and Termination.

This Agreement begins on the Effective Date and will expire no later than 12/31/2028 unless renewed for up to three month-to-month renewal periods. This Agreement will then terminate in its entirety except any provision required by law to extend beyond the termination date. The City may terminate this Agreement, in writing, in accordance with Article 6, Appropriation of Funds.

Upon written notice, either party may terminate this Agreement upon the occurrence of any of the following events:

- A material breach of one or more terms of the Agreement by the other Party, and the failure of the breaching party to cure the breach within thirty calendar days of written notice of the breach;
- The insolvency or bankruptcy of the other party;
- 'Thirty days' prior written notice to the other party.

In the event of such early termination of Services, City shall be responsible for the portion of the designated price that corresponds to the portion of the Term prior to the effective date of termination, and the cost of any Services rendered during the Term.

Article 3. Standard of Care & Warranties.

Contractor shall conduct Service in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The products delivered as a result of this Agreement shall be warranted as set forth in Exhibit 2, which is incorporated as if fully set forth herein.

Article 4. City's Representative.

The City designates Jeff Salzman, Assistant Fire Chief, as the City's Representative for purposes of this Agreement. If the City's Representative deems it appropriate, the City's Representative may consult with other employees of the City, or may retain an appropriate outside expert to assist with the management of this Project. If the City's Representative observes any work performed by the Contractor to not be in conformity with the Agreement, the City's Representative(s) will report that to the Contractor. The City's Representative(s) will have authority to stop any portion of the work not in conformity with the Agreement until the City has investigated and decided upon an appropriate procedure.

Article 5. Compensation.

The City shall pay Contractor for the Products and Service an amount not to exceed \$100,878.60.

Contractor shall submit an invoice to the City to:

City of Sheboygan
Attn: Bernard Rammer
828 Center Ave.
Sheboygan, WI 53081

Payment will be remitted to Contractor within thirty (30) days of invoice receipt. Additional services not set forth in Exhibit 1, or changes in the Services must be approved by the City, in writing, prior to such work being performed, or expenses incurred. The City shall not make payment for unauthorized work or expenses. The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

- Defective work.
- Failure of Contractor to make payments due to subcontractors, material suppliers, or employees.
- Damage to the City or a third party.
- Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect the City.

The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Article 6. Appropriation of Funds.

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty. The City agrees that it will make its best effort to obtain sufficient funds for the Agreement to meet its obligations hereunder in full.

Article 7. Indemnification.

Contractor is responsible to the City for the acts and omissions of its employees, subcontractors, and any other persons performing any of the work under a contract with Contractor. As such, to the extent permitted by law, Contractor shall defend and hold the City, including its officials, agents, and employees, harmless from all third party liability, including, but not limited to, losses, damages, costs, attorney's fees, expenses, causes of action, claims, or judgments which City may suffer solely as a result of (i) a defect in workmanship or design of the Products or (ii) the gross negligence or willful misconduct or violation of applicable law by Contractor, its employees and authorized agents in their performance under this Agreement. This indemnification does not apply to liability and/or damages arising from: (a) the negligence of any person other than an employee or agent of Contractor; (b) the failure of any person other than an employee or agent of Contractor to follow any labeling, manuals and/or instructions for use of the Product; or (c) the use of any product not purchased from Contractor, or Product that has been modified, altered, reprocessed, or repaired by any person other than an employee or agent of Contractor. Further, Contractor will indemnify against any claim that Contractor's Product(s) and/or Services directly infringe a United States Patent.

Article 8. Insurance.

Contractor shall not commence Services under this Agreement until it has obtained all insurance required under this Article. Additionally, Contractor shall not allow any approved subcontractor to commence Services on its subcontract until the subcontractor has obtained all insurance required under this Article, which shall be as follows:

- a. **Workers' Compensation Insurance** – Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements. In the event this Agreement authorizes any work to be subcontracted, Contractor shall require any subcontractor to similarly provide Workers' Compensation Insurance in accordance with all statutory requirements.
- b. **Commercial General Liability Insurance** – Contractor shall acquire and maintain, for the duration of this Agreement, Commercial General Liability Insurance with a policy limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

The proof of insurance referenced above shall be issued by an authorized agent of the insurer(s) and shall state that the Contractor will endeavor to notify the City at least thirty (30) days prior to the expiration, cancellation, non-renewal, or material change in the coverage. The Certificate Holder on the proof of insurance should be listed as:

City of Sheboygan, Wisconsin
828 Center Ave., Suite 110
Sheboygan, Wisconsin 53081

Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor's provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City the required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

During the performance of any and all Services under this Agreement, Contractor shall maintain the above insurance in full force and effect, and shall provide proof of insurance to the City's Representative including the City of Sheboygan as an additional insured with respect to City's vicarious liability which occurs as a result of Contractor's performance under this Agreement.

Notwithstanding any other insurance requirements within this Agreement to the contrary, to the extent allowed by applicable law or regulation, Contractor shall be permitted to maintain a program of self-insurance to comply with the insurance requirements within this Agreement.

Article 9. Intellectual Property.

City acknowledges that it does not acquire any interest in any tooling, drawings, design information, computer programming, software or firmware, patents, intellectual property, or copyrighted or confidential information related to the Product(s) and Services. City expressly agrees not to reverse engineer or decompile Products or related software and information.

Article 10. Notice.

Any notice required by this Agreement shall be made to the other party as follows but either party may change its address by written notice to the other:

City:

City of Sheboygan
Attn.: City Clerk

Contractor:

USContracts@stryker.com

828 Center Ave.
Sheboygan, WI 53083

Notice shall be given by either party to the other in writing and may be effected by personal delivery, delivery by an overnight courier with tracking capability, or by United States certified mail, return receipt requested, postage prepaid.

Article 11. Governing Law, Venue, and Dispute Resolution.

The parties agree to comply with their respective obligations under federal, state, or other applicable laws. This Agreement shall be governed by the laws of the State of Wisconsin. Venue of any disputes arising under this Agreement shall be in the Sheboygan County Circuit Court, Wisconsin. Each party shall be responsible for its own expenses incurred during dispute resolution.

Article 12. Standard Terms and Conditions.

- 12.1. **Open Records.** Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of Final Payment under the Agreement. The parties further understand that state and federal laws may apply, which may require the parties to maintain the security and confidentiality of certain information including, but not limited to, personally identifiable health information.
- 12.2. **Advertising and News Releases.** Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City's Representative. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City's Representative.
- 12.3. **Non-Collusion.** Contractor certifies under penalty of perjury that to the best of its knowledge and belief:
 - a. The prices in its bid were arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any other matter relating to such prices with any other bidder, or with any other competitor.
 - b. The prices quoted in its bid were not knowingly disclosed—directly or indirectly—by the bidder prior to bid opening.
 - c. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a bid for the purpose of restricting competition.

- 12.4. **Party Relationship.** During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the City. Contractor shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of its employees.
- 12.5. **Assignment.** This Agreement and the rights, duties, and responsibilities of the parties shall not be assigned to a third party without the prior express, written consent of the other, except that Contractor may assign this Agreement without such consent, to any person, firm, or corporation succeeding to its business and also to any parent, subsidiary, or affiliated company of Contractor.
- 12.6. **Severability.** If any one or more of the provisions of this Agreement shall, for any reason, be held illegal or invalid, such illegality or invalidity shall not affect the other provisions of this Agreement, which shall remain in full force and effect.
- 12.7. **Force Majeure.** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, supply chain shortages resulting from worldwide epidemics, and unusually severe weather. In every case, the failure to perform must be beyond the reasonable control and without the fault or negligence of the party.
- 12.8. **Non-Waiver.** The failure by one party to act or to require performance of any provision of this Agreement shall not affect that party's right to take such action or to require such performance at any time thereafter. A waiver of any breach or default of this Agreement shall not constitute a waiver of any subsequent breach or default.
- 12.9. **Authority.** The parties represent that they have the authority to enter into this Agreement. The parties further represent that the terms of this Agreement are not inconsistent with any other contractual obligations, express or implied, that they may have.
- 12.10. **Foreign Corporation.** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all requirements of Wis. Stat. Ch. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.
- 12.11. **Construction of Agreement.** Each party represents that it has had an opportunity to negotiate and cooperate in the drafting and preparation of this Agreement and no principles of construction shall be applied against either party on the basis that such party drafted this Agreement.

12.12. **Intent to be Bound.** The City and Contractor each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 13. Entire Agreement.

This Agreement may be modified only by a written amendment signed by both parties hereto. This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if fully set out herein:

1. This Agreement and its Exhibits
2. Any Written Amendment to the Agreement which may be delivered or issued after the Effective Date of the Agreement (including Change Orders)
3. All Other Submittals by Contractor
4. City's Request for Sealed Bids #2021-22
5. Contractor's Bid Submittal
6. Federal Terms and Conditions Addendum

(collectively "the Contract").

This Contract is the entire and integrated agreement between the City and Contractor regarding the subject matter of this Contract. It supersedes all prior and contemporaneous communications, representations and agreements that are not part of this Contract. In resolving conflicts, errors, discrepancies, and disputes concerning the Scope of Work to be performed by Contractor, the document expressing the greater quantity, quality, or other scope of work in question, or imposing the greater obligation upon Contractor and affording the greater right or remedy to the City shall govern. Otherwise, the documents shall be given precedence in the order set forth above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

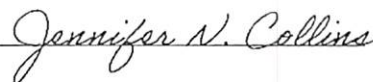
CITY OF SHEBOYGAN, WISCONSIN

STRYKER SALES, LLC

BY:



BY:



Ryan Sorenson, Mayor

ATTEST: Meredith DeBruin

Meredith DeBruin, City Clerk

DATE: 1/26/2023

ATTEST: Jennifer N. Collins

DATE: 1/24/23