



## SOLE SOURCE AGREEMENT

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This **SOLE SOURCE AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF FORT WORTH** (“City”), a Texas home rule municipal corporation, acting by and through its duly authorized Assistant City Manager, and ZOLL Medical Corporation (“Vendor”), a Massachusetts Corporation and acting by and through its duly authorized representative, each individually referred to as a “party” and collectively referred to as the “parties.”

### AGREEMENT DOCUMENTS:

The Agreement documents shall include the following:

1. This Sole Source Services Agreement;
2. Exhibit A – Scope of Services or Goods;
3. Exhibit B – Price Schedule;
4. Exhibit C – Sole Source Exemption;
5. Exhibit D – Verification of Signature Authority Form; and
6. Exhibit E – Conflict of Interest Questionnaire.

Exhibits A, B, C, D, and E which are attached hereto and incorporated herein, are made a part of this Agreement for all purposes. In the event of any conflict between the terms and conditions of Exhibits A, B, C, D, or E and the terms and conditions set forth in the body of this Agreement, the terms and conditions of this Agreement shall control.

1. **Scope of Services.** 1 Year On-Site Worry-Free Service Plan, Worry-Free Conversion Service Plan, On-Site, Worry-Free Pro-Rated Service Plan (“Services”), which are set forth in more detail in Exhibit “A,” attached hereto and incorporated herein for all purposes.

2. **Term.** This Agreement begins on the date signed by Assistant City Manager (“Effective Date”) and expires one year after (“Expiration Date”), unless terminated earlier in accordance with this Agreement (“Initial Term”). City will have the option, if mutually agreed upon by Vendor, to renew this Agreement under the same terms and conditions, for up to Four (4) one-year renewal option(s) (each a “Renewal Term”).

3. **Compensation.** City will pay Vendor in accordance with the provisions of this Agreement, including Exhibit “B,” which is attached hereto and incorporated herein for all purposes. Total compensation, for each year, under this Agreement will not exceed **Seventy-Seven Thousand Nine-Hundred and Two Dollars and Thirty-Five Cents** (\$77,902.35). Vendor will not perform any additional services or bill for expenses incurred for City not specified by this Agreement unless City requests and approves in writing the additional costs for such services. City will not be liable for any additional expenses of Vendor not specified by this Agreement unless City first approves such expenses in writing.

4. **Termination.**

4.1. Written Notice. City or Vendor may terminate this Agreement at any time and for any reason by providing the other party with 30 days' written notice of termination.

4.2. Non-appropriation of Funds. In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Vendor of such occurrence and this Agreement will terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

4.3. Duties and Obligations of the Parties. Payment is made at the initiation of the Services. In the event that this Agreement is terminated prior to the Expiration Date, no refund is provided. Upon termination of this Agreement for any reason, Vendor will provide City with copies of all completed or partially completed documents prepared under this Agreement. In the event Vendor has received access to City Information or data as a requirement to perform services hereunder, Vendor will return all City provided data to City in a machine-readable format or other format deemed acceptable to City.

## **5. Disclosure of Conflicts and Confidential Information.**

5.1. Disclosure of Conflicts. Vendor hereby states to the best of its knowledge to City that Vendor has made full disclosure in writing of any existing or potential conflicts of interest related to Vendor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Vendor hereby agrees immediately to make full disclosure to City in writing.

5.2. Confidential Information. Each party, for itself and its officers, agents and employees, agrees that it will treat all information provided to it by the other party ("Confidential Information") as confidential and will not disclose any such information to a third party without the prior written approval of the other party.

5.3. Public Information Act. City is a government entity under the laws of the State of Texas and all documents held or maintained by City are subject to disclosure under the Texas Public Information Act. In the event there is a request for information marked Confidential or Proprietary, City will promptly notify Vendor. It will be the responsibility of Vendor to submit reasons objecting to disclosure. A determination on whether such reasons are sufficient will not be decided by City, but by the Office of the Attorney General of the State of Texas or by a court of competent jurisdiction.

5.4. Unauthorized Access. Each party must store and maintain Confidential Information in a secure manner and will not allow unauthorized users to access, modify, delete or otherwise corrupt Confidential Information in any way. A party must notify the other party immediately if the security or integrity of any Confidential Information has been compromised or is believed to have been compromised, in which event, the notifying party will, in good faith, use all commercially reasonable efforts to cooperate with the other party in identifying what information has been accessed by unauthorized means and will fully cooperate to protect such Confidential Information from further unauthorized disclosure.

6. **Right to Audit.** Vendor agrees that City will, until the expiration of three (3) years after final payment under this Agreement, or the final conclusion of any audit commenced during the said three

years, have access to and the right to examine at reasonable times any directly pertinent financial transaction books, documents, papers and records, including, but not limited to, all electronic records, of Vendor involving transactions relating to this Agreement at no additional cost to City. Vendor agrees that City will have access during normal working hours to all necessary Vendor facilities and will be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City will give Vendor reasonable advance notice of intended audits.

7. **Independent Contractor.** It is expressly understood and agreed that Vendor will operate as an independent contractor as to all rights and privileges and work performed under this Agreement, and not as agent, representative or employee of City. Subject to and in accordance with the conditions and provisions of this Agreement, Vendor will have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, Vendors, and subcontractors. Vendor acknowledges that the doctrine of *respondeat superior* will not apply as between City, its officers, agents, servants and employees, and Vendor, its officers, agents, employees, servants, contractors, and subcontractors. Vendor further agrees that nothing herein will be construed as the creation of a partnership or joint enterprise between City and Vendor. It is further understood that City will in no way be considered a Co-employer or a Joint employer of Vendor or any officers, agents, servants, employees, contractors, or subcontractors. Neither Vendor, nor any officers, agents, servants, employees, contractors, or subcontractors of Vendor will be entitled to any employment benefits from City. Vendor will be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees, contractors, or contractors.

8. **Liability and Indemnification.**

8.1 **LIABILITY - VENDOR WILL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL TANGIBLE AND DIRECT PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF VENDOR, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS IN PERFORMANCE OF THE SERVICES. IN NO EVENT SHALL VENDOR BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM VENDOR'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS AGREEMENT OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY SERVICES SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF VENDOR OR OTHERWISE.**

8.2 **GENERAL INDEMNIFICATION - VENDOR HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER TANGIBLE PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY THIRD PARTY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT DIRECTLY CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF VENDOR, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS IN PERFORMANCE OF THE SERVICES.**

8.3 **INTELLECTUAL PROPERTY INDEMNIFICATION –**

9. **Assignment and Subcontracting.**

9.1 **Assignment.** Vendor will not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of City. If City grants consent to an assignment, the assignee will execute a written agreement with City and Vendor under which the assignee agrees to be bound by the duties and obligations of Vendor under this Agreement. Vendor will be liable for all obligations of Vendor under this Agreement prior to the effective date of the assignment.

9.2 **Subcontract.** If City grants consent to a subcontract, the subcontractor will execute a written agreement with Vendor referencing this Agreement under which subcontractor agrees to be bound by the duties and obligations of Vendor under this Agreement as such duties and obligations may apply. Vendor must provide City with a fully executed copy of any such subcontract.

10. **Insurance.** Vendor must provide City with certificate(s) of insurance documenting policies of the following types and minimum coverage limits that are to be in effect prior to commencement of any Services pursuant to this Agreement:

10.1 **Coverage and Limits**

(a) Commercial General Liability:

\$1,000,000 - Each Occurrence  
\$2,000,000 - Aggregate

(b) Automobile Liability:

\$1,000,000 - Each occurrence on a combined single limit basis

Coverage will be on any vehicle used by Vendor, or its employees, agents, or representatives in the course of providing Services under this Agreement. "Any vehicle" will be any vehicle owned, hired and non-owned.

(c) Worker's Compensation:

Statutory limits according to the Texas Workers' Compensation Act or any other state workers' compensation laws where the Services are being performed

Employers' liability

\$100,000 - Bodily Injury by accident; each accident/occurrence  
\$100,000 - Bodily Injury by disease; each employee  
\$500,000 - Bodily Injury by disease; policy limit

(d) .

10.2 **General Requirements**

- (a) The commercial general liability and automobile liability policies must include City as an additional insured thereon, with respect to ongoing operations performed by Vendor for City. The term City includes its employees, officers, officials, agents, and volunteers in respect to the contracted services.
- (b) The workers' compensation policy must include a Waiver of Subrogation (Right of Recovery) in favor of City.
- (c) .
- (d) The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A- VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of Risk Management is required.
- (e) Any failure on the part of City to request required insurance documentation will not constitute a waiver of the insurance requirement.
- (f) Certificates of Insurance evidencing that Vendor has obtained all required insurance will be delivered to the City prior to Vendor proceeding with any work pursuant to this Agreement.

11. **Compliance with Laws, Ordinances, Rules and Regulations.** Vendor agrees that in the performance of its obligations hereunder, it will comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Vendor of any violation of such laws, ordinances, rules or regulations, Vendor must immediately desist from and correct the violation.

12. **Non-Discrimination Covenant.** Vendor, for itself, its personal representatives, assigns, contractors, subcontractors, and successors in interest, as part of the consideration herein, agrees that in the performance of Vendor's duties and obligations hereunder, it will not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law.

13. **Notices.** Notices required pursuant to the provisions of this Agreement will be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

<p>To CITY:</p> <p>City of Fort Worth  Attn: Assistant City Manager  200 Texas Street  Fort Worth, TX 76102-6314  Facsimile: (817) 392-8654</p>	<p>To VENDOR:</p> <p>ZOLL Medical Corporation  Attn: Service Department  269 Mill Road Chelmsford, MA 01824-4105  (978) 421-9655  Main (800) 348-9011  Fax (978) 421-0022</p>
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With copy to Fort Worth City Attorney's Office at same address	
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14. **Solicitation of Employees.** Intentionally omitted.

15. **Governmental Powers.** It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

16. **No Waiver.** The failure of City or Vendor to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein does not constitute a waiver of City's or Vendor's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

17. **Governing Law / Venue.** This Agreement will be construed in accordance with the laws of the State of Texas.

18. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

19. **Force Majeure.** City and Vendor will exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but will not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance, or regulation; acts of God; acts of the public enemy; fires; strikes; lockouts; natural disasters; wars; riots; epidemics or pandemics; government action or inaction; orders of government; material or labor restrictions by any governmental authority; transportation problems; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any States; civil disturbances; other national or regional emergencies; or any other similar cause not enumerated herein but which is beyond the reasonable control of the Party whose performance is affected (collectively, "Force Majeure Event"). The performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides notice of the Force Majeure Event, and an explanation as to how it prevents or hinders the Party's performance, as soon as reasonably possible after the occurrence of the Force Majeure Event, with the reasonableness of such notice to be determined by the City in its sole discretion. The notice required by this section must be addressed and delivered in accordance with Section 13 of this Agreement.

20. **Headings not Controlling.** Headings and titles used in this Agreement are for reference purposes only, will not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.

21. **Review of Counsel.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or Exhibits A, B, and C.

22. **Amendments / Modifications / Extensions.** No amendment, modification, or extension of this Agreement will be binding upon a party hereto unless set forth in a written instrument, which is executed by an authorized representative of each party.

23. **Counterparts.** This Agreement may be executed in one or more counterparts and each counterpart will, for all purposes, be deemed an original, but all such counterparts will together constitute one and the same instrument.

24. **Warranty of Services.** Vendor warrants that its Services will be of a high quality and conform to generally prevailing industry standards. City must give written notice of any breach of this warranty within thirty (30) days from the date that the Services are completed. In such event, at Vendor's option, Vendor will either (a) use commercially reasonable efforts to re-perform the Services in a manner that conforms with the warranty, or (b) refund the fees paid by City to Vendor for the nonconforming services.

25. **Immigration Nationality Act.** Vendor must verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, Vendor will provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Vendor must adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Vendor employee who is not legally eligible to perform such services. City, upon written notice to Vendor, will have the right to immediately terminate this Agreement for violations of this provision by Vendor.

26. **Ownership of Work Product.** Intentionally omitted.

27. **Signature Authority.** The person signing this Agreement hereby warrants that they have the legal authority to execute this Agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. This Agreement and any amendment hereto, may be executed by any authorized representative of Vendor. Each party is fully entitled to rely on these warranties and representations in entering into this Agreement or any amendment hereto.

28. **Change in Company Name or Ownership.** Vendor must notify City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of Vendor or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to provide the specified documentation so may adversely impact future invoice payments.

29. **No Boycott of Israel. If Vendor has fewer than 10 employees or this Agreement is for less than \$100,000, this section does not apply.** Vendor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" has the meanings ascribed to those terms in Section 2271 of the Texas Government Code. **By signing this Agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.**

30. **Prohibition on Boycotting Energy Companies.** Vendor acknowledges that, in accordance with Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2, the City is prohibited from entering into a contract for goods or services that has a value of

\$100,000 or more that is to be paid wholly or partly from public funds of the City with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Vendor certifies that Vendor’s signature provides written verification to the City that Vendor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement.

31. **Prohibition on Discrimination Against Firearm and Ammunition Industries.** Vendor acknowledges that except as otherwise provided by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1, the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the City with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate,” “firearm entity” and “firearm trade association” have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Vendor certifies that Vendor’s signature provides written verification to the City that Vendor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.

32. **Electronic Signatures.** This Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and have the same force and effect as an original signature. For these purposes, “electronic signature” means electronically scanned and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign.

33. **Entirety of Agreement.** This Agreement, including all attachments and exhibits, contains the entire understanding and agreement between City and Vendor, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**(Signature Page to Follow)**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiples.

**CITY OF FORT WORTH:**

<p>By: <u><i>Valerie Washington</i></u>  <small>Valerie Washington (Jan 18, 2022 11:37 CST)</small>  Name: <b>Valerie Washington</b>  Title: <b>Assistant City Manager</b></p> <p>Date: <u>Jan 18, 2022</u></p> <p><b>APPROVAL RECOMMENDED:</b></p> <p>By: <u><i>Jim Davis</i></u>  <small>Jim Davis (Jan 12, 2022 23:23 CST)</small>  Name: <b>Jim Davis</b>  Title: <b>Fire Chief</b></p> <p><b>ATTEST:</b></p> <p>By: <u><i>Jannette S. Goodall</i></u>  <small>Jannette S. Goodall (Jan 19, 2022 09:37 CST)</small>  Name: <b>Jannette Goodall</b>  Title: <b>City Secretary</b></p>	<p><b>CONTRACT COMPLIANCE MANAGER:</b>  By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.</p> <p>By: <u><i>Mark Rauscher</i></u>  <small>Mark Rauscher (Jan 12, 2022 23:14 CST)</small>  Name: <b>Mark Rauscher</b>  Title: <b>Fire Assistant Director</b></p> <p><b>APPROVED AS TO FORM AND LEGALITY:</b></p> <p>By: <u><i>Christopher Austria</i></u>  Name: <b>Christopher Austria</b>  Title: <b>Assistant City Attorney</b></p> <p><b>CONTRACT AUTHORIZATION:</b>  <b>M&amp;C: N/A</b>  <b>Form 1295: N/A</b></p>
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**VENDOR:**

ZOLL Medical Corporation

By: *Toni Burke*  
Name: Toni Burke  
Title: Director, Service Programs

Date: January 12, 2022

**OFFICIAL RECORD  
CITY SECRETARY  
FT. WORTH, TX**

**EXHIBIT A**  
**SCOPE OF SERVICES**

1 Year On-Site Worry-Free Service Plan - ZOLL X Series Please refer to "Technical Support and On-Site Service" document. Includes: Annual preventive maintenance, discounts of 27% on new cables, 27% discount on additional lithium Sure Power Batteries, 27% discount on parameter upgrades, Lithium-ion Sure Power II Battery replacement upon failure, and accidental damage (See comments) coverage. Shipping and use of a Service Loaner during repairs, no charge shipping. Extended warranty is a continuation of the EMS One Year Product Limited Warranty. ECG 12-lead cable replacement upon failure, excluding physical damage, one for one/unit/year Serial Number(s): AR18C030580,AR18E032277,AR18G033578 AR18H034360,AR18K036183,AR18K036216,AR18K036217 AR18K036218,AR18K036221,AR18K036223,AR18K036230 AR18K036232,AR19A037528,AR18C030580,AR18E032277 AR18L037432,AR19A037531,AR19A037541,AR19A037624 AR19A037634,AR19A037639,AR19A037640,AR19A037641 AR19A037653,AR19A037654,AR19A037670,AR19A037691 AR19A037692,AR19A037696,AR19A037698,AR19B038114 AR19B038117,AR19B038121,AR19B038125,AR19B038127 AR19B038130,AR19B038134,AR19B038135,AR19B038136 AR19B038140,AR19B038231,AR19B038245,AR19B038255 AR19B038477,AR19B038478,AR19C038895

8889-89000- WFOS Worry-Free Conversion Service Plan, On-Site - ZOLL X Series Please refer to "Technical Support and On-Site Service" document. Includes: Discounts of 27% on new cables, 27% discount on additional lithium Sure Power Batteries, 27% discount on parameter upgrades, Lithium-ion Sure Power II Battery replacement upon failure, and accidental damage (See comments) coverage. Shipping and use of a Service Loaner during repairs, no charge shipping. Extended warranty is a continuation of the EMS One Year Product Limited Warranty. ECG 12-lead cable replacement upon failure, excluding physical damage, one for one/unit/year Serial Number(s): AR20L052900, AR20L052903, AR20L052991 Quantity is determined by taking the number of X Series (3) and multiplying that by the number of months needed (15) which equals 45.

Worry-Free Pro-Rated Service Plan - ZOLL X Series Includes: Annual preventive maintenance, discounts of 27% on new cables, 27% discount on additional lithium Sure Power Batteries, 27% discount on parameter upgrades, Lithium-ion Sure Power II Battery replacement upon failure, and accidental damage coverage (see comments). Shipping and use of a Service Loaner during repairs, no charge shipping. Extended warranty is a continuation of the EMS One Year Product Limited Warranty. Serial Number(s): AR19K044361,AR20L052900, AR20L052903 AR20L052991 Quantity is determined by taking the number of X Series (4) and multiplying that by the number of months needed (9) t by the number of months needed (9), which equals 36

**EXHIBIT B**

**PAYMENT SCHEDULE**



**EXPERTCARE EXTENDED WARRANTY & PREVENTIVE MAINTENANCE CONTRACT**

**Fort Worth Fire Department (Customer # 105335)**

**ZOLL Medical Corporation**

269 Mill Road  
Chelmsford, MA 01824-4105  
(978) 421-9655 Main  
(800) 348-9011  
(978) 421-0022 Fax

**Attn:** Sherri Hauch 8173928753 / sherri.hauch@fortworthtexas.gov

**Bill To:** Fort Worth Fire Department  
1000 Calvert Street  
Fort Worth, TX 76107

**Ship To:** Fort Worth Fire Department  
1000 Calvert Street  
Fort Worth, TX 76107

**From:** Jennifer McCormick  
Service Contracts Representative  
(978) 805-6472 / jmcormick3@zoll.com

**QUOTATION:** 00033434  
Quote Date: September 14, 2021  
Quote Pricing: Valid for 60 Days

**PM Contact:** Sherri Hauch - 8173928753 sherri.hauch@fortworthtexas.gov

**X Series**

Part No	Description	Contract Dates	Qty	Price	Adj. Price	Ext. Price
8889-89011-WF	<p><b>1 Year On-Site Worry-Free Service Plan - ZOLL X Series</b> Please refer to "Technical Support and On-Site Service" document. Includes: Annual preventive maintenance, discounts of 27% on new cables, 27% discount on additional lithium SurePower Batteries, 27% discount on parameter upgrades, Lithium-Ion SurePower II Battery replacement upon failure, and accidental damage (See comments) coverage. Shipping and use of a Service Loaner during repairs, no charge shipping. Extended warranty is a continuation of the EMS One Year Product Limited Warranty. ECG 12-lead cable replacement upon failure, excluding physical damage, one for one/unit/year</p> <p>Serial Number(s): AR18C030580,AR18E032277,AR18G033578 AR18H034360,AR18K036183,AR18K036216,AR18K036217 AR18K036218,AR18K036221,AR18K036223,AR18K036230 AR18K036232,AR19A037528,AR18C030580,AR18E032277 AR18L037432,AR19A037531,AR19A037541,AR19A037624 AR19A037634,AR19A037639,AR19A037640,AR19A037641 AR19A037653,AR19A037654,AR19A037670,AR19A037691 AR19A037692,AR19A037696,AR19A037698,AR19B038114 AR19B038117,AR19B038121,AR19B038125,AR19B038127 AR19B038130,AR19B038134,AR19B038135,AR19B038136 AR19B038140,AR19B038231,AR19B038245,AR19B038255 AR19B038477,AR19B038478,AR19C038895</p>	10/01/2021 to 09/30/2022	46	\$1,875.00	\$1,556.25	\$71,587.50
8889-89000-WFOS	<p><b>Worry-Free Conversion Service Plan, On-Site - ZOLL X Series</b> Please refer to "Technical Support and On-Site Service" document. Includes: Discounts of 27% on new cables, 27% discount on additional lithium SurePower Batteries, 27% discount on parameter upgrades, Lithium-Ion SurePower II Battery replacement upon failure, and accidental damage (See comments) coverage. Shipping and use of a Service Loaner during repairs, no charge shipping. Extended warranty is a continuation of the EMS One Year Product Limited Warranty. ECG 12-lead cable replacement upon failure, excluding physical damage, one for one/unit/year</p> <p>Serial Number(s): AR20L052900, AR20L052903, AR20L052991</p> <p>Quantity is determined by taking the number of X Series (3) and multiplying that by the number of months needed (15), which equals 45.</p>	10/01/2021 to 12/31/2022	45	\$36.58	\$36.58	\$1,646.10

X Series							
Part No	Description	Contract Dates	Qty	Price	Adj. Price	Ext. Price	
8889-89900-WFP	<b>Worry-Free Pro-Rated Service Plan - ZOLL X Series</b> Includes: Annual preventive maintenance, discounts of 27% on new cables, 27% discount on additional lithium SurePower Batteries, 27% discount on parameter upgrades, Lithium-Ion SurePower II Battery replacement upon failure, and accidental damage coverage (see comments). Shipping and use of a Service Loaner during repairs, no charge shipping. Extended warranty is a continuation of the EMS One Year Product Limited Warranty.  Serial Number(s): AR19K044361,AR20L052900,AR20L052903 AR20L052991  Quantity is determined by taking the number of X Series (4) and multiplying that by the number of months needed (9), which equals 36.	01/01/2022 to 09/30/2022	36	\$156.25	\$129.69	\$4,668.75	
<b>TOTAL:</b>						<b>\$77,902.35</b>	

**COMMENTS: \*ACCIDENTAL DAMAGE COVERAGE**  
 includes one case replacement per year per device. This coverage excludes devices that are deemed beyond repair and/or catastrophic damage. ZOLL shall not be responsible for any equipment defect, the failure of the equipment to perform any specified function, or any other nonconformance of the equipment, caused by or attributable to: (i) any modification of the equipment by the Customer, unless such modification is made with the prior written approval of ZOLL; (ii) the use of the equipment with any associated or complementary equipment, accessory or software not supplied by ZOLL; (iii) any misuse or abuse of the equipment; (iv) exposure of the equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL; or (v) installation or wiring of the equipment other than in accordance with ZOLL's instructions.

**\* BATTERY REPLACEMENT COVERAGE:**  
 Batteries must be maintained per ZOLL's recommended maintenance program. Batteries are replaced upon failure, one for one, throughout the term of the ExpertCare Service contract, should the SurePower battery or SurePower Charger display a fault. Batteries must be evaluated and confirmed of failure through ZOLL Technical Support and/or an on-site field service technician. Up to three batteries per device will be covered for batteries acquired from ZOLL in last 24 months.  
 For batteries acquired from ZOLL over 24 months ago, one battery per device will be covered.

1. Applicable tax will be added at the time of invoicing.
2. Payment terms are Net 30.
3. Customer visit to complete the PM work will be scheduled 60-90 days after the agreement is signed.
4. 15% Multi-Unit Discount.

**TERMS & CONDITIONS:** The terms and conditions of this contract are set forth in the attachments. By signing this contract, Customer acknowledges having read the terms and conditions and agrees to be bound by them.

**ZOLL Medical Corporation**

Signature: \_\_\_\_\_

Name: Jennifer McCormick

Title: Service Contracts Representative

Date: \_\_\_\_\_

**Fort Worth Fire Department**

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXTENDED WARRANTY & PREVENTIVE MAINTENANCE CONTRACT for Fort Worth Fire Department**

**Preventive Maintenance Terms and Conditions**

1. Preventive maintenance ("PM") will be invoiced upon ZOLL's receipt of quote with an authorized signature (the "PM Contract") and, if available, a purchase order.
2. Any PMs that remain unused as of the end of a one-year PM contract will be forfeited and no monies will be refunded to the customer. Any PMs that remains unused as of the end of the initial term of the Multi-year PM Contract will automatically roll over into the next year of the PM Contract. Any PMs that remains unused as of the end of the second and subsequent years of the PM Contract, will be forfeited and no monies will be refunded to the customer.
3. If the customer purchases new ZOLL equipment, unused PMs will be transferred to the new equipment at the end of the factory warranty.
4. If ZOLL determines during the course of performing PM that a repair is required and the device is not covered under warranty, ZOLL will request customer authorization in order to repair the device.
5. Upon the customer's request, a loaner will be provided free of charge pursuant to ZOLL's Loaner Policy. The loaner will be provided for use while the device is being serviced by ZOLL.
6. It is the customer's responsibility to ensure devices covered by the PM Contract are available for Preventative Maintenance at the scheduled times.

**Extended Warranty Terms and Conditions**

1. The ZOLL Extended Warranty ("EW") extends the term of ZOLL's Factory Warranty by the number of years selected by the customer. EW coverage commences upon the expiration of the Factory Warranty, and is subject to the terms and conditions contained in the Factory Warranty. The EW does not apply to accessories.
2. The price of the EW will be invoiced upon ZOLL's receipt of quote with an authorized signature from the customer and, if available, a purchase order from the customer.
3. The EW is not transferrable and cannot be cancelled. However, if the customer replaces equipment covered by an EW with new ZOLL equipment, upon customer's request, the remaining time under the EW will be transferred to the new equipment at the end of the factory warranty. All requests to transfer the remaining balance of an EW must be submitted in writing to the ZOLL Service Contracts department within 60 days of date of shipment of new equipment. Failure to submit EW transfer request will result in the forfeiture of remaining EW.
4. If the customer has a claim under an EW, customer must call the ZOLL Help Desk (800-348-9011) to arrange for a Return Authorization in advance of sending the unit for evaluation at ZOLL Headquarters.
5. All repairs are performed at ZOLL headquarters in Chelmsford, MA. If a unit needs to be repaired, upon the customer's request, a loaner will be provided free of charge pursuant to ZOLL's Loaner Policy.
6. If no claims are made under the EW during the EW period, the purchase price of the EW is not refundable.

**EXHIBIT C  
SOLE SOURCE EXEMPTION FORM**



**CITY OF FORT WORTH  
CHAPTER 252 EXEMPTION FORM**

Instructions: Fill out the entire form with detailed information. Once you have completed this form, provide it to the Purchasing attorney for review. The attorney will review the information you have provided to determine whether an exemption to Chapter 252's bidding requirements is defensible. If you are printing this form to provide to Legal, please do not provide the Primer portion. Failure to provide sufficient information may result in follow up questions and cause a delay in the attorney's determination.

**Section I: General Information**

Requesting Department: FIRE DEPT.

Name of Contract Manager: Fire Battalion Chief Sherri Hauch

Department's Attorney: CHRISTOPHER AUSTRIA

Item or Service sought:

    Goods:

    Service:

    Anticipated Amount: [77,902.35]

Vendor: [Zoll Medical Cooperation]

Current/Prior Agreement for item/service: Yes  No

    CSC or Purchase Order #: [PSK-4802]

    Amount: [1,335,195.41]

    Projected M&C Date: [P-12230]

How will this item or service be used? [Original heart monitors and accessories that were bought using PSK 4802 from bid 18-0298 have reached their one year warranty and need additional repair or service in order to be operational and ready when needed. This 1-year On-Site worry free service plan will cover any monitors that break due to wear and tear and also includes annual preventive maintenance that will help minimize equipment repairs and downtime. The plan also includes additional discounts for equipment, parts, and accessories. Zoll is the Sole Source supplier that can work on Zoll monitors]

**Section 2: Claimed Exemption and Justification (Other than sole source)**

NOTE - For a claimed sole-source exemption, complete Section 3.

Please indicate the non-sole-source exemption you believe applies to the purchase and provide information to support its applicability. Please refer to the Exemption Primer for detailed information about common exemptions:

- A procurement necessary to preserve or protect the public health or safety of the City of Fort Worth'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 a right-of-way;
- 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 the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes 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; or

Advertising, other than legal notices.

Please provide details and facts to explain why you believe the exemption applies to the purchase. You may also attach documentation to this form. [INSERT DETAILED EXPLANATION AS TO HOW/WHY CLAIMED EXCEPTION APPLIES TO THIS PURCHASE]

### **Section 3: Claimed Sole-Source Exemption and Justification**

NOTE - For any non-sole-source exemption, complete Section 2.

Please indicate the sole-source exemption you believe applies to the purchase and provide information to support its applicability. Please refer to the Exemption Primer for detailed information about common exemptions

- \*A procurement of items that are 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;

How did you determine that the item or service is only available from one source?  
[Contacted Supplier (Zoll) to find out who can provide annual preventative maintenance and servicing without jeopardizing heart monitor warranties. The supplier (Zoll) stated that they are the only source that can replace, fix, or provide annual maintenance on Zoll monitors without impacting equipment warranties.]

Attach screenshots and provide an explanation of any independent research you conducted, through internet searches, searching cooperatives, or discussions with others knowledgeable on the subject matter that corroborate that the item is available only from a single source.  
[SHOW YOUR RESEARCH/WORK THAT LEAD TO YOUR CONCLUSION]

Did you attach a sole source justification letter?  Yes  No

Describe the uniqueness of the item or service (e.g. compatibility or patent issues, etc.). [Zoll heart monitors are the standard heart monitor used in the Medstar system, and zoll is the only company that can provide this service without negatively impacting warranties.]

**Section 4: Attorney Determination**

With the facts provided by the department, is the use of the claimed exemption defensible if the City were to be challenged on this purchase?  Yes  No.

Was there anything attached to this form that was relied on in making this determination?  Yes  No.

If yes, please explain:

Was there anything not included on this form or attached hereto that was relied on in making this determination?  Yes  No.


If yes, please explain:[EXPLAIN OUTSIDE SOURCE OF INFORMATION]

Will the standard terms and conditions apply?  Yes  No.

Will the contract require special terms?  Yes  No.

Will the contract require review by the department attorney?  Yes  No.

**Approved By:**

  
\_\_\_\_\_  
Taylor Paris / Jessika Williams  
Assistant City Attorney

Date: 12.7.21

## EXEMPTION FORM PRIMER

Below are explanations and examples of common exemptions that could apply to City purchases. If you have questions about the information provided or need additional information, please contact your department's assigned attorney or the appropriate purchasing attorney.

1. A procurement necessary to preserve or protect the public health or safety of the municipality's residents;

Examples of activities that have been found to fall within this exception include ambulance services; solid waste collection and disposal; and first-responder safety equipment such as breathing apparatus for firefighters and bullet-proof vests for police officers.

2. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

Examples of this type of procurement would include repairing or replacing roofs and windows damaged by hail or a tomado. But parts and services for routine maintenance or replacement of old, worn out roofs or windows would not meet this exception.

3. A procurement for personal, professional, or planning services;

Personal services are ones that are unique to the individual providing them. Therefore personal services contract cannot generally be subcontracted or assigned.

Professional services are not defined under Chapter 252, so there is no precise definition to follow. There is no universal definition of this term, however, "several cases suggest that it... is 'predominately mental or intellectual, rather than physical or manual.'" Tex. Atty Gen Op. JM-940 (1988) (*quoting Maryland Casualty Co. v. Cray Water Co.*, 160 S.W. 2d 102 (Tex. Civ. App.—Eastland 1942, no writ). The Texas Attorney General has also opined that "professional services" no longer includes only the services of lawyers, physicians, or theologians, but also those members of disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence. *Id.*

Facts needed to support a professional service exemption include the specialized requirements of that profession and the mental and intellectual skill required by the person while performing the service. Purchases of goods are not professional services.

4. A procurement of items that are available from only one source.

This exemption is commonly referred to as the sole source exemption. In determining whether a purchase is of a good or service that is available from one source, you should not consider price or time to receive the good or service. A sole source does not exist solely on the basis of personal or departmental preference or a desire to keep all units the same brand or make. The information needed to support this exemption is that no other provider

can provide the service or category of good except for the vendor you are proposing. Some examples of sole source purchases include service agreements when only one vendor is authorized to work on the equipment by the manufacturer and allowing another vendor would void the warranty; purchase of a good that is copyrighted or trademarked and only provided by one vendor.

**EXHIBIT D**  
**VERIFICATION OF SIGNATURE AUTHORITY**

**ZOLL Medical Corporation**  
**269 Mill Road Chelmsford, MA 01824-4105**  
**(978) 421-9655**

Execution of this **Signature Verification Form** ("Form") hereby certifies that the following individuals and/or positions have the authority to legally bind Vendor and to execute any agreement, amendment or change order on behalf of Vendor. Such binding authority has been granted by proper order, resolution, ordinance or other authorization of Vendor. City is fully entitled to rely on the warranty and representation set forth in this Form in entering into any agreement or amendment with Vendor. Vendor will submit an updated Form within ten (10) business days if there are any changes to the signatory authority. City is entitled to rely on any current executed Form until it receives a revised Form that has been properly executed by Vendor.

1. Name: **Toni Burke**  
Position: **Director, Service Programs**  
*Toni Burke*  
\_\_\_\_\_  
Signature

2. Name:  
Position:  
  
\_\_\_\_\_  
Signature

3. Name:  
Position:  
  
\_\_\_\_\_  
Signature

Name:  
  
\_\_\_\_\_  
Signature of President / CEO

Other Title: \_\_\_\_\_

Date: \_\_\_\_\_