

K22-851

**AMENDMENT NO. ONE TO THE PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
ZOLL MEDICAL CORPORATION**

**THIS FIRST AMENDMENT** (the "Amendment") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**"), and ZOLL Medical Corporation, represented by Kurt Sandstrom, Vice President Group EMS Sales (the "**Contractor**"). The City and the Contractor are sometimes each referred to as a "**Party**," and collectively, as the "**Parties**." The Amendment is effective as of the date of execution by the City (the "**Effective Date**").

**RECITALS**

**WHEREAS**, on May 4, 2021, the City and the Contractor entered into a Purchase Agreement for ResQPODS (medical airway equipment) to assist New Orleans EMS during respiratory and cardiac arrest of patients in EMS' care (the "**Agreement**"); and

**WHEREAS**, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to renew the Agreement for one (1) additional year;

**NOW THEREFORE**, for good and valuable consideration, the City and the Contractor amend the Agreement as follows:

1. **Extension.** In accordance with Section Six (6) of the Agreement, the term is extended for an additional one (1) year from the Effective Date.
2. **Price.** The City and Contractor reaffirm the product pricing described in Section 3: Agreement Pricing of the Agreement. The maximum amount payable under this Amendment is \$74,000.
3. **Payment.** Unless otherwise agreed by the City, payment terms are NET 30 days, upon the provision of the goods described in the Agreement and a properly submitted invoice via the City's supplier portal, subject to a late charge equal to 1.5% per month from the due date until such amount is paid.
4. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

**DECLARED DISASTER**

**A. Declaration.** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services during the declaration of an emergency.

B. **Task Order - Notification and Personnel.** Prior to or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. **Purchase Order.** Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional need for services or may issue a modified purchase order if changes are made to the initial purchase order.

D. **Timely Documentation.** The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

### **PERFORMANCE MEASURES**

A. **Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. **Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. Further, the City will seek full recovery from the defaulting contractor.

### **NON-DISCRIMINATION**

A. **Equal Employment Opportunity.** In all hiring or employment made possible by or resulting from this Agreement, the Contractor (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability,

national origin, sexual orientation, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state, and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**C. Incorporation into Subcontracts.** The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

**D. Termination for Breach.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

## **FORCE MAJEURE**

**A. Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by a party at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the party, provided such event was not caused by the negligence nor misconduct of either party, by a party's failure to comply with applicable laws, or by a party's breach of this Agreement.

**B. Notice.** To seek the benefit of this Article, a party must provide notice in writing to the other party stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

**C. Effect.**

1. Neither party shall be liable for any act or omission caused by a Force Majeure event. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
  2. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
  3. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.
  4. Notwithstanding Section (C)(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.
- 
5. **Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to provide the goods or services described hereunder.
  6. **Ownership Interest Disclosure.** The Contractor shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until the required affidavits are submitted.
  7. **Employee Verification.** The Contractor swears that: (i) it is registered and participates in a status verification system to verify that all employees are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in the Contractor being ineligible for any public

contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide the requested affidavit or violates any provision of this paragraph.

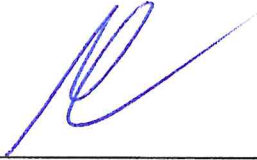
8. **Convicted Felon Statement.** The Contractor swears that it complies with City Code Section 2-8(c). No Contractor principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.
9. **Non-Solicitation Statement.** The Contractor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.
10. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.
11. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Amendment, but all of which, when taken together, shall constitute one and the same agreement.
12. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a manually signed copy of this Amendment.

**[SIGNATURES CONTAINED ON THE NEXT PAGE]**

**[The remainder of this page is intentionally left blank.]**

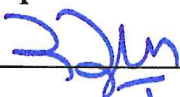
IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY:  for  
LATOYA CANTRELL, MAYOR

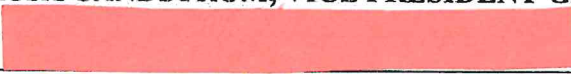
Executed on this 3rd of February, 2023.

FORM AND LEGALITY APPROVED:  
Law Department

By:   
Printed Name: Tracy Tyle

ZOLL MEDICAL CORPORATION

BY:   
KURT SANDSTROM, VICE PRESIDENT GROUP EMS SALES

  
FEDERAL TAX I.D.

[END OF DOCUMENT]