

## **CITY COUNCIL REGULAR MEETING AGENDA**

**REGULAR COUNCIL MEETING  
TUESDAY  
SEPTEMBER 20, 2022**

**COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
3:00 P.M.**

All City Council Meetings are live streamed on the city's website  
(<https://www.flagstaff.az.gov/1461/Streaming-City-Council-Meetings>)

### **\*\*\*PUBLIC COMMENT\*\*\***

**Verbal public comments may be given through a virtual public comment platform or in-person**

**If you want to provide a verbal comment during the Council Meeting, use the link below to join the virtual public comment room.**

### **VIRTUAL PUBLIC COMMENT WAITING ROOM**

Written comments may be submitted to [publiccomment@flagstaffaz.gov](mailto:publiccomment@flagstaffaz.gov). All comments submitted via email will be considered written comments and will be documented into the record as such.

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#### **1. CALL TO ORDER**

##### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

#### **2. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance through other technological means.*

MAYOR DEASY  
VICE MAYOR SWEET  
COUNCILMEMBER ASLAN  
COUNCILMEMBER HOUSE

COUNCILMEMBER MCCARTHY  
COUNCILMEMBER SALAS  
COUNCILMEMBER SHIMONI

#### **3. PLEDGE OF ALLEGIANCE, MISSION STATEMENT, AND LAND ACKNOWLEDGEMENT**

##### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

## **LAND ACKNOWLEDGEMENT**

*The Flagstaff City Council humbly acknowledges the ancestral homelands of this area's Indigenous nations and original stewards. These lands, still inhabited by Native descendants, border mountains sacred to Indigenous peoples. We honor them, their legacies, their traditions, and their continued contributions. We celebrate their past, present, and future generations who will forever know this place as home.*

### **4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

- A. Consideration and Approval of Minutes:** City Council Regular Meeting of November 17, 2020, Regular Meeting of December 1, 2020, Regular Meeting of December 15, 2020, Joint Work Session of August 23, 2021, Regular Meeting of August 24, 2021, Special Meeting of August 31, 2021, Regular Meeting of September 7, 2021, Special Meeting of August 22, 2022, Special Meeting (Executive Session) of June 27, 2022, Special Meeting (Executive Session) of July 5, 2022, Special Meeting (Executive Session) of July 12, 2022, and Special Meeting (Executive Session) of August 29, 2022.

#### **STAFF RECOMMENDED ACTION:**

Approve the minutes of the City Council Regular Meeting of November 17, 2020, Regular Meeting of December 1, 2020, Regular Meeting of December 15, 2020, Joint Work Session of August 23, 2021, Regular Meeting of August 24, 2021, Special Meeting of August 31, 2021, Regular Meeting of September 7, 2021, Special Meeting of August 22, 2022, Special Meeting (Executive Session) of June 27, 2022, Special Meeting (Executive Session) of July 5, 2022, Special Meeting (Executive Session) of July 12, 2022, and Special Meeting (Executive Session) of August 29, 2022.

### **5. PUBLIC PARTICIPATION**

*Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

### **6. PROCLAMATIONS AND RECOGNITIONS**

- A. September Work Anniversaries**

#### **STAFF RECOMMENDED ACTION:**

Recognize employees who are celebrating their work anniversaries in September

### **7. COUNCIL LIAISON REPORTS**



8. **CONSENT ITEMS**

*All matters under Consent Agenda are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.*

- A. **Consideration of Appointment:** On-Call Magistrate for the Flagstaff Municipal Court.

**STAFF RECOMMENDED ACTION:**

Approve the Judicial Appointment Advisory Panel's recommendation to appoint one On-Call Magistrate to the Flagstaff Municipal Court.

- B. **Consideration and Approval of Contract:** To approve the Cooperative Purchase Contract for twelve (12) new X Series Advanced Cardiac Monitors and Defibrillators from ZOLL Medical Corporation in the amount of \$496,332.52, plus additional taxes and fees.

**STAFF RECOMMENDED ACTION:**

1. Approve the Cooperative Purchase Contract with ZOLL Medical Corporation for new advanced cardiac monitors in the amount of \$496,332.52, plus additional taxes and fees; and
2. Authorize the City Manager to execute all necessary documents.

- C. **Consideration and Approval of Letter of Support:** MetroPlan Flagstaff Safe Streets and Roads for All (SS4A) Action Planning Grant.

**STAFF RECOMMENDED ACTION:**

Approve the letter of support.

9. **ROUTINE ITEMS**

- A. **Consideration and Adoption of Ordinance No. 2022-21:** An ordinance of the Flagstaff City Council authorizing the acquisition of real property from the BNSF Railway Company; providing for delegation of authority, repeal of conflicting ordinances, severability, clerical corrections, and establishing an effective date; and

**Consideration and Approval of Contract:** A Real Estate Purchase and Sale Agreement with BNSF Railway Company to purchase approximately 2,614 square feet of real property, to be executed after the effective date of Ordinance No. 2022-21.

**STAFF RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2022-21 by title only for the final time
- 2) City Clerk reads Ordinance No. 2022-21 by title only (if approved above)
- 3) Adopt Ordinance No. 2022-21
- 4) Approve the Real Estate Purchase and Sale Agreement, and authorize the Mayor to execute the required documents after the effective date of Ordinance No. 2022-21

- B. Consideration and Adoption of Resolution No. 2022-43 and Ordinance No. 2022-23:** A resolution declaring as a public record that a certain document to be filed with the City Clerk and entitled “*Addendum 31 to the Employee Handbook of Regulations*” and an ordinance amending the Flagstaff City Code Chapter 1-14, Personnel System, and the Employee Handbook of Regulations by adopting by reference that certain document entitled “*Addendum 31 to the Employee Handbook of Regulations*” to align with classification, compensation and performance management changes.

**STAFF RECOMMENDED ACTION:**

- 1) Adopt Resolution No. 2022-43
- 2) Read Ordinance No. 2022-23 by title only for the final time
- 3) City Clerk reads Ordinance No. 2022-23 by title only (if approved above)
- 4) Adopt Ordinance No. 2022-23

**10. PUBLIC HEARING ITEMS**

- A. Consideration and Adoption of Ordinance No. 2022-25:** An ordinance of the City Council of the City of Flagstaff amending the Flagstaff City Code, Title 11, General Plans and Subdivision, Division 11-10.20: Additional Procedures for Comprehensive Plan Updates, New Elements, and Major Amendments to the General Plan, providing for repeal of conflicting ordinances, severability, and establishing an effective date.

**STAFF RECOMMENDED ACTION:**

At the September 20, 2022 Council Meeting:

- 1) Read Ordinance No. 2022-25 by title only for the first time
- 2) City Clerk reads Ordinance No. 2022-25 by title only (if approved above)

At the October 4, 2022 Council Meeting:

- 3) Read Ordinance No. 2022-25 by title only for the final time
- 4) City Clerk reads Ordinance No. 2022-25 by title only (if approved above)
- 5) Adopt Ordinance No. 2022-25

**11. REGULAR AGENDA**

- A. Consideration and Adoption of Ordinance No. 2022-26:** An ordinance of the Flagstaff City Council authorizing the acquisition of real property for open space and the Flagstaff Urban Trail System purposes; providing for delegation of authority, severability, repeal of conflicting ordinances, authority for clerical corrections, and establishing an effective date

**STAFF RECOMMENDED ACTION:**

At the September 20, 2022 Council Meeting:

- 1) Read Ordinance No. 2022-26 by title only for the first time
- 2) City Clerk reads Ordinance No. 2022-26 by title only (if approved above)

At the October 4, 2022 Council Meeting:

- 3) Read Ordinance No. 2022-26 by title only for the final time
- 4) City Clerk reads Ordinance No. 2022-26 by title only (if approved above)
- 5) Adopt Ordinance No. 2022-26

- B. Consideration and Adoption of Resolution No. 2022-46 and Approval of Grant Agreement:** A resolution of the Flagstaff City Council, authorizing the award of a Grant Agreement between the City of Flagstaff and Arizona State Parks, Recreational Trails Grant for the maintenance of Picture Canyon Preserve.

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2022-46 by title only.
- 2) City Clerk reads Resolution No. 2022-46 by title only (if approved above)
- 3) Adopt Resolution No. 2022-46
- 4) Authorize the Grant Agreement between the Arizona State Parks Board and the City of Flagstaff, Parks, Recreation, Open Space, and Events (PROSE) Division for the Recreational Trails Program Grant to support the maintenance of Picture Canyon Preserve, in the amount of \$126,270, with a participant match of \$30,300.

**12. FUTURE AGENDA ITEM REQUESTS**

*After discussion and upon agreement by three members of the Council, an item will be moved to a regularly-scheduled Council meeting.*

- A. Future Agenda Item Request (F.A.I.R.):** A request by Councilmember House to place on a future agenda a discussion about how the city can assist NAU in building better relationships with the neighborhoods.

**STAFF RECOMMENDED ACTION:**

Council direction.

**13. PUBLIC PARTICIPATION**

**14. INFORMATIONAL ITEMS TO/FROM MAYOR, COUNCIL, AND STAFF, AND FUTURE AGENDA ITEM REQUESTS**

**15. ADJOURNMENT**

**CERTIFICATE OF POSTING OF NOTICE**

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Stacy Saltzburg, MMC, City Clerk

## 4. A.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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#### TITLE:

**Consideration and Approval of Minutes:** City Council Regular Meeting of November 17, 2020, Regular Meeting of December 1, 2020, Regular Meeting of December 15, 2020, Joint Work Session of August 23, 2021, Regular Meeting of August 24, 2021, Special Meeting of August 31, 2021, Regular Meeting of September 7, 2021, Special Meeting of August 22, 2022, Special Meeting (Executive Session) of June 27, 2022, Special Meeting (Executive Session) of July 5, 2022, Special Meeting (Executive Session) of July 12, 2022, and Special Meeting (Executive Session) of August 29, 2022.

#### STAFF RECOMMENDED ACTION:

Approve the minutes of the City Council Regular Meeting of November 17, 2020, Regular Meeting of December 1, 2020, Regular Meeting of December 15, 2020, Joint Work Session of August 23, 2021, Regular Meeting of August 24, 2021, Special Meeting of August 31, 2021, Regular Meeting of September 7, 2021, Special Meeting of August 22, 2022, Special Meeting (Executive Session) of June 27, 2022, Special Meeting (Executive Session) of July 5, 2022, Special Meeting (Executive Session) of July 12, 2022, and Special Meeting (Executive Session) of August 29, 2022.

#### Executive Summary:

Minutes of City Council meetings are a requirement of Arizona Revised Statutes and, additionally, provide a method of informing the public of discussions and actions being taken by the City Council.

#### Financial Impact:

None

#### Policy Impact:

None

#### Connection to PBB Key Community Priorities/Objectives & Regional Plan:

##### Priority Based Budget Key Community Priorities and Objectives

Effective Governance

#### Previous Council Decision on This:

None

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**Attachments:** 11.17.2020.CCRM

12.01.2020.CCRM

12.15.2020.CCRM

08.23.2021.CCJWS

08.24.2021.CCRM

08.31.2021.CCSM

09.07.2021.CCRM

06.27.2022.CCSMES

06.29.2022.CCSMES

07.05.2022.CCSMES

07.12.2022.CCSMES

08.29.2022.CCSMES

## MINUTES

### 1. **CALL TO ORDER**

Mayor Evans called the meeting of the Flagstaff City Council held November 17, 2020, to order at 3:00 p.m.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

### 2. **ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR EVANS (virtually)  
VICE MAYOR SHIMONI (virtually)  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER MCCARTHY (virtually)  
COUNCILMEMBER ODEGAARD (virtually)  
COUNCILMEMBER SALAS (virtually)  
COUNCILMEMBER WHELAN (virtually)

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

### 3. **PLEDGE OF ALLEGIANCE AND MISSION STATEMENT**

The Council and audience recited the pledge of allegiance and Councilmember Salas read the Mission Statement of the City of Flagstaff.

### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

#### 4. PUBLIC PARTICIPATION

*Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

Sustainability Director Nicole Antonopoulos announced that Flagstaff has been named one of 88 agencies on the 2020 A List as climate leaders from the international non-profit Carbon Disclosure Project.

#### 5. APPOINTMENTS

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body..., pursuant to A.R.S. §38-431.03(A)(1).*

##### A. Consideration of Appointments: Airport Commission

**Moved by** Councilmember Charlie Odegaard, **seconded by** Mayor Coral Evans to appoint Cal McCloy to a term expiring October 2023.

**Vote:** 7 - 0 - Unanimously

##### B. Consideration of Appointments: Housing Commission

**Moved by** Councilmember Jamie Whelan, **seconded by** Councilmember Jim McCarthy to appoint Joanna Wheaton to a Community Representative seat for a term expiring in September 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Adam Shimoni to appoint Chris Kemmerly to a Building and Real Estate Professional - Developer seat to a term expiring in September 2023.

Councilmember Whelan noted that Mr. Kemmerly is a current commissioner and has missed eight of the ten meetings. The commission deserves someone who will be present, attentive, and ready to participate. Councilmember McCarthy stated that he had spoken with Mr. Kemmerly and he noted that he was not attending the meetings that were not relevant to his expertise.

Councilmember Aslan also expressed concern about Mr. Kemmerly's absences. Mayor Evans stated that the developer seat has been extremely difficult to fill and it is important there is a development perspective on the commission. She recommended that Councilmember McCarthy continue to engage with Mr. Kemmerly to further stress the importance of attending meetings.

**Vote:** 4 - 0 - Unanimously

**Moved by** Vice Mayor Adam Shimoni, **seconded by** Councilmember Charlie Odegaard to appoint Sandi Flores to a Building and Real Estate Professional - Any seat to a term expiring in September 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Mayor Coral Evans, **seconded by** Councilmember Charlie Odegaard to appoint Adrah Parafiniuk to a Community Representative seat for a term expiring in September 2021.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Charlie Odegaard, **seconded by** Vice Mayor Adam Shimoni to appoint Eric Davis to a Building and Real Estate Professional - Realtor seat to a term expiring in September 2023.

**Vote:** 7 - 0 - Unanimously

**C. Consideration of Appointment:** Sustainability Commission.

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Austin Aslan to appoint David McCain to a term expiring October 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to appoint Kevin White to a term expiring October 2022.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Jim McCarthy to appoint John Daley to a term expiring October 2023.

**Vote:** 7 - 0 - Unanimously

**6. CONSENT ITEMS**

*All matters under Consent Agenda are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.*

**Moved by** Councilmember Charlie Odegaard, **seconded by** Vice Mayor Adam Shimoni to approve the Consent Agenda as presented.

**Vote:** 7 - 0 - Unanimously

**A. Consideration and Approval of Contract:** Slash Management contract for the Schultz Pass and Dry Lake Hills area with Markit! Forestry.

1. Approve the contract with Markit! Forestry in the amount of \$463,060.
2. Authorize the City Manager to execute the necessary documents.



**B. Consideration and Approval of a Consulting Contract:** Landfill Road Environmental Assessment with EnviroSystems Management, Inc.

1. Approve a Cooperative Purchasing Contract with EnviroSystems Management, Inc. to provide professional consulting services for an amount of \$73,246.00.
2. Authorize the City Manager to execute all necessary documents.

**7. ROUTINE ITEMS**

**A. Consideration and Adoption of Resolution No. 2020-59 and Ordinance No. 2020-28:** A Resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled "Case No. PZ-19-00125 Updates to Zoning Code 2020 - High Occupancy Housing Land Use;" and, an Ordinance of the City Council of the City of Flagstaff, Coconino County, Arizona, amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code, to implement the High Occupancy Housing Plan by adopting the High Occupancy Housing Development (HOHD) and Mixed-Use High Occupancy Housing Development (MHOHD) land uses and related standards.

Stephen Hastings submitted a written comment in support of delaying the effective date of the high occupancy housing ordinance.

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Adam Shimoni to adopt Resolution No. 2020-59 with one minor change to amend Section 2 to change the effective date from January 1, 2021 to March 1, 2021.

**Moved by** Councilmember Charlie Odegaard, **seconded by** Vice Mayor Adam Shimoni to amend the motion to include the following:

Sec. 10-80.20.080—HOHD:

Housing development, either for rental or purchase, in which all dwelling units are permanently affordable and offered at 60 percent of the Area Median Income (AMI) in compliance with the Department of Housing and Urban Development regulations shall not be categorized as High Occupancy Housing Development, regardless of the number units, bedrooms, or zoning.

Sec. 10-80.20.130—MOHD:

Mixed-use housing development, either for rental or purchase, in which all dwelling units are permanently affordable and offered at 60 percent of the Area Median Income (AMI) in compliance with the Department of Housing and Urban Development regulations shall not be categorized as High Occupancy Housing Development, regardless of the number of units, bedrooms, or zoning.

Zoning Code Manager Dan Symer noted that the amendment would eliminate all affordable housing projects from the High Occupancy Housing (HOH) requirements and the HOH requirements were based on developments that could be considered high occupancy regardless of affordability or not.

Councilmember McCarthy noted concerns about removing the public from the discussion about a high occupancy, affordable housing development. If the amendment fails, the project could be done but it would have to go through a Conditional Use Permit process which would give the public an opportunity to review the development.

Mayor Evans indicated that the amendment would address the issue of NIMBYism in terms of

affordable housing. Councilmember Odegaard added that the community has said they want affordable housing for the community and this would be a way to deliver affordable housing.

Vice Mayor Shimoni asked if there was a way to require a public process on the affordable housing developments. Senior Assistant City Attorney Christina Rubalcava stated that Council cannot make a requirement that specific projects go through public meeting process because they would be an entitled project that is administratively decided.

**Vote:** 6 - 1

NAY: Councilmember Jim McCarthy

**ORIGINAL MOTION:**

**Vote:** 6 - 1

NAY: Councilmember Jamie Whelan

Council requested that during the time before the effective date of March 1, 2021, that staff review the amended language to determine if there are any concerns that would necessitate further amendment.

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Adam Shimoni to read Ordinance No. 2020-28 by title only for the final time with the amended date.

**Vote:** 6 - 1

NAY: Councilmember Jamie Whelan

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, TITLE 10, FLAGSTAFF ZONING CODE, BY ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT ENTITLED "CASE NO. PZ-19-00125 UPDATES TO ZONING CODE 2020 – HIGH OCCUPANCY HOUSING LAND USE"; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Vice Mayor Adam Shimoni, **seconded by** Councilmember Charlie Odegaard to adopt Ordinance No. 2020-28.

**Vote:** 6 - 1

NAY: Councilmember Jamie Whelan

- B. Consideration and Adoption of Ordinance No. 2020-29:** An ordinance of the City Council of the City of Flagstaff abandoning and authorizing the sale of approximately 1,200 square feet of public right-of-way adjacent to 4013 S. Holland Road; providing for delegation of authority, repeal of conflicting ordinances, severability, and establishing an effective date.

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Charlie Odegaard to read Ordinance No. 2020-29 by title only for the final time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF ABANDONING AND AUTHORIZING THE SALE OF 1,168 SQUARE FEET OF PUBLIC RIGHT-OF-WAY ADJACENT TO 4013 S. HOLLAND ROAD; PROVIDING FOR DELEGATION OF AUTHORITY, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Charlie Odegaard to adopt Ordinance No. 2020-29.

**Vote:** 7 - 0 - Unanimously

- C. **Consideration and Adoption of Ordinance No. 2020-30:** An ordinance of the Flagstaff City Council ratifying the grant and reservation of easements; and formally accepting dedications and donations of easements and real property interests; delegating authority; and establishing an effective date. ***(approving receipt/transfer of easements and real property interests)***

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Austin Aslan to read Ordinance No. 2020-30 by title only for the final time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL RATIFYING THE GRANT AND RESERVATION OF EASEMENTS; AND FORMALLY ACCEPTING DEDICATIONS AND DONATIONS OF EASEMENTS AND REAL PROPERTY INTERESTS; DELEGATING AUTHORITY; AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Charlie Odegaard to adopt Ordinance No. 2020-30.

**Vote:** 7 - 0 - Unanimously

- D. **Consideration and Approval of Amendment One to the Construction Manager At Risk Construction Services Agreement:** for the northern portion of the Coconino Estates Improvements Phase I Project.

Capital Improvements Project Manager Eli Reisner provided a PowerPoint presentation that covered the following:

CMAR CONSTRUCTION SERVICES AGREEMENT AMENDMENT ONE  
AMENDMENT ONE  
VICINITY MAP

**Moved by** Councilmember Charlie Odegaard, **seconded by** Vice Mayor Adam Shimoni to approve Amendment One to the Construction Manager At Risk (CMAR) Construction Services Agreement No. 2019-37, with Eagle Mountain Construction, to include the Guaranteed Maximum Price (GMP) for the northern portion of the Coconino Estates Improvements Phase I Project in the amount of \$3,192,513.34 with no changes to the contract duration, approve an Owner's Contingency of \$74,842.99, which is approximately 2.3% of the Guaranteed Maximum Price for the northern portion of the Project, and authorize the City Manager to execute the necessary documents.

**Vote:** 7 - 0 - Unanimously

**E. Consideration and Approval of Contract: Federal Lobbying Services**

Purchasing Director Patrick Brown addressed Council stating proposals were solicited and submitted using a request for proposals. The scope of work was drafted with the City Manager's Office based on the needs of the city and a scoring criteria was established. Nexxus Consulting was the highest responsive bidder.

Management Analyst Sarah Langley addressed Council stating that Nexxus Consulting has a strong presence in Northern Arizona and is keenly aware of the needs of the city. They have in-depth knowledge about projects such as the Rio de Flag and the Airport.

Council expressed appreciation for the work done by Nexxus Consulting in prior years and were excited to see their contract with the city continued.

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Regina Salas to approve the Contract with Nexxus Consulting, LLC to provide federal lobbying services for the City of Flagstaff for an annual fee of \$96,000 for the first year with a provision for a 2.5% increase each succeeding year, plus applicable expenses billed at cost and authorize the City Manager to execute the necessary documents.

**Vote:** 7 - 0 - Unanimously

A break was held from 4:30 p.m. through 4:45 p.m.

**8. REGULAR AGENDA**

**A. Consideration and Adoption of Ordinance No. 2020-31: An ordinance amending Flagstaff City Code, Chapter 1-18, Administrative Departments, to establish the Engineering and Capital Improvements Division in City Code.**

Mr. Clifton addressed Council stating that the ordinance is to permit a restructure of the organization to put into place something that is already occurring internally.

Deputy City Manager Shannon Anderson added that the ordinance would update the city code to include a new Engineering and Capital Improvements Division that will report up to one of the Deputy City Managers.

Councilmember Whelan asked what the financial impact of the restructure is. Mr. Clifton noted that there is some impact that would involve a reclassification but it is not significant.

**Moved by** Vice Mayor Adam Shimoni, **seconded by** Councilmember Jim McCarthy to read Ordinance No. 2020-31 by title only for the first time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, CHAPTER 1-18, ADMINISTRATIVE DEPARTMENTS, TO ESTABLISH THE ENGINEERING AND CAPITAL IMPROVEMENTS DIVISION; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

- B. Consideration and Adoption of Ordinance No. 2020-32:** An ordinance of the City Council of the City of Flagstaff, changing the name of Agassiz Street to \_\_\_\_; providing for severability, authority for clerical corrections, and establishing an effective date

Management Analyst Sarah Langley provided a PowerPoint presentation that covered the following:

AGASSIZ STREET RENAMING  
BACKGROUND & COUNCIL DIRECTION  
ESTIMATED COSTS  
NAME SUGGESTIONS/VETTING PROCESS  
SURVEY RESULTS  
RATIONALES OF TOP 5 RESULTS  
QUESTIONS/COUNCIL DIRECTION

Deb Harris addressed Council in support of changing the street name to Wilson Riles.

Narvia Riles Bostick submitted a written comment in support of changing the street name to Wilson Riles.

Alexa Hart submitted a written comment in support of changing the street name to Wilson Riles or Dr. Charles Drew.

Gregg Ensminger submitted a comment card in opposition to changing the name of the street.

Council expressed appreciation for the outreach to residents and the public engagement process for soliciting possible names. They discussed the history of Wilson Riles and his impact on Flagstaff. They also discussed some of the other names submitted including Annie Watkins Lane, Code Talker Way, and Pluto Place.

Due to another street in Flagstaff named Wilson, Council agreed that the name should be abbreviated to WC Riles to avoid confusion. They also discussed the possibility of providing compensation for the affected property owners for the inconvenience associated with having to change their street address however, there was not majority support for compensation.

Council expressed a desire to develop an education component to the renaming that highlights who Wilson Riles was and his impact on the Flagstaff community.

**Moved by** Councilmember Jamie Whelan, **seconded by** Mayor Coral Evans to read Ordinance No. 2020-32 by title only for the first time with the name W C Riles.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, CHANGING THE NAME OF AGASSIZ STREET TO W C RILES DRIVE; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

- C. **Consideration and Adoption of Resolution No. 2020-62:** A resolution of the Mayor and Council of the City of Flagstaff, Coconino County, Arizona, declaring official and adopting the results of the General/Special Election held on November 3, 2020.

City Clerk Stacy Saltzburg reported that the total voter turnout was 83.44% which is the highest voter turnout in Flagstaff since 1990. Paul Deasy received the highest number of votes for Mayor. For Councilmembers; Becky Daggett, Jim McCarthy, and Miranda Sweet were the three highest vote getters. The elected officials will be officially sworn in on December 15, 2020.

Ms. Saltzburg noted that she received notification from Coconino County that while they were doing their final audit of all the results, they identified a discrepancy and there were 100 early ballots that were not included in the reports that they issued last week. They corrected the deficiency and issued updated reports yesterday which are reflected in the numbers presented today. As a result of the discrepancy the County Board of Supervisors delayed their canvass until Friday, November 20, 2020. Legally the Council can canvass the results now but the best practice would be to wait until the Board of Supervisors canvasses their results on Friday. To do this, a special meeting will need to be called on Monday, November 23, 2020 to canvass the results.

Council agreed that a special meeting should be called for Monday, November 23, 2020 to canvass the results of the election.

9. **COUNCIL LIAISON REPORTS**

10. **FUTURE AGENDA ITEM REQUESTS**

*After discussion and upon agreement by three members of the Council, an item will be moved to a regularly-scheduled Council meeting.*

- A. **Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Salas to place on a future agenda a discussion about a policy of a moratorium on any new or increased fees until after the global pandemic is over as set forth by CDC.

Councilmember Salas stated that she would like to have a discussion about a possible policy to suspend or defer the implementation of new fees or increased fees until after the pandemic is over.

Joe Galli, on behalf of the Greater Flagstaff Chamber of Commerce, submitted a written comment in support of moving the item forward to a future agenda for discussion.

Four members of Council were supportive of moving the item forward to a future agenda for discussion. It was requested that when the discussion comes back that the decision to defer or suspend fees be tied to the recession plan as well as the budget.

11. **CITY MANAGER REPORT**

A. **City Manager Report**

Mr. Clifton briefly reviewed his report.

**12. COVID-19 UPDATES**

Deputy City Manager Shannon Anderson provided a PowerPoint presentation that covered the following:

AGENDA

THE DATA

CCHHS: COVID-19 WEEKLY CASES

CCHHS: COVID-19 DAILY CASES

CCHHS: COVID-19 RELATED DEATHS

CCHHS: COMMUNITY TRANSMISSION

COUNCIL DISCUSSION ON COMMUNITY TRANSMISSION LEVEL

ADHS DASHBOARD

Councilmembers expressed concern about the number of cases, the capacity of the hospitals, and concerns about how state officials are reporting information.

Coordinator for Indigenous Initiatives Rose Toehe continued the presentation.

INDIGENOUS NATIONS DATA

NAVAJO NATION

HOPI TRIBE

INDIGENOUS NATIONS UPDATE

**13. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, FUTURE AGENDA ITEM REQUESTS**

Councilmember Salas thanked everyone for their hard work and reminded everyone to stay safe, mask up, and physically distance.

Vice Mayor Shimoni stated that November is Native American Heritage month and there are a number of events happening where the community can engage, learn, and listen. He thanked the Economic Vitality staff for their work on the Flagstaff Local movement. He reported that ADOT will be hosting a couple of town halls in the near future and he expressed gratitude to the Arizona Board of Regents for hosting a town hall at NAU.

Mayor Evans stated that she had the opportunity to speak with the Arizona Board of Regents and it is exciting to see the community understanding the roll of the Board in the strategic plan and leadership of NAU.

**14. ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held November 17, 2020, adjourned at 6:39 p.m.

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MAYOR

ATTEST:

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CITY CLERK

**CERTIFICATION**

I, STACY SALTZBURG, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Flagstaff held on November 17, 2020. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 20th day of September, 2022.

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CITY CLERK



## MINUTES

### 1. **CALL TO ORDER**

Mayor Evans called the meeting of the Flagstaff City Council held December 1, 2020, to order at 3:00 p.m.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

### 2. **ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR EVANS (virtually)  
VICE MAYOR SHIMONI (virtually)  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER MCCARTHY (virtually)  
COUNCILMEMBER ODEGAARD (virtually)  
COUNCILMEMBER SALAS (virtually)  
COUNCILMEMBER WHELAN (virtually)

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

### 3. **PLEDGE OF ALLEGIANCE AND MISSION STATEMENT**

The Council and audience recited the pledge of allegiance and Vice Mayor Shimoni read the Mission Statement of the City of Flagstaff.

### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

#### 4. PUBLIC PARTICIPATION

*Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

None

#### 5. APPOINTMENTS

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body..., pursuant to A.R.S. §38-431.03(A)(1).*

##### A. Consideration of Appointments: Indigenous Commission

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Jamie Whelan to appoint Jonathan Yellowhair to a term expiring December 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Jim McCarthy to appoint Joe Washington to a term expiring in December 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Adam Shimoni to appoint Shawna Whitehat to a term expiring in December 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to appoint Dorothy Gishie to an ex-officio ITAC position.

**Vote:** 7 - 0 - Unanimously

**Moved by** Vice Mayor Adam Shimoni, **seconded by** Councilmember Jim McCarthy to appoint Cora Phillips to a term expiring in December 2022.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jamie Whelan, **seconded by** Vice Mayor Adam Shimoni to appoint Kiara Weathersby to a term expiring in December 2022.

**Vote:** 7 - 0 - Unanimously

**Moved by** Mayor Coral Evans, **seconded by** Vice Mayor Adam Shimoni to appoint Courtney Scott to a term expiring in December 2021.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Regina Salas, **seconded by** Vice Mayor Adam Shimoni to appoint Meg Kabotie Adakai to an ex-officio ITAC position.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Charlie Odegaard to appoint Fawn Toya to a term expiring in December 2021.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Austin Aslan to appoint Diana Cudeii to an ex-officio ITAC position.

**Vote:** 7 - 0 - Unanimously

## 6. LIQUOR LICENSE PUBLIC HEARINGS

### A. Consideration and Action on Liquor License Application: Theresa June Morse "FLG Terroir," 17 N. San Francisco St. #2A, Series 10 (beer and wine store), New License.

Mayor Evans opened the public hearing

Police Sergeant Ryan Turley introduced the applications noting no concerns.

Councilmember Aslan asked if the business was changing locations.

Doug Brozovsky, on behalf of FLG Terroir, stated that they are changing their model to better respond to the pandemic.

Councilmember McCarthy asked if FLG Terroir is granted the new license would they have to give up the old license. The applicant, Theresa Morse stated that the Series 7 license will continue to be owned by FLG Terroir but will be placed in inactive status for 36 months. Once the pandemic is over, they will surrender the new Series 10 and reinstate the Series 7.

There being no further comment, Mayor Evans closed the public hearing.

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Charlie Odegaard to forward the application to the State with a recommendation of approval.

**Vote:** 7 - 0 - Unanimously

## 7. CONSENT ITEMS

*All matters under Consent Agenda are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.*

Item 7C was pulled for public comment.

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to approved Consent Agenda Item 7A as presented.

**Vote:** 7 - 0 - Unanimously

- A. **Consideration of Appointment:** Magistrate for the Flagstaff Municipal Court.  
Approve the Judicial Appointment Advisory Panel's recommendation to appoint Amy Mabijs Criddle as Magistrate.
- B. **Consideration and Approval of Contract:** ~~Approve a cooperative purchase contract with Passport Labs, Inc. for parking enforcement software services utilizing the National Cooperative Purchasing Alliance (NCPA) Contract (Contract # 05-20).~~

ITEM PULLED FROM AGENDA

- C. **Consideration and Adoption:** Flagstaff's Lived Black Experience Strategic Plan

The following individuals addressed Council in support of adopting the Flagstaff's Lived Black Experience Strategic Plan:

- Deb Harris
- Khara House
- Vicky Finger
- Dr. Ricardo Guthrie

The following comments were received:

- This is a living, and long overdue document, and is a necessary leg on the stepping stool toward progress in Flagstaff.
- The Black community of Flagstaff has overwhelmingly expressed the sense of invisibility within the community; take this important step in making visible the invisible, and recognize the invaluable historic and ongoing contributions of Black Flagstaffians to the city's past, present, and future.
- Support the implementation of the plan, and consider a trial period to get the project off the ground, attract additional funding, and build a collaboration between the City and the Black community.

Dawn Tucker and Dr. Mark Beeman submitted written comments in support of adopting the Flagstaff's Lived Black Experience Strategic Plan.

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Jim McCarthy to adopt the Flagstaff's Lived Black Experience Strategic Plan.

**Vote:** 7 - 0 - Unanimously

## 8. **ROUTINE ITEMS**

- A. **Consideration and Approval:** Artist's contract for the downtown library entry project with Jones Studio, Inc. for \$75,000.

Beautification, Arts, and Sciences Manager Eliza Kretzmann provided a PowerPoint presentation that covered the following:

LIBRARY ENTRY: ARTIST CONTRACT

AGENDA  
NEW PUBLIC ART PROCESSES  
ARTISTS AS PART OF DESIGN TEAMS  
SELECTION PANELS

Beautification, Arts, and Sciences Project Administrator Jana Weldon continued the presentation.

DOWNTOWN LIBRARY ENTRY PROJECT: ARTIST CONTRACT  
BACKGROUND OF LIBRARY ENTRY PROJECT  
SELECTION PANEL  
SEEKING APPROVAL FOR ARTIST CONTRACT  
SELECTED APPLICANT  
SELECTED APPLICANTS: PAST PROJECTS  
DESIGN WILL BE SITE SPECIFIC  
REVIEW OF THE CONCEPTS THAT COME FORWARD

Council expressed appreciation for the project and the efforts to engage the community and integrate diversity into the design.

**Moved by** Councilmember Charlie Odegaard, **seconded by** Vice Mayor Adam Shimoni to approve the artist's contract for the downtown library entry project with Jones Studio, Inc. for \$75,000 and authorize the City Manager to execute the necessary documents.

**Vote:** 7 - 0 - Unanimously

**B. Consideration and Approval:** Artist contract for design services for the Downtown Connection Center with Haddad|Drugan LLC for \$25,000.

Beautification, Arts, and Sciences Project Administrator Jana Weldon provided a PowerPoint presentation that covered the following:

DOWNTOWN CONNECTION CENTER: ARTIST CONTRACT  
AGENDA  
BACKGROUND  
INTEGRATING THE ARTIST IN THE TEAM

Heather Dalmolin, CEO and General Manager for Mountain Line, thanked staff and the Beautification and Public Art Commission for their support and funding for the project.

INTEGRATING THE ARTIST  
CONTRACT AMOUNT AND SOURCE  
SELECTION PANEL PROCESS  
SELECTED ARTIST – HADDAD DRUGAN  
ART AS A PLACE MAKING CATALYST  
SITE INSPIRATION – DOWNTOWN CONNECTION CENTER  
ART INTEGRATED AT TRANSIT STATIONS  
CLOUD  
DESERT CAMOUFLAGE  
NOW & THEN  
ART INTEGRATED AT OTHER PUBLIC PLACES  
WATER MARK  
SUN SPOT

OPTICAL GARDENS  
FREMONT PEAK PARK  
RECOMMENDED ACTION

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Charlie Odegaard to approve artist contract for design services for the Downtown Connection Center with Haddad|Drugan LLC for \$25,000 and authorize the City Manager to execute all necessary documents.

**Vote:** 7 - 0 - Unanimously

**C. Consideration and Approval:** Red Gap Ranch Grazing Lease with Bar T Bar Ranch

**Moved by** Mayor Coral Evans, **seconded by** Councilmember Jamie Whelan to reject all bids to allow the City to explore other alternatives, options, or potential programs to include in the solicitation and potential lease agreement for Red Gap Ranch.

**Vote:** 7 - 0 - Unanimously

**D. Consideration and Approval of Preliminary Plat:** TLC PC Land Investors LLC requests Preliminary Plat approval for The Estates at Pine Canyon Pine Bluff located at 2080 E. Del Rae Dr., a single-family home subdivision on 17.5 acres in the R1 (Single Family Residential) Zone.

Planning Development Manager Genevieve Pearthree provided a PowerPoint presentation that covered the following:

THE ESTATES AT PINE CANYON – PINE BLUFF  
REQUEST OVERVIEW  
VICINITY MAP  
PINE BLUFF PLAT  
OVERVIEW OF THE PLAT  
REQUIRED FINDING #1: ZONING CODE (TITLE 10)  
LOTS AND BUILDING ENVELOPES  
RESOURCE PROTECTION PLAN  
REQUIRED FINDING #2: ENGINEERING STANDARDS (TITLE 13)  
UTILITIES AND EASEMENTS  
REQUIRED FINDING #3: SUBDIVISIONS STANDARDS (TITLE 11)  
FINDINGS AND RECOMMENDATIONS

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to approve the preliminary plat.

**Vote:** 7 - 0 - Unanimously

**E. Consideration and Adoption of Ordinance No. 2020-31:** An ordinance amending Flagstaff City Code, Chapter 1-18, Administrative Departments, to establish the Engineering and Capital Improvements Division in City Code.

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Adam Shimoni to read Ordinance No. 2020-31 by title only for the final time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, CHAPTER 1-18, ADMINISTRATIVE DEPARTMENTS, TO ESTABLISH THE ENGINEERING AND CAPITAL IMPROVEMENTS DIVISION; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to adopt Ordinance No. 2020-31.

**Vote:** 7 - 0 - Unanimously

- F. Consideration and Adoption of Ordinance No. 2020-32:** An ordinance of the City Council of the City of Flagstaff, changing the name of Agassiz Street to WC Riles; providing for severability, authority for clerical corrections, and establishing an effective date

The following individuals addressed Council in support of renaming Agassiz Street to WC Riles Street:

- Deb Harris
- Khara House
- Vicky Finger
- Dr. Ricardo Guthrie

The following comments were received:

- There is no other street or public place named after a Black person of such stature in the entire city, and it's about time.
- This is a way to historically confirm that Black people helped shape Flagstaff and the region for the better.
- Wilson Riles's distinguished history in Flagstaff as an NAU graduate, school administrator, and a leader in the desegregation of Flagstaff schools marks important Flagstaff history and acknowledgment of the path forward toward recognition of Flagstaff's past, celebration of Flagstaff's community, and hope for Flagstaff's future.
- Thankful to the city for engaging in this community process, recognizing Mr. Riles' contributions to Flagstaff, and acknowledging the need to allow the places and spaces of Flagstaff's community to reflect the people who shaped it.
- Agassiz's ideology was demeaning and should not be associated with Flagstaff values.

Dawn Tucker and Dr. Mark Beeman submitted written comments in support of changing the name of Agassiz Street to WC Riles Street.

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Adam Shimoni to read Ordinance No. 2020-32 by title only for the final time with the clarification that the name of the street to be WC Riles Street.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, CHANGING THE NAME OF AGASSIZ STREET TO WC RILES STREET; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Austin Aslan to adopt Ordinance No. 2020-32.

**Vote:** 7 - 0 - Unanimously

**9. REGULAR AGENDA**

**A. Consideration and Adoption of Resolution No. 2020-64:** A resolution adopting the Water Conservation Strategic Plan.

Water Conservation Manager Tamara Lawless provided a PowerPoint presentation that covered the following:

WATER CONSERVATION STRATEGIC PLAN FINAL DRAFT & PROPOSED ADOPTION  
PLAN BACKGROUND  
PLAN OUTCOMES  
OPTIMIZED CONSERVATION PROGRAM  
WATER RESOURCES MASTER PLAN  
STAFF RECOMMENDATION

Council expressed appreciation for the work staff has put into the plan.

**Moved by** Councilmember Jamie Whelan, **seconded by** Councilmember Jim McCarthy to read Resolution No. 2020-64 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL ADOPTING THE WATER CONSERVATION STRATEGIC PLAN*

**Moved by** Councilmember Jamie Whelan, **seconded by** Councilmember Charlie Odegard to adopt Resolution No. 2020-64.

**Vote:** 7 - 0 - Unanimously

**B. Consideration and Adoption of Resolution No. 2020-65:** A resolution authorizing the execution of a Development Agreement Amendment between Miramonte Presidio, LLC and the City of Flagstaff related to the development of approximately 2.77 acres of real property located 2940 South Woody Mountain Road (Presidio in the Pines Development Agreement Amendment).

Planning Development Manager Genevieve Pearthree provided a PowerPoint presentation that covered the following:

PRESIDIO IN THE PINES RESOLUTION FOR A DEVELOPMENT AGREEMENT  
AMENDMENT  
SITE BACKGROUND/HISTORY  
VICINITY MAP  
DEVELOPMENT AGREEMENT HISTORY  
PURPOSE  
PROPOSED UPDATES  
UPDATE 1: PERMIT MULTIPLE FAMILY DEVELOPMENT ON TRACT M  
PRESIDIO IN THE PINES TRACT M SITE PLAN



BUILDING ELEVATIONS (FOR REFERENCE ONLY)  
UPDATE 2: HOMEOWNER'S ASSOCIATION  
UPDATE 3: ATTAINABLE HOUSING  
COUNCIL OPTIONS

Councilmember Whelan asked if the developer would consider a lower AMI. Whitney Cunningham, on behalf of the developer, stated that because of the ADOT right-of-way, they lost about 25% of the site. Their goal is to provide workforce housing and if they keep adding affordable housing units they lose money and have to increase the other rates and it does not make sense after awhile.

Councilmember McCarthy stated that he is pleased to see a provision within the homeowners association that would disallow short-term rentals. He is supportive of the amendment and believes the development will provide some workforce and affordable housing.

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to read Resolution No. 2020-65 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING THE EXECUTION OF THE FOURTH AMENDMENT TO THE PRESIDIO IN THE PINES DEVELOPMENT AGREEMENT BETWEEN MIRAMONTE PRESIDIO, LLC AND THE CITY OF FLAGSTAFF RELATED TO THE DEVELOPMENT OF APPROXIMATELY 2.77 ACRES OF REAL PROPERTY LOCATED AT 2940 SOUTH WOODY MOUNTAIN ROAD, FLAGSTAFF, ARIZONA AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to adopt Resolution No. 2020-65.

**Vote:** 7 - 0 - Unanimously

A Break was held from 5:05 p.m. through 5:15 p.m.

- C. **Consideration and Approval of Contract:** Change Order No. 14 with Shephard Wesnitzer, Inc. in the amount of \$374,135.00 and add 180 calendar days for the Rio de Flag Flood Control Utility Relocation design services contract

Capital Improvements Project Manager Trevor Henry provided a PowerPoint presentation that covered the following:

RIO DE FLAG FLOOD CONTROL PROJECT CHANGE ORDER NO. 14  
PROJECT AREA MAP  
HISTORY OF DESIGN SERVICES WITH SHEPARD WESNITZER, INC.  
CHANGE ORDER NO. 14

Councilmember Whelan noted that after 14 change orders the contract has more than doubled. She asked how far behind schedule the project is. Mr. Henry stated that the original contract began in 2005; working in partnership with the Army Corp of Engineers has been challenging in terms of schedule and funding.

Councilmember Whelan stated that the Mountain Line Downtown Connection Center is impacted by the Rio de Flag project and asked that staff be mindful of the impacts the schedule could have on their project.

Council expressed appreciation for the many years of work on the project and the efforts to coordinate with the federal government, BNSF, and local partners.

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Jamie Whelan to approve Change Order No. 14 with Shephard Wesnitzer, Inc. the amount of \$374,135.00, add 180 calendar days to the design services contract, and authorize the City Manager to execute the necessary documents.

**Vote:** 7 - 0 - Unanimously

- D. Consideration and Approval of Contract:** Approve the Real Estate Purchase and Sale Agreement between the City of Flagstaff and Allen T. Ginsberg for the purchase of 424 East Butler Avenue (104-01-023) for the purpose of public right-of-way for the Lone Tree Overpass project. The property consists of a Single Family Dwelling and approximately .82 acres on the Northwest corner of South Colorado Street and East Butler Avenue.

Community Development Director Dan Folke stated that the contract is to purchase a property on Butler which is necessary for the Lone Tree Overpass project. An appraisal was completed that came back as \$375,000 and the property owner has agreed to that price.

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to approve the Real Estate Purchase and Sales Agreement between the City of Flagstaff and Allen T. Ginsberg; and, authorize the City Manager to execute all necessary documents to fulfill the intent of this Purchase and Sales Agreement.

**Vote:** 7 - 0 - Unanimously

- E. Consideration and Adoption of Resolution No. 2020-66:** A resolution of the Flagstaff City Council declaring a housing crisis for the City of Flagstaff, prioritizing affordable housing within City operations to create safe, decent and affordable housing opportunities for all community members.

The following individuals addressed Council in support of the resolution:

- Tyler Denham
- Khara House
- Devonna McLaughlin
- Joe Galli, on behalf of the Greater Flagstaff Chamber of Commerce

The following comments were received:

- Housing costs in Flagstaff are high because more people want to live in Flagstaff than there is housing for.
- People are forced to live far away from the city center due to high housing costs and as a result, have a greater carbon footprint and environmental impact.
- There is not enough housing, so build more, preferably dense housing close to transit and jobs.
- This is about how the City Council values the majority of Flagstaff residents who are not homeowners.
- Support the efforts to both make housing in Flagstaff more affordable and attainable and to increase the supply of housing in Flagstaff.
- The resolution is an opportunity for the City to meaningfully partner with the development community in Flagstaff to address this issue and recognize the need for

partnership and collaboration to provide significant housing solutions.

- In the state of Arizona roughly 17,000 new housing units are needed annually to meet the needs of its citizens.
- Council needs to recognize the emergency status of Flagstaff's housing crisis.
- Please move forward with passing the resolution.
- Families who are housing cost burden are only one event away from having to make really difficult choices in their lives.
- COVID has demonstrated that housing is healthcare.
- Housing is the number one challenge facing the community.
- The resolution requires a long-term plan to be brought forward for consideration.
- Housing should be a topic discussed jointly with the Coconino County Board of Supervisors.
- It is important to understand the hurdles the building community are experiencing that make it challenging to get more units into Flagstaff.

Written comments in support of the resolution were submitted by the following individuals:

- Shelley Smithson
- Rebecca Cirzan
- Eric Wolverton
- Jeff Axtell
- Sarah Rendon
- Luke Ostrand
- Tatum Covey
- Zane Jenkins

Housing Director Sarah Darr provided a PowerPoint presentation that covered the following:

HOUSING CRISIS RESOLUTION 2020-66  
TIMELINE  
CITIZEN'S PETITION  
CHANGES FROM LAST WEEK

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Charlie Odegaard to read Resolution No. 2020-66 by title only.

Councilmember Odegaard stated that he would like to see the word crisis replaced with emergency.

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jamie Whelan to amend the motion to change the word crisis to emergency as presented by the petition.

Councilmember Aslan noted his disagreement with the word change. He supports the resolution and the need to address the situation. The climate emergency is a different type of problem than housing; climate is a global existential threat with implications both locally and globally. It would dilute the issue and cause confusion.

Vice Mayor Shimoni expressed his agreement in declaring a housing emergency rather than a housing crisis. He believes that it is possible to tackle both matters as emergencies. They are not mutually exclusive issues and there is quite a bit of crossover between the two which supports the suggestion of declaring both as emergencies.

Councilmember Whelan also expressed support for declaring it as an emergency.

Mayor Evans stated that the housing crisis being experienced in Flagstaff is not unique.

Suggesting the climate emergency is more important because it is a global issue, the same could be said for housing. She expressed concern about how it looks to be saving the environment in Flagstaff but it will only be for the privileged people who get to live there. It is about a bold statement from Council showing the seriousness of the situation.

**Vote:** 5 - 2

NAY: Councilmember Austin Aslan  
Councilmember Jim McCarthy

**ORIGINAL MOTION:**

**Vote:** 5 - 2

NAY: Councilmember Austin Aslan  
Councilmember Jim McCarthy

*A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL DECLARING A HOUSING CRISIS FOR THE CITY OF FLAGSTAFF, PRIORITIZING AFFORDABLE HOUSING WITHIN CITY OPERATIONS TO CREATE SAFE, DECENT AND AFFORDABLE HOUSING OPPORTUNITIES FOR ALL COMMUNITY MEMBERS.*

**Moved by** Councilmember Jamie Whelan, **seconded by** Vice Mayor Adam Shimoni to adopt Resolution No. 2020-66.

**Vote:** 5 - 2

NAY: Councilmember Austin Aslan  
Councilmember Jim McCarthy

- F. **Consideration and Adoption of Ordinance No. 2020-33:** An ordinance of the City Council of the City of Flagstaff, amending City Code Title 7, Health and Sanitation, Chapter 03-001-0014, Water Conservation to prohibit the use of potable water to fill amenity lakes, ponds, or other bodies of water; providing for severability, authority for clerical corrections, and establishing an effective date

Water Resources Manager Erin Young provided a PowerPoint presentation that covered the following:

AMENITY LAKES POLICY DIRECTION  
POLICY ISSUE  
POLICY ALIGNMENT WITH AMAS  
PROPOSAL: ALIGN CITY CODE WITH STATE LAW FOR AMA'S & LOCAL POLICY  
SUGGESTED CHANGES TO CITY CODE

Councilmember McCarthy, Vice Mayor Shimoni, and Councilmember Whelan expressed concern about the amount of water and would like to consider a smaller threshold.

Councilmember Salas noted that the changes were presented to the Water Commission, but no other public outreach has been done. She expressed a desire to have the matter better vetted with the community for comment.

Councilmember Aslan expressed support for the recommendations and suggested code

changes.

Vice Mayor Shimoni asked how the code changes could impact Jay Lively. Ms. Young explained that so long as they do not expand in size, they could continue to utilize potable water. She also noted that government agencies would be exempted and private entities could request an exception from Council.

Mr. Clifton expressed concern about going below 13,000 feet as it could eliminate other pools and recreational facilities and other unforeseen consequences.

Following further discussion Council agreed that they would like more information and a presentation at a future Work Session. There was also a request to have more public outreach for feedback and comment.

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Regina Salas to postpone the item indefinitely until after a scheduled Work Session.

**Vote:** 7 - 0 - Unanimously

**10. COUNCIL LIAISON REPORTS**

None

**11. CITY MANAGER REPORT**

**A. City Manager Report**

Mr. Clifton briefly reviewed his report.

**12. COVID-19 UPDATES**

Deputy City Manager Shannon Anderson provided a PowerPoint presentation that covered the following:

AGENDA  
CCHHS: COVID-19 WEEKLY CASES  
CCHHS: COVID-19 DAILY CASES  
CCHHS: HOSPITAL ADMISSIONS  
CCHHS: COVID-19 RELATED DEATHS  
CCHHS: COMMUNITY TRANSMISSION  
ADHS DASHBOARD  
NAH: HOSPITAL CENSUS

Coordinator for Indigenous Initiatives Rose Toehe continued the presentation.

INDIGENOUS NATIONS DATA  
NAVAJO NATION  
HOPI TRIBE  
INDIGENOUS NATIONS UPDATE

Ms. Anderson concluded the presentation.

HOLIDAY ACTIVITIES

Council discussed the number of cases in the Flagstaff area. They discussed upcoming Halloween and New Year's Eve events and the adjustments made to be more safe.

**13. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, FUTURE AGENDA ITEM REQUESTS**

Vice Mayor Shimoni reported that he met with the Army Corp of Engineers to discuss the partnerships related to the Rio de Flag project. He encouraged the public to check in with friends and family and make sure they are doing okay with isolation and limited contact with the public

Councilmember Odegaard thanked staff for decorating Wheeler Park with a blue tree to recognize fallen police officers.

Councilmember Salas reported that it was Giving Tuesday and she encouraged people to donate and support their local non-profits.

Councilmember Whelan reported that she attended the Recreation end of the season wrap-up meeting. The meeting focused on supporting event producers and understanding the things that are going well and things that could be improved.

Mayor Evans reported that she recently viewed a video about the Rio de Flag and she requested that it be posted on the website.

**14. ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held December 1, 2020, adjourned at 8:02 p.m.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**CERTIFICATION**

I, STACY SALTZBURG, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Flagstaff held on December 1, 2020. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 20th day of September, 2022.

\_\_\_\_\_  
CITY CLERK

## MINUTES

### 1. CALL TO ORDER

Mayor Evans called the meeting of the Flagstaff City Council held December 15, 2020, to order at 3:01 p.m.

### NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

### 2. ROLL CALL

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR EVANS (virtually)  
VICE MAYOR SHIMONI (virtually)  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER MCCARTHY (virtually)  
COUNCILMEMBER ODEGAARD (virtually)  
COUNCILMEMBER SALAS (virtually)  
COUNCILMEMBER WHELAN (virtually)

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

### 3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

The Council and audience recited the pledge of allegiance and Councilmember Whelan read the Mission Statement of the City of Flagstaff.

### MISSION STATEMENT

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

#### 4. **TRANSITION OF NEW CITY COUNCIL**

Mayor Evans handed the meeting over to the new Council. She offered her congratulations, and stated that she is excited to see how the Council grows and prospers.

#### 5. **ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR DEASY (virtually)  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER DAGGETT (virtually)  
COUNCILMEMBER MCCARTHY (virtually)  
COUNCILMEMBER SALAS (virtually)  
COUNCILMEMBER SHIMONI (virtually)  
COUNCILMEMBER SWEET (virtually)

#### 6. **SELECTION OF VICE MAYOR**

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Jim McCarthy to appoint Becky Daggett as Vice Mayor in accordance with the City Council Rules of Procedure.

**Vote:** 7 - 0 - Unanimously

#### 7. **PUBLIC PARTICIPATION**

*Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

A written comment was submitted by Raina Delmar on behalf of the Coconino Anti-Tobacco Students requesting the implementation of the Tobacco Retail License for all tobacco retailers throughout Flagstaff.

#### 8. **LIQUOR LICENSE PUBLIC HEARINGS**

Mayor Deasy opened the public hearing

Police Sergeant Ryan Turley introduced the applications and noted no concerns.

Councilmember Shimoni encouraged the applicant for the Butler Chevron to not sell items such as shooters, 40s, and malt liquor given the proximity to the interstate.



There being no public comment, Mayor Deasy closed the public hearing.

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Adam Shimoni to forward all three applications to the State with a recommendation of approval.

**Vote:** 7 - 0 - Unanimously

- A. **Consideration and Action on Liquor License Application:** Anthony Burton Coulston "Lake Mary Chevron," 4026 S. Lake Mary Road, Series 09 (liquor store - all spirituous liquor), Owner Transfer.
- B. **Consideration and Action on Liquor License Application:** Anthony Burton Coulston "Forest Meadows Chevron," 357 W. Forest Meadows Street, Series 10 (beer and wine store), New License.
- C. **Consideration and Action on Liquor License Application:** Michael Vito Giuliano "Butler Chevron," 2295 E. Butler Avenue, Series 09 (liquor store - all spirituous liquor), Owner Transfer.

## 9. **CONSENT ITEMS**

*All matters under Consent Agenda are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.*

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Miranda Sweet to approve the Consent Agenda as presented.

**Vote:** 7 - 0 - Unanimously

- A. **Consideration and Approval of Grant Application (acceptance, etc.):** Wildland Fire Hazardous Fuels (WFHF) 20-202 grant award - Greater Flagstaff Fuels Reduction Project.  
Approve the Greater Flagstaff Fuels Reduction Project Wildland Fire Hazardous Fuels (WFHF) 20-202 grant award from AZ Dept of Forestry and Fire Management.
- B. **Consideration and Approval of Contract:** Approval of contract for the Flagstaff Police Department's Officer Safety and Wellness Grant-Deliverable #5-Incentivize Physical Fitness. This contract is between the City of Flagstaff and Summit Health and Fitness for \$348.00 per participating police employee and not to exceed \$61,200.00.  
Approve the contract between the City of Flagstaff and Summit Health and Fitness for \$348.00 per participating police employee and not to exceed \$61,200.00. The funding for this contract was awarded by a Community Oriented Policing Services (C.O.P.S) Microgrant, and there is no direct cost to the city.

## 10. **REGULAR AGENDA**

- A. **Consideration and Approval to begin Contract Negotiations:** Authorization to begin contract negotiations for the Flagstaff Pulliam Airport 31.45 acre parcel for master developer services.

Grants and Contracts Manager Stacey Brechler-Knaggs provided a PowerPoint presentation that covered the following:

AIRPORT 31.45 ACRE PARCEL – RSOQ CONTRACT DISCUSSION  
OVERVIEW  
BACKGROUND/HISTORY  
SITE ASSESSMENT  
SITE ASSESSMENT FINDINGS  
POPULATION & EMPLOYMENT GROWTH  
REAL ESTATE DEMAND ANALYSIS  
MARKET TRENDS  
LAND USE ALTERNATIVES  
POTENTIAL SITE USES

Community Investment Director David McIntire continued the presentation.

WHY NOT RESIDENTIAL?  
REQUEST FOR STATEMENT OF QUALIFICATIONS  
VISION AND EXPECTATIONS  
EVALUATION CRITERIA  
TIMELINE

Deb Harris addressed Council stating that there is land out at Schultz Pass that should be developed for workforce housing before suggesting the land at the airport. The airport land should be used for airport or industrial operations that fit better with the area.

Vice Mayor Daggett asked what the incentive is for the developer and the city's financial liability in terms of maintaining tenants along with maintenance and operations. Mr. McIntire explained that those are the conversations they are hoping to have with the developer. The negotiations will focus on developing an agreement where the developer feels comfortable about making the money and the city is comfortable with the types of businesses they will bring in.

Councilmember Shimoni indicated that he would like to see the space considered for office space and retail. Mr. Clifton added that the emphasis in the submittal was on flex industrial and research and development with a commercial element. Telecommuting and doing things remotely is much more common place and it is conceivable that the parcel does not garner as much traffic but its proximity to the airport does enable out of state travel to come in and utilize the facility without a lot of additional infrastructure.

Economic Vitality Director Heidi Hansen stated that staff will be coming back to Council every step of the way about what is planned for the parcel and conversations about the best use of the area.

Councilmember McCarthy expressed his desire to see an emphasis on research and development, light industrial, and a small amount of commercial retail.

Mayor Deasy asked about the internet capacity near the airport in terms of redundancies and its impact on the research and development sector. Mr. McIntire stated that the site assessment found that all utilities, with the exception of electricity, should support all development out there. If additional broadband is needed that would be something that is included as part of the development proposal. The site should be able to support the uses and if not, those are conversations to have with the developer on how to bring them in.

Mayor Deasy asked about Federal Aviation Administration (FAA) rules related to housing in the area. Airport Director Barney Helmick stated that in recent discussions with FAA it was brought up that the location is an overflight area particularly for helicopters. Noise is

considered a subjective issue but the impacts could be substantial. Many noise complaints come from those who are having outside events and experience the sound impacts. Not sure if putting housing in an area that could have such an impact is ideal. Housing Director Sarah Darr added that low-income housing programs are held to environmental assessments including noise. There are units on High Country Trail that had specific actions tied to them to mitigate the noise from I-17 and the airport. It is doable but it can come with a cost.

Councilmember Sweet stated that finding ways to incorporate multi- or single-family housing could be attractive to potential tenants. She would not want to dismiss the idea of housing. Mr. McIntire stated that those are things that can be discussed with the developer in terms of what could be provided within the Regional Plan and the Zoning Code. With the John Wesley Powell expansion there would be land available for housing and new commercial and retail space would further encourage housing in the area. It really comes down to identifying possibilities with the developer.

Comprehensive Planning Manager Sara Dechter stated that the Regional Plan does allow for some residential in the employment area type. Mayor Deasy asked if there is a way to have a few acres designated as residential without triggering the need for a major Regional Plan amendment. Ms. Dechter indicated yes, so long as it is mixed-use for the primary use of industrial and research and development.

Councilmember Aslan stated that it makes sense to ask questions and explore opportunities with the developer. He does not believe that the location is appropriate for residential with the parcel being so close to the highway and airport. He suggested industrial, research and development, and perhaps a hotel.

**Moved by** Councilmember Adam Shimoni, **seconded by** Councilmember Austin Aslan to direct staff to proceed with contract negotiations for master developer services to begin with the highest scoring candidate, Genterra Enterprises, LLC.

**Vote:** 7 - 0 - Unanimously

**B. Consideration and Adoption of Resolution No. 2020-69:** A resolution adopting the City Council 2021 Commemorative Flag Designations

City Clerk Stacy Saltzburg explained that each year the City Council adopts a resolution setting the schedule for the display of flags on the temporary flag pole at City Hall. No additions were requested for 2021, only requests to maintain the current schedule.

**Moved by** Councilmember Adam Shimoni, **seconded by** Councilmember Miranda Sweet to read Resolution No. 2020-69 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF (PURSUANT TO THE CITY COUNCIL POLICY ON THE DISPLAY OF FLAGS) DESIGNATING ALL COMMEMORATIVE FLAGS THAT WILL BE DISPLAYED THROUGHOUT THE YEAR 2021 ON THE TEMPORARY POLE IN FRONT OF CITY HALL*

**Moved by** Councilmember Adam Shimoni, **seconded by** Mayor Paul Deasy to adopt Resolution No. 2020-69.

**Vote:** 7 - 0 - Unanimously

**11. COUNCIL LIAISON REPORTS**

Councilmember Shimoni reported that the CJCC recently met and discussed criminal justice reform. They have hired an agency to help run the meetings and continue moving forward. He also reported that the Alliance meeting is scheduled to occur in the early part of January.

**12. FUTURE AGENDA ITEM REQUESTS**

*After discussion and upon agreement by three members of the Council, an item will be moved to a regularly-scheduled Council meeting.*

- A. Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Aslan to place on a future agenda a discussion to formulate a resolution in support of efforts to lobby the incoming Administration to reinstate Bears Ears National Monument to its original dimensions, as proposed by the Bear Ears Inter-tribal Coalition.

Councilmember Aslan stated that the Bears Ears Inter-tribal Coalition is a historic consortium of sovereign tribal nations united in the effort to conserve the Bears Ears cultural landscape. The Coalition is an unprecedented alliance that formed in order to protect the unique cultural heritage of the Bears Ears region. Prior to designation of the monument, sites of sacred and cultural importance had been desecrated by recreationists, looters, and vandals, prompting the need for the coalition.

In order to honor and protect the needs and interests of the traditional peoples who occupied the region that is now Bears Ears National Monument, the reinstatement of the monument to its original dimensions, as proposed by the Coalition, is imperative.

Council expressed support to move forward with a resolution.

**13. CITY MANAGER REPORT****A. City Manager Report**

Mr. Clifton briefly reviewed his report.

**14. COVID-19 UPDATES**

Deputy City Manager Shannon Anderson provided a PowerPoint presentation that covered the following:

COVID-19 UPDATE  
AGENDA  
CCHHS: COVID-19 WEEKLY CASES  
CCHHS: COVID-19 DAILY CASES  
CCHHS: HOSPITAL ADMISSIONS  
CCHHS: COVID-19 RELATED DEATHS  
CCHHS: COMMUNITY TRANSMISSION  
ADHS DASHBOARD  
NAH: HOSPITAL CENSUS

Coordinator for Indigenous Initiatives Rose Toehe continued the presentation.

INDIGENOUS NATIONS DATA  
NAVAJO NATION  
HOPI TRIBE

Council discussed the case numbers in Flagstaff along with hospital capacity concerns. They also discussed the challenges related to official reporting and comparing those with different data sources. Consistency is what the public needs to feel confident in the reporting. There was also discussion about relying on the local health authority for information. The city does not have its own health officials and the County Health Department is the guiding authority for these types of matters.

**15. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, FUTURE AGENDA ITEM REQUESTS**

Vice Mayor Daggett thanked staff for the warm welcome and stated that she is excited to for the next chapter of the City Council.

Councilmember Aslan welcomed the new Council and stated that he is looking forward to working with everyone.

Councilmember McCarthy stated that he is looking forward to the team building retreat the next day.

Councilmember Salas welcomed the new members of Council. She reported that she had the opportunity to meet with USAGE Whitehall Industries which is a manufacturing company that is relocating to Flagstaff.

Councilmember Shimoni stated that there will be a COVID vigil on Saturday in front of City Hall. He also reported that BNSF was in town to meet with staff to discuss the steps ahead for completing the Rio de Flag project. He thanked the Police Chief candidates for their participation in the recruitment process. He also expressed appreciation to outgoing Mayor Coral Evans for her leadership and work for the City. He welcomed the new Council.

Mr. Clifton reminded Council about the upcoming day and a half retreat. The purpose of the retreat is to focus on relationship building and bringing the new members up to speed on government structure.

Councilmember Sweet thanked everyone for the warm welcome and that she looks forward to working with everyone.

Mayor Deasy stated that the eviction moratorium lifts on December 31, 2020 and he is concerned about facing a serious issue of evictions in the community. He requested a discussion at the following meeting on City preparations if there is no movement from the federal government.

**16. ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held December 15, 2020, adjourned at 8:02 p.m.

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MAYOR

ATTEST:

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CITY CLERK**CERTIFICATION**

I, STACY SALTZBURG, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Flagstaff held on December 15, 2020. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 20th day of September, 2022.

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CITY CLERK

## MINUTES

### 1. Call to Order

Mayor Deasy called the Joint City/County Work Session held August 23, 2021, to order at 3:01 p.m.

### 2. Pledge of Allegiance and Mission Statement

The Council, Board of Supervisors, and attendees recited the pledge of allegiance and Councilmember McCarthy read the Mission Statement of the City of Flagstaff.

#### MISSION STATEMENT

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

### 3. Roll Call:

*NOTE: One or more Councilmembers/Supervisors may be in attendance telephonically or by other technological means.*

#### PRESENT:

CHAIRMAN RYAN (virtually)  
VICE-CHAIRWOMAN FOWLER (virtually)  
SUPERVISOR BEGAY (virtually)  
SUPERVISOR HORSTMAN (virtually)  
SUPERVISOR VASQUEZ (virtually)

MAYOR DEASY (virtually)  
VICE MAYOR DAGGETT (virtually)  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER MCCARTHY (virtually)  
COUNCILMEMBER SALAS (virtually)  
COUNCILMEMBER SHIMONI (virtually)  
COUNCILMEMBER SWEET (virtually)

#### ABSENT:

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon; County Manager Steve Peru

#### 4. Public Participation:

*Public Participation enables the public to address the Council about items that are not on the prepared agenda. Public Participation appears on the agenda twice, at the beginning and at the end of the work session. You may speak at one or the other, but not both. Anyone wishing to comment on an item that is on the agenda is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be called. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak.*

None

#### 5. Museum Post-Wildfire Flooding

Deputy County Manager Lucinda Andreani introduced the item and provided brief opening comments. Interim Water Services Director Andy Bertelsen also provided brief opening comments and presented a PowerPoint presentation that covered the following:

MUSEUM POST-WILDFIRE FLOODING  
INTRODUCTION  
AGENDA  
MUSEUM FLOOD AREA  
MUSEUM FLOOD AREA MITIGATION 2019-2021  
2019 & 2020 MITIGATION  
FLOOD ANALYSIS  
DISTRICT'S INITIAL PROJECTS  
CITY'S OPEN CHANNEL MAINTENANCE  
CITY'S UNDERGROUND STORMWATER MAINTENANCE  
SPRUCE AVENUE CHANNEL IMPROVEMENTS  
CROSS-VEIN WEIRS  
CHANNEL DREDGING  
CULVERT UPSIZING  
DEBRIS BOLLARDS  
MUSEUM FLOOD AREA MITIGATION - 2021

Ms. Andreani continued the presentation.

2021 MUSEUM FLOOD EVENTS, IMPACTS, RESPONSE, COSTS, MITIGATION & SUPPORT  
MUSEUM POST-WILDFIRE FLOODING  
AUGUST 17, 2021, FLOOD EVENT HYDROGRAPH & STREAM GAUGE DATA  
MUSEUM BURN SCAR RAINFALL  
MUSEUM PRIVATE PROPERTY IMPACTS  
MUSEUM FLOOD SPECIFIC AREA (IN PURPLE)  
MUSEUM PUBLIC INFRASTRUCTURE IMPACTS  
JOINT EMERGENCY RESPONSE  
FLOOD ALERT SYSTEM  
IMT & EOC  
DECLARATION OF EMERGENCY

Vice Chairwoman Fowler asked if reimbursement is available for businesses and public service buildings that had also been damaged by the flooding. Ms. Andreani explained that the



reimbursement applies to both business and residential property.

Mr. Bertelsen continued the presentation.

OPERATIONAL RESPONSE  
JOINT PUBLIC WORKS RESPONSE  
WATER SERVICES RESPONSE  
ENGINEERING RESPONSE  
ARROYO SECO EXAMPLE

City of Flagstaff Public Affairs Director Jessica Drum & Coconino County Senior Communications Manager Alex Fischer continued the presentation.

JOINT INFORMATION CENTER  
COMMUNITY MEETINGS

Ms. Andreani continued the presentation.

VOLUNTEER & CORPS EFFORTS  
MANY PARTNERS  
MUSEUM FLOOD FINANCIAL IMPACTS  
MUSEUM FLOOD LONG-TERM MITIGATION STRATEGIES  
ENGINEERING SUMMIT

Coconino County Engineer Christopher Tressler continued the presentation.

NRCS EXIGENCY  
PROJECT LOCATION

City of Flagstaff Project Manager Ed Schenk continued the presentation.

REGIONAL DETENTION AT KILLIP ELEMENTARY SCHOOL

Ms. Andreani continued the presentation.

LEGISLATIVE ADVOCACY  
SUPPORT SERVICES  
VIRTUAL ASSISTANCE CENTER  
HOME REPAIR FOR LOW INCOME HOMEOWNERS

Mr. Schenk continued the presentation.

GREATER FLAGSTAFF AREA FLOOD EVENTS  
MAP OF WATERSHEDS  
100-YR EVENT IN EAST FLAGSTAFF  
EAST FLAGSTAFF FLOOD EVENT  
DAMAGE ALONG FANNING WASH  
ENGINEERING RESPONSE  
EAST FLAGSTAFF FLOOD MODEL  
ENGINEERING RESPONSE  
50-YR EVENT IN UNIVERSITY HEIGHTS

Mr. Tressler continued the presentation.

300+YR EVENT IN FOREST HILLS  
RIO DE FLAG

City of Flagstaff Building Official Amy Palmer continued the presentation.

PRIVATE PROPERTY IMPACTS

City of Flagstaff Grants and Contracts Manager Stacey Brechler-Knaggs continued the presentation.

PUBLIC INFRASTRUCTURE IMPACTS  
PUBLIC INFRASTRUCTURE ASSESSMENT & RECOVERY GIS MAP

The City Council and County Board of Supervisors discussed the following points:

- FEMA floodplain standards, mapping, and mitigation.
- Availability of housing assistance.
- Plans to increase the Linda Vista culvert capacity.
- Challenges with limited funding and resources and ways to advocate for additional funding.
- Ongoing efforts to seek grant funding from the state and federal governments.
- Continued communication with neighborhoods and affected property owners.

**6. Informational Items To/From Chairman, Supervisors and County Manager, Mayor, Council and City Manager**

The Council and Board of Supervisors thanked staff for the presentation and opportunity to meet jointly.

**7. Adjournment**

The Joint City/County Work Session held January 28, 2021, adjourned at 5:44 p.m.

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MAYOR

ATTEST:

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CITY CLERK

## MINUTES

### 1. **CALL TO ORDER**

Mayor Deasy called the meeting of the Flagstaff City Council held August 24, 2021, to order at 3:01 p.m.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

### 2. **ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR DEASY  
VICE MAYOR DAGGETT  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER SALAS  
COUNCILMEMBER SHIMONI  
COUNCILMEMBER SWEET

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

### 3. **PLEDGE OF ALLEGIANCE AND MISSION STATEMENT**

The Council and audience recited the pledge of allegiance and Councilmember Shimoni read the Mission Statement of the City of Flagstaff.

### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

#### 4. **PUBLIC PARTICIPATION**

*Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

Raina Delmar, Co-President of Coconino Anti-Tobacco Students, addressed Council asking them to move forward with the licensing portion of the T21 ordinance.

Michelle James addressed Council about the proposed relocation of Flagstaff Medical Center; she expressed concerns about the impacts and lack of communication about the project.

#### 5. **PROCLAMATIONS AND RECOGNITIONS**

##### A. **Proclamation:** Camp Colton Week

Mayor Deasy read and presented the Camp Colton Week proclamation.

#### 6. **APPOINTMENTS**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body...., pursuant to A.R.S. §38-431.03(A)(1).*

##### A. **Consideration of Appointments:** Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA) Transit Advisory Committee (TAC) Citizen Representative.

**Moved by** Councilmember Adam Shimoni, **seconded by** Councilmember Jim McCarthy to appoint Kevin Parkes to a term expiring October 2024.

**Vote:** 7 - 0 - Unanimously

#### 7. **LIQUOR LICENSE PUBLIC HEARINGS**

Mayor Deasy opened the public hearing for all applications.

Police Sergeant Ryan Turley introduced the three applications, noting no concerns.

There being no public comment Mayor Deasy closed the public hearing.

**Moved by** Councilmember Regina Salas, **seconded by** Mayor Paul Deasy to forward the applications to the State with a recommendation of approval.

**Vote:** 7 - 0 - Unanimously

- A. **Consideration and Action on Liquor License Application:** Scott Michael McClelland, "Tiki Grill," 1509 S. Milton Road, Series 12, New Application.
- B. **Consideration and Action on Liquor License Application:** Lauren Brooks King, "Kachina Kitchen," 1800 S. Milton Road Suite 21, Series 12, New Application.
- C. **Consideration and Action on Liquor License Application:** Jeffrey Craig Miller, "Museum Club," 3404 E. Route 66, Series 06, Owner Transfer.

## 8. **CONSENT ITEMS**

*All matters under Consent Agenda are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.*

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Adam Shimoni to approve the Consent Agenda as presented.

**Vote:** 7 - 0 - Unanimously

- A. **Ratification of City Staff's Approval of Contract:** City Council Ratification of Deputy City Manager Shannon Anderson's August 4, 2021, approval of the Second Amendment to Agreement for Video Streaming Services with Swagit Productions, LLC.  
Ratify staff's August 4, 2021, approval of the Second Amendment to Agreement for Video Services with Swagit Productions, LLC, and an installation charge for a total amount of \$60,955 to provide streaming and closed captioning services and equipment.

## 9. **ROUTINE ITEMS**

- A. **Consideration and Approval for a Digital Ad Server Contract:** Approve the service contract with See Source, LLC for a Digital Ad Server in the amount of \$160,000.00.

Convention and Visitors Bureau Director Trace Ward and Marketing and Media Relations Manager Lori Pappas provided a PowerPoint presentation that covered the following:

DIGITAL AD SERVER  
SEE SOURCE  
RECOVERY  
PAID DIGITAL AD CREATIVE  
EXAMPLES  
DIGITAL AD SERVER VENDOR: SEE SOURCE

Councilmember Shimoni noted that he would like to see more paid digital ads go out in Spanish.

Steve Finch addressed Council in support of the contract with See Source.

**Moved by** Mayor Paul Deasy, **seconded by** Vice Mayor Becky Daggett to approve the annual service agreement with See Source LLC and execute a \$160,000 contract and authorize the City Manager to execute the necessary documents.

**Vote:** 7 - 0 - Unanimously

**10. REGULAR AGENDA**

- A. Consideration and Adoption of Resolution No. 2021-41:** a resolution approving an Intergovernmental Agreement (IGA) between the City of Flagstaff and Coconino County for submission of a grant application and approval upon award of the U.S. Department of Justice, Fiscal Year 2021 Edward Byrne Memorial Justice Assistance (JAG) Grant.

Police Support Services Manager Allison Hughes addressed Council stating that the U.S. Department of Justice, Office of Justice Programs Bureau of Justice Assistance, was created in 1984 to provide federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist crime victims. The Edward Byrne Memorial Justice Assistance Grant (JAG) Program allows states, tribes, and local governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions. It provide agencies with the flexibility to prioritize and spend funds where they are most needed. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state.

Councilmember Shimoni stated that he is struggling with some of the things the funding would be used for. He would like to have a conversation about how the city polices proactively in neighborhoods to prevent crime. Vice Mayor Daggett added that she would like to have a future discussion about alternative police responses.

**Moved by** Councilmember Adam Shimoni, **seconded by** Vice Mayor Becky Daggett to read Resolution No. 2021-41 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN COCONINO COUNTY AND THE CITY OF FLAGSTAFF FOR THE APPLICATION FOR THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2021 LOCAL SOLICITATION / CFDA #16.738*

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Regina Salas to adopt Resolution No. 2021-41.

**Vote:** 7 - 0 - Unanimously

- B. Consideration and Adoption of Resolution No. 2021-40:** A resolution approving an amended intergovernmental agreement between Coconino County, Coconino County Juvenile Court Services Department, Coconino County Accommodation School District, and the City of Flagstaff for use of the City's Hal Jensen Recreation Center by the School District for the Juvenile Transition School.

Recreation Manager Jon Wilson addressed Council stated that following the approval by City Council in early July, the state identified two mandatory provisions that needed to be added to the agreement. The state also limited the renewal to one five-year renewal rather than two. The changes did not affect the overall terms of the agreement. Due to school starting before the Council recess was over, the agreement was provided to the Mayor for signature and staff is asking for ratification of that approval.

**Moved by** Councilmember Adam Shimoni, **seconded by** Vice Mayor Becky Daggett to read Resolution No. 2021-40 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING THE AMENDED INTERGOVERNMENTAL AGREEMENT BETWEEN COCONINO COUNTY, COCONINO COUNTY JUVENILE COURT SERVICES DEPARTMENT, COCONINO COUNTY ACCOMMODATION SCHOOL DISTRICT AND THE CITY OF FLAGSTAFF FOR USE OF THE CITY'S HAL JENSEN RECREATION CENTER BY THE SCHOOL DISTRICT FOR ITS JUVENILE TRANSITION SCHOOL*

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Jim McCarthy to adopt Resolution No. 2021-40.

**Vote:** 7 - 0 - Unanimously

- C. **Consideration and Adoption of Ordinance No. 2021-19:** An ordinance amending Chapter 5 of the City Code pertaining to the establishment of fees for fire department services outside the City Limits.

Fire Chief Mark Gaillard addressed Council stating that the ordinance provides clarity for staff and the public on how fees are established. The intent of the original ordinance was to use the assessed value of a property and staff believes that using the limited assessed value is more appropriate as it is the same value the used for other taxes to be assessed.

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Adam Shimoni to read Ordinance No. 2021-19 by title only for the first time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING SECTION 5-01-001-0001 OF THE FLAGSTAFF CITY CODE REGARDING FIRE PROTECTION SERVICES IN COUNTY ISLANDS AND OTHER SELECTED UNINCORPORATED PROPERTY; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

- D. **Consideration and Adoption of Ordinance No. 2021-20:** An ordinance amending Flagstaff City Code, Chapter 1-18, Administrative Departments, to establish the Parks, Recreation and Open Space Division in City Code.

Deputy City Manager Shannon Anderson addressed Council stating that the ordinance would be to establish the Parks, Recreation, and Open Space Division.

Council expressed their gratitude for the change and noted that it makes a lot of sense for the organization. Councilmember Salas suggested that Events be added to the Division title. The acronym PROSE could be used for Parks, Recreation, Open Space, and Events.

**Moved by** Councilmember Regina Salas, **seconded by** Mayor Paul Deasy to read Ordinance No. 2021-20 by title only for the first time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, CHAPTER 1-18, ADMINISTRATIVE DEPARTMENTS, TO ESTABLISH THE PARKS, RECREATION AND OPEN SPACE DIVISION; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**E. Consideration and Possible Action:** Revisions to City Council Rules of Procedure and Un-Suspension of the Rules

City Clerk Stacy Saltzburg provided a PowerPoint presentation that covered the following:

CITY COUNCIL RULES OF PROCEDURE  
SEEKING DIRECTION – RULE 3.01 & 3.03  
CURRENT SUSPENSION OF RULES  
COUNCIL DIRECTION & QUESTIONS

Following discussion the City Council gave the following direction:

- Continue operating under the suspension of Rule 5.01.
- Meetings will start at 3:00 p.m. with more routine items at the beginning of the meeting.
- The meetings will be continuously running with the Mayor establishing appropriate break times.
- Work Sessions will begin at 3:00 p.m.
- Staff will come back to Council for a check in at the end of October.

A break was held from 4:26 p.m. through 4:44 p.m.

**11. DISCUSSION ITEMS**

**A. COVID-19 update on phases and special events**

Deputy City Manager Shannon Anderson provided a PowerPoint presentation that covered the following:

AGENDA  
CCHHS: COVID-19 WEEKLY CASES  
CCHHS: HOSPITAL ADMISSIONS  
CCHHS: COVID-19 RELATED DEATHS  
CCHHS: COMMUNITY TRANSMISSION  
CCHHS: COMMUNITY VACCINATION  
CCHHS: VARIANTS  
NAH: HOSPITAL CENSUS  
CITY'S RE-ENTRY PLAN PHASE 3

Recreation Manager Jon Wilson continued the presentation.

RECREATION UPDATE  
AQUAPLEX  
JAY LIVELY ICE ARENA  
HAL JENSEN RECREATION CENTER  
JOE C MONTOYA COMMUNITY AND SENIOR CENTER



Library Director Jared Tolman continued the presentation.

LIBRARY UPDATE  
AVAILABLE LIBRARY SERVICES

Ms. Anderson concluded the presentation.

SPECIAL EVENTS NOTICE OF CHANGES

Gina Byars submitted a written comment in support of the 72-Hour notification.

Ryanne Sebern submitted a written comment asking for the Art in the Park event over Labor Day to be kept as scheduled.

Council agreed that 72 hour notice to event planners is appropriate to provide time for them to shift their event. They encouraged event planners to enforce mitigation measures and help limit the spread in the community.

Councilmember Shimoni requested information from NAU now that school is in session. He would also like to hear from Dr. Englethaler again in the near future.

**12. COUNCIL LIAISON REPORTS**

Councilmember Salas reported that she attended the Parks and Recreation Commission meeting where they discussed pickleball, the west side park, and the Parks and Recreation Master Plan. The Tourism Commission met and had a similar presentation to the one earlier in the meeting; they are looking forward to implementing the contract with online advertising.

Councilmember Sweet reported that she will be attending the NACOG meeting on Thursday.

Councilmember McCarthy reported that he took a tour of the flood area with Public Works Director Scott Overton. He also met with Senator Sinema about getting federal assistance with the floods and forest restoration. Lastly, he toured the airport and Joy Cone facility with other councilmembers.

Councilmember Shimoni reported that Mountain Line met last week. He also participated in a few tours and hosted a livestream on Facebook that week.

Councilmember Aslan reported that there was a joint Sustainability and Transportation Commissions meeting last week to discuss the Lone Tree Overpass.

**13. FUTURE AGENDA ITEM REQUESTS**

*After discussion and upon agreement by three members of the Council, an item will be moved to a regularly-scheduled Council meeting.*

**A. Future Agenda Item Request (F.A.I.R.) A Citizens' Petition seeking to decriminalize unsheltered residents**

Jody Clements introduced the petition to repeal the anti-camping ordinance. She feels that it is cruel, discriminatory, counterproductive, and unconstitutional. She requested that the ordinance be repealed.

Ms. Keeler addressed Council in opposition to allowing camping in city limits.

Written comments in support of repealing the anti-camping ordinance were submitted by the following:

- Brian Marbury
- Schuyler Borges
- Claire Hardi

Written comments in opposition of repealing the anti-camping ordinance were submitted by the following:

- Patrick Benson
- Amber and Ryan Ziegler

Councilmember McCarthy stated that the matter is one that Council has already discussed and acted on a number of times. He is not supportive of moving the item forward to a future agenda for discussion.

Vice Mayor Daggett stated that there are a lot of individuals and families who are unsheltered or on the verge of being so. She understands the concern within the petition but does not believe that overturning the ban solves the underlying problem. Flagstaff has a severe shortage of housing for low income people and that needs to be address.

Councilmember Shimoni expressed his desire to move the petition forward and have a conversation about a temporary camping ordinance similar to Eugene, Oregon.

Council briefly discussed the other FAIR items that are similar to the petition, the upcoming ARPA funding discussions, and the need for a broader discussion on housing in general. Following their discussion there was not the requisite support needed to move the petition forward to a future agenda for discussion.

#### **14. CITY MANAGER REPORT**

##### **A. City Manager Report**

Mr. Clifton briefly reviewed his report.

#### **15. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, FUTURE AGENDA ITEM REQUESTS**

Councilmember Shimoni stated that there is a nice live stream on YouTube with the Outreach Director from CAHOOTS in Oregon. He encouraged everyone to watch it. He also requested a FAIR item to discuss the Flagstaff Police Department efforts regarding not call initiated services like neighborhood watch and community policing.

Vice Mayor Daggett thanked Mr. Clifton for moving staff up in the organization; it speaks to the talent and quality of employees.

Mayor Deasy stated that he would like to consider having a digital sign in front of City Hall to inform the public about what is being discussed at City Council Meetings. There may need to be modifications to the sign code in order to make it work.

Councilmember McCarthy thanked Mr. Clifton for his leadership.

Councilmember Sweet thanked the community for their involvement. She stated that it was the Flagstaff Birth and Women Center's last night; they have worked hard bringing babies into the community. She encouraged everyone to get vaccinated if able.

Councilmember Salas encouraged Council, staff, and the public to continue looking for strategic solutions to address homelessness. She is looking forward to the upcoming ARPA funding discussion. She also noted that tomorrow is the National Park Services birthday.

**16. ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held August 24, 2021, adjourned at 6:12 p.m.

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MAYOR

ATTEST:

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CITY CLERK

**CERTIFICATION**

I, STACY SALTZBURG, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Flagstaff held on August 24, 2021. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 20th day of September, 2022.

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CITY CLERK

## MINUTES

### 1. Call to Order

Mayor Deasy called the Special Meeting of the Flagstaff City Council held August 31, 2021, to order at 6:02 p.m.

#### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this work session, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

### 2. Pledge of Allegiance and Mission Statement

The Council and audience recited the pledge of allegiance and Councilmember McCarthy read the Mission Statement of the City of Flagstaff.

#### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

### 3. **ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

#### PRESENT:

MAYOR DEASY  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER SHIMONI

#### ABSENT:

VICE MAYOR DAGGETT  
COUNCILMEMBER ASLAN  
COUNCILMEMBER SALAS  
COUNCILMEMBER SWEET

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

### 4. **Consideration and Possible Approval:** Special Meeting Agenda as Posted

### 5. **Consideration and Possible Approval:** Expenditure of less than \$50,000 for wastewater testing for COVID-19 at public schools

**6. Adjournment**

A quorum of Council was not present and in accordance with state law and the City Charter, the meeting immediately adjourned at 6:04 p.m.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

## MINUTES

### 1. **CALL TO ORDER**

Mayor Deasy called the meeting of the Flagstaff City Council held September 7, 2021, to order at 3:01 p.m.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

### 2. **ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR DEASY  
VICE MAYOR DAGGETT  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER SALAS  
COUNCILMEMBER SHIMONI  
COUNCILMEMBER SWEET

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

### 3. **PLEDGE OF ALLEGIANCE AND MISSION STATEMENT**

The Council and audience recited the pledge of allegiance and Councilmember Sweet read the Mission Statement of the City of Flagstaff.

### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

#### 4. **APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

- A. **Consideration and Approval of Minutes:** City Council Regular Meeting of September 17, 2019, Planning Session of September 24, 2019, Regular Meeting of October 1, 2019, Regular Meeting of October 15, 2019, Regular Meeting of November 5, 2019, Regular Meeting of November 19, 2019, Regular Meeting of December 3, 2019, Work Session of December 5, 2019, Joint City/Chamber Work Session of December 9, 2019, Regular Meeting of December 17, 2019, Regular Meeting of January 7, 2020, Work Session of January 14, 2020, Budget Retreat of February 3, 2020, Regular Meeting of April 6, 2021, Regular Meeting of April 20, 2021, Budget Retreat of April 22, 2021, Special Meeting of April 24, 2021, Regular Meeting of May 4, 2021, Regular Meeting of May 18, 2021, Executive Session of May 25, 2021, Regular Meeting of June 1, 2021, Executive Session of June 8, 2021, Work Session of June 8, 2021, and Special Work Session of June 22, 2021.

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Adam Shimoni to approve the minutes of the City Council Regular Meeting of September 17, 2019, Planning Session of September 24, 2019, Regular Meeting of October 1, 2019, Regular Meeting of October 15, 2019, Regular Meeting of November 5, 2019, Regular Meeting of November 19, 2019, Regular Meeting of December 3, 2019, Work Session of December 5, 2019, Joint City/Chamber Work Session of December 9, 2019, Regular Meeting of December 17, 2019, Regular Meeting of January 7, 2020, Work Session of January 14, 2020, Budget Retreat of February 3, 2020, Regular Meeting of April 6, 2021, Regular Meeting of April 20, 2021, Budget Retreat of April 22, 2021, Special Meeting of April 24, 2021, Regular Meeting of May 4, 2021, Regular Meeting of May 18, 2021, Executive Session of May 25, 2021, Regular Meeting of June 1, 2021, Executive Session of June 8, 2021, Work Session of June 8, 2021, and Special Work Session of June 22, 2021.

**Vote:** 7 - 0 - Unanimously

#### 5. **PUBLIC PARTICIPATION**

*Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

John Conley addressed Council calling for the resignation of Mayor Deasy.

Coordinator for Indigenous Initiatives Rose Toehe addressed Council inviting them and the public to participate in Indigenous People's Day.

#### 6. **PROCLAMATIONS AND RECOGNITIONS**

- A. **Proclamation:** Hispanic Heritage Month

Mayor Deasy read and presented the Hispanic Heritage Month proclamation.

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Miranda Sweet to reorder the agenda to take Item 17 before moving on in the agenda.

**Vote:** 7 - 0 - Unanimously

Item 17 was taken as the next agenda item.

**7. CITY MANAGER REPORT**

**A. City Manager Report**

Mr. Clifton briefly reviewed his report.

**8. COUNCIL LIAISON REPORTS**

Councilmember McCarthy reported that he attended the Bicycle Advisory Committee meeting where they discussed road markings downtown to help protect cyclists and the Beaver and Butler protected bike lanes. He attended the MetroPlan meeting and met with Bob Holmes, the City's federal lobbyist. He also attended meetings on early childhood development, the new hospital relocation proposal, and the Planning and Zoning Commission meeting.

Councilmember Salas reported that she attended the FMPO Executive Board meeting last week where they approved a \$2.4 million request for the Lone Tree Overpass project as part of the \$50 million request being put forward by the Rural Transportation Advocacy Board.

**9. COVID-19 UPDATES**

**A. COVID-19 Update**

Deputy City Manager Shannon Anderson provided a PowerPoint presentation that covered the following:

COVID-19 UPDATE  
AGENDA  
CCHHS COVID-19 WEEKLY CASES  
CCHHS: HOSPITAL ADMISSIONS  
CCHHS: COVID-19 RELATED DEATHS  
CCHHS: COMMUNITY TRANSMISSION  
CCHHS: COMMUNITY VACCINATION  
CCHHS: VARIANTS  
NAH: HOSPITAL CENSUS

Coordinator for Indigenous Initiatives Rose Toehe continued the presentation.

INDIGENOUS NATIONS DATA  
NAVAJO NATION  
HOPI TRIBE

Councilmember Shimoni asked if there was more that could be done to encourage mask wearing and social distancing. Economic Vitality Director Heidi Hansen suggested shifting back to the Stay, Play, and Distance messaging. Council supported the suggestion.



**10. APPOINTMENTS**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body....., pursuant to A.R.S. §38-431.03(A)(1).*

**A. Consideration of Appointments: Library Board.**

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Jim McCarthy to appoint Carmenlita Chief to a term expiring November 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Austin Aslan to appoint Meredith Heller to a term expiring November 2023.

**Vote:** 7 - 0 - Unanimously

**B. Consideration of Appointments: Housing Commission.**

Tyler Denham addressed Council asking to be appointed to the commission.

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Adam Shimoni to appoint Tyler Denham for the Community Representative seat with a term expiring September 2023.

**Moved by** Councilmember Jim McCarthy, **seconded by** Mayor Paul Deasy to recess into Executive Session for legal advice.

**Vote:** 7 - 0 - Unanimously

Council recessed into Executive Session from 4:26 p.m. through 4:44 p.m.

**ORIGINAL MOTION**

Councilmember Shimoni stated that Mr. Denham is passionate and he appreciates his advocacy and energy. He expressed support for the nomination.

Vice Mayor Daggett also noted her support for the nomination stating that she has worked with Mr. Denham on the 10-Year Housing Plan and his work has been invaluable.

Councilmember Aslan expressed concern about Mr. Denham and recent interactions he has had with him.

**Vote:** 4 - 3

NAY: Councilmember Austin Aslan  
Councilmember Jim McCarthy  
Mayor Paul Deasy

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Jim McCarthy to appoint Karen Flores for the Building & Real Estate Professional - Lender seat with a term expiring September 2024.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jim McCarthy, **seconded by** Mayor Paul Deasy to appoint Devonna McLaughlin for the Low Income Housing Expert seat with a term expiring September 2024.

**Vote:** 7 - 0 - Unanimously

**11. LIQUOR LICENSE PUBLIC HEARINGS**

Mayor Deasy opened the public hearing for all applications.

Police Sergeant Ryan Turley introduced the three applications and noted no concerns.

There being no public comment Mayor Deasy closed the public hearing.

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Miranda Sweet to forward the applications to the State with a recommendation of approval.

**Vote:** 7 - 0 - Unanimously

- A. **Consideration and Action on Liquor License Application:** Jared Michael Repinski, "Lumberjack Pizza," 104 E. Route 66, Series 07 (beer and wine bar), Owner Transfer.
- B. **Consideration and Action on Liquor License Application:** Adam Louis Harrington, "Harrington's Tap House," 2711 E. Lakin Drive, Series 07 (Beer and Wine Bar), New Application.

A break was held from 4:52 p.m. through 5:11 p.m.

**12. CONSENT ITEMS**

*All matters under Consent Agenda are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.*

Councilmember Shimoni requested Item 12D be pulled for discussion.

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Jim McCarthy to approve Items 12A, B, C, and E.

**Vote:** 7 - 0 - Unanimously

- A. **Consideration and Approval of Contract:** Approve the Contract for Services with Chief Building Services, LLC for security services at City Libraries and City Hall; also approve the Contract for Services with Sedona Protective Services, LLC dba Southwest Protective Services for security services at City Parks locations.

- 1. Approve the Contract for Services with Chief Building Services, LLC, for security

services at the following facilities:

- City Libraries, not to exceed \$90,000 annually.
- City Hall, not to exceed \$40,000 annually.

2. Approve the Contract for Services with Sedona Protective Services, LLC, dba Southwest Protective Services for security services at City Parks locations, not to exceed \$35,000 annually.
3. Authorize the City Manager to execute the necessary documents.

**B. Consideration and Approval of Cooperative Purchasing Contract:** Purchase of one (1) Commercial Front Load Refuse Truck and one (1) Residential Side Load Refuse Truck from Rush Truck Center Arizona through the Houston-Galveston Area Council (H-GAC) Cooperative Purchase Agreement, Contract No. HT06-20.

1. Approve the purchase of one (1) Commercial Front Load Refuse Truck in the amount of \$307,615.19, and one (1) Residential Side Load Refuse Truck in the amount of \$325,165.21, for a total purchase amount of \$632,780.40 (page 1 of pricing worksheet) from Rush Truck Center Arizona through the Houston-Galveston Area Council Cooperative Purchasing Agreement, Contract No. HT06-20; and
2. Authorize the City Manager to execute the necessary documents.

**C. Consideration and Approval of Contract:** Award Eagle Mountain Construction, Inc. the Construction Manager at Risk (CMAR) construction phase services agreement for Phase 2 of the Flagstaff Pulliam Airport Long-Term Parking project.

1. Award Eagle Mountain Construction, Inc. the Construction Manager at Risk (CMAR) construction phase services agreement in an amount not to exceed \$487,335.37 for Phase 2 construction (final phase) which includes a Contractor's contingency of \$10,000.00 and an Owner's contingency of \$11,110.55.
2. Authorize the City Manager to execute any necessary documents.

**D. Consideration and Approval of Final Plat PZ-17-00227-11 :** Ponderosa Parkway LLC, requests Final Plat approval for Ponderosa Parkway Condominiums Unit 3—a 65-unit residential condominium subdivision at 1640 E. Ponderosa Parkway on 11.97 acres in the High Density Residential (HR) Zone.

Councilmember Shimoni asked if the project had ten bike spots. Planning and Development Manager Tiffany Antol explained that the rezone was done a couple of years ago and this action is just for the condo plat.

**Moved by** Councilmember Adam Shimoni, **seconded by** Councilmember Miranda Sweet to approve the Final Plat and authorize the Mayor to sign the plat and City Subdivider Agreement when notified by staff that the documents are ready for recording.

**Vote:** 7 - 0 - Unanimously

**E. Consideration and Approval:** Post-wildfire funding advocacy letter

Approve the post-wildfire funding advocacy letter

**13. ROUTINE ITEMS**

- A. Consideration and Adoption of Ordinance No. 2021-19:** An ordinance amending Chapter 5 of the City Code pertaining to the establishment of fees for fire department services outside the City Limits.

**Moved by** Councilmember Jim McCarthy, **seconded by** Mayor Paul Deasy to read Ordinance No. 2021-19 by title only for the final time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING SECTION 5-01-001-0001 OF THE FLAGSTAFF CITY CODE REGARDING FIRE PROTECTION SERVICES IN COUNTY ISLANDS AND OTHER SELECTED UNINCORPORATED PROPERTY; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Miranda Sweet to adopt Ordinance No. 2021-19.

**Vote:** 7 - 0 - Unanimously

- B. Consideration and Adoption of Ordinance No. 2021-20:** An ordinance amending Flagstaff City Code, Chapter 1-18, Administrative Departments, to establish the Parks, Recreation and Open Space Division in City Code.

Vice Mayor Daggett stated that with the issue of housing rising in consciousness and Council declaring a housing emergency, she would like the City Manager to consider elevating the Housing Section so they have a seat at the leadership table.

Councilmember Salas noted a correction in the ordinance that the title of the Division should be Parks, Recreation, Open Space, and Events.

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Miranda Sweet to read Ordinance No. 2021-20 by title only for the final time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, CHAPTER 1-18, ADMINISTRATIVE DEPARTMENTS, TO ESTABLISH THE PARKS, RECREATION AND OPEN SPACE DIVISION; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Miranda Sweet to adopt Ordinance No. 2021-20.

**Vote:** 7 - 0 - Unanimously

**C. Consideration and Approval of Contract:** Lone Tree Overpass Project - Award of First Amendment to the Design-Build Services Agreement to Ames Construction.

Senior Project Manager Christine Cameron displayed a map and explained that a future presentation is coming forward in the near future for the design of the project..

**LONE TREE OVERPASS AND CORRIDOR IMPROVEMENTS VICINITY MAP**

Councilmember Aslan asked how AMES Construction is thinking about the aesthetics and the potential landmark opportunity. Ms. Cameron stated that those elements will be part of the presentation in a couple of weeks.

**Moved by** Councilmember Jim McCarthy, **seconded by** Mayor Paul Deasy to award the First Amendment to the Design-Build Services Agreement to Ames Construction of Phoenix, Arizona in an amount not to exceed \$893,268.46; and authorize the City Manager to execute the necessary documents.

**Vote:** 7 - 0 - Unanimously

**D. Consideration and Approval of Preliminary Plat:** Case No. PZ-17-00175-04 Miramonte Birch & Verde, LLC requests Preliminary Plat approval for Miramonte at Birch Avenue. The subdivision consists of 24 residential condominium units, located at 304-316 E Birch Avenue. The condominium plat is on 0.53 acres in the T4N.1 (Transect) Zone.

Senior Planner Tiffany Antol provided a PowerPoint presentation that covered the following:

MIRAMONTE AT BIRCH CONDOMINIUMS  
REQUEST OVERVIEW  
VICINITY MAP  
MIRAMONTE @ BIRCH PRELIMINARY PLAT  
REQUIRED FINDING #1: ZONING CODE (TITLE 10)  
MIRAMONTE @ BIRCH SITE PLAN  
MIRAMONTE @ BIRCH ELEVATIONS  
REQUIRED FINDING #2: ENGINEERING STANDARDS (TITLE 11)  
REQUIRED FINDING #3: SUBDIVISION STANDARDS (TITLE 11)  
FINDINGS AND RECOMMENDATION

Councilmember Shimoni asked if covered bike parking is provided. Applicant Jack Kemmerly explained that there are eight bike spaces that are covered within the parking structure.

Councilmember Shimoni asked if electric vehicle parking is being provided. Mr. Kemmerly stated yes, they are looking to expand on the ten spaces in the parking garage.

Councilmember Salas asked why there were no affordable units included. Mr. Kemmerly stated that unfortunately, the cost of construction and price of land and infrastructure improvements did not lend itself to affordable units with this project.

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Adam Shimoni to approve the Preliminary Plat.

**Vote:** 7 - 0 - Unanimously

**14. REGULAR AGENDA**

- A. Consideration and Adoption of Resolution No. 2021-42:** A resolution approving two Binding Waivers of Enforcement relating to Assessor Parcel Numbers 101-35-002, 101-35-003, 101-35-004, and 105-10-481A located at the corner of Dale Avenue and Leroux Street and located at 3100 South Solitaires Canyon Drive.

Deputy City Attorney Kevin Fincel provided a PowerPoint presentation that covered the following:

PROP 207 CLAIMS  
BACKGROUND  
ORDINANCE 2020-28  
PROP 207 CLAIMS  
OVERVIEW OF PROP 207  
BINDING WAIVER OF ENFORCEMENT

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Becky Daggett to read Resolution No. 2021-42 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING TWO BINDING WAIVERS OF ENFORCEMENT, RELATING TO ASSESSOR PARCEL NUMBERS 101-35-002, 101-35-003, 101-35-004, AND 105-10-481A LOCATED AT THE CORNER OF DALE AVENUE AND LEROUX STREET AND LOCATED AT 3100 SOUTH SOLITAIRES CANYON DRIVE, BOTH WITHIN THE CORPORATE LIMITS OF THE CITY OF FLAGSTAFF*

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Becky Daggett to adopt Resolution No. 2021-42.

**Vote:** 7 - 0 - Unanimously

- B. City Council Review of Conditional Use Permit:** A Conditional Use Permit request from Miramonte Presidio LLC to establish a Planned Residential Development (PRD) on Tract M within the Presidio in the Pines master planned development was denied by the Planning Commission on August 25, 2021 by a 3-2 vote.

Robert Davis addressed Council requesting that they accept the denial from the Planning and Zoning Commission and request Miramonte to come back and address the resident concerns.

Land Acquisition Development Manager for Miramonte Homes Charity Lee addressed Council requesting that they review the decision of the Planning and Zoning Commission. Staff recommended approval with conditions and granting the use permit will not be detrimental to the health safety and welfare of the community. The project is a 39 unit for sale project that include four attainable units.

Councilmember Shimoni asked what the projected units were for Tracts A and B. Ms. Lee explained that Tract A was a 232 unit, five-story complex that has been downsized to 42 units. Tract B was 23 units downsized to 14.

Councilmember Shimoni asked if there could be any increase in affordable units within the project. Ms. Lee explained that the Development Agreement has been approved by Council

and they intend to proceed within the requirements of the Development Agreement.

Tyler Denham addressed Council stating that the Planning and Zoning Commission vote was close with a 3-2 vote and of the three who opposed only one gave a reason. He is supportive of Council considering the conditional use permit at a meeting because it will bring light to the project.

Summer Johnson addressed Council in support of the Planning and Zoning Commission decision. She is concerned about traffic and noise should the project move forward.

Brandon (no last name given) addressed Council in support of the Planning and Zoning Commission decision. He is concerned about traffic, the height of the building, and converting to condos.

Councilmember McCarthy stated that he attended the Planning and Zoning Commission meeting and both sides of the issue had a lot to say. If Council does not move forward with review of the decision, the project is dead. He does not believe that ending a project on such a close vote is appropriate and he would like to have the discussion and allow both sides the opportunity to present to Council.

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Austin Aslan to have Council review the decision of the Planning and Zoning Commission to deny the Conditional Use Permit.

**Vote:** 7 - 0 - Unanimously

## 15. **DISCUSSION ITEMS**

### A. **Discussion and Direction:** American Rescue Plan Act Local Recovery Funding

Management Services Director Rick Tadder, Public Affairs Director Sarah Langley, and Grants and Contracts Manager Stacey Brechler-Knaggs provided a PowerPoint presentation that covered the following:

AMERICAN RESCUE PLAN ACT LOCAL RECOVERY FUNDS  
AGENDA  
AMERICAN RESCUE PLAN ACT LOCAL RECOVERY FUNDS OVERVIEW  
INTENT OF THE STATE AND LOCAL RECOVERY FUND  
POTENTIAL ADDITIONAL LEGISLATION  
COMPLIANCE AND REPORTING GUIDANCE  
COMPLIANCE  
REPORTING REQUIREMENTS  
REVIEW OF ELIGIBLE CATEGORIES  
US TREASURY IDENTIFIES 7 CATEGORIES, 66 SUBCATEGORIES  
REVIEW OF ELIGIBLE CATEGORIES  
BUDGET TEAM DRAFT PROPOSAL  
DRAFT PROPOSAL  
NEXT STEPS

Devonna McLaughlin from Housing Solutions of Northern Arizona addressed Council in support of funding for housing efforts.

Monica Foos with Flagstaff Family Food Center addressed Council in support of funding for a vehicle to assist in food distribution in the community.

Terry Madeksza with the Downtown Business Alliance addressed Council in support of funding for small businesses.

The Council discussed how to allocate the funds and agreed to the following:

<b>Funding Draft Proposal</b>	<b>Amount</b>
Vaccination incentive program	\$ 500,000
Support congregate settings agencies such as shelters and schools	\$ 200,000
Support of mental health and substance use services	\$ 75,000
Pilot programs to assists with alternate care services	\$ 2,400,000
Support of small businesses. Possible business grants	\$ 500,000
Support of tourism related businesses	\$ 350,000
Support of non-profits and other agencies impacted by the pandemic. Including arts grants, event, permit and parking waivers; food agencies	\$ 725,000
Contracted Human Resources services to assist with recruitment	\$ 50,000
Education assistance for early learning opportunities	\$ 250,000
Education assistance for academic opportunities, such as STEM related programs	\$ 350,000
Housing assistance programs	\$ 450,000
Possible premium pay for workers performing direct work in public health and safety areas	\$ 1,000,000
Improvement to water and wastewater cyber security measures including fiber projects to facilities	\$ 1,500,000
Revenue loss replacement	\$ 4,500,000
Hiring of staff and/or consultants to help manage the ARPA Local Funding including compliance and reporting	\$ 400,000
ADD: Temporary labor funding	\$ -
ADD: Job Training	\$ -
ADD: Study for water quality from treatment plants	\$ -
Total	\$ 13,250,000
ARPA Local Allocation	\$ 13,252,816
Remaining Balance	\$ 2,816

A break was held from 7:50 p.m. through 8:04 p.m.



**B. Consideration and Direction:** Expenditure of less than \$50,000 for wastewater testing for COVID-19 at public schools

Dr. Christal Hepp provided a PowerPoint presentation that covered the following:

SAMPLING PROCEDURES  
CITY OF FLAGSTAFF WWTPS  
CITY OF FLAGSTAFF QPCR RESULTS  
NAU WASTEWATER TESTING PROJECT  
PREVIOUS FUSD WASTEWATER PROJECT  
PROPOSED FALL 2021 AND SPRING 2022 COLLABORATION WITH CITY OF  
FLAGSTAFF AND FLAGSTAFF UNIFIED SCHOOL DISTRICT  
CAVEATS / PROS

Flagstaff Unified School District Superintendent Mike Penca addressed Council and thanked Dr. Hepp for the presentation. He indicated that FUSD found value with the project the prior year; however, with the high community transmission levels it is expected that all sites would show positive readings. With many students ineligible to receive vaccines, the testing has been one of many strategies used during the pandemic. Continued testing has not been discussed with the School Board.

Councilmember McCarthy indicated that he would like to get an opinion from an epidemiologist and perhaps Dr. Engelthaler could present to Council in the future about the impact of wastewater testing. Vice Mayor Daggett stated that she spoke with Dr. Engelthaler about the testing and he indicated that when there are higher instances of positive cases in the community, additional testing is not needed because it is expected that there will be positive samples at all schools.

Dr. Hepp explained that the value is not necessarily in seeing a presence or absence of COVID-19 but rather in the quantification of different mitigation strategies. They are able to evaluate effectiveness based on how COVID-19 increased or decreased.

Mayor Deasy noted that the testing also picks up other pathogens that are traveling throughout the community. It is possible that the flu would show up in the testing before it physically manifests which could allow for earlier interventions.

Councilmember Aslan stated that he is not supportive of expending funds for testing at this time. He feels that contact tracing and other mitigation strategies are more appropriate and he is more interested in utilizing funds for alternate care or housing services.

Councilmember Sweet indicated that she sees value in the testing but agrees that it may not be the right time. She suggested that Council revisit the matter at a later time when cases lower and it might be more beneficial for testing to occur.

Councilmember Salas also suggested postponing the item. She indicated that she would like to get information from Coconino County Health and Human Services along with Dr. Engelthaler. She would like to give the FUSD School Board time to discuss and determine if it would be beneficial for them.

Mayor Deasy stated that these types of projects provide opportunities for lab technicians and entry level workers; it is about more than just Covid-19, it is also a workforce development opportunity.

A majority of Council was not in support of allocating funding to wastewater testing.

**16. FUTURE AGENDA ITEM REQUESTS**

*After discussion and upon agreement by three members of the Council, an item will be moved to a regularly-scheduled Council meeting.*

- A. Future Agenda Item Request (F.A.I.R.)** A Citizens' Petition seeking to "limit the on-street parking of all Recreational Vehicles (campers, boats, camping vehicles, trailers, etc.), and any other trailer, to 30 calendar days, with a possible appeal to the City for an additional 30-day extension, for a maximum limit of 60 days per calendar year."

Council was supportive of moving the item to a future agenda for discussion.

- B. Future Agenda Item Request (F.A.I.R.):** A request by the Commission on Diversity Awareness through Councilmember McCarthy to place on a future agenda a discussion about equitable restroom availability.

Councilmember McCarthy stated that the request came from the Commission on Diversity Awareness. The would apply to City properties that have a single, general use restroom that it be signed using equitable signage.

Council was supportive of moving the matter forward to a future agenda for discussion. They requested that the Commission on Diversity Awareness be invited to present to the Council at that meeting.

**17. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, FUTURE AGENDA ITEM REQUESTS**

Councilmember McCarthy read a statement that encouraged treating everyone with respect and to focus attention on community issues.

Councilmember Sweet also read a statement. She expressed frustration about the Mayor calling a Special Council Meeting after Council had already voted to cancel the regularly scheduled meeting due to the League Conference. Unless the issue at hand is a true emergency, the public deserves ample notice for agendas.

Councilmember Salas reported that she attended a number of meetings at the League Conference on behalf of the Mayor. She also met with a company who is exploring Flagstaff as a location for a training center.

Councilmember Shimoni stated that the Council is charged with working together and serving the community. He expressed disappointment with the events of the prior week. He spoke about treating each other with respect and taking efforts to repair relationships.

Vice Mayor Daggett stated that the Council should be spending time working on behalf of the community rather than addressing the behavior of Council. She would like to see everyone conduct themselves in accordance with their position of representing the community.

Mayor Deasy explained his sense of urgency with the situation and that the urgency was not well communicated. He did not feel that he was asking for too much time in calling a meeting. He was acting with a sense of urgency for the Council to assist the community.

He recognized his tone and acknowledged the need to repair and build relationships.

**18. ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held September 7, 2021, adjourned at 9:01 p.m.

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MAYOR

ATTEST:

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CITY CLERK

**CERTIFICATION**

I, STACY SALTZBURG, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Flagstaff held on September 7, 2021. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 20th day of September, 2022.

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CITY CLERK

SPECIAL MEETING (EXECUTIVE SESSION)  
MONDAY, JUNE 27, 2022  
STAFF CONFERENCE ROOM - SECOND FLOOR  
FLAGSTAFF CITY HALL  
211 WEST ASPEN AVENUE  
4:00 P.M.

**1. Call to Order**

Mayor Deasy called the Special Meeting (Executive Session) to order at 4:05 p.m.

**2. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

MAYOR DEASY (virtually)  
VICE MAYOR SWEET (virtually)  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER HOUSE (virtually)  
COUNCILMEMBER MCCARTHY (arrived at 4:32 p.m.)  
COUNCILMEMBER SALAS (virtually)

ABSENT:

COUNCILMEMBER SHIMONI

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

**3. Recess into Executive Session**

**Moved by** Mayor Paul Deasy, **seconded by** Vice Mayor Miranda Sweet to recess into Executive Session.

**Vote:** 5 - 0 - Unanimously

**4. Executive Session:**

- A.** Discussion or consultation for legal advice with the attorney or attorneys of the public body; discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation; and discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property., pursuant to A.R.S. §38-431.03(A)(3)(4) and (7), respectively.
- i. Water Litigation Update

- B.** Discussion or consultation for legal advice with the attorney or attorneys of the public body; and discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, pursuant to A.R.S. §38-431.03(A)(3) and (7), respectively.

- i. Arizona State Land Department Easement Acquisition

**5. Adjournment**

The Special Meeting (Executive Session) of the Flagstaff City Council held June 27, 2022, reconvened into Open Session at 7:05 p.m. at which time the meeting adjourned.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

SPECIAL MEETING (EXECUTIVE SESSION)  
WEDNESDAY, JUNE 29, 2022  
STAFF CONFERENCE ROOM - SECOND FLOOR  
FLAGSTAFF CITY HALL  
211 WEST ASPEN AVENUE  
4:00 P.M.

**1. Call to Order**

Mayor Deasy called the Special Meeting (Executive Session) to order at 4:05 p.m.

**2. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR DEASY (virtually)  
VICE MAYOR SWEET (virtually)  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER HOUSE (virtually)  
COUNCILMEMBER MCCARTHY (virtually)  
COUNCILMEMBER SALAS (virtually)  
COUNCILMEMBER SHIMONI (virtually)

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

**3. Recess into Executive Session**

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Jim McCarthy to recess into Executive Session.

**Vote:** 7 - 0 - Unanimously

**4. Executive Session:**

- A.** Discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to A.R.S. §38-431.03(A)(3).
- i.** Legal advice regarding the potential prohibition of the use of fireworks in the City of Flagstaff between June 29, 2022 and July 6, 2022.

**5. Adjournment**

The Special Meeting (Executive Session) of the Flagstaff City Council held June 29, 2022, reconvened into Open Session at 4:47 p.m. at which time the meeting adjourned.

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MAYOR

ATTEST:

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CITY CLERK

SPECIAL MEETING (EXECUTIVE SESSION)  
TUESDAY, JULY 5, 2022  
STAFF CONFERENCE ROOM - SECOND FLOOR  
FLAGSTAFF CITY HALL  
211 WEST ASPEN AVENUE  
1:00 P.M.

**1. Call to Order**

Mayor Deasy called the Special Meeting (Executive Session) to order at 1:03 p.m.

**2. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR DEASY  
VICE MAYOR SWEET  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER HOUSE  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER SALAS  
COUNCILMEMBER SHIMONI (virtually)

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

**3. Recess into Executive Session**

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Jim McCarthy to recess into Executive Session.

**Vote:** 7 - 0 - Unanimously

**4. Executive Session:**

- A.** Discussion or consultation for legal advice with the attorney or attorneys of the public body; discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation; and discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property., pursuant to A.R.S. §38-431.03(A)(3)(4) and (7), respectively.
  - i. City Property Lease – Theatrikos
  - ii. Legal advice related to property negotiations and acquisition of property for the Lone Tree Overpass Project and business relocation efforts



- iii. Legal advice and property negotiations related to acquisition of an easement for waterline maintenance access road for the Switzer Canyon Water Main Transmission Line Project, and possible easement for FUTS along project route

**5. Adjournment**

The Special Meeting (Executive Session) of the Flagstaff City Council held July 5, 2022, reconvened into Open Session at 2:25 p.m. at which time the meeting adjourned.

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MAYOR

ATTEST:

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CITY CLERK

SPECIAL MEETING (EXECUTIVE SESSION)  
TUESDAY, JULY 12, 2022  
STAFF CONFERENCE ROOM - SECOND FLOOR  
FLAGSTAFF CITY HALL  
211 WEST ASPEN AVENUE  
1:00 P.M.

**1. Call to Order**

Vice Mayor Sweet called the Special Meeting (Executive Session) to order at 1:05 p.m.

**2. PRESENT:**

**ABSENT:**

MAYOR DEASY (virtually - joined at 1:08 p.m.)  
VICE MAYOR SWEET (virtually)  
COUNCILMEMBER ASLAN (virtually - joined at 1:10 p.m.)  
COUNCILMEMBER HOUSE (virtually)  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER SALAS  
COUNCILMEMBER SHIMONI (virtually)

Others present: Deputy City Manager Shannon Anderson; City Attorney Sterling Solomon.

**3. Recess into Executive Session**

**Moved by** Vice Mayor Miranda Sweet, **seconded by** Councilmember Jim McCarthy to recess into Executive Session.

**Vote:** 5 - 0 - Unanimously

**4. Executive Session:**

- A.** Discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to A.R.S. §38-431.03(A)(3).
- i.** Legal advice regarding undercover operation conducted by Flagstaff Police Department on local massage parlors who were suspected of running houses of prostitution and allegations made in news report about operation.

**5. Adjournment**

The Special Meeting (Executive Session) of the Flagstaff City Council held July 12, 2022, adjourned at 3:09 p.m.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

SPECIAL MEETING (EXECUTIVE SESSION)  
MONDAY, AUGUST 29, 2022  
STAFF CONFERENCE ROOM - SECOND FLOOR  
FLAGSTAFF CITY HALL  
211 WEST ASPEN AVENUE  
1:00 P.M.

**1. Call to Order**

Mayor Deasy called the Special Meeting (Executive Session) to order at 1:04 p.m.

**2. ROLL CALL**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

PRESENT:

ABSENT:

MAYOR DEASY  
VICE MAYOR SWEET  
COUNCILMEMBER ASLAN (virtually)  
COUNCILMEMBER HOUSE  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER SALAS  
COUNCILMEMBER SHIMONI (virtually)

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

**3. Recess into Executive Session**

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Jim McCarthy to recess into Executive Session.

**Vote:** 7 - 0 - Unanimously

**4. Executive Session:**

- A.** Discussion or consultation for legal advice with the attorney or attorneys of the public body and discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to A.R.S. §38-431.03(A)(3) and (4), respectively.
- i. Legal advice and settlement discussions on binding waivers of enforcement

**B.** Discussion or consultation for legal advice with the attorney or attorneys of the public body pursuant to A.R.S. §38-431.03(A)(3).

i. Legal advice regarding Holiday Display Policy

Item postponed to a later date.

**5. Adjournment**

The Special Meeting (Executive Session) of the Flagstaff City Council held August 29, 2022, reconvened into Open Session at 1:27 p.m. at which time the meeting adjourned.

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MAYOR

ATTEST:

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CITY CLERK

**6. A.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 09/14/2022  
**Meeting Date:** 09/20/2022



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**TITLE**

**September Work Anniversaries**

**STAFF RECOMMENDED ACTION:**

Recognize employees who are celebrating their work anniversaries in September

**EXECUTIVE SUMMARY:**

**INFORMATION:**

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**Attachments:** Presentation



# Five Year Anniversaries



Shelly O'Connell  
Administrative Specialist



Devlin Rackley  
PECS Supervisor



**TEAM FLAGSTAFF**  
WE MAKE THE CITY BETTER



# Five Year Anniversaries



Michaelson Johnson  
Streets Operations Tech II

Morgan Mullaney  
Grants & Contracts Specialist



**TEAM FLAGSTAFF**  
WE MAKE THE CITY BETTER





# Five Year Anniversaries



Candace Schipper  
Creative Services Specialist

Laney Stevens  
Water Services Operator IV



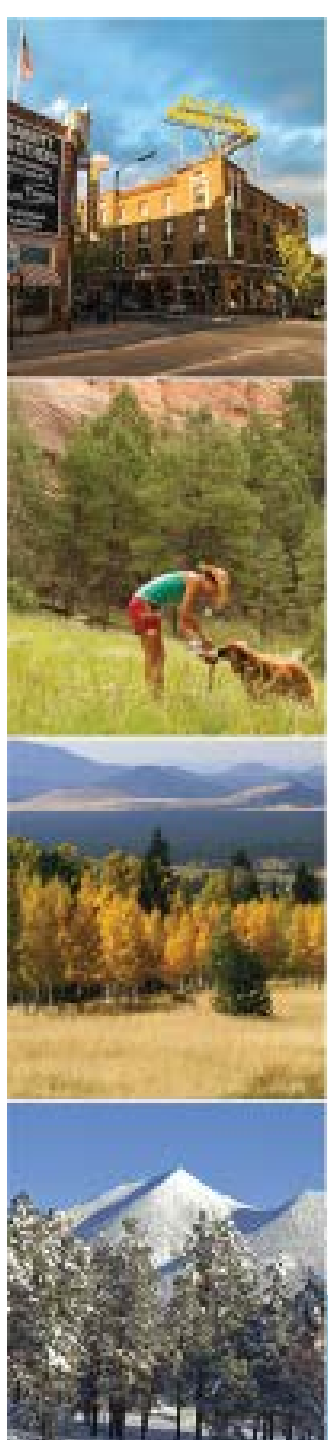
**TEAM FLAGSTAFF**  
WE MAKE THE CITY BETTER



# Fifteen Year Anniversaries



Ladd Steele  
Waster Services Operator IV



**TEAM FLAGSTAFF**  
WE MAKE THE CITY BETTER



# Twenty Year Anniversaries



John Hickey  
Water Services Supervisor



**TEAM FLAGSTAFF**

WE MAKE THE CITY BETTER



# 25 years plus!!!

Lawrence is an amazing coworker in both Recreation and Parks during his 27-years with us working in many areas such as Athletics, at Recreation Centers, as an official for adult sports, and in Parks helping us keep our grounds clean and our locations ready for any event.

Lawrence is an Arizona native, including primarily in northern Arizona, with a large family of siblings with interests in all sports as a former athlete.

Over the years, Lawrence has experienced many changes including in our community, and is always ready for the next challenge. Lawrence is meticulous, dedicated, observant but most of all a joy to call a coworker.

Without Lawrence, our parties at our ramadas would no longer resemble the image below. Thank you, Lawrence, for all that you do for Team Flagstaff!



**TEAM FLAGSTAFF**  
WE MAKE THE CITY BETTER





## 8. A.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Jessica Cortes, Court Administrator  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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#### **TITLE:**

**Consideration of Appointment:** On-Call Magistrate for the Flagstaff Municipal Court.

#### **STAFF RECOMMENDED ACTION:**

Approve the Judicial Appointment Advisory Panel's recommendation to appoint one On-Call Magistrate to the Flagstaff Municipal Court.

#### **Executive Summary:**

Appointment of all magistrates is required to be completed by the Flagstaff City Council for a two-year term under both the City Charter and FCC Section 1-15-001-0002(A). Appointment of On-Call Magistrates for the Municipal Court allows for ongoing operations of the court without interruption. On-Call Magistrates hear criminal, civil, traffic and local code violations that are filed in the Flagstaff Municipal Court. They conduct trials, both jury and non-jury, and sentence individuals within the parameters set by law. On-Call Magistrates are required for the ongoing operational needs of the Municipal Court. On-Call Magistrates are critical to the criminal and civil processes of the judicial branch.

#### **Financial Impact:**

Funding for all judicial positions is included in the approved budget of the Flagstaff Municipal Court. No additional budgetary impact is anticipated.

#### **Policy Impact:**

On-Call Magistrates are critical to the criminal and civil processes of the judicial branch. These appointments help maintain an independent judiciary that is necessary for the ongoing operations of our local government. A strong, independent, and fair judicial branch provides balance to criminal and civil matters that require resolution within our municipality.

#### **Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:**

Personnel - Attract and retain quality staff.

#### **Has There Been Previous Council Decision on This:**

No, the On-Call Magistrate Candidate would be newly appointed.

#### **Options and Alternatives:**

Approve the appointments.

Don't approve the appointments and request alternative candidates for Council consideration.

**Community Involvement:**

Inform.

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**Attachments:**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Mark Wilson, Deputy Fire Chief  
**Co-Submitter:** Emily Markel  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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**TITLE:**

**Consideration and Approval of Contract:** To approve the Cooperative Purchase Contract for twelve (12) new X Series Advanced Cardiac Monitors and Defibrillators from ZOLL Medical Corporation in the amount of \$496,332.52, plus additional taxes and fees.

**STAFF RECOMMENDED ACTION:**

1. Approve the Cooperative Purchase Contract with ZOLL Medical Corporation for new advanced cardiac monitors in the amount of \$496,332.52, plus additional taxes and fees; and
2. Authorize the City Manager to execute all necessary documents.

**Executive Summary:**

Approval of the Cooperative Purchase Contract would allow the Flagstaff Fire Department (FFD) to purchase twelve (12) new X Series Advanced Cardiac Monitors and Defibrillators to replace the nine-year old models that FFD has been using. The purchase will ensure that FFD is using the latest in technology for patient care. Every emergency medical call through the 911 Dispatch center for the FFD has at least one (1) Paramedic assigned for advanced life support measures. These new advanced cardiac monitors allow FFD to provide the highest level of patient care when dealing with cardiac and other medical conditions while out in the field. These cardiac monitors are also interchangeable with the tools used by Guardian Medical Transport for seamless patient care, transport, or hand-offs. The X Series Advanced Cardiac Monitors and Defibrillators have been the only type of monitor used by FFD, Guardian and Summit Fire & Medical District. This purchase will continue consistency while joint agencies work together in the field. In addition, ZOLL will give the City a trade-in value for older cardiac monitors as part of the Cooperative Purchase Contract.

**Financial Impact:**

This equipment was budgeted for \$505,000 in the Flagstaff Fire Department in the General Fund in account 001-03-051-0203-2-4245 and approved through the FY2022-23 budget process. The City is using a Government Purchasing Cooperative Contract through the City of Tucson to ensure the most competitive pricing.

**Policy Impact:**

No policy impact.

**Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:**

## **Priority Based Budget Key Community Priorities and Objectives**

Safe and Healthy Community.

### **Regional Plan**

Goal PF.3. Provide high-quality emergency response and public safety services including law enforcement, fire, medical, and ambulance transport service.

Policy PF.3.1. Maintain high-quality effectiveness and efficiency in law enforcement, fire, and emergency services to the extent that is consistent with governmental operations, plans, public policies, population served, and monies available.

### **Has There Been Previous Council Decision on This:**

There have been prior purchases of cardiac monitors.

### **Options and Alternatives:**

Choose to keep the older cardiac monitor models in service for patient care.

### **Background/History:**

Cardiac monitors are recommended to be replaced between 5-7 years due to ongoing use, updated technology, and general ability to service. Currently, the cardiac monitors being utilized by FFD are nine (9) years old and are ready to be phased out with newer more advanced units.

City Procurement is utilizing the City of Tucson cooperative contract to gain the best pricing for the products needed for FFD.

### **Key Considerations:**

These cardiac monitors provide information to FFD paramedics and crews regarding, cardiac rhythms, blood oxygen saturation, CO levels, blood pressures, respiratory information and many advanced features for CPR, or numerous other cardiac algorithms'. By replacing the older cardiac monitors, FFD is ensuring that paramedics and patients in the community are receiving the highest level of care while in the field. With new technology like Bluetooth, these cardiac monitors will interface directly with current field software reporting and allow for a better reporting process with partnering agencies. FFD is also able to use current stock of electrodes and various attachments, along with replacement stock from Guardian with the same brand being used within the region.

### **Expanded Financial Considerations:**

The City will be purchasing the cardiac monitors directly rather than utilizing a seven (7) year lease as it had for past units. This allows for FFD to not spend additional funds on interest from a lease purchase. Funding was approved by the Budget Team and was part of the approved City Managers FY22-23 budget adopted by the City Council.

### **Community Benefits and Considerations:**

This provides the highest level of care for our community when FFD responds to emergency medical incidents. This purchase also allows for information to be relayed ahead of the patient to the Flagstaff Medical Center for early preparations to be made by staff at the Emergency Department.

### **Community Involvement:**

None.

### **Expanded Options and Alternatives:**



None.

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**Attachments:**    Cooperative Purchase Contract  
                         Exhibit A - Quote and Terms  
                         Exhibit B - Agency Contract  
                         Exhibit B - Contract Price  
                         Exhibit B - Extension

## COOPERATIVE PURCHASE CONTRACT

Contract No. 2023-24

This Cooperative Purchase Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and ZOLL Medical Corporation, a Massachusetts Corporation ("Contractor").

### RECITALS:

- A. Contractor has a Government Purchasing Cooperative Contract #171769 with the City of Tucson, Arizona to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and
- B. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

### AGREEMENT:

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties agree as follows:

- 1. Materials and or Services Purchased: Contractor shall provide to City the materials and or services, as specified in the Purchase Order(s) and/or Scope of Work submitted by the City in accordance with the Agency Contract. General description of materials and or services being purchased:

#### **X Series Advanced Monitor and Defibrillator**

- 2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Purchase Order(s) submitted to Contractor or Exhibit A attached hereto and incorporated by reference.
- 3. Payment: Payment to the Contractor for the materials and or services provided for **Four hundred and ninety-six thousand, three hundred and thirty-two dollars and fifty-two cents (\$496,332.52) plus other fees and taxes**; made in accordance with the price list and terms set forth in the Agency Contract.
- 4. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents, including terms and conditions contained in Exhibit A and any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. The Agency Contract documents are set forth in Exhibit B attached hereto and incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract, including, specifically changes in price for the materials.
- 5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the parties and shall continue until expiration or termination of the underlying Agency Contract, unless sooner terminated by City in writing.
7. Renewal: This Cooperative Purchase Contract shall be automatically renewed if the underlying Agency Contract is renewed, for the same renewal period, unless City provides advance written notice to Contractor of its intention to non-renew.

ZOLL Medical Corporation:

By: \_\_\_\_\_

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

CITY OF FLAGSTAFF

By: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney's Office

## **EXHIBIT A**

**Quote from Zoll Medical Corporation No.: Q-33878 (attached)**

**EXHIBIT B**  
**AGENCY CONTRACT**

1. **Contract #171769-01 City of Tucson Department of Procurement** (attached)
2. **Agency Best and Final Price Page** (attached)
3. **Agency Contract Extension** (attached)

**ZOLL Medical Corporation**

269 Mill Road  
Chelmsford, MA 01824-4105  
Federal ID# 04-2711626

Phone: (800) 348-9011  
Fax: (978) 421-0015  
Email: esales@zoll.com

Quote No: Q-33878 Version: 1

Flagstaff Fire Department  
211 West Aspen Avenue  
Flagstaff, AZ 86001

ZOLL Customer No: 166468

Kevin Wiles  
(928) 779-7619  
kwiles@flagstaffaz.gov

Quote No: Q-33878  
Version: 1

Issued Date: June 6, 2022  
Expiration Date: June 30, 2022

Terms: NET 30 DAYS

FOB: Destination  
Freight: Free Freight

Prepared by: Barry Herbert  
EMS Territory Manager  
bherbert@zoll.com  
+1 4807931388

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
1	662091	601-2231111-01	<b>X Series Advanced Monitor/Defibrillator - 12-Lead ECG, Pacing, SpO2, SpCO, EtCO2, BVM, NIBP, CPR Expansion Pack</b>  Includes: TBI Dashboard, 4 trace tri-mode display monitor/ defibrillator/ printer, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5in ( 16.5cm) diagonal screen. Accessories Included: MFC cable and CPR connector, A/C power cord, One (1) roll printer paper, 6.6 Ah Li-ion battery, Operators Manual, Quick Reference Guide, and One (1)-year EMS warranty.  Parameter Details: Real CPR Help - Dashboard display of CPR Depth and Rate for Adult and Pediatric patients, Visual and audio prompts to coach CPR depth (Adult patient only), Release bar to ensure adequate release off the chest, Metronome to coach rate for Adult and Pediatric patients. See-Thru ® CPR artifact filtering • Interpretative 12-Lead ECG (Full 12 ECG lead view with both dynamic and static 12-lead mode display. 12-Lead OneStep ECG cable - includes 4-Lead limb lead cable and removable precordial 6-Lead set) • ZOLL Noninvasive Pacing Technology • Real BVM Help: Dashboard provides real-time ventilation feedback on both volume and rate for intubated and non-intubated patients. AccuVent Cable included. (Accuvent disposable sensors sold separately) • Welch Allyn NIBP with Smartcuff. 10 foot Dual Lumen hose and SureBP Reusable Adult Medium Cuff • Masimo SpO2 & SpCO with Signal Extraction Technology (SET), Rainbow SET® • EtCO2 Oridion Microstream Technology. Microstream tubing set sold separately •	12	\$48,971.00	\$33,389.44	\$400,673.28

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Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
2	662091	8300-000676	<b>OneStep Cable, X Series</b>	12	\$506.00	\$297.50	\$3,570.00
3	662091	8009-0020	<b>CPR-D-padz and CPR Stat Padz Connector for R Series</b>	12	\$438.00	\$262.50	\$3,150.00
4	662091	8000-001128	<b>Accuvent Flow Tube (Box of 10)</b>	12	\$708.00	\$450.63	\$5,407.56
5	662091	8000-0895	<b>Cuff Kit with Welch Allyn Small Adult, Large Adult and Thigh Cuffs</b>	12	\$173.00	\$110.25	\$1,323.00
6	662091	REUSE-10-2MQ	<b>Welch Allyn REUSE-10-2MQ Cuff, Small Adult, 2-Tube, Twist Lock connector</b>	12	\$58.00	\$36.75	\$441.00
7	662091	REUSE-09-2MQ	<b>Welch Allyn REUSE-09-2MQ Cuff, Child, 2-Tube, Twist Lock connector</b>	12	\$58.00	\$36.75	\$441.00
8	662091	REUSE-08-2MQ	<b>Welch Allyn REUSE-08-2MQ Cuff, Small Child, 2-Tube, Twist Lock connector</b>	12	\$58.00	\$36.75	\$441.00
9	662091	8000-001392	<b>Masimo rainbow® RC-4 - 4FT, Reusable EMS Patient Cable</b>	12	\$278.00	\$176.64	\$2,119.68
10	662091	8000-000371	<b>rainbow® DCI® SpO2/SpCO/SpMet Adult Reusable Sensor with connector (3 ft)</b>	12	\$957.00	\$591.50	\$7,098.00
11	662091	8000-0580-01	<b>Six hour rechargeable Smart battery</b>	24	\$572.00	\$346.50	\$8,316.00
12		8000-000393-01	<b>X Series Carry Case, Premium</b>	12	\$385.00	\$385.00	\$4,620.00

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Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
13		8778-89005-WF	<b>X Series - Worry-Free Service Plan - 5 Years At Time of Sale</b>  Includes: Annual preventive maintenance, 27% discount on new cables, 27% discount on additional lithium SurePower Batteries, 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. • ACCIDENTAL DAMAGE COVERAGE: Includes one case replacement per year per device. This coverage excludes devices that are deemed beyond repair and/or catastrophic damage. • BATTERY REPLACEMENT PROGRAM: 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.	12	\$8,390.00	\$7,551.00	\$90,612.00
14		8400-110045	<b>CaseReview Premium Subscription, R Series and X Series, 5 Year- Hosted</b>  Provides detailed post-case information, including CPR quality on compression depth, rate, pause time and release velocity, as well as ECG, shocks, EtCO2 and SpO2 vital signs.	12	\$2,260.00	\$2,260.00	\$27,120.00
15		6008-9901-61	<b>ZOLL X Series Trade In Allowance (EMS Group)</b>  See Trade Unit Considerations.	9		(\$6,000.00)	(\$54,000.00)
16		7800-0414-61	<b>LP 15 12-Lead Version 4 Trade In Allowance</b>  See Trade Unit Considerations.	1		(\$5,000.00)	(\$5,000.00)

Subtotal: \$496,332.52

**Total: \$496,332.52**

Contract Reference	Description
662091	Reflects City Of Tucson 2018 contract pricing. Notwithstanding anything to the contrary herein, the terms and conditions set forth in City Of Tucson 2018 shall apply to the customer's purchase of the products set forth on this quote.

**Trade Unit Considerations**

Trade-In values valid through June 30, 2022 if all equipment purchased is in good operational and cosmetic condition and includes all standard accessories. Trade-In values are dependent on the quantity and configuration of the ZOLL devices listed on this quotation. Customer assumes responsibility for shipping trade-in equipment at the quantities listed on the trade line items in this quotation to ZOLL's Chelmsford Headquarters within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.

**Additional Language**



**ZOLL Medical Corporation**

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Flagstaff Fire Department  
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Pricing within this quote is pending an executed LOC agreement or verification of membership eligibility to an existing pricing agreement.

To the extent that ZOLL and Customer, or Customer's Representative have negotiated and executed overriding terms and conditions ("Overriding T's & C's"), those terms and conditions would apply to this quotation. In all other cases, this quote is made subject to ZOLL's Standard Commercial Terms and Conditions ("ZOLL T's & C's") which for capital equipment, accessories and consumables can be found at <https://www.zoll.com/about-zoll/invoice-terms-and-conditions> and for software products can be found at <http://www.zoll.com/SSPTC> and for hosted software products can be found at <http://www.zoll.com/SSHTC>. Except in the case of overriding T's and C's, any Purchase Order ("PO") issued in response to this quotation will be deemed to incorporate ZOLL T's & C's, and any other terms and conditions presented shall have no force or effect except to the extent agreed in writing by ZOLL.

1. This Quote expires on June 30, 2022. Pricing is subject to change after this date.
2. Applicable tax, shipping & handling will be added at the time of invoicing.
3. All purchase orders are subject to credit approval before being accepted by ZOLL.
4. To place an order, please forward the purchase order with a copy of this quotation to [esales@zoll.com](mailto:esales@zoll.com) or via fax to 978-421-0015.
5. All discounts from list price are contingent upon payment within the agreed upon terms.
6. Place your future accessory orders online by visiting [www.zollwebstore.com](http://www.zollwebstore.com).

**Order Information (to be completed by the customer)**

☐ Tax Exempt Entity (Tax Exempt Certificate must be provided to ZOLL)

☐ Taxable Entity (Applicable tax will be applied at time of invoice)

BILL TO ADDRESS	SHIP TO ADDRESS
Name/Department:	Name/Department:
Address:	Address:
City / State / Zip Code:	City / State / Zip Code:

Is a Purchase Order (PO) required for the purchase and/or payment of the products listed on this quotation?

☐ Yes      PO Number: \_\_\_\_\_      PO Amount: \_\_\_\_\_  
(A copy of the Purchase Order must be included with this Quote when returned to ZOLL)

☐ No      (Please complete the below section when submitting this order)

For organizations that do not require a PO, ZOLL requires written execution of this order. The person signing below represents and warrants that she or he has the authority to bind the party for which he or she is signing to the terms and prices in this quotation.

**Flagstaff Fire Department**

Authorized Signature:

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

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

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



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### ALS/BLS Software Solutions Master Application Service Provider Agreement

**1. Orders.** ZOLL Medical Corporation (“ZOLL”) shall provide the ASP Services, Implementation Services and Support Services identified in any order or contract (“Order”) between ZOLL and another party (“Customer”) incorporating this Software Solutions Master Application Service Provider Agreement (together with each such Order, the “Agreement”). ASP Services are further defined in [Section 3](#). Implementation Services are further defined in [Section 4](#). Support Services are further defined in [Section 5](#). The ASP Services, Implementation Services, and Support Services are each, and are collectively, “Services”. The terms and conditions set forth in this Agreement shall only apply to ALS/BLS Software Solutions products that are used with ZOLL Medical Corporation defibrillators. For the sake of clarity, these terms and conditions do not apply to any ZOLL patient care reporting software.

**2. Payment.** Customer shall pay fees to ZOLL for Services as provided in any Order and this Agreement (“Fees”). Unless otherwise provided in the applicable Order, Customer will pay ZOLL all Fees due under this Agreement within thirty (30) days after the date of ZOLL’s invoice. The first invoice will be sent after the Deployment Effective Date. “Deployment Date” means the date upon which the deployment of the ASP Services is complete and it is able to function as described in the warranty set forth in this Agreement, regardless of whether Customer actually uses such ASP Services. “Deployment Effective Date” means the earlier of (a) the Deployment Date or (b) 90 days from the date after ZOLL’s shipment of defibrillators that are included on the Order (the “Latest Deployment Date”), unless a delay in the Deployment Date has been caused by ZOLL, in which case the Deployment Effective Date shall be postponed by a number of days equal to the delay that ZOLL has caused. Fees are non-refundable other than as expressly set forth herein. Amounts not paid when due will accrue interest at the rate of 1.5% per month, or the maximum allowed by law, whichever is less. Customer shall pay all expenses (including reasonable attorney’s fees) incurred by ZOLL in connection with collection of late payments. Any amounts not paid by Customer when due may result in the forfeiture by Customer, in ZOLL’s sole discretion, of any discounts previously offered by ZOLL. In addition, ZOLL may cease providing any or all of the Services if any invoice is not paid in a timely manner, in which event ZOLL will not be liable to Customer for any damages caused by such cessation. Payment terms are subject to ZOLL’s credit approval. Fees exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (“Taxes”).

**3. ASP Services.** “ASP Services” means the hosting and maintenance of ZOLL software, as modified, updated, and enhanced (the “Underlying Software”), for remote electronic access and use by Registered Users on the website with a unique URL to be provided by ZOLL to Customer (the “ZOLL Site”) in substantial conformity with the instructions for use, documentation and users manuals from time-to-time provided by ZOLL (the “Documentation”), as listed in any Order, on and after the Implementation Date (defined below) for such services and before that Order has expired or been terminated in accordance with the Agreement. Customer acknowledges that the ASP Services are only compatible with ZOLL equipment that has been enabled and configured for use with the ASP Services in accordance with the Documentation and only with the browser and other technical environment that supports the use of the ASP Services in accordance with the Documentation.

**3.1. Provision of ASP Services.** Subject to the terms and conditions of the Agreement, ZOLL will use commercially reasonable efforts to make the ASP Services available to Customer and Customer’s employees, directors, principals, partners, consultants and agents authorized to use ASP Services on behalf of Customer and registered through the ZOLL Site for such use (“Registered Users”) through the ZOLL Site over normal network connections in accordance with the Documentation, excepting downtime due to necessary maintenance and troubleshooting. Customer, not ZOLL, shall be responsible for controlling Registered Users and protection of confidentiality of its login identifications and passwords. Customer acknowledges that (i) it is responsible for maintaining its interface and connectivity to the ASP Services and (ii) any facilities used for provision of the ASP Services may be owned or operated by ZOLL, or a ZOLL affiliate or a third party, or any combination of such facilities, as determined by ZOLL. Customer acknowledges that ZOLL may modify and upgrade the ASP Services, on an ongoing basis, to improve or adapt the ASP Services. Without limiting the foregoing, ZOLL will have the right, in its sole discretion, to develop, provide and market new, upgraded or modified ASP Services to Customer, including adding, removing or modifying the functionality or features of the ASP Services accessible by Registered Users. ZOLL will use commercially reasonable efforts to notify Customer within a reasonable period of time prior to the implementation of such changes so that Customer is reasonably informed of alterations to the ASP Services that will affect the ASP Services and Customer’s use of them. Notwithstanding anything to the contrary in the Agreement, ZOLL may cease providing any ASP Services upon at least six months advance notice to Customer.

**3.2. Access Software.** Subject to the terms and conditions of this Agreement, ZOLL grants to Customer, during the Term, a non-exclusive, non-transferable, non-sublicensable license for Registered Users to access and use the ASP Services using the ZOLL software that Registered Users may download at the ZOLL Site to access the ASP Services, as modified, updated and enhanced (the “Access Software”), each as made available to Customer through the ZOLL Site, solely for Customer’s internal business purposes and solely in accordance with the Documentation. Access Software and Underlying Software are, collectively, the “Software”.

**3.3. Restrictions.** Customer shall not, and shall not permit any third party to: (a) use, reproduce, modify, adapt, alter, translate or create derivative works from the ASP Services, Software or Documentation; (b) merge the ASP Services, Software or Documentation with other software or services; (c) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer or allow access to the ASP Services, Software or the Documentation to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the Source Code for the ASP Services or Software; (e) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in the ASP Services, Software or Documentation; or (f) otherwise use or copy the ASP Services, Software or Documentation in any manner not expressly permitted by the Agreement. Customer agrees not to use the ASP Services in excess of its authorized login protocols. Customer shall immediately notify ZOLL of any unauthorized use of Customer’s login ID, password or account or other breach of security. If Customer becomes aware of any actual or threatened activity contemplated by the restrictions on use set forth in this section, Customer will, and will cause Registered Users to, immediately take all reasonable measures necessary to stop the activity or threatened activity and to mitigate the effect of such activity including: (i) discontinuing and limiting any improper access to any data; (ii) preventing any use and disclosure of improperly obtained data; (iii) destroying any copies of improperly obtained data that may have been made on their systems; (iv) otherwise attempting to mitigate any harm from such events; and (v) immediately notifying ZOLL of any such event so that ZOLL may also attempt to remedy the problem and prevent its future occurrence.

#### **3.4. Service Level Agreement.**

**3.4.1. Downtime.** “Downtime”, expressed in minutes, is any time the ASP Services are not accessible to Registered Users.

**3.4.2. Planned Downtime.** “Planned Downtime” is Downtime during which ASP Services may not be available in order for ZOLL to continue to provide commercially reasonable services, features and performance to its customers. Planned Downtime includes, but is not limited to: (a) Standard Maintenance; and (b) Emergency Maintenance. “Standard Maintenance” is performed when upgrades or system updates are desirable. “Emergency Maintenance” is performed when a critical system update must be applied quickly to avoid significant Downtime. Standard Maintenance may be performed weekly on Monday and Wednesday between the hours of 7 p.m. to 11 p.m. in Broomfield, Colorado. ZOLL will provide Customer with notice at least 24 hours in advance of Standard Maintenance.



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Flagstaff Fire Department  
Quote No: Q-33878 Version: 1

**3.4.3. Excused Downtime.** “Excused Downtime” time is Downtime caused by: (a) services, software or hardware provided by anyone or any entity other than ZOLL, (b) software, services or systems operating outside of a ZOLL Site, including any software or systems operating on a Customer’s premises (including ZOLL software); (c) a Force Majeure Event or (d) Customer’s failure to comply with its obligations under the Agreement or use of the ASP Services in ways that were not intended.

**3.4.4. Unplanned Downtime.** Unplanned Downtime in a calendar month is expressed as a percentage calculated as follows:

$$\frac{(\text{Downtime} - (\text{Planned Downtime} + \text{Excused Downtime}))}{\text{Total number of minutes in the calendar month}} \times 100 = x\%, \text{ where “x” is Unplanned Downtime.}$$

**3.4.5. Unplanned Downtime Goal.** ZOLL shall provide the ASP Services such that there is less than 1% of Unplanned Downtime in a calendar month (the “Unplanned Downtime Goal”). The ASP Services covered by the Unplanned Downtime Goal are those for which Customer has paid all Fees when due and is using in the course of carrying out its normal business operations in accordance with the Agreement.

**3.4.6. Revocation of Administrative Rights.** Notwithstanding anything to the contrary in the Agreement, ZOLL may revoke administrative rights, including database access rights, if the use of any such rights results in Downtime.

**3.4.7. Customer Content; Security; Backup.**

**3.4.7.1. Customer Content.** As between ZOLL and Customer, and without limiting the rights of any patient, Customer will retain all right, title and interest in and to all data, information or other content provided by Customer in its use of the ASP Services (“Customer Content”); *provided, however*, that ZOLL may de-identify and use Customer Content for any lawful purpose consistent with all applicable law.

**3.4.7.2. Security.** Subject to Customer’s obligations under this Agreement, ZOLL will implement commercially reasonable security measures within the ASP Services in an attempt to prevent unlawful access to Customer Content by third parties. Such measures may include, where appropriate, use of updated firewalls, commercially available virus screening software, logon identification and passwords, encryption, intrusion detection systems, logging of incidents, periodic reporting, and prompt application of current security patches and virus definitions.

**3.4.7.3. Backup of Customer Content (Not Applicable to Remote View).** Although ZOLL will use commercially reasonable efforts to maintain the integrity of the Customer Content, to back up the Customer Content, and to provide full and ongoing access to the ASP Services, loss of access to the ASP Services and loss of Customer Content may occur. Customer will make provision for additional back-up storage of any critical Customer Content and shall be responsible for compliance with all records retention requirements applicable to Customer. ZOLL will not be responsible for any loss, corruption of or inaccessibility of the Customer Content due to interruption in the ASP Services or otherwise arising out of circumstances not within ZOLL’s control.

**3.4.7.4. Availability of Customer Content (Not Applicable to Remote View).** It is Customer’s responsibility to maintain any Customer Content that it requires for archival purposes, ongoing management of its operations and compliance with applicable records retention requirements. Unless specified otherwise in the Agreement, ZOLL will store Customer Content, other than Inactive Customer Content as defined below (the “Active Customer Content”), in ZOLL’s working data set until the earlier of (i) five years (calculated from the date of creation of such Customer Content, or ZOLL’s receipt of such Customer Content, whichever is later) or (ii) the expiration or termination of this Agreement or the Order under which such Active Customer Content was stored (the “Active Retention Period”). Upon the expiration of the Active Retention Period, ZOLL will notify Customer in writing and will provide Customer the option, which Customer shall exercise by informing ZOLL in writing, within 30 days of receiving the notice, that either (a) Customer wishes to receive Active Customer Content in a database determined by ZOLL in its sole and absolute discretion (a “Database”), or (b) Customer will pay ZOLL, at ZOLL’s then-current storage rates and upon ZOLL’s then-current terms and conditions, to continue to store the Active Customer Content. If Customer fails to exercise one of the foregoing options within such 30-day period, ZOLL will have the right to destroy the Active Customer Content. During the time ZOLL stores Customer Content for Customer hereunder, ZOLL may periodically identify Customer Content that has had no activity associated with it for at least 180 days (“Inactive Customer Content”) and will notify Customer in writing of its intent to remove the Inactive Customer Content from ZOLL’s working data set and destroy such data, unless Customer requests, in writing, within 30 days of receiving the notice from ZOLL, that either (z) Customer wishes to receive the Inactive Customer Content in a Database, or (y) Customer will pay ZOLL, at ZOLL’s then-current storage rates and upon ZOLL’s then-current terms and conditions, to continue to store such Inactive Customer Content. If Customer fails to exercise one of the foregoing options within such 30-day period, ZOLL will have the right to destroy the applicable Inactive Customer Content in its possession or under its control. Except for this [Section 3.4.7.4](#), the terms of [Section 3.4](#) (including, without limitation, the Unplanned Downtime Goal) do not apply to Customer’s access of Inactive Customer Content. Customer represents, warrants and agrees that it (A) is solely responsible for determining the retention period applicable to it with respect to Customer Content maintained by ZOLL; (B) has consulted with or has had the opportunity to consult with legal, information governance or records management professionals; and (C) is not relying upon ZOLL to assist with determining the records maintenance or retention requirements applicable to it.

**3.4.8. Remedies.** A “Service Credit” means a percentage of the monthly Fee to be credited to Customer (subject to Customer’s written request therefor and ZOLL’s verification thereof) for any ASP Service for which the Unplanned Downtime Goal is exceeded in a calendar month. For any calendar month where the aggregate total of Unplanned Downtime for any ASP Service exceeds one percent ZOLL will provide a 10% Service Credit towards Customer’s monthly Fee for such ASP Service that was affected; *provided, that* Customer (i) requests such Service Credit in writing within 30 days of the end of the calendar month in which such Unplanned Downtime occurred, (ii) includes in such request the nature of, and date and time of such Unplanned Downtime and (iii) such Unplanned Downtime is verified by ZOLL. Such Service Credit will be applied to a future month’s invoice for such ASP Services, which typically is two months later. Failure to submit a written request for Service Credit as provided in this [Section 3.4.8](#) shall constitute a waiver of such Service Credit by Customer. Further, Service Credits shall not be issued if Customer is not current on all Fees due and payable. The remedy set forth in this [Section 3.4.8](#) shall be the Customers’ sole and exclusive remedy with respect to ZOLL exceeding the Unplanned Downtime Goal.

**3.4.9. Modifications.** Changes to this [Section 3.4](#) may be made from time to time at ZOLL’s sole discretion. Customer will be notified of any such changes that are material.

**4. Implementation Services.** ZOLL shall provide ASP Services implementation, training and any related services identified in an Order (the “Implementation Services”). Customer shall, in a timely manner and at its own expense, cooperate and provide or make available to ZOLL access to the Customer’s premises, systems, telephone, terminals and facsimile machines and all relevant information, documentation and staff reasonably required by ZOLL to enable ZOLL to perform the Implementation Services. Customer acknowledges that any time frames or dates for completion of the Implementation Services set out in an Order are estimates only and



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the ability to meet them is influenced by a range of factors including, without limitation, response times and level of cooperation of Customer. Any obligations as to time are therefore on a "reasonable efforts" basis only and ZOLL shall not be liable for failure to meet time frames or completion dates unless solely due to ZOLL's negligence.

**5. Support Services.** ZOLL shall provide the following Support Services for ASP Services without any additional Fees, except that ZOLL will have no obligation to provide such Support Services if any Fees for ASP Services are past due.

#### **5.1. Support.**

**5.1.1. Emergency Support.** ZOLL shall provide telephone support to Customer for 24 hours a day, 7 days a week, to address Errors that prevent Customer from using Supported ASP Services for a purpose for which Customer has an immediate and material need. "**Supported ASP Services**" means the ASP Services for which Customer has paid the then-current Fees. "**Supported Environment**" means a browser and other technical environment that supports the use of the ASP Services in accordance with the Documentation. "**Error**" means a reproducible defect in the Supported ASP Services when operated in accordance with the Documentation in a Supported Environment that causes the Supported ASP Services not to operate substantially in accordance with such Documentation.

**5.1.2. Technical Support.** ZOLL shall provide telephone support to Customer during 6 a.m. to 6 p.m. Eastern Time, Monday to Friday, excluding ZOLL holidays ("**Business Hours**") to address all other Errors relating to any Supported ASP Services. Such telephone support will include (i) clarification of functions and features of the Supported ASP Services; (ii) clarification of the Documentation; (iii) guidance in operation of the Supported ASP Services; (iv) assistance in identifying and verifying the causes of suspected Errors in the Supported ASP Services; and (v) advice on bypassing identified Errors in the Supported ASP Services, if reasonably possible. Responses to such reporting shall be provided at a minimum within twenty-four (24) hours during Business Hours.

**5.1.3. Resolution.** ZOLL shall use commercially reasonable efforts to provide a modification or workaround to Supported ASP Services that resolves an Error in all material respects ("**Resolution**").

**5.1.4. Expenses.** Support Services provided hereunder shall be provided from Chelmsford, Massachusetts or Broomfield, Colorado, as determined in ZOLL's sole discretion. Should Customer request that ZOLL send personnel to Customer's location to resolve any Error in the Supported ASP Services, ZOLL may charge Customer a fee of \$2,500 for each day ZOLL personnel is at Customer's location.

**5.1.5. Exceptions.** ZOLL shall have no responsibility under this Agreement to fix any Errors arising out of or related to the following causes: (a) Customer's modification or combination of the Access Software (in whole or in part), (b) use of the Supported ASP Services in an environment other than a Supported Environment; or (c) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; failure of media not furnished by ZOLL; excessive heating; fire and smoke damage; operation of the Supported ASP Services with other media and hardware, software or telecommunication interfaces; or causes other than ordinary use. Any corrections performed by ZOLL for such Errors shall be made, in ZOLL's reasonable discretion, at ZOLL's then-current time and material charges. ZOLL will provide the Support Services only for the most current release and the one immediately preceding major release of any Access Software. Notwithstanding anything to the contrary in the Agreement, (i) ZOLL may cease providing Support Services for any ASP Services upon at least six (6) months advance notice to Customer of such cessation and (ii) Support Services do not cover Third Party Products or Services (defined below).

**5.2. Conditions and Limitations.** Customer shall provide ZOLL with access to Customer's personnel and its equipment. This access must include the ability to remotely access the equipment on which the Supported ASP Services are operating and to obtain the same access to the equipment as those of Customer's employees having the highest privilege or clearance level. ZOLL will inform Customer of the specifications of the remote access methods available and associated software needed, and Customer will be responsible for the costs and use of said equipment. Fees for third party software and services are set by the owner of such software.

#### **6. Warranties.**

**6.1. Implementation Services and Support Services.** Subject to Customer's payment of the Fees, ZOLL warrants that any Implementation Services or Support Services provided to Customer will be performed with due care in a professional and workmanlike manner. ZOLL shall, as its sole obligation and Customer's sole and exclusive remedy for any breach of the warranty set forth in this [Section 6.1](#), perform again the Implementation Services or Support Services that gave rise to the breach or, in the case of Implementation Services, at ZOLL's option, refund the Fees for such Implementation Services paid by Customer for the Implementation Services which gave rise to the breach. The availability of any remedy for a breach of the warranty set forth in this [Section 6.1](#) is conditioned upon Customer notifying ZOLL in writing of such breach within thirty (30) days following performance of the defective Implementation Services or Support Services, specifying the breach in reasonable detail.

**6.2. ASP Services and Access Software.** Subject to Customer's payment of the Fees, ZOLL represents and warrants with respect to any ASP Services that (i) ZOLL has the right to license the Access Software and Documentation and make the ASP Services available to Customer pursuant to this Agreement and (ii) the ASP Services, when used as permitted and in accordance with the Documentation, will materially conform to the Documentation. ZOLL does not warrant that Customer's use of the ASP Services will be error free or uninterrupted. Customer will notify ZOLL in writing of any breach of this warranty with respect to any ASP Services prior to the expiration or termination of the Order for such ASP Services. If ZOLL is unable to provide a correction or work-around pursuant to the terms governing the provision of the ASP Services after using commercially reasonable efforts, ZOLL may terminate such Order upon written notice to Customer. Any such correction or work-around shall not extend the term of such Order. This [Section 6.2](#) sets forth Customer's exclusive remedy, and ZOLL's entire liability, for breach of the warranty for the ASP Services contained herein.

**6.3. Warranty Disclaimers.** The warranties for the Software and Services are solely and expressly as set forth in [Section 6.1](#) and [Section 6.2](#) and are expressly qualified, in their entirety, by this [Section 6.3](#). EXCEPT AS EXPRESSLY SET FORTH IN [SECTION 6.1](#) AND [SECTION 6.2](#), (A) THE SOFTWARE AND SERVICES ARE PROVIDED STRICTLY "AS IS", WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, WRITTEN OR ORAL; (B) ZOLL DOES NOT PROMISE THAT THE SOFTWARE OR SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE OR THAT THEY ARE SUITABLE FOR THE PARTICULAR NEEDS OF CUSTOMER, REGISTERED USERS OR ANY THIRD PARTY; AND (C) ZOLL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE IN TRADE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT, AND THAT NO WARRANTIES ARE MADE BY ANY OF ZOLL'S LICENSORS OR SUPPLIERS WITH RESPECT TO THIRD PARTY PRODUCTS OR SERVICES. Customer acknowledges and agrees that, in entering into this Agreement, it has not relied upon the future availability of any new or enhanced feature or functionality, or any new or enhanced product or service, including, without limitation, updates or upgrades to ZOLL's existing products and services. ZOLL's performance obligations hereunder are limited to those expressly enumerated herein, and payment for ZOLL's performance obligations shall be due as described herein.





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**7. Confidentiality.** Neither party will use any trade secrets, information, or other material, tangible or intangible, that relates to the business or technology of the other party and is marked or identified as confidential or is disclosed in circumstances that would lead a reasonable person to believe such information is confidential (“**Confidential Information**”) for any purpose not expressly permitted by this Agreement, and will further disclose the Confidential Information of the party disclosing it (“**Disclosing Party**”) only to the employees or contractors of the party receiving it (“**Receiving Party**”) who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. The ASP Services, Software and Documentation shall be ZOLL’s Confidential Information (including without limitation any routines, subroutines, directories, tools, programs, or any other technology included in the Software), notwithstanding any failure to mark or identify it as such. The Receiving Party’s obligations under this Section 7 with respect to any Confidential Information of the Disclosing Party will terminate when and to the extent the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, Confidential Information. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (ii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such disclosure in writing prior to making such disclosure and cooperates with the Disclosing Party, at the Disclosing Party’s reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure.

## **8. Indemnification.**

**8.1. By ZOLL.** ZOLL will defend, at its own expense, any action against Customer or its or any of its agents, officers, director, or employees (“**Customer Parties**”) brought by a third party alleging that any Software or Services infringe any U.S. patents or any copyrights or misappropriate any trade secrets of a third party, and ZOLL will pay those costs and damages finally awarded against the Customer Parties in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer: (a) notifying ZOLL promptly in writing of such claim or action; (b) giving ZOLL sole control of the defense thereof and any related settlement negotiations; and (c) cooperating with ZOLL and, at ZOLL’s request and expense, assisting in such defense. If any of the Software or Services become, or in ZOLL’s opinion is likely to become, the subject of an infringement claim, ZOLL may, at its sole option and expense, either: (i) procure for Customer the right to continue using such Software or Services; (ii) modify or replace such Software or Services with substantially similar software or services so that such Software or Services becomes non-infringing; or (iii) terminate this Agreement, in whole or in part. Notwithstanding the foregoing, ZOLL will have no obligation under this Section 8.1 or otherwise with respect to any infringement claim based upon: (1) use of any of the Software or Services not in accordance with this Agreement; (2) any use of any Software or Services in combination with products equipment, software, services or data not supplied by ZOLL if such infringement would have been avoided but for the combination with other products, equipment, software, services or data; (3) the failure of Customer to implement any replacements, corrections or modifications made available by ZOLL for any Software or Services including, but not limited to, any use of any release of the Software other than the most current release made commercially available by ZOLL; (4) any Customer Content; or (5) any modification of any Software or Services or use thereof by any person other than ZOLL or its authorized agents or subcontractors. This Section 8 states ZOLL’s entire liability and the exclusive remedy for any claims of infringement.

**8.2. By Customer.** Customer shall indemnify, defend and hold ZOLL and its agents, officers, directors and employees (the “**ZOLL Parties**”) harmless from and against any and all liabilities, losses, expenses, damages and claims (collectively, “**Claims**”) that arise out of the following except to the extent the Claims are due to the gross negligence, intentional misconduct or breach of this Agreement by the ZOLL Parties: (i) information provided to any of the ZOLL Parties by any of the Customer Parties; (ii) any of the Customer Parties’ use or misuse of any of the Software or Services, including without limitation in combination with Customer’s software or services or third party software or services; (iii) any modifications made by any of the Customer Parties to any of the Software or Services; (iv) infringement by any of the Customer Parties of any third party intellectual property right; (v) Taxes (other than taxes based on ZOLL’s net income) and any related penalties and interest, arising from the payment of the Fees or the delivery of the Software and Services to Customer; and (ix) any violation of laws or regulations, including without limitation applicable export and import control laws and regulations in the use of any of the Software or Services, by any of the Customer Parties.

**9. Limitation of Liability.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT WILL ZOLL OR ITS AFFILIATES, SUBCONTRACTORS OR SUPPLIERS, OR ANY OF THEIR OFFICERS OR DIRECTORS, BE LIABLE, EVEN IF ADVISED OF THE POSSIBILITY, FOR: (i) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), (ii) LOSS OF PROFIT, DATA, BUSINESS OR GOODWILL, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR (iii) ANY LOSSES, COSTS OR DAMAGES ASSOCIATED WITH CUSTOMER’S PRODUCTS OR OTHER ELEMENTS INCORPORATED OR USED THEREWITH WHICH WERE NOT PROVIDED BY ZOLL OR WITH RESPECT TO ANY MODIFICATIONS MADE TO THE SOFTWARE OR SERVICES OR MISUSE OF THE SOFTWARE OR SERVICES. ZOLL’S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID TO ZOLL BY CUSTOMER FOR THE SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. Customer acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that ZOLL would not enter into this Agreement without these limitations on its liability. Customer agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. The remedies in this Agreement are Customer’s sole and exclusive remedies. In addition, ZOLL disclaims all liability of any kind of ZOLL’s licensors and suppliers, for third party products or services, and for the actions or omissions of Customer’s representatives.

**10. Ownership.** All right, title and interest, including but not limited to all existing or future copyrights, trademarks, service marks, trade secrets, patents, patent applications, know how, moral rights, contract rights, and proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing, in and to the following are the exclusive property of ZOLL (or, as the case may be, its subsidiaries, licensors and suppliers): (i) ASP Services, Software, Documentation, and all proprietary technology used by ZOLL to perform its obligations under this Agreement; (ii) all software, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that ZOLL makes, develops, conceives or reduces to practice, whether alone or jointly with others, in the course of performing the Services; (iii) the fully compiled version of any of the foregoing software programs that can be executed by a computer and used without further compilation (the “**Executable Code**”); (iv) the human readable version of any of the foregoing software programs that can be compiled into Executable Code (the “**Source Code**”); and (v) all enhancements, modifications, improvements and derivative works of each and any of the foregoing (the “**ZOLL Property**”). If any derivative work is created



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by Customer from the Software or Services, ZOLL shall own all right, title and interest in and to such derivative work. Any rights not expressly granted to Customer hereunder are reserved by ZOLL (or its licensors and suppliers, as the case may be).

### 11. Term and Termination.

**11.1. Term.** The term of this Agreement (“**Term**”) begins on the effective date of the first Order incorporating this Agreement and continues until it is terminated. The term of each Order begins on the effective date of such Order and continues until it expires or is terminated; *provided, however*, that such term (and any extension thereof) shall automatically renew for an equivalent period at ZOLL’s then current list pricing unless either party notifies the other party in writing of an intent to not renew such term at least ninety (90) days prior to the expiration of such term. “**Implementation Date**” for any ASP Services means the earlier of (a) the date upon which the activation of such ASP Services is complete and such ASP Services are able to function as described in the warranty for such ASP Services, regardless of whether Customer uses such ASP Services or (b) one hundred eighty (180) days following the shipment of the monitor/defibrillators in connection with which such ASP Services are to be used, unless a delay in the activation of such ASP Services is caused by ZOLL, in which case the Implementation Date shall be postponed by a number of days equal to the delay that ZOLL has caused; or (c) if Customer does not use Implementation Services to activate such ASP Services, the date of the Order for such ASP Services.

**11.2. Termination.** Either party may terminate this Agreement or any Order without cause on thirty (30) days’ prior written notice to the other party. Either party may terminate this Agreement or any Order if the other party materially defaults in the performance of any of its obligations hereunder and fails to cure such default within twenty (20) days after written notice from the non-defaulting party.

**11.3. Effects of Termination.** Upon expiration or termination of this Agreement or any Order for any reason: (a) all amounts, if any, owed to ZOLL under this Agreement or the Order that has expired or been terminated (the “**Expired or Terminated Document**”) before such termination or expiration will become immediately due and payable; (b) Customer’s right to access the ASP Services, and all licensed rights granted, in the Expired or Terminated Document will immediately terminate and cease to exist; and (c) Customer must (i) promptly discontinue all use of any ASP Services provided under the Expired or Terminated Document (ii) erase all copies of Access Software from Customer’s computers and the computers of its customers and return to ZOLL or destroy all copies of such Access Software and related Documentation on tangible media in Customer’s possession and (iii) return or destroy all copies of the Documentation in Customer’s possession or control; (d) each party shall promptly discontinue all use of the other party’s Confidential Information disclosed in connection with the Expired or Terminated Document and return to the other party or, at the other party’s option, destroy, all copies of any such Confidential Information in tangible or electronic form. Additionally, if any Order for ASP Services is terminated by ZOLL for a material default or by Customer without cause, then Customer immediately shall pay ZOLL an early termination fee equal to the amount of (x) the Fees for such ASP Services otherwise payable during the initial term of such Order had such Order not been terminated during such term minus (y) the sum of such Fees paid by Customer to ZOLL prior to the date of termination. Upon ZOLL’s request, Customer will provide a written certification (in a form acceptable to ZOLL), certifying as to Customer’s compliance with its post-termination obligations set forth in this [Section 11.3](#).

### 12. General Provisions.

**12.1. Compliance with Laws.** Customer shall comply with all applicable laws and regulations, and obtain required authorizations, concerning its use of the ASP Services, including without limitation if applicable all export and import control laws and regulations. Customer will not use any ASP Services for any purpose in violation of any applicable laws. ZOLL may suspend performance if Customer violated applicable laws or regulations.

**12.2. Audits and Inspections.** Upon written request from ZOLL, Customer shall furnish ZOLL with a certificate signed by an officer of Customer stating that the ASP Services are being used strictly in accordance with the terms and conditions of this Agreement. During the Term and for a period of six months following the termination or expiration of this Agreement, upon prior written notice, ZOLL will have the right, during normal business hours, to inspect, or have an independent audit firm inspect, Customer’s records relating to Customer’s use of the ASP Services to ensure it is in compliance with the terms of this Agreement. The costs of the audit will be paid by ZOLL, unless the audit reveals that Customer’s underpayment of Fees exceeds five percent. Customer will promptly pay to ZOLL any amounts shown by any such audit to be owing (which shall be calculated at ZOLL’s standard, non-discounted rates) plus interest as provided in [Section 2](#) above.

**12.3. Assignments.** Customer may not assign or transfer, by operation of law or otherwise (including in connection with a sale of substantially all assets or equity, merger or other change in control transaction), any of its rights under this Agreement or any Order to any third party without ZOLL’s prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. ZOLL shall have the right to assign this Agreement or any Order to any affiliate, or to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise, and to contract with any third party to provide part of any of the Software and Services, and to delegate performance of this Agreement or any Order to any of its subsidiaries.

**12.4. U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Software and Documentation are composed of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202 1 (JUN 1995) and 227.7202 3 (JUN 1995).

**12.5. Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile, or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in the most recent Order (or to such other address or person as from time to time provided by such party in accordance with this [Section 12.5](#)), and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner.

**12.6. Governing Law and Venue; Waiver of Jury Trial.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in the State of Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

**12.7. Remedies.** Except as otherwise expressly provided in this Agreement, the parties’ rights and remedies under this Agreement are cumulative. Customer acknowledges that the Software and Services are built on valuable trade secrets and proprietary information of ZOLL, that any actual or threatened breach hereof will constitute immediate, irreparable harm to ZOLL for which monetary damages would be an inadequate remedy, and that ZOLL will be entitled to injunctive relief for such breach or threatened breach. Customer further agrees to waive and hereby waives any requirement for the security or the posting of any bond in connection with such remedies.



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Such remedies shall not be considered to be the exclusive remedies for any such breach or threatened breach, but shall be in addition to all other remedies available at law or equity to ZOLL.

**12.8. Waivers.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**12.9. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

**12.10. Independent Contractors.** The parties are entering into, and will perform, this Agreement as independent contractors. Nothing in this Agreement will be construed to make either party the agent of the other for any purpose whatsoever, to authorize either party to enter into any contract or assume any obligation on behalf of the other or to establish a partnership, franchise or joint venture between the parties.

**12.11. Third Parties.** Customer is solely responsible for, and none of the fees set forth herein shall be deemed to cover, any amounts owed to third parties in connection with the use of the ASP Services. If Customer engages a third-party provider (“**Third Party Provider**”) to deliver products or services, including without limitation software, integrated into or receiving data from or accessing the ASP Services (“**Third Party Products or Services**”), Customer represents, warrants and agrees that: (i) ZOLL shall have no liability, and makes no representation, with respect to such Third Party Products or Services; and (ii) the Third Party Provider shall not be an agent of ZOLL. To the extent the ASP Services or Software contains software owned by a third party for which ZOLL has a license agreement with a third party, the ASP Services and Software and all rights granted hereunder are expressly limited by and subject to any license agreements ZOLL may have for such software.

**12.12. Force Majeure.** Neither party shall be liable for damages for any delay or failure of performance hereunder (other than payment obligation) arising out of causes beyond such party’s reasonable control and without such party’s fault or negligence, including, but not limited to, failure of its suppliers to timely deliver acceptable parts or services, any act or omission of Customer that interferes with or impedes ZOLL’s performance hereunder, acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures (a “**Force Majeure Event**”).

**12.13. Entire Agreement; Amendment; No Third Party Beneficiaries; Survival.** This Agreement, which may be accepted by performance, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral, except agreements at zollonline.com. Any other representation or agreement, whether written or oral, including but not limited to any purchase order issued by Customer, shall be wholly inapplicable to the Software and Services and shall not be binding in any way on ZOLL. This Agreement may not be amended or changed or any provision hereof waived except in writing signed by both parties. Any different or additional terms in any purchase order, confirmation or similar form issued or otherwise provided by Customer but not signed by an authorized representative of ZOLL shall have no force or effect. There are no third party beneficiaries of this Agreement. Those provisions of this Agreement that may be reasonably interpreted as surviving termination of this Agreement or the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the termination hereof including, but not limited to, Section 7 (Confidentiality), Section 8 (Indemnification), Section 9 (Limitation on Liability), Section 10 (Ownership), Section 11.3 (Effects of Termination) and Section 12 (General Provisions). This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

**13. HIPAA.** This Section 13 applies if and to the extent that ZOLL creates, receives, maintains or transmits, directly or indirectly, any protected health information of Customer (“**PHI**”) in the course of providing Software or Services to Customer. Capitalized terms used but not defined in this Section 13 have the meanings assigned to them elsewhere in the Agreement or, if not defined therein, as defined in the Health Insurance Portability and Accountability Act of 1996 (P.L. 104 191), 42 U.S.C. Section 1320d, et seq., and regulations promulgated thereunder, as amended from time to time (such statute and regulations collectively referred to as “**HIPAA**”). “**Covered Entity**” as used herein means Customer. “**Business Associate**” as used herein means ZOLL. The purpose of this Section 13 is to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing PHI and business associates under HIPAA.

**13.1. Applicability.** This Section 13 applies if and to the extent that Business Associate creates, receives, maintains or transmits, directly or indirectly, any PHI in the course of providing Software or Services to Covered Entity.

**13.2. Compliance and Agents.** Business Associate agrees that, to the extent it has access to PHI, Business Associate will fully comply with the requirements of this Section 13 with respect to such PHI. Business Associate will ensure that every agent, including a subcontractor, of Business Associate to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity will comply with the same restrictions and conditions as set forth herein.

**13.3. Use and Disclosure; Rights.** Business Associate agrees that it shall not use or disclose PHI except as permitted under this Agreement, and in compliance with each applicable requirement of 45 CFR Section 164.504(e). Business Associate may use or disclose the PHI received or created by it, (a) to perform its obligations under this Agreement, (b) to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, or (c) to provide data aggregation functions to Covered Entity as permitted by HIPAA. Further, Business Associate may use the PHI received by it in its capacity as Business Associate, if necessary, to properly manage and administer its business or to carry out its legal responsibilities. Business Associate may disclose the PHI received by it in its capacity as Business Associate to properly manage and administer its business or to carry out its legal responsibilities if: (a) the disclosure is required by law, or (b) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

**13.4. Safeguards.** Business Associate agrees to develop, document, use, and keep current appropriate procedural, physical, and electronic safeguards, as required in 45 C.F.R. §§164.308 - 164.312, sufficient to prevent any use or disclosure of electronic PHI other than as permitted or required by this Agreement.

**13.5. Minimum Necessary.** Business Associate will limit any use, disclosure, or request for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request.

**13.6. Report of Improper Use or Disclosure.** Business Associate shall report to Covered Entity any information of which it becomes aware concerning any use or disclosure of PHI that is not permitted by this Agreement and any security incident of which it becomes aware. Business Associate will, following the discovery of a



## ZOLL Medical Corporation

269 Mill Road  
Chelmsford, MA 01824-4105  
Federal ID# 04-2711626

Phone: (800) 348-9011

Fax: (978) 421-0015

Email: esales@zoll.com

Flagstaff Fire Department  
Quote No: Q-33878 Version: 1

breach of “**unsecured protected health information**,” as defined in 45 C.F.R. § 164.402, notify Covered Entity of such breach within 15 days. The notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement.

**13.7. Individual Access.** In accordance with an individual’s right to access to his or her own PHI in a designated record set under 45 CFR §164.524 and the individual’s right to copy or amend such records under 45 CFR §164.524 and §164.526, Business Associate shall make available all PHI in a designated record set to Covered Entity to enable the Covered Entity to provide access to the individual to whom that information pertains or such individual’s representative.

**13.8. Amendment of and Access to PHI.** Business Associate shall make available for amendment PHI in a designated record set and shall incorporate any amendments to PHI in a designated record set in accordance with 45 CFR §164.526 and in accordance with any process mutually agreed to by the parties.

**13.9. Accounting.** Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to an individual’s request for an accounting of disclosures of their PHI in accordance with 45 CFR §164.528. Business Associate agrees to make available to Covered Entity the information needed to enable Covered Entity to provide the individual with an accounting of disclosures as set forth in 45 CFR §164.528.

**13.10. DHHS Access to Books, Records, and Other Information.** Business Associate shall make available to the U.S. Department of Health and Human Services (“DHHS”), its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity for purposes of determining the Covered Entity’s compliance with HIPAA.

**13.11. Individual Authorizations; Restrictions.** Covered Entity will notify Business Associate of any limitation in its notice of privacy practices, any restriction to the use or disclosure of PHI that Covered Entity has agreed to with an individual and of any changes in or revocation of an authorization or other permission by an individual, to the extent that such limitation, restriction, change, or revocation may affect Business Associate’s use or disclosure of PHI.

**13.12. HITECH Act Compliance.** Covered Entity and Business Associate agree to comply with the amendments to HIPAA included in the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), including all privacy and security regulations issued under the HITECH Act that apply to Business Associate.

**13.13. Breach; Termination; Mitigation.** If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate’s obligations under this Section 13, Covered Entity and Business Associate shall take any steps reasonably necessary to cure such breach and make Business Associate comply, and, if such steps are unsuccessful, Covered Entity may terminate this Agreement. Business Associate shall take reasonable actions available to it to mitigate any detrimental effects of such violation or failure to comply.

**13.14. Return of PHI.** Business Associate agrees that upon termination of this Agreement, and if feasible, Business Associate shall (a) return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate has continued to maintain in any form or manner and retain no copies of such information or, (b) if such return or destruction is not feasible, immediately notify Covered Entity of the reasons return or destruction are not feasible, and extend indefinitely the protection of this Section 13 to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI not feasible.

**13.15. De-identified Health Information.** Business Associate may de-identify any and all PHI and may create a “**Limited Data Set**” in accordance with 45 C.F.R. § 164.514(b) & (e). Covered Entity acknowledges and agrees that de-identified information is not PHI and that Business Associate may use such de-identified information for any lawful purpose. Use or disclosure of a Limited Data Set must comply with 45 CFR 164.514(e).

**13.16. Survival.** All representations, covenants, and agreements in or under this Section 13 shall survive the execution, delivery, and performance of this Agreement.

**13.17. Further Assurances; Conflicts.** Each party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Section 13. The terms and conditions of this Section 13 will override and control any expressly conflicting term or condition of the Agreement. All non-conflicting terms and conditions of the Agreement shall remain in full force and effect. Any ambiguity shall be resolved in a manner that will permit Covered Entity to comply with HIPAA. For the avoidance of doubt, a limitation on liability in the Agreement does not conflict with this Section 13.

**13.18. Applicable Law.** The parties acknowledge and agree that HIPAA may be amended and additional guidance or regulations implementing HIPAA may be issued after the date of the execution of this Agreement and may affect the parties’ obligations hereunder. The parties agree to take such action as is necessary to amend this Agreement from time to time in order as is necessary for Covered Entity to comply with HIPAA.

By signing below, the Customer acknowledges and agrees to those terms and conditions. The person signing below represents and warrants that she or he has the authority to bind the Customer to those terms and conditions.





**ZOLL Medical Corporation**

269 Mill Road  
Chelmsford, MA 01824-4105  
Federal ID# 04-2711626

Phone: (800) 348-9011

Fax: (978) 421-0015

Email: [esales@zoll.com](mailto:esales@zoll.com)

Flagstaff Fire Department  
Quote No: Q-33878 Version: 1

---

**Customer**

Signature:

\_\_\_\_\_

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

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

Company: \_\_\_\_\_

Company Address: \_\_\_\_\_

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

# **Contract #171769**

## **Cardiac Monitors**

### **ZOLL Medical Corporation**

#### **Table of Contents**

1. ZOLL's Signed Letter of Concurrence
2. City's Request for Letter of Concurrence
3. ZOLL's Response to Additional Information to Intent to Negotiate
4. City's Request for Additional Information to Intent to Negotiate
5. ZOLL's Response to Intent to Negotiate
6. City's Request for Intent to Negotiate
7. ZOLL's Response to RFP# 171769
8. RFP# 171769

# **1. ZOLL's Signed Letter of Concurrence**

August 14, 2017



**CITY OF  
TUCSON**

DEPARTMENT OF  
PROCUREMENT

Amy Coffin  
Bid & Proposals Coordinator  
ZOLL Medical Corporation  
269 Mill Road  
Chelmsford, MA 01824  
[acoffin@zoll.com](mailto:acoffin@zoll.com)

Sent via electronic mail, this day

**Subject: Request for Proposal No. 171769 – Cardiac Monitors  
Summary of Negotiated Items/Letter of Concurrence**

Dear Ms. Coffin:

Based upon the previous discussions and negotiations, this letter serves as a request for confirmation that the statements below represent your firm's best and final offer to the City of Tucson regarding the subject solicitation. Points of agreement not identified below are not included in the offer. In the event there is any disagreement with this document or if there is other information that must be included in the document, Zoll Medical must specify such in a written response to this request.

**1. Best and Final Pricing**

- a. Zoll shall provide a trade-in credit for 55 MRX Monitors at \$8,534.00 each for a total of \$469,370.00
- b. Zoll shall provide a credit on the Tucson Fire account for the return of the Multifunction Therapy Cable – X Series and CPR Connector in the amount of \$11,500 to be utilized toward future purchases of accessories, etc. Zoll shall handle the return of these items at the time of implementation.
- c. Zoll agrees to offer a 3% administrative fee to the City on all sales to other agencies. Zoll shall pay the fee quarterly, within 60 days after the end of the quarter for all EMS/Fire Agencies. The form for which other EMS/Fire agencies must sign to utilize this contract is attached to this letter.

**2. Special Terms and Conditions**

The agreed upon Special Terms and Conditions are attached to this letter.

**3. Standard Terms and Conditions**

The agreed upon Standard Terms and Conditions are attached to this letter.

**4. Business Associate Agreement**

The Business Associate Agreement shall supersede any conflicting data and is contained within the EULA.

**5. ZOLL Online Terms of Use Section 8**

The City would like to add the following language to Section 8 of the Online Terms of Use. This language aligns with the standard in the software industry where direct damages are covered.

*8.D. Notwithstanding the above, the City's exclusive remedy shall be the recovery of the direct damages actually suffered by it.*

**6. ZOLL Online Application Service Provider Agreement Section 6**

The City would like to align this language with the standard software industry to a "TWELVE (12)" month period rather than "SIX (6)."

*ZOLL's total cumulative liability in connection with this Agreement and the Software, whether in contract or tort or otherwise, will not exceed the amount paid TO ZOLL BY CUSTOMER FOR the ASP SERVICES provided UNDER THIS AGREEMENT IN THE PREVIOUS SIX (6) TWELVE (12) MONTH PERIOD.*

ADMINISTRATION • DESIGN AND CONSTRUCTION SERVICES • GOODS AND SERVICES  
MAIL SERVICES • S.A.M.M. (SURPLUS AUCTION MATERIALS MANAGEMENT)  
CITY HALL • 255 W. ALAMEDA • P.O. BOX 27210 • TUCSON, AZ 85726-7210  
(520) 791-4217 • FAX (520) 791-4735 • TTY (520) 791-2639  
[www.tucsonprocurement.com](http://www.tucsonprocurement.com)

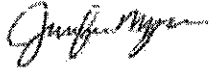
**7. Order of Precedence**

The order of precedence for documents shall be in the following order:

1. Letter of Concurrence
2. Negotiated Special Terms and Conditions
3. Negotiated Standard Terms and Conditions
4. Business Associate Agreement
5. EULA
6. ZOLL's Proposal
7. Original RFP

Your response to this letter must be received by the City's Department of Procurement on or before August 17, 2017 at 4:00 p.m. local Arizona time. Please contact me with any questions.

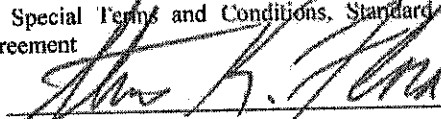
Sincerely,



Jenn Myers  
Senior Contract Officer

Attachments: Special Terms and Conditions, Standard Terms and Conditions, ZOLL Business Associate Agreement

Concurrence:



Date:

8/16/2017

Name/Title:

Steven Flora, Senior VP. North American Sales

## **2. City Request for Letter of Concurrence**

August 14, 2017



**CITY OF  
TUCSON**

DEPARTMENT OF  
PROCUREMENT

Amy Coffin  
Bid & Proposals Coordinator  
ZOLL Medical Corporation  
269 Mill Road  
Chelmsford, MA 01824  
[acoffin@zoll.com](mailto:acoffin@zoll.com)

*Sent via electronic mail, this day*

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Sincerely,



Jenn Myers  
Senior Contract Officer

Attachments: Special Terms and Conditions, Standard Terms and Conditions, ZOLL Business Associate Agreement

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

Name/Title: \_\_\_\_\_



## **SPECIAL TERMS AND CONDITIONS**

1. **SAFETY STANDARDS:** The Bidder/Offeror shall certify that the equipment being bid/offered is designed and includes operating features that comply with the safety standard promulgated under the Federal Occupational Safety and Health Act (OSHA). If the equipment being bid/offered is governed by OSHA regulations the successful Bidder/Offeror is required to submit a certificate stating that such equipment complies with applicable OSHA standards.

During the term of this Contract, should there be modifications in federal and/or state laws and regulations regarding safety standards or other specifications and marketing procedures for the contracted item(s), the City of Tucson reserves the right to amend the Contract to provide for the delivery of items which conform to such changes. As a result, the City will negotiate any necessary price changes with the Contractor. Should negotiations fail the City may cancel the Contract for the affected items.

2. **DEFECTIVE PRODUCT:** All defective products shall, at the Contractors sole discretion, be repaired, replaced or exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. Contractor will supply a loaner for any equipment returned if it cannot be repaired or replaced within seven (7) days of initial notification.
3. **WARRANTY:** Bidder/Offeror shall warrant that all equipment and parts furnished in their bid/offer are newly manufactured and free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered or installed. Warranty shall also guarantee accepted trade standards of quality, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the Contractor's liability as stated herein.
4. **EQUIPMENT/RECALL NOTICES:** In the event of any recall notice, technical service bulletin, or other important notification affecting equipment purchased from this contract, a notice shall be sent to the Contract Representative. It shall be the responsibility of the contractors to assure that all recall notices are sent directly to the agencies Contract Representative.
5. **FOB DESTINATION FREIGHT PREPAID:** Prices shall be FOB Destination Freight Prepaid to the delivery location designated. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will assist the Contractor in arranging for inspection.
6. **PRICE ADJUSTMENT:** The City will review fully documented requests for price adjustment after any Contract has been in effect for one (1) year. Any price adjustment will only be made at the time of Contract renewal and/or extension and will be a factor in the extension review process. The City will determine whether the requested price adjustment or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the effective date of the Contract extension.
7. **TERM AND RENEWAL:** The term of the Contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, at its sole option, to renew the Contract for four (4) additional one-year periods or portions thereof. In the event that the City exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.

8. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See [http://www.tucsonprocurement.com/coop\\_partners.aspx](http://www.tucsonprocurement.com/coop_partners.aspx) and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

9. **INSURANCE:**

The Contractor agrees to:

- A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. Contractor will not cancel any of the required coverage without first providing thirty (30) days written notice to the City.
- B. The Commercial General Liability Insurance and Commercial Automobile Liability Insurance policies will include the City as an additional insured, but only with respect to liability arising directly from ongoing operations performed by the Contractor on behalf of the City. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. With respect to sole negligence of the contractor, the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable

COVERAGE	LIMITS OF LIABILITY
<b>I. Commercial General Liability:</b>	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Project	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
<b>II. Commercial Automobile Liability</b>	

Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement. Combined Single Limit	\$1,000,000
<b>III. Workers' Compensation (applicable to the State of Arizona)*<sup>1</sup></b>	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
<b>V. Professional Liability – Technology Errors &amp; Omissions - In addition to I, II, III</b>	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

\*<sup>1</sup> Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

**D. ADDITIONAL INSURANCE REQUIREMENTS:** Policies shall be endorsed to include the following provisions:

1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor (including Worker's Compensation).
2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

**E. NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require 10 days written notice from the Contractor to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.

**F. ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**G. VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department of Procurement.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

- H. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- I. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance.

## STANDARD TERMS AND CONDITIONS

1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Director of Procurement.
2. **AFFIRMATIVE ACTION:** Contractor shall abide by the provisions of the Tucson Procurement Code Chapter 28, Article XII.
3. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.
4. **APPLICABLE LAW:** This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.
5. **ASSIGNMENT-DELEGATION:** No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.
6. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.
7. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.
8. **COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.
9. **CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
10. **CONTRACT AMENDMENTS:** The Procurement Department, with mutual written agreement by Contractor, has the authority to:
  - A. Amend the contract or enter into supplemental verbal or written agreements;
  - B. Grant time extensions or contract renewals;
  - C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Procurement. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

11. **CONTRACT:** The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial

non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

12. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, and after the Contractor has been provided an opportunity to cure, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.
13. **DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
14. **EQUAL PAY:** The Contractor shall comply with the applicable provisions of the Equal Pay Act of 1963 (Pub.L. 88-38, 29 U.S.C. section 206(d)); Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352, 42 U.S.C. 2000e *et seq.*; and, the Lily Ledbetter Fair Pay Act of 2009 (Pub.L. 111-2).
15. **EXCLUSIVE POSSESSION:** All services, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
16. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

17. **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

18. **GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this

provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

**19. HUMAN RELATIONS:** Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.

**20. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractor agrees to waive all rights of subrogation against the City of Tucson, its agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

**21. INDEPENDENT CONTRACTOR:** It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

**22. INSPECTION AND ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor in accordance with the Contractor's Warranty & Return Policies. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

**23. INTERPRETATION-PAROLE EVIDENCE:** This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

**24. ISRAEL BOYCOTT DIVESTMENTS:** Acceptance of the contract warrants that the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S. § 35-393.

**25. LICENSES:** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

- 26. LIENS:** All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.
- 27. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.
- 28. NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.
- 29. OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.
- 30. PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice. The invoice shall not be dated prior to the receipt of goods or completion of services.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

- 31. PROTECTION OF GOVERNMENT PROPERTY:** The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.
- 32. PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.
- 33. RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.
- 34. RIGHT TO ASSURANCE:** Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.
- 35. RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.
- 36. RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in



the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

- 37. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.
- 38. SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.
- 39. SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.
- 40. SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.
- 41. TERMINATION OF CONTRACT:** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract, and after providing the Contractor an adequate opportunity to cure. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;

In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;

The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;

The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this

Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

- 42. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.
- 43. WARRANTIES:** Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.



**Business Associate Agreement  
Between  
The City of Tucson and ZOLL Data Systems, Inc.**

This Agreement is entered into between the City of Tucson (hereinafter "Covered Entity" or "City of Tucson") and ZOLL Data Systems Inc. (hereinafter "Business Associate" or "BA").

This Agreement is incorporated into all existing and current contract(s) between the parties (the "Underlying Contract(s)") under which Business Associate is carrying out activities or functions involving the use of protected health information (PHI), as this term is defined in 45 CFR Parts 160 and 164, and it replaces any prior agreement(s) entered concerning such PHI. Business Associates must comply with all requirements for protecting PHI under federal Privacy and Information Security regulations and are subject to the application of civil and criminal penalties under sections 1176 and 1177 of the Social Security Act. Covered Entity is committed to providing high quality patient care, education, and research. In furtherance of its mission, Covered Entity wishes to conduct transactions involving the disclosure of PHI to Business Associate for the purpose of conducting the activities set forth in the Underlying Contract(s).

Some or all of the information to be disclosed is required by law to be protected against unauthorized use, disclosure, modification or loss. In order to comply with applicable legal requirements for the protection of information, the parties agree as follows:

**A. ALLOWABLE USES OF PHI**

Only the minimum necessary PHI to accomplish the intended purpose of this agreement can be used or disclosed only for the following purposes:

1. Support of the TFD RescueNet suite of applications.

2. \_\_\_\_\_

**B. OBLIGATIONS OF BUSINESS ASSOCIATE**

**Section 1. Safeguarding Information.**

A. Business Associate shall only use, store, disclose, or access PHI:

- (1) In accordance with, and only to the extent permissible under the Underlying Contract; and

(2) In full compliance with any and all applicable laws, regulations, rules or standards, including, but without limitation, FERPA, HIPAA, the Gramm-Leach-Bliley Financial Services Modernization Act (GLB), the Federal Trade Commission Identity Theft Rules, the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and the Social Security Act, RCW 19.255.010 and RCW 42.56.590.

B. Business Associate shall have in place policies and procedures to implement and maintain all safeguards necessary to ensure the confidentiality, availability, and integrity of all Covered Entity data. Such safeguards shall include as deemed appropriate by Business Associate, and without limitation, use of: policies and procedures to prevent any unauthorized use or disclosure of, or access to, PHI; restrictions on administrative access to PHI; system firewalls, secure network and transfer protocols such as Secure Socket Shell (SSH), Secure Copy Protocol (SCP), Hyper-Text Transfer Protocol over Secure Sockets Layer (HTTPS), or Internet Protocol Security (IPSec); industry compliant network authentication protocols such as Kerberos or Lightweight Directory Access Protocol (LDAP); encryption; regular and timely system upgrades, including implementation of security patches; disk quotas to ensure system availability; logging in accordance with City of Tucson specifications (as communicated by City of Tucson to Business Associate in writing), maintenance of logs on centralized servers; and backup systems for disaster recovery, security, and forensics purposes.

## **Section 2. Use or disclosure of Protected Health Information.**

Business Associate shall not use or disclose PHI received from Covered Entity in any manner that would constitute a violation of federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and any regulations enacted pursuant to its provisions ("HIPAA Standards"), or applicable provisions of Arizona state law. Business Associate shall ensure that any use or disclosure by its directors, officers, employees, contractors, and agents of PHI received from Covered Entity, or created or received on behalf of Covered Entity is in accordance with the provisions of this Agreement and applicable federal and state law. Business Associate shall not use or disclose PHI in any manner other than that permitted or required by the Covered Entity for the purpose of accomplishing services to or on behalf of Covered Entity in accordance with the Underlying Contracts. Notwithstanding the foregoing, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate and to carry out its legal responsibilities; provided that such disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. In addition, Business Associate may use or disclose PHI received or created by it to provide data aggregation functions to Covered Entity as permitted by HIPAA Standards.

## **Section 3. Reporting of Unauthorized Use or Disclosure of PHI.**

Business Associate shall, within five (5) business days of becoming aware of an unauthorized use or disclosure of PHI by Business Associate, its officers, directors, employees, contractors, agents or by a third party to which Business Associate disclosed PHI, report any such disclosure to Covered Entity. Such notice shall be made to the following:

The City Attorney  
City of Tucson  
255 West Alameda Street  
Tucson, AZ 85701

**Section 4. Agreements by Third Parties.**

Business Associate shall obtain satisfactory assurances from any agent or subcontractor who will have access to PHI that is received from Covered Entity, or created or received on behalf of the Covered Entity, and shall ensure that the agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate through this Agreement with respect to PHI. Business Associate shall require that any agent or subcontractor notify Business Associate of any instances in which PHI is used or disclosed in an unauthorized manner. Business Associate agrees to notify Covered Entity of any such unauthorized use or disclosure. Business Associate shall take steps to cure the breach of confidentiality and end the violation, or shall terminate the agency agreement or subcontract.

**Section 5. Access to Information.**

If Business Associates maintains Designated Record Set (DRS) documentation on behalf of Covered Entity, Business Associate agrees to provide access to the documentation maintained by the Covered Entity. Business Associate shall make available to Covered Entity such information for so long as it is maintained. If any individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to the Covered Entity. Business Associate shall not deny any individual's request for access to the individual's PHI. A denial of access to PHI requested is the responsibility of the Covered Entity.

**Section 6. Availability of PHI for Amendment.**

Within five (5) business days of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a DRS (for so long as the PHI is maintained in the DRS), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.

**Section 7. Accounting of Disclosures.**

Business Associate agrees to implement an appropriate record keeping and reporting process to enable it to provide the following information regarding disclosures of PHI: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed,

and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. If Business Associate receives a request for an accounting of disclosures, Business Associate shall forward such request to Covered Entity within a reasonable time frame to allow Covered Entity to prepare and deliver any required accounting of disclosures.

**Section 8. Restrictions on Certain Disclosure of Health Information.**

Business Associate agrees to restrict the disclosure of the protected health information of an individual, if Covered Entity agrees to a requested restriction by an individual. If Business Associate receives a request for a restriction, Business Associate shall forward such request to Covered Entity within five business days to allow Covered Entity to respond to the requested restriction.

**Section 9. Availability of Books and Records.**

Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from Covered Entity, or created or received on behalf of Covered Entity, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA Standards. Business Associate shall provide to Covered Entity a copy of any documentation that Business Associate provides to the Secretary within five business days, which documentation and information contained therein shall be kept strictly confidential by Covered Entity.

**Section 10. Return or Destruction of Information.**

At the termination of the Underlying Contract(s), Business Associate shall return or destroy all PHI received from Covered Entity, or created or received on behalf of Covered Entity, that Business Associate maintains in any form. Business Associate will retain no copies of PHI. If Business Associate determines that return or destruction of any PHI is not feasible, Business Associate shall notify Covered Entity of the reasons why return or destruction is not feasible. If destruction or return of PHI is not feasible, Business Associate shall not use PHI received from Covered Entity, or created or received on behalf of Covered Entity, in a manner other than those permitted or required by state and federal laws or for the purposes described herein.

**Section 11. Electronic Protected Health Information ("ePHI").**

If Business Associate creates, receives, maintains or transmits ePHI on behalf of Covered Entity, Business Associate agrees to (1) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Covered Entity's ePHI in accordance with Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations; (2) ensure that any third party agent or subcontractor who receives Covered Entity's ePHI from Business Associate agrees to implement equivalent administrative, physical and technical safeguards; and (3) deploy appropriate safeguards to implement the Secretary of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in

carrying out security standards; and (4) report any security incidents involving Covered Entity's ePHI within five business days of discovery.

**Section 12. Potential Breach of PHI.**

A. If Business Associate has reason to believe that personal information or PHI transmitted pursuant to this Agreement may have been accessed, disclosed, or acquired without proper authorization, Business Associate will, within fifteen business days of discovery, give City of Tucson notice and use commercially reasonable efforts to take actions as may be necessary to identify, mitigate and remediate the cause of the breach. A breach shall be treated as discovered by the BA as of the first day on which such breach is known to the BA, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the BA) or should reasonably have been known to the BA (or person referenced above) to have occurred. Business Associate shall use commercially reasonable efforts to mitigate and remediate any unauthorized access and shall devote such resources as may be reasonably practicable to accomplish that goal. The BA shall cooperate with all Covered Entity efforts, including providing any and all information necessary to enable Covered Entity to fully understand the nature and scope of the unauthorized access, including but not limited to identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach.

B. To the extent City of Tucson deems warranted, City of Tucson may provide notice to any or all individuals affected by any unauthorized access, whose personal and/or PHI may have been improperly accessed or disclosed that was not protected according to the Secretary of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards. In the event that the Business Associate's assistance is required to reinstall software, such assistance shall be provided at no cost to Covered Entity and in accordance with the Covered Entity's policies and standards. Business Associate must coordinate with City of Tucson any public notification to any individual, media outlet, or the Secretary of Health and Human Services.

If City of Tucson determines that notification is required, the BA will supply City of Tucson Compliance with the following information:

- (1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
- (2) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
- (3) A brief description of what the BA is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

C. Business Associate shall indemnify, hold harmless, and defend City of Tucson from and against any penalties, loss, liability, damage, costs, or expenses, including but not limited to reasonable attorneys' fees, arising from or pertaining to third-party claims or actions arising from Business Associate's breach of this agreement or the violation by Business Associate of any state or federal law applicable to the use, disclosure or protection of personal information or PHI.

D. City of Tucson has the right, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance therewith, within the limits of Business Associate's technical capabilities.

### **C. Miscellaneous.**

#### **Section 13. Limitation on Liability.**

In no event will Business Associate be liable hereunder for any consequential, indirect, exemplary, special, punitive or incidental damages, including any lost data, lost profits, and costs of procurement of substitute goods or services, arising from or relating to this Agreement; however caused and under any theory of liability (including negligence), even if Business Associate has been advised of the possibility of such damages.

#### **Section 14. Termination.**

Notwithstanding any provision to the contrary in the Underlying Contract(s), Covered Entity may terminate its participation in the Underlying Contract(s) immediately upon written notice to Business Associate without liability for such termination, in the event that Covered Entity determines that Business Associate has violated a material provision of this Agreement.

#### **Section 15. De-identified Health Information.**

Business Associate may de-identify any and all PHI and may create a "Limited Data Set" in accordance with 45 C.F.R. § 164.514(b)&(e). Covered Entity acknowledges and agrees that de-identified information is not PHI and that Business Associate may use such de-identified information for any lawful purpose. Use or disclosure of a Limited Data Set must comply with 45 CFR 164.514(e).

#### **Section 16. Third Party Beneficiaries.**

Nothing in this Addendum is intended to create any third party beneficiaries.

#### **Section 17. Definitions.**

**Personal Information** means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (a) Social security number;
- (b) Driver's license number or Arizona identification card number; or



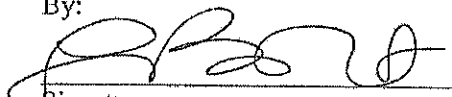
(c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

**Breach of the security of the system** means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency.

All terms not otherwise defined herein shall be defined in accordance with 45 CFR Parts 160 and 164.

ZOLL Data Systems, Inc.

By:

	<u>CFO</u>	<u>12/10/13</u>
Signature	Position	Date

	<u>Contract Administrator</u>	<u>12/9/13</u>
Signature	Position	Date



**TO: City of Tucson Department of Procurement**

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Tucson, AZ 85701

Attn: **Jenn Myers**

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

**ZOLL Medical Corporation**

Worldwide HeadQuarters

269 Mill Rd

Chelmsford, Massachusetts 01824-4105

(978) 421-9655 Main

(800) 348-9011

(978) 421-0015 Customer Support

FEDERAL ID#: 04-2711626

**QUOTATION 249563 V:1**

**DATE:** July 19, 2017

**TERMS:** Net 30 Days

**FOB:** Destination

\*\*

**FREIGHT:** Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221011-01	<b>X Series® Manual Monitor/Defibrillator \$14,995</b> with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5" (16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display.  <b>Accessories Included:</b> <ul style="list-style-type: none"><li>• Six (6) foot 3- Lead ECG cable</li><li>• MFC cable</li><li>• MFC CPR connector</li><li>• A/C power adapter/ battery charger</li><li>• A/C power cord</li><li>• One (1) roll printer paper</li><li>• 6.6 Ah Li-ion battery</li><li>• Carry case</li><li>• Declaration of Conformity</li><li>• Operator's Manual</li><li>• Quick Reference Guide</li></ul> <b>• One (1)-year EMS warranty</b>  <b>Advanced Options:</b> <b>Real CPR Help Expansion Pack \$ 995</b> CPR Dashboard quantitative depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) <ul style="list-style-type: none"><li>• See - Thru CPR artifact filtering</li></ul> <b>ZOLL NonInvasive Pacing Technology: \$2,550</b>	75	\$37,275.00	\$26,092.50	\$1,956,937.50 *

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**Page 1 Subtotal**

**\$1,956,937.50**

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Barry Herbert  
Territory Manager  
480-689-9362



## ZOLL Medical Corporation

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<b>Masimo Pulse Oximetry</b>				
		<b>SP02</b> <span style="float: right;"><b>\$1,795</b></span>				
		• Signal Extraction Technology (SET)				
		• Rainbow SET				
		<b>NIBP Welch Allyn Includes:</b> <span style="float: right;"><b>\$3,495</b></span>				
		• Smartcuff 10 foot Dual Lumen hose				
		• SureBP Reusable Adult Medium Cuff				
		<b>End Tidal Carbon Dioxide monitoring (ETCO2)</b>				
		<b>Oridion Microstream Technology:</b> <span style="float: right;"><b>\$4,995</b></span>				
		Order required Microstream tubing sets separately				
		<b>Interpretative 12- Lead ECG:</b> <span style="float: right;"><b>\$8,450</b></span>				
		• 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set				
2	8000-0330	SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors (4 ft)	150	\$295.00	\$206.50	\$30,975.00 *
3	8000-0294	SpO2 LNCS Adult Reusable Sensor (1 each)	150	\$295.00	\$206.50	\$30,975.00 *
4	8000-0580-01	Six hour rechargeable Smart battery	150	\$495.00	\$346.50	\$51,975.00 *
5	8300-0500-01	SurePower 4 Bay Charging System including 4 Battery Charging adapters	30	\$2,583.00	\$1,808.10	\$54,243.00 *
<b>Page 2 Subtotal</b>						<b>\$2,125,105.50</b>

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
6	8300-0002-02	Dual Lumen NIBP Hose, 5 Ft.- These no charge cables are to replace the 10 Ft. hoses that come standard with line 1.	75	\$125.00	No Charge	No Charge *
7	8300-0002-02	Dual Lumen NIBP Hose, 5 Ft.	75	\$125.00	\$87.50	\$6,562.50 *
8	REUSE-11-2MQ	Adult Cuff, 2-Tube, Twist lock connector	75	\$52.50	\$36.75	\$2,756.25 *
9	8300-0802-01	12-Lead one step ECG cable - AAMI includes 4-Lead trunk cable and removable precordial 6 lead set.	75	\$325.00	\$227.50	\$17,062.50 *
10	8000-000472-01	Multi- Tech Cell Modem Kit, CDMA, Verizon, US	75	\$595.00	\$416.50	\$31,237.50 *
11	8300-0520-01	Filterline Set Adult/Pediatric, Case of 25	16	\$275.00	\$192.50	\$3,080.00 *
12	8300-0524-01	Smart CapnoLine Plus O2 Adult (O2 tubing), Case of 25	16	\$355.00	\$248.50	\$3,976.00 *
13	8000-000901-01	ECG plain white paper- 80mm (pack of 6 rolls)	70	\$24.00	\$16.80	\$1,176.00 *
14	8900-0004	4 ECG electrodes/pouch (120 pouches / 480 electrodes)	4	\$96.00	\$67.20	\$268.80 *

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**Page 3 Subtotal \$2,191,225.05**

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Territory Manager  
480-689-9362



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QUOTATION 249563 V:1

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FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
15	8900-0400	CPR stat-padz HVP Multi-Function CPR Electrodes - 8 pair/case	20	\$560.00	\$392.00	\$7,840.00	*
16	8900-000220-01	OneStep Pediatric CPR Electrode (8 per case)	20	\$650.00	\$455.00	\$9,100.00	*
17	8300-000676	OneStep Cable, X Series	150	\$425.00	\$297.50	\$44,625.00	*
18	8009-0020	CPR-D Padz and CPR Stat Padz Connector for R Series	150	\$375.00	\$262.50	\$39,375.00	*
19	8778-200044	4 yrs Extended warranty, 1 PM per year, Battery replacement	75	\$5,570.00	\$5,040.00	\$378,000.00	*
20	20100000101011010	AED Plus with Graphical Cover. Includes: LCD screen showing voice prompt messages, device advisory messages, elapsed time, shock count and chest compression bar. Supplied with Public Safety PASS Cover, Softcase, Operator's Guide and (5) five year limited warranty.	20	\$1,995.00	\$1,197.00	\$23,940.00	*
21	8000-0807-01	Type 123 Lithium Batteries, quantity of ten (10) with storage sleeve	40	\$75.00	\$52.50	\$2,100.00	*
22	8900-0400	CPR stat-padz HVP Multi-Function CPR Electrodes - 8 pair/case	5	\$560.00	\$392.00	\$1,960.00	*
						<b>Page 4 Subtotal</b>	<b>\$2,698,165.05</b>

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
23	8900-0810-01	<b>pedi•padz® II Pediatric Multi-Function Electrodes</b> - Designed for use with the AED Plus. The AED recognizes when pedi•padz II are connected and automatically proceeds with a pediatric ECG and adjusts energy to pediatric levels. Twenty four (24) month shelf-life. One pair.	40	\$95.00	\$66.50	\$2,660.00 *
24	8008-0050-01	<b>AED Plus Trainer2 Unit.</b> The AED Plus Trainer2 can be used by trainers to train users of the AED Plus. Supplied with wireless Remote Controller, one set of <b>CPR-D</b> training electrodes, one pair of replacement gels, 4 D-Cell batteries, 2 AA batteries, Operators Guide, and a (6) six month limited warranty.	3	\$379.00	No Charge	No Charge *
25	7800-0214	<b>MRX Biphasic w/Pacing, 12 lead + 3 parameters Trade-In-</b> Trade-in value is subject to change after initial purchase.	55		(\$8,534.00)	(\$469,370.00) **
26	7800-0227	<b>Phillips FR3 Trade-In</b>	56		(\$100.00)	(\$5,600.00) **
<b>Page 5 Subtotal</b>						<b>\$2,225,855.05</b>

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<p>**Trade-In Value valid if all equipment purchased is in good operational and cosmetic condition, and includes all standard accessories. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.</p> <p>*Reflects Discount Pricing.</p> <p>This quotation has been quoted with payment terms of NET 30. For financing options, please refer to item 30 on the Method of Approach response document.</p> <p>No Charge Items and Trade Values are only valid for the initial purchase with the City of Tucson for all items within this quotation.</p> <p>Upon the return of 75 multi function cables and 75 CPR connectors included in the shipment of line one, ZOLL Medical Corporation will issue a credit of \$11,500.00 on the City of Tucson Fire's account for future purchases.</p>				
TOTAL						\$2,225,855.05

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## ZOLL QUOTATION GENERAL TERMS & CONDITIONS

**1. ACCEPTANCE.** This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgement by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract") the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

**2. DELIVERY AND RISK OF LOSS.** Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

**3. TERMS OF PAYMENT.** Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

**4. CREDIT APPROVAL.** All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

**5. TAXES & FEES.** The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

**6. WARRANTY.** (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect 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 Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation; or (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 Medical Corporation; or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. SOFTWARE LICENSE.** (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the product of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Medical Corporation Software.

**8. DELAYS IN DELIVERY.** ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

**9. LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATION'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

**10. PATENT INDEMNITY.** ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

**11. CLAIMS FOR SHORTAGE.** Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

**12. RETURNS AND CANCELLATION.** (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

**13. APPLICABLE LAW.** This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

**14. COMPLIANCE WITH LAWS.** (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

**15. NON-WAIVER OF DEFAULT.** In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

**16. ASSIGNMENT.** This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

**17. TITLE TO PRODUCTS.** Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

### 18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

**VETERAN'S EMPLOYMENT** - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

**EMPLOYMENT OF HANDICAPPED** - If this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

**EQUAL OPPORTUNITY EMPLOYMENT** - If this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth as 41 CFR 60-1.40.

**19. VALIDITY OF QUOTATION.** This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

**20. GENERAL.** Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.



### **3. ZOLL's Response to Additional Information to Intent to Negotiate**

**Jenn Myers - RE: City of Tucson, RFP # 171769, Cardiac Monitors**

---

**From:** Jennifer Curran <JCurran@zoll.com>  
**To:** Jenn Myers <Jenn.Myers@tucsonaz.gov>  
**Date:** 8/8/2017 4:57 AM  
**Subject:** RE: City of Tucson, RFP # 171769, Cardiac Monitors  
**Cc:** Mike Borkowski <MBorkowski@zoll.com>, Ryan Grulke <RGrulke@zoll.com>, "A..."  
**Attachments:** Tucson BAA 121013.pdf; Tucson\_InsRequirements\_PJC 8.7.2017 (rvsd).docx

---

Good Morning Jenn,

Please see attached a copy of the current executed BAA with ZOLL Data. I hope it is sufficient for supporting this potential award?

The word document attached is the response from my Director of Risk Management. Her note back to me stated: *"With respect to the Insurance requirements, I believe Tucson was only asking why we felt both Professional and Privacy Liability were not applicable. We have the coverage, so I don't mind leaving it in and made the appropriate change. I didn't see any other comments with respect to Insurance so I left all my other redlines."*

Please advise if this is acceptable?

Also, there is concern regarding the mark up of the EULA and we wanted to see if you and your team are available today at 2:30 EST for a quick conference call with my legal department?

Thanks,

Jen

Jennifer Curran  
Contracts Manager  
978-421-9185 Phone  
603-380-1995 Cell  
978-421-0005 Fax  
jcurran@zoll.com  
www.zoll.com

*Office Hours: 7:30am – 4:00pm EST*

*An Asahi Kasei Group Company*

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**From:** Mike Borkowski  
**Sent:** Friday, August 04, 2017 12:21 AM  
**To:** Jennifer Curran <JCurran@zoll.com>; Patty Comb <PComb@zoll.com>  
**Cc:** Amy Coffin <ACoffin@zoll.com>

**Subject:** FW: City of Tucson, RFP # 171769, Cardiac Monitors  
**Importance:** High

Jen / Patty

Can you please look over the attached letter from the City of Tucson?

--

Kind Regards,  
Mike

Mike Borkowski  
Strategic Account Manager  
ZOLL Medical Corporation  
480-299-8900 Wireless / Text  
[Mborkowski@zoll.com](mailto:Mborkowski@zoll.com)

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

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**From:** Jenn Myers [<mailto:Jenn.Myers@tucsonaz.gov>]  
**Sent:** Wednesday, August 02, 2017 8:42 AM  
**To:** Amy Coffin <[ACoffin@zoll.com](mailto:ACoffin@zoll.com)>  
**Cc:** Barry Herbert <[BHerbert@zoll.com](mailto:BHerbert@zoll.com)>; Mike Borkowski <[MBorkowski@zoll.com](mailto:MBorkowski@zoll.com)>; Ryan Grulke <[RGrulke@zoll.com](mailto:RGrulke@zoll.com)>  
**Subject:** City of Tucson, RFP # 171769, Cardiac Monitors

Good morning Amy,

My apologies that it took so long on the City's end. Please see the attached letter regarding the technology pieces that still need to be included. Please let me know if you have any questions.

Thank you,  
Jenn

*Jenn Myers*  
Senior Contract Officer  
Department of Procurement  
255 W Alameda, 6th Floor  
Tucson, AZ 85726  
[520-837-4137](tel:520-837-4137)  
[520-791-4735](tel:520-791-4735) Fax



**INSURANCE:**

The Contractor agrees to:

- A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. ~~All policies will contain an endorsement providing that written notice be given to the City at least 30 days prior to termination or cancellation in coverage in any policy, and 10 days notice for cancellation due to non-payment in premium. Contractor will not cancel any of the required coverage without first providing thirty (30) days written notice to the City.~~
- B. The Commercial General Liability Insurance and Commercial Automobile Liability Insurance policies will include the City as an additional insured, but only with respect to liability arising directly from ongoing operations performed by the Contractor on behalf of the City out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. With respect to sole negligence of the contractor, the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable

COVERAGE	LIMITS OF LIABILITY
<b>I. Commercial General Liability:</b>	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Project	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
<b>II. Commercial Automobile Liability</b>	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
<b>III. Workers' Compensation (applicable to the State of Arizona)*1</b>	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
<b>V. Professional Liability – Technology Errors &amp; Omissions - In addition to I, II, III</b>	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract. Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor	

warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

**Network Security (Cyber) and Privacy Liability – In addition to I, II, III**

Each Claim

Annual Aggregate

\$1,000,000

\$2,000,000

Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include loss of use, breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

\*<sup>1</sup> Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

**D. ADDITIONAL INSURANCE REQUIREMENTS:** Policies shall be endorsed to include the following provisions:

1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor (including Worker's Compensation).
2. With respect to sole negligence of the Contractor, The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

**E. NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require 10 days written notice from the Contractor to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.

F. **ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

G. **VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department of Procurement.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

H. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

I. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance.



**TO: City of Tucson Department of Procurement**

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: **Jenn Myers**

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

**ZOLL Medical Corporation**

Worldwide Headquarters  
269 Mill Rd  
Chelmsford, Massachusetts 01824-4105  
(978) 421-9655 Main  
(800) 348-9011  
(978) 421-0015 Customer Support  
FEDERAL ID#: 04-2711626

**QUOTATION 249563 V:1**

DATE: July 19, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221011-01	<b>X Series ® Manual Monitor/Defibrillator \$14,995</b> with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5" (16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display.  <b>Accessories Included:</b> <ul style="list-style-type: none"><li>• Six (6) foot 3- Lead ECG cable</li><li>• MFC cable</li><li>• MFC CPR connector</li><li>• A/C power adapter/ battery charger</li><li>• A/C power cord</li><li>• One (1) roll printer paper</li><li>• 6.6 Ah Li-ion battery</li><li>• Carry case</li><li>• Declaration of Conformity</li><li>• Operator's Manual</li><li>• Quick Reference Guide</li></ul> <b>• One (1)-year EMS warranty</b>  <b>Advanced Options:</b> <b>Real CPR Help Expansion Pack \$ 995</b> CPR Dashboard quantitative depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) <ul style="list-style-type: none"><li>• See - Thru CPR artifact filtering</li></ul> <b>ZOLL Noninvasive Pacing Technology: \$2,550</b>	75	\$37,275.00	\$26,092.50	\$1,956,937.50 *

This quote is made subject to ZOLL's standard commercial terms and conditions (ZOLL T's + C's) which accompany this quote. Any purchase order (P.O.) issued in response to this quotation will be deemed to incorporate ZOLL T's + C's. Any modification of the ZOLL T's + C's must be set forth or referenced in the customer's P.O. No commercial terms or conditions shall apply to the sale of goods or services governed by this quote and the customer's P.O. unless set forth in or referenced by either document.

**Page 1 Subtotal**

**\$1,956,937.50**

1. DELIVERY WILL BE MADE 60-90 DAYS AFTER RECEIPT OF ACCEPTED PURCHASE ORDER.
2. PRICES QUOTED ARE VALID FOR 90 DAYS.
3. APPLICABLE TAX WILL BE ADDED AT THE TIME OF INVOICING.
4. ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTABLE BY ZOLL.
5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015 OR EMAIL TO [ESALES@ZOLL.COM](mailto:ESALES@ZOLL.COM).
6. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
7. PLACE YOUR ACCESSORY ORDERS ONLINE BY VISITING [www.zollwebstore.com](http://www.zollwebstore.com).

Barry Herbert  
Territory Manager  
480-689-9362





## ZOLL Medical Corporation

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(978) 421-9655 Main  
(800) 348-9011  
(978) 421-0015 Customer Support  
FEDERAL ID#: 04-2711626

**TO: City of Tucson Department of Procurement**

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: **Jenn Myers**

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

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\*\*

**FREIGHT:** Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<b>Masimo Pulse Oximetry</b>				
		<b>SP02 \$1,795</b>				
		• Signal Extraction Technology (SET)				
		• Rainbow SET				
		<b>NIBP Welch Allyn Includes: \$3,495</b>				
		• Smartcuff 10 foot Dual Lumen hose				
		• SureBP Reusable Adult Medium Cuff				
		<b>End Tidal Carbon Dioxide monitoring (ETCO2)</b>				
		<b>Orion Microstream Technology: \$4,995</b>				
		Order required Microstream tubing sets separately				
		<b>Interpretative 12- Lead ECG: \$8,450</b>				
		• 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set				
2	8000-0330	SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors (4 ft)	150	\$295.00	\$206.50	\$30,975.00 *
3	8000-0294	SpO2 LNCS Adult Reusable Sensor (1 each)	150	\$295.00	\$206.50	\$30,975.00 *
4	8000-0580-01	Six hour rechargeable Smart battery	150	\$495.00	\$346.50	\$51,975.00 *
5	8300-0500-01	SurePower 4 Bay Charging System including 4 Battery Charging adapters	30	\$2,583.00	\$1,808.10	\$54,243.00 *

This quote is made subject to ZOLL's standard commercial terms and conditions (ZOLL T's + C's) which accompany this quote. Any purchase order (P.O.) issued in response to this quotation will be deemed to incorporate ZOLL T's + C's. Any modification of the ZOLL T's + C's must be set forth or referenced in the customer's P.O. No commercial terms or conditions shall apply to the sale of goods or services governed by this quote and the customer's P.O. unless set forth in or referenced by either document.

**Page 2 Subtotal \$2,125,105.50**

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2. PRICES QUOTED ARE VALID FOR 90 DAYS.
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5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015 OR EMAIL TO [ESALES@ZOLL.COM](mailto:ESALES@ZOLL.COM).
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Territory Manager  
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255 W. Alameda, 6th Floor  
Tucson, AZ 85701

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TERMS: Net 30 Days

FOB: Destination

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
6	8300-0002-02	Dual Lumen NIBP Hose, 5 Ft.- These no charge cables are to replace the 10 Ft. hoses that come standard with line 1.	75	\$125.00	No Charge	No Charge *
7	8300-0002-02	Dual Lumen NIBP Hose, 5 Ft.	75	\$125.00	\$87.50	\$6,562.50 *
8	REUSE-11-2MQ	Adult Cuff, 2-Tube, Twist lock connector	75	\$52.50	\$36.75	\$2,756.25 *
9	8300-0802-01	12-Lead one step ECG cable - AAMI includes 4-Lead trunk cable and removable precordial 6 lead set.	75	\$325.00	\$227.50	\$17,062.50 *
10	8000-000472-01	Multi- Tech Cell Modem Kit, CDMA, Verizon, US	75	\$595.00	\$416.50	\$31,237.50 *
11	8300-0520-01	Filterline Set Adult/Pediatric, Case of 25	16	\$275.00	\$192.50	\$3,080.00 *
12	8300-0524-01	Smart CapnoLine Plus O2 Adult (O2 tubing), Case of 25	16	\$355.00	\$248.50	\$3,976.00 *
13	8000-000901-01	ECG plain white paper- 80mm (pack of 6 rolls)	70	\$24.00	\$16.80	\$1,176.00 *
14	8900-0004	4 ECG electrodes/pouch (120 pouches / 480 electrodes)	4	\$96.00	\$67.20	\$268.80 *

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Page 3 Subtotal **\$2,191,225.05**

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2. PRICES QUOTED ARE VALID FOR 90 DAYS.
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5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015 OR EMAIL TO [ESALES@ZOLL.COM](mailto:ESALES@ZOLL.COM).
6. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
7. PLACE YOUR ACCESSORY ORDERS ONLINE BY VISITING [www.zollwebstore.com](http://www.zollwebstore.com).

Barry Herbert  
Territory Manager  
480-689-9362



## ZOLL Medical Corporation

Worldwide Headquarters  
269 Mill Rd  
Chelmsford, Massachusetts 01824-4105  
(978) 421-9655 Main  
(800) 348-9011  
(978) 421-0015 Customer Support  
FEDERAL ID#: 04-2711626

**TO: City of Tucson Department of Procurement**

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: **Jenn Myers**

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

**QUOTATION 249563 V:1**

**DATE:** July 19, 2017

**TERMS:** Net 30 Days

**FOB:** Destination \*\*

**FREIGHT:** Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
15	8900-0400	CPR stat*padz HVP Multi-Function CPR Electrodes - 8 pair/case	20	\$560.00	\$392.00	\$7,840.00 *
16	8900-000220-01	OneStep Pediatric CPR Electrode (8 per case)	20	\$650.00	\$455.00	\$9,100.00 *
17	8300-000676	OneStep Cable, X Series	150	\$425.00	\$297.50	\$44,625.00 *
18	8009-0020	CPR-D Padz and CPR Stat Padz Connector for R Series	150	\$375.00	\$262.50	\$39,375.00 *
19	8778-200044	4 yrs Extended warranty, 1 PM per year, Battery replacement	75	\$5,570.00	\$5,040.00	\$378,000.00 *
20	20100000101011010	AED Plus with Graphical Cover. Includes: LCD screen showing voice prompt messages, device advisory messages, elapsed time, shock count and chest compression bar. Supplied with Public Safety PASS Cover, Softcase, Operator's Guide and (5) five year limited warranty.	20	\$1,995.00	\$1,197.00	\$23,940.00 *
21	8000-0807-01	Type 123 Lithium Batteries, quantity of ten (10) with storage sleeve	40	\$75.00	\$52.50	\$2,100.00 *
22	8900-0400	CPR stat*padz HVP Multi-Function CPR Electrodes - 8 pair/case	5	\$560.00	\$392.00	\$1,960.00 *

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**Page 4 Subtotal \$2,698,165.05**

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Barry Herbert  
Territory Manager  
480-689-9362



**TO: City of Tucson Department of Procurement**

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: **Jenn Myers**

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

**ZOLL Medical Corporation**

Worldwide Headquarters

269 Mill Rd

Chelmsford, Massachusetts 01824-4105

(978) 421-9655 Main

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FEDERAL ID#: 04-2711626

**QUOTATION 249563 V:1**

**DATE:** July 19, 2017

**TERMS:** Net 30 Days

**FOB:** Destination

\*\*

**FREIGHT:** Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
23	8900-0810-01	<b>pedi-padz® II Pediatric Multi-Function Electrodes</b> - Designed for use with the AED Plus. The AED recognizes when pedi-padz II are connected and automatically proceeds with a pediatric ECG and adjusts energy to pediatric levels. Twenty four (24) month shelf-life. <b>One pair.</b>	40	\$95.00	\$66.50	\$2,660.00 *
24	8008-0050-01	<b>AED Plus Trainer2 Unit.</b> The AED Plus Trainer2 can be used by trainers to train users of the AED Plus. Supplied with wireless Remote Controller, one set of <b>CPR-D</b> training electrodes, one pair of replacement gels, 4 D-Cell batteries, 2 AA batteries, Operators Guide, and a (6) six month limited warranty.	3	\$379.00	No Charge	No Charge *
25	7800-0214	<b>MRX Biphasic w/Pacing, 12 lead + 3 parameters Trade-In-</b> <i>Trade-in value is subject to change after initial purchase.</i>	55		(\$8,534.00)	(\$469,370.00) **
26	7800-0227	<b>Phillips FR3 Trade-In</b>	56		(\$100.00)	(\$5,600.00) **

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**Page 5 Subtotal**

**\$2,225,855.05**

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Barry Herbert  
Territory Manager  
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255 W. Alameda, 6th Floor  
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**QUOTATION 249563 V:1**

DATE: July 19, 2017

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FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<p>**Trade-In Value valid if all equipment purchased is in good operational and cosmetic condition, and includes all standard accessories. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.</p> <p>*Reflects Discount Pricing.</p> <p>This quotation has been quoted with payment terms of NET 30. For financing options, please refer to Item 30 on the Method of Approach response document.</p> <p>No Charge Items and Trade Values are only valid for the initial purchase with the City of Tucson for all items within this quotation.</p> <p>Upon the return of 75 multi function cables and 75 CPR connectors included in the shipment of line one, ZOLL Medical Corporation will issue a credit of \$11,500.00 on the City of Tucson Fire's account for future purchases.</p>				
TOTAL						\$2,225,855.05

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Barry Herbert  
Territory Manager  
480-689-9362

## ZOLL QUOTATION GENERAL TERMS & CONDITIONS

**1. ACCEPTANCE.** This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgement by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract") the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

**2. DELIVERY AND RISK OF LOSS.** Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

**3. TERMS OF PAYMENT.** Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

**4. CREDIT APPROVAL.** All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

**5. TAXES & FEES.** The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

**6. WARRANTY.** (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect 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 Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation, or (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 Medical Corporation, or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. SOFTWARE LICENSE.** (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the product of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This license applies only to ZOLL Medical Corporation Software.

**8. DELAYS IN DELIVERY.** ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

**9. LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATION'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

**10. PATENT INDEMNITY.** ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

**11. CLAIMS FOR SHORTAGE.** Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

**12. RETURNS AND CANCELLATION.** (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

**13. APPLICABLE LAW.** This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

**14. COMPLIANCE WITH LAWS.** (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

**15. NON-WAIVER OF DEFAULT.** In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

**16. ASSIGNMENT.** This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

**17. TITLE TO PRODUCTS.** Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

### 18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

**VETERAN'S EMPLOYMENT** - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

**EMPLOYMENT OF HANDICAPPED** - If this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

**EQUAL OPPORTUNITY EMPLOYMENT** - If this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth as 41 CFR 60-1.40.

**19. VALIDITY OF QUOTATION.** This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

**20. GENERAL.** Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.

**Jenn Myers - RE: City of Tucson, RFP # 171769, Cardiac Monitors**

---

**From:** Jennifer Curran <JCurran@zoll.com>  
**To:** Jenn Myers <Jenn.Myers@tucsonaz.gov>  
**Date:** 8/11/2017 6:13 AM  
**Subject:** RE: City of Tucson, RFP # 171769, Cardiac Monitors  
**Cc:** Ryan Grulke <RGrulke@zoll.com>, Mike Borkowski <MBorkowski@zoll.com>, "A..."

---

Hi Jenn,

I wanted to get the answers we have back to you. I only have the third party question remaining & will send you that response ASAP.

Please let me know if you have any questions or if we missed anything.

1. What is uptime?
  - 99.9%
2. What are the standard maintenance windows?
  - Every third month we have a 15 minute window of downtime.
3. What warranty applies to the site content?
  - No warranty applies. That is consistent with common practice for free technology.
4. Are there any associated third party products?
  - TBD
5. Which vendor is hosting the data?
  - Zayo

Thanks,

Jen

Jennifer Curran

Contracts Manager

978-421-9185 Phone

603-380-1995 Cell

978-421-0005 Fax

jcurran@zoll.com

www.zoll.com

*Office Hours: 7:30am – 4:00pm EST*

*An Asahi Kasei Group Company*

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---

**From:** Jenn Myers [Jenn.Myers@tucsonaz.gov]

**Sent:** Thursday, August 10, 2017 6:32 PM

**To:** Jennifer Curran <JCurran@zoll.com>

**Subject:** RE: City of Tucson, RFP # 171769, Cardiac Monitors

Hi Jennifer,

Do you know if you were able to obtain the information about the system that your lawyer was going to obtain after the call?

Thank you,  
Jenn

*Jenn Myers*

Senior Contract Officer

Department of Procurement

255 W Alameda, 6th Floor

Tucson, AZ 85726

520-837-4137

520-791-4735 Fax

>>> Jennifer Curran <[JCurran@zoll.com](mailto:JCurran@zoll.com)> 8/10/2017 5:11 AM >>>  
That does help and when are you looking to deploy the units to the field?

Thanks,  
Jen

Jennifer Curran  
Contracts Manager  
978-421-9185 Phone  
603-380-1995 Cell  
978-421-0005 Fax  
[jcurran@zoll.com](mailto:jcurran@zoll.com)

[www.zoll.com](http://www.zoll.com)

*Office Hours: 7:30am – 4:00pm EST*

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---

**From:** Jenn Myers [<mailto:Jenn.Myers@tucsonaz.gov>]  
**Sent:** Wednesday, August 09, 2017 6:25 PM  
**To:** Jennifer Curran <[JCurran@zoll.com](mailto:JCurran@zoll.com)>  
**Subject:** RE: City of Tucson, RFP # 171769, Cardiac Monitors

Hello Jennifer,



We are hoping to have a final contract awarded and a P.O. by 9/1 if that helps!

Thanks,  
Jenn

*Jenn Myers*

Senior Contract Officer  
Department of Procurement  
255 W Alameda, 6th Floor  
Tucson, AZ 85726  
520-837-4137  
520-791-4735 Fax

>>> Jennifer Curran <[JCurran@zoll.com](mailto:JCurran@zoll.com)> 8/9/2017 12:20 PM >>>  
Hi Jenn,

I was mistaken with the 2 week lead-time. Sorry about that. Can you provide the "need by" date so I can get with production to find out what we can do?

Thanks,  
Jen

Jennifer Curran  
Contracts Manager  
978-421-9185 Phone  
603-380-1995 Cell  
978-421-0005 Fax  
[jcurran@zoll.com](mailto:jcurran@zoll.com)  
[www.zoll.com](http://www.zoll.com)  
Office Hours: 7:30am – 4:00pm EST

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---

**From:** Jenn Myers [<mailto:Jenn.Myers@tucsonaz.gov>]  
**Sent:** Wednesday, August 09, 2017 2:11 PM  
**To:** Jennifer Curran <[JCurran@zoll.com](mailto:JCurran@zoll.com)>  
**Subject:** Fwd: City of Tucson, RFP # 171769, Cardiac Monitors

These are the documents Lloyd is referring to.

>>> Jenn Myers 8/2/2017 8:41 AM >>>

Good morning Amy,

My apologies that it took so long on the City's end. Please see the attached letter regarding the technology pieces that still need to be included. Please let me know if you have any questions.

Thank you,

Jenn

*Jenn Myers*

Senior Contract Officer

Department of Procurement

255 W Alameda, 6th Floor

Tucson, AZ 85726

520-837-4137

520-791-4735 Fax

**Jenn Myers - RE: City of Tucson, RFP # 171769, Cardiac Monitors**


---

**From:** Jennifer Curran <JCurran@zoll.com>  
**To:** Jenn Myers <Jenn.Myers@tucsonaz.gov>  
**Date:** 8/11/2017 11:09 AM  
**Subject:** RE: City of Tucson, RFP # 171769, Cardiac Monitors  
**Cc:** Amy Coffin <ACoffin@zoll.com>, Mike Borkowski <MBorkowski@zoll.com>, "Ry..."

---

Hi Jenn,

Here a list of 3<sup>rd</sup> party products used to support 12-Lead

Vendor	Products/Purpose
Alchemy	Security Monitoring
Alertsite	Alertsite - Site Status
Alien Vault	Security log collection
AppDynamics	Application Performance Monitoring
Avamar	VM Backups
Cisco	Firewall
DataStax - Cassandra Support	Cassandra Database
e-Fax	Faxing
F5	F5 - Load balancing
Microsoft	SQL, IIS, .Net
Palo Alto	Palo Alto Firewalls
PRTG	System monitoring
Riverbed	Load balancing
SunGard	Data Center IP relay for E-series 12 Leads
Symantec	Virus Control
VMWare	Virtualization platform
Zayo	Data Center IaaS provider

In addition to the above list used to support the operation of 12-Lead, the web application itself uses locomp plot controls, Microdoc and PDFSharp pdf generation utilities and Microsoft Report Viewer controls for report rendering/navigation.

Let us know if you need anything further.

Thanks,  
 Jen

Jennifer Curran  
 Contracts Manager  
 978-421-9185 Phone

603-380-1995 Cell

978-421-0005 Fax

jcurran@zoll.com

www.zoll.com

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---

**From:** Jenn Myers [[Jenn.Myers@tucsonaz.gov](mailto:Jenn.Myers@tucsonaz.gov)]

**Sent:** Friday, August 11, 2017 10:24 AM

**To:** Jennifer Curran <[JCurran@zoll.com](mailto:JCurran@zoll.com)>

**Cc:** Amy Coffin <[ACoffin@zoll.com](mailto:ACoffin@zoll.com)>; Mike Borkowski <[MBorkowski@zoll.com](mailto:MBorkowski@zoll.com)>; Ryan Grulke <[RGrulke@zoll.com](mailto:RGrulke@zoll.com)>

**Subject:** RE: City of Tucson, RFP # 171769, Cardiac Monitors

Thank you!

*Jenn Myers*

Senior Contract Officer

Department of Procurement

255 W Alameda, 6th Floor

Tucson, AZ 85726

520-837-4137

520-791-4735 Fax

>>> Jennifer Curran <[JCurran@zoll.com](mailto:JCurran@zoll.com)> 8/11/2017 6:13 AM >>>

Hi Jenn,

I wanted to get the answers we have back to you. I only have the third party question remaining & will send you that response ASAP.

Please let me know if you have any questions or if we missed anything.

1. What is uptime?
  - 99.9%
2. What are the standard maintenance windows?
  - Every third month we have a 15 minute window of downtime.
3. What warranty applies to the site content?
  - No warranty applies. That is consistent with common practice for free technology.
4. Are there any associated third party products?

- TBD
- 5. Which vendor is hosting the data?
  - Zayo

Thanks,

Jen

Jennifer Curran

Contracts Manager

978-421-9185 Phone

603-380-1995 Cell

978-421-0005 Fax

jcurran@zoll.com

www.zoll.com

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---

**From:** Jenn Myers [<mailto:Jenn.Myers@tucsonaz.gov>]

**Sent:** Thursday, August 10, 2017 6:32 PM

**To:** Jennifer Curran <[JCurran@zoll.com](mailto:JCurran@zoll.com)>

**Subject:** RE: City of Tucson, RFP # 171769, Cardiac Monitors

Hi Jennifer,

Do you know if you were able to obtain the information about the system that your lawyer was going to obtain after the call?

Thank you,

Jenn

*Jenn Myers*

Senior Contract Officer

Department of Procurement

255 W Alameda, 6th Floor

Tucson, AZ 85726

520-837-4137

520-791-4735 Fax

>>> Jennifer Curran <[JCurran@zoll.com](mailto:JCurran@zoll.com)> 8/10/2017 5:11 AM >>>

That does help and when are you looking to deploy the units to the field?

Thanks,  
Jen

Jennifer Curran  
Contracts Manager  
978-421-9185 Phone  
603-380-1995 Cell  
978-421-0005 Fax  
jcurran@zoll.com  
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*Jenn Myers*

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**Subject:** Fwd: City of Tucson, RFP # 171769, Cardiac Monitors

These are the documents Lloyd is referring to.  
>>> Jenn Myers 8/2/2017 8:41 AM >>>  
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Jenn

*Jenn Myers*

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255 W Alameda, 6th Floor  
Tucson, AZ 85726  
520-837-4137

520-791-4735 Fax



#### **4. City of Tucson's Request for Additional Information to Intent to Negotiate**



**CITY OF  
TUCSON**

DEPARTMENT OF  
PROCUREMENT

August 2, 2017

Amy Coffin  
Bid & Proposals Coordinator  
ZOLL Medical Corporation  
269 Mill Road  
Chelmsford, MA 01824  
[acoffin@zoll.com](mailto:acoffin@zoll.com)

*Sent via electronic mail, this day*

**Subject: Request for Proposal No. 171769 – Cardiac Monitors  
Additional Information to Intent to Negotiate**

Dear Ms. Coffin:

The City of Tucson has completed the evaluation of submittals received in response to the subject solicitation. Based upon the recommendation of the evaluation committee, the City is inviting your firm to enter negotiations. Specifically, the City requests the following:

**1. Special Terms and Conditions: Insurance**

a. The City requires Professional Liability – Technology Errors & Omissions as well as Network Security (Cyber) and Privacy Liability as part of the insurance requirements due to the fact that the City will be utilizing Zoll's web-based software system. Please explain why Zoll feels the requirement will not be applicable.

**2. Zoll EULA**

The City requests that the following revisions be made to the EULA. Please see the attached redlined document.

**3. City of Tucson software rider addendum**

The City requires that the attached software rider addendum will take precedence over the Zoll provided EULA. Please confirm your understanding of this requirement.

**4. City of Tucson Business Associate Agreement**

The City requires that the attached Business Associate Agreement be included in the contract. Please indicate specific uses of PHI, if any, in Section A. Allowable Uses of PHI of the referenced agreement.

This Notice of Intent to Negotiate is not an intent to award a contract and does not establish a contractual relationship between the firm and the City. In the event that the City is not able to negotiate a satisfactory contract with the firm, the City will terminate negotiations. Please submit a written response to my attention via e-mail to [Jenn.myers@tucsonaz.gov](mailto:Jenn.myers@tucsonaz.gov) as soon as possible. Please contact me via e-mail or at (520) 837-4137 with questions regarding the items above.

Sincerely,

Jenn Myers  
Senior Contract Officer

**INSURANCE:**

The Contractor agrees to:

- A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least 30 days prior to termination or cancellation in coverage in any policy, and 10 days notice for cancellation due to non-payment in premium.
- B. The Commercial General Liability Insurance and Commercial Automobile Liability Insurance policies will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable

COVERAGE	LIMITS OF LIABILITY
<b>I. Commercial General Liability:</b>	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Project	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
<b>II. Commercial Automobile Liability</b>	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
<b>III. Workers' Compensation (applicable to the State of Arizona)*<sup>1</sup></b>	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
<b>V. Professional Liability – Technology Errors &amp; Omissions - In addition to I, II, III</b>	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

\*<sup>1</sup> Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

- D. **ADDITIONAL INSURANCE REQUIREMENTS:** Policies shall be endorsed to include the following provisions:
  1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor (including Worker's Compensation).

ADMINISTRATION • DESIGN AND CONSTRUCTION SERVICES • GOODS AND SERVICES  
 MAIL SERVICES • S.A.M.M. (SURPLUS AUCTION MATERIALS MANAGEMENT)  
 CITY HALL • 255 W. ALAMEDA • P.O. BOX 27210 • TUCSON, AZ 85726-7210  
 (520) 791-4217 • FAX (520) 791-4735 • TTY (520) 791-2639  
[www.tucsonprocurement.com](http://www.tucsonprocurement.com)

2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
  3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- E. NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require 10 days written notice from the Contractor to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.
- F. ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- G. VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.
- All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.
- All certificates required by this Contract shall be sent directly to the Department of Procurement.
- The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- H. SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies ~~or~~ Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- I. EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance.

ZOLL Online Terms of Service  
ZOLL Online Terms of Use

Last updated on 9/8/2014

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~~We may, from time to time, modify or change the Terms of Use. Any revised version of the Terms of Use will be posted on our Site and will govern your future use of the Site. Please review these Terms of Use periodically.~~

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(a) Use of the Site and certain Site Content requires you to be 18 years of age or older.

(b) Whenever you submit information to us, you agree to provide true, accurate and complete information.

(c) Accounts or Registration. We may impose restrictions on your ability to establish an account or register for certain activities (e.g., age limits, limitations on the number of accounts, etc.).

When registering an account, you may need to select a username ("ID") and password. You are responsible for keeping your ID and password, and other account information, confidential and are fully responsible for all activities that occur under your account, whether or not you authorized such activities. You agree to notify us immediately of any breach of security or unauthorized use of your account or ID and password.

#### 3. LIMITATION, SUSPENSION OR TERMINATION

~~(a) We may, with agreement by Customer in our sole discretion, temporarily or permanently change, limit, suspend or terminate your access to the Site (including any Site Content or User Content), without prior notice. We may do so based on changes to our business practices (e.g., eliminating a service, etc.), if you violate the letter or spirit of these Terms of Use, or for any other lawful reason. You agree that we are not liable to you or any third party for any such action.~~

(b) Any limitation, suspension or termination we impose shall not alter your obligations to us under these Terms of Use. The provisions of these Terms of Use which by their nature should survive any such action on our part shall survive.

#### 4. ACCEPTABLE USE

(a) The Site (including, without limitation, Site Content and User Content) is provided for your information and limited use. When using the Site, you agree to comply with these Terms of Use, and all applicable international, federal, state and local laws.

(b) Except as expressly permitted by these Terms of Use, you may not:

- use the Site in an unlawful or fraudulent manner or for such purposes, to collect personally identifiable information, or to impersonate other users;
- modify our copyright/trademark or other proprietary rights notices, or interfere with the security-related features of the Site (e.g., those that prevent or restrict copying Site Content);
- use the Site in any way to knowingly manipulate or distort, or knowingly undermine the integrity and accuracy of data, or knowingly take any action to interfere with, damage or disrupt any part of the Site;
- use the Site to send, knowingly receive, upload/post or download, any material which does not comply with our content standards;
- use the Site to transmit or facilitate the transmission of any unsolicited or unauthorized advertising or promotional material;
- use the Site to knowingly transmit any data, or upload to the Site any data, that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware;
- decompile, reverse engineer or disassemble any portion of the Site;
- use any robot, spider, other automatic device or manual process to monitor or copy our web pages or Site Content, or use network-monitoring software to determine architecture of or extract usage data from the Site; or
- engage in any conduct that restricts or inhibits any other user from using or enjoying the Site.

(c) You agree to fully cooperate with us to investigate any suspected or actual activity that is in breach of these Terms of Use.

#### 5. USER CONTENT

(a) We may now or in the future permit you to post, upload, transmit through or otherwise provide through the Site (collectively, "submit") messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information (e.g., your name, e-mail address, etc.) and other content (collectively "User Content").

(b) Standards. You agree not to knowingly submit any User Content protected by copyright, trademark, patent, trade secret, moral right, or other intellectual property or proprietary right without the express permission of the owner of the respective right. You are solely liable for any damage resulting from your failure to obtain such permission or from any other harm resulting from your User Content. You also represent and warrant that your User Content:

- will comply with all applicable laws;
- will be truthful, non-misleading and non-deceptive;
- will not contain any material which is tortious (e.g., defames or invades the privacy of any person, etc.), obscene, offensive, hateful or inflammatory;
- will not promote sexually explicit material or violence, or promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- does not breach any legal duty you owe to a third party, such as a contractual duty or a duty of confidence;
- will not be threatening, abuse or invade another's privacy, or provided with an intent to harass, upset or embarrass any other person;

- will not be provided with an intent to impersonate any person, to misrepresent your identity or affiliation with any person, or to falsely give the impression that your User Content comes from someone else; or

- will not advocate, promote or assist any unlawful act (e.g., criminal acts, copyright infringement, computer misuse, etc.).

(c) We may monitor, edit or remove any User Content for violation of the letter or spirit of these terms, or for any other lawful reason. However, we have no obligation to look for, edit or remove any User Content for any reason including, without limitation, violation of these terms.

(d) Grant of Rights & Use. We do not claim ownership to your User Content. However, by submitting User Content, you automatically grant, or warrant that the owner has expressly granted, to us a worldwide, royalty-free, perpetual, irrevocable, non-exclusive, fully sublicenseable and transferable right and license to use, reproduce, distribute, create derivative works based upon (e.g., translations, etc.), publicly display/perform, transmit and publish the User Content (in whole or in part) as we, in our sole discretion, deem appropriate in connection with our business and operations. Notwithstanding the foregoing, you waive any and all claims you may now or later have in any jurisdiction to so-called "moral rights" or rights of "droit moral" with respect to the User Content.

By submitting User Content, you also grant us the right, but not the obligation, to use your biographical or other information about you including, without limitation, all or some of your name, alias, nickname and geographical location in connection with your User Content consistent with the license granted in the previous paragraph but subject to our Online Privacy Statement.

#### 6. RELIANCE ON SITE INFORMATION

(a) While we make efforts to ensure that information provided by us is accurate, we do not represent or warrant that any User Content or Site Content is accurate, complete or current. In all instances, it is your responsibility to evaluate the accuracy, timeliness, completeness, or usefulness of Site Content, User Content, and other information and opinions expressed through the Site.

(b) If there is a dispute between you and anyone you have granted permission to accessing the Site, or you and any third party in connection with the Site, you understand and agree that we are under no obligation to become involved. In such instances, you hereby release ZOLL and its officers, directors, employees, parents, partners, successors, agents, affiliates, subsidiaries and their related companies from claims, demands and damages of every kind or nature arising out of, relating to or in any way connected with such dispute.

#### 7. THIRD PARTIES

(a) Your dealings with third parties via the Site, including third party websites accessed via links on the Site, are solely between you and that third party. As such, when you engage in a transaction with a third party or access a third party's website, you do so under their terms and policies, not ours. Complaints, questions and claims related to transactions with any third party should be directed to that third party.

(b) WE MAKE NO WARRANTIES REGARDING AND SHALL NOT BE LIABLE OR RESPONSIBLE TO YOU (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR YOUR USE OF, THE QUALITY OR LATE DELIVERY OF THE GOODS OR SERVICES FROM ANY THIRD PARTY OR FOR HONORING (OR TO CAUSE ANY MERCHANT TO HONOR) ANY ERRONEOUS INFORMATION REGARDING THE PRICE, DESCRIPTION AND AVAILABILITY OF, OR ANY DISCOUNTS, OFFERS, PROMOTIONS AND

Comment [LW1]: What are these? Can these be turned off?

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(b) YOU AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE SITE OR THESE TERMS OF USE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. CAUSES OF ACTION BROUGHT OUTSIDE THIS TIME PERIOD ARE WAIVED.

(c) In some jurisdictions, limitations of liability are not permitted and, therefore, some of the above limits may not apply in all instances.

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(a) TO THE FULL EXTENT PERMITTED BY LAW, THE SITE AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE ARE PROVIDED BY ZOLL ON AN "AS IS" AND "AS AVAILABLE" BASIS AND ARE NOT WARRANTED TO BE, AMONG OTHER THINGS, FREE OF COMPUTER VIRUSES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE IS AT YOUR OWN RISK. ZOLL MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF ITS SITE OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR SERVICES INCLUDED ON ITS SITE OR OTHERWISE MADE AVAILABLE TO YOU THROUGH ITS SERVICES.

(b) Certain state laws do not allow limitations on implied warranties. If these laws apply to you, some or all of the above disclaimers, exclusions or limitations may not apply to you, and you might have additional rights.

#### 10. INDEMNIFICATION

You agree to defend, indemnify and hold harmless ZOLL and its officers, directors, employees, partners, successors, agents, distribution partners, affiliates, subsidiaries and their related companies from and against any and all claims, liabilities, losses, damages, obligations, costs and expenses (including reasonable attorneys' fees and costs) arising out of or related to: (i) your access to or use of the Site; (ii) your User Content; (iii) any actual or alleged violation or breach by you of these Terms of Use; (iv) any actual or alleged breach of any representation, warranty or covenant that you have made to us; or (v) your acts or omissions. You agree to cooperate fully with us in the defense of any claim that is the subject of your obligations hereunder.

#### 11. GOVERNING LAW



~~These Terms of Use shall be construed in accordance with the laws of the State of Colorado without regard to its conflict of laws rules. You consent to jurisdiction in the State of Colorado.~~

## 12. AMENDMENT; ADDITIONAL TERMS

(a) We may update the Site to provide better options and features, or for other reasons. In certain instances it may be necessary to update or modify our Terms of Use. We also may, in some instances, need to provide you with operating rules or additional terms that govern your use of parts of the Site ("Additional Terms"). Accordingly, you agree that we may at any time provide you with Additional Terms, or update or modify these Terms of Use, as appropriate or necessary. To the extent any Additional Terms conflict with these Terms of Use, the Additional Terms will control but only after Customer and Zoll execute a written amendment to this EULA.

(b) Modifications to these Terms of Use or any Additional Terms will be effective upon executing a written amendment to this EULA. : (a) notice, either by posting on the Site or by other proper notification; and (b) your subsequent use of the Site. It is your responsibility to review the Terms of Use and the Site from time to time for any changes or Additional Terms. Your access and continued use of the Site following any modification of these Terms of Use or the provision of Additional Terms will signify your assent to and acceptance of the same. If you object to any revision to the Terms of Use or to any Additional Terms, immediately discontinue use of the Site.

## 13. OTHER TERMS

(a) No waiver by either of us of any breach or default under these Terms of Use shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used in these Terms of Use are for convenience only and shall not be given any legal import.

(b) Except where specifically stated otherwise, if any part of these Terms of Use are deemed unlawful or unenforceable for any reason, we both agree that only that part of the Terms of Use shall be stricken and that the remaining terms in the Terms of Use shall not be affected and shall remain in force and effect.

(c) ~~Customer nor Zoll~~ You may not assign these Terms of Use or assign any rights or delegate any obligations hereunder, in whole or in part, without other parties ~~our~~ prior written consent.

(d) These Terms of Use (including the Online Privacy Statement and any Additional Terms incorporated by reference) constitute the entire agreement, and supersede all previous written or oral agreements, between you and ZOLL in connection with the Site.

ZOLL Application Service Provider and Business Associate Agreements  
ZOLL Online Application Service Provider Agreement

IMPORTANT-READ CAREFULLY. This Application Service Agreement ("Agreement") is a legal Agreement between you ("Customer") and ZOLL Data Systems, Inc., at 11802 Ridge Parkway, Suite 400, Broomfield, CO 80021 ("ZOLL") for ASP Services, associated media, and Instructions. ~~BY CLICKING THE "ACCEPT" BUTTON OR USING THE ASP SERVICES, CUSTOMER IS STATING THAT IT HAS READ AND UNDERSTANDS ALL OF THE TERMS AND CONDITIONS OF THIS ASP AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS, WITHOUT LIMITATION OR QUALIFICATION. IF CUSTOMER DOES NOT AGREE TO THESE TERMS, CUSTOMER WILL NOT ACCESS OR USE THE SERVICES.~~

In addition, ZOLL may amend this Agreement (including the exhibits hereto) or any additional terms that apply to an ASP Service or the ZOLL Site ~~at any time by executing a written amendment with Customer. Customer should review the most current form of this Agreement regularly. ZOLL will post the most current form at <https://www.zollonline.com/Account/TermsOfService>. ZOLL will endeavor to, but is not required to, notify Customer of any amendments. Amendments will not apply retroactively and will become effective no sooner than thirty (30) days after they are posted. However, changes addressing new functions for an ASP Service or changes made for legal reasons will be effective immediately. Customer understands and acknowledges that its continued use of the ASP Services constitutes its agreement to and acceptance of all such amendments and that absent such effective consent, use of the ASP Services is not authorized.~~

Terms and Conditions

1. Definitions.

1.1. "ASP Services" means the services described on the ZOLL Site that Customer has chosen to receive by following the procedures indicated on the ZOLL Site.

1.2. "BAA" means the Business Associate Addendum attached hereto as Exhibit A.

1.3. "Confidential Information" means all trade secrets, business and financial information, computer software, machine and operator instructions, business methods, procedures, know-how, and other information that relates to the business or technology of either party and is marked or identified as confidential, ~~or disclosed in circumstances that would lead a reasonable person to believe such information is confidential.~~ The Software and Instructions shall be considered ZOLL's Confidential Information, notwithstanding any failure to mark or identify it as such.

1.4. "Fee Based Services" means the ASP Services for which ZOLL charges Customer a fee.

1.5. "Instructions" means the instructions for use of the ASP Services and the documentation and users manuals from time to time provided by ZOLL on the ZOLL Site.

1.6. "Intellectual Property Rights" means any and all existing or future copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing.

1.7. "Software" means the ZOLL software and the ZOLL licensors' and/or suppliers' software that underlies the ASP Services provided to Customer, as modified, updated, and enhanced.

1.8. "ZOLL Site" means the web site located at a unique URL to be provided by ZOLL to Customer where end users may download the Software and access and use the ASP Services.

## 2. ASP Services; Payment Obligation.

2.1. Provision of ASP Services by ZOLL. Subject to the terms and conditions of this Agreement, ZOLL will use commercially reasonable efforts to make the ASP Services available to Customer through the ZOLL Site over normal network connections, excepting downtime due to necessary maintenance and troubleshooting. Customer, not ZOLL, shall be responsible for controlling its users and protection of its passwords. The BAA shall apply to the ASP Services.

2.2. Support and Maintenance. ZOLL will provide telephone support services during ZOLL's regular business hours for ASP Services questions.

2.3. Payment Obligation.. Fee Based Services provided to Customer will require payment of a monthly fee. Customer will be notified of fees and terms of use and payment when Customer first accesses a Fee Based Service. Customer will be required to enter credit card information or other form of payment information before accessing any Fee Based Service.

Comment [LW2]: ZOLL must disclose this information and include in this contract.

## 3. License Grant; Restrictions; Ownership.

3.1. License Grant. Subject to the terms and conditions of this Agreement ZOLL grants to Customer, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable license to access and use the ASP Services using the Software, each as made available to Customer through the ZOLL Site, solely for Customer's internal business purposes and solely in accordance with the Instructions.

3.2. Restrictions. Customer shall not, and shall not permit any Customer third party to: (a) modify, adapt, alter, translate, or create derivative works from the ASP Services, the Software or the Instructions; (b) allow any third party access to or use of the ASP Services; (c) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the source code for the Software; or (d) otherwise use or copy the Software or the Instructions or the ASP Services in any manner not expressly permitted.

3.3. Ownership. The Software, the Instructions, the ASP Services, all proprietary technology utilized by ZOLL to perform its obligations under this Agreement, and all Intellectual Property Rights in and to the foregoing, are the exclusive property of ZOLL (or as the case may be its licensors and suppliers). Any rights not expressly granted to Customer hereunder are reserved by ZOLL (or its licensors and suppliers, as the case may be).

## 4. Customer Content.

As between ZOLL and Customer, and without limiting the rights (if any) of any patient, Customer will retain all right, title and interest in and to all data, information or other content provided by Customer in its use of the ASP Services ("Customer Content"), provided, however, that ZOLL may de-identify and use Customer Content for any lawful purpose consistent with all applicable law.

## 5. Warranty Disclaimers.

~~THE ASP SERVICES ARE PROVIDED "AS IS". WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY; ZOLL DOES NOT PROMISE THAT THE ASP SERVICES WILL BE AVAILABLE FOR ANY PERIOD AND ZOLL MAKES NO UP-TIME COMMITMENT. ZOLL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. CUSTOMER ACKNOWLEDGES THAT IT~~

HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT AND THAT NO WARRANTIES ARE MADE BY ANY OF ZOLL'S LICENSORS OR SUPPLIERS.

5.1. CUSTOMER ACKNOWLEDGES AND AGREES THAT, IN ENTERING INTO THIS CONTRACT, IT HAS NOT RELIED UPON THE FUTURE AVAILABILITY OF ANY NEW OR ENHANCED FEATURE OR FUNCTIONALITY, OR ANY NEW OR ENHANCED PRODUCT OR SERVICE, INCLUDING WITHOUT LIMITATION, UPDATES TO ZOLL'S EXISTING PRODUCTS AND SERVICES. ZOLL'S PERFORMANCE OBLIGATIONS HEREUNDER ARE LIMITED TO THOSE EXPRESSLY ENUMERATED HEREIN, AND PAYMENT FOR ZOLL'S PERFORMANCE OBLIGATIONS SHALL BE DUE AS DESCRIBED HEREIN.

#### 6. Limitation of Liability.

In no event will ZOLL be liable for any consequential, indirect, exemplary, special, or incidental damages, OR for any lost data, lost profits OR costs of procurement of substitute goods or services, arising from or relating to this Agreement, however caused and under any theory of liability (including negligence), even if ZOLL has been advised of the possibility of such damages. ZOLL's total cumulative liability in connection with this Agreement and the Software, whether in contract or tort or otherwise, will not exceed the amount paid TO ZOLL BY CUSTOMER FOR the ASP SERVICES provided UNDER THIS AGREEMENT IN THE PREVIOUS SIX (6) MONTH PERIOD. Customer acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that ZOLL would not enter into this Agreement without these limitations on its liability, and Customer agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. In addition, ZOLL disclaims all liability of any kind of ZOLL's licensors and suppliers.

#### 7. Term and Termination.

7.1. Term. The term of this Agreement ("Term") will begin on the date these terms are accepted by Customer and continue until terminated.

7.2. Termination. Either party may terminate this Agreement with or without cause on 30 thirty 20 days' prior written notice to the other.

7.3. Effects of Termination. Upon expiration or termination of this Agreement for any reason: (a) amounts, if any, owed to ZOLL under this Agreement before such termination or expiration will be immediately due and payable, (b) all licensed rights granted in this Agreement will immediately cease to exist; and (c) Customer must promptly discontinue all use of the ASP Services and return or destroy, all copies of the Instructions and/ Software in Customer's possession or control. Customer shall receive a refund for pre-paid amounts beyond the effective date of the Termination.

#### 8. Confidentiality.

8.1. Protection. Subject to Section 4 hereof, the party receiving Confidential Information ("Receiving Party") from the other party ("Disclosing Party") will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the

Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

8.2. Exceptions. The Receiving Party's obligations under Section 8.1 above with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure in writing prior to making such disclosure and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

Notwithstanding the above, the City is required to comply with Chapter 28, Section 28-5 of the Tucson Procurement Code regarding confidential information.

Sec. 28-5. Confidential information.

Confidential information shall be designated as follows:

Sec. 28-5(1). If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from public record, a statement advising the contract officer of this fact should accompany the submission and the information shall be so identified wherever it appears.

Sec. 28-5(2). The information identified by the person as confidential may not be disclosed until the contract officer makes a written determination.

Sec. 28-5(3). The contract officer shall review the statement and information and may determine in writing that the information shall be withheld or disclosed.

Sec. 28-5(4). If the contract officer determines to disclose the information, the contract officer shall inform the person in writing of such determination.

Sec. 28-5(5). Notwithstanding the above provisions, in the event records marked as confidential are requested for public release, the city shall release records marked confidential ten (10) working days after the date of notice to the person of the request for release, unless the person has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records.

Sec. 28-5(6). The city shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked confidential. Nor shall the city be in any way financially responsible for any costs associated with securing such an order.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

9. Indemnification.

Customer shall indemnify, defend and hold ZOLL harmless of, from and against any and all liabilities, losses, expenses, damages and claims that arise out of Customer's use of the ASP Services or Customer's breach of this Agreement, except to the extent same are due to ZOLL's breach hereof or ZOLL's negligence.

#### 10. General Provisions.

10.1. Compliance with Laws and Export Regulations. Customer shall comply with all applicable laws and regulations concerning its use of the ASP Services, including without limitation if applicable all export and import control laws and regulations. Customer will not use the ASP Services for any purpose in violation of any applicable laws. Customer agrees to defend, indemnify, and hold harmless ZOLL from and against any violation of any applicable laws or regulations by Customer or any of its agents, officers, directors, or employees.

10.2. Compliance Certificate. Upon written request from ZOLL, Customer shall furnish ZOLL with a certificate signed by an officer of Customer stating that the ASP Services are being used in accordance with the terms and conditions of this Agreement.

10.3. Assignment. ~~Neither party~~ Customer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without the other parties ZOLL's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. ~~ZOLL shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.~~

10.4. U.S. Government End Users. If Customer is a branch or agency of the United States Government, the following provision applies. The Software and Instructions are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and if provided hereunder are (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995).

10.5. Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile (fax), or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth above or in the contact information provided by Customer in connection with accepting the terms of this Agreement, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner, ~~it is provided, however, that ZOLL's amendments of this Agreement shall be deemed delivered to Customer and Customer shall be deemed notified thereof by ZOLL posting the most current form of this Agreement on the website set forth at the beginning of this Agreement as more particularly provided at the beginning of this Agreement.~~

10.6. Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

10.7. Remedies. Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the ASP Services are built on valuable trade secrets and proprietary information of ZOLL, that any actual or

threatened breach hereof due to Customer's actions may constitute immediate, irreparable harm to ZOLL for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

10.8. Waivers. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

10.9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

10.10. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

10.11. Entire Agreement. This Agreement, including the cover page (if any) and any exhibits hereto, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

10.12. Third Party Access to ZOLL Site on behalf of Customer. If Customer engages a third-party provider approved by ZOLL ("Third-Party Provider") to provide Customer with data management services using Third-Party Provider's product(s) that are integrated with software products (including Software) and/or equipment of ZOLL and/or ZOLL affiliates (the "Third-Party Services"), Customer agrees to promptly notify ZOLL thereof and Customer hereby consents to ZOLL sharing of Customer Content with such Third-Party Provider for the sole purpose of Third-Party Provider's provision of the Third-Party Services. Customer agrees that if Customer wishes to grant such Third-Party Provider access to the ZOLL Site and/or the ASP Services for the purpose of the provision of the Third-Party Services, Customer shall require Third-Party Provider to comply with the terms of this Agreement, ~~and Customer agrees to indemnify, defend and hold harmless ZOLL from and against any liabilities, losses, expenses, damages and claims arising from Third-Party Provider's access and use of the ZOLL Site and the ASP Services.~~ Upon termination of Customer's agreement with Third-Party Provider for any reason, Customer agrees to immediately terminate Third-Party Provider's access to the ZOLL Site and the ASP Services and notify ZOLL thereof. Customer represents that Customer has a valid Business Associate Agreement with Third-Party Provider in place for the provision of the Third-Party Services and that the sharing by ZOLL of the Customer Content with Third-Party Provider does not violate any agreement, law, regulation, or other legal standard applicable to Customer. In addition, Customer agrees that the provision of the Third-Party Services by Third-Party Provider to Customer does not make Third-Party Provider a subcontractor business associate of ZOLL.

## ZOLL Online Business Associate Agreement

### Exhibit A

#### Business Associate Addendum

Comment [LW3]: Replacing with City of Tucson.

This Business Associate Addendum (this "Addendum") is entered into by and between you ("Covered Entity") and ZOLL Data Systems ("Business Associate") in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information ("PHI") and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations collectively referred to as "HIPAA"). This Addendum amends the terms and conditions of and is hereby incorporated as part of that certain agreement between Covered Entity and Business Associate entitled Application Service Provider Agreement (the "Services Agreement") and attached hereto.

#### STATEMENT OF AGREEMENT

§1. Definitions. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HIPAA; provided that PHI shall refer only to protected health information of Covered Entity unless otherwise stated.

§2. Compliance and Agents. Business Associate agrees that to the extent it has access to PHI, Business Associate will fully comply with the requirements of this Addendum with respect to such PHI. Business Associate will ensure that every agent, including a subcontractor, of Business Associate to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity will comply with the same restrictions and conditions as set forth in this Addendum. If Covered Entity is required by HIPAA to maintain a Notice of Privacy Practices, Covered Entity shall notify Business Associate of any limitations in such notice to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

§3. Use and Disclosure: Rights. Business Associate agrees that it shall not use or disclose PHI except as permitted under this Addendum, including Section 16 hereof, and in compliance with each applicable requirement of 45 CFR Section 164.504(e). Business Associate may use or disclose the PHI received or created by it, (a) to perform its obligations under this Addendum; (b) to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement; or (c) to provide data aggregation functions to Covered Entity as permitted by HIPAA. Further, Business associate may use the PHI received by it in its capacity as Business Associate, if necessary, to properly manage and administer its business or to carry out its legal responsibilities. Business Associate may disclose the PHI received by it in its capacity as Business Associate to properly manage and administer its business or to carry out its legal responsibilities if: (a) the disclosure is required by law; or (b) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached. Covered Entity



shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

§4. Safeguards. Business Associate agrees to develop, document, use, and keep current appropriate procedural, physical, and electronic safeguards, as required in 45 C.F.R. §§164.308-164.312, sufficient to prevent any use or disclosure of electronic PHI other than as permitted or required by this Addendum.

§5. Minimum Necessary. Business Associate will limit any use, disclosure, or request for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request.

§6. Report of Improper Use or Disclosure. Business Associate shall report to Covered Entity any information of which it becomes aware concerning any use or disclosure of PHI that is not permitted by this Addendum and any security incident of which it becomes aware. Business Associate will, following the discovery of a breach of "unsecured protected health information," as defined in 45 C.F.R. §164.402, notify Covered Entity of such breach within 15 days. The notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Addendum.

§7. Individual Access. In accordance with an individual's right to access to their own PHI in a designated record set under 45 CFR §164.524 and the individual's right to copy or amend such records under 45 CFR §164.524 and §164.526, Business Associate shall make available all PHI in a designated record set to Covered Entity to enable the Covered Entity to provide access to the individual to whom that information pertains or such individual's representative.

§8. Amendment of and Access to PHI. Business Associate shall make available for amendment PHI in a designated record set and shall incorporate any amendments to PHI in a designated record set in accordance with 45 CFR §164.526 and in accordance with any process mutually agreed to by the parties.

§9. Accounting. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to an individual's request for an accounting of disclosures of their PHI in accordance with 45 CFR §164.528. Business Associate agrees to make available to Covered Entity the information needed to enable Covered Entity to provide the individual with an accounting of disclosures as set forth in 45 CFR §164.528.

§10. DHHS Access to Books, Records, and Other Information. Business Associate shall make available to the U.S. Department of Health and Human Services ("DHHS"), its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity for purposes of determining the Covered Entity's compliance with HIPAA.

§11. Individual Authorizations; Restrictions. Covered Entity will notify Business Associate of any limitation in its notice of privacy practices, any restriction to the use or disclosure of PHI that Covered Entity has agreed to with an individual and of any changes in or revocation of an authorization or other permission by an individual, to the extent that such limitation, restriction, change, or revocation may affect Business Associate's use or disclosure of PHI.

§12. Compliance with ARRA. Covered Entity and Business Associate agree to comply with the amendments to HIPAA included in the American Recovery and Reinvestment Act of 2009

("ARRA") (P.L. 111-5), including all privacy and security regulations issued under ARRA that apply to Business Associate as and when those regulations are effective.

§13. Term. This Addendum shall take effect on the effective date of the Services Agreement, and shall continue in effect unless and until either party terminates this Addendum or the Services Agreement.

§14. Breach; Termination; Mitigation. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Addendum, Covered Entity and Business Associate shall take any steps reasonably necessary to cure such breach and make Business Associate comply, and if such steps are unsuccessful, Covered Entity may terminate this Addendum. Business Associate shall take reasonable actions available to it to mitigate any detrimental effects of such violation or failure to comply.

§15. Return of PHI. Business Associate agrees that upon termination of this Addendum, and if feasible, Business Associate shall (a) return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form or manner and retain no copies of such information or, (b) if such return or destruction is not feasible, immediately notify Covered Entity of the reasons return or destruction are not feasible, and extend indefinitely the protection of this Addendum to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI not feasible.

§16. De-identified Health Information. Business Associate may de-identify any and all PHI and may create a "Limited Data Set" in accordance with 45 C.F.R. § 164.514(b)&(e). Customer acknowledges and agrees that deidentified information is not PHI and that Business Associate may use such de-identified information for any lawful purpose. Use or disclosure of a Limited Data Set must comply with 45 CFR 164.514(e).

§17. Survival. All representations, covenants, and agreements in or under this Addendum or any other documents executed in connection with the transactions contemplated by this Addendum, shall survive the execution, delivery, and performance of this Addendum and such other documents. The respective rights and obligations of Business Associate under Section 14 of this Addendum shall survive termination or expiration of this Addendum.

§18. Further Assurances; Conflicts. Each party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Addendum. The terms and conditions of this Addendum will override and control any conflicting term or condition of the Services Agreement. All non-conflicting terms and conditions of the Service Agreement shall remain in full force and effect. Any ambiguity in this Addendum with respect to the Services Agreement shall be resolved in a manner that will permit Covered Entity to comply with HIPAA.

§19. Applicable Law. The parties acknowledge and agree that HIPAA may be amended and additional guidance or regulations implementing HIPAA may be issued after the date of the execution of this Addendum and may affect the parties' obligations under this Addendum. The parties agree to take such action as is necessary to amend this Addendum from time in order as is necessary for Covered Entity to comply with HIPAA.

§20. Previously Executed BAAs. For avoidance of doubt, with respect to PHI shared under the Services Agreement, this Addendum supersedes and replaces any business associate agreements or addenda previously executed by the parties, notwithstanding any provisions in such previously executed business associated agreements or addenda to the contrary.



LICENSOR: ZOLL  
RESELLER (if any): \_\_\_\_\_  
CONTRACT PIN: \_\_\_\_\_

The terms and conditions of this addendum (“**Rider**”) supplement the EULA (as defined below) between Zoll, the licensor and provider (“**Licensor**”), and the City of Tucson (including any agency, office or commission), as licensee (“**City**” or “**Licensee**”), and are applicable to any procurement of hosted services from Licensor, including, but not limited to, Software as a Service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS) and Software (including Software embedded in Hardware) sold, licensed, transferred or otherwise provided to the City by Licensor or through a third-party reseller (“**Reseller**”). As used in this Rider, “party” refers to Licensor or Licensee (*i.e.*, does not include a Reseller), individually, and “parties” means the Licensor and the Licensee, collectively.

The parties agree as follows:

**1. Additional Definitions**

“**City Data**” means information, databases, data compilations, reports, charts, graphs, diagrams, or other information created, generated or maintained by Licensor for the benefit of the City under the EULA or provided or made accessible by the City to Licensor under the Agreement, including data created solely by the City’s use of the Cloud Product or Software.

“**Cloud Product**” means the software-, platform-, infrastructure- or other “as a service” solution for which access is provided to the Licensee by the Licensor under the EULA.

“**EULA**” means any agreements between Licensor and Licensee that governs Licensee’s use of a Cloud Product or Software purchased under this Agreement.

“**Software**” means is any set of machine-readable instructions provided to the City by or through Licensor that directs a computer’s processor to perform specific operations.

“**Privacy Laws**” means data privacy, trans-border data flow and data protection laws and regulations, including the Gramm-Leach-Bliley Act and its implementing regulations, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, the Health Information Technology for Economic and Clinical Health Act of 2009 and its implementing regulations, and U.S. State and City information security, data destruction and data breach notification laws and their implementing regulations.

“**Service Level Agreement**” means the term setting forth the service levels that Licensor must meet in providing the Cloud Product,

including any credits to be provided for failure to meet the service levels.

**2. Order of Precedence**

This Rider takes precedence over any provision in the EULA or in any separate agreement between the City and Reseller. In the event of a conflict between this Rider and the EULA, the Rider will prevail. Defined terms in the EULA or an agreement between the City and Reseller will be given their ordinary meaning in this Rider.

**3. Term**

3.1 All terms of this Agreement that should by their nature survive termination will survive, including, Sections 11 (Governing Law; Jurisdiction and Venue; Jury Waiver), 13 (City Data), 14 (Security), and 15.2 (Warranties).

**4. Authorized Users**

The authorized user of the Cloud Product or Software is the City of Tucson, including its employees, authorized agents, consultants, auditors, other independent contractors and any external users contemplated by the parties. This paragraph does not modify the quantity of users licensed.

**5. Limitation Of Liability**

5.1. Subject to the provisions of Section 5.2 below, each party’s aggregate liability for all claims arising out of this agreement, whether in contract, tort or otherwise, shall not exceed the greater of: (i) forty-eight (48) times the average monthly charges paid by the City to the Licensor (or Reseller, if any), calculated over the prior twelve (12) month period immediately preceding the date on which liability for the claim first arose; (ii) three times

LICENSOR: ZOLL  
RESELLER (if any): \_\_\_\_\_  
CONTRACT PIN: \_\_\_\_\_

(3x) the contract value; or (iii) one million dollars (\$1,000,000).

5.2. The limitation of liability set forth in Section 5.1 above will not apply to Licensor's liability arising out of any of the following: (i) Licensor's indemnification obligations under this agreement; (ii) Licensor's breach of the confidentiality provisions in this agreement; (iii) the infringement by Licensor, or any of its affiliates or subcontractors of the intellectual property of the City or of a third party; and (iv) to the extent prohibited by law.

5.3. To the extent that Licensor may be liable to the City for any action, inaction or operation of the Licensor under the EULA, including this Rider, or under statutory or common law, for which Reseller may also be liable, Licensor's and the Reseller's (if any) liabilities are joint and several, and the City is not limited in its ability to seek recourse from one or the other.

## **6. Warranties**

6.1. SLA. Licensor represents and warrants that the Cloud Product or Software provided under the EULA will function in accordance with the agreed upon service levels. Contractor shall calculate and apply all service credits earned during a given billing period to the invoice for the following billing period. SLA claims and service credits will not be deemed to be waived by the passage of time or the City's failure to report an issue or request service credits.

6.2. Intellectual Property. Licensor represents and warrants that it has the rights necessary to license the Cloud Product or Software to the Licensee in accordance with the terms of the EULA.

## **7. Indemnification for Intellectual Property Infringement**

Licensor shall defend, indemnify and hold Licensee and its employees, officers and agents (collectively, "Indemnitees") harmless from any and all judgments, damages, liabilities, amounts paid in settlement, awards, fines, penalties, disbursements, costs and expenses (including witness fees, expert fees, investigation fees, travel expenses, bonds, the cost of

establishing the right to indemnification under this Section 7, court costs and reasonable attorney's fees) to which the Indemnitees may be subjected, become liable to pay, suffer or incur in connection with any claim, allegation, suit, subpoena, action or proceeding (whether completed, actual, pending, threatened, civil, criminal, investigative, administrative, meritorious or without merit) that arises from or relates to the infringement of any copyright, trade secret, trademark, patent or other tangible or intangible property or personal right of any third party by the Licensor or its subcontractors. Licensor shall defend, indemnify and hold the Indemnitees harmless regardless of whether or not the alleged infringement arises out of the use of the Cloud Product or Software in a manner not expressly contemplated in the EULA or in combination with any hardware, equipment or other software not provided or authorized by Licensor. Insofar as the facts or the law relating to any claim would preclude the Indemnitees from being completely indemnified by the Licensor, the Indemnitees will be partially indemnified by the Licensor to the fullest extent permitted by the law.

## **8. No Additional Terms Permitted**

To be valid and binding on the City, terms and conditions must bear the written signature of the Director of Procurement, Deputy Director of Procurement or Contract Administrator. No online terms and conditions that are incorporated by reference in the EULA will be binding on Licensee. In addition, no shrink-wrap, click-wrap or other end user terms and conditions that are embedded in or provided with any Cloud Product or Software are binding on Licensee, even if use of the Cloud Product or Software requires an affirmative acceptance of those terms.

## **9. No Portion of this Agreement may be Changed Unilaterally**

No portion of the EULA, including this Rider, may be changed unilaterally. To be valid, any amendment to the EULA, including this Rider, must be in writing and signed by the parties. Any provision in the EULA to the contrary is deemed to conflict with this Rider and is be null and void.

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#### **10. Use of Third Party Providers**

10.1 Licensor must identify any third party entities involved in the provision of the Cloud Product or Software and provide a copy of the agreement between the Licensor and the third party provider. The agreement must be approved in writing by the City. Any provision in the EULA to the contrary is deemed to conflict with this Rider. If Licensor proceeds with an unapproved third party provider, it will be deemed liable to the City for any third party claims to the same extent as the third party provider would have had it agreed to the terms set forth in this Rider.

10.2 Any subcontractor or Affiliate (as defined below) of Licensor that provides any software or services in connection with this Agreement is deemed to be a subcontractor whose subcontracts must be approved in writing by the City. As used in this paragraph, "Affiliate" means any parent, subsidiary or other entity that is (directly or indirectly) controlled by, or controls, Licensor. Any provision in the EULA to the contrary is deemed to conflict with this Rider.

#### **11. Governing Law; Jurisdiction and Venue; Jury Waiver**

The laws of the State of Arizona, without reference to its choice of law principles, govern the EULA and any claims arising out of or relating to the EULA, its negotiation, execution, performance or breach. All disputes and controversies arising out of or relating to the negotiation, execution, performance or breach of the EULA, including this Rider, must be resolved in the Superior Court in Pima County, Arizona, and each party irrevocably consents to the exclusive venue and personal jurisdiction of those courts for the resolution of disputes and waives all objections thereto. To the fullest extent permitted by law, each party irrevocably waives its right to a jury in any litigation arising out of or relating to this EULA, its negotiation, execution, performance or breach.

#### **12. Fees**

12.1. The City is not responsible for an early termination fee.

12.2. Rates and fees may only be increased pursuant to a written amendment to this Rider that has been signed by the parties. Overage and excess usage fees are not permitted in the absence of the City's prior written agreement.

12.3. The City will not be liable for any unauthorized use, including fees and charges that may become due to Licensor as a result of that use.

12.4. The City's payment of an invoice without objection or failure to raise an objection to an invoice will constitute a waiver of any objections to that invoice.

#### **13. City Data**

13.1. The City retains sole ownership and intellectual property rights in all City Data. Contractor does not have the right to retain any City Data other than as provided in this Rider. This Agreement does not convey to either party any ownership right or license to use, sell, exploit, copy or further develop the other party's Confidential Information or intellectual property, including patents, copyrights, trademarks, trade names and trade secrets. The City hereby retains all right, title, and interest in and to any suggestion, enhancement request, recommendation, correction or other feedback provided to Licensor relating to the Cloud Product or Software, except that Licensor may use that information in connection with its provision of the Cloud Products or Software to the City.

13.2. Licensor shall encrypt all City Data while in transit and at rest using encryption standards and methods that are approved and recommended by the National Institute of Standards and Technology and comply with FIPS 140-2, Security Requirements for Cryptographic Modules. Licensor shall ensure that all City Data is segregated from other data maintained by Licensor, and that City Data is stored, maintained and processed on physical servers and storage devices that are dedicated to the City.

13.3. At all times during the City's agreement with Licensor, including during any suspension, and for a period of 180 days after the

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end of that agreement, Licensor shall, at no cost to the City:

- i. ensure that all City Data maintained by Licensor or its subcontractors remains immediately accessible to the City through an encrypted Internet connection;
- ii. transmit encrypted City Data to the City in a format that complies with the City's Open Data Law (NYC Administrative Code §§ 23-501 et seq.), is easily usable by the City and does not include or require any proprietary software or other materials for its use; and
- iii. within 30 days after receiving a notice from the City's Chief Information Security Officer, copy and return City Data pursuant to the express written instructions set forth in the City's; unless otherwise specified in that notice, City Data must be returned on portable digital media that employs full disk encryption and the cryptographic keys must not be shipped with the City Data.

13.4. Licensor may not use, access, or perform any analytical analyses of any kind on data derived from the City's usage of the Cloud Product and Software, whether anonymized or aggregated or both, except as agreed to in writing by the City in its discretion, or as required for the Licensor to provide Cloud Products and Software for the City.

13.5. City Data must be located at all times in the United States, whether at rest, in transit or otherwise, except as provided in writing by the City of Tucson.

13.6. Any third party, subcontractor, or affiliate of Licensor that uses or has access to City Data is also subject to the obligations of this Sections 13 (City Data), 14 (Security) and 15

(Additional Terms for Software Licenses) of this Rider.

13.7. At the end of the 180 day period, or as otherwise requested by the City in writing, Licensor shall immediately destroy the City Data, including any copies, extracts, descriptions, and summaries contained in Contractor's records or systems, and provide the City with a written certification setting forth the actions taken to assure destruction. All media must be sanitized in accordance with the most recent version of NIST SP 800-00, Guidelines for Media Sanitization, or its successor publication.

#### 14. Security

14.1 Licensor shall comply with all Privacy Laws and industry standards (e.g., PCI DSS) ("**Industry Controls**") that are applicable to the Cloud Products and Software, including the provision of all critical security updates and patches.

14.2 Cloud Provider shall cooperate with the City's reasonable investigation of Service issues, data security and breach issues and any suspected breach of this Agreement.

14.3 Licensor shall perform a semi-annual audit of the security of the computers and the computing environment it uses in processing City Data. The audit must be performed according to ISO 27001 and SOC 2 Type II standards or the industry best-practice existing at the time of the audit, if stricter. Regardless of the standard, each audit will result in the generation of an audit report, which Licensor shall provide to the City within fifteen (15) days of performing the audit.

#### 15. Additional Terms for Software Licenses

To the extent that the order includes Software, the following terms and conditions will apply and govern only Software (including any software embedded in hardware) licensed to the City:

##### 15.1. General License Terms

The Licensor hereby grants to the City a paid-up, royalty-free, worldwide, non-exclusive,

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CONTRACT PIN: \_\_\_\_\_

perpetual, and irrevocable license to use, execute, reproduce, distribute to authorized users, make, modify, adapt, display, perform, create derivative works of, and copy for backup and disaster recovery purposes, the software, with all license rights necessary to fully effectuate the purposes of the Agreement and the business purposes of the City. This paragraph does not modify the quantity of users or devices licensed.

15.2. **Warranties**

- i. **Software**. Licensor represents and warrants that the software provided under this Agreement will function in accordance with the documentation made available to the City.
- ii. **Intellectual Property**. Licensor represents and warrants that it has the rights necessary to license the software to the Licensee in accordance with the terms of this Agreement.
- iii. **Malware**. Licensor warrants that the software contains no:  
(i) viruses, worms, spyware or malware; (ii) coding that may disable the software or impair in any way its operation based

on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numerals, or other similar self-destruct mechanisms (e.g., "time bombs," "time locks," or "drop dead" devices); or (iii) coding that would permit the Contractor, Third-Party Licensor or any third party to access the software to cause disablement or impairment (e.g., a "trap door" device). This malware warranty shall apply until the later of the end of the warranty period specified in the order or one (1) year after the date on which the software is accepted by the City.

- iv. **General**. No warranties provided by the Reseller or Licensor will be invalidated by the failure of the City to install or otherwise use an available software update (e.g., a new version or release).

**ACKNOWLEDGED AND ACCEPTED BY:**

Licensor: ZOLL Medical Corporation

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

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

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

Licensee: City of Tucson

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

Title: Contract Administrator

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





**Business Associate Agreement  
Between  
The City of Tucson and ZOLL Medical Corporation**

This Agreement is entered into between the City of Tucson (hereinafter "Covered Entity") and ZOLL Medical Corporation (hereinafter "Business Associate").

This Agreement is incorporated into all existing and current contract(s) between the parties (the "Underlying Contract(s)") under which Business Associate is carrying out activities or functions involving the use of protected health information (PHI), as this term is defined in 45 CFR Parts 160 and 164, and it replaces any prior agreement(s) entered concerning such PHI. Business Associates must comply with all requirements for protecting PHI under federal Privacy and Information Security regulations and are subject to the application of civil and criminal penalties under sections 1176 and 1177 of the Social Security Act. Covered Entity is committed to providing high quality patient care, education, and research. In furtherance of its mission, Covered Entity wishes to conduct transactions involving the disclosure of PHI to Business Associate for the purpose of conducting the activities set forth in the Underlying Contract(s).

Some or all of the information to be disclosed is required by law to be protected against unauthorized use, disclosure, modification or loss. In order to comply with applicable legal requirements for the protection of information, the parties agree as follows:

**A. ALLOWABLE USES OF PHI**

Only the minimum necessary PHI to accomplish the intended purpose of this agreement can be used or disclosed only for the following purposes:

- 1.
- 2.
- 3.

**B. OBLIGATIONS OF BUSINESS ASSOCIATE**

**Section 1. Safeguarding Information.**

A. Business Associate shall only use, store, disclose, or access PHI:

- (1) In accordance with, and only to the extent permissible under the Underlying Contract; and

(2) In full compliance with any and all applicable laws, regulations, rules or standards, including, but without limitation, FERPA, HIPAA, the Gramm-Leach-Bliley Financial Services Modernization Act (GLB), the Federal Trade Commission Identity Theft Rules, the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and the Social Security Act, RCW 19.255.010 and RCW 42.56.590.

B. Business Associate shall have in place policies and procedures to implement and maintain all safeguards necessary to ensure the confidentiality, availability, and integrity of all Covered Entity data. Such safeguards shall include as appropriate, and without limitation, use of: policies and procedures to prevent any unauthorized use or disclosure of, or access to, PHI; restrictions on administrative access to PHI; system firewalls, secure network and transfer protocols such as Secure Socket Shell (SSH), Secure Copy Protocol (SCP), Hyper-Text Transfer Protocol over Secure Sockets Layer (HTTPS), or Internet Protocol Security (IPSec); industry compliant network authentication protocols such as Kerberos or Lightweight Directory Access Protocol (LDAP); encryption; regular and timely system upgrades, including implementation of security patches; disk quotas to ensure system availability; logging in accordance with City of Tucson specifications, maintenance of logs on centralized servers; and backup systems for disaster recovery, security, and forensics purposes.

C. Business Associate shall have in place policies and procedures to detect patterns, practices, or specific activities that indicate the possible existence of identity theft (The Federal Trade Commission has regulations known as the Red Flag Rules which are part of the Fair and Accurate Credit Transactions (FACT) Act of 2003) that may arise in the performance of Business Associate's activities and shall:

(1) Report all Red Flags to Covered Entity at the address provided for reporting unauthorized use or disclosure of PHI in Section 3; and

(2) Take prompt steps to prevent or mitigate possible identity theft when Red Flags are detected.

## **Section 2. Use or disclosure of Protected Health Information.**

Business Associate shall not use or disclose PHI received from Covered Entity in any manner that would constitute a violation of federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and any regulations enacted pursuant to its provisions ("HIPAA Standards"), or applicable provisions of Arizona state law.. Business Associate shall ensure that any use or disclosure by its directors, officers, employees, contractors, and agents of PHI received from Covered Entity, or created or received on behalf of Covered Entity is in accordance with the provisions of this Agreement and applicable federal and state law. Business Associate shall not use or disclose PHI in any manner other than that permitted or required by the Covered Entity for the purpose of accomplishing services to or on behalf of Covered Entity in accordance with the Underlying Contracts. Notwithstanding the foregoing, Business Associate may use PHI

for the proper management and administration of the Business Associate and to carry out its legal responsibilities.

**Section 3. Reporting of Unauthorized Use or Disclosure of PHI.**

Business Associate shall, within five (5) working days of becoming aware of an unauthorized use or disclosure of PHI by Business Associate, its officers, directors, employees, contractors, agents or by a third party to which Business Associate disclosed PHI, report any such disclosure to Covered Entity. Such notice shall be made to the following:

The City Attorney  
City of Tucson  
255 West Alameda Street  
Tucson, AZ 85701

**Section 4. Agreements by Third Parties.**

Business Associate shall obtain satisfactory assurances from any agent or subcontractor who will have access to PHI that is received from Covered Entity, or created or received on behalf of the Covered Entity, and shall ensure that the agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate through this Agreement with respect to PHI. Business Associate shall require that any agent or subcontractor notify Business Associate of any instances in which PHI is used or disclosed in an unauthorized manner. Business Associate agrees to notify Covered Entity of any such unauthorized use or disclosure. Business Associate shall take steps to cure the breach of confidentiality and end the violation, or shall terminate the agency agreement or subcontract.

**Section 5. Access to Information.**

If Business Associates maintains Designated Record Set (DRS) documentation on behalf of Covered Entity, Business Associate agrees to provide access to the documentation maintained by the Covered Entity. Business Associate shall make available to Covered Entity such information for so long as it is maintained. If any individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to the Covered Entity. Business Associate shall not deny any individual's request for access to the individual's PHI. A denial of access to PHI requested is the responsibility of the Covered Entity.

**Section 6. Availability of PHI for Amendment.**

Within five days of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a DRS (for so long as the PHI is maintained in the DRS), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.

Section 7. **Accounting of Disclosures.**

Business Associate agrees to implement an appropriate record keeping and reporting process to enable it to provide the following information regarding disclosures of PHI: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. If Business Associate receives a request for an accounting of disclosures, Business Associate shall forward such request to Covered Entity within a reasonable time frame to allow Covered Entity to prepare and deliver any required accounting of disclosures.

Section 8. **Restrictions on Certain Disclosure of Health Information.**

Business Associate agrees to restrict the disclosure of the protected health information of an individual, if Covered Entity agrees to a requested restriction by an individual. If Business Associate receives a request for a restriction, Business Associate shall forward such request to Covered Entity within five business days to allow Covered Entity to respond to the requested restriction.

Section 9. **Availability of Books and Records.**

Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from Covered Entity, or created or received on behalf of Covered Entity, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA Standards. Business Associate shall provide to Covered Entity a copy of any documentation that Business Associate provides to the Secretary within five business days.

Section 10. **Return or Destruction of Information.**

At the termination of the Underlying Contract(s), Business Associate shall return or destroy all PHI received from Covered Entity, or created or received on behalf of Covered Entity, that Business Associate maintains in any form. Business Associate will retain no copies of PHI. If Business Associate determines that return or destruction of any PHI is not feasible, Business Associate shall notify Covered Entity of the reasons why return or destruction is not feasible. If destruction or return of PHI is not feasible, Business Associate shall not use PHI received from Covered Entity, or created or received on behalf of Covered Entity, in a manner other than those permitted or required by state and federal laws or for the purposes described herein.

Section 11. **Electronic Protected Health Information ("ePHI").**

If Business Associate creates, receives, maintains or transmits ePHI on behalf of Covered Entity, Business Associate agrees to (1) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Covered Entity's ePHI in accordance with Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations; (2) ensure that any third

party agent or subcontractor who receives Covered Entity's ePHI from Business Associate agrees to implement equivalent administrative, physical and technical safeguards; and (3) deploy appropriate safeguards to implement the Secretary of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards; and (4) report any security incidents involving Covered Entity's ePHI within five business days of discovery.

**Section 12. Potential Breach of PHI.**

A. If Business Associate has reason to believe that personal information or PHI transmitted pursuant to this Agreement may have been accessed, disclosed, or acquired without proper authorization, Business Associate will, within five business days of discovery, give City of Tucson notice and take actions as may be necessary to preserve forensic evidence and to identify, mitigate and remediate the cause of the breach. A breach shall be treated as discovered by the BA as of the first day on which such breach is known to the BA, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the BA) or should reasonably have been known to the BA (or person referenced above) to have occurred. Business Associate shall give highest priority to immediately mitigate and remediate any unauthorized access and shall devote such resources as may be required to accomplish that goal. The BA shall cooperate with all Covered Entity efforts, including providing any and all information necessary to enable Covered Entity to fully understand the nature and scope of the unauthorized access, including but not limited to identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach.

B. To the extent City of Tucson deems warranted, City of Tucson may provide notice or may require Business Associate to provide notice to any or all individuals affected by any unauthorized access, whose personal and/or PHI may have been improperly accessed or disclosed that was not protected according to the Secretary of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards. In such case, Business Associate shall consult with Covered Entity regarding appropriate steps required to notify third parties. In the event that the Business Associate's assistance is required to reinstall software, such assistance shall be provided at no cost to Covered Entity and in accordance with the Covered Entity's policies and standards. Business Associate must coordinate with City of Tucson any public notification to any individual, media outlet, or the Secretary of Health and Human Services.

If City of Tucson determines that notification is required, the BA shall pay the full costs of notice to impacted individuals, including the costs to retain an outside consulting firm to undertake the notification effort and will supply City of Tucson Compliance with the following information to make such notification:

- (1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

(2) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).

(3) A brief description of what the BA is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

C. Business Associate shall indemnify, hold harmless, and defend City of Tucson from and against any penalties, claims, actions, loss, liability, damage, costs, or expenses, including but not limited to reasonable attorneys' fees, system remediation, or forensic analysis, arising from or pertaining to a breach of this agreement, the violation of any state or federal law applicable to the use, disclosure or protection of personal information or PHI, and the unauthorized access to PHI. The indemnification provided hereunder includes the full costs of notice to impacted individuals, including the costs to retain an outside consulting firm to undertake the notification effort.

D. City of Tucson has the right, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance therewith, within the limits of Business Associate's technical capabilities.

### **C. Miscellaneous.**

#### **Section 13. Termination.**

Notwithstanding any provision to the contrary in the Underlying Contract(s), Covered Entity may terminate its participation in the Underlying Contract(s) immediately upon written notice to Business Associate without liability for such termination, in the event that Covered Entity determines that Business Associate has violated a material provision of this Agreement.

#### **Section 14. Third Party Beneficiaries.**

Nothing in this Addendum is intended to create any third party beneficiaries.

#### **Section 15. Definitions.**

**Personal Information** means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (a) Social security number;
- (b) Driver's license number or Arizona identification card number; or
- (c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

**Breach of the security of the system** means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency.

All terms not otherwise defined herein shall be defined in accordance with 45 CFR Parts 160 and 164.

_____ Signature City of Tucson	_____ Position	_____ Date
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_____ Signature ZOLL Medical Corporation	_____ Position	_____ Date
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**CITY OF  
TUCSON**

DEPARTMENT OF  
PROCUREMENT

July 26, 2017

Amy Coffin  
Bid & Proposals Coordinator  
ZOLL Medical Corporation  
269 Mill Road  
Chelmsford, MA 01824  
[acoffin@zoll.com](mailto:acoffin@zoll.com)

*Sent via electronic mail, this day*

**Subject: Request for Proposal No. 171769 – Cardiac Monitors  
Additional Information to Intent to Negotiate**

Dear Ms. Coffin:

The City of Tucson has completed the evaluation of submittals received in response to the subject solicitation. Based upon the recommendation of the evaluation committee, the City is inviting your firm to enter negotiations. Specifically, the City requests the following:

**1. Special Terms and Conditions: Insurance**

- a. The City shall hereby add the attached Insurance clause to the Special Terms and Conditions as paragraph 9. Please confirm your understanding and acceptance of this clause.

This Notice of Intent to Negotiate is not an intent to award a contract and does not establish a contractual relationship between the firm and the City. In the event that the City is not able to negotiate a satisfactory contract with the firm, the City will terminate negotiations.

Please submit a written response to my attention via e-mail to [Jenn.myers@tucsonaz.gov](mailto:Jenn.myers@tucsonaz.gov) as soon as possible. Please contact me via e-mail or at (520) 837-4137 with questions regarding the items above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jenn Myers".

Jenn Myers  
Senior Contract Officer

Attachments: One (1)



**INSURANCE:**

The Contractor agrees to:

- A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least 30 days prior to termination or cancellation in coverage in any policy, and 10 days notice for cancellation due to non-payment in premium.
- B. The Commercial General Liability Insurance and Commercial Automobile Liability Insurance policies will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable

COVERAGE	LIMITS OF LIABILITY
<b>I. Commercial General Liability:</b>	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Project	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
<b>II. Commercial Automobile Liability</b>	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
<b>III. Workers' Compensation (applicable to the State of Arizona)*<sup>1</sup></b>	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
<b>V. Professional Liability – Technology Errors &amp; Omissions - In addition to I, II, III</b>	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

\*<sup>1</sup> Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

- D. **ADDITIONAL INSURANCE REQUIREMENTS:** Policies shall be endorsed to include the following provisions:
  - 1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor (including Worker's Compensation).

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2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
  3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- E. **NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require 10 days written notice from the Contractor to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.
- F. **ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- G. **VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.
- All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.
- All certificates required by this Contract shall be sent directly to the Department of Procurement.
- The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- H. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- I. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance.

## **5. ZOLL's Response to Intent to Negotiate**

**Jenn Myers - ZOLL Medical Corporation's response to the City of Tucson's Intent to Negotiate: Request for Proposal# 171769- Cardiac Monitors due July 14, 2017 at 4:00p.m.**

---

**From:** Amy Coffin <ACoffin@zoll.com>  
**To:** "jenn.myers@tucsonaz.gov" <jenn.myers@tucsonaz.gov>  
**Date:** 7/14/2017 11:12 AM  
**Subject:** ZOLL Medical Corporation's response to the City of Tucson's Intent to Negotiate: Request for Proposal# 171769- Cardiac Monitors due July 14, 2017 at 4:00p.m.  
**Cc:** Mike Borkowski <MBorkowski@zoll.com>, Ryan Grulke <RGrulke@zoll.com>, Ba...  
**Attachments:** City of Tucson Cover Letter.pdf; Notice of Intent to Negotiate-Final.docx; X Series EMS One Year Warranty.docx; AED Plus 5 YR Product Warranty.docx; Tucson Access Agreement template.doc; End User License Agreement .docx; BEST AND FINAL PRICE PAGE - Final.pdf; City of Tucson Department of Procurement 249242Version 1 .pdf; OFFER AND ACCEPTANCE - Final.pdf

---

Hello Jen,

Attached you will find ZOLL Medical Corporation's response to your Intent to Negotiate: Request for Proposal# 171769- Cardiac Monitors. Our response includes the following documents:

- ZOLL Cover Letter
- Intent to Negotiate Document
- EMS One (1) Year Warranty (Word Doc for editing)
- AED Plus Five (5) Year Warranty (Word Doc for editing)
- Access Agreement
- End User License Agreement
- Best & Final Offer Page
- ZOLL Quotation
- Offer & Acceptance

Please let me know that this has been received, and if you have any questions.

Thank you for the opportunity,

Amy Coffin  
Bids/Proposals Coordinator  
Notary Public  
978-421-9447 phone (direct)  
800-348-9011 phone (toll free)  
978-421-0015 fax  
acoffin@zoll.com  
www.zoll.com

**ZOLL**

*An Asahi Kasei Group Company*

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.



269 Mill Road  
Chelmsford, Massachusetts 01824-4105  
978-421-9655 (main)  
978-421-0025 (fax)  
www.zoll.com

July 14, 2017

City of Tucson Department of Procurement  
255 W. Alameda, 6<sup>th</sup> Floor  
Tucson, AZ 85701

RE: Intent to Negotiate: Request for Proposal# 171769- Cardiac Monitors

Dear Sir/Ma'am,

ZOLL® Medical Corporation ("ZOLL") is pleased to provide our response to your Intent to Negotiate: Request for Proposal# 171769- Cardiac Monitors due July 14, 2017 at 4:00 p.m.

Our proposal includes the following:

- Intent to Negotiate Document with comments added and references to the included documents below:
  - EMS One (1) Year Warranty
  - AED Plus Five (5) Year Warranty
  - Access Agreement
  - End User License Agreement (pertains to ZOLL Data Items only)
- Best & Final Price Page
- ZOLL Quotation
- Offer & Acceptance

Highlighted below are some key points in our final offer.

- All necessary components to bring pediatric CPR to the entire department have been added to the quote. This will allow for the department to significantly scale back the need for AEDs, resulting in a savings of thousands of dollars.
- The additional twelve Philips MRX trades were added to the final offer. Its trade value in the open market has declined significantly of late. For the final offer we've added five trades at the original trade value we bid in the RFP (\$8,534) to match the additional five X Series units that were added to package. For the remaining seven units, our trade offer is \$3,000. The total trade incentive for the monitors goes from (\$366,962) to (\$409,632).
- The fifty-six Philips FR3 trades have been added at \$100 each for a total incentive of \$5,600.
- Seventy five 5ft NIBP cables have been added at no cost, resulting in a savings value of \$6,562.50
- For training purposes we've included three AED Plus trainers at no cost, resulting in a savings value of \$1,137 to help ease the transition to the new AED.

Thank you for your time, effort, and the opportunity to work alongside The City of Tucson and the Fire Department on this important project. We understand you still have an important decision to make, and we hope you will seriously consider our best and final offer. We look forward to building on our relationship with the City.

If you need any further information or assistance, please do not hesitate to call me at 480-299-8900 (mobile) or email me, [mborkowski@zoll.com](mailto:mborkowski@zoll.com).

Regards,

Mike Borkowski  
EMS Strategic Account Manager

MB/ajc  
Enclosures



## CITY OF TUCSON

DEPARTMENT OF PROCUREMENT

July 12, 2017

Amy Coffin  
Bid & Proposals Coordinator ZOLL  
Medical Corporation 269 Mill Road  
Chelmsford, MA 01824  
[acoffin@zoll.com](mailto:acoffin@zoll.com)

*Sent via electronic mail, this day*

**Subject: Request for Proposal No. 171769 – Cardiac Monitors Intent to Negotiate**

Dear Ms. Coffin:

The City of Tucson has completed the evaluation of submittals received in response to the subject solicitation. Based upon the recommendation of the evaluation committee, the City is inviting your firm to enter negotiations. Specifically, the City requests the following:

**1. Best and Final Pricing**

a. The City requests a Best and Final Offer from Zoll Medical Corporation. Please complete the attached Best and Final Price Page.

- In consideration of the cardiac monitor having the functionality of the AEDs, the City has revised the intent of the initial purchase quantities to seventy-five (75) cardiac monitors and twenty (20) AEDs. This is reflected on the Best and Final Price Page.
- The City has also added to the Best and Final Price Page, two line items for trade-in value. The City intends to trade in fifty-five (55) MRX monitors and fifty-six (56) Philips FR3s. Please provide the trade-in value for these items.

b. Please provide a break down (similar to the original quotation) including the 5ft Dual Lumen NIBP Hose in lieu of the 10ft, that incorporates the above mentioned items into a final price proposal.

Completed pricing document with the above requirements is included with this response.

**2. Special Terms and Conditions: Defective Product**

The City accepts Zoll's proposed modifications in the attached Special Terms and Conditions: Defective Product.

**3. Special Terms and Conditions: Warranty**

The City rejects Zoll's proposed deletion in the attached Special Terms and Conditions: Warranty. Please clarify why Zoll will not provide a warranty for the "fitness for the intended use".

A warranty for fitness for intended use means that, where ZOLL at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying

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on ZOLL's skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods are fit for that purpose. For example, if the customer indicates that they want an AED where the user can provide a shock even when not advised by the box, and ZOLL sells an AED Plus, that would violate the warranty.

Please advise if the City of Tucson has a specific use that is not covered by our standard warranty, and if so we request that the City of Tucson redline the included warranty documentation included in our response.

**4. Special Terms and Conditions: Cooperative Purchasing**

Zoll has requested that a signed contract acknowledgement form be required for any EMS/Fire agencies utilizing this contract, at time of order. Please provide a copy of this form for the City's review.

The City of Tucson Access Agreement has been included in this response for your review.

**5. Cooperative Administration Fee**

The City requests that the proposed offer be revised to provide a 3% administrative fee to the City on all sales to other agencies, which on average represents the typical administrative fee for cooperative contracts.

ZOLL accepts the 3% fee, which will be paid quarterly, within 60 days after the end of the quarter for all EMS/Fire Agencies.

**6. Standard Terms and Conditions: Contract Amendments**

The City accepts Zoll's proposed modifications in the attached Standard Terms and Conditions: Contract Amendments.

**7. Standard Terms and Conditions: Default in One Installment to Constitute Total Breach**

The City accepts Zoll's proposed modifications in the attached Standard Terms and Conditions: Default in One Installment to Constitute Total Breach.

**8. Standard Terms and Conditions: Exclusive Possession**

The City accepts Zoll's proposed modifications in the attached Standard Terms and Conditions: Exclusive Possession.

**9. Standard Terms and Conditions: Indemnification**

The City denies the modification to the Standard Terms and Conditions: Indemnification. The original language published within the Request for Proposal shall endure without change or modification. Please confirm your understanding of this clause.

ZOLL agrees to the Indemnification clause as originally included in the RFP.

**10. Standard Terms and Conditions: Inspection and Acceptance**

The City accepts Zoll's proposed modifications in the attached Standard Terms and Conditions: Inspection and Acceptance.

**11. Standard Terms and Conditions: Termination of Contract**

The City accepts the addition of "and after providing the Contracts an adequate opportunity to cure." to the first sentence of the second paragraph. The City does not agree to remove "In the opinion of the City" throughout this term and condition. Please confirm your agreement to retain the phrase "In the opinion of the City..."

ZOLL accepts to the alternate language proposed here.



### 12. End User License Agreement

During the presentation, Zoll stated that users of the website would agree to an End User License agreement for access to the website. Please provide a copy of that agreement for the City's review and consideration.

A copy of the End User License Agreement is included with this response. This pertains to ZOLL Data items only, not to the items within the quotation we are including with our RFP response. These agreements can also be found online.

The user agreements are on the ZOLL Online website upon creating an account. This is done at ZOLL's Online login page (<https://www.zollonline.com/login>) by clicking Sign Up Now. There are links to two agreements at the bottom of the page:

1. ZOLL Online terms of service
2. ZOLL application service provider and business associate agreement

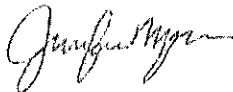
### 13. Offer and Acceptance Page

The City does not accept the modification made to the Offer and Acceptance Page. Please sign and return the attached Offer and Acceptance Page.

This Notice of Intent to Negotiate is not an intent to award a contract and does not establish a contractual relationship between the firm and the City. In the event that the City is not able to negotiate a satisfactory contract with the firm, the City will terminate negotiations.

Please submit a written response to my attention via e-mail to [Jenn.myers@tucsonaz.gov](mailto:Jenn.myers@tucsonaz.gov) on or before **Friday, July 14, 2017 at 4:00 PM**. Please contact me via e-mail or at (520) 837-4137 with questions regarding the items above.

Sincerely,



Jenn Myers  
Senior Contract Officer

Attachments: Four (4) Best and  
Final Price Page Offer and  
Acceptance  
Copy of Zoll's proposed Special Terms and Conditions Copy  
of Zoll's proposed Standard Terms and Conditions

Cc: Mike Borkowski, [mborkowski@zoll.com](mailto:mborkowski@zoll.com) Ryan  
Grulke, [rgrulke@zoll.com](mailto:rgrulke@zoll.com)



## **EMS ONE YEAR PRODUCT LIMITED WARRANTY**

ZOLL Medical Corporation (ZOLL) warrants to the Customer that from the date of shipment from ZOLL's facility, the equipment (constituting the Defibrillators and Battery Chargers) will be free from defects in material and workmanship under normal use and service for the period of one (1) year from the date of shipment. The Factory Warranty covers all parts, labor, shipping and insurance costs for the repair of the equipment. A Service Loaner is provided at no charge for use during the repair.

During such one-year period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the equipment found to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship, ZOLL's regular service charges shall apply.

Accessories (constituting the cables, paddles, SpO2 sensors, single battery chargers and electrodes) shall be warranted for 90 days from date of shipment. During such period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the accessories found by ZOLL to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship; ZOLL's regular service charges shall apply.

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.

This warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, patient cables and accessories.

The foregoing warranty does not apply to software included as part of the equipment (including software embodied in read-only memory, known as "firmware").

THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ZOLL's maximum liability arising out of the sale of the Products (equipment and related accessories and disposables) or their use, whether based upon warranty, contract, tort or otherwise, shall not exceed the actual payments received by ZOLL in connection therewith. ZOLL shall not be liable for any incidental, special or consequential loss, damage or expense (including without limitation lost profits) directly or indirectly arising from the sale, inability to sell, use or loss of use of any Product (however caused and on any theory of liability), even if ZOLL has been advised of the possibility of such loss. The foregoing limitations shall not apply to any claims for bodily injury or death to the extent that limitation of damages for such claims are unenforceable or against public policy under any applicable statute or rule of law.



## **AED PLUS AND AED PRO FIVE YEAR LIMITED PRODUCT WARRANTY**

ZOLL Medical Corporation (ZOLL) warrants to the Customer that from the date of installation, or thirty (30) days after the date of shipment from ZOLL's facility, whichever first occurs, the Equipment (constituting the Defibrillator) will be free from defects in material and workmanship under normal use and service for a period of five (5) years. The Factory Warranty covers all parts, labor, shipping and insurance costs for the repair of the Equipment. A Service Loaner is provided at no charge for use during the repair.

During such five-year period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the Equipment found to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship; ZOLL's regular service charges shall apply.

Accessories (constituting the PASS cover and electrodes) shall be warranted for ninety (90) days from date of shipment. During such period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the accessories found by ZOLL to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship; ZOLL's regular service charges shall apply.

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.

This warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, patient cables and accessories. The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory, known as "firmware").

The foregoing warranty constitutes the exclusive remedy of the customer and the exclusive liability of ZOLL for any breach of any warranty related to the Equipment supplied hereunder.

**THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF "MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE."**

ZOLL's maximum liability arising out of the sale of the Products (Equipment and related accessories and disposables) or their use, whether based upon warranty, contract, tort or otherwise, shall not exceed the actual payments received by ZOLL in connection therewith. ZOLL shall not be liable for any incidental, special or consequential loss, damage or expense (including without limitation lost profits) directly or indirectly arising from the sale, inability to sell, use or loss of use of any Product (however caused and on any theory of liability), even if ZOLL has been advised of the possibility of such loss. The foregoing limitations shall not apply to any claims for bodily injury or death to the extent that limitation of damages for such claims is unenforceable or against public policy under any applicable statute or rule of law.

In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.





# EXHIBIT A

## ACKNOWLEDGMENT FORM

We, \_\_\_\_\_, located at \_\_\_\_\_, as of the date of this request, would like to access the *City of Tucson's Contract # 171769 for Cardiac Monitors dated \_\_\_\_\_*. This contract is effective \_\_\_\_\_ through \_\_\_\_\_ with ZOLL Medical Corporation. As per the purchasing agreement included therein, by signing this request, I am certifying that I am a person authorized to bind the agency, and by doing so agree to accept all terms and conditions as stated within the *City of Tucson's Contract # 171769 for Cardiac Monitors dated \_\_\_\_\_*.

AGENCY NAME:

\_\_\_\_\_

Date:

\_\_\_\_\_

Signed:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

ZOLL Online Terms of Service  
ZOLL Online Terms of Use

Last updated on 9/8/2014

ZOLL Data Systems, Inc. ("ZOLL," "we," "us," or "our") provides you with access to the website <http://www.zollonline.com> and other features, applications, emails, content, presentations, downloads, surveys, reviews, newsletters, panels, communities and/or other devices, products or services (collectively, the "Site") subject to the following Terms of Use. Please read the following Terms of Use carefully before using the Site. By accessing or using the Site, you agree to these Terms of Use.

We may, from time to time, modify or change the Terms of Use. Any revised version of the Terms of Use will be posted on our Site and will govern your future use of the Site. Please review these Terms of Use periodically.

#### 1. INTELLECTUAL PROPERTY

The Site and its related content and services and any derivative works or enhancements of the same (collectively, "Site Content") and all intellectual property rights to the same are owned by us or our licensors. All trademarks, service marks, trade names and trade dress that may appear on the Site are owned by us or our licensors. Except for the limited use rights granted in these Terms of Use, you shall not acquire any right, title or interest in the Site or any Site Content. Any rights not expressly granted in these Terms of Use are expressly reserved.

#### 2. ACCESS OR USE OF THE SITE

- (a) Use of the Site and certain Site Content requires you to be 18 years of age or older.
- (b) Whenever you submit information to us, you agree to provide true, accurate and complete information.
- (c) Accounts or Registration. We may impose restrictions on your ability to establish an account or register for certain activities (e.g., age limits, limitations on the number of accounts, etc.). When registering an account, you may need to select a username ("ID") and password. You are responsible for keeping your ID and password, and other account information, confidential and are fully responsible for all activities that occur under your account, whether or not you authorized such activities. You agree to notify us immediately of any breach of security or unauthorized use of your account or ID and password.

#### 3. LIMITATION, SUSPENSION OR TERMINATION

- (a) We may, in our sole discretion, temporarily or permanently change, limit, suspend or terminate your access to the Site (including any Site Content or User Content) without prior notice. We may do so based on changes to our business practices (e.g., eliminating a service, etc.), if you violate the letter or spirit of these Terms of Use, or for any other lawful reason. You agree that we are not liable to you or any third party for any such action.
- (b) Any limitation, suspension or termination we impose shall not alter your obligations to us under these Terms of Use. The provisions of these Terms of Use which by their nature should survive any such action on our part shall survive.

#### 4. ACCEPTABLE USE

(a) The Site (including, without limitation, Site Content and User Content) is provided for your information and limited use. When using the Site, you agree to comply with these Terms of Use, and all applicable international, federal, state and local laws.

(b) Except as expressly permitted by these Terms of Use, you may not:

- use the Site in an unlawful or fraudulent manner or for such purposes, to collect personally identifiable information, or to impersonate other users;
  - modify our copyright/trademark or other proprietary rights notices, or interfere with the security-related features of the Site (e.g., those that prevent or restrict copying Site Content);
  - use the Site in any way to manipulate or distort, or undermine the integrity and accuracy of data, or take any action to interfere with, damage or disrupt any part of the Site;
  - use the Site to send, knowingly receive, upload/post or download, any material which does not comply with our content standards;
  - use the Site to transmit or facilitate the transmission of any unsolicited or unauthorized advertising or promotional material;
  - use the Site to transmit any data, or upload to the Site any data, that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware;
  - decompile, reverse engineer or disassemble any portion of the Site;
  - use any robot, spider, other automatic device or manual process to monitor or copy our web pages or Site Content, or use network-monitoring software to determine architecture of or extract usage data from the Site; or
  - engage in any conduct that restricts or inhibits any other user from using or enjoying the Site.
- (c) You agree to fully cooperate with us to investigate any suspected or actual activity that is in breach of these Terms of Use.

## 5. USER CONTENT

(a) We may now or in the future permit you to post, upload, transmit through or otherwise provide through the Site (collectively, "submit") messages, text, illustrations, files, images, graphics, phodoc, comments, sounds, music, videos, information (e.g., your name, e-mail address, etc.) and other content (collectively "User Content").

(b) Standards. You agree not to submit any User Content protected by copyright, trademark, patent, trade secret, moral right, or other intellectual property or proprietary right without the express permission of the owner of the respective right. You are solely liable for any damage resulting from your failure to obtain such permission or from any other harm resulting from your User Content. You also represent and warrant that your User Content:

- will comply with all applicable laws;
- will be truthful, non-misleading and non-deceptive;
- will not contain any material which is tortious (e.g., defames or invades the privacy of any person, etc.), obscene, offensive, hateful or inflammatory;
- will not promote sexually explicit material or violence, or promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- does not breach any legal duty you owe to a third party, such as a contractual duty or a duty of confidence;
- will not be threatening, abuse or invade another's privacy, or provided with an intent to harass, upset or embarrass any other person;

- will not be provided with an intent to impersonate any person, to misrepresent your identity or affiliation with any person, or to falsely give the impression that your User Content comes from someone else; or

- will not advocate, promote or assist any unlawful act (e.g., criminal acts, copyright infringement, computer misuse, etc.).

(c) We may monitor, edit or remove any User Content for violation of the letter or spirit of these terms, or for any other lawful reason. However, we have no obligation to look for, edit or remove any User Content for any reason including, without limitation, violation of these terms.

(d) Grant of Rights & Use. We do not claim ownership to your User Content. However, by submitting User Content, you automatically grant, or warrant that the owner has expressly granted, to us a worldwide, royalty-free, perpetual, irrevocable, non-exclusive, fully sublicensable and transferable right and license to use, reproduce, distribute, create derivative works based upon (e.g., translations, etc.), publicly display/perform, transmit and publish the User Content (in whole or in part) as we, in our sole discretion, deem appropriate in connection with our business and operations. Notwithstanding the foregoing, you waive any and all claims you may now or later have in any jurisdiction to so-called "moral rights" or rights of "droit moral" with respect to the User Content.

By submitting User Content, you also grant us the right, but not the obligation, to use your biographical or other information about you including, without limitation, all or some of your name, alias, nickname and geographical location in connection with your User Content consistent with the license granted in the previous paragraph but subject to our Online Privacy Statement.

#### 6. RELIANCE ON SITE INFORMATION

(a) While we make efforts to ensure that information provided by us is accurate, we do not represent or warrant that any User Content or Site Content is accurate, complete or current. In all instances, it is your responsibility to evaluate the accuracy, timeliness, completeness, or usefulness of Site Content, User Content, and other information and opinions expressed through the Site.

(b) If there is a dispute between you and anyone accessing the Site, or you and any third party in connection with the Site, you understand and agree that we are under no obligation to become involved. In such instances, you hereby release ZOLL and its officers, directors, employees, parents, partners, successors, agents, affiliates, subsidiaries and their related companies from claims, demands and damages of every kind or nature arising out of, relating to or in any way connected with such dispute.

#### 7. THIRD PARTIES

(a) Your dealings with third parties via the Site, including third party websites accessed via links on the Site, are solely between you and that third party. As such, when you engage in a transaction with a third party or access a third party's website, you do so under their terms and policies, not ours. Complaints, questions and claims related to transactions with any third party should be directed to that third party.

(b) WE MAKE NO WARRANTIES REGARDING AND SHALL NOT BE LIABLE OR RESPONSIBLE TO YOU (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR YOUR USE OF, THE QUALITY OR LATE DELIVERY OF THE GOODS OR SERVICES FROM ANY THIRD PARTY OR FOR HONORING (OR TO CAUSE ANY MERCHANT TO HONOR) ANY ERRONEOUS INFORMATION REGARDING THE PRICE, DESCRIPTION AND AVAILABILITY OF, OR ANY DISCOUNTS, OFFERS, PROMOTIONS AND



COUPONS RELATING TO ANY PRODUCT OR SERVICE OFFERINGS PROMOTED OR AVAILABLE THROUGH THE SITE.

#### 8. LIMITS ON OUR LIABILITY

(a) UNDER NO CIRCUMSTANCES SHALL ZOLL OR ITS OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, SUCCESSORS, AGENTS, DISTRIBUTION PARTNERS, AFFILIATES, SUBSIDIARIES OR THEIR RELATED COMPANIES BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF ZOLL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH THE SITE OR THESE TERMS OF USE. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE SITE INCLUDING, WITHOUT LIMITATION, ZOLL CONTENT IS TO STOP USING THE SITE. THIS LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF SERVICES OR PRODUCTS, INFORMATION, ADVICE, INFORMATION OR ADVERTISING RECEIVED THROUGH OR IN CONNECTION WITH THE SITE OR ANY LINKS PROVIDED VIA EITHER. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

(b) YOU AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE SITE OR THESE TERMS OF USE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. CAUSES OF ACTION BROUGHT OUTSIDE THIS TIME PERIOD ARE WAIVED.

(c) In some jurisdictions, limitations of liability are not permitted and, therefore, some of the above limits may not apply in all instances.

#### 9. DISCLAIMER OF WARRANTIES

(a) TO THE FULL EXTENT PERMITTED BY LAW, THE SITE AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE ARE PROVIDED BY ZOLL ON AN "AS IS" AND "AS AVAILABLE" BASIS AND ARE NOT WARRANTED TO BE, AMONG OTHER THINGS, FREE OF COMPUTER VIRUSES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE IS AT YOUR OWN RISK. ZOLL MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF ITS SITE OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR SERVICES INCLUDED ON ITS SITE OR OTHERWISE MADE AVAILABLE TO YOU THROUGH ITS SERVICES.

(b) Certain state laws do not allow limitations on implied warranties. If these laws apply to you, some or all of the above disclaimers, exclusions or limitations may not apply to you, and you might have additional rights.

#### 10. INDEMNIFICATION

You agree to defend, indemnify and hold harmless ZOLL and its officers, directors, employees, partners, successors, agents, distribution partners, affiliates, subsidiaries and their related companies from and against any and all claims, liabilities, losses, damages, obligations, costs and expenses (including reasonable attorneys' fees and costs) arising out of or related to: (i) your access to or use of the Site; (ii) your User Content; (iii) any actual or alleged violation or breach by you of these Terms of Use; (iv) any actual or alleged breach of any representation, warranty or covenant that you have made to us; or (v) your acts or omissions. You agree to cooperate fully with us in the defense of any claim that is the subject of your obligations hereunder.

#### 11. GOVERNING LAW

These Terms of Use shall be construed in accordance with the laws of the State of Colorado without regard to its conflict of laws rules. You consent to jurisdiction in the State of Colorado.

#### 12. AMENDMENT; ADDITIONAL TERMS

(a) We may update the Site to provide better options and features, or for other reasons. In certain instances it may be necessary to update or modify our Terms of Use. We also may, in some instances, need to provide you with operating rules or additional terms that govern your use of parts of the Site ("Additional Terms"). Accordingly, you agree that we may at any time provide you with Additional Terms, or update or modify these Terms of Use, as appropriate or necessary. To the extent any Additional Terms conflict with these Terms of Use, the Additional Terms will control.

(b) Modifications to these Terms of Use or any Additional Terms will be effective upon: (a) notice, either by posting on the Site or by other proper notification; and (b) your subsequent use of the Site. It is your responsibility to review the Terms of Use and the Site from time to time for any changes or Additional Terms. Your access and continued use of the Site following any modification of these Terms of Use or the provision of Additional Terms will signify your assent to and acceptance of the same. If you object to any revision to the Terms of Use or to any Additional Terms, immediately discontinue use of the Site.

#### 13. OTHER TERMS

(a) No waiver by either of us of any breach or default under these Terms of Use shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used in these Terms of Use are for convenience only and shall not be given any legal import.

(b) Except where specifically stated otherwise, if any part of these Terms of Use are deemed unlawful or unenforceable for any reason, we both agree that only that part of the Terms of Use shall be stricken and that the remaining terms in the Terms of Use shall not be affected and shall remain in force and effect.

(c) You may not assign these Terms of Use or assign any rights or delegate any obligations hereunder, in whole or in part, without our prior written consent.

(d) These Terms of Use (including the Online Privacy Statement and any Additional Terms incorporated by reference) constitute the entire agreement, and supersede all previous written or oral agreements, between you and ZOLL in connection with the Site.

ZOLL Application Service Provider and Business Associate Agreements  
ZOLL Online Application Service Provider Agreement

**IMPORTANT-READ CAREFULLY.** This Application Service Agreement ("Agreement") is a legal Agreement between you ("Customer") and ZOLL Data Systems, Inc., at 11802 Ridge Parkway, Suite 400, Broomfield, CO 80021 ("ZOLL") for ASP Services, associated media, and Instructions. BY CLICKING THE "ACCEPT" BUTTON OR USING THE ASP SERVICES, CUSTOMER IS STATING THAT IT HAS READ AND UNDERSTANDS ALL OF THE TERMS AND CONDITIONS OF THIS ASP AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS, WITHOUT LIMITATION OR QUALIFICATION. IF CUSTOMER DOES NOT AGREE TO THESE TERMS, CUSTOMER WILL NOT ACCESS OR USE THE SERVICES.

In addition, ZOLL may amend this Agreement (including the exhibits hereto) or any additional terms that apply to an ASP Service or the ZOLL Site at any time. Customer should review the most current form of this Agreement regularly. ZOLL will post the most current form at <https://www.zollonline.com/Account/TermsOfService>. ZOLL will endeavor to, but is not required to, notify Customer of any amendments. Amendments will not apply retroactively and will become effective no sooner than thirty (30) days after they are posted. However, changes addressing new functions for an ASP Service or changes made for legal reasons will be effective immediately. Customer understands and acknowledges that its continued use of the ASP Services constitutes its agreement to and acceptance of all such amendments and that absent such effective consent, use of the ASP Services is not authorized.

## Terms and Conditions

### 1. Definitions.

- 1.1. "ASP Services" means the services described on the ZOLL Site that Customer has chosen to receive by following the procedures indicated on the ZOLL Site.
- 1.2. "BAA" means the Business Associate Addendum attached hereto as Exhibit A.
- 1.3. "Confidential Information" means all trade secrets, business and financial information, computer software, machine and operator instructions, business methods, procedures, know-how, and other information that relates to the business or technology of either party and is marked or identified as confidential, or disclosed in circumstances that would lead a reasonable person to believe such information is confidential. The Software and Instructions shall be considered ZOLL's Confidential Information, notwithstanding any failure to mark or identify it as such.
- 1.4. "Fee Based Services" means the ASP Services for which ZOLL charges Customer a fee.
- 1.5. "Instructions" means the instructions for use of the ASP Services and the documentation and users manuals from time to time provided by ZOLL on the ZOLL Site.
- 1.6. "Intellectual Property Rights" means any and all existing or future copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing.
- 1.7. "Software" means the ZOLL software and the ZOLL licensors' and/or suppliers' software that underlies the ASP Services provided to Customer, as modified, updated, and enhanced.
- 1.8. "ZOLL Site" means the web site located at a unique URL to be provided by ZOLL to Customer where end users may download the Software and access and use the ASP Services.

### 2. ASP Services; Payment Obligation.

- 2.1. Provision of ASP Services by ZOLL. Subject to the terms and conditions of this Agreement, ZOLL will use commercially reasonable efforts to make the ASP Services available to Customer through the ZOLL Site over normal network connections, excepting downtime due to necessary maintenance and troubleshooting. Customer, not ZOLL, shall be responsible for controlling its users and protection of its passwords. The BAA shall apply to the ASP Services.
- 2.2. Support and Maintenance. ZOLL will provide telephone support services during ZOLL's regular business hours for ASP Services questions.
- 2.3. Payment Obligation.. Fee Based Services provided to Customer will require payment of a monthly fee. Customer will be notified of fees and terms of use and payment when Customer first accesses a Fee Based Service. Customer will be required to enter credit card information or other form of payment information before accessing any Fee Based Service.

### 3. License Grant; Restrictions; Ownership.

3.1. License Grant. Subject to the terms and conditions of this Agreement ZOLL grants to Customer, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable license to access and use the ASP Services using the Software, each as made available to Customer through the ZOLL Site, solely for Customer's internal business purposes and solely in accordance with the Instructions.

3.2. Restrictions. Customer shall not, and shall not permit any third party to: (a) modify, adapt, alter, translate, or create derivative works from the ASP Services, the Software or the Instructions; (b) allow any third party access to or use of the ASP Services; (c) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the source code for the Software; or (d) otherwise use or copy the Software or the Instructions or the ASP Services in any manner not expressly permitted.

3.3. Ownership. The Software, the Instructions, the ASP Services, all proprietary technology utilized by ZOLL to perform its obligations under this Agreement, and all Intellectual Property Rights in and to the foregoing, are the exclusive property of ZOLL (or as the case may be its licensors and suppliers). Any rights not expressly granted to Customer hereunder are reserved by ZOLL (or its licensors and suppliers, as the case may be).

### 4. Customer Content.

As between ZOLL and Customer, and without limiting the rights (if any) of any patient, Customer will retain all right, title and interest in and to all data, information or other content provided by Customer in its use of the ASP Services ("Customer Content"), provided, however, that ZOLL may de-identify and use Customer Content for any lawful purpose consistent with all applicable law.

### 5. Warranty Disclaimers.

THE ASP SERVICES ARE PROVIDED "AS IS", WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY; ZOLL DOES NOT PROMISE THAT THE ASP SERVICES WILL BE AVAILABLE FOR ANY PERIOD AND ZOLL MAKES NO UP-TIME COMMITMENT. ZOLL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT AND THAT NO WARRANTIES ARE MADE BY ANY OF ZOLL'S LICENSORS OR SUPPLIERS.

5.1. CUSTOMER ACKNOWLEDGES AND AGREES THAT, IN ENTERING INTO THIS CONTRACT, IT HAS NOT RELIED UPON THE FUTURE AVAILABILITY OF ANY NEW OR ENHANCED FEATURE OR FUNCTIONALITY, OR ANY NEW OR ENHANCED PRODUCT OR SERVICE, INCLUDING WITHOUT LIMITATION, UPDATES TO ZOLL'S EXISTING PRODUCTS AND SERVICES. ZOLL'S PERFORMANCE OBLIGATIONS HEREUNDER ARE LIMITED TO THOSE EXPRESSLY ENUMERATED HEREIN, AND PAYMENT FOR ZOLL'S PERFORMANCE OBLIGATIONS SHALL BE DUE AS DESCRIBED HEREIN.

### 6. Limitation of Liability.

In no event will ZOLL be liable for any consequential, indirect, exemplary, special, or incidental damages, OR for any lost data, lost profits OR costs of procurement of substitute goods or

services, arising from or relating to this Agreement, however caused and under any theory of liability (including negligence), even if ZOLL has been advised of the possibility of such damages. ZOLL's total cumulative liability in connection with this Agreement and the Software, whether in contract or tort or otherwise, will not exceed the amount paid TO ZOLL BY CUSTOMER FOR the ASP SERVICES provided UNDER THIS AGREEMENT IN THE PREVIOUS SIX (6) MONTH PERIOD. Customer acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that ZOLL would not enter into this Agreement without these limitations on its liability, and Customer agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. In addition, ZOLL disclaims all liability of any kind of ZOLL's licensors and suppliers.

#### 7. Term and Termination.

7.1. Term. The term of this Agreement ("Term") will begin on the date these terms are accepted by Customer and continue until terminated.

7.2. Termination. Either party may terminate this Agreement with or without cause on 20 days' prior notice to the other.

7.3. Effects of Termination. Upon expiration or termination of this Agreement for any reason: (a) amounts, if any, owed to ZOLL under this Agreement before such termination or expiration will be immediately due and payable, (b) all licensed rights granted in this Agreement will immediately cease to exist; and (c) Customer must promptly discontinue all use of the ASP Services and return or destroy, all copies of the Instructions and/ Software in Customer's possession or control.

#### 8. Confidentiality.

8.1. Protection. Subject to Section 4 hereof, the party receiving Confidential Information ("Receiving Party") from the other party ("Disclosing Party") will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

8.2. Exceptions. The Receiving Party's obligations under Section 8.1 above with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure in writing prior to making such disclosure and

cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

#### 9. Indemnification.

Customer shall indemnify, defend and hold ZOLL harmless of, from and against any and all liabilities, losses, expenses, damages and claims that arise out of Customer's use of the ASP Services or Customer's breach of this Agreement, except to the extent same are due to ZOLL's breach hereof or ZOLL's negligence.

#### 10. General Provisions.

10.1. Compliance with Laws and Export Regulations. Customer shall comply with all applicable laws and regulations concerning its use of the ASP Services, including without limitation if applicable all export and import control laws and regulations. Customer will not use the ASP Services for any purpose in violation of any applicable laws. Customer agrees to defend, indemnify, and hold harmless ZOLL from and against any violation of any applicable laws or regulations by Customer or any of its agents, officers, directors, or employees.

10.2. Compliance Certificate. Upon written request from ZOLL, Customer shall furnish ZOLL with a certificate signed by an officer of Customer stating that the ASP Services are being used in accordance with the terms and conditions of this Agreement.

10.3. Assignment. Customer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without ZOLL's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. ZOLL shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

10.4. U.S. Government End Users. If Customer is a branch or agency of the United States Government, the following provision applies. The Software and Instructions are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and if provided hereunder are (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995).

10.5. Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile (fax), or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth above or in the contact information provided by Customer in connection with accepting the terms of this Agreement, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner; provided, however, that ZOLL's amendments of this Agreement shall be deemed delivered to Customer and Customer shall be deemed notified thereof by ZOLL posting the most current form of this Agreement on the website set forth at the beginning of this Agreement as more particularly provided at the beginning of this Agreement.

10.6. Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

10.7. Remedies. Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the ASP Services are built on valuable trade secrets and proprietary information of ZOLL, that any actual or threatened breach hereof may constitute immediate, irreparable harm to ZOLL for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

10.8. Waivers. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

10.9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

10.10. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

10.11. Entire Agreement. This Agreement, including the cover page (if any) and any exhibits hereto, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

10.12. Third Party Access to ZOLL Site on behalf of Customer. If Customer engages a third-party provider approved by ZOLL ("Third-Party Provider") to provide Customer with data management services using Third-Party Provider's product(s) that are integrated with software products (including Software) and/or equipment of ZOLL and/or ZOLL affiliates (the "Third-Party Services"), Customer agrees to promptly notify ZOLL thereof and Customer hereby consents to ZOLL sharing of Customer Content with such Third-Party Provider for the sole purpose of Third-Party Provider's provision of the Third-Party Services. Customer agrees that if Customer wishes to grant such Third-Party Provider access to the ZOLL Site and/or the ASP Services for the purpose of the provision of the Third-Party Services, Customer shall require Third-Party Provider to comply with the terms of this Agreement and Customer agrees to indemnify, defend and hold harmless ZOLL from and against any liabilities, losses, expenses, damages and claims arising from Third-Party Provider's access and use of the ZOLL Site and the ASP Services. Upon termination of Customer's agreement with Third-Party Provider for any reason, Customer agrees to immediately terminate Third-Party Provider's access to the ZOLL Site and the ASP Services and notify ZOLL thereof. Customer represents that Customer has a valid Business Associate Agreement with Third-Party Provider in place for the provision of the Third-Party Services and that the sharing by ZOLL of the Customer Content with Third-Party Provider does not violate any agreement, law, regulation, or other legal standard applicable to Customer. In addition, Customer agrees that the provision of the Third-Party Services by Third-Party Provider to Customer does not make Third-Party Provider a subcontractor business associate of ZOLL.

ZOLL Online Business Associate Agreement

Exhibit A

## Business Associate Addendum

This Business Associate Addendum (this "Addendum") is entered into by and between you ("Covered Entity") and ZOLL Data Systems, ("Business Associate") in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information ("PHI") and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations collectively referred to as "HIPAA") This Addendum amends the terms and conditions of and is hereby incorporated as part of that certain agreement between Covered Entity and Business Associate entitled Application Service Provider Agreement (the "Services Agreement") and attached hereto.

### STATEMENT OF AGREEMENT

§1. Definitions. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HIPAA; provided that PHI shall refer only to protected health information of Covered Entity unless otherwise stated.

§2. Compliance and Agents. Business Associate agrees that to the extent it has access to PHI, Business Associate will fully comply with the requirements of this Addendum with respect to such PHI. Business Associate will ensure that every agent, including a subcontractor, of Business Associate to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity will comply with the same restrictions and conditions as set forth in this Addendum. If Covered Entity is required by HIPAA to maintain a Notice of Privacy Practices, Covered Entity shall notify Business Associate of any limitations in such notice to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

§3. Use and Disclosure; Rights. Business Associate agrees that it shall not use or disclose PHI except as permitted under this Addendum, including Section 16 hereof, and in compliance with each applicable requirement of 45 CFR Section 164.504(e). Business Associate may use or disclose the PHI received or created by it, (a) to perform its obligations under this Addendum, (b) to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, or (c) to provide data aggregation functions to Covered Entity as permitted by HIPAA. Further, Business associate may use the PHI received by it in its capacity as Business Associate, if necessary, to properly manage and administer its business or to carry out its legal responsibilities. Business Associate may disclose the PHI received by it in its capacity as Business Associate to properly manage and administer its business or to carry out its legal responsibilities if: (a) the disclosure is required by law, or (b) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

§4. Safeguards. Business Associate agrees to develop, document, use, and keep current appropriate procedural, physical, and electronic safeguards, as required in 45 C.F.R. §§164.308 - 164.312, sufficient to prevent any use or disclosure of electronic PHI other than as permitted or required by this Addendum.



§5. Minimum Necessary. Business Associate will limit any use, disclosure, or request for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request.

§6. Report of Improper Use or Disclosure. Business Associate shall report to Covered Entity any information of which it becomes aware concerning any use or disclosure of PHI that is not permitted by this Addendum and any security incident of which it becomes aware. Business Associate will, following the discovery of a breach of "unsecured protected health information," as defined in 45 C.F.R. § 164.402, notify Covered Entity of such breach within 15 days. The notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Addendum.

§7. Individual Access. In accordance with an individual's right to access to their own PHI in a designated record set under 45 CFR §164.524 and the individual's right to copy or amend such records under 45 CFR §164.524 and §164.526, Business Associate shall make available all PHI in a designated record set to Covered Entity to enable the Covered Entity to provide access to the individual to whom that information pertains or such individual's representative.

§8. Amendment of and Access to PHI. Business Associate shall make available for amendment PHI in a designated record set and shall incorporate any amendments to PHI in a designated record set in accordance with 45 CFR §164.526 and in accordance with any process mutually agreed to by the parties.

§9. Accounting. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to an individual's request for an accounting of disclosures of their PHI in accordance with 45 CFR §164.528. Business Associate agrees to make available to Covered Entity the information needed to enable Covered Entity to provide the individual with an accounting of disclosures as set forth in 45 CFR §164.528.

§10. DHHS Access to Books, Records, and Other Information. Business Associate shall make available to the U.S. Department of Health and Human Services ("DHHS"), its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity for purposes of determining the Covered Entity's compliance with HIPAA.

§11. Individual Authorizations; Restrictions. Covered Entity will notify Business Associate of any limitation in its notice of privacy practices, any restriction to the use or disclosure of PHI that Covered Entity has agreed to with an individual and of any changes in or revocation of an authorization or other permission by an individual, to the extent that such limitation, restriction, change, or revocation may affect Business Associate's use or disclosure of PHI.

§12. Compliance with ARRA. Covered Entity and Business Associate agree to comply with the amendments to HIPAA included in the American Recovery and Reinvestment Act of 2009 ("ARRA") (P.L. 111-5), including all privacy and security regulations issued under ARRA that apply to Business Associate as and when those regulations are effective.

§13. Term. This Addendum shall take effect on the effective date of the Services Agreement, and shall continue in effect unless and until either party terminates this Addendum or the Services Agreement.

§14. Breach; Termination; Mitigation. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Addendum, Covered Entity and Business Associate shall take any steps reasonably necessary to cure such breach and make Business Associate comply, and, if such steps are unsuccessful, Covered Entity may terminate this Addendum. Business Associate shall take reasonable actions available to it to mitigate any detrimental effects of such violation or failure to comply.

§15. Return of PHI. Business Associate agrees that upon termination of this Addendum, and if feasible, Business Associate shall (a) return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form or manner and retain no copies of such information or, (b) if such return or destruction is not feasible, immediately notify Covered Entity of the reasons return or destruction are not feasible, and extend indefinitely the protection of this Addendum to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI not feasible.

§16. De-identified Health Information. Business Associate may de-identify any and all PHI and may create a "Limited Data Set" in accordance with 45 C.F.R. § 164.514(b)&(e). Customer acknowledges and agrees that deidentified information is not PHI and that Business Associate may use such de-identified information for any lawful purpose. Use or disclosure of a Limited Data Set must comply with 45 CFR 164.514(e).

§17. Survival. All representations, covenants, and agreements in or under this Addendum or any other documents executed in connection with the transactions contemplated by this Addendum, shall survive the execution, delivery, and performance of this Addendum and such other documents. The respective rights and obligations of Business Associate under Section 14 of this Addendum shall survive termination or expiration of this Addendum.

§18. Further Assurances; Conflicts. Each party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Addendum. The terms and conditions of this Addendum will override and control any conflicting term or condition of the Services Agreement. All non-conflicting terms and conditions of the Service Agreement shall remain in full force and effect. Any ambiguity in this Addendum with respect to the Services Agreement shall be resolved in a manner that will permit Covered Entity to comply with HIPAA.

§19. Applicable Law. The parties acknowledge and agree that HIPAA may be amended and additional guidance or regulations implementing HIPAA may be issued after the date of the execution of this Addendum and may affect the parties' obligations under this Addendum. The parties agree to take such action as is necessary to amend this Addendum from time in order as is necessary for Covered Entity to comply with HIPAA.

§20. Previously Executed BAAs. For avoidance of doubt, with respect to PHI shared under the Services Agreement, this Addendum supersedes and replaces any business associate agreements or addenda previously executed by the parties, notwithstanding any provisions in such previously-executed business associated agreements or addenda to the contrary.

## BEST AND FINAL PRICE PAGE

*Fee must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, materials, printing, travel and mileage, postage, etc.*

The quantities shown are estimates only and the City reserves the right to increase or decrease amounts as circumstances may require.

ITEM	DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT PRICE	EXTENDED PRICE	In addition to the one year warranty that comes with the monitor, this pricing includes four years of extended warranty per monitor
1.	Cardiac Monitor (fully equipped)	75 ea	\$34,909.20	\$ 2,618,190.05	
2.	Lithium Ion Battery (additional)	150 ea	\$ 346.50	\$ 51,975.00	
3.	AED (fully equipped)	20 ea	\$ 1,533.00	\$ 30,660.00	
		<u>QUANTITY</u>			
4.	Trade-In Value MRX Monitors	55 48 ea	\$8,534.00	\$409,632.00	
	Trade-In Value MRX Monitors	7 ea	\$3,000.00	\$21,000.00	
5.	Trade-In Value Philips FR3 AEDs	56 ea	\$100.00	\$5,600.00	
				<b>GRAND TOTAL</b>	<b>\$2,264,593.05</b>

Note: fully equipped means all necessary accessories such as carrying case, batteries (including secondary set) cables, finger probes, BP cuff, battery support unit and/or other adjunct required to utilize all functions of the device.

### 1. Additional Accessories, etc. (Information only)

• Monitor Lithium Battery	1 ea	\$ 346.50	\$ 346.50
• AED Battery Replacement	1 ea	\$ 52.50	\$ 52.50
• SpMET(with adjuncts)	70 75ea	\$ 3,920.00	\$ 294,000.00
• SpCO (with adjuncts)	70 75ea	\$ 2,341.50	\$ 175,612.50
• Temperature	70 75ea	\$ 696.50	\$ 52,237.50
• BP Cuff Replacement	1 ea	\$ 36.75	\$ 36.75
• Cable Set Complete	1 ea	\$ 227.50	\$ 227.50
• Defib Pads (set) adult	1 ea	\$ 52.50	\$ 52.50
• Monitor Replacement case	1 ea	\$ 346.50	\$ 346.50
• AED Replacement case	1 ea	\$ 73.50	\$ 73.50

This pricing is for  
units shipped from  
the warehouse with  
these parameters.  
See below for  
pricing of upgrades  
after shipment.

Note: BP Cuff Replacement- include price for different sizes- small, medium, large, extra-large if different cost. ZOLL offers replacement, reusable cuffs, sizing from infant to adult. All sizes are offered at the same price listed above.

Note: Cable Set Complete, as it relates to additional accessories means cardiac 3-lead and 12-lead therapy cables. The pricing listed above is for a 12-Lead Cable set that includes both limb leads and v leads. These can also be purchased separately at the pricing listed below: Limb Leads- \$206.50 each

V Leads- \$206.50 each

3 Leads- \$87.50

\*The following pricing is for the parameter upgrades after shipment of the quoted device.

SpCO (with adjuncts) \$3,164.88 per unit

SpMet (with adjuncts) \$5,225.50 per unit

Temperature \$870.62 per unit



TO: City of Tucson Department of Procurement

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Tel: 520-837-4137

**ZOLL Medical Corporation**

Worldwide Headquarters

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(800) 348-9011

(978) 421-0015 Customer Support

FEDERAL ID#: 04-2711626

**QUOTATION 249242 V:1**

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221011-01	<b>X Series ® Manual Monitor/Defibrillator \$14,995</b> with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5"( 16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display.  <b>Accessories Included:</b> <ul style="list-style-type: none"><li>• Six (6) foot 3- Lead ECG cable</li><li>• MFC cable</li><li>• MFC CPR connector</li><li>• A/C power adapter/ battery charger</li><li>• A/C power cord</li><li>• One (1) roll printer paper</li><li>• 6.6 Ah Li-Ion battery</li><li>• Carry case</li><li>• Declaration of Conformity</li><li>• Operator's Manual</li><li>• Quick Reference Guide</li></ul> <b>• One (1)-year EMS warranty</b>  <b>Advanced Options:</b> <b>Real CPR Help Expansion Pack \$ 995</b> CPR Dashboard quantitative depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) <ul style="list-style-type: none"><li>• See - Thru CPR artifact filtering</li></ul> <b>ZOLL Noninvasive Pacing Technology: \$2,550</b>	75	\$37,275.00	\$26,092.50	\$1,956,937.50 *

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**Page 1 Subtotal \$1,956,937.50**

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Barry Herbert  
Territory Manager  
480-689-9362



**TO: City of Tucson Department of Procurement**

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: **Jenn Myers**

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

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FEDERAL ID#: 04-2711626

**QUOTATION 249242 V:1**

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

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FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<b>Masimo Pulse Oximetry</b>				
		<b>SP02 \$1,795</b>				
		• Signal Extraction Technology (SET)				
		• Rainbow SET				
		<b>NIBP Welch Allyn includes: \$3,495</b>				
		• Smartcuff 10 foot Dual Lumen hose				
		• SureBP Reusable Adult Medium Cuff				
		<b>End Tidal Carbon Dioxide monitoring (ETCO2)</b>				
		<b>Oridion Microstream Technology: \$4,995</b>				
		Order required Microstream tubing sets separately				
		<b>Interpretative 12- Lead ECG: \$8,450</b>				
		• 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set				
2	8000-0330	SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors (4 ft)	150	\$295.00	\$206.50	\$30,975.00 *
3	8000-0294	SpO2 LNCS Adult Reusable Sensor (1 each)	150	\$295.00	\$206.50	\$30,975.00 *
4	8000-0580-01	Six hour rechargeable Smart battery	150	\$495.00	\$346.50	\$51,975.00 *
5	8300-0500-01	SurePower 4 Bay Charging System including 4 Battery Charging adapters	30	\$2,583.00	\$1,808.10	\$54,243.00 *

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**Page 2 Subtotal**

**\$2,125,105.50**

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Barry Herbert  
Territory Manager  
480-689-9362



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### QUOTATION 249242 V:1

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
6	8300-0002-02	Dual Lumen NIBP Hose, 5 Ft.- These no charge cables are to replace the 10 Ft. hoses that come standard with line 1.	75	\$125.00	No Charge	No Charge	*
7	8300-0002-02	Dual Lumen NIBP Hose, 5 Ft.	75	\$125.00	\$87.50	\$6,562.50	*
8	REUSE-11-2MQ	Adult Cuff, 2-Tube, Twist lock connector	75	\$52.50	\$36.75	\$2,756.25	*
9	8300-0802-01	12-Lead one step ECG cable - AAMI includes 4-Lead trunk cable and removable precordial 6 lead set.	75	\$325.00	\$227.50	\$17,062.50	*
10	8000-000472-01	Multi-Tech Cell Modem Kit, CDMA, Verizon, US	75	\$595.00	\$416.50	\$31,237.50	*
11	8300-0520-01	Filterline Set Adult/Pediatric, Case of 25	16	\$275.00	\$192.50	\$3,080.00	*
12	8300-0524-01	Smart CapnoLine Plus O2 Adult (O2 tubing), Case of 25	16	\$355.00	\$248.50	\$3,976.00	*
13	8000-000901-01	ECG plain white paper- 80mm (pack of 6 rolls)	70	\$24.00	\$16.80	\$1,176.00	*
14	8900-0004	4 ECG electrodes/pouch (120 pouches / 480 electrodes)	4	\$96.00	\$67.20	\$268.80	*

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Page 3 Subtotal

\$2,191,225.05

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**QUOTATION 249242 V:1**

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
15	8900-0400	CPR stat*padz HVP Multi-Function CPR Electrodes - 8 pair/case	20	\$560.00	\$392.00	\$7,840.00	*
16	8900-000220-01	OneStep Pediatric CPR Electrode (8 per case)	20	\$650.00	\$455.00	\$9,100.00	*
17	8300-000676	OneStep Cable, X Series	150	\$425.00	\$297.50	\$44,625.00	*
18	8009-0020	CPR-D Padz and CPR Stat Padz Connector for R Series	150	\$375.00	\$262.50	\$39,375.00	*
19	8778-200044	4 yrs Extended warranty, 1 PM per year, Battery replacement	75	\$5,570.00	\$5,040.00	\$378,000.00	*
20	20100000101011010	AED Plus with Graphical Cover. Includes: LCD screen showing voice prompt messages, device advisory messages, elapsed time, shock count and chest compression bar. Supplied with Public Safety PASS Cover, Softcase, Operator's Guide and (5) five year limited warranty.	20	\$1,995.00	\$1,197.00	\$23,940.00	*
21	8000-0807-01	Type 123 Lithium Batteries, quantity of ten (10) with storage sleeve	40	\$75.00	\$52.50	\$2,100.00	*
22	8900-0400	CPR stat*padz HVP Multi-Function CPR Electrodes - 8 pair/case	5	\$560.00	\$392.00	\$1,960.00	*

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**Page 4 Subtotal**

**\$2,698,165.05**

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**QUOTATION 249242 V:1**

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

FREIGHT: Free Freight

\*\*

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
23	8900-0810-01	<b>pedi•padz® II Pediatric Multi-Function Electrodes</b> - Designed for use with the AED Plus. The AED recognizes when pedi•padz II are connected and automatically proceeds with a pediatric ECG and adjusts energy to pediatric levels. Twenty four (24) month shelf-life. One pair.	40	\$95.00	\$66.50	\$2,660.00 *
24	8008-0050-01	<b>AED Plus Trainer2 Unit.</b> The AED Plus Trainer2 can be used by trainers to train users of the AED Plus. Supplied with wireless Remote Controller, one set of <b>CPR-D</b> training electrodes, one pair of replacement gels, 4 D-Cell batteries, 2 AA batteries, Operators Guide, and a (6) six month limited warranty.	3	\$379.00	No Charge	No Charge *
25	7800-0214	<b>MRX Biphasic w/Pacing, 12 lead + 3 parameters Trade-In-</b> Trade-in value is subject to change after initial purchase.	48		(\$8,534.00)	(\$409,632.00) **
28	7800-0214	<b>MRX Biphasic w/Pacing, 12 lead + 3 parameters Trade-In</b>	7		(\$3,000.00)	(\$21,000.00) **
27	7800-0227	<b>Phillips FR3 Trade-In</b>	56		(\$100.00)	(\$5,600.00) **

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**Page 5 Subtotal**

**\$2,264,593.05**

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**QUOTATION 249242 V:1**

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<p>**Trade-In Value valid if all equipment purchased is in good operational and cosmetic condition, and includes all standard accessories. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.</p> <p>*Reflects Discount Pricing.</p> <p>This quotation has been quoted with payment terms of NET 30. For financing options, please refer to item 30 on the Method of Approach response document.</p> <p>No Charge Items and Trade Values are only valid for the initial purchase with the City of Tucson for all items within this quotation.</p>				
TOTAL						\$2,264,593.05

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## ZOLL QUOTATION GENERAL TERMS & CONDITIONS

**1. ACCEPTANCE.** This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgment by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract") the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

**2. DELIVERY AND RISK OF LOSS.** Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

**3. TERMS OF PAYMENT.** Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

**4. CREDIT APPROVAL.** All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

**5. TAXES & FEES.** The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

**6. WARRANTY.** (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect 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 Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation, or (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 Medical Corporation, or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. SOFTWARE LICENSE.** (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the product of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Medical Corporation Software.

**8. DELAYS IN DELIVERY.** ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

**9. LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATION'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

**10. PATENT INDEMNITY.** ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

**11. CLAIMS FOR SHORTAGE.** Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

**12. RETURNS AND CANCELLATION.** (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

**13. APPLICABLE LAW.** This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

**14. COMPLIANCE WITH LAWS.** (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

**16. NON-WAIVER OF DEFAULT.** In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

**16. ASSIGNMENT.** This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

**17. TITLE TO PRODUCTS.** Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

### 18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

**VETERAN'S EMPLOYMENT** - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

**EMPLOYMENT OF HANDICAPPED** - If this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

**EQUAL OPPORTUNITY EMPLOYMENT** - If this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth at 41 CFR 60-1.40.

**19. VALIDITY OF QUOTATION.** This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

**20. GENERAL.** Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.

## OFFER AND ACCEPTANCE

### OFFER

#### TO THE CITY OF TUCSON:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

ZOLL Medical Corporation

Company Name

269 Mill Road

Address

Chelmsford, MA 01824

City

State

Zip

Signature of Person Authorized to Sign

Steven K. Flora

Printed Name

Sr. V.P. of North American Sales

Title

Name: Mike Borkowski

Title: EMS Strategic Account Manager

Phone: 480-299-8900

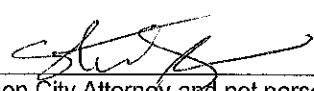
Fax: 978-421-0015

E-mail: mborkowski@zoll.com

### ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. 171769 - 01.

Approved as to form this 18<sup>th</sup> day of Sept, 2017.

  
As Tucson City Attorney and not personally

CITY OF TUCSON, a municipal corporation

Awarded this 18<sup>th</sup> day of September, 2017.

  
for Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM  
As Director of Procurement and not personally

## **6. City's Request for Intent to Negotiate**



**CITY OF  
TUCSON**  
DEPARTMENT OF  
PROCUREMENT

July 12, 2017

Amy Coffin  
Bid & Proposals Coordinator  
ZOLL Medical Corporation  
269 Mill Road  
Chelmsford, MA 01824  
[acoffin@zoll.com](mailto:acoffin@zoll.com)

*Sent via electronic mail, this day*

**Subject: Request for Proposal No. 171769 – Cardiac Monitors  
Intent to Negotiate**

Dear Ms. Coffin:

The City of Tucson has completed the evaluation of submittals received in response to the subject solicitation. Based upon the recommendation of the evaluation committee, the City is inviting your firm to enter negotiations. Specifically, the City requests the following:

**1. Best and Final Pricing**

a. The City requests a Best and Final Offer from Zoll Medical Corporation. Please complete the attached Best and Final Price Page.

- In consideration of the cardiac monitor having the functionality of the AEDs, the City has revised the intent of the initial purchase quantities to seventy-five (75) cardiac monitors and twenty (20) AEDs. This is reflected on the Best and Final Price Page.
- The City has also added to the Best and Final Price Page, two line items for trade-in value. The City intends to trade in fifty-five (55) MRX monitors and fifty-six (56) Philips FR3s. Please provide the trade-in value for these items.

b. Please provide a break down (similar to the original quotation) including the 5ft Dual Lumen NIBP Hose in lieu of the 10ft, that incorporates the above mentioned items into a final price proposal.

**2. Special Terms and Conditions: Defective Product**

The City accepts Zoll's proposed modifications in the attached Special Terms and Conditions: Defective Product.

**3. Special Terms and Conditions: Warranty**

The City rejects Zoll's proposed deletion in the attached Special Terms and Conditions: Warranty. Please clarify why Zoll will not provide a warranty for the "fitness for the intended use".

**4. Special Terms and Conditions: Cooperative Purchasing**

Zoll has requested that a signed contract acknowledgement form be required for any agencies utilizing this contract, at time of order. Please provide a copy of this form for the City's review.

**5. Cooperative Administration Fee**

The City requests that the proposed offer be revised to provide a 3% administrative fee to the City on all sales to other agencies, which on average represents the typical administrative fee for cooperative contracts.

ADMINISTRATION • DESIGN AND CONSTRUCTION SERVICES • GOODS AND SERVICES  
MAIL SERVICES • S.A.M.M. (SURPLUS AUCTION MATERIALS MANAGEMENT)  
CITY HALL • 255 W. ALAMEDA • P.O. BOX 27210 • TUCSON, AZ 85726-7210  
(520) 791-4217 • FAX (520) 791-4735 • TTY (520) 791-2639  
[www.tucsonprocurement.com](http://www.tucsonprocurement.com)

**6. Standard Terms and Conditions: Contract Amendments**

The City accepts Zoll's proposed modifications in the attached Standard Terms and Conditions: Contract Amendments.

**7. Standard Terms and Conditions: Default in One Installment to Constitute Total Breach**

The City accepts Zoll's proposed modifications in the attached Standard Terms and Conditions: Default in One Installment to Constitute Total Breach.

**8. Standard Terms and Conditions: Exclusive Possession**

The City accepts Zoll's proposed modifications in the attached Standard Terms and Conditions: Exclusive Possession.

**9. Standard Terms and Conditions: Indemnification**

The City denies the modification to the Standard Terms and Conditions: Indemnification. The original language published within the Request for Proposal shall endure without change or modification. Please confirm your understanding of this clause.

**10. Standard Terms and Conditions: Inspection and Acceptance**

The City accepts Zoll's proposed modifications in the attached Standard Terms and Conditions: Inspection and Acceptance.

**11. Standard Terms and Conditions: Termination of Contract**

The City accepts the addition of "and after providing the Contracts an adequate opportunity to cure," to the first sentence of the second paragraph. The City does not agree to remove "In the opinion of the City" throughout this term and condition. Please confirm your agreement to retain the phrase "In the opinion of the City...".

**12. End User License Agreement**

During the presentation, Zoll stated that users of the website would agree to an End User License Agreement for access to the website. Please provide a copy of that agreement for the City's review and consideration.

**13. Offer and Acceptance Page**

The City does not accept the modification made to the Offer and Acceptance Page. Please sign and return the attached Offer and Acceptance Page.

This Notice of Intent to Negotiate is not an intent to award a contract and does not establish a contractual relationship between the firm and the City. In the event that the City is not able to negotiate a satisfactory contract with the firm, the City will terminate negotiations.

Please submit a written response to my attention via e-mail to [Jenn.myers@tucsonaz.gov](mailto:Jenn.myers@tucsonaz.gov) on or before **Friday, July 14, 2017 at 4:00 PM**. Please contact me via e-mail or at (520) 837-4137 with questions regarding the items above.

Sincerely,



Jenn Myers  
Senior Contract Officer

Attachments: Four (4)  
Best and Final Price Page  
Offer and Acceptance  
Copy of Zoll's proposed Special Terms and Conditions  
Copy of Zoll's proposed Standard Terms and Conditions

Cc: Mike Borkowski, [mborkowski@zoll.com](mailto:mborkowski@zoll.com)  
Ryan Grulke, [rgrulke@zoll.com](mailto:rgrulke@zoll.com)

## OFFER AND ACCEPTANCE

### OFFER

#### TO THE CITY OF TUCSON:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

\_\_\_\_\_  
Company Name

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

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
City State Zip

Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorized to Sign

Fax: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

E-mail: \_\_\_\_\_

\_\_\_\_\_  
Title

### ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. 171769 -.

CITY OF TUCSON, a municipal corporation

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
As Tucson City Attorney and not personally

\_\_\_\_\_  
Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM  
As Director of Procurement and not personally



## BEST AND FINAL PRICE PAGE

*Fee must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, materials, printing, travel and mileage, postage, etc.*

The quantities shown are estimates only and the City reserves the right to increase or decrease amounts as circumstances may require.

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>ESTIMATED ANNUAL QUANTITY</u>	<u>UNIT PRICE</u>	<u>EXTENDED PRICE</u>
1.	Cardiac Monitor (fully equipped)	75 ea	\$ _____	\$ _____
2.	Lithium Ion Battery (additional)	150 ea	\$ _____	\$ _____
3.	AED (fully equipped)	20 ea	\$ _____	\$ _____
		<u>QUANTITY</u>		
4.	Trade-In Value MRX Monitors	55 ea		\$ ( _____ )
5.	Trade-In Value Philips FR3 AEDs	56 ea		\$ ( _____ )
				<b>GRAND TOTAL \$ _____</b>

Note: fully equipped means all necessary accessories such as carrying case, batteries (including secondary set) cables, finger probes, BP cuff, battery support unit and/or other adjunct required to utilize all functions of the device.

1. Additional Accessories, etc. (Information only)				
•	Monitor Lithium Battery	1 ea	\$ _____	\$ _____
•	AED Battery Replacement	1 ea	\$ _____	\$ _____
•	SpMET(with adjuncts)	70 ea	\$ _____	\$ _____
•	SpCO (with adjuncts)	70 ea	\$ _____	\$ _____
•	Temperature	70 ea	\$ _____	\$ _____
•	BP Cuff Replacement	1 ea	\$ _____	\$ _____
•	Cable Set Complete	1 ea	\$ _____	\$ _____
•	Defib Pads (set)	1 ea	\$ _____	\$ _____
•	Monitor Replacement case	1 ea	\$ _____	\$ _____
•	AED Replacement case	1 ea	\$ _____	\$ _____

## STANDARD TERMS AND CONDITIONS

1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Director of Procurement.
2. **AFFIRMATIVE ACTION:** Contractor shall abide by the provisions of the Tucson Procurement Code Chapter 28, Article XII.
3. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.
4. **APPLICABLE LAW:** This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.
5. **ASSIGNMENT-DELEGATION:** No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.
6. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.
7. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.
8. **COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.
9. **CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
10. **CONTRACT AMENDMENTS:** The Procurement Department, with mutual written agreement by Contractor, has the sole authority to:
  - A. Amend the contract or enter into supplemental verbal or written agreements;
  - B. Grant time extensions or contract renewals;
  - C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Procurement. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

11. **CONTRACT:** The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

12. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, and after the Contractor has been provided an opportunity to cure, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.
13. **DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
14. **EQUAL PAY:** The Contractor shall comply with the applicable provisions of the Equal Pay Act of 1963 (Pub.L. 88-38, 29 U.S.C. section 208(d)); Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352, 42 U.S.C. 2000e *et seq.*; and, the Lily Ledbetter Fair Pay Act of 2009 (Pub.L. 111-2).
15. **EXCLUSIVE POSSESSION:** All services, information, ~~computer program elements~~, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
16. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.
- If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.
17. **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.
- If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
18. **GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
19. **HUMAN RELATIONS:** Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.
20. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and

employees from and against all allegations, demands, proceedings, suits, actions, claims brought by third parties, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, reasonable attorney fees, and court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, to the extent arising directly from or out of or resulting from (a) any negligent actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or a defect in products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, or (b) infringement of third-party patents or copyrights caused by City of Tucson's use of such products in accordance with their written operating instructions. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractor agrees to waive all rights of subrogation against the City of Tucson, its agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

21. **INDEPENDENT CONTRACTOR:** It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

22. **INSPECTION AND ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor in accordance with the Contractors Warranty & Return Policies. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.
23. **INTERPRETATION-PAROLE EVIDENCE:** This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.
24. **ISRAEL BOYCOTT DIVESTMENTS:** Acceptance of the contract warrants that the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S. § 35-393.
25. **LICENSES:** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
26. **LIENS:** All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.
27. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.
28. **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
256 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

or services from another source when necessary.

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SENIOR CONTRACT OFFICER: JENN MYERS  
PH: (520) 837-4137 / FAX: (520) 781-4735

**29. OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

**30. PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice. The invoice shall not be dated prior to the receipt of goods or completion of services.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

**31. PROTECTION OF GOVERNMENT PROPERTY:** The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

**32. PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

**33. RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.

**34. RIGHT TO ASSURANCE:** Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.

**35. RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.

**36. RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

**37. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.

**38. SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.

**39. SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. All

subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.

40. **SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.

41. **TERMINATION OF CONTRACT:** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract, ~~and after providing the Contractor an adequate opportunity to cure.~~ The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

~~In the opinion of the City, if~~ The Contractor provides personnel that do not meet the requirements of the Contract;

~~In the opinion of the City, the~~ The Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

~~In the opinion of the City, if~~ The Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;

The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

~~In the opinion of the City, if~~ The Contractor fails to make progress in the performance of the requirements of the Contract;

The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

42. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

43. **WARRANTIES:** Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

## SPECIAL TERMS AND CONDITIONS

1. **SAFETY STANDARDS:** The Bidder/Offeror shall certify that the equipment being bid/offered is designed and includes operating features that comply with the safety standard promulgated under the Federal Occupational Safety and Health Act (OSHA). If the equipment being bid/offered is governed by OSHA regulations the successful Bidder/Offeror is required to submit a certificate stating that such equipment complies with applicable OSHA standards.

During the term of this Contract, should there be modifications in federal and/or state laws and regulations regarding safety standards or other specifications and marketing procedures for the contracted item(s), the City of Tucson reserves the right to amend the Contract to provide for the delivery of items which conform to such changes. As a result, the City will negotiate any necessary price changes with the Contractor. Should negotiations fail the City may cancel the Contract for the affected items.

2. **DEFECTIVE PRODUCT:** All defective products shall be at the Contractor's sole discretion, be repaired, replaced and/or exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. All replacement products must be received by the City within seven (7) days of initial notification. Contractor will supply a loaner for any equipment returned if it cannot be repaired or replaced within seven (7) days of initial notification.
3. **WARRANTY:** Bidder/Offeror shall warrant that all equipment and parts furnished in their bid/offer are newly manufactured and free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered or installed. Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the Contractor's liability as stated herein.
4. **EQUIPMENT/RECALL NOTICES:** In the event of any recall notice, technical service bulletin, or other important notification affecting equipment purchased from this contract, a notice shall be sent to the Contract Representative. It shall be the responsibility of the contractors to assure that all recall notices are sent directly to the agencies Contract Representative.
5. **FOB DESTINATION FREIGHT PREPAID:** Prices shall be FOB Destination Freight Prepaid to the delivery location designated. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will assist the Contractor in arranging for inspection.
6. **PRICE ADJUSTMENT:** The City will review fully documented requests for price adjustment after any Contract has been in effect for one (1) year. Any price adjustment will only be made at the time of Contract renewal and/or extension and will be a factor in the extension review process. The City will determine whether the requested price adjustment or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the effective date of the Contract extension.
7. **TERM AND RENEWAL:** The term of the Contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, at its sole option, to renew the Contract for four (4) additional one-year periods or portions thereof. In the event that the City exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.



8. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See [http://www.tucsonprocurement.com/coop\\_partners.aspx](http://www.tucsonprocurement.com/coop_partners.aspx) and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change.

Commented [AC2]: A signed contract acknowledgment form will be required for any of these agencies utilizing this contract, at time of order.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

## **7. ZOLL's Response to RFP# 171769**

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

REQUEST FOR PROPOSAL NO. 171769  
PAGE 24 OF 24  
SENIOR CONTRACT OFFICER: JENN MYERS  
PH: (520) 837-4137 / FAX: (520) 791-4735

## OFFER AND ACCEPTANCE

### OFFER

#### TO THE CITY OF TUCSON:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

ZOLL Medical Corporation

Company Name

269 Mill Road

Address

Chelmsford, MA 01824

City

State

Zip

Signature of Person Authorized to Sign

Steven K. Flora

Printed Name

Sr. V.P. of North American Sales

Title

Name: Mike Borkowski

Title: EMS Strategic Account Manager

Phone: 480-299-8900

Fax: 978-421-0015

E-mail: mborkowski@zoll.com

### ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. **171769** - \_\_\_\_\_.

CITY OF TUCSON, a municipal corporation

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

As Tucson City Attorney and not personally

Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM  
As Director of Procurement and not personally



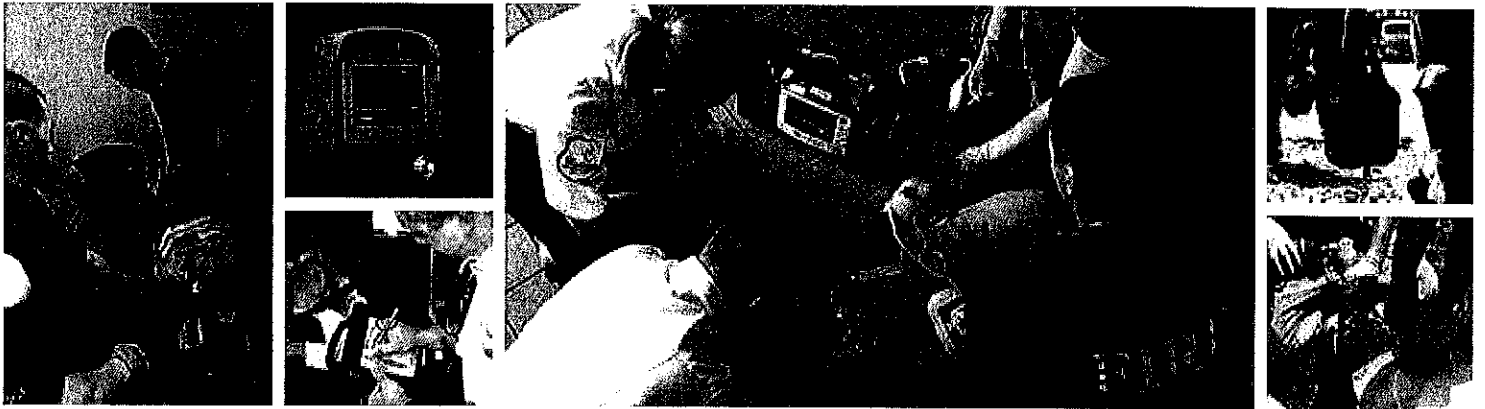
269 Mill Road  
Chelmsford, Massachusetts 01824-4105  
978-421-9655 (main)  
978-421-0025 (fax)  
www.zoll.com

**ZOLL Medical Corporation's Response to The City of Tucson's Request for Proposal# 171769-Cardiac Monitors due June 14, 2017 at 4:00p.m.**

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**ZOLL®**



## Section I- Cover Letter



269 Mill Road  
Chelmsford, Massachusetts 01824-4105  
978-421-9655 (main)  
978-421-0025 (fax)  
www.zoll.com

June 12, 2017

City of Tucson Department of Procurement  
255 W. Alameda, 6<sup>th</sup> Floor  
Tucson, AZ 85701

RE: Request for Proposal# 171769- Cardiac Monitors

Dear Sir/Ma'am,

ZOLL® Medical Corporation ("ZOLL") is pleased to provide our response to your Request for Proposal# 171769- Cardiac Monitors due June 14, 2017 at 4:00 p.m.

ZOLL manufactures and markets an integrated line of proprietary, non-invasive resuscitation devices and disposable electrodes. ZOLL's products are used in hospitals, by emergency medical services (EMS) personnel, and in public access environments to provide lifesaving pacing and defibrillation to patients suffering cardiac arrest, and for the treatment of patients with life-threatening cardiac arrhythmias. ZOLL also designs and markets software that automates collection and management of both clinical and non-clinical data.

Our proposal includes the following:

- Bid Documents, completed & signed, with exceptions or clarifications marked as redlines. *This section also includes the Addendum and required pricing information*
- Method of Approach
- Qualifications & Experience
- ZOLL Quotation
- Implementation Plan
  - Project Plan
  - X Series Skills Competency
  - LEAP Program
  - eLearning Brochure
- Return, Warranty & Technical Support Information
  - Return Policy
  - EMS One (1) Year Limited Product Warranty
  - AED Plus Five (5) Year Warranty
  - Free Extended Warranty AED Plus
  - On-Site Technical Support & Services
- ZOLL Product Specifications & Literature

Thank you for the opportunity to respond to this bid request. We stand ready to serve the needs of the City of Tucson, and look forward to the prospect of a long and mutually rewarding relationship.

If you need any further information or assistance, please do not hesitate to call me at 480-299-8900 (mobile) or email me, [mborkowski@zoll.com](mailto:mborkowski@zoll.com).

Regards,

Mike Borkowski  
EMS Strategic Account Manager

MB/ajc  
Enclosures

**ZOLL®**



## **Section II- Original Bid Documents**

## CITY OF TUCSON REQUEST FOR PROPOSAL

REQUEST FOR PROPOSAL NUMBER: 171769  
PROPOSAL DUE DATE: Wednesday, June 14, 2017, AT 4:00 P.M.,  
Local AZ Time  
PROPOSAL SUBMITTAL LOCATION: Department of Procurement  
255 W. Alameda, 6<sup>th</sup> Floor, Tucson, AZ 85701  
MATERIAL OR SERVICE: Cardiac Monitors  
PRE-PROPOSAL CONFERENCE DATE: Thursday, June 01, 2017  
TIME: 2:00 P.M., Local AZ Time  
LOCATION: City Hall, Procurement 6<sup>th</sup> Floor East Conference  
Room, 255 W. Alameda, Tucson, AZ 85701  
SENIOR CONTRACT OFFICER: Jenn Myers  
TELEPHONE NUMBER: (520) 837-4137  
Jenn.Myers@tucsonaz.gov

A copy of this solicitation and possible future amendments may be obtained from our Internet site at: <http://www.tucsonprocurement.com/> by selecting the Bid Opportunities link and the associated solicitation number. The City does not mail out Notices of available solicitations via the U.S. Postal Service. Email notifications are sent to those interested offerors who are registered with us and who have selected email as their preferred delivery method. To register, please visit [www.tucsonprocurement.com](http://www.tucsonprocurement.com), click on Vendors, then click on Vendor Registration. To update an existing record, click on Vendors, click on What's New?, and read the section titled "Notice of Solicitations." You may also call (520) 791-4217 if you have questions.

Competitive sealed proposals for the specified material or service shall be received by the Department of Procurement, 255 W. Alameda, 6th Floor, Tucson, Arizona 85701, until the date and time cited.

Proposals must be in the actual possession of the Department of Procurement at the location indicated, on or prior to the exact date and time indicated above. Late proposals shall not be considered. The prevailing clock shall be the City Department of Procurement clock.

Proposals must be submitted in a sealed envelope. The Request for Proposal number and the offeror's name and address should be clearly indicated on the outside of the envelope. All proposals must be completed in ink or typewritten. Questions must be addressed to the Contract Officer listed above.

\*\*\*\*ALERT\*\*\*\*

Effective July 1, 2014, the City of Tucson's Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) Program has moved to the Department of Procurement and has become the Business Enterprise and Compliance Program. To contact them, please call (520) 837-4000 or visit the website at [http://www.tucsonprocurement.com/Bidders\\_Page.aspx](http://www.tucsonprocurement.com/Bidders_Page.aspx) and click on SBE or DBE.

JM/car

PUBLISH DATE: Monday, May 22, 2017

Revised 12/2016



CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

REQUEST FOR PROPOSAL NO. 171769  
PAGE 2 OF 24  
SENIOR CONTRACT OFFICER: JENN MYERS  
PH: (520) 837-4137 / FAX: (520) 791-4735

## INTRODUCTION

The City of Tucson intends to establish an annual requirements contract for the purchase of **CARDIAC MONITORS AND AUTOMATED ELECTRONIC DEFIBRILLATORS (AED)**. This contract will include all accessories, supplies and services necessary to operate the devices.

Tucson Fire Department currently operates 55 cardiac monitors and 56 AED's. This equipment is an important part of their medical treatment services. The Tucson Fire Department intends to purchase up to 70 new cardiac monitors and up to 60 new AEDs for use in a pre-hospital work environment. These new devices will replace the existing inventory.

## SCOPE OF WORK

### TECHNICAL SPECIFICATIONS

The devices must include all necessary cables, print capabilities, defibrillation and pacing accessories, Li-ion batteries, carrying case, and other accessories needed to utilize all required features.

#### Required Features:

##### **Cardiac Monitor (fully equipped shall include all listed features)**

- 12 Lead EKG
- SpO2
- ETCO2 with Capnography waveform
- NIBP
- Pulse Rate
- CPR device (integrate with monitor) to measure CPR quality, depth, rate, interruptions, and release
- AED mode for pediatric patients
- MAP (mean arterial pressure)
- Pediatric functionality (Ability to configure monitor for both adult and pediatric patients)
- All necessary storage and carrying bags.
- All necessary battery and battery support units for each device
- Secondary battery or batteries to be used as in-field back ups
- All required cables, connectors, or other adjuncts necessary to operate and download the device
- Maintenance package and warranty of no less than three (3) years past product's availability.
- Battery maintenance, reconditioning and replacement program and equipment.
- Pacing
- Defibrillation (Biphasic)
- Serial EKG
- Temperature (optional feature)
- SpCO (optional feature)
- SpMet (optional feature)

##### **Please provide the following information:**

- Weight fully loaded with all features and supplies: 11.7 lbs. with paper and battery installed.
- Dimensions with all required case components: 8.9" x 10.4" x 7.9" (does not include carry case)
- Battery requirement: Qty 1 Rechargeable lithium-ion battery, 11.1 Vdc, 6.6 Ah, 73 Wh

##### **AED**

- Rhythm display
- Adult and Pediatric Use
- Pads integrate with Cardiac Monitor
- All necessary storage and carrying bags.
- All necessary battery and battery support units for each device
- Secondary battery or batteries if required

##### **Please provide the following information:**

- Weight fully loaded with all adjuncts and supplies: 6.7 lbs.
- Dimensions with all required case components: 5.25" x 9.50" x 11.50" (does not include carry case)
- Battery requirement: Qty 10 non-proprietary Duracel Lithium 123A batteries.

## SCOPE OF WORK

### Data Collection and Management

1. Data from the cardiac monitor and AED shall be retrievable through either a wireless or wired option from the device.
2. Data from the cardiac monitor and AED shall automatically upload to an enterprise records management system when connected to a network.
3. Cardiac Arrest and 12 lead data shall be accessible through an enterprise records management system for research and Public Records Requests.
4. Both the cardiac monitor and the AED devices shall have the ability to upload patient assessment and intervention actions through a wireless or wired option for medical records reports, quality control, and quality improvement programs.
5. Contractor shall provide any accessories, hardware and/or software systems necessary for the Fire Department to readily retrieve, transfer and/or upload the data.
6. The enterprise level records management system should be accessible via the web, be HIPAA compliant, and allow for role dependent secure access.
7. System should have an existing interface with Zoll's RescueNet Tablet ePCR system.
8. All data must reside within the United States of America at all times with providers that are certified to host medical data.
9. Records Management system must have ability to show CPR "report card" indicating quality of CPR, depth, rate, interruptions, and release.
10. Ability to transmit 12-leads from the field.
11. Provide data storage solution (either a physical server or cloud solution) for data management systems.

### Service/Maintenance

1. Contractor shall provide warranty and service contract for cardiac monitor, AEDs, adjuncts and batteries.
2. Contractor shall provide on-site service/maintenance on devices as recommended by the product manufacturer with a minimum of 1-per year per device.
3. Contractor shall provide manufacturer certified service technicians to perform repairs and service on the selected monitor and AED
4. Contractor shall make available loaner devices at no cost as needed for department owned devices out of service for extended repair.
5. Contractor shall include software updates for both the devices and the records management system free of charge as part of the maintenance agreement.
6. Contractor shall provide a written process to be instituted following an equipment malfunction. Process shall be inclusive of operator actions, vendor actions and notification responsibilities.

### Training

1. Contractor shall provide onsite training to TFD personnel by authorized vendor representatives.
2. Training shall include in-house operator level training for up to 250 paramedics. This training shall cover all operational functions of the device(s).
3. Training shall include supervisor training for up to 20 supervisors. This training shall include basic device configuration for crew identification, hospital destination, and any other field/user level adjustments necessary to update device(s) and any other more advanced administrative functions.
4. Training shall include systems administration for the records management system and device configuration and integration.
5. Training may be provided through a train-the-trainer model as agreed upon by TFD.
6. Contractor shall provide a suitable on-line class with all training material. This class could augment initial training, at TFD's discretion, as well as be used for future employees' training.
7. Training shall include the process(es) to be followed post device malfunction.

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
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PH: (520) 837-4137 / FAX: (520) 791-4735

**Implementation**

1. Contractor shall work with TFD to provide an implementation plan and time line for TFD to transition into the new devices to include device delivery, configuration, training, deployment, go/no go check sheet, user confidence determination, and acceptance.
2. Contractor shall provide contingency plan for failed implementation.

**Lease to Purchase**

1. Contractor shall offer an optional lease to purchase program. This program shall include a minimum of a two (2) year lease to purchase option. All terms of the lease shall be provided with the response to the RFP. The terms shall not include a prepayment penalty.

## INSTRUCTIONS TO OFFERORS

### 1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

For purposes of this solicitation and subsequent contract, the following definitions shall apply:

**City:** The City of Tucson, Arizona

**Contract:** The legal agreement executed between the City and the Contractor/Consultant. The Contract shall include this RFP document incorporated herein by reference, all terms, conditions, specifications, scope of work, Amendments, the Contractor's offer and negotiated items as accepted by the City.

**Contractor/Consultant:** The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City.

**Contract Representative:** The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and is responsible for monitoring and overseeing the Contractor's performance under this Contract.

**Director of Procurement:** The contracting authority for the City, authorized to sign contracts and amendments thereto on behalf of the City.

**May:** Indicates something that is not mandatory but permissible.

**Offeror:** The individual, partnership, or corporation who submits a proposal in response to a solicitation.

**Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the City's sole discretion, result in the rejection of a proposal as non-responsive.

**Should:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.

2. **PRE-PROPOSAL CONFERENCE:** If scheduled, the date and time of a Pre-Proposal conference is indicated on the cover page of this document. Attendance at this conference is not mandatory. Written minutes and/or notes will not be available, therefore attendance is encouraged. If an Offeror is unable to attend the Pre-Proposal Conference questions may be submitted in writing. Offerors are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the Request for Proposal due date to the Contract Officer listed above. The purpose of this conference will be to clarify the contents of this Request for Proposal in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this Request for Proposal or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and may issue a written amendment to the Request for Proposal. Oral statements or instructions will not constitute an amendment to this Request for Proposal.

3. **INQUIRIES:** Any question related to the Request for Proposal shall be directed to the Contract Officer whose name appears above. An offeror shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, at least five days prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. An envelope containing questions should be identified as such, otherwise it may not be opened until after the official proposal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Proposal will be binding.

4. **AMENDMENT OF REQUEST FOR PROPOSAL:** The Offeror shall acknowledge receipt of a Request for Proposal Amendment by signing and returning the document by the specified due date and time.

5. **FAMILIARIZATION OF SCOPE OF WORK:** Before submitting a proposal, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a proposal will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

### 6. PREPARATION OF PROPOSAL:

- A. All proposals shall be on the forms provided in this Request for Proposal package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.
- B. At a minimum, your proposal should include the signed Offer and Acceptance form, signed copies of any solicitation amendments, completed Price Page and your response to all evaluation criteria.
- C. The Offer and Acceptance page shall be signed by a person authorized to submit an offer. An authorized signature on the Offer and Acceptance page, Proposal Amendment(s), or cover letter accompanying the proposal documents shall constitute an irrevocable offer to sell the good and/or service specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.

- D. The authorized person signing the proposal shall initial erasure, interlineations or other modifications on the proposal.
  - E. In case of error in the extension of prices in the proposal, unit price shall govern when applicable.
  - F. Periods of time, stated as a number of days, shall be in calendar days.
  - G. It is the responsibility of all offerors to examine the entire Request for Proposal package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time.
  - H. The City shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.
  - I. Offeror must list any subcontractors to be utilized in the performance of the services specified herein. For each subcontractor, details on respective qualifications must be included.
7. **PAYMENT DISCOUNTS:** Payment discount periods shall be computed from the date of receipt of the material/service or correct invoice, whichever is later, to the date City's payment warrant is mailed. Unless freight and other charges are itemized, any discount provided shall be taken on full amount of invoice. Payment discounts of twenty-one calendar days or more shall be deducted from the proposed price in determining the price points. However, the City shall be entitled to take advantage of any payment discount offered by a vendor provided payment is made within the discount period. The payment discount shall apply to all purchases and to all payment methods.
8. **TAXES:** The City of Tucson is exempt from federal excise tax, including the federal transportation tax.
9. **PROPOSAL/SUBMITTAL FORMAT:** An original and 4 copies (5 total) of each proposal should be submitted on the forms and in the format specified in the RFP. Offerors shall also submit one electronic copy of the proposal on cd, disc or zip disc in MS Office 2003 or .pdf format. Any confidential information shall be submitted on a separate cd, disc or zip disc. The original copy of the proposal should be clearly labeled "Original" and shall be single-sided, three hole punched and in a binder. The material should be in sequence and related to the RFP. The sections of the submittal should be tabbed, clearly identifiable and should include a minimum of the following sections: the completed Offer and Acceptance Form, all signed Amendments, a copy of this RFP document and the Offeror's response to the Evaluation Criteria including the completed Price Page. Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal.
10. **EXCEPTIONS TO CONTRACT PROVISIONS:** A response to any Request for Proposal is an offer to contract with the City based upon the contract provisions contained in the City's Request for Proposal, including but not limited to, the specifications, scope of work and any terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the Request for Proposal cannot be modified without the express written approval of the Director or his designee. If a proposal or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Director or his designee, the contract provisions contained in the City's Request for Proposal shall prevail.
11. **PUBLIC RECORD:** All proposals submitted in response to this Request for Proposal shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.
12. **CONFIDENTIAL INFORMATION:** The City of Tucson is obligated to abide by all public information laws. If an Offeror believes that any portion of a proposal, offer, specification, protest or correspondence contains information that should be withheld, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears. The City shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.
13. **CERTIFICATION:** By signature on the Offer and Acceptance page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offeror certifies:
- A. The submission of the offer did not involve collusion or other anti-competitive practices.
  - B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
  - C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
  - D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.

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14. **WHERE TO SUBMIT PROPOSALS:** In order to be considered, the Offeror must complete and submit its proposal to the City of Tucson Department of Procurement at the location indicated, prior to or at the exact date and time indicated on the Notice of Request for Proposal page. The Offeror's proposal shall be submitted in a sealed envelope. The words "SEALED PROPOSAL" with the REQUEST FOR PROPOSAL TITLE, REQUEST FOR PROPOSAL NUMBER, PROPOSAL DUE DATE AND TIME and OFFEROR'S NAME AND ADDRESS shall be written on the envelope.
15. **LATE PROPOSALS:** Late proposals will be rejected.
16. **OFFER AND ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the proposal due date and time.
17. **WITHDRAWAL OF PROPOSAL:** At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the proposal by a written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.
18. **DISCUSSIONS:** The City reserves the right to conduct discussions with offerors for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.
19. **TAX OFFSET POLICY:** If applicable, in evaluating price proposals, the City shall include the amount of applicable business privilege tax, except that the amount of the City of Tucson business privilege tax shall not be included in the evaluation.
20. **CONTRACT NEGOTIATIONS:** Exclusive or concurrent negotiations may be conducted with responsible offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. In the event the City deems that negotiations are not progressing, the City may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified firm(s).
21. **VENDOR APPLICATION:** Prior to the award of a Contract, the successful offeror shall register with the City's Department of Procurement. Registration can be completed at <http://www.tucsonprocurement.com/> by clicking on Vendor Services. Please note that email notifications of newly published solicitations and amendments will be provided to those vendors that select email as their preferred delivery method in their vendor record.
22. **CITY OF TUCSON BUSINESS LICENSE:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at <http://www.tucsonaz.gov/etax>. For questions contact the City's Business License Section at (520) 791-4566 or email at [tax-license@tucsonaz.gov](mailto:tax-license@tucsonaz.gov).
23. **UPON NOTICE OF INTENT TO AWARD:** The apparent successful offeror shall sign and file with the City, within five (5) days after Notice of Intent to Award, all documents necessary to the successful execution of the Contract.
24. **AWARD OF CONTRACT:** Notwithstanding any other provision of the Request for Proposal, the City reserves the right to:  
(1) waive any immaterial defect or informality; or  
(2) reject any or all proposals, or portions thereof; or  
(3) reissue the Request for Proposal.
- A response to this Request for Proposal is an offer to contract with the City based upon the terms, conditions and Scope of Work contained in the City's Request for Proposal. Proposals do not become contracts unless and until they are executed by the City's Director of Procurement and the City Attorney. A contract has its inception in the award, eliminating a formal signing of a separate contract. All of the terms and conditions of the contract are contained in the Request for Proposal, unless any of the terms and conditions are modified by a Request for Proposal amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.
25. **PROPOSAL RESULTS:** The name(s) of the successful offeror(s) will be posted on the Procurement Department's Internet site at <http://www.tucsonprocurement.com/> upon issuance of a Notice of Intent to Award or upon final contract execution.

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26. **PROTESTS:** A protest shall be in writing and shall be filed with the Director of Procurement. A protest of a Request for Proposal shall be received at the Department of Procurement not less than five (5) working days before the Request for Proposal due date. A protest of a proposed award or of an award shall be filed within ten (10) days after issuance of notification of award or issuance of a notice of intent to award, as applicable. A protest shall include:
- A. The name, address, and telephone number of the protestant;
  - B. The signature of the protestant or its representative;
  - C. Identification of the Request for Proposal or Contract number;
  - D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and
  - E. The form of relief requested.



## LIVING WAGE REQUIREMENT

Chapter 28, Article XIV of the Tucson Procurement Code requires that a living wage be paid to certain employees of Contractors and their applicable subcontractors who are performing services for the City of Tucson. This solicitation, and the resulting Contract, is subject to the referenced Article. By signing the Offer and Acceptance page, Bidder/Offeror agrees to comply with the requirements of the Article.

In accordance with Sec. 28-155 of the Tucson Procurement Code, an eligible employee is defined as an employee of the Contractor or their subcontractor who:

- (a) is not a person who provides volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- (b) expends chargeable time providing services to the City and on City property;
- (c) is at least sixteen (16) years of age.

Eligible employees shall be paid no less than the living wage for the time they spend providing services to the City on City property. In accordance with Sec. 28-157 of the Tucson Procurement Code, the living wage is as follows:

- If health benefits are offered, and if the Contractor pays no less than fifty (50) percent of the eligible employee's health benefits premium, a wage of no less than \$10.39 per hour; or
- If no health benefits are offered, or if the Contractor pays less than fifty (50) percent of the eligible employee's health benefits premium, a wage of no less than \$11.62 per hour.

Proof of compliance with this policy shall be provided by the successful Bidder/Offeror upon notification by the City of its intent to award a Contract.

Notwithstanding the Severability clause under the Standard Terms and Conditions section of this document, if the provisions of this clause become unenforceable for any reason, the City reserves the right to terminate this Contract without penalty or liability. In the event the City negotiates an adjustment to the terms, conditions, or price acceptable to the parties, then this Contract shall continue until expiration.

In accordance with Sec. 28-158 of the Tucson Procurement Code, the following shall apply to compliance with wage requirement:

The City's Director of Procurement shall monitor compliance, including the investigation of claimed violations, and may promulgate administrative rules and regulations to implement and enforce this Article. In the event of any violation of the provisions set forth in this Article, the responsible Contractor and any applicable subcontractors shall be liable for the unpaid wages and shall pay the eligible employee any amounts underpaid. The City's Director of Procurement is additionally authorized to take any one or more of the following remedies in the event of a written determination of noncompliance:

- (a) Liquidated damages paid to the City in the amount of \$50.00 for each incidence of non-compliance for each day of non-compliance and/or each day it continues;
- (b) Suspension of further payments under the Contract until the violation has ceased;
- (c) Suspend and/or terminate the Contract for cause; and/or
- (d) Debar or suspend the Contractor or subcontractor from future City contracts pursuant to Tucson Procurement Code, Chapter 28, Article IX.

Protests or appeals of the Director's remedies for non-compliance shall be in accordance with Article IX.

In accordance with Sec. 28-159 of the Tucson Procurement Code, the following shall apply to records:

- (a) The Contractor and any applicable subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the City's Director of

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Procurement, and shall permit such representatives to interview employees during working hours on the job. If the Contractor and any applicable subcontractor fails to submit the required records or make them available, the Director may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debayment action pursuant to Article IX.

- (b) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all eligible employees. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

All inquiries regarding the Living Wage program may be directed to the Contract Officer responsible for this solicitation.

**CITY OF TUCSON  
CERTIFICATION OF LIVING WAGE PAYMENTS**

*(This form must be completed by the Contractor and each applicable subcontractor.)*

Contract Number: 171769

Contractor or Sub Name: ZOLL Medical Corporation

**(Please Check Only One of the Following Two Options)**

X I do hereby agree to pay all eligible employees working on the above-referenced contract a minimum of \$10.39 per hour and provide health benefits. I also agree to pay at least 50% of the eligible employees' health benefits premium. Our firm's health insurance provider(s) are listed below:

Blue Cross Blue Shield of Massachusetts

Name of Health Insurance Company: \_\_\_\_\_

Address: P.O. Box 986030, Boston, MA 02298

Telephone: 800-952-4196

Fax Number: \_\_\_\_\_

Plan or Program Number: 002340198

Monthly premium paid by employer: 80% Monthly premium paid by employee 20%

Name of Health Insurance Company: Blue Cross Blue Shield of Massachusetts

Address: P.O. Box 986030, Boston, MA 02298

Telephone: 800-952-4196

Fax Number: \_\_\_\_\_

Plan or Program Number: 002344547

Monthly premium paid by employer: 80% Monthly premium paid by employee 20 %

I do hereby agree to pay all eligible employees working on the above-referenced contract a minimum of \$11.62 per hour. I **do not** offer health benefits to eligible employees working on this contract and/or I **do not** pay at least 50% of the eligible employees' health benefits premium.

ZOLL Medical Corporation

(Contractor /Sub-Contractor Name)

June 12, 2017

(Date)

by 

(Signature)

Maureen Callahan, Director of Human Resources

(Title)

## PROPOSAL EVALUATION REQUIREMENTS

### I. PROPOSAL EVALUATION CRITERIA – (listed in relative order of importance)

- A. Method of Approach
- B. Qualifications & Experience
- C. Price Proposal

### II. REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA: The narrative portion and the materials presented in response to this Request for Proposal should be submitted in the same order as requested and must contain, at a minimum, the following:

#### A. Method of Approach

1. Offeror shall prepare a detailed Method of Approach to the Scope of Work, which clearly identifies the services proposed to be performed by the Offeror. This section should confirm Offeror's understanding of the RFP and the needs of the Tucson Fire Department. This should address in depth how Offeror plans to meet the requirements of each of the services and activities as outlined in the Scope of Work of the RFP. The method and approach for each service should be addressed in a manner that reflects understanding and commitment to providing services as needed in a professional manner in the specified time frame.
2. Describe the products/brands that you are offering. Please provide product brochure, descriptive literature, and/or a product catalog
3. Describe the ordering process Tucson Fire employees should follow.
4. Describe any alternative methods for purchase, such as Internet ordering
5. Provide a method for delivery of products.
6. Provide a description of proposed quality control practices in addition to the requirements described in the Scope of Work.
7. Describe how you will keep the City updated on all updated technology.
8. Describe how data will be collected, stored and retrieved for use by the Tucson Fire Department.
9. Describe how CPR data is collected including devices or adjuncts required to collect CPR data, how the data is stored, transferred, and what software is required to retrieve the data for QA purposed and public record release.
10. Describe each step from turning on the device to capturing and storing a 12 lead, including application and use of the CPR adjuncts and other accessory devices. This must include entering a patient's name.
11. Describe the warranty offered on devices including any limitation to warranty repairs and or replacement.
12. Describe the maintenance on software systems. Submit any Software License Agreements, Software Maintenance Agreements, Service Level Agreements, etc. for the City's consideration. Any agreement that is not submitted prior to contract award may not be considered after contract award.
13. Describe the user management and user definition for the records management system.
14. Describe how devices get assigned to users.
15. Describe how devices get subscribed to the server/cloud level system.
16. Describe your backup and recovery approach.
17. Describe your device security approach.
18. Describe your server/cloud access management system.
19. Describe how a specific set of data (i.e., 12 Lead can be associated with a patient from the TabletPCR system.
20. Describe the training that will be provided by the Contractor to TFD personnel.
21. Describe the implementation plan and time line for TFD.

22. Describe how offeror shall repair/maintain devices on City property including the turnaround time when calls are made by TFD personnel for maintenance including processing, timelines and associated cost for repairs.
23. Describe how loaner devices will be provided.
24. Describe the weight of the devices.
25. Describe the connectivity options for the devices.
26. Describe how data will be compatible with the Zoll RescueNet TabletPCR application. Please specify how this integration would work.
27. Please describe how you would enable an interface with Zoll's RescueNet TablePCR system if it does not yet exist.
28. Contractor shall describe cloud storage options including cloud storage capability, download and access process, record retrieval, records interface with EPCR, and data retention period.
29. If a cloud based solution is offered how will you manage your backups and ensure availability? Where are your primary and secondary data centers.
30. Provide details and terms of leasing options.

**B. Qualifications & Experience**

1. Provide a general overview of your company, including number of years in business, corporate headquarters location, etc. Provide a brief history of the organization.
2. Provide resumes and/or biographies for all key personnel, including supervisors, who will be assigned to this contract.
3. Indicate the office locations of the Key Personnel to be assigned to the account and identify the lead person.
4. Provide at least three (3) references for work that is similar in scope to the Scope of Work of this contract. Preferably, the City seeks 3 references from fire agencies that are utilizing the same devices proposed herein, as well as the Zoll EPCR. For each reference, include name, telephone number, and email address of contact person.
5. If the use of subcontractors is proposed, provide the information requested in items 1 through 4 above for each subcontractor.
6. Offerors who submit a proposal as a manufacturer's representative must include a letter from each manufacturer involved. The letter shall certify that the vendor is authorized to provide the specific products presented, that the vendor is authorized to submit a proposal on such products, and guarantees that should the vendor fail to fulfill any obligations established as a result of a Contract award, the manufacturer, upon assignment by the City, will either assume such obligations or provide an alternate authorized vendor for the balance of the Contract period. In the event of such an assignment, all other terms and conditions of the Contract shall remain the same.
7. Describe any specific ongoing or open FDA inquiries into products proposed or accessories to products proposed.
8. Describe any general ongoing or open FDA inquiries that could impact your ability to service this contract.

**C. Price Proposal**

1. Provide price proposal as requested on the Price Page attached herein.
2. As stated in the Instructions to Offerors, 7. Discounts, the price(s) herein can be discounted by 0%, if payment is made within 30 days. These payment terms shall apply to all purchases and to all payment methods.
3. Cooperative Purchasing Program: Will your firm provide the City of Tucson, as the lead agency on this regional contract, a rebate in the form of a percentage of sales based upon the other agencies sales?

\_\_\_\_\_ Yes ☒ No If yes, state proposed percentage: \_\_\_\_\_ 0%

4. Will payment be accepted via commercial credit card? ☒ Yes \_\_\_\_\_ No  
a. If yes, can commercial payment(s) be made online? \_\_\_\_\_ Yes ☒ No  
b. Will a third party be processing the commercial credit card payment(s)? \_\_\_\_\_ Yes ☒ No  
c. If yes, indicate the flat fee per transaction \$ N/A (as allowable, per Section 5.2.E of Visa Operating Regulations).  
d. If "no" to above, will consideration be given to accept the card? \_\_\_\_\_ Yes ☒ No
5. Does your firm have a City of Tucson Business License? \_\_\_\_\_ Yes ☒ No \_\_\_\_\_  
If yes, please provide a copy of your City of Tucson Business license.

Commented [AC1]: ZOLL submitted our application for a business license with the City of Tucson on May 31, 2017. The confirmation email states that it takes 2-4 weeks to receive this license. ZOLL has been provided with a temporary account number of 3052199.

### III. GENERAL

#### A. Shortlist:

The City reserves the right to shortlist the offerors on the stated criteria. However, the City may determine that shortlisting is not necessary.

#### B. Interviews:

The City reserves the right to conduct interviews with some or all of the offerors at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the offeror for the costs associated with the interview process.

#### C. Additional Investigations:

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any offeror submitting a proposal.

#### D. Prior Experience:

Experiences with the City and entities that evaluation committee members represent and that are not specifically mentioned in the solicitation response may be taken into consideration when evaluating offers.

#### E. Multiple Awards:

To provide adequate contract coverage, at the City's sole discretion, multiple awards may be made.

## SPECIAL TERMS AND CONDITIONS

1. **SAFETY STANDARDS:** The Bidder/Offeree shall certify that the equipment being bid/offered is designed and includes operating features that comply with the safety standard promulgated under the Federal Occupational Safety and Health Act (OSHA). If the equipment being bid/offered is governed by OSHA regulations the successful Bidder/Offeree is required to submit a certificate stating that such equipment complies with applicable OSHA standards.

During the term of this Contract, should there be modifications in federal and/or state laws and regulations regarding safety standards or other specifications and marketing procedures for the contracted item(s), the City of Tucson reserves the right to amend the Contract to provide for the delivery of items which conform to such changes. As a result, the City will negotiate any necessary price changes with the Contractor. Should negotiations fail the City may cancel the Contract for the affected items.

2. **DEFECTIVE PRODUCT:** All defective products shall be at the Contractor's sole discretion, be repaired, replaced and/or exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. All replacement products must be received by the City within seven (7) days of initial notification. Contractor will supply a loaner for any equipment returned if it cannot be repaired or replaced within seven (7) days of initial notification.
3. **WARRANTY:** Bidder/Offeree shall warrant that all equipment and parts furnished in their bid/offer are newly manufactured and free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered or installed. Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the Contractor's liability as stated herein.
4. **EQUIPMENT/RECALL NOTICES:** In the event of any recall notice, technical service bulletin, or other important notification affecting equipment purchased from this contract, a notice shall be sent to the Contract Representative. It shall be the responsibility of the contractors to assure that all recall notices are sent directly to the agencies Contract Representative.
5. **FOB DESTINATION FREIGHT PREPAID:** Prices shall be FOB Destination Freight Prepaid to the delivery location designated. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will assist the Contractor in arranging for inspection.
6. **PRICE ADJUSTMENT:** The City will review fully documented requests for price adjustment after any Contract has been in effect for one (1) year. Any price adjustment will only be made at the time of Contract renewal and/or extension and will be a factor in the extension review process. The City will determine whether the requested price adjustment or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the effective date of the Contract extension.
7. **TERM AND RENEWAL:** The term of the Contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, at its sole option, to renew the Contract for four (4) additional one-year periods or portions thereof. In the event that the City exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.

8. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See [http://www.tucsonprocurement.com/coop\\_partners.aspx](http://www.tucsonprocurement.com/coop_partners.aspx) and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change.

**Commented (AC2):** A signed contract acknowledgment form will be required for any of these agencies utilizing this contract, at time of order.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.



## STANDARD TERMS AND CONDITIONS

1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Director of Procurement.
2. **AFFIRMATIVE ACTION:** Contractor shall abide by the provisions of the Tucson Procurement Code Chapter 28, Article XII.
3. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.
4. **APPLICABLE LAW:** This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.
5. **ASSIGNMENT-DELEGATION:** No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.
6. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.
7. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.
8. **COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.
9. **CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
10. **CONTRACT AMENDMENTS:** The Procurement Department, with mutual written agreement by Contractor, has the sole authority to:
  - A. Amend the contract or enter into supplemental verbal or written agreements;
  - B. Grant time extensions or contract renewals;
  - C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Procurement. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

11. **CONTRACT:** The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

- 12. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, and after the Contractor has been provided an opportunity to cure, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.
- 13. DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
- 14. EQUAL PAY:** The Contractor shall comply with the applicable provisions of the Equal Pay Act of 1963 (Pub.L. 88-38, 29 U.S.C. section 206(d)); Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352, 42 U.S.C. 2000e *et seq.*; and, the Lily Ledbetter Fair Pay Act of 2009 (Pub.L. 111-2).
- 15. EXCLUSIVE POSSESSION:** All services, information, ~~computer program elements~~, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
- 16. FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.
- If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.
- 17. FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.
- If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 18. GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
- 19. HUMAN RELATIONS:** Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.
- 20. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and

employees from and against all allegations, demands, proceedings, suits, actions, claims, brought by third parties, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, reasonable attorney fees, and court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, to the extent arising directly from or out of or resulting from (a) any negligent actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or a defect in products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, or (b) infringement of third-party patents or copyrights caused by City of Tucson's use of such products in accordance with their written operating instructions. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractor agrees to waive all rights of subrogation against the City of Tucson, its agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

- 21. INDEPENDENT CONTRACTOR:** It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

- 22. INSPECTION AND ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor in accordance with the Contractors Warranty & Return Policies. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

- 23. INTERPRETATION-PAROLE EVIDENCE:** This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

- 24. ISRAEL BOYCOTT DIVESTMENTS:** Acceptance of the contract warrants that the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S. § 35-393.

- 25. LICENSES:** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

- 26. LIENS:** All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.

- 27. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.

- 28. NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

or services from another source when necessary.

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SENIOR CONTRACT OFFICER: JENN MYERS  
PH: (520) 837-4137 / FAX: (520) 791-4735

**29. OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

**30. PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice. The invoice shall not be dated prior to the receipt of goods or completion of services.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

**31. PROTECTION OF GOVERNMENT PROPERTY:** The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

**32. PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

**33. RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.

**34. RIGHT TO ASSURANCE:** Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.

**35. RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.

**36. RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

**37. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.

**38. SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.

**39. SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. All

subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.

**40. SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.

**41. TERMINATION OF CONTRACT:** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract, and after providing the Contractor an adequate opportunity to cure. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

~~In the opinion of the City, if~~ The Contractor provides personnel that do not meet the requirements of the Contract;

~~In the opinion of the City, the~~ The Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

~~In the opinion of the City, if~~ The Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;

The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

~~In the opinion of the City, if~~ The Contractor fails to make progress in the performance of the requirements of the Contract;

The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

**42. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

**43. WARRANTIES:** Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. More receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

### PRICE PAGE

*Fee must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, materials, printing, travel and mileage, postage, etc.*

The quantities shown are estimates only and the City reserves the right to increase or decrease amounts as circumstances may require.

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>ESTIMATED ANNUAL QUANTITY</u>	<u>UNIT PRICE</u>	<u>EXTENDED PRICE</u>
1.	Cardiac Monitor (fully equipped)	70 ea	\$ _____	\$ _____
2.	Lithium Ion Battery (additional)	140 ea	\$ _____	\$ _____
3.	AED (fully equipped)	60 ea	\$ _____	\$ _____
<b>GRAND TOTAL \$</b>				_____

Note: fully equipped means all necessary accessories such as carrying case, batteries (including secondary set) cables, finger probes, BP cuff, battery support unit and/or other adjunct required to utilize all functions of the device.

1. Additional Accessories, etc. (Information only)

• Monitor Lithium Battery	1 ea	\$ _____	\$ _____
• AED Battery Replacement	1 ea	\$ _____	\$ _____
• SpMET(with adjuncts)	70 ea	\$ _____	\$ _____
• SpCO (with adjuncts)	70 ea	\$ _____	\$ _____
• Temperature	70 ea	\$ _____	\$ _____
• BP Cuff Replacement	1 ea	\$ _____	\$ _____
• Cable Set Complete	1 ea	\$ _____	\$ _____
• Defib Pads (set)	1 ea	\$ _____	\$ _____
• Monitor Replacement case	1 ea	\$ _____	\$ _____
• AED Replacement case	1 ea	\$ _____	\$ _____

**ZOLL has provided this pricing information on the following addendum pages.**

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

REQUEST FOR PROPOSAL NO. 171769  
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SENIOR CONTRACT OFFICER: JENN MYERS  
PH: (520) 837-4137 / FAX: (520) 791-4735

## OFFER AND ACCEPTANCE

### OFFER

#### TO THE CITY OF TUCSON:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal, including Contractors modifications to such, which is incorporated by reference as if fully set forth herein.

#### ZOLL Medical Corporation

Company Name

269 Mill Road

Address

Chelmsford, MA 01824

City

State

Zip

Signature of Person Authorized to Sign

Steven K. Flora

Printed Name

Sr. V.P. of North American Sales

Title

For clarification of this offer, contact:

Name: Amy Coffin

Title: Bids & Proposals Coordinator

Phone: 800-348-9011

Fax: 978-421-0015

E-mail: acoffin@zoll.com

### ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. 171769 -.

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF TUCSON, a municipal corporation

Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

As Tucson City Attorney and not personally

Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM  
As Director of Procurement and not personally



**CITY OF TUCSON**  
**DEPARTMENT OF PROCUREMENT**

REQUEST FOR PROPOSAL NO. 171769

**Cardiac Monitors**

AMENDMENT NO. **One (1)**

DATE ISSUED: **Tuesday, June 06, 2017**

The referenced document has been modified as per the attached Amendment No. **One (1)**.

**Please sign this Amendment where designated and return the executed copy with your PROPSAL.** This amendment is hereby made part of the referenced solicitation as though fully set forth therein. Any questions regarding this amendment should be addressed to **Jenn Myers**, Senior Contract Officer at (520) **837-4137** or **[Jenn.Myers@tucsonaz.gov](mailto:Jenn.Myers@tucsonaz.gov)**

DEPARTMENT OF PROCUREMENT  
ADMINISTRATION • DESIGN AND CONSTRUCTION SERVICES • GOODS AND SERVICES  
MAIL SERVICES • S.A.M.M. (SURPLUS AUCTION MATERIALS MANAGEMENT)  
CITY HALL • 255 W. ALAMEDA • P.O. BOX 27210 • TUCSON, AZ 85726-7210  
(520) 791-4217 • FAX (520) 791-4735 • TTY (520) 791-2639  
[www.tucsonprocurement.com](http://www.tucsonprocurement.com)

## REQUEST FOR PROPOSAL AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701  
P.O. BOX 27210, TUCSON, AZ 85726  
Phone: (520) 837-4137  
ISSUE DATE: Tuesday, June 06, 2017

RFP NO.: 171769  
RFP AMENDMENT NO.: One (1)  
PAGE 1 of 1  
DUE DATE: Wednesday, June 14, 2017 @ 4:00 P.M., Local AZ Time  
RESPONSIBLE CONTRACT OFFICER: Jenn Myers

### Cardiac Monitors

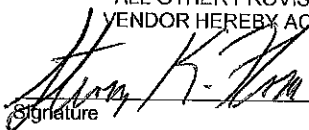
A SIGNED COPY OF THIS AMENDMENT MUST BE SUBMITTED WITH YOUR PROPOSAL.  
THIS RFP IS AMENDED AS FOLLOWS:

**ITEM NO.1: PROPOSAL/SUBMITTAL FORMAT:** The required number of copies shall hereby be changed to **An Original and 7 copies (8 total) of each proposal**

**ITEM NO. 2: REVISED PRICE PAGE:** The price page shall hereby be replaced in its entirety with the revised price page.

**\*\*END OF AMENDMENT\*\***

ALL OTHER PROVISIONS OF THE REQUEST FOR PROPOSAL SHALL REMAIN IN THEIR ENTIRETY.  
VENDOR HEREBY ACKNOWLEDGES RECEIPT AND UNDERSTANDING OF THE ABOVE AMENDMENT.

  
Signature \_\_\_\_\_ Date June 12, 2017  
Steven K. Flora, Sr. V.P. of North American Sales  
Print Name and Title \_\_\_\_\_

ZOLL Medical Corporation  
Company Name \_\_\_\_\_  
269 Mill Road  
Address \_\_\_\_\_  
Chelmsford, MA 01824  
City State Zip

## REVISED PRICE PAGE

*Fee must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, materials, printing, travel and mileage, postage, etc.*

The quantities shown are estimates only and the City reserves the right to increase or decrease amounts as circumstances may require.

ITEM	DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT PRICE	EXTENDED PRICE
1.	Cardiac Monitor (fully equipped)	70 ea	\$34,163.23	\$2,391,426.10
2.	Lithium Ion Battery (additional)	140 ea	\$346.50	\$48,510.00
3.	AED (fully equipped)	60 ea	\$1,539.53	\$92,372.00
<b>GRAND TOTAL</b>				<b>\$2,532,308.10</b> (without trade-ins quoted)
				<b>\$2,165,346.10</b> (with trade-ins quoted)

Note: fully equipped means all necessary accessories such as carrying case, batteries (including secondary set) cables, finger probes, BP cuff, battery support unit and/or other adjunct required to utilize all functions of the device.

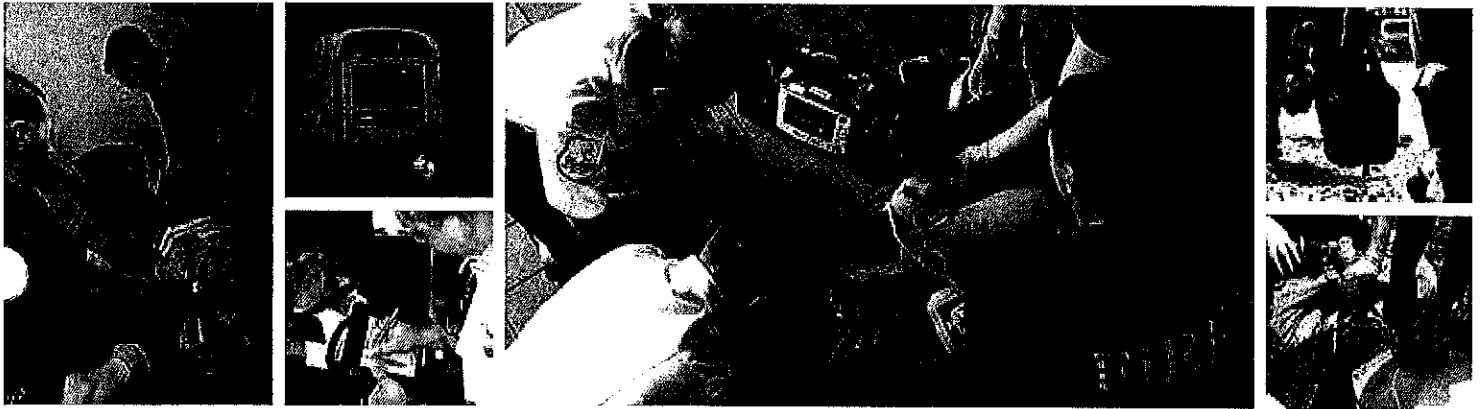
1.	Additional Accessories, etc. (Information only)			
	• Monitor Lithium Battery	1 ea	\$346.50	\$346.50
	• AED Battery Replacement	1 ea	\$52.50	\$52.50
	• SpMET(with adjuncts)	70 ea	\$3,920.00	\$274,400.00
	• SpCO (with adjuncts)	70 ea	\$2,341.50	\$163,905.00
	• Temperature	70 ea	\$696.50	\$48,755.00
	• BP Cuff Replacement	1 ea	\$36.75	\$36.75
	• Cable Set Complete	1 ea	\$227.50	\$227.50
	• Defib Pads (set)	1 ea	\$52.50	\$52.50
	• Monitor Replacement case	1 ea	\$346.50	\$346.50
	• AED Replacement case	1 ea	\$73.50	\$73.50

Note: BP Cuff Replacement- include price for different sizes- small, medium, large, extra-large if different cost. ZOLL offers replacement, reusable cuffs, sizing from infant to adult. All sizes are offered at the same price listed about.

Note: Cable Set Complete, as it relates to additional accessories means cardiac 3-lead and 12-lead therapy cables. The pricing listed above is for a 12-Lead Cable set that includes both limb leads and v leads. These can also be purchased separately at the pricing listed below:  
Limb Leads- \$206.50 each  
V Leads- \$206.50 each  
3 Leads- \$87.50

\*The following pricing is for the parameter upgrades after shipment of the quoted device.  
SpCO (with adjuncts) \$3,164.88 per unit  
SpMet (with adjuncts) \$5,225.50 per unit  
Temperature \$870.62 per unit

**ZOLL®**



## Section V- ZOLL Quotation



TO: City of Tucson Department of Procurement

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: Jenn Myers

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

**ZOLL Medical Corporation**

Worldwide Headquarters  
269 Mill Rd  
Chelmsford, Massachusetts 01824-4105  
(978) 421-9655 Main  
(800) 348-9011  
(978) 421-0015 Customer Support  
FEDERAL ID#: 04-2711626

**QUOTATION 245679 V:1**

DATE: June 12, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221011-01	<p><b>X Series® Manual Monitor/Defibrillator \$14,995</b> with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5" (16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display.</p> <p><b>Accessories Included:</b></p> <ul style="list-style-type: none"><li>• Six (6) foot 3- Lead ECG cable</li><li>• MFC cable</li><li>• MFC CPR connector</li><li>• A/C power adapter/ battery charger</li><li>• A/C power cord</li><li>• One (1) roll printer paper</li><li>• 6.6 Ah Li-Ion battery</li><li>• Carry case</li><li>• Declaration of Conformity</li><li>• Operator's Manual</li><li>• Quick Reference Guide</li></ul> <p>• One (1)-year EMS warranty</p> <p><b>Advanced Options:</b> <b>Real CPR Help Expansion Pack \$ 995</b> CPR Dashboard quantitative depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) • See - Thru CPR artifact filtering</p> <p><b>ZOLL Noninvasive Pacing Technology: \$2,550</b></p>	70	\$37,275.00	\$26,092.50	\$1,826,475.00 *

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Page 1 Subtotal \$1,826,475.00

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Barry Herbert  
EMS Territory Manager  
480-689-9362



TO: City of Tucson Department of Procurement

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

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**QUOTATION 245679 V:1**

DATE: June 12, 2017

TERMS: Net 30 Days

FOB: Destination

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FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<b>Masimo Pulse Oximetry</b>				
		<b>SP02</b> <b>\$1,795</b> <ul style="list-style-type: none"><li>• Signal Extraction Technology (SET)</li><li>• Rainbow SET</li></ul>				
		<b>NIBP Welch Allyn Includes:</b> <b>\$3,495</b> <ul style="list-style-type: none"><li>• Smartcuff 10 foot Dual Lumen hose</li><li>• SureBP Reusable Adult Medium Cuff</li></ul>				
		<b>End Tidal Carbon Dioxide monitoring (ETCO2)</b> <b>Oridion Microstream Technology:</b> <b>\$4,995</b> Order required Microstream tubing sets separately				
		<b>Interpretative 12- Lead ECG:</b> <b>\$8,450</b> <ul style="list-style-type: none"><li>• 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set</li></ul>				
2	8000-0330	SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors (4 ft)	140	\$295.00	\$206.50	\$28,910.00 *
3	8000-0294	SpO2 LNCS Adult Reusable Sensor (1 each)	140	\$295.00	\$206.50	\$28,910.00 *
4	8000-0580-01	Six hour rechargeable Smart battery	140	\$495.00	\$346.50	\$48,510.00 *
5	8300-0500-01	SurePower 4 Bay Charging System Including 4 Battery Charging adapters	30	\$2,583.00	\$1,808.10	\$54,243.00 *

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Page 2 Subtotal **\$1,987,048.00**

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**QUOTATION 245679 V:1**

DATE: June 12, 2017

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FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
6	8300-0002-01	Dual Lumen NIBP Hose, 10 Ft.	70	\$125.00	\$87.50	\$6,125.00 *
7	REUSE-11-2MQ	Adult Cuff, 2-Tube, Twist lock connector	70	\$52.50	\$36.75	\$2,572.50 *
8	8300-0802-01	12-Lead one step ECG cable - AAMI includes 4-Lead trunk cable and removable precordial 6 lead set.	70	\$325.00	\$227.50	\$15,925.00 *
9	8300-0783	Multifunction Therapy Cable - X Series	70	\$298.00	\$208.60	\$14,602.00 *
10	8000-0370	CPR Connector	70	\$265.00	\$185.50	\$12,985.00 *
11	8000-000472-01	Mult-Tech Cell Modem Kit, CDMA, Verizon, US	70	\$595.00	\$416.50	\$29,155.00 *
12	8300-0520-01	Filterline Set Adult/Pediatric, Case of 25	14	\$275.00	\$192.50	\$2,695.00 *
13	8300-0524-01	Smart CapnoLine Plus O2 Adult (O2 tubing), Case of 25	14	\$355.00	\$248.50	\$3,479.00 *
14	8900-0400	CPR stat*padz HVP Multi-Function CPR Electrodes - 8 pair/case	18	\$560.00	\$392.00	\$7,056.00 *

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Page 3 Subtotal **\$2,081,642.50**

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FEDERAL ID#: 04-2711626

**QUOTATION 245679 V:1**

DATE: June 12, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
15	8900-2065	<i>pedi-padz</i> Pediatric Liquid Gel Multi-Function Electrodes - 6 pair/case	24	\$249.00	\$174.30	\$4,183.20 *
16	8900-0004	4 ECG electrodes/pouch (120 pouches / 480 electrodes)	2	\$96.00	\$67.20	\$134.40 *
17	8000-000901-01	ECG plain white paper- 80mm (pack of 6 rolls)	70	\$24.00	\$16.80	\$1,176.00 *
18	8778-200044	4 yrs Extended warranty, 1 PM per year, Battery replacement	70	\$5,570.00	\$5,040.00	\$352,800.00 *
19	20100000101011010	AED Plus with Graphical Cover. Includes: LCD screen showing voice prompt messages, device advisory messages, elapsed time, shock count and chest compression bar. Supplied with Public Safety PASS Cover, Softcase, Operator's Guide and (5) five year limited warranty.	60	\$1,995.00	\$1,197.00	\$71,820.00 *
20	8000-0807-01	Type 123 Lithium Batteries, quantity of ten (10) with storage sleeve	120	\$75.00	\$52.50	\$6,300.00 *
21	8900-0400	<i>CPR stat-padz</i> HVP Multi-Function CPR Electrodes - 8 pair/case	16	\$560.00	\$392.00	\$6,272.00 *

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Page 4 Subtotal

**\$2,524,328.10**

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FEDERAL ID#: 04-2711626

**QUOTATION 245679 V:1**

DATE: June 12, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
22	8900-0810-01	<i>pedi-padz® II Pediatric Multi-Function Electrodes - Designed for use with the AED Plus. The AED recognizes when pedi-padz II are connected and automatically proceeds with a pediatric ECG and adjusts energy to pediatric levels. Twenty four (24) month shelf-life. One pair.</i>	120	\$95.00	\$66.50	\$7,980.00 *
23	7800-0214	<b>MRX Biphasic w/Pacing, 12 lead + 3 parameters</b> <i>Trade-In- Trade-in value is subject to change after initial purchase.</i>	43		(\$8,534.00)	(\$366,962.00) **
<p><b>**Trade-In Value valid if all equipment purchased is in good operational and cosmetic condition, and includes all standard accessories.</b> Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.</p> <p><b>*Reflects Discount Pricing.</b></p> <p>This quotation has been quoted with payment terms of <b>NET 30</b>. For financing options, please refer to item 30 on the Method of Approach response document.</p>						

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**TOTAL \$2,165,346.10**

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Barry Herbert  
EMS Territory Manager  
480-689-9362

## ZOLL QUOTATION GENERAL TERMS & CONDITIONS

**1. ACCEPTANCE.** This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and "described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgement by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract") the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

**2. DELIVERY AND RISK OF LOSS.** Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

**3. TERMS OF PAYMENT.** Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

**4. CREDIT APPROVAL.** All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

**5. TAXES & FEES.** The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

**6. WARRANTY.** (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect 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 Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation, or (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 Medical Corporation, or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embedded in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. SOFTWARE LICENSE.** (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the product of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Medical Corporation Software.

**8. DELAYS IN DELIVERY.** ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

**9. LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATION'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

**10. PATENT INDEMNITY.** ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

**11. CLAIMS FOR SHORTAGE.** Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

**12. RETURNS AND CANCELLATION.** (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

**13. APPLICABLE LAW.** This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

**14. COMPLIANCE WITH LAWS.** (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

**15. NON-WAIVER OF DEFAULT.** In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

**16. ASSIGNMENT.** This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

**17. TITLE TO PRODUCTS.** Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

### 18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

**VETERAN'S EMPLOYMENT** - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

**EMPLOYMENT OF HANDICAPPED** - If this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

**EQUAL OPPORTUNITY EMPLOYMENT** - If this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth as 41 CFR 60-1.40.

**19. VALIDITY OF QUOTATION.** This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

**20. GENERAL.** Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.

**ZOLL®**



## Section III- Method of Approach



## A. METHOD OF APPROACH

1. Offeror shall prepare a detailed Method of Approach to the Scope of Work, which clearly identifies the services proposed to be performed by the Offeror. This section should confirm Offeror's understanding of the RFP and the needs of the Tucson Fire Department. This should address in depth how Offeror plans to meet the requirements of each of the services and activities as outlined in the Scope of Work of the RFP. The method and approach for each service should be addressed in a manner that reflects understanding and commitment to providing services as needed in a professional manner in the specified time frame.

ZOLL fully understands the systems concepts and solutions required. It is our understanding that this project involves the sale, support, and installation of up to 70 ALS defibrillators and a number of AEDs. It will also involve the export and integration of data collected within the ZOLL X Series, all of which ZOLL is fully prepared to do and has done so in excess of a thousand installations. ZOLL will fully support the delivery of in-service training by our Clinical Deployment Team, data support from our Sales Engineering Team as well as follow-up training as needed. We are prepared to deliver written reports at each stage of implementation if requested. Training will be provided by highly qualified licensed paramedics employed by ZOLL and supported by on-line interactive training. Please see the attached implementation plan. Progression will be as follows:

- Staged delivery of X Series and AED Plus
- Assembly of X Series and AED Plus cases and cables at customer site
- Training program reviewed with clinical personnel from Tucson Fire
- Training program delivered by ZOLL personnel
- Classroom training consisting of didactic and hands-on training delivered by ZOLL personnel
- Follow-up training at customer's request
- Ride-alongs as approved by Tucson Fire
- Active support of data integration into RescueNet Code Review, ZOLL On-line and RescueNet 12 Lead
- Integration into ZOLL and installation of any software as needed within your system and at any hospitals as requested

Project support will be directed by ZOLL's highly experienced Deployment Team with experience in such places as Northwest Fire, Golder Ranch Fire, Los Angeles County, Austin Travis County, San Antonio Fire, Orange County Fire Authority, and Cal Fire Riverside.

Our commitment to customer service is paramount in everything we do. The results of that commitment are ZOLL's own customers voting it to fifteen straight (2001-current) North Face Awards, which is a distinction awarded by the Omega Management Group each year to those companies that demonstrate excellence in customer service.

ZOLL will assign a project manager to work in conjunction with the strategic account manager that is assigned to the City already to oversee RescueNet ePCR, Billing and Fire RMS. Cardiac monitors and AED will be added to the scope of work as listed in the RFP.



## A. METHOD OF APPROACH

2. Describe the products/brands that you are offering. Please provide product brochure, descriptive literature, and/or a product catalog.

ZOLL is proud to offer the X Series Cardiac Monitor Defibrillator and the AED PLUS Automated External Defibrillator.

**The X Series** is the newest, most state-of-the-art monitor on the US market today. It also the smallest, lightest, full featured transport Monitor/Defibrillator on the market today. When transporting critically ill patients, a monitor that is small and lightweight with extensive monitoring capabilities is required. In the event your patient arrests during transport, you also need a defibrillator. Now you can have all of these features plus real-time CPR feedback in one compact device. The X Series is a full-featured monitor/defibrillator, yet it weighs less than 12 pounds with battery included. *It is at least 59% smaller and 42% lighter than the competitive monitor/defibrillators.*

**The AED Plus** is ZOLL's flagship public access/BLS defibrillator. It was the first AED in the world to incorporate rate and depth CPR visual and audible feedback. It also has the distinction of being the AED with lowest cost of ownership long term. 5,5,5, up to five years of life on the pads (CPR D Padz), five years of life on the batteries, and five years of warranty included (with an option to extend to 7 years by registering the device with ZOLL). The battery pack is comprised of 12 non-rechargeable li-ion batteries that can easily be replaced through ZOLL or many other commercial outlets resulting in significant cost and time savings.

### X Series: an in depth review

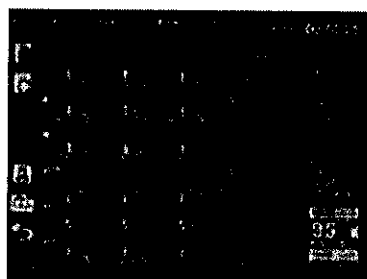
#### Advanced Monitoring Technology with Defibrillation Capabilities

The X Series incorporates the most advanced and most complete monitoring solutions available. In addition to 3-, 4-, 5- or 12-lead ECG monitoring, this extremely durable device can measure more physiologic parameters than any other monitor/defibrillator on U.S. market including: NIBP, EtCO<sub>2</sub>, Total Hemoglobin (SpHb), Oxygen Content (SpOC), Carboxyhemoglobin (SpCO), Methaemoglobin (SpMet), Oxygen Saturation (SpO<sub>2</sub>), Pulse Rate (PR), Perfusion Index (PI), and Pleth Variability Index (PVI), as well as three invasive blood pressures and two temperatures. *The X Series is the only defibrillator that can monitor three invasive pressure lines.* This allows clinicians to measure arterial, venous, and intracranial pressures simultaneously, using standard invasive pressure transducers.

The X Series simultaneously displays up to four physiological waveforms; choose from ECG, SpO<sub>2</sub>, EtCO<sub>2</sub>, IBP, CPR, or cascading ECG. Regardless of which measurements you're tracking, they will be easy to see thanks to the large, high-contrast, color screen.

#### See All 12-leads in Real-time: A Window to Serial ECG Changes:

Unstable patients call for extraordinary vigilance. Substantial ST changes can occur between the initial transmission and arrival at the hospital. The X Series offers Split-Screen View keeps medics on top of the situation by displaying the real waveform next to one that was previously acquired, THIS IS MADE TO BE USED IN A MOVING ENVIRONMENT





## A. METHOD OF APPROACH

- ZOLL gives the crews 12 leads on the screen, seeing all 12-Leads at the same time increases accuracy of 12-Leads because any data problems are seen before the 12-Lead is acquired.
- The X-Series is only monitor that displays all 12-Leads in diagnostic mode. This means the provider is able to see every lead with the diagnostic filters applied and gives a true picture of what is going on with the patient, making serial ECG acquisition easier and more effective with the X Series than any other monitor on the market.
- Unlike the Glasgow Algorithm (Physio) which has a demonstrated track record of high rate of false positives, the Innovise algorithm in the X-Series is the most accurate 12-Lead algorithm on the market today and the only one with a specificity for both **male and female patients**. Both the GE and the Glasgow can only apply an algorithm that is specific to male patients.
- At 89% the X Series offers the greatest level of sensitivity for the detection of AMI. Compare that to the 72% AMI sensitivity of the Glasgow Algorithm in Physio's Lifepak 15. **Make that alert call confidently knowing it is based on the best algorithm.**

### Masimo Advanced Parameters

The X Series is the only defibrillator that gives you the breadth and option of Masimo's entire Advanced Parameters bank which includes: Oxygen (SpO<sub>2</sub>), Total Hemoglobin (SpHb), Oxygen Content (SpOC), Carboxyhemoglobin (SpCO), Methaemoglobin (SpMet), Oxygen Saturation (SpO<sub>2</sub>), Pulse Rate (PR), Perfusion Index (PI), and Pleth Variability Index (PVI)

### Welch Allyn NIBP

The noninvasive blood pressure (NIBP) technology in the X Series is considered the gold standard for NIBP. Only available on ZOLL monitor/defibrillators, Sure BP® and Smartcuf® make the difference. With Sure BP®, you'll get pressure readings in about 15 seconds because they are *detected during cuff inflation*. Smartcuf® *synchronizes the measurement to the patient's R wave*, improving accuracy and reliability.

### Oridion Microstream® EtCO<sub>2</sub>

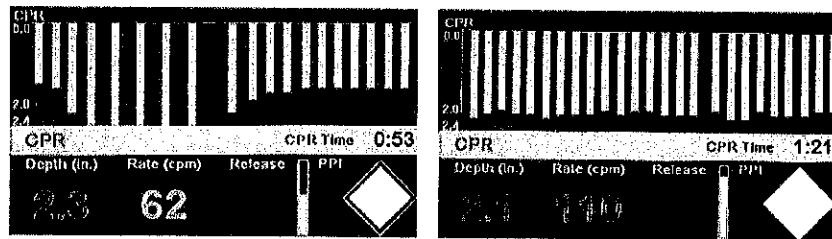
The X Series offers end-tidal carbon dioxide Microstream® monitoring for continuous monitoring of both intubated and non-intubated patients of all ages (neonate to adult). The 2015 American Heart Association Guidelines stated that use of capnography to monitor endotracheal tube placement is a Class I recommendation. Additionally, this parameter allows continuous monitoring of the progress of resuscitation and provides a secondary indicator of CPR quality and ventilation. The X Series offers the widest CO<sub>2</sub> measurement range when compared with any other defibrillator. The X Series can measure from 0 to 150 mmHg, allowing the clinician to accurately measure patients with elevated CO<sub>2</sub> levels (i.e. some drug overdose patients). Other defibrillators stop reading at 99 mmHg.

### Unmatched CPR Support for Adult and Pediatric Patients

In the 2015 AHA Guidelines and the 2013 AHA Consensus Statement, key emphasis was placed on performing high-quality CPR and minimizing interruptions in chest compressions. Should your patient require CPR, you'll have unmatched support that only ZOLL can offer. CPR Dashboard™ displays real-time measures that drive high-quality CPR coaching clinicians to a depth of 2 to 2.4 inches and a rate of 100 to 120 compressions per minute.

## A. METHOD OF APPROACH

# ZOLL®



Inadequate compressions → Good compressions

You get *audible and visual* indicators letting you know if your compressions are of proper depth and rate and whether you are releasing quickly enough to allow for full ventricular filling. A Perfusion Performance Indicator (PPI) is another indicator of overall chest compression quality.

If compressions are paused for more than 3 seconds, an Idle Timer will display to prompt the clinician to resume CPR. 2015 AHA Guidelines states that *"For adults in cardiac arrest receiving CPR without an advanced airway, it is reasonable to pause compressions for less than 10 seconds to deliver 2 breaths (Class IIa, LOE C-LD). In adult cardiac arrest with an unprotected airway, it may be reasonable to perform CPR with the goal of a chest compression fraction as high as possible, with a target of at least 60% (Class IIb, LOE C-LD)."*

The X Series also features See-Thru CPR®, unique to ZOLL. See-Thru CPR filters out chest compression artifact so that the patient's underlying heart rhythm can be displayed during CPR. By allowing the clinician to visualize the underlying rhythm, this technology minimizes the duration of pauses in compressions, critical to improving patient survival.

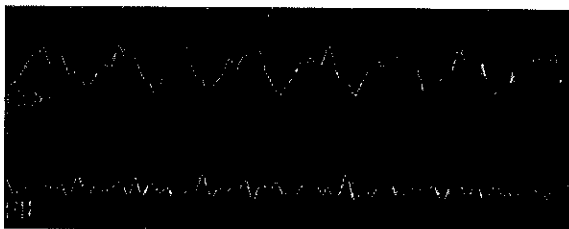


Figure: Raw ECG shown as the top trace; filtered ECG shown as the bottom trace.

### CPR Stat Padz™ and Pediatric One-Step™ Electrodes

Designed for use with ZOLL manual defibrillator medical devices, these electrodes provide the benefits of Real CPR Help®, which conveys the depth and rate of compressions in real time, and See-Thru CPR®, which allows rescuers to see the underlying electrical activity during compressions. ZOLL builds this technology into its pads to allow for easy deployment on the most critical calls the crews will conduct. **With ZOLL's CPR Stat Padz the crews will not have to carry in, set up, and deploy additional systems to help with CPR. This also allows for crews to not have to worry about decontamination, storage and accounting for the supplemental CPR system. With Real CPR help all data can be easy synced, into the patient report unlike other CPR Systems.**

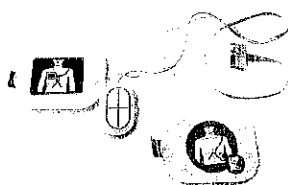


Figure: Adult CPR Stat Pads



Figure: Pediatric One-Step Pediatric CPR Pad



## A. METHOD OF APPROACH

### Rectilinear Biphasic Waveform

ZOLL utilizes a *proprietary rectilinear biphasic waveform* (RBW). The RBW is the only external biphasic waveform developed specifically for external defibrillation. ZOLL is the only company cleared by the FDA to label its biphasic waveform as superior to monophasic for defibrillation of high-impedance ventricular fibrillation and cardioversion of atrial fibrillation.

The RBW delivers the highest average current to high impedance patients; average current is what defibrillates the myocardium. Clinical studies have demonstrated that the *ZOLL RBW is 99% first shock effective at 120 joules for all ventricular tachyarrhythmias*. RBW has been studied in more than 7,000 patients in over 14 separate clinical trials. **All biphasic waveforms are superior to monophasic in that they control for patient impedance. However, ZOLL's biphasic waveform is the only one cleared by FDA to claim superiority over monophasic – all others can only claim equivalent efficacy.**

### 40ms Noninvasive Pacing Waveform

ZOLL offers a *unique 40ms constant current pacing pulse*. In clinical studies, ZOLL's pacing waveform has been shown to successfully pace (capture) nearly twice as often as other pacing waveforms. In addition to the higher capture rates (efficacy) ZOLL's pacer has demonstrated the need to use significantly lower levels of current for capture making our external pacemaker more tolerable for the conscious patient. The ZOLL X Series also give you both fixed and demand mode. ZOLL Medical Corporation began as a pacing company. Our founder, Dr. Paul Zoll, invented external pacing and our waveform was patented for the first twenty years of ZOLL's existence.

### Supports Neonates to Adults

With the X Series, the same monitor/defibrillator can be used to transport adults, children, and neonates. Pediatric and neonatal patients are not just small adults. They require monitoring and defibrillation capabilities that are specific to their needs. The X Series is capable of automatically adjusting the alarm limits, NIBP inflation pressure and volume.

*ZOLL offers the only manual defibrillator on the market that automatically lowers the energy level of the shock and activates a pediatric specific arrhythmia analysis algorithm simply by connecting to ZOLL pediatric electrodes.*

### Data Communications and Data Transfer

The X Series provides unprecedented communication capabilities with integrated Wi-Fi, Bluetooth and USB options, including cellular modem. Whether it is the transport of a STEMI patient to a larger receiving hospital, or transfer of a patient from the ICU for tests, the X Series provides the level of monitoring needed for even your most critical patients.

Once the patient has been safely returned to the ICU, all vital sign and trend data can be quickly and wirelessly uploaded to the ZOLL RescueNet® suite of products and ultimately the electronic medical record system installed at the hospital. Should a cardiac event take place during transport, code data including CPR quality is available for documentation, debriefing, and quality improvement initiatives. **This capability is standard with every X Series meaning there is no additional cost associated with 12-lead transmission or case management. Free for you and free for your receiving hospitals.**

The X Series is designed with electronic charting in mind. It redefines what a monitor should send to the patient record. The built-in memory ensures a complete patient record is transmitted by capturing 24 hours of event (ECG and vital signs) or trend data, and up to 1,000 timestamped events. The X Series simplifies transmission. Its standard communication package makes wires, cables, and "dongles" a thing of the past. It is the first monitor to integrate Wi-Fi, Bluetooth, and USB capabilities as part of the standard communication package. The X Series speeds medic charting by seamlessly uploading the event record. It automatically populates patient data fields in many of the leading ePCR systems. ZOLL's open interface





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software development kit (SDK) is available to all ePCR vendors. The X Series' open architecture means the X Series can transmit a 12-lead ECG into all of the leading STEMI and cardiology management systems. This dramatically increases the efficiency of medic charting by seamlessly uploading the event record. It automatically populates patient data fields into Tucson Fire's ZOLL Tablet ePCR application.

### **ZOLL Online / CaseReview**

ZOLL Case Review and the X Series give you the most comprehensive and insightful look into the patient case file. ZOLL make data collection simple and easy. Gone are the days of chasing crews to download case files from their monitors. Instead, with the push of a button, medics now directly send X Series® files from the field to your system at the end of a call and move on with their shift. Data cards and cables are a thing of the past. With RescueNet® CaseReview, access to case files is as fast as opening the browser of any web-enabled device. Case files are immediately available moments after their transmission. One hundred percent case review is within reach. Event reports are a click away. Choose a case from the list display in your browser, open it, and examine the case. Key QA elements presented in colorful graphics make reviewing simple. Debriefing medics can be a same-day matter. Event-specific reports are easily distributed with a few clicks. Crews can review their own performance while the event is fresh in their minds. The real power of RescueNet CaseReview comes from its ability to collectively summarize system-wide performance. This next-generation tool delivers the capability to summarize the full set of event files in order to recommend quality and system-level improvements. Pre-configured reports, in combination with tag-and-query filter capabilities that produce customized summaries, shed light on system trends and advanced processes. Put this all in place without the need for a network or IT specialist. No special hardware is required to use RescueNet CaseReview's capabilities. A service's secure account can be accessed from any web-enabled device. The cloud-to-cloud interface makes ePCR integration more stable. When CaseReview is updated, ePCR devices no longer need to be modified. Putting CaseReview in place gives you IT independence while consolidating QA/QI efforts. Today most services spend about 80% of their time chasing the data and 20% analyzing. Case Review attempts to reverse that.

## A. METHOD OF APPROACH

### Optimizing the QA Process

#### Immediate File Access

- Review all files from browser
- Use any web-connected device

#### Service-wide Views

- Create system-focused reports
- Populate pre-configured reports
- Customize reports with file tags, query filters



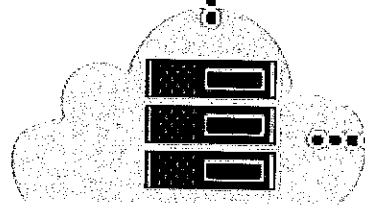
Case Review

#### Instantaneous Debriefing

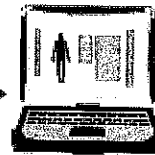
Debrief while medics still on shift, following AHA recommendation to review while resuscitation is fresh in rescuer's mind!

#### Open Architecture

Any ePCR can receive event reports



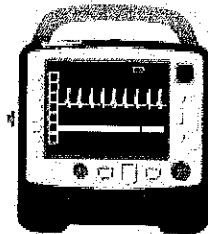
ZOLL Online



Patient Chart

#### Simplified Data Collection

- Medics push case file at end of call, move on with shift
- No need to track down data cards or USB sticks in field



#### IS Independence (hosted version)

- No support required since tool not tied to specific hardware
- Compatible with mobile devices (Windows, iOS, Android)
- Includes file archive, backup, upgrades, and system maintenance

### SurePower™ Batteries

The X Series SurePower™ II high-capacity lithium-ion battery can continuously monitor more physiological parameters for a longer time from a single battery, than any other defibrillator. *Each X Series battery will continuously monitor ECG, SpO2, EtCO2, three channels of invasive pressures, two channels of temperature and non-invasive blood pressure every 15 minutes for 6 hours.* X Series is the only defibrillator that can operate for 6 hours from one battery and still provide AC or DC backup capability. The X Series battery is swappable, allowing the user to remove the battery without losing data or monitor settings. The battery can be recharged, during use, in 4 hours – providing continuous operating power. The battery also includes a run time battery level indicator, as well as a total capacity indicator. As a redundant safety measure, our SurePower II Charging systems automatically fail out any battery with a capacity below 60% shifting failures from the patient to the charger.

### AED Plus: an in depth review

#### Resuscitation Features

ZOLL Medical Corporation's AED Plus and AED Pro are designed to enhance a victim's chance of survival by making it possible for a rescuer to effectively respond in ways that the rescuer with just an ordinary AED could not. The "Chain of Survival" taught by the American Red Cross and AHA is designed to optimize a patient's chance for survival of a sudden cardiac arrest. This concept has four links in the



## A. METHOD OF APPROACH

chain - early access, early cardiopulmonary resuscitation, early defibrillation, and early advanced cardiac life support (ACLS) - all deemed critical to a patient's survival. From ABC assessment to defibrillation and CPR, the ZOLL AED Plus and the AED Pro are the **first** and **only** AED that guides rescuers through the entire rescue process.

### Supports Complete Chain of Survival

The best way to increase the chance of saving sudden cardiac arrest (SCA) victims is to remember and follow every link in the Chain: Early Access, Early CPR, Early Defibrillation, Early Advanced Care. Every step helps save lives. Any break in the Chain compromises survival. Ordinary AEDs only defibrillate. Rapid defibrillation is a critical intervention to improve survival, but it is not enough. While roughly half of the unresponsive, collapsed victims need defibrillation, every one of them need effective cardiopulmonary resuscitation (CPR).

Following the Chain of Survival requires more than just attaching electrodes and delivering a shock. From checking responsiveness, summoning help, and doing an assessment to CPR and defibrillation, ZOLL AED's with instantaneous Real CPR Help guide the rescuer through the entire rescue. By focusing on the full Chain of Survival and supporting effective CPR, ZOLL AED's are the first and only Full-Rescue AED's.

### Help for the Infrequent Rescuers – A Complete Road Map for Resuscitation

A picture is worth a thousand words. ZOLL AEDs with their visual/text displays and voice prompts help the rescuer every step of the way to perform every important life-saving action. These prompts assure that everything is done in order and that shocks, if required, are delivered rapidly.

- ZOLL AED Plus and AED Pro are the only AEDs that **provide graphical, text and voice prompts** to help coach the rescuer through the COMPLETE rescue, helping the rescuer perform all of the steps involved in a rescue and provide the feedback helping a rescuer provide high-quality CPR.
- **Real-time ECG display, number of shock provide** and a clock that indicates elapsed time. This provides important event information for the advanced responder.
- The ZOLL AED Pro **backlit screen** allows a rescuer to use the device effectively even in the dark should there be a power outage.
- The ZOLL AED Plus and AED Pro, with its brilliant graphics, text and voice prompts, was designed to **allow a rescue to be made by the hearing or visually impaired**.

### Supports Cardio Pulmonary Resuscitation (CPR)

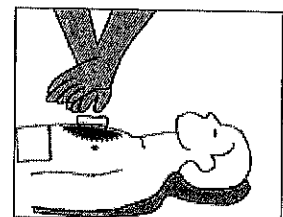
Inadequate compression rate and depth are common during CPR. Adult victims require high-quality CPR. High-quality CPR is compressions at a rate of 100 per minute and at a depth at least 2 inches. Compressions must be done well to effectively move blood and oxygen.

All victims of cardiac arrest require high-quality CPR throughout the rescue. The American Heart Association in the 2010 Guidelines stresses the importance of high-quality CPR:

"There was unanimous support for increased emphasis on ensuring that rescuers deliver high-quality CPR: rescuers need to provide an adequate number and depth of compressions, allow complete chest recoil after each compression, and minimize interruptions in chest compressions."

(AHA Guidelines for CPR and ECC, pg. IV-206)

Only Real CPR Help, available from ZOLL in the AED Plus and AED Pro, provides real-time feedback on rescuer's rate and depth of CPR chest compression, allowing them to provide the high-quality CPR that a victim of cardiac arrest requires:





## **A. METHOD OF APPROACH**

"CPR is important both before and after shock delivery. When performed immediately after collapse from VF SCA, CPR can double or triple the victim's chance of survival. CPR should be provided until an automated external defibrillator (AED) or manual defibrillator is available."

(2005 American Heart Association Guidelines for Emergency Cardiac Care, pg. IV-13)

ZOLL AED's convert compression data instantaneously from the CPR-D padz and provides a metronome to help the rescuer with the proper rate and depth, saying "Push harder" or "Good compressions," as needed. It also shows CPR compression depth on the display screen. ZOLL AED's the only devices that help the rescuer achieve the correct rate and depth of chest compressions during CPR. No other AED has this capability.

- Not just defibrillation (more than a 2-button shock box)
- Instantaneous feedback on a rescuer depth and rate of CPR chest compressions
- A critical link in the "Chain of Survival". The AED's Real CPR Help Feedback provides audio and visual cues that help prevent the two most common errors of CPR: inadequate depth and inadequate rate. The AED Plus delivers a visual bar graph and voice prompts to let the rescuer know if they are performing effective chest compressions or need to push harder while its adaptive metronome leads the rescuer to the recommended 100 compressions-per-minute rate.

### **ZOLL's Rectilinear Biphasic Waveform**

ZOLL Medical Corporation Defibrillators utilize ZOLL patented Rectilinear Biphasic Waveform (RBW) which has demonstrated superior clinical performance with increased current and low energy treatment modalities. The ZOLL RBW is the only waveform cleared by the FDA to be labeled as clinically superior to monophasic waveforms for the conversion of ventricular fibrillation in high-impedance patients. This allows ZOLL Defibrillators to deliver more current than any other defibrillator when it matters most.

Only the ZOLL Rectilinear Biphasic Waveform has proven its clinical superiority for defibrillating VF in high-impedance patients. It also reduces the exposure to high peak current and keeps an optimal waveform shape over a wide range of patient variability therefore enhancing efficacy while reducing the risk of inappropriate currents.

### **Intelligent Pediatric Capability**

ZOLL AED's can defibrillate children up to eight years of age, using the Pedi-Padz II electrodes. When the Pedi-Padz II electrode is connected, the AED recognizes that a pediatric rescue is in progress. With ECG analysis designed specifically for a pediatric heart rate, coupled with appropriate defibrillation energy levels, the AED can handle both adult and pediatric rescues.

- Helps prevent mistakes where both pediatric and adult pads are available because it recognizes and announces, with voice and text prompts, which kind of pads are attached. This makes it less likely that a rescuer will mistakenly attach pediatric pads to an adult and deliver too little energy, or attach adult pads to a child and deliver too much energy.
- Provides child-specific advice on when to shock because it performs heart analysis (electrocardiogram - ECG) specifically designed for children, whose heart rates are typically faster than adults. This makes it less likely that a shock will be advised when in fact it should not.
- Provides confidence that the shock delivered is what the rescuer intends because it delivers six levels of energy that originate and are controlled in the AED itself - three levels for adults, and three lower levels for children. This assures the user that once the AED has indicated "pediatric pads", the energy delivered will be a pediatric dosage, and will not be distorted in some way because of special hardware in the wires to the pads.

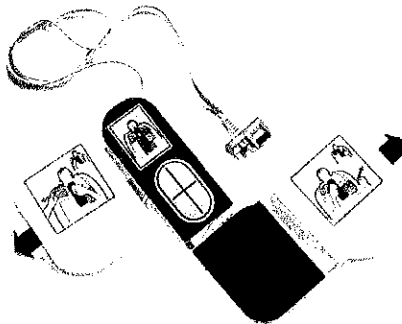


## A. METHOD OF APPROACH

### One-Piece Electrode Pad

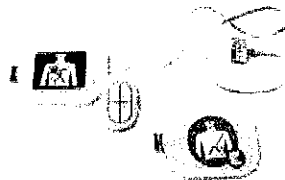
Ordinary AEDs require that the rescuer use two electrodes. ZOLL's Full-Rescue AED features CPR-D padz, a one-piece, pre-connected electrode with CPR Feedback. By using CPR hand placement as the landmark, it is easy to place the CPR-D padz on the victim quickly.

- ZOLL AED's incorporate electrodes that have a five year shelf life, the longest of any electrodes in the market and batteries that have a five year shelf life and support a daily self-check – longer than any other AED battery saving you money and significantly decreases the cost of ownership for years to come.
- The electrodes transfer easily to other ZOLL defibrillators with minimal interruption in treatment.
- The one piece CPR-D Padz electrode simplifies placement and eliminates confusion by providing visual landmarks and "pull-tab" applications.



**ZOLL CPR-D Padz**

ZOLL offers multiple pad compatibility options across its line of defibrillators. This approach allows for seamless transition while providing the best possible patient care and cost savings for the department.



**ZOLL CPR-Stat Padz**

### Exceptionally durable – Designed to withstand extreme conditions

ZOLL AED's superior design and construction allow a Particle and Water Ingress Rating of (IP-55). The AED Pro is the industry leader in the drop test, the only AED to pass the 1.5 meter drop test. The reliability and durability of ZOLL AED's is a key reason why it has been selected by the military for all types of military expeditionary environments.

### Advanced Data Capabilities and Upgradability

ZOLL AED's utilize wireless and USB technology to facilitate the downloading of data from AED after a sudden cardiac event, instead of using outdated data cards that are easily lost or the chain of custody broken. Data can easily be downloaded to a computer, USB storage device (AED Pro) or PDA. Because the ZOLL AED's are software driven, software updates will be provided, should protocols change in the future.



#### A. METHOD OF APPROACH

3. Describe the ordering process Tucson Fire employees should follow.

ZOLL offers many methods of ordering to make the process as convenient as possible for our customers. Purchase Orders can be submitted to the following:

- PHONE: 800-348-9011 (M-F 8:30am-7:00pm EST) *consumables only*
- FAX: 978-421-0015
- ONLINE: ZOLL WebStore @ <https://www.zollwebstore.com/> *consumables only*
- EMAIL: [esales@zoll.com](mailto:esales@zoll.com)

All orders will be processed within 24 hours of being received, and a confirmation will be sent via email to the email address listed on the Purchase Order.

4. Describe any alternative methods for purchase, such as Internet ordering.

Consumables may be purchased online at [www.zollwebstore.com](http://www.zollwebstore.com). Capital equipment is not available on the webstore, and may be submitted to the FAX or EMAIL noted above.

5. Provide a method for delivery of products.

The City of Tucson Fire will be notified of a shipment via email to the email address listed on the Purchase Order. Consumable orders will be delivered within 7-10 days after receipt of a Purchase Order. Capital Equipment orders will be delivered within 60 days after receipt of Purchase Order. ZOLL does have the flexibility to meet a reasonable capital equipment shipping request by the City of Tucson. Unless otherwise stated, ZOLL will ship UPS Ground with terms of FOB Destination and Free Shipping & Handling (ground shipments only). The City of Tucson Fire Department may request to expedite shipping, and will be responsible to pay for the shipping & handling. Any expedited orders should be requested by 3:00 EST.

6. Provide a description of proposed quality control practices in addition to the requirements described in the Scope of Work.

Above and beyond ZOLL's first class quality control, we will deploy the local quality assurance manager to unpack, inspect, build and configure each monitor along with all related cables, sensors and disposables. In the unlikely event that something to be replaced the local quality assurance manager will facilitate the replacement of the item before any training or deployment occurs.

7. Describe how you will keep the City updated on all updated technology.

The strategic account manager will be in regular contact with the City and Fire Department on any new updates, parameters, or anything that can provide the citizens of Tucson with an improved level of care or the department better administratively or operationally efficiency.

8. Describe how data will be collected, stored and retrieved for use by the Tucson Fire Department.

Data will be collected initially on the X Series using a dedicated ARM processor solid-state memory that store up to 250 calls, 24 hours of event (ECG and vital signs) or trend data, and up to 1,000 timestamped events. From there data can easily be transmitted from the X Series to ZOLL Tablet ePCR using either Wi-Fi, Bluetooth, or USB upload. From there data would be managed/stored using the same manner and infrastructure you have in the field today.

9. Describe how CPR data is collected including devices or adjuncts required to collect CPR data, how the data is stored, transferred, and what software is required to retrieve the data for QA purposed and public record release.

ZOLL is still the only company in the world to employ a passive, pad-based CPR feedback solution in lieu of trying to remember to bring an additional piece of equipment to the patient's bedside. By using a passive measurement system providers do not have to change their behavior in order to access all of the CPR feedback features onboard both the X Series and AED Plus units. By simply applying a set of CPR pads they will see rate, depth, and release velocity (X Series only) feedback immediately on screen. The X Series also contain a novel feature called See-Thru CPR which will allows providers to



## A. METHOD OF APPROACH

see the patient's underlying rhythm the entire time they are performing compression allowing for pause times to be minimized. Intra-call data is automatically generated and stored in memory. When the case is sent to ZOLL ePCR the QA/QI file is automatically generated and attached. QA/QI data collection is both automatic and consolidated. There is no separate piece of equipment to chase down to try to pull data from. The result is less chasing data and more analyzing and improving.

10. Describe each step from turning on the device to capturing and storing a 12 lead, including application and use of the CPR adjuncts and other accessory devices. This must include entering a patient's name

### **12-Lead**

Step 1: Turn Monitor On

Step 2: Push 12-lead Button

Step 3: Monitor auto prompts for patient information, add age and gender, patient last name all together.

Step 4: Press Done to Acquire, 12-leads are auto stored at this point.

Step 5 (Optional): Transmit to any area hospital (free for you, free for them)

### **CPR with Feedback**

Step 1: Turn Monitor On

Step 2: Apply CPR Stat Pads to patient's bare chest

Step 3: Perform Compression, dashboard will give you real time rate depth, and release velocity (Real CPR Help) and the patients underlying rhythm the entire time CPR is being performed (See-Thru CPR). System will give providers both audible and visual feedback in real time.

Step 4: QA/QI file is auto-generated when case is transmitted to ZOLL ePCR via Bluetooth, Wi-Fi, or USB communications. CPR Review available in near-real time.

11. Describe the warranty offered on devices including any limitation to warranty repairs and or replacement.

Please refer to the documents labeled "EMS One (1) Year Limited Product Warranty", "AED Plus Five (5) Year Limited Product Warranty", and "Free Extended Warranty AED Plus" included in Section VII of this response.

12. Describe the maintenance on software systems. Submit any Software License Agreements, Software Maintenance Agreements, Service Level Agreements, etc. for the City's consideration. Any agreement that is not submitted prior to contract award may not be considered after contract award.

Major software updates for the X Series are included at no charge and are typically administered alongside yearly PMs. A synopsis of the changes the updates contain will provided in advance so a decision can be made as to whether or not to perform the update. There is no EULA that accompanies these updates. Code Review software is available at no charge online and our Case Review and RescueNet 12-Lead applications are available at no cost online at [www.zollonline.com](http://www.zollonline.com).

13. Describe the user management and user definition for the records management system. The ZOLLonline system allows for the creation of two types of users. Administrative users have specific rights to manage the account setting, add users, and remove users. User level access permissions allow for viewing data, but not changing settings or adding new users to the account.

14. Describe how devices get assigned to users.  
Devices are usually assigned by station and then by apparatus.

15. Describe how devices get subscribed to the server/cloud level system.  
Devices will be programmed with an account specific identifier and password. This will allow the devices to interact with a specific ZOLLonline account. The identifier and password will be programmed in all X Series devices prior to implementation.



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16. Describe your backup and recovery approach.

All databases are backed up regularly. Full backups are done daily and hourly backups are done throughout the day. Database redundancy is also used to protect against hardware or operating system failure. Backup tapes are stored off-site.

17. Describe your device security approach.

The X Series monitor defibrillator utilizes a proprietary operating system. This operating system will only interact with ZOLL issued updates. The device setting area is protected with a configurable password. Only authorized users can make changes to these settings.

18. Describe your server/cloud access management system.

ZOLLOnline.com is a central storage option for all X Series data. This includes a repository of transmitted 12 lead case studies and full disclosure files. The system includes a robust search mechanism to allow users to find the data they are interested in. User's interactions are logged and reports on user access are available. The system is HIPAA and HITECH compliant.

19. Describe how a specific set of data (i.e., 12 Lead can be associated with a patient from the TabletPCR system.

When a 12 lead is acquired and stored, multiple data points are available for reference. These include the device name, age, sex, serial number of the X Series, and a patient number associated with the case. After a case is linked to a TabletPCR record, these data points can be referenced in the ZOLLOnline system. If the reviewer is just interested in viewing the case data (including 12 leads) they can open the entire case from within Tablet or WebPCR.

20. Describe the training that will be provided by the Contractor to TFD personnel.

Please refer to the document labeled "Implementation Plan" included in Section VI of this response.

21. Describe the implementation plan and time line for TFD

Please refer to the document labeled "Implementation Plan" included in Section VI of this response.

22. Describe how offeror shall repair/maintain devices on City property including the turnaround time when calls are made by TFD personnel for maintenance including processing, timelines and associated cost for repairs.

Please refer to the document labeled "Technical Support & On-Site Service" included in Section 6 of this response.

23. Describe how loaner devices will be provided.

If it is determined that a loaner device is required, the Technical Support Help Desk will dispatch a service loaner to your facility. A Service Loaner is available at no charge during the repair analysis process and is shipped to arrive before 10 AM the next business day. Please refer to the document labeled "Technical Support & On-Site Service" included in Section 6 of this response.

24. Describe the weight of the devices.

The ZOLL X Series weighs 11.7 lbs. with a battery and paper installed.

25. Describe the connectivity options for the devices.

Wi-Fi, Bluetooth, and USB

26. Describe how data will be compatible with the ZOLL RescueNet TabletPCR application. Please specify how this integration would work.

TabletPCR is developed by ZOLL. This gives the unique ability to have both X Series and TabletPCR developers' work together developing integration. We offer the ability to transfer data via





## A. METHOD OF APPROACH

Wi-Fi, Bluetooth, and USB. After the data is transferred, the file is parsed and specific items are placed in the PCR. These include pulse, SPO2, respirations, ETCO2, 12 leads, defibrillations, cardioversions, pacing events, and all code markers. The upload of the case data is simple for the end user, resulting in higher compliance rates. The full case file is attached to the ePCR and second by second data can be viewed in the field or by QA/QI.

27. Please describe how you would enable an interface with ZOLL's RescueNet TablePCR system if it does not yet exist.

The X Series interface is built into the ZOLL TabletPCR application.

28. Contractor shall describe cloud storage options including cloud storage capability, download and access process, record retrieval, records interface with EPCR, and data retention period.

ZOLLonline.com can be utilized for a cloud based storage of case files and transmitted 12 leads. The system is managed by ZOLL and fully hosted. There is no additional cost for the base 12 lead and case management tools. Access is managed via a username and password. After logging into the system, the user will have the option to open view 12 leads or full disclosure case files. CPR report cards are available in the system for individual case debriefing. ePCR integration with the X Series will occur at the local level and not utilize the zollonline.com system. 12 leads will be stored indefinitely and individual case files will be stored for 30 days. ZOLL does offer an upgraded Case Review product that allows for 7 years of case file storage.

29. If a cloud based solution is offered how will you manage your backups and ensure availability? Where are your primary and secondary data centers?

All databases are backed up regularly. Full backups are done daily and hourly backups are done throughout the day. Database redundancy is also used to protect against hardware or operating system failure. Backup tapes are stored off-site.

Microsoft IIS web servers are deployed in redundant farms for scalability and high availability. The web server farm resides in a perimeter DMZ, while database servers are segregated by a firewall to limit access and safeguard information. All servers are virtualized to leverage the HA features of VMWare. ZOLL deploys anti-virus software across systems to protect against newly discovered threats and malware. ZOLL Online is a multi-tenant infrastructure; direct server access, monitoring systems access as well as direct access to data is disallowed to all ZOLL clients to protect their privacy.

The primary datacenter is located in Denver, CO. Our secondary (backup) datacenter is located in Chicago, IL.

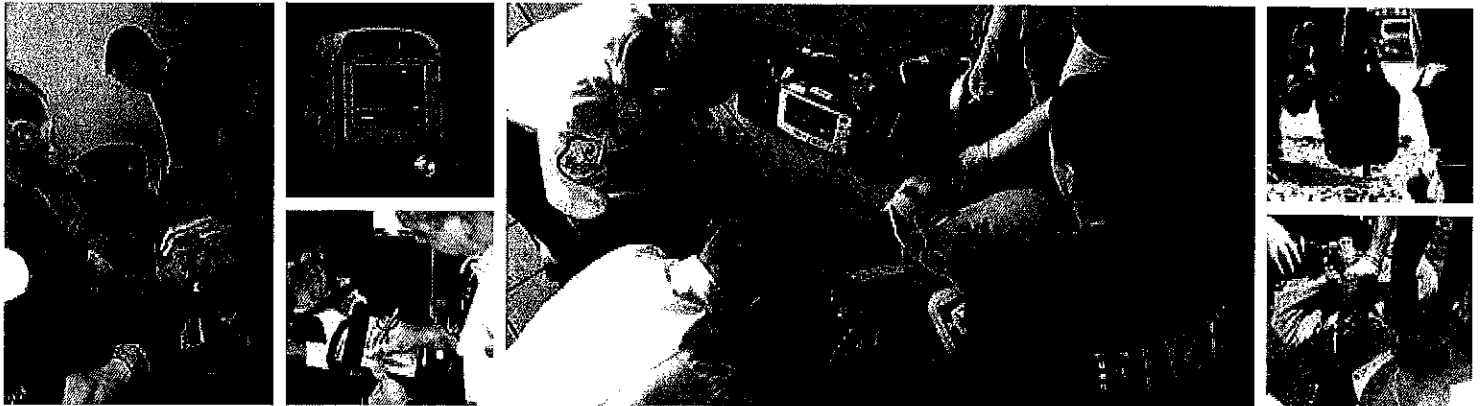
30. Provide details and terms of leasing options.

ZOLL Medical Corporation is providing interest free financing terms. These terms apply to the purchase of all items including trade-in equipment from quote 245679 V1. ZOLL is willing to work with the City of Tucson for additional specific payment terms that best fit the needs of the City of Tucson. ZOLL has great flexibility on payment terms and will work the City for mutual agreed upon terms if desired.

- 2 equal payments due NET 30, July 30, 2018.
- 3 equal payments due NET 30, July 30, 2018, July 30, 2019.

By placing a purchase order in response to this quotation, the City of Tucson agrees that it thereby grants to ZOLL a purchase money security interest in all the goods referenced by such purchase order and acknowledges that ZOLL may file a UCC Financing Statement ordering such purchase money security interest. Customer further agrees to execute a Security Agreement to be provided by ZOLL prior to shipment pursuant to such purchase order.

**ZOLL.**



## Section IV- Qualifications & Experience



## B. QUALIFICATIONS AND EXPERIENCE

1. Provide a general overview of your company, including number of years in business, corporate headquarters location, etc. Provide a brief history of the organization.

This proposal for the Tucson Fire Department, has been developed taking into consideration Tucson Fire Department procurement communities' unique needs and how ZOLL Medical Corporation's solutions will meet them. We believe the business relationship and partnership between ZOLL and Tucson Fire Department will be longstanding and mutually beneficial.

ZOLL is focused on improving patient outcomes with novel resuscitation and acute critical care technology. Our family of products offers the most integrated system of clinical solutions for EMS as well as complementary products and services to provide data integration and management.

Since the founding of ZOLL in 1980, the company has been committed to developing and marketing cardiac resuscitation products with "leading-edge" technology. The ZOLL name is synonymous with the market introduction of innovative, technically advanced cardiac resuscitation systems. Since our beginning, ZOLL products have embodied innovation and brought new capabilities to the market. ZOLL's CPR technology is unsurpassed. Over the last decade, the importance of high-quality CPR has become clear. Through our Real CPR Help®, CPR Dashboard™, and See-Thru CPR® technologies, ZOLL gives rescuers the tools they need to strive to perform the highest quality of CPR recommended in the American Heart Association 2015 Guidelines.<sup>1</sup>

Today ZOLL's product portfolio and customer base have greatly expanded. Hospitals, emergency medical services (EMS), and lay rescuers across the globe use ZOLL professional and automated external defibrillators every day to treat sudden cardiac arrest and improve outcomes. Our comprehensive product portfolio also includes the world's only wearable defibrillator; a revolutionary automated CPR system; rapid, highly efficient intravascular and surface temperature management systems for patients who require therapeutic cooling or warming; and intrathoracic pressure regulation (IPR) therapy, which creates a vacuum inside the chest cavity that enhances circulation, increases blood pressure, and lowers intracranial pressure.

In 2015 our ResQ CPR™ System became the first and only CPR device with an FDA-approved indication to "increase the likelihood of survival in adults who have experienced non-traumatic cardiac arrest." Cardiac arrest victims treated with the ResQ CPR System were 49% more likely to be alive one year after the event than patients treated with conventional manual CPR.<sup>2</sup> We also offer a family of portable ventilators for environments ranging from the emergency department to military operations, and every care environment in between.

At ZOLL we also feel strongly that we need to address data management and analysis. One of ZOLL's core principles is that if you can't measure something, you can't improve it. Our data offerings are unmatched. When the call first comes in, EMS systems use RescueNet® Navigator to get the crew to the scene as quickly as possible. After the crisis has passed, RescueNet Code Review enables rescuers to see events as they occurred, providing the ECG, the vital signs, and the depth and rate of compressions for a post-event analysis.

In all, we are focused on key areas that we believe make a real difference to our customers and their patients: investing in people and research, delivering innovative products, and helping our customers save lives that might otherwise be lost. Investments



## B. QUALIFICATIONS AND EXPERIENCE

In research and development in our quest to continue delivering products that set new standards of care are above average for the industry and our spending in clinical research is unequalled.

Our ongoing commitment is to being a consistent, stable, and reliable partner whom our customers can count on to achieve meaningful business and clinical advances.

To that end, ZOLL employs more than 4,000 employees to manufacture, market and sell products in more than 140 countries. Throughout ZOLL's first 30 years in business, the company has had consistent management, regularly ending each fiscal year with no debt and substantial assets.

In 2012, ZOLL was acquired by the Asahi Kasei Group, part of Asahi Kasei Corporation. With operations in chemicals and fibers, homes and construction materials, electronics, and the healthcare business sectors, Tokyo-based Asahi Kasei has more than 30,000 employees worldwide and sales of \$19 billion.

ZOLL's commitment to our customers is paramount in everything we do. We recognize the unique challenges faced by each of the markets ZOLL serves and work with our customers to address their needs. Through ongoing research and development, intelligent engineering, and strategic acquisitions, we have pursued this goal for more than three decades by offering best-in-class, technically advanced products and by adding new capabilities.

We believe ZOLL's proposal is comprehensive, and one that clearly addresses all of the critical elements of Tucson Fire Department solicitation for Automated External Defibrillator (AED) units, accessories, and service and support. We also believe that we have offered very compelling clinical reasons and financial incentives for Tucson Fire Department to include ZOLL in its award decision at this time. We are confident that ZOLL's clinically advanced technology would significantly improve clinical outcomes and that cost reductions in Tucson Fire Department's procurement community could be achieved.

ZOLL considers it a great privilege to have an opportunity of a business partnership with the Tucson Fire Department in conjunction with Tucson Fire Department and we are deeply committed to supplying excellent products and services to the Tucson Fire Department procurement communities. We extend an invitation for any interested Tucson Fire Department representative to visit ZOLL's worldwide headquarters in Chelmsford, Massachusetts to gain more insight into our vision for the future. Similarly, we welcome all opportunities to meet with Tucson Fire Department representatives in the state of Texas to work toward the development of a meaningful business partnership.

<sup>1</sup>Kronick SL, et al. *Circulation*. 2015; 132(suppl 2):S397-S413.

<sup>2</sup> ResQCPR System Summary of Safety and Effectiveness Data approved by Food & Drug Administration 2015.

2. Provide resumes and/or biographies for all key personnel, including supervisors, who will be assigned to this contract.

Mike Borkowski - Strategic Account Manager, 480-299-8900, [Mborkowski@zoll.com](mailto:Mborkowski@zoll.com)

Mike has 15+ years at ZOLL Medical and will oversee all aspects of the conversion. Mike's current role at ZOLL is to convert large, strategic accounts to ZOLL. He manages the process for a successful transition and to provide a single point of contact for monitors, AED's, ePCR, Fire RMS and billing.



## B. QUALIFICATIONS AND EXPERIENCE

Ryan Grulke, Southwest USA EMS Regional Manager, 512-277-0424, [rgrulke@zoll.com](mailto:rgrulke@zoll.com)  
Ryan has 12+ years in the medical field and 7 year at ZOLL Medical and will manage local representation and corporate logistics. Ryan's current role at ZOLL is to manage all eight Southwest EMS representative's sales activities.

Barry Herbert – Arizona Territory Manager, 480-793-1388, [bherbert@zoll.com](mailto:bherbert@zoll.com)  
Barry is the newest member of the ZOLL team. He brings 9 years of customer support and sales specialist. Barry's current roll at ZOLL will be to manage and grow the AZ Market and provide world class customer service to his Arizona EMS customers

Chris Graf – Senior Sales Engineer, 484-239-5867, [cgraf@zoll.com](mailto:cgraf@zoll.com)  
Chris has 10+ years at ZOLL Medical Corporation and will be the technical contact for Tucson. Chris' current role is to be the product expert regarding IT aspects of the X Series and supporting integrations. These include cloud based storage, integrating the X Series into Tucson's infrastructure, and ePCR linking. Prior to ZOLL, Chris was a paramedic that managed a fire based EMS service.

Alex Ciric, Territory Manager, 480-494-1970, [aciric@zoll.com](mailto:aciric@zoll.com).  
Alex recently began his career with ZOLL Data earlier this year. He has +10 years in wireless technology business experience. Alex's current role at ZOLL is providing software and hardware solutions. Alex also in a key resource on RN ePCR, Billing and Fire RMS for the department.

Sandra Montero, Customer Quality Assurance Regional Manager, 305-785-8908, [smontero@zoll.com](mailto:smontero@zoll.com)  
Sandra has been with the ZOLL Field Technical Support Team for 10 years. She is the Western Service Manager and over sees the Technical Support Team in the Western Region. She serves as the customer liaison to the company for quality and service.

Michael Limberg, Field Technical Service Representative, 770-355-6156, [mlimberg@zoll.com](mailto:mlimberg@zoll.com).  
Michael is the local field technical service that provides technical support, warranty and preventive maintenance for Arizona customers for the past 3 years. He has working knowledge of the Fire Service as I was a Fire fighter EMT for over 10 years and is very customer focused.

Shannon L Tinker, Manager, US EMS Clinical Deployment, 386-212-1415 [sltinker@zoll.com](mailto:sltinker@zoll.com)  
Shannon joined ZOLL in 2011 as a Technical Training and Deployment Specialist for the Service Organization. She transferred to the Clinical Deployment Team in 2012 to join a program met with exemplary reviews from customers across North America. Today she leads a team of experienced EMS educators that train and support thousands of healthcare providers annually. She brings 20 years of combined Healthcare and EMS experience as a Paramedic, Supervisor and QA/QI Coordinator.

Eric T. Mannion, Manager, US EMS Clinical Deployment, 978-906-1200, [emannion@zoll.com](mailto:emannion@zoll.com)  
Eric joined ZOLL in 2010, one of the first paramedics recruited to provide Clinical Education to ZOLL's clients. The program was met with exemplary reviews from customers across North America. Today he leads a team of experienced EMS educators who log nearly 20,000 hours of education and reach thousands of healthcare providers annually. He brings 30 years of combined Fire and EMS experience as a practicing clinician, Operation's Manager and adjunct instructor at a local college.

Eric Houle, Sr. Clinical Deployment Specialist, 386-299-1045, [ehoule@zoll.com](mailto:ehoule@zoll.com)  
Eric is a senior member of the Clinical Deployment Team and has been training on the X-Series® since its inception in 2012. He brings 21 years of experience in the Fire/EMS industry as a front-line provider, clinical educator and EMS system administrator. Prior to joining ZOLL, Eric was the EMS Clinical Training Manager for a countywide ambulance service in central Florida where he continues to work part-time using a variety of ZOLL products, including X-Series®, AutoPulse®,



## B. QUALIFICATIONS AND EXPERIENCE

TabletPCR® and the RescueNet® Dispatch Billing suite. Eric is also an adjunct faculty member at the Central Florida College.

Rod Cheney Clinical Deployment Specialist, 419-906-9018, [rcheney@zoll.com](mailto:rcheney@zoll.com)

Rod joined ZOLL's Technical Service team in 2013 as an AutoPulse® Specialist, transitioning to the Clinical Deployment team in 2015. He brings a vast career in Emergency Services serving at different capacities throughout his 23 year career. Prior to joining ZOLL, Rod served as Paramedic, EMS Director, Firefighter, Critical Care Transport Medic, EMA Director & LEPC Director. Fulton County, where Rod served as the Director of EMS, was the first county in Ohio to convert to ZOLL products, including E-Series®, AutoPulse® and ResQpod® Rod continues to support his community teaching First Aid and CPR.

Carol Calache, Clinical Deployment Specialist, 386-882-7654, [ccalache@zoll.com](mailto:ccalache@zoll.com)

Carol joined our Clinical Deployment Team with 20 years' experience in Fire/EMS. She began her career in the private sector as a Paramedic/Field Training Officer, subsequently transitioning to a central Florida fire department where she moved through the ranks to Driver/Engineer and Clinical Educator. In 2009 she was elected by her peers to serve as their IAFF Union President and continued to do so until her retirement. She was instrumental in the initial beta-testing of the AutoPulse® during its original market debut. Carol is a graduate of the University of Florida Sports Management program.

3. Indicate the office locations of the Key Personnel to be assigned to the account and identify the lead person.

Mike Borkowski will be the lead person assigned to the City of Tucson's account. Mike's office is out of Scottsdale, Arizona. The locations for the rest of the team are as follows:

Ryan Grulke- Austin, Texas

Barry Herbert- Mesa, Arizona

Chris Graf- Broomfield, Colorado

Alex Ciric- Gilbert, Arizona

Sandra Montero- Phoenix, Arizona

Michael Limberg- San Tan Valley, Arizona

Shannon Tinker- Titusville, Florida

Eric Mannion- Townsend, Massachusetts

Eric Houle- South Daytona, Florida

Rod Cheney- Archbold, Ohio

Carol Calache- New Smyrna Beach, Florida

4. Provide at least three (3) references for work that is similar in scope to the Scope of Work of this contract. Preferably, the City seeks 3 references from fire agencies that are utilizing the same devices proposed herein, as well as the ZOLL EPCR. For each reference, include name, telephone number, and email address of contact person.

LifeNet EMS

Jarrold Nall

903-244-2148

[jnall@lifenetems.org](mailto:jnall@lifenetems.org)

Volusia County Emergency Medical Services

Mike Vincent

386-236-3545

[mvincent@volusia.org](mailto:mvincent@volusia.org)

City of San Antonio Fire

Antonio (Tony) Felan

210-844-5206

[Antonio.felan@sanantonio.gov](mailto:Antonio.felan@sanantonio.gov)



## **B. QUALIFICATIONS AND EXPERIENCE**

5. If the use of subcontractors is proposed, provide the information requested in items 1 through 4 above for each subcontractor.  
N/A

6. Offerors who submit a proposal as a manufacturer's representative must include a letter from each manufacturer involved. The letter shall certify that the vendor is authorized to provide the specific products presented, that the vendor is authorized to submit a proposal on such products, and guarantees that should the vendor fail to fulfill any obligations established as a result of a Contract award, the manufacturer, upon assignment by the City, will either assume such obligations or provide an alternate authorized vendor for the balance of the Contract period. In the event of such an assignment, all other terms and conditions of the Contract shall remain the same.

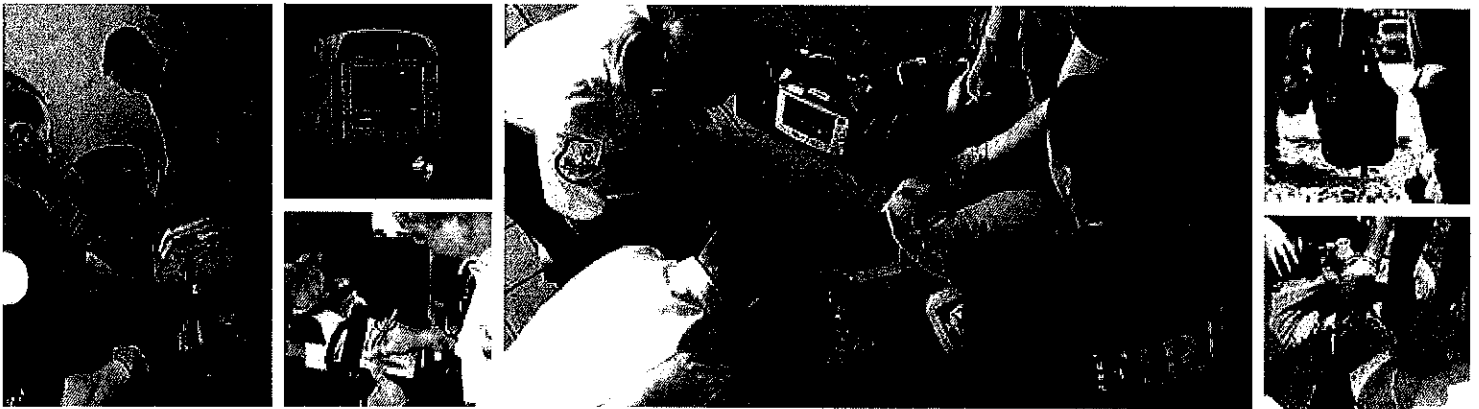
ZOLL Medical Corporation is the manufacturer.

7. Describe any specific ongoing or open FDA inquiries into products proposed or accessories to products proposed.  
ZOLL Medical Corporation does not have any open FDA inquiries into the proposed products or accessories.

8. Describe any general ongoing or open FDA inquiries that could impact your ability to service this contract.

There are currently no ongoing or open FDA inquiries.

**ZOLL®**



## **Section VI- Training & Implementation Plans**





## **C. IMPLEMENTATION PLAN**

### **Project Management Plan**

ZOLL knows the importance of providing quality and timely services to customers. Our implementation approach will utilize a project management plan to be sponsored by Shannon Tinker (Manager, US EMS Clinical Deployment), coordinated by Barry Herbert (Arizona EMS Territory Manager), and managed by a dedicated Clinical Deployment Support Team member. The project deliverables will consist of three phases; buildout, training, and deployment.

The buildout phase will begin at ship date. Multiple members of the Clinical Deployment Support Team will be onsite for device assembly as well as site support for provider training. Sales Engineering will provide data integration support to include 12 Lead transmission and data upload to ePCR for this project. Thorough testing of all devices for functionality and data integration will be conducted by our support team members and ZOLL welcomes collaboration with Tucson Fire Department IT and Education Staff as required. All education content will be approved prior to delivery by TFD Training/Leadership and the ZOLL Territory Manager will coordinate all processes and communication of such. The deployment project manager will collaborate with TFD Leadership/Training Team to ensure all training sites are fully equipped and trainers are fully prepared to deliver provider training. It is ZOLL's goal to ensure the training facilities and curriculum all meet Tucson Fire Leadership standards prior to the delivery of education to healthcare providers.

As the training phase begins ZOLL will make computer based training available for Tucson Fire Department's frontline, supervisor, and Administration Staff (as needed). ZOLL's computer based training will allow Tucson Fire Department to set target dates for completion by staff and monitor their progress towards that goal. Each trainee will have a unique username/password and have access to the classes 24 hours per day, 7 days per week, on-duty or off. ZOLL will also conduct intensive "Train the Trainer" classes with select supervisory staff (as defined by Tucson Fire) which will allow your organization to develop in house "subject matter experts" as related to their cardiac monitor/defibrillators. Once both TFD and ZOLL are satisfied the devices have been tested, configured, data integration has been completed, and "training the trainers" is finished we will look to TFD Training Leadership to verify the computer based training has been completed to their satisfaction. Provider training will be scheduled in collaboration with TFD to ensure there will be no interruption of service delivery by healthcare providers towards a goal of achieving a 95% provider training completion rate by date to be determined. The training model used to achieve this goal (classroom based, scenario based, or combination of both) will be used in conjunction with the curriculum approved by both Tucson Fire and the project sponsor. Any providers unable to attend the deployment training will be determined by TFD and ZOLL will schedule additional classes to fully train the remaining staff.

To further demonstrate our commitment to a partnership with Tucson Fire Department and helping them to complete their mission statement we will utilize the same training phase implemented for deployment to successfully conduct follow-up training at a mutually agreeable date (6-9 months suggested). Our goal will be to enhance user functionality and ensure a "best practices" model is being followed. We would welcome feedback from supervisory staff, the Medical Director's Office, and healthcare providers during the interlude from deployment to follow-up education to help guide this training. The following is a draft of the proposed training outline:



## **C. IMPLEMENTATION PLAN**

### **Deployment and Training**

ZOLL Medical shall provide the deployment services outlined below:

- Equipment setup and configuration
- Product training
- End user training
- 12 Lead transmission setup and configuration
- Data integration setup

A comprehensive education and deployment plan will be developed to meet each customer's unique requirements. The plan will include a combination of end-user training and train-the-trainer programs.

Product training will be provided by ZOLL's EMS Clinical Deployment Team. The Clinical Deployment Team is a specialized team of clinical educators/product experts. A brief description of the team is as follows:

#### **Specialized team of Clinical Educators**

- Responsible for all EMS equipment deployed in North America
- All currently certified Paramedics
- Extensive EMS and Firefighting background
- Minimum credentials
  - National or State level certification at Paramedic level
  - 10 years of Paramedic level EMS experience
  - 10 years of EMS education experience at ALS level
- Numerous instructor credentials
  - ACLS, PALS, BCLS, BTLS, PHTLS
- Extensive specialized background
- Data Integration
  - 12 lead and case data
- Academia
- Project Management



## C. IMPLEMENTATION PLAN

### Proposed Training for Tucson Fire Department – 3 Weeks

Week 1

Equipment setup and configuration

Super-user Training for Clinical and Supervisory Staff – 3 training sessions – 3 hours per session

Weeks 2, 3 and (4 if needed)

End-user Equipment Training – 2 hours per session

Monday – 2 Training Sessions – Afternoon and Evening

Tuesday – 3 Training Sessions – Morning, Afternoon and Evening

Wednesday – 3 Training Sessions – Morning, Afternoon and Evening

Thursday – 3 Training Sessions – Morning, Afternoon and Evening

Friday – 2 Training Sessions – Morning and Afternoon

39 (52 if needed) Total End-user training sessions

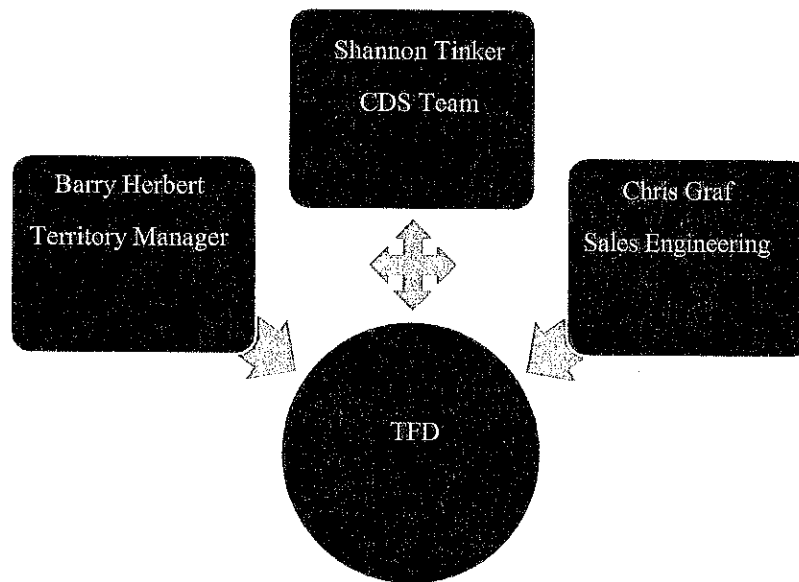
ZOLL to provide go/no go check sheet, user confidence determination, and acceptance.

We believe this model of project management through a phased process will ensure successful data integration of the X-Series, give Tucson Fire the most flexibility to ensure the timely delivery of healthcare during deployment, while achieve the highest percentage of initial provider training. ZOLL is staffed with knowledgeable, extensively trained Clinical Deployment team who will define their success by Tucson Fire Department's success. Our dedication to seeing a seamless transition the ZOLL family of products will be the highest priority of every ZOLL employee involved. From shipping through follow up training we will all be committed to seeking a collaborative environment that will allow ZOLL to perform the work needed to help TFD continually provide world class mobile healthcare with the highest quality customer service and clinical excellence in a fiscally responsible manner.

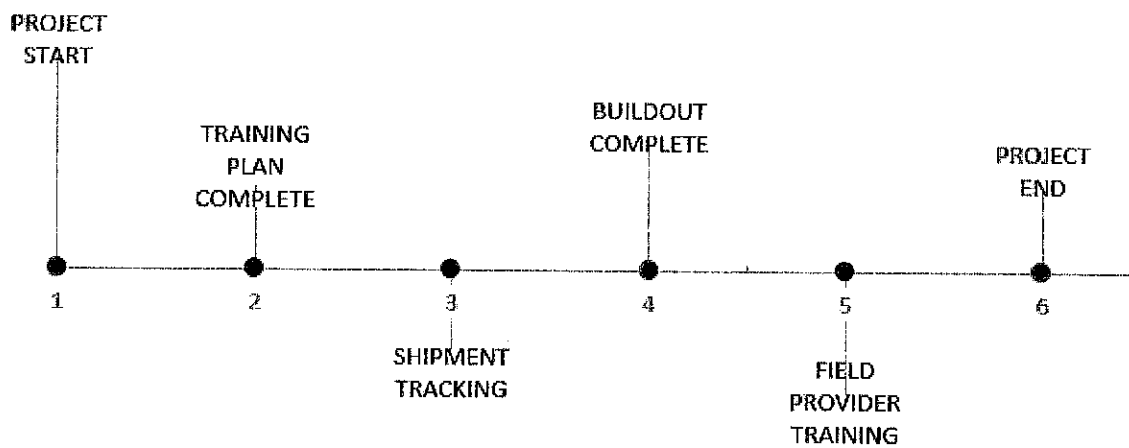
## C. IMPLEMENTATION PLAN

# ZOLL®

### Communication and Project Team Structure



### Milestones of Project Management Plan



## C. IMPLEMENTATION PLAN



### Project Schedule and Milestones

WBS	Task	Resource Names	Start	Finish	Duration (days)	Percent Complete
1	Online X Series Training	Ronna Zaremski			30	0%
2	Needs Assessment	Shannon Tinker			5	0%
3	Train the Trainer	CDS Team			5	0%
M	Training Plan Complete	CDS Team/TFD			1	0%
M	Buildout Complete	CDS Team			-	-
4	X Series Shipment Confirmed	Barry Herbert			60	0%
5	Configuration	CDS Team			1	0%
6	Data Integration of 12 Lead and ePCR	Chris Graf				
7	Assembly	CDS Team			5	0%
M	Field Provider Training Begins	CDS Team			45	-



## **X Series® Skills Competency**

### **Instructions to participant:**

In this session, you will be tested using the ZOLL X Series Monitor/Defibrillator and a simulated patient. The simulated patient encounter is meant to test your ability to properly use the features of the X Series and to demonstrate competence in the use of the device. The patient's rapidly changing condition is not meant to reflect your performance whatsoever. Feel free to ask questions about your patient's condition. However, I cannot provide you with any additional information beyond what is contained in the scenario below. You may have as many assistants as needed and you will have 10 minutes to complete this scenario. You are required to print a Treatment Summary Report at the end of the scenario. Do you have any questions?

**Please take a moment to check your equipment, remove, check, and reinsert the battery, perform a 30J Defib test and clear the Log.**

### **Scenario:**

You are dispatched to a community hospital for the interfacility transport of a 48-year old male with a confirmed MI. Revascularization was attempted in the Cardiac Cath Lab without success. Patient is now being transported to the Regional Cardiac Care center for CABG. Patient has a confirmed Septal / Anterior MI and has had several episodes of Ventricular Tachycardia, requiring Amiodarone administration. The patient is not complaining of pain at the time of transport. You find the patient on Heparin, Nitro and Amiodarone. The patient has a CVP line in place.

**After candidate completes steps 1 through 6, assume crew is transporting patient, the patient begins complaining of Chest Pain 7/10. Treatment should be per local protocol. Participant should acquire and interpret 12 Lead EKG. Once 12 Lead EKG interpretation is done, and treatment has been rendered to your satisfaction, the patient has a sustained episode of V-Tach with pulses. Patient becomes lethargic and hypotension. Participant should Synchronize and Cardiovert patient, after cardioversion, patient deteriorates to V-Fib. Provider should defibrillate patient – require at least two defibrillations to ensure provider comfort with energy settings. After second defibrillation, patient converts to 3<sup>rd</sup> degree AV block. Provider should initiate pacing. Ensure that provider can turn pacer on, identifies electrical capture, confirms mechanical capture, and can adjust pacer rate as appropriate. Reassess all vital signs. Print Treatment Summary Report.**



## X Series Skills Competency

Name: \_\_\_\_\_ Evaluator: \_\_\_\_\_

Date: \_\_\_\_\_ Time start: \_\_\_\_\_ Time end: \_\_\_\_\_

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### COMPLETED

- |   |                          |
|---|--------------------------|
| 1. Powers equipment on. Verifies System Self Check.                             | <input type="checkbox"/> |
| 2. Assesses all Vital Signs by placing probes, cannulas and cuffs correctly     | <input type="checkbox"/> |
| 3. Applies and attaches 4 Lead ECG Cable  | <input type="checkbox"/> |
| 4. Properly interprets initial EKG rhythm                                       | <input type="checkbox"/> |
| 5. Properly connects IBP transducer, zero's and labels IBP channel              | <input type="checkbox"/> |
| 6. Reassesses patient, EKG leads and vital signs and sets NIBP to Auto cycle Q5 | <input type="checkbox"/> |
| 7. Correctly interprets 12 Lead EKG   | <input type="checkbox"/> |
| 8. Properly treats rhythm and manages patient condition appropriately           | <input type="checkbox"/> |
| 9. Recognizes change in EKG rhythm  | <input type="checkbox"/> |
| 10. Identifies need, and Cardioverts patient at appropriate energy              | <input type="checkbox"/> |
| 11. Identifies need, and Defibrillates patient at appropriate energy            | <input type="checkbox"/> |
| 12. Properly treats rhythm and manages patient condition appropriately          | <input type="checkbox"/> |
| 13. Initiates/terminates CPR when necessary                                     | <input type="checkbox"/> |
| 14. Recognizes change in EKG rhythm   | <input type="checkbox"/> |
| 15. Initiates pacing, achieves electrical capture, confirms mechanical capture  | <input type="checkbox"/> |
| 16. Reassesses all vital signs  | <input type="checkbox"/> |
| 17. Prints a Treatment Summary Report   | <input type="checkbox"/> |

**\*Utilize local EMS protocol and/or 2005/2010 American Heart Association Guidelines**

<b>SCENARIO PATHWAY</b>
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**1. Normal Sinus Rhythm**

**MONITORING**

- a. Obtain vital signs and 4 Lead EKG
- b. Vitals variable, use volunteer or facilitator for assessment
- c. Obtain and interpret 12 Lead EKG
- d. Change rhythm to Ventricular Tachycardia

**2. Ventricular Tachycardia WITH PULSES**

**CARDIOVERSION**

- a. Identify rhythm change
- b. Administer sedative (optional)
- c. Apply Multi-function Electrode (or paddles) to patient's bare chest
- d. Synchronize and cardioversion 70 J to 100J
- e. Change EKG rhythm to Ventricular Fibrillation

**3. Ventricular Fibrillation**

**DEFIBRILLATION**

- a. Defibrillation 120 J
- b. Treat according to local protocols
- c. Defibrillation 150 J
- d. Change EKG rhythm to 3<sup>rd</sup> Degree AV Block

**4. 3<sup>rd</sup> Degree AV Block**

**PACING**

- a. Start Pacer
- b. Increase mA until electrical capture is achieved
- c. Confirm mechanical capture is achieved
- d. Assess vital signs
- e. Verbalize how to check underlying rhythm if necessary
- f. Print a Treatment Summary Report





### LEAP Program

The LEAP Program is an interactive partnership developed by ZOLL's Clinical Deployment Team to instill confidence in the X Series user interface and reestablish a high level of satisfaction with the overall ZOLL experience. The program is typically implemented at the request of a Territory Manager when a ZOLL partner experiences challenges after initial implementation. The customer dissatisfaction level may range from simple misinformation requiring additional education to full on escalation of ZOLL as an organization not meeting the expectations of the client. The CDS team member steps into a role of customer advocacy through needs assessment and realigning expectations based upon specific feedback.

**LEAP** is a simple acronym with each letter representing a specific action:

**L** - Listen to the client and **All** of their concerns. This is covered on the first day as an open forum with participants ranging from field providers to senior management.

**E** - Evaluate and educate. Determine level of user's understanding, expectation, and practices. Differentiate and separate clinical applications from technical understanding. Train or reintroduce the crews to a higher level of understanding and reset performance expectations. Share best practices that lead to quality performance. This should be rolled out in the form of a classroom setting with ample hands on time.

**A** - Apply the newly learned techniques in real world environment. This should include ride time as well as individual training to promote confident interaction with the device.

**P** - Practice the recently implemented best practices with vigilance and consistency.

The program requires one team leader from the clinical deployment team who will guide the process and serve as point person for the short term basis. That designee will be well versed in partnering with customers to develop a plan to correct any and all concerns expressed by the client. This format delivers a clean and professional approach to the customer who has already used available means with in ZOLL.

The three day approach will first begin with a provider feedback session to listen and put in writing the concerns of ALL providers. That afternoon consists of class work and ride time. The CDS leader works closely with the TM and ZOLL departments to develop a plan of action addressing the concerns of the client. That member will share the completed plan with all necessary departments that, in turn, will be given the opportunity to contribute ideas and solutions to develop a solid plan of action focused on customer satisfaction.

The second day provides opportunity for additional education or ride time depending on what the client wants or needs. The CDS member will be working in the back ground with mission essential departments at ZOLL promoting a unified, team approach laser focused on addressing the needs of the client. Once a plan is ratified the CDS member will present the plan of action to the client and implement the agreed upon remediation to the customer. This plan will include a 30 and 60 day benchmark.

On day three we will finish with the customer on site. We will address any last minute issues and implement the online survey recording any and all concerns of the crews in real time for the CDS team to address. This survey will be revealed to the crews and forward facing users of the devices. That survey will be used to identify any outliers that may come up during the next three weeks. The survey is routed directly to one of two CDS members who will follow up with the crews in a direct and immediate manner. The duration of the survey is limited to three weeks. Once the survey window is closed, the CDS team will review and calculate the findings providing all results and discoveries to all involved. At this point, the CDS team member's role diminishes to encourage and maintain direct interaction with the TM beyond the initial LEAP process.

## **8. RFP#171769**

# CITY OF TUCSON

## REQUEST FOR PROPOSAL

REQUEST FOR PROPOSAL NUMBER: 171769  
PROPOSAL DUE DATE: Wednesday, June 14, 2017, AT 4:00 P.M.,  
Local AZ Time  
PROPOSAL SUBMITTAL LOCATION: Department of Procurement  
255 W. Alameda, 6<sup>th</sup> Floor, Tucson, AZ 85701  
MATERIAL OR SERVICE: Cardiac Monitors  
PRE-PROPOSAL CONFERENCE DATE: Thursday, June 01, 2017  
TIME: 2:00 P.M., Local AZ Time  
LOCATION: City Hall, Procurement 6<sup>th</sup> Floor East Conference  
Room, 255 W. Alameda, Tucson, AZ 85701  
SENIOR CONTRACT OFFICER: Jenn Myers  
TELEPHONE NUMBER: (520) 837-4137  
Jenn.Myers@tucsonaz.gov

A copy of this solicitation and possible future amendments may be obtained from our Internet site at: <http://www.tucsonprocurement.com/> by selecting the Bid Opportunities link and the associated solicitation number. The City does not mail out Notices of available solicitations via the U.S. Postal Service. Email notifications are sent to those interested offerors who are registered with us and who have selected email as their preferred delivery method. To register, please visit [www.tucsonprocurement.com](http://www.tucsonprocurement.com/), click on Vendors, then click on Vendor Registration. To update an existing record, click on Vendors, click on What's New?, and read the section titled "Notice of Solicitations." You may also call (520) 791-4217 if you have questions.

Competitive sealed proposals for the specified material or service shall be received by the Department of Procurement, 255 W. Alameda, 6th Floor, Tucson, Arizona 85701, until the date and time cited.

Proposals must be in the actual possession of the Department of Procurement at the location indicated, on or prior to the exact date and time indicated above. Late proposals shall not be considered. The prevailing clock shall be the City Department of Procurement clock.

Proposals must be submitted in a sealed envelope. The Request for Proposal number and the offeror's name and address should be clearly indicated on the outside of the envelope. All proposals must be completed in ink or typewritten. Questions must be addressed to the Contract Officer listed above.

### \*\*\*\*ALERT\*\*\*\*

Effective July 1, 2014, the City of Tucson's Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) Program has moved to the Department of Procurement and has become the Business Enterprise and Compliance Program. To contact them, please call (520) 837-4000 or visit the website at [http://www.tucsonprocurement.com/Bidders\\_Page.aspx](http://www.tucsonprocurement.com/Bidders_Page.aspx) and click on SBE or DBE.

JM/car

PUBLISH DATE: Monday, May 22, 2017

## INTRODUCTION

The City of Tucson intends to establish an annual requirements contract for the purchase of **CARDIAC MONITORS AND AUTOMATED ELECTRONIC DEFIBRILLATORS (AED)**. This contract will include all accessories, supplies and services necessary to operate the devices.

Tucson Fire Department currently operates 55 cardiac monitors and 56 AED's. This equipment is an important part of their medical treatment services. The Tucson Fire Department intends to purchase up to 70 new cardiac monitors and up to 60 new AEDs for use in a pre-hospital work environment. These new devices will replace the existing inventory.

## SCOPE OF WORK

### TECHNICAL SPECIFICATIONS

The devices must include all necessary cables, print capabilities, defibrillation and pacing accessories, Li-ion batteries, carrying case, and other accessories needed to utilize all required features.

#### Required Features:

##### **Cardiac Monitor (fully equipped shall include all listed features)**

- 12 Lead EKG
- SpO2
- ETCO2 with Capnography waveform
- NIBP
- Pulse Rate
- CPR device (integrate with monitor) to measure CPR quality, depth, rate, interruptions, and release
- AED mode for pediatric patients
- MAP (mean arterial pressure)
- Pediatric functionality (Ability to configure monitor for both adult and pediatric patients)
- All necessary storage and carrying bags.
- All necessary battery and battery support units for each device
- Secondary battery or batteries to be used as in-field back ups
- All required cables, connectors, or other adjuncts necessary to operate and download the device
- Maintenance package and warranty of no less than three (3) years past product's availability.
- Battery maintenance, reconditioning and replacement program and equipment.
- Pacing
- Defibrillation (Biphasic)
- Serial EKG
- Temperature (optional feature)
- SpCO (optional feature)
- SpMet (optional feature)

##### **Please provide the following information:**

- Weight fully loaded with all features and supplies: \_\_\_\_\_
- Dimensions with all required case components: \_\_\_\_\_
- Battery requirement: \_\_\_\_\_

##### **AED**

- Rhythm display
- Adult and Pediatric Use
- Pads integrate with Cardiac Monitor
- All necessary storage and carrying bags.
- All necessary battery and battery support units for each device
- Secondary battery or batteries if required

##### **Please provide the following information:**

- Weight fully loaded with all adjuncts and supplies: \_\_\_\_\_
- Dimensions with all required case components: \_\_\_\_\_
- Battery requirement: \_\_\_\_\_

## SCOPE OF WORK

### **Data Collection and Management**

1. Data from the cardiac monitor and AED shall be retrievable through either a wireless or wired option from the device.
2. Data from the cardiac monitor and AED shall automatically upload to an enterprise records management system when connected to a network.
3. Cardiac Arrest and 12 lead data shall be accessible through an enterprise records management system for research and Public Records Requests.
4. Both the cardiac monitor and the AED devices shall have the ability to upload patient assessment and intervention actions through a wireless or wired option for medical records reports, quality control, and quality improvement programs.
5. Contractor shall provide any accessories, hardware and/or software systems necessary for the Fire Department to readily retrieve, transfer and/or upload the data.
6. The enterprise level records management system should be accessible via the web, be HIPAA compliant, and allow for role dependent secure access.
7. System should have an existing interface with Zoll's RescueNet Tablet ePCR system.
8. All data must reside within the United States of America at all times with providers that are certified to host medical data.
9. Records Management system must have ability to show CPR "report card" indicating quality of CPR, depth, rate, interruptions, and release.
10. Ability to transmit 12-leads from the field.
11. Provide data storage solution (either a physical server or cloud solution) for data management systems.

### **Service/Maintenance**

1. Contractor shall provide warranty and service contract for cardiac monitor, AEDs, adjuncts and batteries.
2. Contractor shall provide on-site service/maintenance on devices as recommended by the product manufacturer with a minimum of 1-per year per device.
3. Contractor shall provide manufacturer certified service technicians to perform repairs and service on the selected monitor and AED
4. Contractor shall make available loaner devices at no cost as needed for department owned devices out of service for extended repair.
5. Contractor shall include software updates for both the devices and the records management system free of charge as part of the maintenance agreement.
6. Contractor shall provide a written process to be instituted following an equipment malfunction. Process shall be inclusive of operator actions, vendor actions and notification responsibilities.

### **Training**

1. Contractor shall provide onsite training to TFD personnel by authorized vendor representatives.
2. Training shall include in-house operator level training for up to 250 paramedics. This training shall cover all operational functions of the device(s).
3. Training shall include supervisor training for up to 20 supervisors. This training shall include basic device configuration for crew identification, hospital destination, and any other field/user level adjustments necessary to update device(s) and any other more advanced administrative functions.
4. Training shall include systems administration for the records management system and device configuration and integration.
5. Training may be provided through a train-the-trainer model as agreed upon by TFD.
6. Contractor shall provide a suitable on-line class with all training material. This class could augment initial training, at TFD's discretion, as well as be used for future employees' training.
7. Training shall include the process(es) to be followed post device malfunction.

**Implementation**

1. Contractor shall work with TFD to provide an implementation plan and time line for TFD to transition into the new devices to include device delivery, configuration, training, deployment, go/no go check sheet, user confidence determination, and acceptance.
2. Contractor shall provide contingency plan for failed implementation.

**Lease to Purchase**

1. Contractor shall offer an optional lease to purchase program. This program shall include a minimum of a two (2) year lease to purchase option. All terms of the lease shall be provided with the response to the RFP. The terms shall not include a prepayment penalty.

## INSTRUCTIONS TO OFFERORS

### 1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

For purposes of this solicitation and subsequent contract, the following definitions shall apply:

**City:** The City of Tucson, Arizona

**Contract:** The legal agreement executed between the City and the Contractor/Consultant. The Contract shall include this RFP document incorporated herein by reference, all terms, conditions, specifications, scope of work, Amendments, the Contractor's offer and negotiated items as accepted by the City.

**Contractor/Consultant:** The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City.

**Contract Representative:** The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and is responsible for monitoring and overseeing the Contractor's performance under this Contract.

**Director of Procurement:** The contracting authority for the City, authorized to sign contracts and amendments thereto on behalf of the City.

**May:** Indicates something that is not mandatory but permissible.

**Offeror:** The individual, partnership, or corporation who submits a proposal in response to a solicitation.

**Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the City's sole discretion, result in the rejection of a proposal as non-responsive.

**Should:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.

2. **PRE-PROPOSAL CONFERENCE:** If scheduled, the date and time of a Pre-Proposal conference is indicated on the cover page of this document. Attendance at this conference is not mandatory. Written minutes and/or notes will not be available, therefore attendance is encouraged. If an Offeror is unable to attend the Pre-Proposal Conference questions may be submitted in writing. Offerors are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the Request for Proposal due date to the Contract Officer listed above. The purpose of this conference will be to clarify the contents of this Request for Proposal in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this Request for Proposal or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and may issue a written amendment to the Request for Proposal. Oral statements or instructions will not constitute an amendment to this Request for Proposal.
3. **INQUIRIES:** Any question related to the Request for Proposal shall be directed to the Contract Officer whose name appears above. An offeror shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, at least five days prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. An envelope containing questions should be identified as such, otherwise it may not be opened until after the official proposal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Proposal will be binding.
4. **AMENDMENT OF REQUEST FOR PROPOSAL:** The Offeror shall acknowledge receipt of a Request for Proposal Amendment by signing and returning the document by the specified due date and time.
5. **FAMILIARIZATION OF SCOPE OF WORK:** Before submitting a proposal, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a proposal will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.
6. **PREPARATION OF PROPOSAL:**
  - A. All proposals shall be on the forms provided in this Request for Proposal package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.
  - B. At a minimum, your proposal should include the signed Offer and Acceptance form, signed copies of any solicitation amendments, completed Price Page and your response to all evaluation criteria.
  - C. The Offer and Acceptance page shall be signed by a person authorized to submit an offer. An authorized signature on the Offer and Acceptance page, Proposal Amendment(s), or cover letter accompanying the proposal documents shall constitute an irrevocable offer to sell the good and/or service specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.



- D. The authorized person signing the proposal shall initial erasure, interlineations or other modifications on the proposal.
  - E. In case of error in the extension of prices in the proposal, unit price shall govern when applicable.
  - F. Periods of time, stated as a number of days, shall be in calendar days.
  - G. It is the responsibility of all offerors to examine the entire Request for Proposal package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time.
  - H. The City shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.
  - I. Offeror must list any subcontractors to be utilized in the performance of the services specified herein. For each subcontractor, details on respective qualifications must be included.
7. **PAYMENT DISCOUNTS:** Payment discount periods shall be computed from the date of receipt of the material/service or correct invoice, whichever is later, to the date City's payment warrant is mailed. Unless freight and other charges are itemized, any discount provided shall be taken on full amount of invoice. Payment discounts of twenty-one calendar days or more shall be deducted from the proposed price in determining the price points. However, the City shall be entitled to take advantage of any payment discount offered by a vendor provided payment is made within the discount period. The payment discount shall apply to all purchases and to all payment methods.
8. **TAXES:** The City of Tucson is exempt from federal excise tax, including the federal transportation tax.
9. **PROPOSAL/SUBMITTAL FORMAT:** An original and 4 copies (5 total) of each proposal should be submitted on the forms and in the format specified in the RFP. Offerors shall also submit one electronic copy of the proposal on cd, disc or zip disc in MS Office 2003 or .pdf format. Any confidential information shall be submitted on a separate cd, disc or zip disc. The original copy of the proposal should be clearly labeled "Original" and shall be single-sided, three hole punched and in a binder. The material should be in sequence and related to the RFP. **The sections of the submittal should be tabbed, clearly identifiable and should include a minimum of the following sections: the completed Offer and Acceptance Form, all signed Amendments, a copy of this RFP document and the Offeror's response to the Evaluation Criteria including the completed Price Page.** Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal.
10. **EXCEPTIONS TO CONTRACT PROVISIONS:** A response to any Request for Proposal is an offer to contract with the City based upon the contract provisions contained in the City's Request for Proposal, including but not limited to, the specifications, scope of work and any terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the Request for Proposal cannot be modified without the express written approval of the Director or his designee. If a proposal or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Director or his designee, the contract provisions contained in the City's Request for Proposal shall prevail.
11. **PUBLIC RECORD:** All proposals submitted in response to this Request for Proposal shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.
12. **CONFIDENTIAL INFORMATION:** The City of Tucson is obligated to abide by all public information laws. If an Offeror believes that any portion of a proposal, offer, specification, protest or correspondence contains information that should be withheld, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears. The City shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.
13. **CERTIFICATION:** By signature on the Offer and Acceptance page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offeror certifies:
- A. The submission of the offer did not involve collusion or other anti-competitive practices.
  - B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
  - C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
  - D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.

- 14. WHERE TO SUBMIT PROPOSALS:** In order to be considered, the Offeror must complete and submit its proposal to the City of Tucson Department of Procurement at the location indicated, prior to or at the exact date and time indicated on the Notice of Request for Proposal page. The Offeror's proposal shall be submitted in a sealed envelope. The words "SEALED PROPOSAL" with the REQUEST FOR PROPOSAL TITLE, REQUEST FOR PROPOSAL NUMBER, PROPOSAL DUE DATE AND TIME and OFFEROR'S NAME AND ADDRESS shall be written on the envelope.
- 15. LATE PROPOSALS:** Late proposals will be rejected.
- 16. OFFER AND ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the proposal due date and time.
- 17. WITHDRAWAL OF PROPOSAL:** At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the proposal by a written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.
- 18. DISCUSSIONS:** The City reserves the right to conduct discussions with offerors for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.
- 19. TAX OFFSET POLICY:** If applicable, in evaluating price proposals, the City shall include the amount of applicable business privilege tax, except that the amount of the City of Tucson business privilege tax shall not be included in the evaluation.
- 20. CONTRACT NEGOTIATIONS:** Exclusive or concurrent negotiations may be conducted with responsible offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. In the event the City deems that negotiations are not progressing, the City may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified firm(s).
- 21. VENDOR APPLICATION:** Prior to the award of a Contract, the successful offeror shall register with the City's Department of Procurement. Registration can be completed at <http://www.tucsonprocurement.com/> by clicking on Vendor Services. Please note that email notifications of newly published solicitations and amendments will be provided to those vendors that select email as their preferred delivery method in their vendor record.
- 22. CITY OF TUCSON BUSINESS LICENSE:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at <http://www.tucsonaz.gov/etax>. For questions contact the City's Business License Section at (520) 791-4566 or email at [tax-license@tucsonaz.gov](mailto:tax-license@tucsonaz.gov).
- 23. UPON NOTICE OF INTENT TO AWARD:** The apparent successful offeror shall sign and file with the City, within five (5) days after Notice of Intent to Award, all documents necessary to the successful execution of the Contract.
- 24. AWARD OF CONTRACT:** Notwithstanding any other provision of the Request for Proposal, the City reserves the right to:
- (1) waive any immaterial defect or informality; or
  - (2) reject any or all proposals, or portions thereof; or
  - (3) reissue the Request for Proposal.
- A response to this Request for Proposal is an offer to contract with the City based upon the terms, conditions and Scope of Work contained in the City's Request for Proposal. Proposals do not become contracts unless and until they are executed by the City's Director of Procurement and the City Attorney. A contract has its inception in the award, eliminating a formal signing of a separate contract. All of the terms and conditions of the contract are contained in the Request for Proposal, unless any of the terms and conditions are modified by a Request for Proposal amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.
- 25. PROPOSAL RESULTS:** The name(s) of the successful offeror(s) will be posted on the Procurement Department's Internet site at <http://www.tucsonprocurement.com/> upon issuance of a Notice of Intent to Award or upon final contract execution.

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

REQUEST FOR PROPOSAL NO. 171769  
PAGE 9 OF 24  
SENIOR CONTRACT OFFICER: JENN MYERS  
PH: (520) 837-4137 / FAX: (520) 791-4735

- 26. PROTESTS:** A protest shall be in writing and shall be filed with the Director of Procurement. A protest of a Request for Proposal shall be received at the Department of Procurement not less than five (5) working days before the Request for Proposal due date. A protest of a proposed award or of an award shall be filed within ten (10) days after issuance of notification of award or issuance of a notice of intent to award, as applicable. A protest shall include:
- A. The name, address, and telephone number of the protestant;
  - B. The signature of the protestant or its representative;
  - C. Identification of the Request for Proposal or Contract number;
  - D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and
  - E. The form of relief requested.

## LIVING WAGE REQUIREMENT

Chapter 28, Article XIV of the Tucson Procurement Code requires that a living wage be paid to certain employees of Contractors and their applicable subcontractors who are performing services for the City of Tucson. This solicitation, and the resulting Contract, is subject to the referenced Article. By signing the Offer and Acceptance page, Bidder/Offeror agrees to comply with the requirements of the Article.

In accordance with Sec. 28-155 of the Tucson Procurement Code, an eligible employee is defined as an employee of the Contractor or their subcontractor who:

- (a) is not a person who provides volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- (b) expends chargeable time providing services to the City and on City property;
- (c) Is at least sixteen (16) years of age.

Eligible employees shall be paid no less than the living wage for the time they spend providing services to the City on City property. In accordance with Sec. 28-157 of the Tucson Procurement Code, the living wage is as follows:

- If health benefits are offered, and if the Contractor pays no less than fifty (50) percent of the eligible employee's health benefits premium, a wage of no less than \$10.39 per hour; or
- If no health benefits are offered, or if the Contractor pays less than fifty (50) percent of the eligible employee's health benefits premium, a wage of no less than \$11.62 per hour.

Proof of compliance with this policy shall be provided by the successful Bidder/Offeror upon notification by the City of its intent to award a Contract.

Notwithstanding the Severability clause under the Standard Terms and Conditions section of this document, if the provisions of this clause become unenforceable for any reason, the City reserves the right to terminate this Contract without penalty or liability. In the event the City negotiates an adjustment to the terms, conditions, or price acceptable to the parties, then this Contract shall continue until expiration.

In accordance with Sec. 28-158 of the Tucson Procurement Code, the following shall apply to compliance with wage requirement:

The City's Director of Procurement shall monitor compliance, including the investigation of claimed violations, and may promulgate administrative rules and regulations to implement and enforce this Article. In the event of any violation of the provisions set forth in this Article, the responsible Contractor and any applicable subcontractors shall be liable for the unpaid wages and shall pay the eligible employee any amounts underpaid. The City's Director of Procurement is additionally authorized to take any one or more of the following remedies in the event of a written determination of noncompliance:

- (a) Liquidated damages paid to the City in the amount of \$50.00 for each incidence of non-compliance for each day of non-compliance and/or each day it continues;
- (b) Suspension of further payments under the Contract until the violation has ceased;
- (c) Suspend and/or terminate the Contract for cause; and/or
- (d) Debar or suspend the Contractor or subcontractor from future City contracts pursuant to Tucson Procurement Code, Chapter 28, Article IX.

Protests or appeals of the Director's remedies for non-compliance shall be in accordance with Article IX.

In accordance with Sec. 28-159 of the Tucson Procurement Code, the following shall apply to records:

- (a) The Contractor and any applicable subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the City's Director of

Procurement, and shall permit such representatives to interview employees during working hours on the job. If the Contractor and any applicable subcontractor fails to submit the required records or make them available, the Director may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to Article IX.

- (b) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all eligible employees. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

All inquiries regarding the Living Wage program may be directed to the Contract Officer responsible for this solicitation.

**CITY OF TUCSON  
CERTIFICATION OF LIVING WAGE PAYMENTS**

*(This form must be completed by the Contractor and each applicable subcontractor.)*

**Contract Number: 171769**

**Contractor or Sub Name:** \_\_\_\_\_

**(Please Check Only One of the Following Two Options)**

\_\_\_\_\_ I do hereby agree to pay all eligible employees working on the above-referenced contract a minimum of \$10.39 per hour and provide health benefits. I also agree to pay at least 50% of the eligible employees' health benefits premium. Our firm's health insurance provider(s) are listed below:

Name of Health Insurance Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Plan or Program Number: \_\_\_\_\_

Monthly premium paid by employer: \_\_\_\_\_ Monthly premium paid by employee \_\_\_\_\_

Name of Health Insurance Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Plan or Program Number: \_\_\_\_\_

Monthly premium paid by employer: \_\_\_\_\_ Monthly premium paid by employee \_\_\_\_\_

\_\_\_\_\_ I do hereby agree to pay all eligible employees working on the above-referenced contract a minimum of \$11.62 per hour. I **do not** offer health benefits to eligible employees working on this contract and/or I **do not** pay at least 50% of the eligible employees' health benefits premium.

\_\_\_\_\_  
(Contractor /Sub-Contractor Name)

by \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

## PROPOSAL EVALUATION REQUIREMENTS

### I. PROPOSAL EVALUATION CRITERIA – (listed in relative order of importance)

- A. Method of Approach
- B. Qualifications & Experience
- C. Price Proposal

### II. REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA: The narrative portion and the materials presented in response to this Request for Proposal should be submitted in the same order as requested and must contain, at a minimum, the following:

#### A. Method of Approach

1. Offeror shall prepare a detailed Method of Approach to the Scope of Work, which clearly identifies the services proposed to be performed by the Offeror. This section should confirm Offeror's understanding of the RFP and the needs of the Tucson Fire Department. This should address in depth how Offeror plans to meet the requirements of each of the services and activities as outlined in the Scope of Work of the RFP. The method and approach for each service should be addressed in a manner that reflects understanding and commitment to providing services as needed in a professional manner in the specified time frame.
2. Describe the products/brands that you are offering. Please provide product brochure, descriptive literature, and/or a product catalog
3. Describe the ordering process Tucson Fire employees should follow.
4. Describe any alternative methods for purchase, such as Internet ordering
5. Provide a method for delivery of products.
6. Provide a description of proposed quality control practices in addition to the requirements described in the Scope of Work.
7. Describe how you will keep the City updated on all updated technology.
8. Describe how data will be collected, stored and retrieved for use by the Tucson Fire Department.
9. Describe how CPR data is collected including devices or adjuncts required to collect CPR data, how the data is stored, transferred, and what software is required to retrieve the data for QA purposed and public record release.
10. Describe each step from turning on the device to capturing and storing a 12 lead, including application and use of the CPR adjuncts and other accessory devices. This must include entering a patient's name.
11. Describe the warranty offered on devices including any limitation to warranty repairs and or replacement.
12. Describe the maintenance on software systems. Submit any Software License Agreements, Software Maintenance Agreements, Service Level Agreements, etc. for the City's consideration. Any agreement that is not submitted prior to contract award may not be considered after contract award.
13. Describe the user management and user definition for the records management system.
14. Describe how devices get assigned to users.
15. Describe how devices get subscribed to the server/cloud level system.
16. Describe your backup and recovery approach.
17. Describe your device security approach.
18. Describe your server/cloud access management system.
19. Describe how a specific set of data (i.e., 12 Lead can be associated with a patient from the TabletPCR system.
20. Describe the training that will be provided by the Contractor to TFD personnel.
21. Describe the implementation plan and time line for TFD.

22. Describe how offeror shall repair/maintain devices on City property including the turnaround time when calls are made by TFD personnel for maintenance including processing, timelines and associated cost for repairs.
23. Describe how loaner devices will be provided.
24. Describe the weight of the devices.
25. Describe the connectivity options for the devices.
26. Describe how data will be compatible with the Zoll RescueNet TabletPCR application. Please specify how this integration would work.
27. Please describe how you would enable an interface with Zoll's RescueNet TablePCR system if it does not yet exist.
28. Contractor shall describe cloud storage options including cloud storage capability, download and access process, record retrieval, records interface with EPCR, and data retention period.
29. If a cloud based solution is offered how will you manage your backups and ensure availability? Where are your primary and secondary data centers.
30. Provide details and terms of leasing options.

**B. Qualifications & Experience**

1. Provide a general overview of your company, including number of years in business, corporate headquarters location, etc. Provide a brief history of the organization.
2. Provide resumes and/or biographies for all key personnel, including supervisors, who will be assigned to this contract.
3. Indicate the office locations of the Key Personnel to be assigned to the account and identify the lead person.
4. Provide at least three (3) references for work that is similar in scope to the Scope of Work of this contract. Preferably, the City seeks 3 references from fire agencies that are utilizing the same devices proposed herein, as well as the Zoll EPCR. For each reference, include name, telephone number, and email address of contact person.
5. If the use of subcontractors is proposed, provide the information requested in items 1 through 4 above for each subcontractor.
6. Offerors who submit a proposal as a manufacturer's representative must include a letter from each manufacturer involved. The letter shall certify that the vendor is authorized to provide the specific products presented, that the vendor is authorized to submit a proposal on such products, and guarantees that should the vendor fail to fulfill any obligations established as a result of a Contract award, the manufacturer, upon assignment by the City, will either assume such obligations or provide an alternate authorized vendor for the balance of the Contract period. In the event of such an assignment, all other terms and conditions of the Contract shall remain the same.
7. Describe any specific ongoing or open FDA inquiries into products proposed or accessories to products proposed.
8. Describe any general ongoing or open FDA inquiries that could impact your ability to service this contract.

**C. Price Proposal**

1. Provide price proposal as requested on the Price Page attached herein.
2. As stated in the Instructions to Offerors, 7. Discounts, the price(s) herein can be discounted by \_\_\_\_\_%, if payment is made within \_\_\_\_\_ days. These payment terms shall apply to all purchases and to all payment methods.
3. Cooperative Purchasing Program: Will your firm provide the City of Tucson, as the lead agency on this regional contract, a rebate in the form of a percentage of sales based upon the other agencies sales?



\_\_\_\_\_Yes \_\_\_\_\_No If yes, state proposed percentage: \_\_\_\_\_%

4. Will payment be accepted via commercial credit card? \_\_\_\_\_Yes \_\_\_\_\_No  
a. If yes, can commercial payment(s) be made online? \_\_\_\_\_Yes \_\_\_\_\_No  
b. Will a third party be processing the commercial credit card payment(s)? \_\_\_\_\_Yes \_\_\_\_\_No  
c. If yes, indicate the flat fee per transaction \$\_\_\_\_\_ (as allowable, per Section 5.2.E of Visa Operating Regulations).  
d. If "no" to above, will consideration be given to accept the card? \_\_\_\_\_Yes \_\_\_\_\_No
5. Does your firm have a City of Tucson Business License? \_\_\_\_\_Yes \_\_\_\_\_No  
If yes, please provide a copy of your City of Tucson Business license.

**III. GENERAL**

**A. Shortlist:**

The City reserves the right to shortlist the offerors on the stated criteria. However, the City may determine that shortlisting is not necessary.

**B. Interviews:**

The City reserves the right to conduct interviews with some or all of the offerors at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the offeror for the costs associated with the interview process.

**C. Additional Investigations:**

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any offeror submitting a proposal.

**D. Prior Experience:**

Experiences with the City and entities that evaluation committee members represent and that are not specifically mentioned in the solicitation response may be taken into consideration when evaluating offers.

**E. Multiple Awards:**

To provide adequate contract coverage, at the City's sole discretion, multiple awards may be made.

## SPECIAL TERMS AND CONDITIONS

1. **SAFETY STANDARDS:** The Bidder/Offeror shall certify that the equipment being bid/offered is designed and includes operating features that comply with the safety standard promulgated under the Federal Occupational Safety and Health Act (OSHA). If the equipment being bid/offered is governed by OSHA regulations the successful Bidder/Offeror is required to submit a certificate stating that such equipment complies with applicable OSHA standards.

During the term of this Contract, should there be modifications in federal and/or state laws and regulations regarding safety standards or other specifications and marketing procedures for the contracted item(s), the City of Tucson reserves the right to amend the Contract to provide for the delivery of items which conform to such changes. As a result, the City will negotiate any necessary price changes with the Contractor. Should negotiations fail the City may cancel the Contract for the affected items.

2. **DEFECTIVE PRODUCT:** All defective products shall be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. All replacement products must be received by the City within seven (7) days of initial notification.
3. **WARRANTY:** Bidder/Offeror shall warrant that all equipment and parts furnished in their bid/offer are newly manufactured and free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered or installed. Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the Contractor's liability as stated herein.
4. **EQUIPMENT/RECALL NOTICES:** In the event of any recall notice, technical service bulletin, or other important notification affecting equipment purchased from this contract, a notice shall be sent to the Contract Representative. It shall be the responsibility of the contractors to assure that all recall notices are sent directly to the agencies Contract Representative.
5. **FOB DESTINATION FREIGHT PREPAID:** Prices shall be FOB Destination Freight Prepaid to the delivery location designated. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will assist the Contractor in arranging for inspection.
6. **PRICE ADJUSTMENT:** The City will review fully documented requests for price adjustment after any Contract has been in effect for one (1) year. Any price adjustment will only be made at the time of Contract renewal and/or extension and will be a factor in the extension review process. The City will determine whether the requested price adjustment or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the effective date of the Contract extension.
7. **TERM AND RENEWAL:** The term of the Contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, at its sole option, to renew the Contract for four (4) additional one-year periods or portions thereof. In the event that the City exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.

- 8. COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See [http://www.tucsonprocurement.com/coop\\_partners.aspx](http://www.tucsonprocurement.com/coop_partners.aspx) and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

## STANDARD TERMS AND CONDITIONS

1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Director of Procurement.
2. **AFFIRMATIVE ACTION:** Contractor shall abide by the provisions of the Tucson Procurement Code Chapter 28, Article XII.
3. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.
4. **APPLICABLE LAW:** This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.
5. **ASSIGNMENT-DELEGATION:** No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.
6. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.
7. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.
8. **COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.
9. **CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
10. **CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:
  - A. Amend the contract or enter into supplemental verbal or written agreements;
  - B. Grant time extensions or contract renewals;
  - C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Procurement. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

11. **CONTRACT:** The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

- 12. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.
- 13. DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
- 14. EQUAL PAY:** The Contractor shall comply with the applicable provisions of the Equal Pay Act of 1963 (Pub.L. 88-38, 29 U.S.C. section 206(d)); Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352, 42 U.S.C. 2000e *et seq.*; and, the Lily Ledbetter Fair Pay Act of 2009 (Pub.L. 111-2).
- 15. EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
- 16. FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.
- If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.
- 17. FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.
- If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 18. GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
- 19. HUMAN RELATIONS:** Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.
- 20. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and

employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractor agrees to waive all rights of subrogation against the City of Tucson, its agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

- 21. INDEPENDENT CONTRACTOR:** It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

- 22. INSPECTION AND ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

- 23. INTERPRETATION-PAROLE EVIDENCE:** This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

- 24. ISRAEL BOYCOTT DIVESTMENTS:** Acceptance of the contract warrants that the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S. § 35-393.

- 25. LICENSES:** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

- 26. LIENS:** All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.

- 27. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.

- 28. NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.

**29. OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

**30. PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice. The invoice shall not be dated prior to the receipt of goods or completion of services.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

**31. PROTECTION OF GOVERNMENT PROPERTY:** The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

**32. PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

**33. RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.

**34. RIGHT TO ASSURANCE:** Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.

**35. RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.

**36. RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

**37. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.

**38. SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.

**39. SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. All

subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.

**40. SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.

**41. TERMINATION OF CONTRACT:** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;

In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;

The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;

The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

**42. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

**43. WARRANTIES:** Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.



## PRICE PAGE

*Fee must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, materials, printing, travel and mileage, postage, etc.*

The quantities shown are estimates only and the City reserves the right to increase or decrease amounts as circumstances may require.

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>ESTIMATED ANNUAL QUANTITY</u>	<u>UNIT PRICE</u>	<u>EXTENDED PRICE</u>
1.	Cardiac Monitor (fully equipped)	70 ea	\$ _____	\$ _____
2.	Lithium Ion Battery (additional)	140 ea	\$ _____	\$ _____
3.	AED (fully equipped)	60 ea	\$ _____	\$ _____
<b>GRAND TOTAL \$</b>				_____

Note: fully equipped means all necessary accessories such as carrying case, batteries (including secondary set) cables, finger probes, BP cuff, battery support unit and/or other adjunct required to utilize all functions of the device.

1. Additional Accessories, etc. (Information only)

• Monitor Lithium Battery	1 ea	\$ _____	\$ _____
• AED Battery Replacement	1 ea	\$ _____	\$ _____
• SpMET(with adjuncts)	70 ea	\$ _____	\$ _____
• SpCO (with adjuncts)	70 ea	\$ _____	\$ _____
• Temperature	70 ea	\$ _____	\$ _____
• BP Cuff Replacement	1 ea	\$ _____	\$ _____
• Cable Set Complete	1 ea	\$ _____	\$ _____
• Defib Pads (set)	1 ea	\$ _____	\$ _____
• Monitor Replacement case	1 ea	\$ _____	\$ _____
• AED Replacement case	1 ea	\$ _____	\$ _____

## OFFER AND ACCEPTANCE

### OFFER

#### TO THE CITY OF TUCSON:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

\_\_\_\_\_  
Company Name

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

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
City State Zip

Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorized to Sign

Fax: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

E-mail: \_\_\_\_\_

\_\_\_\_\_  
Title

### ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. 171769 -.

CITY OF TUCSON, a municipal corporation

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
As Tucson City Attorney and not personally

\_\_\_\_\_  
Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM  
As Director of Procurement and not personally

## BEST AND FINAL PRICE PAGE

*Fee must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, materials, printing, travel and mileage, postage, etc.*

The quantities shown are estimates only and the City reserves the right to increase or decrease amounts as circumstances may require.

ITEM	DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT PRICE	EXTENDED PRICE	In addition to the one year warranty that comes with the monitor, this pricing includes four years of extended warranty per monitor
1.	Cardiac Monitor (fully equipped)	75 ea	\$34,909.20	\$ 2,618,190.05	
2.	Lithium Ion Battery (additional)	150 ea	\$ 346.50	\$ 51,975.00	
3.	AED (fully equipped)	20 ea	\$ 1,533.00	\$ 30,660.00	
		<u>QUANTITY</u>			
4.	Trade-In Value MRX Monitors	55 48 ea	\$8,534.00	\$409,632.00	
	Trade-In Value MRX Monitors	7 ea	\$3,000.00	\$21,000.00	
5.	Trade-In Value Philips FR3 AEDs	56 ea	\$100.00	\$5,600.00	
<b>GRAND TOTAL</b>				<b>\$2,264,593.05</b>	

Note: fully equipped means all necessary accessories such as carrying case, batteries (including secondary set) cables, finger probes, BP cuff, battery support unit and/or other adjunct required to utilize all functions of the device.

### 1. Additional Accessories, etc. (Information only)

• Monitor Lithium Battery	1 ea	\$ 346.50	\$ 346.50
• AED Battery Replacement	1 ea	\$ 52.50	\$ 52.50
• SpMET(with adjuncts)	70 75ea	\$ 3,920.00	\$ 294,000.00
• SpCO (with adjuncts)	70 75ea	\$ 2,341.50	\$ 175,612.50
• Temperature	70 75ea	\$ 696.50	\$ 52,237.50
• BP Cuff Replacement	1 ea	\$ 36.75	\$ 36.75
• Cable Set Complete	1 ea	\$ 227.50	\$ 227.50
• Defib Pads (set) adult	1 ea	\$ 52.50	\$ 52.50
• Monitor Replacement case	1 ea	\$ 346.50	\$ 346.50
• AED Replacement case	1 ea	\$ 73.50	\$ 73.50

This pricing is for  
units shipped from  
the warehouse with  
these parameters.  
See below for  
pricing of upgrades  
after shipment.

Note: BP Cuff Replacement- include price for different sizes- small, medium, large, extra-large if different cost. ZOLL offers replacement, reusable cuffs, sizing from infant to adult. All sizes are offered at the same price listed above.

Note: Cable Set Complete, as it relates to additional accessories means cardiac 3-lead and 12-lead therapy cables. The pricing listed above is for a 12-Lead Cable set that includes both limb leads and v leads. These can also be purchased separately at the pricing listed below: Limb Leads- \$206.50 each

V Leads- \$206.50 each

3 Leads- \$87.50

\*The following pricing is for the parameter upgrades after shipment of the quoted device.

SpCO (with adjuncts) \$3,164.88 per unit

SpMet (with adjuncts) \$5,225.50 per unit

Temperature \$870.62 per unit



TO: City of Tucson Department of Procurement

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: Jenn Myers

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

## ZOLL Medical Corporation

Worldwide Headquarters

269 Mill Rd

Chelmsford, Massachusetts 01824-4105

(978) 421-9655 Main

(800) 348-9011

(978) 421-0015 Customer Support

FEDERAL ID#: 04-2711626

QUOTATION 249242 V:1

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221011-01	<b>X Series ® Manual Monitor/Defibrillator \$14,995</b> with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5"( 16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display.  <b>Accessories Included:</b> <ul style="list-style-type: none"><li>• Six (6) foot 3- Lead ECG cable</li><li>• MFC cable</li><li>• MFC CPR connector</li><li>• A/C power adapter/ battery charger</li><li>• A/C power cord</li><li>• One (1) roll printer paper</li><li>• 6.6 Ah Li-Ion battery</li><li>• Carry case</li><li>• Declaration of Conformity</li><li>• Operator's Manual</li><li>• Quick Reference Guide</li></ul> <b>• One (1)-year EMS warranty</b>  <b>Advanced Options:</b> <b>Real CPR Help Expansion Pack \$ 995</b> CPR Dashboard quantitative depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) <ul style="list-style-type: none"><li>• See - Thru CPR artifact filtering</li></ul> <b>ZOLL Noninvasive Pacing Technology: \$2,550</b>	75	\$37,275.00	\$26,092.50	\$1,956,937.50 *

This quote is made subject to ZOLL's standard commercial terms and conditions (ZOLL T's + C's) which accompany this quote. Any purchase order (P.O.) issued in response to this quotation will be deemed to incorporate ZOLL T's + C's. Any modification of the ZOLL T's + C's must be set forth or referenced in the customer's P.O. No commercial terms or conditions shall apply to the sale of goods or services governed by this quote and the customer's P.O unless set forth in or referenced by either document.

Page 1 Subtotal \$1,956,937.50

1. DELIVERY WILL BE MADE 60-90 DAYS AFTER RECEIPT OF ACCEPTED PURCHASE ORDER.
2. PRICES QUOTED ARE VALID FOR 90 DAYS.
3. APPLICABLE TAX WILL BE ADDED AT THE TIME OF INVOICING.
4. ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTABLE BY ZOLL.
5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015  
OR EMAIL TO [ESALES@ZOLL.COM](mailto:ESALES@ZOLL.COM).
6. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
7. PLACE YOUR ACCESSORY ORDERS ONLINE BY VISITING [www.zollwebstore.com](http://www.zollwebstore.com).

Barry Herbert  
Territory Manager  
480-689-9362



**TO: City of Tucson Department of Procurement**

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: **Jenn Myers**

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

**ZOLL Medical Corporation**

Worldwide Headquarters  
269 Mill Rd  
Chelmsford, Massachusetts 01824-4105  
(978) 421-9655 Main  
(800) 348-9011  
(978) 421-0015 Customer Support  
FEDERAL ID#: 04-2711626

**QUOTATION 249242 V:1**

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<b>Masimo Pulse Oximetry</b>				
		<b>SP02 \$1,795</b>				
		• Signal Extraction Technology (SET)				
		• Rainbow SET				
		<b>NIBP Welch Allyn includes: \$3,495</b>				
		• Smartcuff 10 foot Dual Lumen hose				
		• SureBP Reusable Adult Medium Cuff				
		<b>End Tidal Carbon Dioxide monitoring (ETCO2)</b>				
		<b>Oridion Microstream Technology: \$4,995</b>				
		Order required Microstream tubing sets separately				
		<b>Interpretative 12- Lead ECG: \$8,450</b>				
		• 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set				
2	8000-0330	SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors (4 ft)	150	\$295.00	\$206.50	\$30,975.00 *
3	8000-0294	SpO2 LNCS Adult Reusable Sensor (1 each)	150	\$295.00	\$206.50	\$30,975.00 *
4	8000-0580-01	Six hour rechargeable Smart battery	150	\$495.00	\$346.50	\$51,975.00 *
5	8300-0500-01	SurePower 4 Bay Charging System including 4 Battery Charging adapters	30	\$2,583.00	\$1,808.10	\$54,243.00 *

This quote is made subject to ZOLL's standard commercial terms and conditions (ZOLL T's + C's) which accompany this quote. Any purchase order (P.O.) issued in response to this quotation will be deemed to incorporate ZOLL T's + C's. Any modification of the ZOLL T's + C's must be set forth or referenced in the customer's P.O. No commercial terms or conditions shall apply to the sale of goods or services governed by this quote and the customer's P.O. unless set forth in or referenced by either document.

**Page 2 Subtotal**

**\$2,125,105.50**

1. DELIVERY WILL BE MADE 60-90 DAYS AFTER RECEIPT OF ACCEPTED PURCHASE ORDER.
2. PRICES QUOTED ARE VALID FOR 90 DAYS.
3. APPLICABLE TAX WILL BE ADDED AT THE TIME OF INVOICING.
4. ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTABLE BY ZOLL.
5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015 OR EMAIL TO [ESALES@ZOLL.COM](mailto:ESALES@ZOLL.COM).
6. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
7. PLACE YOUR ACCESSORY ORDERS ONLINE BY VISITING [www.zollwebstore.com](http://www.zollwebstore.com).

Barry Herbert  
Territory Manager  
480-689-9362



TO: City of Tucson Department of Procurement

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
6	8300-0002-02	Dual Lumen NIBP Hose, 5 Ft.- These no charge cables are to replace the 10 Ft. hoses that come standard with line 1.	75	\$125.00	No Charge	No Charge	*
7	8300-0002-02	Dual Lumen NIBP Hose, 5 Ft.	75	\$125.00	\$87.50	\$6,562.50	*
8	REUSE-11-2MQ	Adult Cuff, 2-Tube, Twist lock connector	75	\$52.50	\$36.75	\$2,756.25	*
9	8300-0802-01	12-Lead one step ECG cable - AAMI includes 4-Lead trunk cable and removable precordial 6 lead set.	75	\$325.00	\$227.50	\$17,062.50	*
10	8000-000472-01	Multi-Tech Cell Modem Kit, CDMA, Verizon, US	75	\$595.00	\$416.50	\$31,237.50	*
11	8300-0520-01	Filterline Set Adult/Pediatric, Case of 25	16	\$275.00	\$192.50	\$3,080.00	*
12	8300-0524-01	Smart CapnoLine Plus O2 Adult (O2 tubing), Case of 25	16	\$355.00	\$248.50	\$3,976.00	*
13	8000-000901-01	ECG plain white paper- 80mm (pack of 6 rolls)	70	\$24.00	\$16.80	\$1,176.00	*
14	8900-0004	4 ECG electrodes/pouch (120 pouches / 480 electrodes)	4	\$96.00	\$67.20	\$268.80	*

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Page 3 Subtotal

\$2,191,225.05

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2. PRICES QUOTED ARE VALID FOR 90 DAYS.
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4. ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTABLE BY ZOLL.
5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015 OR EMAIL TO [ESALES@ZOLL.COM](mailto:ESALES@ZOLL.COM).
6. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
7. PLACE YOUR ACCESSORY ORDERS ONLINE BY VISITING [www.zollwebstore.com](http://www.zollwebstore.com).

Barry Herbert  
Territory Manager  
480-689-9362



**TO: City of Tucson Department of Procurement**

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: **Jenn Myers**

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

**ZOLL Medical Corporation**

Worldwide Headquarters  
269 Mill Rd  
Chelmsford, Massachusetts 01824-4105  
(978) 421-9655 Main  
(800) 348-9011  
(978) 421-0015 Customer Support  
FEDERAL ID#: 04-2711626

**QUOTATION 249242 V:1**

DATE: July 14, 2017

TERMS: Net 30 Days

FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
15	8900-0400	CPR stat*padz HVP Multi-Function CPR Electrodes - 8 pair/case	20	\$560.00	\$392.00	\$7,840.00	*
16	8900-000220-01	OneStep Pediatric CPR Electrode (8 per case)	20	\$650.00	\$455.00	\$9,100.00	*
17	8300-000676	OneStep Cable, X Series	150	\$425.00	\$297.50	\$44,625.00	*
18	8009-0020	CPR-D Padz and CPR Stat Padz Connector for R Series	150	\$375.00	\$262.50	\$39,375.00	*
19	8778-200044	4 yrs Extended warranty, 1 PM per year, Battery replacement	75	\$5,570.00	\$5,040.00	\$378,000.00	*
20	20100000101011010	AED Plus with Graphical Cover. Includes: LCD screen showing voice prompt messages, device advisory messages, elapsed time, shock count and chest compression bar. Supplied with Public Safety PASS Cover, Softcase, Operator's Guide and (5) five year limited warranty.	20	\$1,995.00	\$1,197.00	\$23,940.00	*
21	8000-0807-01	Type 123 Lithium Batteries, quantity of ten (10) with storage sleeve	40	\$75.00	\$52.50	\$2,100.00	*
22	8900-0400	CPR stat*padz HVP Multi-Function CPR Electrodes - 8 pair/case	5	\$560.00	\$392.00	\$1,960.00	*

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**Page 4 Subtotal**

**\$2,698,165.05**

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Territory Manager  
480-689-9362



TO: City of Tucson Department of Procurement

255 W. Alameda, 6th Floor  
Tucson, AZ 85701

Attn: Jenn Myers

email: [jenn.myers@tucsonaz.gov](mailto:jenn.myers@tucsonaz.gov)

Tel: 520-837-4137

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
23	8900-0810-01	<b>pedi•padz® II Pediatric Multi-Function Electrodes</b> - Designed for use with the AED Plus. The AED recognizes when pedi•padz II are connected and automatically proceeds with a pediatric ECG and adjusts energy to pediatric levels. Twenty four (24) month shelf-life. One pair.	40	\$95.00	\$66.50	\$2,660.00 *
24	8008-0050-01	<b>AED Plus Trainer2 Unit.</b> The AED Plus Trainer2 can be used by trainers to train users of the AED Plus. Supplied with wireless Remote Controller, one set of <b>CPR-D</b> training electrodes, one pair of replacement gels, 4 D-Cell batteries, 2 AA batteries, Operators Guide, and a (6) six month limited warranty.	3	\$379.00	No Charge	No Charge *
25	7800-0214	<b>MRX Biphasic w/Pacing, 12 lead + 3 parameters Trade-In-</b> Trade-in value is subject to change after initial purchase.	48		(\$8,534.00)	(\$409,632.00) **
28	7800-0214	<b>MRX Biphasic w/Pacing, 12 lead + 3 parameters Trade-In</b>	7		(\$3,000.00)	(\$21,000.00) **
27	7800-0227	<b>Phillips FR3 Trade-In</b>	56		(\$100.00)	(\$5,600.00) **

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**Page 5 Subtotal**

**\$2,264,593.05**

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**QUOTATION 249242 V:1**

DATE: July 14, 2017

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FOB: Destination

\*\*

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<p>**Trade-In Value valid if all equipment purchased is in good operational and cosmetic condition, and includes all standard accessories. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.</p> <p>*Reflects Discount Pricing.</p> <p>This quotation has been quoted with payment terms of NET 30. For financing options, please refer to item 30 on the Method of Approach response document.</p> <p>No Charge Items and Trade Values are only valid for the initial purchase with the City of Tucson for all items within this quotation.</p>				

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**TOTAL \$2,264,593.05**

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Barry Herbert  
Territory Manager  
480-689-9362

## ZOLL QUOTATION GENERAL TERMS & CONDITIONS

**1. ACCEPTANCE.** This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgment by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract") the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

**2. DELIVERY AND RISK OF LOSS.** Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

**3. TERMS OF PAYMENT.** Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

**4. CREDIT APPROVAL.** All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

**5. TAXES & FEES.** The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

**6. WARRANTY.** (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect 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 Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation, or (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 Medical Corporation, or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. SOFTWARE LICENSE.** (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the product of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Medical Corporation Software.

**8. DELAYS IN DELIVERY.** ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

**9. LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATION'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

**10. PATENT INDEMNITY.** ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

**11. CLAIMS FOR SHORTAGE.** Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

**12. RETURNS AND CANCELLATION.** (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

**13. APPLICABLE LAW.** This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

**14. COMPLIANCE WITH LAWS.** (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

**16. NON-WAIVER OF DEFAULT.** In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

**16. ASSIGNMENT.** This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

**17. TITLE TO PRODUCTS.** Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

### 18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

**VETERAN'S EMPLOYMENT** - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

**EMPLOYMENT OF HANDICAPPED** - If this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

**EQUAL OPPORTUNITY EMPLOYMENT** - If this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth at 41 CFR 60-1.40.

**19. VALIDITY OF QUOTATION.** This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

**20. GENERAL.** Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.

## OFFER AND ACCEPTANCE

### OFFER

#### TO THE CITY OF TUCSON:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

ZOLL Medical Corporation

Company Name

269 Mill Road

Address

Chelmsford, MA 01824

City

State

Zip

Signature of Person Authorized to Sign

Steven K. Flora

Printed Name

Sr. V.P. of North American Sales

Title

Name: Mike Borkowski

Title: EMS Strategic Account Manager

Phone: 480-299-8900

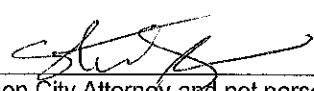
Fax: 978-421-0015

E-mail: mborkowski@zoll.com

### ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. 171769 - 01.

Approved as to form this 18<sup>th</sup> day of Sept, 2017.

  
As Tucson City Attorney and not personally

CITY OF TUCSON, a municipal corporation

Awarded this 18<sup>th</sup> day of September, 2017.

  
for Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM  
As Director of Procurement and not personally

# CONTRACT AMENDMENT

CITY OF TUCSON BUSINESS SERVICES DEPARTMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701  
P.O. BOX 27210, TUCSON, AZ 85726  
PHONE: (520) 837-4113 / FAX: (520) 791-4735  
Ladd.lyons@tucsonaz.gov  
ISSUE DATE: 05/06/2021

**CONTRACT # 171769-01**  
CONTRACT AMENDMENT NUMBER: SIX (6)  
PAGE 1 of 1  
LL  
CONTRACT OFFICER: Ladd Lyons

## CARDIAC MONITORS

THIS CONTRACT IS AMENDED AS FOLLOWS:

### ITEM ONE (1): RENEWAL

In accordance with Contract Special Terms and Conditions, paragraph 7, "Term and Renewal", the City hereby exercises its option to renew the contract for the period of **September 18, 2021 through September 17, 2022.**

**\*\*\*END OF AMENDED ITEMS\*\*\***

**ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.**

**CONTRACTOR: ZOLL Medical Corporation**

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF  
AND UNDERSTANDING OF THE ABOVE AMENDMENT

*Kurt Sandstrom*

05/06/2021 21:51 UTC

Signature of person authorized to sign Date

Kurt Sandstrom VP of EMS Sales

Name and Title (typed or printed legibly)

ZOLL Medical Corporation

Company Name

269 Mill Road, Chelmsford, MA 01824

Address

ksandstrom@zoll.com

Email Address

Chelmsford MA 01824

City State Zip

Contact information for Sales/Account  
Representative for daily business operations:

Barry Herbert EMS Senior Territory manager Arizona

Name and Title (typed or printed legibly)

480-793-1388

Phone Number

bherbert@zoll.com

Email Address

**CITY OF TUCSON:**

THE ABOVE REFERENCED CONTRACT AMENDMENT

IS HEREBY EXECUTED THIS 7th DAY

OF May, 2021, AT TUCSON, ARIZONA.

*Jennifer Myers*  
for Director of Business Services and not personally



## Envelope Data

Subject: City of Tucson Amendmet  
Documents: City of Tucson Amendment 6 171769 5-6-2021.pdf  
Document Hash: 18161268  
Envelope ID: ENV88316078-6729-AAEB-0039-BAED  
Sender: Jody Podgurski  
Sent: 05/06/2021 21:39 PM UTC  
Status: Completed  
Status Date: 05/06/2021 21:51 PM UTC

## Recipient(s) / Roles

Name / Role	Address	Type
Jody Podgurski	jpodgurski@zoll.com	Sender
Kurt Sandstrom	ksandstrom@zoll.com	Signer

## Document Events

Name / Roles	Email	IP Address	Date	Event
Jody Podgurski	jpodgurski@zoll.com	71.235.170.77	05/06/2021 21:39 PM UTC	Created
Kurt Sandstrom	ksandstrom@zoll.com	174.242.76.40	05/06/2021 21:51 PM UTC	Signed
			05/06/2021 21:51 PM UTC	Status - Completed

## Signer Signatures

Signer Name / Roles	Signature	Initials
Kurt Sandstrom		

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Shawn Johnson, Chief of Staff  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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**TITLE:**

**Consideration and Approval of Letter of Support:** MetroPlan Flagstaff Safe Streets and Roads for All (SS4A) Action Planning Grant.

**STAFF RECOMMENDED ACTION:**

Approve the letter of support.

**Executive Summary:**

This planning project will address matters for all road users and will result in both future infrastructure projects and programs that can improve safety in our region and within the City of Flagstaff.

MetroPlan and its partner agencies are in a strong position to lead in both safety and equity. The data shows that we need to do more for all road users, particularly, our pedestrians and bicyclists who generally have a significantly higher rate of exposure to safety issues on roadways. Additionally, this planning project addresses equity issues by providing a foundation for prioritizing pedestrian and bicycle safety improvements for our most vulnerable and underserved community members.

**Financial Impact:**

None

**Policy Impact:**

None

**Connection to PBB Key Community Priorities/Objectives & Regional Plan:**

**Carbon Neutrality Plan**

**Regional Plan**

**Previous Council Decision on This:**

No.

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**Attachments:** Letter of Support



# CITY OF FLAGSTAFF

## OFFICE OF THE CITY MANAGER

211 West Aspen Avenue, Flagstaff, Arizona 86001

Main Line: 928-213-2000

Website: <https://www.flagstaff.az.gov>

September 9, 2022

The Honorable Pete Buttigieg, Secretary  
US Department of Transportation  
1200 New Jersey Avenue SE  
Washington DC, 20590

RE: MetroPlan Flagstaff Safe Streets and Roads for All (SS4A) Action Planning Grant

Dear Secretary Buttigieg,

The City of Flagstaff would like to offer strong support for the Vulnerable Roadway Users Safety Action Plan. This planning project will address our most vulnerable road users and will result in both future infrastructure projects and programs that can reduce or eliminate serious injuries and fatalities in our region and within the City of Flagstaff.

This planning project will address matters for all road users and will result in both future infrastructure projects and programs that can improve safety in our region and within the City of Flagstaff.

MetroPlan and its partner agencies are in a strong position to lead in both safety and equity. The data shows that we need to do more for all road users, particularly, our pedestrians and bicyclists who generally have a significantly higher rate of exposure to safety issues on roadways. Additionally, this planning project addresses equity issues by providing a foundation for prioritizing pedestrian and bicycle safety improvements for our most vulnerable and underserved community members.

We support MetroPlan's SS4A application as it will enhance and benefit our community by enacting policies and standards that ensure safe and adequate accommodations for all road users. This plan also compliments the City of Flagstaff's Regional Strategic Transportation Safety Plan, Carbon Neutrality Plan, and our Active Transportation Plan. This is a win win situation for us all if the application was to be approved.

Please note that the MetroPlan region is a significant recreational and tourism community that sees nearly 5.5 million visitors annually. The safety and equity benefits of this planning project will be far-reaching beyond our community. The City of Flagstaff sincerely hopes you see the multiple benefits of providing federal funding for this planning project. Thank you for your time, attention, and consideration.

Sincerely,

Greg Clifton  
City Manager

## 9. A.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Bryce Doty, Real Estate Manager  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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#### TITLE:

**Consideration and Adoption of Ordinance No. 2022-21:** An ordinance of the Flagstaff City Council authorizing the acquisition of real property from the BNSF Railway Company; providing for delegation of authority, repeal of conflicting ordinances, severability, clerical corrections, and establishing an effective date; and

**Consideration and Approval of Contract:** A Real Estate Purchase and Sale Agreement with BNSF Railway Company to purchase approximately 2,614 square feet of real property, to be executed after the effective date of Ordinance No. 2022-21.

#### STAFF RECOMMENDED ACTION:

- 1) Read Ordinance No. 2022-21 by title only for the final time
- 2) City Clerk reads Ordinance No. 2022-21 by title only (if approved above)
- 3) Adopt Ordinance No. 2022-21
- 4) Approve the Real Estate Purchase and Sale Agreement, and authorize the Mayor to execute the required documents after the effective date of Ordinance No. 2022-21

#### Executive Summary:

A small parcel owned by the BNSF Railway Company is sandwiched between City property located at 116 and 216 W. Phoenix Avenue, identified by Coconino County Assessor Parcel Number 100-43-001D. Mountain Line's new Downtown Connection Center project is located on the City properties. BNSF has agreed to sell the parcel to the City through the attached purchase and sale agreement, which is its form.

This parcel, once acquired, is subject to the IGA between the City and Mountain line for the Downtown Connection Center approved on 6/21/22 and will become part of the leased City property for the facility. This ordinance authorizes the real property acquisition.

Note: The legal description and map of the property is being prepared, and will be attached prior to the Council meeting. The purchase and sale agreement will be updated with the correct closing date and attached prior to the Council meeting when the contract will be approved.

#### Financial Impact:



The City's offer to BNSF, based on an appraisal of the land was accepted in the amount of \$71,900. A processing fee of \$2,500 in addition to the purchase price brings the total acquisition to \$74,400. Account number 044-09-404-1500-1-4431 and budget appropriation is available in 044-09-404-1500-1-4273 for the acquisition.

**Policy Impact:**

N/A

**Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:**

**Carbon Neutrality Plan**

Decreased Dependence on Cars

DD-1: Encourage vibrancy, appropriate density, and attainability in existing neighborhoods, so that more residents live within walking distance of their daily needs.

DD-2: Create inclusive networks for walking and biking that are continuous, attractive, safe, comprehensive, and convenient for people of all ages.

DD-3: Encourage Flagstaff residents and visitors to walk, bike, roll and take the bus.

DD-4: Transform transportation policies and planning to incorporate greenhouse gas emissions analysis and reduce dependence on driving.

DD-5: Invest in comprehensive and equitable transit.

DD-6: Proactively invest to protect Flagstaff's clean air status.

**Regional Plan**

Goal T.7. Provide a high-quality, safe, convenient, accessible public transportation system, where feasible, to serve as an attractive alternative to single-occupant vehicle

Policy T.7.1. Cooperate with NAIPTA in developing and implementing the five-year transit master planning goals and objectives to continuously improve service, awareness, and ridership.

Policy T.7.2. Provide public transit centers and options that are effectively distributed throughout the region to increase access to public transit.

Policy T.7.3. Support a public transit system design that encourages frequent and convenient access points, for various transportation modes and providers, such as private bus and shuttle systems, park-and-ride lots for cars and bicycles, and well-placed access to bus, railroad, and airline terminal facilities.

Policy T.7.4. Support mobility services for seniors and persons with mobility needs.

Policy T.7.5. Incorporate adopted plans and policies for non-motorized and public transportation in the permitting process for all development or land use proposals, including provisions for efficient access and mobility, and convenient links between pedestrian, bicycle, and transit facilities.

Policy T.7.6. Coordinate with NAIPTA to establish rural transit service within the region that is consistent with County land use plans, based on funding availability, cost effectiveness, location of major trip generators, distance between generators, and the needs of transit-dependent individuals.

**Has There Been Previous Council Decision on This:**

On June 21, 2022, Council approved an IGA with Mountain Line to lease the adjoining city-owned parcels and this parcel once acquired for the construction and operation of the Downtown Connection Center.

**Background/History:**

A new Downtown Connection Center (DCC) is identified in Mountain Line's 2020 Strategic Plan as the highest priority capital project in order to support public transit service within the community. Since 2009, Mountain Line has operated the existing DCC under an Intergovernmental Agreement (IGA) and licensing agreement with the City of Flagstaff for use of City owned parcels on Phoenix Avenue. This transit hub serves approximately 52,000 riders monthly and has upwards of 300 buses accessing the site daily at our current level of service.

The existing DCC has capacity for nine buses at two curb islands and two on-street loading zones developed for 30' buses, that were in operation in 2009. Mountain Line currently operates 40' and 60' buses and has made minor accommodations and upgrades to fit our new fleet into the existing DCC. The existing loading zones have no additional capacity for transit service expansion and presents significant operational challenges for existing service levels. Under our current conditions, Mountain Line has to get creative about connection schedules and bus dwell locations.

The existing DCC has minimal amenities for riders and drivers. A portion of the existing City warehouse is used for a driver comfort station with restrooms and a breakroom for staff. Aside from two bus shelters, there are no customer service or amenities for patrons.

Due to these limitations, in FY2018, NAIPTA applied for and received a \$6,777,938 Federal Transit Administration (FTA) Section 5307/5339 grant (80% federal/20% local) awarded through ADOT for acquisition, design and construction of a new connection center. Then, in 2019, NAIPTA applied for and received a second FTA Section 5339 grant bringing an additional \$15,675,000 in federal funds to the project.

The City began negotiations with BNSF to acquire the parcel in between the two city parcels began in 2020 and formally applied to purchase the property on August 31, 2021.

**Key Considerations:**

Acquiring the parcel allows full site control between the both phases of the DCC development. Project Phase 1 includes the removal of the existing warehouse and construction of the new DCC building. The configuration of the bus bays and surface parking is not changed in Phase 1. Phase 2 includes the new bus bays and reoriented surface parking. Phase 2 will not begin until after completion of the Rio de Flag Flood Control project. Phase 2 includes new civic space as depicted on the approved site plan. Failure to acquire the BNSF parcel could lead to accessibility and access issues between the bus bays and the new DCC building. This could lead to re-design requirements and delays.

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**Attachments:**    [Presentation](#)  
                          [Ord. 2022-21](#)  
                          [Exhibit A - Legal Description](#)  
                          [Draft Purchase Contract](#)



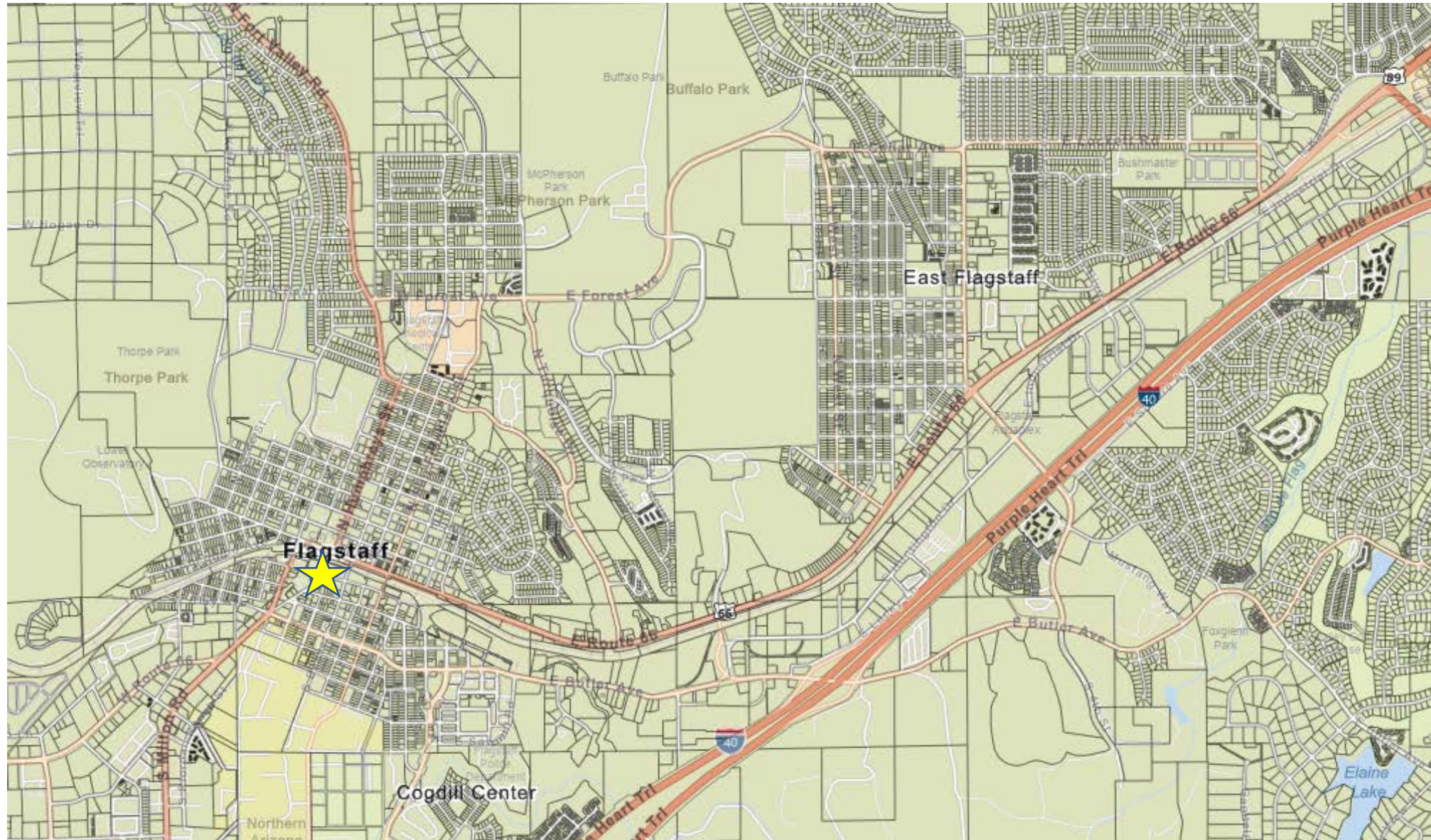
# Acquisition of BNSF Property







# Vicinity Map









1



View north across the subject property from Phoenix Avenue

2



View north across the subject property

## **ORDINANCE NO. 2022-21**

### **AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AUTHORIZING THE ACQUISITION OF REAL PROPERTY FROM THE BNSF RAILWAY COMPANY; PROVIDING FOR DELEGATION OF AUTHORITY, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

#### **RECITALS:**

WHEREAS, pursuant to Article I, Section 3 of the Flagstaff City Charter, the City has the power and authority to acquire real property; and

WHEREAS, pursuant to Article VII, Section 5 of the Flagstaff City Charter, acquisition of real property is to be approved by ordinance; and

WHEREAS, the City desires to acquire from BNSF Railway Company a parcel of land located north of Phoenix Avenue, between Milton Road and S. Beaver Street in Flagstaff, Arizona for purposes of property assembly with adjacent real property owned by the City.

#### **ENACTMENTS:**

#### **NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

##### **SECTION 1. In General.**

The Flagstaff City Council hereby authorizes the acquisition of an approximately 2,614 square foot parcel of land located in the City of Flagstaff, Coconino County and legally described and depicted in Exhibit 1 attached hereto and incorporated by reference ("the Property"). The Property may be acquired through purchase, exchange, gift, donation, or dedication.

If the Property has been acquired by the City prior to the effective date of this ordinance, then the acquisition is hereby ratified.

##### **SECTION 2. Delegation of Authority.**

The Mayor, City Manager, City Attorney, City Clerk, City Engineer, Finance Director, Community Development Director, Real Estate Manager, or their delegates or agents, are hereby authorized and directed to take all steps and execute all documents necessary to acquire the Property and to carry out the purpose and intent of this ordinance.

##### **SECTION 3. Repeal of Conflicting Ordinances.**

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.



**SECTION 4. Severability.**

That if any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the City Code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 5. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

**SECTION 6. Effective Date.**

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 20th day of September, 2022.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY

Attachments:

Exhibit 1 Legal description and map

**EXHIBIT 'A'**  
**LEGAL DESCRIPTION**  
**APN: 100-43-001D**

A parcel of land lying within the southeast quarter of Section 16, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

Commencing at a found 2" aluminum cap at the centerline intersection of West Phoenix Avenue and South Beaver Street, from which a found rebar in a hand hole at the centerline intersection of West Phoenix Avenue and South Milton Road bears North 75°40'32" West, a distance of 1042.04 feet (Basis of Bearing, North 75°38'30" West, 1041.90 feet per Book 17 of Surveys, Page 42, Official Records of Coconino County);

Thence along the centerline of West Phoenix Avenue, North 75°40'32" West, a distance of 726.85 feet;

Thence leaving said centerline, North 14°19'28" East, a distance of 25.00 feet to a found 1/2-inch rebar on the northerly Right-of-Way line of West Phoenix Avenue, said point being in common with the southeast corner of that parcel of land as described in Instrument Number 3455408, Official Records of Coconino County, and the **TRUE POINT OF BEGINING**;

Thence along the easterly line of said parcel, North 13°07'59" East, a distance of 160.40 feet to a found 1/2-inch rebar at the northeast corner of said parcel;

Thence South 75°42'54" East, a distance of 21.42 feet to a point on the westerly line of that parcel of land as described in Docket 1533, Page 56, Official Records of Coconino County;

Thence along said easterly line, South 20°45'30" West, a distance of 161.40 feet to the **TRUE POINT OF BEGINING**;

Containing 1,718 square feet, or 0.04 acres, more or less.

## **BNSF RAILWAY COMPANY**

### **REAL ESTATE PURCHASE AND SALE AGREEMENT**

This Real Estate Purchase and Sale Agreement (“**Agreement**”) is entered into as of the Effective Date (defined below) between **CITY OF FLAGSTAFF**, an Arizona Municipal Corporation (“**Buyer**”) and **BNSF RAILWAY COMPANY** (“**Seller**”). This Agreement shall not be binding upon either party unless and until both parties have executed and delivered this Agreement. The submission of this document by Seller to Buyer shall not constitute an offer to sell by Seller.

In consideration of the mutual covenants set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

#### **GENERAL TERMS AND DEFINITIONS**

1. The following terms shall have the meanings set forth below:

Closing. The consummation of the transaction contemplated by this Agreement, which shall be deemed to have occurred when both parties have delivered the items contemplated in Section 4 of this Agreement.

Closing Date Notwithstanding, anything herein, this sale shall close on or before August 15, 2022. Seller shall have the right to extend the closing up to ninety (90) days, at Seller’s sole judgment.

Earnest Money The cash sum of Seventy-One Thousand Nine-Hundred Dollars and zero/100’s (\$71,900.00) made payable to The Bank of New York Mellon Trust Company, NA.

Effective Date The date of Seller’s execution of this Agreement as indicated below Seller’s signature hereto.

Property That parcel of land situated in or near the City of Flagstaff, County of Coconino and State of Arizona, shown hatched black on map marked Exhibit A dated May 21, 2019 attached hereto and made a part hereof, subject to revision as set forth below in Section 3.

Purchase Price The sum of Seventy-One Thousand Nine-Hundred Dollars and zero/100’s (\$71,900.00).

Review Period The period commencing on the Effective Date and expiring at 5:00 p.m. central time on the date that is 7 days after the Effective Date.

#### **PURCHASE AND SALE**

2. (a) Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price, all of Seller’s right, title and interest (if any), in and to the Property.

(b) Seller may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, (Goldfinch) an exchange intermediary, in order for Seller to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Seller shall provide Buyer with a Notice of Assignment, attached as Exhibit B, and Buyer shall execute an acknowledgement of receipt of such notice. Buyer may also assign its rights (but not its obligations) under this Agreement to an exchange intermediary in order for Buyer to effect an exchange under Section 1031 of the Internal of Revenue Code.

(c) Upon submission by Buyer to Seller of this Agreement signed by Buyer, Buyer shall deposit the Earnest Money with Goldfinch as escrow agent. Goldfinch shall hold the Earnest Money in escrow pursuant to the terms and conditions of this Agreement. The Earnest Money shall be refunded to Buyer if this Agreement is not executed and delivered by Seller within forty five (45) days after the date Buyer delivers this agreement fully executed by Buyer and deposits the Earnest Money. Buyer shall not be entitled to any interest on the Earnest Money held by Goldfinch pursuant to this Agreement. Buyer acknowledges that receipt by Goldfinch of the Earnest Money shall not constitute acceptance of this Agreement or Buyer's offer provided, however, that Goldfinch shall return the Earnest Money to Buyer if Seller does not execute and deliver this Agreement within forty-five (45) days after Buyer deposits the Earnest Money. Goldfinch shall deliver the Earnest Money to the party entitled thereto pursuant to this Agreement, provided, however if there is a dispute between Buyer and Seller as to who is so entitled, Goldfinch may deposit the Earnest Money with a court of competent jurisdiction pending resolution of such dispute.

(d) The balance of the Purchase Price shall be paid at Closing as provided below.

## INSPECTION

3. (a) After the Effective Date, Buyer shall, at Buyer's sole cost and expense, cause to be prepared a survey of the Property certified to Seller, Buyer and such other parties as Buyer may choose showing the boundaries of the Property and any improvements located thereon (the "**Survey**"). Said Survey shall be delivered to Seller no later than twenty (20) days prior to the Closing Date. Seller shall have the right to review and require necessary changes to the Survey to more accurately describe the Property and any Easements located thereon. If Seller does not agree that the description of the Property contained on the Survey is the Property Seller wishes to sell or otherwise objects to the Survey then Seller may terminate this Agreement by written notice to Buyer in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If Seller agrees in writing that the Survey description is accurate then the description thereon shall be the definition of the Property for all purposes under this Agreement. In the event a city, county, or other governing authority where the Property is located (a "**Municipality**") requires a survey or plat to convey the Property (a "**Plat**"), the Buyer shall obtain, at Buyer's sole cost and expense, such Plat and the approval of such Municipality. Seller's obligations hereunder are conditioned upon Seller's approval of the Plat approved by the Municipality. Buyer shall provide the proposed Plat to Seller prior to submission to the Municipality and prior to the expiration of the Review Period.

(b) Buyer shall have until the end of the Review Period to examine title to the Property. If Buyer elects to obtain a title commitment for the Property Buyer may deliver to Seller no later than the expiration of the Review Period written notice of any objections to the status of title or matters reflected on the Survey that Buyer may have together with a copy of such title commitment, Survey and all matters referenced therein. Seller shall have no obligation to cure any such objection. If Seller notifies Buyer in writing that Seller will cure any such objection Seller (a) shall make good faith efforts to cure such matter by the Closing Date and if not cured by such date Buyer may terminate this Agreement in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination, and (b) may effect such cure by causing the title company issuing the title commitment to remove such matter as an exception from coverage by paying additional premium therefor or otherwise.

If Seller at any time notifies Buyer in writing that Seller is not willing or able to cure any of the such objections (including those which Seller has previously endeavored to cure) then Buyer or Seller may terminate this Agreement by written notice to the other delivered within five (5) days after Seller so notifies Buyer that Seller is unwilling or unable to cure such objection. In the event of such termination, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not so terminated, the parties shall proceed to Closing according to the remaining provisions of this Agreement.

(c) Prior to any entry upon the Property by Buyer, the surveyor preparing the Survey or other individuals on behalf of Buyer, Buyer shall execute and deliver to Seller an Entry and Confidentiality Agreement in the form attached hereto as Exhibit C and incorporated herein (the “**Entry Agreement**”). The terms and provisions of the Entry Agreement are incorporated herein, shall survive the Closing, shall not be merged into the Deed or any document delivered at Closing and shall survive any termination of this Agreement. Any breach by Buyer of its obligations under the Entry Agreement shall be deemed a breach by Buyer under this Agreement. Notwithstanding anything in this Agreement to the contrary, including the provisions of Section 6(a), nothing in this Agreement or the exercise of any remedy by Seller under this Agreement shall limit or affect in any manner any remedy available to Seller under the Entry Agreement in the event of a breach of Buyer’s obligations under the Entry Agreement.

(d) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to any judgment against Seller which may appear of record as a lien against the Property. Seller shall pay such lien if and when it is judicially determined to be valid, and Seller hereby indemnifies the Buyer for all loss arising out of Seller's failure to have a judgment lien so settled and satisfied.

## **CLOSING**

4. (a) Subject to the terms of this Agreement, the Closing shall occur on the Closing Date. On or before the Closing Date Buyer shall (1) pay the Purchase Price, less the Earnest Money to Seller in cash, by certified check made payable to The Bank of New York Mellon Trust Company, NA or by wire transfer to Seller's account as designated by Seller and the Earnest Money shall become the property of Seller and no longer subject to the terms of this Agreement and (2) such other affidavits or certificates as is reasonably necessary or customary to consummate the transaction. After Buyer has delivered the foregoing items, Seller shall deliver to Buyer (1) a Quitclaim Deed in recordable form, subject to all matters of record and restating the exceptions and reservations set forth in Section 8 (the “**Deed**”) conveying to Buyer Seller’s interest, if any, in and to the Property, (2) counterparts of the Exchange Assignment, and (3) such other affidavits and certificates as is reasonably necessary or customary to consummate the transaction in form and substance acceptable to Seller.

## **PRORATIONS AND CLOSING COSTS**

5. (a) Real estate taxes and assessments payable or paid in the year of Closing shall be prorated by Seller and Buyer as of the Closing Date on the basis of the most recent ascertainable taxes assessed against the Property. If the Property is not separately assessed for tax purposes then there shall be no proration of taxes between Buyer and Seller, the parties shall cooperate post-Closing to cause the Property to be separately assessed and each party shall indemnify the other for any failure to pay real estate taxes and assessments due with respect to the properties constituting the tax parcel to which the Property is a part. Notwithstanding the foregoing, there shall be no proration for taxes to the extent the payment of same has been assumed by a tenant under an existing lease to be assigned to Buyer. All outstanding assessments on the Property levied or due in the year of Closing and afterward shall be paid by Buyer.

(b) The parties shall cooperate so that utilities serving the Property that are not the responsibility of a tenant under a lease to be assigned to Buyer at Closing, to the extent feasible, shall be switched into the name of Buyer as of the Closing Date, so that a final statement can be issued to Seller for the billing period ending on the Closing Date, and so that the first day of the first billing cycle in Buyer's name can begin on the Closing Date. If, however, the final statement covering the final period of ownership by Seller also includes periods of ownership by Buyer, Buyer shall pay Seller at Closing the amount attributable to Buyer's period of ownership. Buyer shall be responsible to pay all utilities serving the Property due after Closing.

(c) Buyer shall pay all closing costs associated with Closing including, but not limited to, any escrow fees, documentary stamps and other recording costs associated with this transaction, excise taxes, the cost of any state, county or local transfer taxes, the cost of the Survey, and the costs associated with any title insurance obtained by Buyer.

(d) If any real estate broker or agent can establish a valid claim for commission or other compensation as a result of Buyer having used their services in connection with the purchase of the Property, all such commission or other compensation shall be paid by Buyer. Seller shall not be liable for any real estate commissions or finders fees to any party with respect to the sale of the Property, except amounts due to Jones Lang LaSalle Brokerage Inc. ("**Broker**") pursuant to a separate agreement. Buyer acknowledges that Broker has advised, and hereby advises, Buyer that the Broker is acting as on behalf of the Seller, with the duty to represent Seller's interest, and Broker is not the agent of the Buyer. If a policy of title insurance is to be obtained, Buyer should obtain a commitment for title insurance which should be examined prior to closing by an attorney of Buyer's choice. Prior to the execution of this Agreement, Broker has advised and hereby advises the principals of this transaction, that this Agreement is binding on them, and the principals hereby acknowledge that they have been so advised. Broker has no authority to execute any document on behalf of Seller, make representations on behalf of Seller or bind Seller in any manner.

(e) The obligations of the parties in this Section 5, to the extent incurred, shall survive any termination of this Agreement.

## **DEFAULT AND REMEDIES**

6. (a) In the event of a default by Buyer under the terms of this Agreement, Seller's sole and exclusive remedies shall be: (a) terminate this Agreement whereupon the parties shall have no further obligations hereunder except those that expressly survive termination, or (b) waive such default and proceed Closing, or (c) obtain specific performance of this Agreement. If Seller terminates this Agreement as provided in the previous sentence Seller shall be entitled to retain the Earnest Money. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Seller may have at law or in equity for Buyer's default or breach of any obligation hereunder to be performed by Buyer after Closing. It is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Earnest Money constitutes a reasonable liquidation of such damages and is intended not as a penalty, but as liquidated damages.

(b) In the event of a default by Seller under the terms of this Agreement, Buyer's sole and exclusive remedies hereunder shall be to terminate this Agreement and receive a refund of the Earnest Money. Upon such termination and the payment of such sums by Seller the parties shall have no further obligations hereunder except those that expressly survive termination. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Buyer may have at law or in equity for Seller's default or breach of any obligation hereunder to be performed by Seller after Closing.

## NATURE OF SALE

7. Buyer has been allowed to make an inspection of the Property. **BUYER IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY**, including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the **"Condition of the Property"**). Buyer represents and warrants to Seller that Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, the manager of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Buyer's inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever Seller and Seller's officers, directors, shareholders, employees and agents (collectively, **"Indemnitees"**) from any and all present or future claims or demands, and any and all damages, Losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause the Seller remaining property or the operations or business of the Seller on its remaining property to be in compliance with the requirements of any Environmental Law, (c) Losses for or related to injury or death of any person, (d) Losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (e) Losses arising under any Environmental Law enacted after transfer. The rights of Seller under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of Buyer to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. The term **"Environmental Law"** means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term **"Hazardous Substance"** means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of

its fractions. The provisions of this Section 7 shall be binding on Buyer, and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land.

## RESERVATIONS

8. The obligations in this Section 8 shall be binding upon Buyer and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land benefiting Seller and Seller's successors and assigns. For purposes of this Section 8, Grantor shall mean Seller and Grantee shall mean Buyer. Buyer may object to the reservations set forth in Section 8(a) below in accordance with the provision of Section 3 and if Seller is unwilling or unable to cure such objection either party may terminate this Agreement as set forth in Section 3.

(a) Grantee's interest shall be subject to the rights and interests of Grantor, Grantor's licensees, permittees and other third parties in and to all existing driveways, roads, utilities, fiber optic lines, tracks, wires and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by the Grantor, Grantor's licensees, permittees or other third parties and whether or not of public record. Grantor shall have a perpetual easement on the Property for the use of such existing driveways, roads, utilities, fiber optic lines, tracks, wires and easements by Grantor and Grantor's licensees, permittees and customers. Grantor shall have a non-exclusive easement for the construction, maintenance and operation of one or more pipelines or fiber optic lines and any and all communications facilities as may be located in the future on the Property within 60 feet of the center line of any Main Track on or adjacent to the Property and as may be presently located on the Property.

(b) Grantee's interest shall be subject to a reservation to Grantor of all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature including sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property, together with the right of access at all times to exercise said rights.

(c) Any improvements constructed or altered on the Property after the date Grantor quitclaims its interest to Grantee shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property.

**(d) Grantor reserves unto itself, its successors and assigns, in perpetuity, any and all non-riparian water and water rights associated with the Property, including but not limited to, any and all ditches and ditch rights, water wells, springs, diversion works, water lines, pipes, pumps, motors, generators, electrical gear and wires, and any related equipment and improvements whatsoever, historically used upon or associated with the Property, including all mutual water company shares, ditch shares, water service agreements and contracts, and water claims, and including but not limited to, all unappropriated, undeveloped or unused water and water rights associated with or underlying the Property, and the exclusive right to develop and take water from the Property by any means, and including all appropriations, priorities, permits and certificates which are appurtenant to, associated with, used upon, flowing over, under, or lying on, in, or under the Property, together with the perpetual right to construct, install, operate, replace, rework, reconstruct, rehabilitate and maintain any and all water diversion, production, and transportation structures, equipment, improvements and piping, including but not limited to, headgates, diversion structures, water wells, water well houses, water well casing, water well screens, spring collection galleries, sumps, water pipes, and related electrical gear and wires, and to construct, install, operate and maintain water pumps and hydroelectric generation equipment and all equipment necessary, convenient or related to the**



**production, transportation or delivery of water from, on, under or across the Property, or any portion thereof.**

(e) For 99 years after the Closing Date, Grantee covenants and agrees that the Property shall be used solely for non-residential purposes and that the groundwater will not be used for drinking water or irrigation purposes.

## **REPRESENTATIONS**

9. Buyer represents and warrants to Seller that if Buyer is other than a natural person or persons that it is a validly formed municipality under the laws of the State of Arizona; that it is in good standing in the state of its organization and in the state in which the Property is located; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do. Buyer represents and warrants to Seller that it is not subject to any bankruptcy proceeding. Seller represents and warrants to Buyer that it is a validly formed corporation under the laws of the State of Delaware; that it is in good standing in the state of its organization and in the state in which the Property is located; that it is not subject to any bankruptcy proceeding; that it has all requisite corporate authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Seller are duly authorized to so do. It shall be a condition of each party's obligations to Close this transaction that the representations and warranties of the other party contained herein are true and accurate as of Closing, provided, however that if one party waives such condition by proceeding to Close with knowledge that any of the second party's representations or warranties are inaccurate, the second party shall have no liability with respect to such inaccuracy known by the first party.

## **MISCELLANEOUS**

10. (a) Any notice under this Agreement must be written. Notices must be either (i) hand-delivered; (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient; (iii) deposited with a nationally recognized overnight delivery service, addressed to the recipient as specified below; or (iv) telecopied by facsimile transmission to the party at the telecopy number listed below, provided that such transmission is followed with a copy sent by overnight delivery or regular mail to the address specified below. Any notice is effective upon deposit with the U.S. Postal Service or with the overnight delivery service, as applicable; all other notices are effective when received. All notices shall be addressed to the address of the recipient indicated below the signature of such party below. Either party may change its address for notice by proper notice to the other party.

(b) If the approval of any governmental agency is required for the sale of Seller's interest (if any) in the Property, it is understood and agreed that Seller's obligations under this Agreement are conditioned upon obtaining such approval and that both parties shall use good faith efforts to obtain such approval. If such approval cannot be obtained by the Closing Date, Seller may elect to extend the Closing Date to a date no later than ninety (90) days after the original Closing Date. In the event said approval cannot be obtained by such extended date, either party may terminate this Agreement without liability to the other, except that the Earnest Money shall be refunded to Buyer and thereafter neither party shall have any obligation hereunder except those that expressly survive termination.

(c) Nothing in this Agreement shall prevent Seller from discontinuing service over any railroad line or lines by which rail service may be provided to the Property.

(d) If, prior to Closing, the Property or any portion thereof is destroyed or damaged, or becomes subject to a taking by virtue of eminent domain to any extent whatsoever then either party may terminate this Agreement by written notice to the other within thirty (30) days after notice of such fact (but in any

event prior to Closing). If so terminated, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligations hereunder except those that expressly survive termination. If not so terminated the parties shall proceed with the Closing.

(e) Time is of the essence of each of the party's respective obligations under this Agreement. Whenever a date specified in this Agreement falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.

(f) This Agreement and, to the extent executed, the Entry Agreement, contains the entire Agreement between Seller and Buyer with respect to the Property. Oral statements or prior written matters not specifically incorporated into this Agreement are superceded hereby. No variation, modification, or change to this Agreement or the Entry Agreement shall bind either party unless set forth in a document signed by both parties. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement. The captions above the section numbers of this Agreement are for reference only and do not modify or affect this Agreement. Each party has had the opportunity to have counsel review this Agreement and the Entry Agreement and, therefore, no rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Agreement, the Entry Agreement or any closing document. This Agreement and the Entry Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute the same Agreement. This Agreement and the Entry Agreement are intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the Entry Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement and the Entry Agreement (to the extent executed) shall continue in full force and effect, but without giving effect to such term or provision.

(g) Buyer may not assign its interest in this Agreement or the Entry Agreement without Seller's prior written consent. The provisions of this Agreement and, to the extent executed, the Entry Agreement, shall bind Seller, the Buyer, and their heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Seller, the Buyer and their heirs, executors, administrators, permitted successors and assigns. If Buyer is more than one person or entity, Buyer's obligations under this Agreement and, to the extent executed, the Entry Agreement, shall be joint and several.

(h) This Agreement relates only to land. Unless otherwise herein provided, any conveyance shall exclude Seller's railroad tracks and appurtenances thereto, Seller's buildings and any other improvements on the Property, all of which may be removed by Seller within 90 days following conveyance of the Property, and if not removed, shall be deemed abandoned by the Seller without obligation on the Seller's part and shall thereafter be and become the Property of the Buyer in place. Notwithstanding the foregoing, Seller shall not have to remove any improvements or fixtures for which an easement has been reserved hereunder or in the deed.

(i) Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder. Seller shall, upon request of Buyer, complete an affidavit to this effect and deliver it to Buyer on or before closing of said sale.

(j) The provisions of Sections 5-8 and Section 10 of this Agreement shall survive Closing and shall not be merged into the Deed or any other document delivered at Closing. The provisions of Section 9 of this Agreement shall survive Closing for a period of one year and shall not be merged into the Deed or any other document delivered at Closing. Nothing in this section shall alter any requirement in any other

Section of this Agreement for the provisions of such section to be incorporated into the Deed, such as Sections 7 and 8.

(k) If any action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and discovery or investigation expenses in addition to any other relief to which that party may be entitled.

(l) SELLER AND BUYER IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUITE OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

#### **ADMINISTRATIVE FEE**

12. Buyer acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Buyer and Seller, that the Buyer shall pay upon return of this Agreement signed by Buyer to Seller's Broker a processing fee in the amount of \$2,500.00 over and above the agreed upon Purchase Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, Buyer and Seller have executed this Agreement to be effective as of the Effective Date.

**BUYER:**

**CITY OF FLAGSTAFF**, an Arizona Municipal  
Corporation  
Buyer's name as it is to appear on deed  
(PRINTED/TYPED)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Buyer's Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

Buyer's SSN or EIN: \_\_\_\_\_

**SELLER:**

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Seller's Address:

c/o Jones Lang LaSalle Global Services, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

\_\_\_\_\_  
Date of Seller's Execution (Effective Date)

**EXHIBIT A**

[Attach Map showing Property cross-hatched in black]

**EXHIBIT “B”**

**NOTICE OF ASSIGNMENT**

***Goldfinch Exchange Company LLC***

*A Delaware limited liability company*

*2001 Western Avenue, Suite 330*

*Seattle, WA 98121*

*425-646-4020*

*206-728-0935 fax*

**NOTICE OF ASSIGNMENT**

**TO:** **CITY OF FLAGSTAFF**, an Arizona Municipal Corporation  
and any assignees or exchange intermediaries of Buyer

You and BNSF Railway Company ("BNSF") have entered into the Real Estate Purchase and Sale Agreement, dated \_\_\_\_\_, 20\_\_ for the sale of the real property described therein. You are hereby notified that BNSF has assigned its rights as Seller, but not its obligations, to Goldfinch Exchange Company LLC for the purpose of effecting a tax deferred exchange under Internal Revenue Code Section 1031. This is an assignment of rights only and BNSF will deed the property directly to you.

**ACKNOWLEDGED:**

**CITY OF FLAGSTAFF**, an Arizona Municipal Corporation

By: \_\_\_\_\_

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

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

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Jeanie Gallagher, Human Resources Director  
**Co-Submitter:** Jessica Vigorito  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



---

**TITLE:**

**Consideration and Adoption of Resolution No. 2022-43 and Ordinance No. 2022-23:** A resolution declaring as a public record that a certain document to be filed with the City Clerk and entitled “*Addendum 31 to the Employee Handbook of Regulations*” and an ordinance amending the Flagstaff City Code Chapter 1-14, Personnel System, and the Employee Handbook of Regulations by adopting by reference that certain document entitled “*Addendum 31 to the Employee Handbook of Regulations*” to align with classification, compensation and performance management changes.

**STAFF RECOMMENDED ACTION:**

- 1) Adopt Resolution No. 2022-43
- 2) Read Ordinance No. 2022-23 by title only for the final time
- 3) City Clerk reads Ordinance No. 2022-23 by title only (if approved above)
- 4) Adopt Ordinance No. 2022-23

**Executive Summary:**

This ordinance provides a comprehensive update to the identified sections of the Employee Handbook of Regulations with respect to Classification, Compensation and Performance Management.

In FY 2020 the City of Flagstaff contracted with Evergreen Solutions, LLC to conduct a comprehensive analysis of the City’s compensation program. This analysis was completed in the spring of 2021 and changes to the City’s compensation structures were included in the budget process and implemented in FY 2022. These included replacing the pay plan structure, adjusting the pay ranges to market-based ranges, establishing a budgeted merit fund, and implementing compression adjustments. During this same time period the City transitioned to the Neo Gov PERFORM platform for performance management and modified the performance evaluation criteria.

With the compensation program foundation in place, the approved budget for FY 2023 includes budgeted merit, additional compression adjustments, and a market-adjustment budget to ensure the City regularly assess the market and adjust positions within the pay structure as identified.

Significant collaboration has ensued since the July 2021 implementation of the new compensation structure including human resources, city managers, leadership, extended leadership, as well as the employee advisory committee to update these policies to align with the adopted compensation structure as well as ensure the City is positioned long-term for recruitment and retention of outstanding staff.



Funding for these policy changes is included in the FY 2023 budget.

The revised policies align with the City of Flagstaff redesigned Classification, Compensation and Performance Management programs.

High Performing Governance: Implement innovative local government programs, new ideas & best practices; be recognized as a model for others to follow. Be an employer of choice through inclusive recruitment & by providing employees with the necessary tools, training, support & compensation.

Yes. Various modifications to many of these policies have occurred over the years.

**Attachments:**      Presentation  
                              Res. 2022-43  
                              Addendum 31  
                              Ord. 2022-23



# COMPENSATION ORDINANCES

Flagstaff City Council  
September 6, 2022

Jeanie Gallagher, Contract Human Resource Executive  
Jessica Vigorito, Human Resources Analyst



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# HISTORY

- FY 2021 – Evergreen Compensation Study and implement Neo Gov PERFORM Feb 2021
- FY 2022 – Implement Pay Structure, Market-based Pay Ranges, Compression Adjustments, Budgeted Merit Pool
- FY 2023 – Additional Compression Adjustments, Market Adjustment Program, Continue Merit Pool
- FY 2023 – Adopt the updated policies
- FY 2024 – Pay for Performance



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# UPDATES IN GENERAL

- Gender-neutral pronouns
- Reduce duplication of information
- Grammar
- Eliminate unnecessary procedure language and reference to forms that quickly becomes dated
- Consistent and current terminology
- Align with adopted compensation and performance management programs
- Regulatory updates



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# REGULATORY EXAMPLES

- ACA/ASRS Benefit eligibility for part time
- ACA/ASRS and Temporary Employees
- Fire to 106-hour/14-day work period
- Fair Labor Standards Regular Hourly Rate
- Overtime pay



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# COMPENSATION PROGRAM ALIGNMENT

- Reference to consistent Salary Calculation Method
- Market Analysis/Benchmarks
- Internal Hierarchy
- Eliminate Rezone language (Broadband)
- Add Step Plan language



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# CONSISTENCY

- Pay changes effective 1<sup>st</sup> day of a pay period.
- New Classification Date
  - Promotion
  - Voluntary Reassignment
  - Reclassification
  - Transfer
- Market Adjustment vs. Reclassification
- Acting Pay vs. Temporary Promotion
- Voluntary Reassignment vs. Demotion
- Compensatory time maximums and payouts



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# SALARY CALCULATION METHOD – REGULAR PAY PLAN

- Same for new hires, promotions, rehires, reclassified employees.
- Credit prior relatable work experience, education, certifications and credentials above the minimum requirements.
- Collaborative process between HR and hiring Division.
- Offers above range midpoint require Finance approval.
- Offers above salary calculation require internal impact analysis and City Manager approval.
- Pro-rated merits (budgeted merit) included where the classification date is reset.



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# PERFORMANCE EVALUATION

- Aligned with Neo Gov PERFORM.
- Probation for most classified employees is 6 months.
- Probation for Courts, Fire and Police is 1 year.
- Organizational competencies, job specific competencies, goals, professional development.
- Positioned to support pay for performance.



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# REHIRE ENHANCEMENT

- Increase rehire enhancement from 30 days to 12 months.
- New Classification date = Original hire date + number of days gap in service.
- No loss in pay when returning to same or equal level position.
- Assignment to prior vacation tier.
- Restore lost sick leave (minus payouts).
- Access to benefits as soon as allowed by plan documents.



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# Recruitment and Retention

- Consistent rules – employees can trust the compensation program.
- Standardized pay plan structures.
- Standardized salary calculation methodology.
- Maintaining compa ratios in assigned range.
- New hires don't benefit more than current staff.
- Budgeted merit and moving to pay for performance.
- Expand rehire enticement from 30 days to 12 months.



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# QUESTIONS



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**RESOLUTION NO. 2022-43**

**A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED “ADDENDUM 31 TO THE EMPLOYEE HANDBOOK OF REGULATIONS” AND PROVIDING FOR AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, pursuant to A.R.S. § 9-802 a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

**SECTION 1. In General.**

That certain document known as “*Addendum 31 to the Employee Handbook of Regulations*” attached hereto as Exhibit A is hereby declared to be a public record, and one (1) paper copy and one (1) electronic copy maintained in compliance with A.R.S. § 44-7041 shall remain on file with the City Clerk and kept available for public use and inspection.

**SECTION 2. Effective Date.**

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 20th day of September, 2022.

---

MAYOR

ATTEST:

---

CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY

Exhibits:

*Addendum 31 to the Employee Handbook of Regulations*

## **City of Flagstaff Employee Handbook of Regulations** **Revised ~~01/10/19~~10/20/22**

### **ARTICLE 1-10. GENERAL PROVISIONS**

#### **1-10-010. GENERAL DISCLAIMER**

The rules, policies, and procedures set forth in this Ordinance shall not constitute an employee contract

The programs and policies described in this Ordinance shall be those in effect at the time of printing. The City of Flagstaff ("City") reserves the right to improve, eliminate, or change any program or benefit described herein whenever it is practical or appropriate. The provisions of this Ordinance may be formally modified, amended, or repealed at any time, and no person shall be deemed to have acquired any vested interest in any position based on prior policies or procedures that are hereby superseded by amendment and/or modification.

In the event that the actual application of the City's policies, practices, procedures, or benefit plans appears to differ from statements or information contained herein, the correct application thereof shall be finally determined by the Flagstaff City Manager or designee.

#### **B. INTRODUCTION**

To ensure that policy interpretations are consistent, the City's Human Resources Director or designee shall be responsible for interpreting policy application and intent. The Human Resources Director's interpretations shall be applicable to all City employment situations. All references to "Human Resources Director" shall include that person's designee.

Nothing in this Ordinance shall constitute a contract, either express or implied, between the City Council and the City employees, for either employment or for any benefit. All policies herein are subject to change through the continuing approval, revision, amendment or modification process of the City Council.

The City Council may alter, eliminate, or add to any of the provisions of this Ordinance through the formal amendment process at any time and for any lawful reason, and such alterations, eliminations, or additions shall apply to all City employment situations from the time of their inception.

#### **C. PURPOSE**

The general purpose of this Ordinance is to establish a system of personnel administration. This system shall provide means to recruit, select, develop, and maintain an effective and responsive work force and shall include policies and procedures for employee hiring and advancement, training and career development, job classification,



## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

salary administration, retirement, fringe benefits, leaves, discipline, discharge, and other related activities.

### D. ADMINISTRATION OF THE RULES

The responsibility for the administration of these Rules and Regulations rests with the City Manager, SENIOR DEPUTY CITY MANAGER AND the Deputy City Manager, and the Human Resources Director. ~~In order to~~ TO establish uniform administration of these policies, the Human Resources Director, after consulting with the City Manager, may publish a comprehensive administrative manual which serves as the official communication for implementing policy; establishing procedures; and issuing regulations, orders and announcements.

### E. SEVERABILITY

Should any article, paragraph, sentence, clause or phrase of this Ordinance or the application of same to a particular set of persons or circumstances be declared unconstitutional or invalid for any reason, the remainder of such Ordinance shall not be affected thereby, it being the intent that the provisions of this Ordinance are severable.

#### 1-10-010.01. GENERAL DEFINITIONS ~~(RENUMBERED)~~

General Definitions apply to the entire Employee Handbook of Regulations; however, if there is a conflicting specific definition found within a section, then the specific definition will apply to that section.

“Benefit Eligible Employees” are employees who are ~~tenure~~-eligible FOR CERTAIN BENEFITS, tenure granted and Exempt employee who works twenty (20) hours or more per week.— BASED ON CITY BENEFIT PLAN DOCUMENTS AS WELL AS REQUIRED BY STATE, FEDERAL OR LOCAL REGULATION.

“CALL-OUT” IS THE PERIOD OF TIME WHEN AN EMPLOYEE IS CALLED OUT TO PERFORM UNSCHEDULED WORK WHILE ON-CALL.

“CALL-OUT COMPENSATION” IS PAID AT ONE AND ONE HALF (1 ½) TIMES THE EMPLOYEE’S REGULAR HOURLY RATE WHEN AN EMPLOYEE IS CALLED OUT TO PERFORM UNSCHEDULED WORK WHILE ON CALL.

“CALL-OUT COMPENSATORY TIME” IS PAID WHEN AN EMPLOYEE IS CALLED OUT TO PERFORM UNSCHEDULED WORK WHILE ON CALL IN LIEU OF “CALL-OUT COMPENSATION”.

“Classified Employees” shall have the same meaning as Non-Exempt employees~~;~~ AND WHO IS PAID WAGES SUBJECT TO THE OVERTIME PAY REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT.

“Commissioned” means the employee is an active member of the Public Safety Retirement System ~~and the City Police or Fire Department.~~



## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

“Date of hire” means the date when employment with the City commences.

“Domestic Partner” shall mean a person registered as a domestic partner under the laws of any state or political subdivision, including Flagstaff City Code, Chapter 14-01 (Domestic Partner Registry) for purposes related to leave policies.

“Earned Paid Sick Time” shall mean time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee ~~normally~~ earns during hours worked and is provided by City to the employee for the purposes described in A.R.S. § 23-373 and incorporated in this Handbook. Earned Paid Sick Time may be referred to as “accrued sick leave”, “paid sick leave”, or “unused sick leave” in some places in the Handbook.

“Emergency Service Employees” shall MEAN ~~be~~ a non-exempt employee who holds a position ~~in Fire, Police, Streets, Fleet Services, Airport, Water Reclamation and Water Plants, Water Distribution and Wastewater Collection, Industrial Pre Treatment, Parks, Facilities Maintenance, Building Inspection, or other positions~~ designated by the Division Director and approved by the ~~Deputy City Manager~~ CITY MANAGER’S OFFICE OR DESIGNEE.

~~“Exempt Employees” are employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA).~~

“Family Member” shall have the same meaning as set forth in A.R.S. § 23-371.H ~~and means:~~

- ~~1. — Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a Domestic Partner, a child to whom the employee stands in Loco Parentis, or an individual to whom the employee stood in Loco Parentis when the individual was a minor;~~
- ~~2. — A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee’s spouse or Domestic Partner or a person who stood in Loco Parentis when the employee or employee’s spouse or Domestic Partner was a minor child;~~
- ~~3. — A person to whom the employee is legally married under the laws of any state, or a Domestic Partner of an employee as registered under the laws of any state or political subdivision;~~
- ~~4. — A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee’s spouse or Domestic Partner; or~~
- ~~5. — Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.~~

“Fire Suppression Employees” are Commissioned, ~~Non-Exempt~~ CLASSIFIED employees who engage in fire protection activities as defined by the Fair Labor Standards

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Act 29 U.S.C. § 203(y) and who ARE PAID FLSA-REQUIRED OVERTIME ON A 14-DAY WORK PERIOD BASIS (SEE ESTABLISH WORK PERIOD DIRECTIVE 2020-1). ~~work over ninety-one (91) hours in a twelve (12) day work period.~~

“Full-Time” REFERS TO AN EMPLOYEE THAT is ~~considered~~ SCHEDULED forty (40) hours per week.

“Hours Worked” GENERALLY INCLUDES ALL ~~is~~ time ~~when~~ an employee MUST BE ON DUTY, OR is necessarily required to be on the employer’s premises, ~~on duty~~ or at ANY OTHER ~~a~~ PRESCRIBED PLACE OF WORK ~~prescribed work place per the Fair Labor Standards Act Fact Sheet #22.~~ HOURS WORKED ALSO INCLUDES ANY ADDITIONAL TIME THE EMPLOYEE IS ALLOWED (I.E., SUFFERED OR PERMITTED) TO WORK.

“Injury, Illness, or Medical Care” shall mean a physical illness, injury or health condition; the need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or a need for preventive medical care.

“In Loco Parentis” is defined as a person who helped raise and had day-to-day responsibilities to care for and financially support the employee as a child, assuming the role of a parent.

“Intermittent Leave” is leave THAT IS TAKEN in separate blocks of time FOR A SINGLE QUALIFYING REASON.

“Key Employee” ~~is defined as a salaried, Benefit Eligible Employee who is among the highest paid ten (10) percent of all the employees working for the employer within seventy-five (75) miles of the employee’s worksite~~ SHALL HAVE THE SAME MEANING AS PRESCRIBED BY 29 C.F.R. § 825.217 (AS AMENDED).

“Light Duty” means an employee is able to perform restricted duties and/or WORK A RESTRICTED schedule per the employee’s treating physician. ~~Light duty may include telecommuting or other types of alternate work schedules per policy 1-20-053.~~

~~“Non-Exempt Employees” are employees who are paid wages subject to the overtime pay requirements of the Fair Labor Standards Act.~~

“Part-Time” REFERS TO AN EMPLOYEE THAT IS SCHEDULED ~~is considered~~ twenty (20) hours to thirty-nine (39) hours per week.

“Reduced Scheduled” is a reduced number of hours in the employee’s usual weekly or daily work schedule.

“Regular Hourly Rate” ~~is the employee’s total straight time earnings divided by the number of hours worked~~ IS DETERMINED BY DIVIDING THE EMPLOYEE’S TOTAL PAY FOR EMPLOYMENT (EXCEPT STATUTORY EXCLUSIONS) IN ANY WORKWEEK BY THE TOTAL NUMBER OF HOURS ACTUALLY WORKED BY

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

### THE EMPLOYEE IN THAT WORKWEEK FOR WHICH SUCH COMPENSATION WAS PAID.

“Shift Employees” are employees assigned to a position which is staffed at least six (6) days a week, or twenty-four (24) hours a day, and is assigned a designated work schedule that can be either rotating or permanently assigned.

“Temporary Employees” are employees hired by the City ~~for a temporary period and~~ who work less than 20 hours per week. ~~Temporary Employees are not classified as Benefit Eligible Employees~~

“Tenured Employees” are ~~Non-Exempt~~CLASSIFIED employees who have completed their probationary period.

“Unclassified Employees” shall have the same meaning as Exempt employees.

“WAITING” MEANS AN EMPLOYEE IS ENGAGED TO WAIT WHEN REQUIRED TO REMAIN ON CITY PREMISES OR A PRESCRIBED WORKPLACE. TIME SPENT WHILE ENGAGED TO WAIT IS HOURS WORKED UNDER THE FLSA.

“Work Week” shall begin on Sunday morning at 12:01 a.m. and end the following Saturday at midnight for all employees.

“Working Day” shall be considered equal to 0.38461 percent of the number of working or duty hours in the established work year for each employee (i.e.  $2080 \times 0.38461\% = 7.99$  or 8 and  $2912 \times 0.38461\% = 11.19$  or 11.2).

(Ord. No. 2013-09, Amended 05/07/13); (Ord. No. 2017-12, Amended 07/01/17); (Ord. No. 2018-18, Amended 06/15/18); (Ord. No. 2018-26, Amended 09/20/18); (Ord. No. 2018-35, Amended 11/06/18); (Ord. No. 2019-10, Amended 07/02/19); ORD NO. 2022-??, AMENDED 10/20/22)

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

### 1-10-030. EMPLOYMENT CATEGORIES

#### A. APPOINTED POSITIONS

The following City offices will be appointed by City Council in accordance with the City Charter:

- ~~A.~~ 1. City Attorney
- ~~B.~~ 2. City Magistrate(s)
- ~~C.~~ 3. City Manager

~~The following City offices will be appointed by the Flagstaff Metropolitan Planning Organization (FMPO) Executive Board in accordance with the Intergovernmental Agreement:~~

- ~~1. FMPO Executive Director~~

#### B. UNCLASSIFIED SERVICE

1. Unclassified service positions are created to provide a responsive ~~management~~ MANAGERIAL AND PROFESSIONAL team to carry out the goals and policies of the City of Flagstaff. The unclassified service is ~~made up~~ COMPRISED of EXECUTIVE, ADMINISTRATIVE, COMPUTER, AND PROFESSIONAL POSITIONS THAT ARE EXEMPT FROM OVERTIME, AS DETERMINED BY THE PROVISIONS OF THE FAIR LABOR STANDARDS ACT (FLSA). ~~administrative/professional and some technical employees, otherwise known as exempt. These are executive, administrative, or professional positions which are from overtime as determined by the provisions of the Fair Labor Standards Act (FLSA). The Deputy City Manager, all Department and Division Heads, certain supervisory, technical, and professional positions fall under this category. Employees under this classification do not serve a probationary period.~~
2. ~~Exempt~~ UNCLASSIFIED employees shall be entitled to all regular benefits and leaves, unless stipulated in a specific Article or Section.
3. The grievance procedure and right of appeal to the Personnel Board shall not apply to ~~exempt~~ UNCLASSIFIED personnel ~~as cited in this Section.~~

#### C. CLASSIFIED SERVICE

1. The objective of the classified service is to facilitate efficient and economical services to the public. "Classified staff" describes positions which are eligible for overtime compensation under the provisions of the Fair Labor Standards Act (FLSA) and are considered non-EXEMPT

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

under the FLSA. These positions are typically clerical, technical, administrative/professional support, skilled craft, or service/maintenance in nature. Some positions may include supervisory responsibilities or may involve varying degrees of independent judgment and discretion. These positions may be full or part time.

2. ~~The following principles will apply to classified staff:~~
  - a. ~~Employment by the City shall be based upon merit and fitness, free of personal and political consideration.~~
  - b. ~~Appointments, promotions, and other actions shall be based on systematic examinations and/or evaluation and any other information concerning work performance.~~
  - c. ~~Positions having similar duties and responsibilities shall be classified and compensated on a uniform basis.~~
  - d. ~~In general, all classified employees shall be assigned a salary range in the compensation schedule.~~
  - e. ~~Continuation of employment for employees shall be subject to good behavior, satisfactory work performance, necessity for the performance of work, and the availability of funds.~~
23. Upon satisfactory completion of their probationary period, ~~e~~Classified employees are considered tenured.
3. Classified employees who have completed their probationary period, shall have appeal rights to the Personnel Board if dismissed, demoted, or suspended WITHOUT PAY for ten (10) working days or more.

### D. TEMPORARY SERVICE

1. Temporary employees may work ~~part time~~ for an entire fiscal year at fewer than twenty (20) hours per week~~;~~ or may work ~~full time~~ twenty (20) hours or more per week for up to nineteen (19) weeks in a fiscal year and then may work the remainder of the year at fewer than twenty (20) hours per week. Under this schedule temporary employees are not required to contribute to the Arizona State Retirement System.
2. Temporary employees ~~may also work~~WORKING TWENTY (20) or more hours per week IN EXCESS OF NINETEEN (19) WEEKS IN A FISCAL YEAR~~for up to 26 weeks in a fiscal year and an additional 45 days intermittently. Under this schedule they~~ are required to contribute to the Arizona State Retirement System THROUGH THE END OF THAT FISCAL YEAR.

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3. ~~If a temporary employee works 27 weeks or more at 20 hours or more per week (whether consecutive or not), they become~~THE LOOK-BACK METHODOLOGY IS UTILIZED TO DETERMINE IF A TEMPORARY EMPLOYEE BECOMES benefit eligible FOR MEDICAL INSURANCE.
4. Temporary employees may be dismissed at any time, without cause, without notice, and without a statement of reasons. TEMPORARY EMPLOYEES DO NOT HAVE ~~or~~ access to the Personnel Board. However, temporary employees shall have the right to file formal grievances under the Grievance Procedure (Article 1-9010-022).
5. ~~For those temporary employees who are assigned to work twenty (20) or more hours per week for a continuous period of one (1) year or more (i.e., grant personnel or military replacements) are eligible for employee benefits, however, they do not have access to the Personnel Board.~~

### ~~E.~~ EMPLOYMENT STATUS

1. ~~Tenured Employees: Tenured employees are those who are in the Classified Service and who are assigned to work twenty (20) or more hours per week, occupy budgeted positions, and who are not serving a probationary period. (All City positions, some grant-funded positions, are budgeted on a fiscal year basis.) Employees in this category are entitled to City-defined employee benefits. Employees in this category have the right to appeal to the Personnel Board as indicated in Article 1-10 and the right to the Grievance Procedure in Article 1-90.~~
2. ~~Probationary Employees: Probationary employees are those who have been hired as classified employees and have been employed for fewer than six (6) months or fewer than twelve (12) months for Public Safety and/or who are serving a subsequent probationary period in accordance with an extension of an initial probation. Time served while on temporary status does not count toward completion of probationary status time requirements. An employee who is completing his/her probationary period may be dismissed at any time and for any cause and does not have access to the Personnel Board. However, he/she may petition for review by the City Manager within five (5) calendar days from receipt of the notice of dismissal.~~

~~Employees who are completing an administrative review due to a promotion shall have access to the Personnel Board as outlined in Article 1-10-040.~~

3. ~~Exempt Employees: Exempt employees are those who are employed in an administrative, technical, or professional position or any other FLSA category (Unclassified Service). The grievance procedure and right of appeal to the Personnel Board do not apply to this group of employees.~~

(Ord. No. 2018-36, Amended, 11/06/18)

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

### 1-10-050. POSITION CLASSIFICATION PLAN

- A. The Human Resources Director shall be responsible for the classification of all positions ~~on the basis of the kind~~ BASED ON THE SCOPE and level of the duties and responsibilities of the positions, to the end that all positions in the same class shall be sufficiently alike to permit use of a single descriptive title, the same qualification requirements, the same method of evaluation for competence, and the same ~~salary~~ PAY range. WORKING TITLES MAY BE USED TO FURTHER DESCRIBE THE SPECIFICS OF A POSITION THAT IS USED IN MULTIPLE AREAS.

~~1. A job class may contain one or more positions.~~

- ~~21.~~ Classification of all positions MAY INCLUDE A MARKET ANALYSIS AS WELL AS AN INTERNAL ORGANIZATIONAL HIERARCHY REVIEW WITH FINAL ~~shall require a study and~~ recommendation by the Human Resources Director and approval of the City Manager OR DESIGNEE.

- B. The classification plan of all positions shall provide class titles, descriptions of duties and responsibilities, qualifications, and other requirements as deemed necessary by the Human Resources Director. The plan shall be amended as the duties, responsibilities, and employment conditions change. The plan shall be audited as required for changes which may have occurred.

1. The Human Resources Division shall maintain ~~copies~~ RECORDS of current specifications for all classes of employment.
2. The specifications shall include title, ADMINISTRATIVE DUTIES; examples of work performed, MINIMUM REQUIREMENTS, ~~distinguishing features of work~~; required knowledge, skills, and abilities, desirable experience and training; PHYSICAL REQUIREMENTS AND WORKING CONDITIONS, and for classes requiring special licensing or requirements, a statement of such shall be included.
3. The class specifications are descriptive only and are not to be restrictive in nature. They are intended to DETERMINE THEIR ASSIGNMENT TO THE RESPECTIVE CLASSES ~~indicate the kinds of positions that should be allocated to the respective classes~~ as determined by their duties, responsibilities, and qualification requirements.
  - a. In assigning a position to a class, consideration shall be given to the general duties, tasks, responsibilities, and desirable qualifications, along with the relationship the position has to other classes.
  - b. It is not intended that a class specification give a complete array of all the specific duties, tasks, and responsibilities, but rather to give



## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

a general picture of the essential characteristics AND FUNCTIONS of the ~~class~~ POSITION with sufficient ~~allocating~~ factors described to properly identify the class.

- c. The use of a particular expression or illustration as to duties, qualifications, or other attributes shall not be held to exclude others not mentioned; if such others are similar in kind and degree. The appropriate supervisor, as circumstances require, may assign different tasks to a position when such duties are similar in kind and rank with those specified in the class of the position. In essence, the phrase “~~and to do related work as required~~ OTHER DUTIES AS ASSIGNED” is described in the paragraphs above.
- d. Employees may be required to perform other duties during CRITICAL OR emergency situations.

C. A position may be reclassified ~~on the basis of~~ DUE TO A change in or reassignment of the duties and responsibilities and/or qualification requirements of the position.

- 1. The Human Resources Director shall be responsible for such reclassifications as found necessary, based upon ~~a study~~ AN ANALYSIS of duties, responsibilities, and REQUIRED MINIMUM qualifications.
- 2. ALL RECLASSIFICATIONS ARE SUBJECT TO APPROVAL BY THE FINANCE DIVISION (BUDGET AVAILABILITY) AND THE CITY MANAGER OR DESIGNEE.
- ~~3. A reclassification shall become effective upon approval by the City Manager on a Personnel Action Form.~~
- ~~3. Incumbents may or may not be reclassified with their positions, based upon the findings and recommendations of the Human Resources Director and the approval of the City Manager.~~



## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

### ARTICLE 1-20. COMPENSATION

#### 1-20-010. PAY PLAN STRUCTURE

- A. The Human Resources Director, under the direction of the City Manager, shall prepare a pay plan STRUCTURE covering all classes of positions in the ~~classified service~~CITY EXCEPT FOR THOSE POSITIONS APPOINTED BY THE CITY COUNCIL. In arriving at salary rates or ranges, consideration may be given to prevailing rates of pay (MARKET ANALYSIS), and consideration of working conditions for comparable work in other BENCHMARK ORGANIZATIONS, ~~public and in private employment~~, current cost of living, ~~suggestions by Department Heads~~, the City's financial condition and policies, and other relevant factors.
- B. The City Manager, Human Resources Director, or the person or agency employed for that purpose shall make such further studies of the pay plan as is necessary in their judgment or requested by the City Council.
- C. The Human Resources Director shall be responsible for recommending wage, rates, and salary ranges; hours and working conditions; and additional benefits for each job class in the City ~~service~~.
- D. Each job class in the ~~classified service~~CITY shall be assigned to a salary range in the uniform plan to reflect the similarities and differences in levels of duties and responsibilities. ~~The wages, hours, and other terms and conditions of employment shall be related to similar conditions in the appropriate labor market.~~
1. ~~Such assignment to a salary range for classified employees shall be made by the City Council.~~
  2. ~~The pay plan may be amended by the City Council from time to time, if circumstances require, either through adjustment of rates or by reassignment of job classes to different pay ranges.~~

#### 1-20-020. APPROPRIATE SALARY

ALL APPROVED PAY CHANGES SHALL BE EFFECTIVE ON THE FIRST DAY OF A PAY PERIOD.

##### A. MERIT INCREASE

1. A. ~~Tenure~~TENURED CLASSIFIED, ~~tenure eligible~~ and exempt UNCLASSIFIED employees IN THE REGULAR PAY PLAN shall be eligible for consideration for merit pay increases as determined by the City's pay plan.COMPENSATION AND PERFORMANCE EVALUATION PLANS NOT TO EXCEED THE MAXIMUM OF THE PAY RANGE.

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

2. EMPLOYEES ASSIGNED TO THE CITY'S STEP PAY PLANS SHALL RECEIVE A MERIT INCREASE TO THE NEXT ELIGIBLE STEP IN THE PLAN BASED ON THEIR POSITION CLASSIFICATION, NOT TO EXCEED THE MAXIMUM STEP IN THE PAY RANGE, UNLESS OTHERWISE DETERMINED IN THE BUDGET PROCESS.
3. A COMPLETED PERFORMANCE EVALUATION MUST SUPPORT EACH MERIT INCREASE RECOMMENDATION.
4. MERIT PAY (INCLUDING STEP PLAN) INCREASES SHALL BE EFFECTIVE ON THE FIRST DAY OF THE PAY PERIOD IN WHICH THE EMPLOYEE'S CLASSIFICATION DATE OCCURS.
5. THE MERIT BUDGET SHALL BE DETERMINED AND APPROVED ANNUALLY IN THE BUDGET PROCESS.
6. SALARY INCREASES FOR COUNCIL-APPOINTED POSITIONS SHALL BE AT THE DISCRETION OF THE COUNCIL WHO MAY SEEK RECOMMENDATIONS FROM THE HUMAN RESOURCES DIRECTOR.

### B. SALARY CONSIDERATION

#### 1. REGULAR PAY PLAN

- A. A newly hired, promoted, rehired, or reclassified employee ~~may~~ WILL be compensated between the minimum and ~~twelve (12)~~ percent above the minimum (i.e. minimum of the salary range x 1.12) of the salary range. THE MIDPOINT OF THE SALARY range. HUMAN RESOURCES SHALL UTILIZE A CONSISTENT METHOD TO CALCULATE CREDIT FOR PRIOR RELATABLE WORK EXPERIENCE, EDUCATION, AND OTHER RELATED CERTIFICATIONS OR CREDENTIALS. HUMAN RESOURCES SHALL COLLABORATE WITH THE HIRING MANAGER WHEN ASSESSING THE RELATABILITY OF ALL DOCUMENTED INFORMATION. of the job class based on economic conditions, unusual employment conditions, or exceptional qualifications when a higher hiring rate may be in the City's best interest. SALARY OFFERS ABOVE THE MIDPOINT MAY BE AUTHORIZED FOR EXCEPTIONAL QUALIFICATIONS WHEN SUPPORTED BY THE SALARY CALCULATION METHODOLOGY AND SUPPORTED BY AVAILABLE BUDGET CAPACITY. -The City Manager may authorize hiring above THE RATE DETERMINED BY THE SALARY CALCULATION METHODOLOGY. AN INTERNAL EQUITY ANALYSIS WILL

~~BE UTILIZED TO ASSESS PAY EQUITY. twelve percent above the minimum based on such factors and on a recommendation by the Human Resources Director and appropriate Division Director.~~  
In no case ~~should~~ WILL the salary be above the maximum of the assigned PAY range.

2. STEP PAY PLAN

- ~~A. A newly hired, promoted, or rehired, OR RECLASSIFIED EMPLOYEE WILL BE COMPENSATED IN A CONSISTENT MANNER IN ACCORDANCE WITH THE ESTABLISHED PROCEDURES OF THE RESPECTIVE DIVISION FOR THE STEP PLAN. SUCH PROCEDURES SHALL BE APPROVED BY THE HUMAN RESOURCES DIRECTOR. employee in a broad band pay structure may be compensated between the minimum and mid point of zone one. The City Manager may authorize hiring above the mid point based on a recommendation by the Human Resources Director and appropriate Division Director.~~
- ~~D. Merit pay increases for employees shall only be granted upon recommendation of the employee's Division Director for efficient service and continued improvement by the employee in the effective performance of the duties of their position.~~
- ~~1. A completed performance evaluation must accompany each merit pay increase recommendation.~~
- ~~2. The merit pay increase shall be effective on the employee's anniversary date or classification date.~~
- ~~E. Salaries and merit reviews for the City Manager, City Attorney, and City Magistrates shall be determined by the City Council.~~

1-20-021. POSITION RECLASSIFICATION

A. CONSIDERATION FOR A POSITION RECLASSIFICATION MAY BE INDICATED WHEN THE BUSINESS NEEDS OF THE CITY HAVE RESULTED IN A SUBSTANTIAL CHANGE IN DUTIES, SCOPE OF RESPONSIBILITIES, MINIMUM QUALIFICATIONS, AND/OR DUE TO A REORGANIZATION.

- ~~F. 1. Upward salary adjustments.~~ When an employee's position AND THE INCUMBENT EMPLOYEE is reclassified to a higher ~~level~~ PAY RANGE, the following rules shall determine the affected employee's ~~salary~~ PAY:

A1. In all cases, every QUALIFIED affected employee shall be assigned to the new ~~salary~~ PAY range.

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- B2. In no case will an employee receive a decrease ~~as a result of a salary adjustment~~ RESULTING FROM A POSITION RECLASSIFICATION to a higher ~~salary~~ PAY range.
- C3. THE EMPLOYEE'S NEW RATE OF PAY WILL BE DETERMINED IN ACCORDANCE WITH SECTION 1-20-020 B, SALARY CONSIDERATION. FOR THE REGULAR PAY PLAN, A PRO RATA AMOUNT OF THE BUDGETED MERIT WILL BE ADDED TO THE CALCULATED INCREASE (E.G., AN EMPLOYEE IS RECLASSED 6 MONTHS INTO THEIR REVIEW PERIOD AND THE BUDGETED MERIT IS 3%. THE EMPLOYEE WILL RECEIVE A PRO RATED MERIT OF 1.5% [ $.5 \times 3\% = 1.5\%$ ]). FOR STEP PLANS THE MERIT INCREASE SHALL BE APPLIED PRIOR TO THE RECLASSIFICATION INCREASE WHEN THE EMPLOYEE'S CLASSIFICATION DATE IS WITHIN NINETY (90) DAYS OF THE EFFECTIVE DATE OF THE RECLASSIFICATION.

~~Employees shall retain their classification dates for purposes of performance evaluations and merit increases.~~

- ~~4. When an employee's classification changes from classified to exempt the employee will be eligible for an increase per B above.~~
- ~~6. Rezone~~
- ~~a. Rezone requests will be considered once a year as part of the fiscal year budget process and any changes will be effective July 1<sup>st</sup> of the following fiscal year. A mid-year request may be requested when the additional compensation can be funded within the base budget on an ongoing basis and any such changes will be effective the first day of the pay period following the completion of the work.~~
- ~~b. The supervisor must submit the following to the Human Resources Division prior to the pre-determined budget deadline: (1) a Zone Change Form, (2) a copy of the employee's most recent performance evaluation demonstrating an overall rating of exceeds expectations or better, and (3) the Zone Change Checklist applicable to the position.~~
- ~~c. Employees must serve in zone one for at least one year and meet all of the requirements in the Zone Change Checklist to be eligible for a rezone to zone two. Employees in zone two must serve for at~~

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~~least two years and meet all of the requirements in the Zone Change Checklist to be eligible for a rezone to zone three.~~

- ~~d. The rezone will result in a six (6) percent increase or the minimum of the new zone, whichever amount is greater. If the six (6) percent increase results in a salary that is greater than the maximum of the zone, the employee's increase will be limited to the maximum of the zone.~~

~~G2. Downward salary adjustments. When an employee's position~~A POSITION ~~is reclassified to a lower PAY RANGE, THE CHANGE WILL NOT BE IMPLEMENTED UNTIL THERE ARE NO ACTIVE EMPLOYEES IN THE POSITION. level, the following rule shall determine the affected employee's salary:~~

- ~~1. The employee will be placed in the lower salary range closest to their current rate of pay that does not result in an increase.~~

3. WHEN AN EMPLOYEE IS PLACED AS AN UNDERHIRE DUE TO NOT INITIALLY MEETING THE MINIMUM QUALIFICATIONS FOR THE POSITION, THE EMPLOYEE'S RATE OF PAY WILL BE CALCULATED IN ACCORDANCE WITH THEIR CURRENT QUALIFICATIONS IN AN APPLICABLE CITY POSITION CLASSIFICATION DURING THE UNDERHIRE PERIOD. WHEN RECLASSIFIED TO THE INTENDED VACANCY THE SALARY WILL BE CALCULATED IN ACCORDANCE WITH A.1.C ABOVE.

4. RECLASSIFIED EMPLOYEES ~~DO~~ RECEIVE A NEW CLASSIFICATION DATE.

5. WHEN AN EMPLOYEE ABSORBS SIGNIFICANT AND PERMANENT EXPANDED RESPONSIBILITIES, YET THE MARKET DATA DOES NOT SUPPORT A POSITION RECLASSIFICATION, THE DIVISION DIRECTOR MAY MAKE A RECOMMENDATION TO THE HUMAN RESOURCES DIRECTOR AND THE CITY MANAGER (OR DESIGNEE) FOR AN INCREASE IN PAY NOT TO EXCEED 3%.

### 1-20-022 MARKET ADJUSTMENT

A. A MARKET ADJUSTMENT OCCURS WHEN AN EXISTING POSITION IS IDENTIFIED THROUGH A BENCHMARK ANALYSIS TO BE ADJUSTED TO A DIFFERENT PAY RANGE.

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1. WHEN THE EMPLOYEE'S POSITION IS MARKET ADJUSTED TO A HIGHER PAY RANGE, THE FOLLOWING SHALL DETERMINE THE AFFECTED EMPLOYEE'S PAY:
  - A. EVERY EMPLOYEE IN THE POSITION SHALL BE ASSIGNED TO THE NEW PAY RANGE.
  - B. EMPLOYEES WILL MAINTAIN THEIR COMPA RATIO IN THE NEW RANGE.
2. WHEN DATA SUPPORTS A MARKET ADJUSTMENT TO A LOWER PAY RANGE, THE CHANGE WILL NOT BE IMPLEMENTED UNTIL THERE ARE NO ACTIVE EMPLOYEES IN THE POSITION.
3. EMPLOYEES SUBJECT TO A MARKET ADJUSTMENT DO NOT RECEIVE A NEW CLASSIFICATION DATE.

### 1-20-023. PROMOTION

- AH. A PROMOTION IS AN EMPLOYEE'S MOVEMENT TO A POSITION IN A HIGHER PAY RANGE RESULTING FROM A RECRUITMENT PROCESS.

~~Promotion. Promotions shall be made as provided in Article 1-40, Section 1-40-010. Upon promotion to another classification, an employee shall receive a rate of pay based on the following criteria:~~

- ~~1. The new salary rate will be in the range that results in a minimum of a six (6) percent increase, with flexibility for a higher amount with prior approval of the Human Resources Director and City Manager.~~
- ~~2. In addition to the increase provided in B above, employees may continue to receive their regular merit increase if their classification date before promotion falls within three (3) months of the promotion. Thereafter, merit increase and performance evaluations will be based on the effective date of the promotion.~~

### 1. REGULAR PAY PLAN

- A. UPON PROMOTION TO A HIGHER PAY RANGE, THE FOLLOWING RULES SHALL DETERMINE THE AFFECTED EMPLOYEE'S PAY.
  1. THE EMPLOYEE'S NEW RATE OF PAY WILL BE DETERMINED IN ACCORDANCE WITH SECTION 1-20-020 B, SALARY CONSIDERATION.
  2. A PRO RATA AMOUNT OF THE BUDGETED MERIT WILL BE ADDED TO THE CALCULATED INCREASE.

3. IN NO CASE SHALL THE RATE OF PAY BE LOWER THAN THE MINIMUM OF THE NEW PAY RANGE.
4. IN NO CASE SHALL THE PROMOTIONAL INCREASE BE LESS THAN 5%. HOWEVER, IT MAY NOT EXCEED THE MAXIMUM OF THE PAY RANGE.

2. STEP PAY PLAN

- A. UPON PROMOTION TO A HIGHER PAY RANGE THE EMPLOYEE SHALL BE ASSIGNED TO A STEP IN THE NEW PAY RANGE IN ACCORDANCE WITH THE PAY CHANGE MAP FOR THAT DIVISION/POSITION. PAY CHANGE MAPS SHALL BE APPROVED BY THE DIRECTOR OF HUMAN RESOURCES.
  - B. THE MERIT STEP INCREASE SHALL BE APPLIED PRIOR TO THE PROMOTION INCREASE WHEN THE EMPLOYEES' CLASSIFICATION DATE IS WITHIN NINETY (90) DAYS OF THE EFFECTIVE DATE OF THE PROMOTION.
3. PROMOTED EMPLOYEES ~~DO~~ WILL BE GIVEN A NEW CLASSIFICATION DATE EFFECTIVE THE DATE OF THE PROMOTION.

1-20-024. VOLUNTARY REASSIGNMENT

- 1A. Voluntary Reassignment. ~~A VOLUNTARY REASSIGNMENT A voluntary reassignment~~ occurs when an employee moves from a position in a higher pay range to a ~~position~~ VACANCY in a lower pay range AT THEIR REQUEST OR BY APPLYING FOR A POSITION IN A LOWER PAY RANGE DURING A RECRUITMENT AND BEING SELECTED FOR THE POSITION. ~~The employee will move to the lower pay range and not receive an increase in pay. In some circumstance, the employee's rate of pay may decrease as a result of the reassignment. The employee shall retain their current classification date for purposes of merit pay increases and performance evaluations.~~

1. REGULAR PAY PLAN

- A. THE EMPLOYEE'S NEW RATE OF PAY WILL BE DETERMINED IN ACCORDANCE WITH SECTION 1-20-020 B, SALARY CONSIDERATION.
- B. A PRO RATA AMOUNT OF THE BUDGETED MERIT WILL BE ADDED TO THE CALCULATED INCREASE.



C. IN NO CASE SHALL THE RATE OF PAY BE LOWER THAN THE MINIMUM OF THE NEW RANGE, NOR HIGHER THAN THE MAXIMUM OF THE NEW RANGE.

~~A.D.~~ THE NEW RATE OF PAY MAY NOT RESULT IN A PAY INCREASE ASIDE FROM THE PRO-RATA MERIT ADJUSTMENT.

2. STEP PAY PLAN

A. THE EMPLOYEE SHALL BE ASSIGNED TO A STEP IN THE NEW PAY RANGE IN ACCORDANCE WITH THE PAY CHANGE MAP FOR THAT DIVISION/POSITION. PAY CHANGE MAPS SHALL BE APPROVED BY THE DIRECTOR OF HUMAN RESOURCES.

B. IN NO CASE SHALL THE RATE OF PAY BE LOWER THAN THE MINIMUM OF THE NEW RANGE, NOR HIGHER THAN THE MAXIMUM OF THE NEW RANGE.

C. THE NEW RATE OF PAY MAY NOT RESULT IN A PAY INCREASE ASIDE FROM ANY MERIT ADJUSTMENT.

2. THE EMPLOYEE WILL BE GIVEN A NEW CLASSIFICATION DATE EFFECTIVE THE DATE OF THE VOLUNTARY REASSIGNMENT.

1-20-025. TRANSFER

~~JA.~~ ~~Transfer-~~ A TRANSFER- A transfer occurs when an employee moves from one position to another in the same pay range or from one area of the organization to another in the same position.

1. The employee will remain in the same pay range and will not receive an increase OR DECREASE in pay. HOWEVER, IN THE REGULAR PAY PLAN A PRO RATA AMOUNT OF THE BUDGETED MERIT WILL BE ADDED TO THEIR REGULAR RATE OF PAY. FOR STEP PLANS THE MERIT STEP INCREASE SHALL BE APPLIED ON THE EFFECTIVE DATE OF THE TRANSFER WHEN THE EMPLOYEE'S CLASSIFICATION DATE IS WITHIN NINETY (90) DAYS OF THE EFFECTIVE DATE OF THE TRANSFER

2. The employee's rate of pay may decrease based on budget capacity. The employee shall retain their current classification date for purposes of merit pay increases and performance evaluations. WILL RECEIVE A NEW CLASSIFICATION DATE EFFECTIVE THE DATE OF THE TRANSFER.

1-20-026. DEMOTION



## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

AK. ~~Demotion for cause.~~ A DEMOTION TO A POSITION IN A LOWER PAY RANGE shall be made as provided in Article 1-40, Section 1-40-031. EMPLOYEES MAY BE OFFERED A DEMOTION AS A SOLUTION TO A DOCUMENTED PERFORMANCE ISSUE.

1. An employee who is demoted ~~for cause~~ shall be placed in the lower ~~salary~~ PAY range that will provide a reduction in pay.
2. HUMAN RESOURCES AND THE APPLICABLE DIVISION LEADERSHIP SHALL DETERMINE THE NEW RATE OF PAY BASED ON THE SPECIFIC CIRCUMSTANCES. NO MERIT CONSIDERATION WILL BE INCLUDED.
3. The employee ~~shall be given~~ WILL RECEIVE a new classification date ~~for purposes of merit pay increases and performance evaluations.~~ EFFECTIVE THE DATE OF THE DEMOTION.

### 1-20-027. CORRECTIVE ACTION PAY REDUCTION

AL. ~~Disciplinary pay reduction.~~ A CORRECTIVE ACTION PAY REDUCTION IS A TEMPORARY REDUCTION IN PAY SUPPORTED BY A CORRECTIVE ACTION.

1. An employee who is being paid a rate of pay higher than the minimum of ~~the~~ THEIR ASSIGNED pay range may be reduced by a percentage or dollar amount on the basis of unsatisfactory work performance or conduct.
2. An employee shall not be paid less than the minimum of the pay range as a result of the ~~disciplinary~~ CORRECTIVE action.
3. Such action shall require the specific recommendation of the employee's Division Director and the Human Resources Director, with the approval of the City Manager.

14. The employee shall be notified in writing by their Division Director not LESS ~~later~~ than two (2) calendar weeks prior to the effective date of the action. Such notice shall inform the employee that they may file a reply with the Division Director and Human Resources Director. THE REPLY MUST BE FILED WITHIN FIVE (5) BUSINESS DAYS OF RECEIVING THE NOTICE. ~~not later than one (1) calendar week prior to the effective date of the action.~~ Such reply shall be reviewed by the City Manager OR DESIGNEE for final action.

2. ~~The employee shall have the opportunity to attach a statement to the notice.~~

53. The employee may be returned to their former rate of pay at such time as deemed appropriate by their Division Director.

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

### 6. THE EMPLOYEE IS ELIGIBLE TO RECEIVE THEIR APPLICABLE MERIT INCREASE.

(Ord. No. 2010-10, Amended 06/08/10) (Ord. No. 2017-26, Amended 10/19/17) (Ord. No. 2020-01, Amended 04/17/20, Amended 04/02/21, AMENDED 10/20/22)

#### 1-20-030. WORKING HOURS AND PAY

- A. The average regular work week for full-time classified employees shall be forty (40) hours. The work week for all employees, EXCEPT FIRE SUPPRESSION EMPLOYEES, begins on Sunday morning at 12:01 a.m. and ends the following Saturday at midnight. PURSUANT TO 29 U.S.C. § 207(K), A 14-DAY WORK PERIOD HAS BEEN ESTABLISHED FOR FIRE SUPPRESSION EMPLOYEES (SEE ESTABLISH EMPLOYEE WORK PERIOD DIRECTIVE 2020-1).
- B. ~~As a standard policy, all~~ ALL employees shall be allowed two (2) PAID work breaks of fifteen (15) minutes duration per day AS THE POSITION ALLOWS. ~~All w~~Work breaks ~~shall~~ MAY be scheduled by the supervisor so that work areas are covered. ~~This applies to all personnel except~~
- ~~on duty police officers, on duty fire personnel, operating field crews, employees operating equipment on scheduled routes, and other instances where the nature of the employee's duties prevents orderly scheduling of any specific time for work breaks.~~
- C. UNPAID Lunch periods shall be ~~scheduled~~ PROVIDED for all employees, ~~except those specifically excluded by the City Manager~~. The lunch period will ordinarily last one hour, however, by mutual consent between employee and ~~Department Head~~ DIVISION LEADERSHIP, may be reduced to one-half hour. LUNCH BREAKS MAY BE SCHEDULED BY THE SUPERVISOR SO THAT WORK AREAS ARE COVERED.
- D. Employees shall not be allowed to accumulate work breaks and/or lunch periods for the purpose of taking time off.
- E. Regular salaries and compensation for all City employees shall be paid on a bi-weekly basis.
- F. For the purposes of vacation, sick leave, family leave, personal leave, and holiday leave, a working day shall be considered as equal to .38461 percent of the number of working or duty hours in the established work year for each employee.

#### 1-20-040. OVERTIME PAY

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

- A. ~~A full-time classified employee who performs authorized work in excess of their regular work week, work day, or shift, shall be compensated for such overtime at the rate of one and one-half (1 1/2) times their regular rate of pay.~~ OVERTIME SHALL BE COMPENSATED AT THE RATE OF ONE AND ONE-HALF (1 1/2) TIMES THE REGULAR RATE OF PAY.
1. Overtime shall be calculated to the nearest one-quarter (1/4) hour of overtime worked.
  2. All overtime must be authorized in advance by the appropriate ~~department and ratified by the City Manager or designee.~~ DIVISION LEADER OR DESIGNEE.
  3. All unclassified ~~and certain classified~~ job classes shall be exempt from the above overtime provisions upon recommendation of the Human Resources Director ~~and approval of the City Manager.~~ Any such exemptions shall ~~be in compliance~~ COMPLY with the applicable provisions of the Fair Labor Standards Act, as ~~required of~~ APPLICABLE TO municipalities.
    - a. UNCLASSIFIED ~~EE~~ employees ~~in these classes~~ may receive ~~overtime~~ STRAIGHT pay FOR HOURS WORKED IN EXCESS OF 40 HOURS PER WEEK in the event of extraordinary circumstances or emergency conditions. This may be ~~done only by written order of~~ AUTHORIZED BY the City Manager upon recommendation of the Department Head.
    - b. Time off for work performed during extraordinary circumstances or emergency conditions by employees in ~~these~~ job UNCLASSIFIED JOB classes may be authorized and administered by the appropriate Department Head.
  4. There shall be no overtime compensation for time spent in attending meetings, including travel time of any kind, which are for the purpose of education or training, except where attendance is made mandatory by the employee's division or Department Head, or such overtime compensation is required of municipalities by the Fair Labor Standards Act.
  5. Fire suppression employees ~~working~~ WHO WORK in excess of ~~fifty-six (56)~~ ONE HUNDRED AND SIX (106) hours ~~per~~ IN ANY week FOURTEEN (14) DAY WORK PERIOD shall be compensated pursuant to Section 1-20-040 A~~2~~, except when they are engaged in emergency operations at the end of a shift or while engaged in emergency operations on call back, in which case ~~overtime~~ compensation for emergency scene responses only will be paid ~~at an hourly rate calculated on a forty (40) hour work week.~~ AT A GUARANTEED PREMIUM PAY OF 210%. Emergency operations are those circumstances that create a medical, fire, or hazardous material incidents.

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

6. ~~There shall be no overtime compensation for any time spent in travel from the employee's home to the appropriate location where the employee reports to or for work.~~

(Ord. No. 2007-39, Amended, 08/07/07; Ord. No. 2010-10, Amended, 06/08/10; ORD NO. 2022-??, 10/20/22)

### 1-20-041. COMPENSATORY TIME

Compensatory time off ~~(comp time)~~ is paid time off the job that is earned and ACCUMULATED ~~accrued~~ by an employee in lieu of immediate ~~cash payment~~ OVERTIME COMPENSATION for working overtime hours. The use of comp~~ENSATORY~~ time ~~instead~~ IN LIEU of overtime is limited by Section 7(o) of the Fair Labor Standards Act (FLSA) to a public agency that is a state, a political subdivision of a state, or an interstate governmental agency. Compensatory time cannot be used ~~as a means~~ to avoid statutory overtime compensation.

- A. All full-time classified employees are authorized to ~~accrue~~ EARN compensatory time at the rate of one and one-half hours for one hour of overtime worked, in lieu of immediate ~~cash~~ overtime compensation.
- B. Compensatory time will not be earned during a work week when an employee is using paid time off such as sick, vacation, personal, holiday or compensatory time. Compensatory time may only be earned when
1. Any non-commissioned classified employee works over forty (40) hours in a work week.
  2. Any police commissioned employee works over forty (40) hours in a work week.
  3. Any fire suppression commissioned employee WHO works over one hundred ~~eighty-two (182)~~ SIX (106) hours in ~~the twenty-four (24) day~~ A FOURTEEN (14) DAY work period per Section 7(k) of the FLSA.
  4. ~~Any wild land fire non-commissioned employee works over one hundred and six (106) hours in the fourteen (14) day work period per Section 7(k) of the FLSA.~~
- C. ~~Accrual~~ ACCUMULATION of compensatory time by those eligible employees shall be subject to the approval of each Division Director and shall be based on the unique personnel requirements of each division.
- D. No employee shall be allowed to ~~accrue~~ ACCUMULATE in excess of sixty (60) hours, except for fire suppression commissioned personnel, who shall be allowed to ~~accrue~~ ACCUMULATE eighty-four (84) hours. ~~An employee may request to exceed these limitations by completing a Compensatory Time Excess Accrual Authorization Request Form and submitting it to the Division Director. These~~

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

- ~~maximums may be exceeded only upon the approval of the Division Director, Human Resources and the City Manager. Authorization for exceeding the maximum is only valid for the fiscal year in which the form is completed. In no event shall authorization be given to accrue compensatory time in excess of one hundred eighty (180) hours.~~
- E. Any employee who has ~~accrued~~ ACCUMULATED compensatory time and requested use of this compensatory time shall be permitted to use such time off within a reasonable period after making the request, if such use does not unduly disrupt the operations of the City. A reasonable period will be determined by considering the customary work practices within the City, based on the facts and circumstances in each case. Such practices include, but are not limited to:
1. Anticipated peak workloads based on past experience,
  2. Emergency requirements for staff and services, and
  3. The availability of qualified substitute staff.
- F. An employee has the right to use compensatory time earned and must not be ~~encouraged~~ ENCOURAGED to accept more compensatory time than the City can realistically and in good faith expect to be able to grant within a reasonable period of THE EMPLOYEE making a request for use of such time.
- ~~G. Hours of compensatory time in excess of the above maximums must be used prior to June 30th each fiscal year. Excess compensatory time not used prior to the June 30th date shall be paid to the employee and not be carried over to subsequent periods.~~
- GH. An employee who intends to earn compensatory time in lieu of overtime shall notify their immediate supervisor prior to submitting a timesheet for the pay period. Otherwise, any eligible overtime will be compensated as overtime wages for the pay period.
- HI. All compensatory time shall be reported as it is ~~accrued~~ EARNED, or used IN THE TIMEKEEPING SYSTEM, ~~to the Payroll Section.~~
- ~~1. Accruals shall be included on the time entry report submitted by the division and will appear on the employee's pay stub.~~
  - ~~2. Compensatory time used shall be marked "CU" on the time entry report submitted by the division and will appear on the employee's pay check.~~
  - ~~3. Separate compensatory time records shall not be maintained by the division.~~
- I. An employee will be paid for ~~accrued~~ ACCUMULATED compensatory time:

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

1. Upon termination of service at a rate of compensation not less than:
  - a. The average regular rate received by such employee during the last three years of employment. When the period of employment is less than three years, the average rate still must be calculated based on the rates in effect during such period. Or
  - b. The final regular rate received by such employee, whichever is higher.
2. Upon moving from a ~~non-exempt~~CLASSIFIED to an ~~exempt~~UNCLASSIFIED position at a rate of pay equal to the employee's current REGULAR hourly rate PRIOR TO THE POSITION CHANGE.
3. UPON MOVING FROM ONE DIVISION/SECTION TO ANOTHER DIVISION/SECTION AT A RATE EQUAL TO THE EMPLOYEE'S REGULAR HOURLY RATE PRIOR TO THE CHANGE.

~~K. The City Manager is authorized to make adjustments for callback and standby pay by administrative memoranda.~~

(Ord. No. 2010-10, Amended, 06/08/10; ORD. NO 2022-//, 10/20/22)

### 1-20-042. ON-CALL AND CALL-OUT PAY

The purpose of this policy is to establish guidelines for compensation and ensure compliance with the Fair Labor Standards Act (FLSA) regarding the compensation of ~~non-exempt~~CLASSIFIED employees who are required to be available on-call for work outside of scheduled or regular hours.

#### ~~A. DEFINITIONS~~

- ~~1. "Waiting" means an employee is engaged to wait when required to remain on City premises or prescribed work place. Time spent while engaged to wait is Hours Worked under the FLSA.~~
- ~~2. "On Call" is the period of time when an employee is required to carry a cellular phone or pager and must respond to work when paged or called upon.~~
- ~~3. "On Call Compensatory Time" is paid time off the job that is earned and accrued by an employee in lieu of immediate cash payment for On Call hours.~~
- ~~4. "On Call Compensation" compensation paid at one and one half (1 ½) times the employee's Regular Hourly Rate for On Call hours.~~
- ~~5. "Call Out" is the period of time when an employee is called out to perform unscheduled work while On Call.~~

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

6. ~~“Call-Out Compensatory Time” is paid when an employee is called out to perform unscheduled work while On-Call.~~

7. ~~“Call-Out Compensation” compensation paid at one and one half (1 1/2) times the employee’s Regular Hourly Rate for Call-Out hours.~~

### AB. ELIGIBILITY

1. ~~Non-Exempt~~CLASSIFIED EE Employees who serve On-Call or are subject to Call-Out are eligible for additional compensation and/or compensatory time pursuant to this policy. The employee’s ~~supervisor~~ may elect ~~whether the employee is~~ to be paid compensation or receive compensatory time for On-Call and Call-Out services, ~~based on budget and operational needs of the division.~~
2. An employee may not consume alcohol OR BE IMPAIRED BY ALCOHOL OR OTHER INTOXICANTS while On-Call. ~~or within the four-hour immediately preceding being On-Call.~~ An employee who is On-Call must remain within the local area as described in *Residency Requirements* per section 1-60-101. An employee On-Call is otherwise free to engage in personal activities while On-Call.
3. On-Call time begins when an employee ~~or other employees are~~ IS not required to be on the City’s premises, on duty, or at the prescribed work place.
4. An employee On-Call who fails to ~~promptly respond to~~ ARESPOND WITHIN THE PRESCRIBED TIME LIMIT TO A Call-Out will not be paid for On-Call time and/or may be subject to ~~discipline~~ CORRECTIVE ACTION.

### BC. PROCEDURES ADMINISTRATION

1. ~~An employee On-Call shall receive one (1) hour of On-Call Compensation for eight (8) hours the employee is scheduled On-Call. This will be calculated by taking the total hours of On-Call multiplied by 0.125.~~ AN EMPLOYEE ON-CALL SHALL RECEIVE 12.5% OF THE REGULAR RATE OF PAY FOR EACH ONE (1) HOUR OF ON-CALL COMPENSATION.
2. An employee who is On-Call and called out to work will receive Call-Out Compensation or Call-Out Compensatory Time, but not On-Call Compensation.
3. An employee who is called out to work ~~by the employee who is On-Call~~ WHEN THEY ARE NOT ON CALL, will receive Call-Out Compensation or Call-Out Compensatory Time.



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4. An employee on Call-Out shall receive one (1) hour of Call-Out Compensation or Call-Out Compensatory Time for each hour the employee is performing Call-Out duties. The employee shall receive a minimum of two (2) hours of Call-Out Compensation or Call-Out Compensatory Time each time the employee is required to ~~respond~~ REPORT to A Call-Out.

~~5. — The immediate supervisor shall code On-Call hours as OS (On-Call Compensation) or CS (On-Call Compensatory Time) when submitting the employee's time sheet.~~

~~6. — The immediate supervisor shall code Call-Out hours as O3 (Call-Out Compensation) or C3 (Call-Out Compensatory Time) when submitting the employee's time sheet.~~

57. Employee's shall report hours as Hours Worked for all hours spent ENGAGED IN Waiting.

68. An employee who is ENGAGED TO WAIT ~~Waiting~~ shall be compensated at the employee's Regular Hourly Rate unless overtime is required per policy 1-20-040 *Overtime Pay*.

### ~~D. — EXAMPLE~~

~~A Water Services employee's shift ends at 4:00 p.m. and they are scheduled to be On-Call beginning at 6:00 p.m. when the last shift at the plant leaves until 6:00 a.m. when the first shift at the plant begins. The employee responds to a plant alarm from 2:00 a.m. to 4:30 a.m. The following is an outline of how this employee will be compensated for On-Call and Call-Out hours.~~

~~On-Call 9.5 hours~~

~~Call-Out 2.5 hours~~

~~On-Call Compensation or Compensatory Time is 1.19 hours (i.e. 12 On-Call hours minus 2.5 hours of Call-Out equals 9.5 hours. 9.5 On-Call hours multiplied by 0.125 equals 1.19 hours of On-Call Compensation.~~

~~Call-Out Compensation or Compensatory Time is 2.5 hours.~~

~~Link(s):~~



## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

### ~~FLSA Hours Worked~~

(Ord. No. 2018-18, Amended 06/15/18, ~~Ord. No 2022-??, 10/20/22~~)

#### 1-20-050. ACTING PAY COMPENSATION

~~A.~~ A. — CLASSIFIED AND UNCLASSIFIED NON-emergency service employees (excluding temporary employees and employees who are serving their initial probationary period) who are:

- ~~1. Designated to perform the duties of a position that is of a higher classification or PAY range than their normal job due to a vacancy or absence; OR,~~
2. ACTING DUE TO A VACANCY WHERE THE EMPLOYEE IS TAKING ON PARTIAL RESPONSIBILITIES AND/OR DOES NOT MEET THE MINIMUM REQUIREMENTS FOR THE POSITION (AND IS THEREFORE NOT ELIGIBLE FOR A TEMPORARY PROMOTION).
3. AN UNCLASSIFIED EMPLOYEE WHEN COVERING FOR A VACANCY IN THE SAME PAY RANGE AS THEIR NORMAL JOB.

~~A.B.~~ ACTING PAY ASSIGNMENTS MUST BE FOR TEN (10) DAYS (TWO (2) WORK WEEKS) OR GREATER AND DO NOT LAST GREATER THAN TWELVE (12) WEEKS.

~~C.~~ ACTING PAY WILL BE PAID RETROACTIVE TO THE EFFECTIVE DATE OF THE ASSIGNMENT.

~~\_\_\_\_\_ in the higher classification or range of more than ten (10) consecutive working days, the employee will receive Acting Pay Compensation.~~

- ~~1. Acting Pay Compensation will begin after the non-emergency service employee has worked out of class in the same position for more than ten (10) consecutive working days (a working day is defined in Section 1-20-030 F).~~
- ~~2. Acting Pay Compensation will be paid retroactive to the effective date of the assignment.~~
- ~~3. An employee will receive a five (5) percent increase for Acting Pay Compensation. Under exceptional circumstances a Department Head may request a greater than a five (5) percent increase, with approval from the City Manager.~~

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

~~D.B.—CLASSIFIED Fire, Police, Airport staff; , and other employees POSITIONS who THAT are designated APPROVED by the Department Head to respond to an emergency situation, (excluding exempts) and OR are required by the Department DIVISION Head to perform the duties of a position that is of a higher classification or range than their normal job due to a vacancy, absence, or required staffing level in the higher classification or range will receive Acting Pay Compensation under the following circumstances:~~

~~1. Acting Pay will be paid hour-for-hour for each hour the employee works in a position with IN a higher classification or PAY range.~~

~~2. An employee will receive a five (5) percent increase for Acting Pay Compensation.~~

~~C. At the end of the assignment, the employee will return to their regular assignment and pay.~~

~~E. THE AMOUNT OF ACTING PAY IS A MINIMUM OF 5% AND WILL VARY BASED ON THE ASSIGNMENT (LINK). EXCEPTIONS MAY BE REQUESTED BY SUBMISSION OF A JUSTIFICATION TO THE CITY MANAGER OR DESIGNEE.~~

~~F. MERIT INCREASES AS WELL AS ANY OTHER APPLICABLE SALARY ADJUSTMENTS WILL BE APPLIED TO THE REGULAR RATE OF PAY WHEN THEY ARE BECOME EFFECTIVE DURING AN ACTING PAY ASSIGNMENT.~~

~~G. WHEN THE ACTING PAY ASSIGNMENT IS COMPLETED, THE EMPLOYEE SHALL RETURN TO THEIR FORMER POSITION AND RATE OF PAY, INCLUSIVE OF ANY PAY ADJUSTMENTS EFFECTIVE DURING THE ACTING PAY ASSIGNMENT.~~

### ~~1-20-051. SUPPLEMENTAL PAY~~

~~A. Exempt employees (excluding temporary employees and employees who have not worked for the City for six (6) months or more) may receive supplemental pay for performing supervisory/managerial duties at the same or lower range than their classification or range which are outside their normal duties due to an absence or a vacancy under the following conditions:~~

~~1. The Department Head must submit a memo to the Human Resources Director for approval describing the managerial/supervisory duties the employee will be assuming.~~

~~2. An employee is eligible for supplemental pay after assuming the duties for more than ten (10) consecutive working days not to exceed six (6) months. Exceptions may be made with prior approval from the Human Resources Director and City Manager.~~

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

- ~~3. Supplemental pay will be paid retroactive to the effective date of assuming the duties.~~
- ~~4. An employee will receive five (5) percent increase and under special circumstances a Department Head may request a greater than a five (5) percent increase. Exceptions may be made with prior approval from the Human Resources Director and City Manager.~~
- ~~5. At the end of the assignment, the employee will no longer be eligible for the supplemental pay.~~

### 1-20-052. TEMPORARY PROMOTION

- A. A Department Head may appoint a qualified employee in good standing (excluding probationary and temporary employees) to another existing position on a temporary basis. This may be accomplished without observing regular recruiting and hiring procedures. HOWEVER, AN INTERNAL SOLICITATION OF INTEREST WITHIN THE DIVISION (OPTION TO EXTEND CITY-WIDE) WILL BE CONDUCTED TO ENSURE ALL QUALIFIED, INTERESTED EMPLOYEES ARE CONSIDERED. APPROVAL BY THE HUMAN RESOURCES DIRECTOR AND THE CITY MANAGER OR DESIGNEE IS REQUIRED. ~~by submitting a written justification to the Human Resources Director for review of appropriate classification, minimum qualifications, salary etc. and final approval by the City Manager or his/her designee.~~
- B. The following conditions must apply:
  1. A specific vacant position must exist AND SHOULD BE POSTED PROMPTLY FOR RECRUITMENT TO MITIGATE EXTENDED TEMPORARY ASSIGNMENTS.
  2. The employee must meet the minimum qualifications for the position, must have a good performance record, and not currently be involved in any ~~disciplinary~~ CORRECTIVE ACTION process.
  3. The employee's temporary promotion does not, in any way, guarantee the temporary promotion position to the employee on a permanent basis. The temporary promotion does not confer any explicit preference to the employee in competing for the position if and when a permanent opening occurs.
  4. A temporary promotion must last longer than thirty (30) days but not more than one (1) year. Exceptions may be made with prior approval from the Human Resources Director and City Manager.
  5. The employee will receive a new salary rate in the new PAY range.

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- a. CALCULATED IN ACCORDANCE WITH 1-20-020, B, APPROPRIATE SALARY.
- b. IN NO CASE SHALL THE RATE OF PAY BE LOWER THAN THE MINIMUM OF THE NEW PAY RANGE.
- c. IN NO CASE SHALL THE INCREASE BE LESS THAN 5%. HOWEVER, THE INCREASE MAY NOT RESULT IN A PAY RATE ABOVE THE MAXIMUM OF THE PAY RANGE.

~~5. that results in a minimum of a six (6) percent increase whichever is greater, with the flexibility for a higher amount with prior approval from the Human Resources Director and City Manager or his/her designee as outlined in Section 1-20-020.~~

6. An employee who is temporarily promoted ~~is not required to serve an administrative review and~~ may be returned to ~~his/her~~ THEIR regular assignment at any time.
7. The employee's regular position shall be guaranteed to ~~him/her~~ THEM during the tenure of the temporary promotion.
8. When the temporary promotion is completed, the employee shall return to ~~his/her~~ THEIR former position and salary rate, which will include any merit increase OR OTHER SALARY ADJUSTMENT TO THEIR REGULAR RATE OF PAY THAT BECAME EFFECTIVE DURING THE TEMPORARY PROMOTION. ~~the employee may be eligible for.~~
- ~~9. If the employee is permanently placed into the position he/she temporarily promoted to, then he/she will keep the salary that was established at the time of the temporary appointment and will be required to serve an administrative review as outlined in Section 1-30-061. The time spent serving in the temporary promotion will not count towards the administrative review.~~
- ~~10. The employee shall receive any merit increase for which he/she is eligible for and any other salary adjustments granted to all employees in that classification.~~

## ARTICLE 1-30. EMPLOYMENT

### 1-30-060. PROBATIONARY PERIOD

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

The probationary period is the initial period of adjustment when the CLASSIFIED employee is learning about the City and their new position and the employee is provided with training and guidance from their supervisor.

A. Probationary periods are designed to provide a reasonable amount of time to evaluate an employee's performance.

~~1. Non-exempt non-commissioned employees will serve a six-month probationary period.~~

~~2. Non-exempt Municipal Court and non-exempt commissioned employees will serve a one-year probationary period. The probationary period for Police Officers will begin after the completion of the Field Training Officer (FTO) Program.~~

~~B. Probationary period may be extended by no more than six (6) months per section 1-30-061.B Performance Evaluation System Probationary Evaluation.~~

BC. Upon successful completion of a probationary period, a ~~non-exempt~~ CLASSIFIED employee shall be granted tenured status in the position in which the probationary period is served.

CD. Time spent serving as a temporary employee will not count towards the probationary period.

DE. The appropriate Division Director may dismiss the probationary employee at any time during the probationary period when the employee is not progressing or performing satisfactorily per section 1-40-122 Dismissal of Probationary Employee.

(Ord. No. 2012-14, Amended, 10/02/12); (Ord. No. 2007-39, Amended, 08/07/07, ORD. NO. 2022-??, 10/20/22)

### 1-30-061. PERFORMANCE EVALUATION SYSTEM

The performance evaluation system ESTABLISHES CONSISTENT ORGANIZATIONAL COMPETENCIES AS WELL AS JOB SPECIFIC COMPETENCIES FOR EACH POSITION CLASSIFICATION (EXCLUDING TEMPORARY AND CONTRACT PERSONNEL). THE SYSTEM ALSO SUPPORTS THE DEVELOPMENT OF GOALS BY THE SUPERVISOR AND THE EMPLOYEE. ~~enables the creation of reasonable performance expectations by the supervisor and the employee.~~ The formal evaluations of the employee's work behavior, PERFORMANCE, AND GOAL ACHIEVEMENTS help the employer and the employee build on the strengths of the employee, RECOGNIZE ACHIEVEMENTS, and identify those areas the employee needs improvement to be more effective and efficient in their job.

#### A. EVALUATION PROCESS

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

1. The supervisor will prepare the evaluation based on the review of the following items:
  - a. A comparison of the employee's performance with the performance expectations ~~established upon the employee's date of hire or the previous year's evaluation;~~
  - b.        The duties and responsibilities of the employee's position; ~~and~~
  - c.        COMPETENCIES
  - d.        D ON ORGANIZATIONAL VALUES;
  - ~~b.e.~~        ACHIEVEMENT OF ESTABLISHED GOALS;
  - f.        Supervisory notes taken during the evaluation period; AND
  - ~~e.g.~~        INPUT PROVIDED FROM THE EMPLOYEE ON THEIR SELF-EVALUATION.-
2.        The supervisor's evaluation WILL~~should~~ be based on an employee's actual performance and not on personal prejudice, bias or favoritism.
- ~~2.3.~~        THE EVALUATION MAY INCLUDE MULTIPLE SUPERVISORS IF APPLICABLE FOR THE RATING PERIOD.
- ~~3.4.~~        The online evaluation system~~, or the supervisor,~~ will notify the employee ~~to login to the online evaluation system and complete the pre-review input section of the evaluation form.~~ TO COMPLETE THEIR SELF-EVALUATION. This allows the employee an opportunity to present ~~his or her~~ THEIR accomplishments for the year and assist the supervisor in completing the performance evaluation.
- ~~4.5.~~        The supervisor will meet with the employee to review the performance evaluation. The supervisor will discuss the employee's strengths, GOAL ACHIEVEMENTS, AND areas of improvement with suggestions for improvement. GOALS AND A PROFESSIONAL DEVELOPMENT PLAN ARE ALSO ESTABLISHED ~~and expectations and goals~~ for the upcoming year.
- ~~5. —~~        ~~An employee will login to the online evaluation system, select agree or disagree with evaluation rating, provide a written statement and electronically sign the evaluation.~~
6. The evaluation will be retained online in the ~~online evaluation system~~ 201 PERSONNEL FILE.

### B. PROBATIONARY EVALUATION

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

1. All ~~non-exempt~~CLASSIFIED employees will be evaluated during their probationary period to ensure satisfactory performance. ~~based on the following schedule:~~

~~A non-commissioned non-exempt employee shall be evaluated at three and six months from their date of hire.~~
2. CLASSIFIED, NON-COMMISSIONED EMPLOYEES WILL SERVE A SIX (6)-MONTH PROBATIONARY PERIOD (EXCEPT AS LISTED BELOW).
- a. 3. ~~A non-exempt employee of the Municipal Court, POLICE COMMUNICATIONS, AND POLICE AND FIRE COMMISSIONED EMPLOYEES WILL SERVE A ONE (1)-YEAR PROBATIONARY PERIOD.~~ shall be evaluated at four, eight and twelve months from their date of hire.
  - b. ~~A non-commissioned non-exempt Police Department employee working in the Communications Center shall be evaluated at six and twelve months from their date of hire.~~
  - c. ~~A commissioned non-exempt employee of the Fire Department shall be evaluated at three, six, nine and twelve months from their date of hire.~~
  - d. ~~A commissioned non-exempt employee of the Police Department shall be evaluated at six and twelve months after their completion of the Field Training Officer (FTO) Program.~~
- 4.2. The probationary evaluation schedule may be extended up to ~~six~~THREE (3) months. ALL EXTENSIONS OR EXCEPTIONS REQUIRE THE APPROVAL OF HUMAN RESOURCES AND THE DIVISION DIRECTOR. ANOTHER PERFORMANCE EVALUATION IS REQUIRED TOMUST BE COMPLETED PRIOR TO THE END OF THE EXTENDED PROBATIONARY PERIOD. ~~by completing the following process:~~
  - a. ~~The supervisor submits a request in writing outlining the reason for and length of the probationary period extension and the request is approved by the Section Head, Division Director, Deputy City Manager and Human Resources Director prior to the end of the probationary period.~~
  - b. ~~The supervisor notifies the employee in writing the probationary period has been extended and the employee acknowledges by signing the written document.~~
  - c. ~~The employee acknowledgement is filed in the employee's personnel file.~~

~~d. Another performance evaluation is completed before the end of the extended probationary period.~~

53. An employee is deemed to have satisfactorily completed the probationary period when an extension is not requested prior to the end of the probationary period.

~~4. An employee who does not perform satisfactorily during the probationary evaluation period may be discharged per section 1-40-022 Dismissals of Probationary Employees.~~

~~5. Exempt employees do not serve a probationary period; thus, a probationary evaluation is not required.~~

#### ~~C. ANNUAL EVALUATION~~

~~1. After an employee has completed the probationary evaluation or administrative evaluation period, the rating period shall be annually upon the employee's hire or classification date.~~

~~2. Exempt evaluations shall be completed upon the employee's anniversary or classification date.~~

~~3. Upon budgetary approval non-exempt and exempt employees with an overall evaluation score of meets expectations or above will receive a merit increase, except when the employee is at the maximum of the pay range.~~

~~4. Council appointed employee evaluations shall be completed on the anniversary of and prior to the end of the service agreement.~~

~~5. Additional evaluations may be required upon request from the immediate supervisor.~~

#### ~~D. ADMINISTRATIVE EVALUATION~~

~~1. Non-exempt and exempt employees who are promoted, demoted, transferred, or voluntarily reassigned to another position are subject to an administrative evaluation based on the following schedule:~~

~~1. A non-commissioned non-exempt or exempt employee shall be evaluated at three and six months from their date of promotion, demotion, transfer, or voluntary reassignment to another position.~~

~~2. A non-exempt or exempt employee of the Municipal Court shall be evaluated at four, eight and twelve months from their date of promotion, demotion, transfer or voluntary reassignment to another position.~~



## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

- ~~3. A non-exempt or exempt Police Department employee working the Communications Center shall be evaluated at six and twelve months from their date of promotion, demotion, transfer or voluntary reassignment to another position.~~
- ~~4. A commissioned non-exempt or exempt employee shall be evaluated at six and twelve months from their date of promotion, demotion, transfer or voluntary reassignment to another position.~~
- ~~2. An employee who does not perform satisfactorily during the administrative evaluation period may be returned to their previous position, provided a vacancy exists. Should no vacancy exist at the time, the employee shall be recommended for termination. The employee is eligible to request a hearing before the Personnel Board per section 1-10-40.C Personnel Board Request for Hearing.~~
- ~~3. Additional administrative evaluations may be required upon request from the immediate supervisor.~~

### D. ANNUAL EVALUATION

1. CLASSIFIED AND UNCLASSIFIED EMPLOYEES SHALL BE EVALUATED ANNUALLY ON THEIR CLASSIFICATION DATE (EXCLUDES TEMPORARY AND CONTRACT PERSONNEL).
2. COUNCIL APPOINTED EMPLOYEE EVALUATIONS SHALL BE COMPLETED ON THE ANNIVERSARY OF AND PRIOR TO THE END OF THE SERVICE AGREEMENT.

(Ord. No. 2012-14, Amended, 10/02/12); (Ord. No. 2019-10, Amended 07/02/19, ORD. NO. 2022-??, 10/20/22)

1-30-070. REINSTATEMENT – ~~REHIRE EMPLOYMENT~~

### REINSTATEMENT

- A. A. Any tenured classified employee who has been suspended, demoted, or dismissed may be reinstated to their position as a result of an appeal to the Personnel Board and upon the approval of the City Manager. In the event of such reinstatement, the employee may be entitled to their former status of employment and all pay and benefits lost as a result of the ~~disciplinary~~ CORRECTIVE action.
- B. B. Former full-time classified and unclassified employees with less than thirty (30) days' break-in-service may be reinstated TO THE SAME POSITION (AN APPROVED VACANT POSITION MUST BE AVAILABLE) at the

request of the Department Head and upon approval of the City Manager (A RECRUITMENT IS NOT REQUIRED). ~~Other former employees, except those on re-employment lists, will be treated in the same manner as all other applicants and subject to all normal selection processes.~~

REHIRE

A. THE FOLLOWING REHIRE PROVISIONS WILL BE APPLICABLE TO FORMER FULL TIME CLASSIFIED AND UNCLASSIFIED EMPLOYEES WITH AT LEAST ONE CONSECUTIVE YEAR OF PRIOR SERVICE AND A BREAK IN SERVICE OF LESS THAN TWELVE (12) MONTHS WHO ARE REHIRED THROUGH A RECRUITMENT PROCESS

1. THE REHIRED EMPLOYEE WILL RECEIVE A NEW CLASSIFICATION DATE DETERMINED AS FOLLOWS: ORIGINAL DATE OF HIRE PLUS NUMBER OF DAYS GAP IN SERVICE = NEW CLASSIFICATION DATE.
2. THE REHIRED EMPLOYEE'S SALARY CALCULATION WILL BE COMPLETED PURSUANT TO 1-20-020, B, APPROPRIATE SALARY. IF THE EMPLOYEE RETURNS TO THE SAME POSITION, THE SALARY CALCULATION WILL NOT RESULT IN A REDUCTION IN PAY.
3. THE EMPLOYEE WILL BE ASSIGNED TO THEIR PRIOR VACATION ACCRUAL TIER.
4. THE EMPLOYEE WILL HAVE ANY FORFEITED SICK LEAVE (MINUS ANY PAYOUTS) REINSTATED TO THEIR BANK, AND CONSISTENT WITH ALL HIRES RECEIVE AN ADVANCE OF SIX (6) DAYS OF SICK LEAVE AVAILABLE FOR IMMEDIATE USE. SHOULD THE REHIRED EMPLOYEE LEAVE EMPLOYMENT PRIOR TO FULFILLING SIX (6) MONTHS OF EMPLOYMENT, USE OF ANY ADVANCED LEAVE SHALL BE DEDUCTED FROM THEIR COMPENSATION UPON SEPARATION.
5. THE EMPLOYEE WILL BE ELIGIBLE FOR CITY BENEFIT PROGRAMS PURSUANT TO GOVERNING PLAN DOCUMENTS.
6. EMPLOYEES REHIRED TO THEIR FORMER POSITION, PROGRAM, SECTION AND DIVISION WILL NOT SERVE A PROBATIONARY PERIOD. ALL OTHER CLASSIFIED REHIRES WILL BE REQUIRED TO DO SO.

~~ARTICLE 1-40. EMPLOYEE STATUS PERSONNEL ACTIONS~~

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

### ~~1-40-010. — PROMOTION~~

~~A. — A change in an employee's work to more extensive duties, together with higher minimum qualifications and pay range, is a promotion. This includes when an employee is transferring from one pay plan to another and the new classification is in a higher pay range than the employee's current classification.~~

- ~~1. — Promotions, as defined in Section 1-40-010 A, will be a division option in filling a vacancy.~~
- ~~2. — When a vacancy occurs within a division, the Division Director may request Human Resources to establish a promotional list of qualified workers.~~
- ~~3. — Upon promotion to another range, an employee shall receive a rate of pay as outlined in Section 1-20-020 B and H.~~
- ~~4. — Upon promotion, the employee shall be given a new classification date effective at the time of appointment and begin completing an administrative review in the new class. Refer to Section 1-30-061 for more information regarding administrative review.~~

~~(Ord. No. 2010-10, Amended, 06/08/10) (Ord. No. 2020-01 Amended, 04/17/20)~~

### ~~1-40-020. — VOLUNTARY REASSIGNMENT~~

~~A. — An employee may request a voluntary reassignment to a lower range for any reason. A voluntary reassignment shall require the approval of the Department Head under whom the employee will serve, the Human Resources Director, and the City Manager. A voluntary reassignment shall not be granted unless a vacancy exists. An employee taking such a voluntary demotion may be placed in any salary step of the appropriate salary schedule that does not provide any increase in salary and shall be given a new classification date for purposes of merit pay increases.~~

~~B. — An employee taking a voluntary reassignment may be placed in any salary step of the lower pay grade that does not provide any increase in salary and will be given a new classification date for purposes of merit pay increases and performance evaluations and will complete a six (6) month administrative review. Refer to Section 1-30-061 for more information.~~

~~C. — Voluntary reassignment as a result of an impending lay-off shall be in accordance with the provisions of Section 1-40-050 (Reduction in Force).~~

~~D. — Employees requesting a voluntary reassignment will be required to complete an administrative review as outlined in Section 1-30-061.~~

### ~~1-40-030. — TRANSFER~~

## ADDENDUM 31 EMPLOYEE HANDBOOK OF REGULATIONS

- ~~A. — A change of an employee's place of employment from one division to another or from one department to another or from one position to another in the same pay range shall be considered a transfer.~~
- ~~1. — If the transfer includes a change from one department to another, both Department Heads must consent to the transfer. The consent of the employee shall not be required when their pay is not affected by the transfer.~~
  - ~~2. — The employee will maintain his/her current rate of pay and will retain his/her classification date for purposes of merit increases and performance evaluations.~~
  - ~~3. — No employee shall be transferred to a position for which they do not possess the minimum qualifications, unless the City Manager authorizes an on-the-job training appointment.~~
  - ~~4. — An employee who transfers to another position in the same pay range, from one division to another or one department to another shall be required to complete an administrative review. Refer to Section 1-30-061 for more information.~~

### ~~1-40-031. — DEMOTION~~

- ~~A. — When an employee is moved to a lower pay range for disciplinary reasons, this is considered a demotion.~~
- ~~B. — An employee who is demoted shall be placed in any salary step of the appropriate salary schedule that does not provide any increase in salary and shall be given a new classification date for purposes of merit increases and performance evaluations.~~
- ~~C. — Employees who are demoted will be required to complete an administrative review as outlined in Section 1-30-061.~~

## **ORDINANCE NO. 2022-23**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE EMPLOYEE HANDBOOK OF REGULATIONS AND FLAGSTAFF CITY CODE, BY ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT ENTITLED “ADDENDUM 31 TO THE EMPLOYEE HANDBOOK OF REGULATIONS”; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

### **RECITALS:**

WHEREAS, the City Council has authority to approve this Addendum 31 of the Flagstaff Employee Handbook of Regulations pursuant to the Flagstaff City Charter, Article IV.

### **ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. That certain document known as “*Addendum 31 to the Employee Handbook of Regulations*”, one (1) paper copy and (1) electronic copy of which are on file in the office of the City Clerk of Flagstaff, Arizona, has been declared a public record by Resolution No. 2022-43 of the City of Flagstaff, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

#### **SECTION 2. Repeal of Conflicting Ordinances**

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

#### **SECTION 3. Severability**

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the Employee Handbook adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

#### **SECTION 4. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

#### **SECTION 5. Effective Date**

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 20th day of September, 2022.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Wesley Welch, Associate Planner  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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**TITLE:**

**Consideration and Adoption of Ordinance No. 2022-25:** An ordinance of the City Council of the City of Flagstaff amending the Flagstaff City Code, Title 11, General Plans and Subdivision, Division 11-10.20: Additional Procedures for Comprehensive Plan Updates, New Elements, and Major Amendments to the General Plan, providing for repeal of conflicting ordinances, severability, and establishing an effective date.

**STAFF RECOMMENDED ACTION:**

At the September 20, 2022 Council Meeting:

- 1) Read Ordinance No. 2022-25 by title only for the first time
- 2) City Clerk reads Ordinance No. 2022-25 by title only (if approved above)

At the October 4, 2022 Council Meeting:

- 3) Read Ordinance No. 2022-25 by title only for the final time
- 4) City Clerk reads Ordinance No. 2022-25 by title only (if approved above)
- 5) Adopt Ordinance No. 2022-25

**Executive Summary:**

The proposed amendment is to remove a reference to the public participation procedures within Flagstaff City Code Title 10, Zoning Code that conflict with the requirements for public participation procedures within Flagstaff City Code Title 11, General Plans and Subdivision. The amendment also modifies the major plan amendment application process procedures in alignment with House Bill 2482 which requires that plan amendments be presented in a City Council public hearing within 12 months of the submission of the application. This new legislation removes the requirement for all major plan amendments to be presented at a single public hearing during the calendar year.

**Financial Impact:**

There are no anticipated financial impacts affiliated with the proposed City Code Text Amendment.

**Policy Impact:**

There are no anticipated policy impacts affiliated with the proposed City Code Text Amendment.

**Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:**

## **Priority Based Budget Key Community Priorities and Objectives**

High Performing Governance - Serve the public by providing high quality customer service.

## **Carbon Neutrality Plan**

CR-1: Ensure all mitigation actions improve Flagstaff's ability to adapt to the future.

## **Regional Plan**

Goal ED.1. Create a healthy environment for business by ensuring transparent, expeditious, and predictable government processes.

## **Has There Been Previous Council Decision on This:**

There have been no previous Council decisions on this.

## **Options and Alternatives:**

The City Council may adopt, modify, or deny the proposed amendment.

## **Background/History:**

The proposed amendment includes the following:

### **Delete Section 11-10.20.010.E**

~~E. All Comprehensive Plan updates are subject to the public participation procedures established in Section 10-20.30.060, Neighborhood Meeting.~~

### **And modify Section 11-10.20.020.B.1.a as follows:**

B. Supplemental Procedures for Major Plan Amendments. In addition to the common procedures provided in Section 11-10.10.020, a major amendment to the General Plan shall be adopted in the following manner:

1. Application Deadline.
  - a. All applications for major plan amendments to the General Plan shall be **presented at a City Council public hearing within twelve months of the date of submission of a complete application.** ~~heard by the Council at a single public hearing during the calendar year in which they are filed. In order to provide sufficient time for comprehensive review of an application for a major plan amendment, the Director shall determine the application date each year for major plan amendment requests. The following typical submittal dates apply:~~  
~~April 1st — Pre-application meeting deadline;~~  
~~May 1st — Application deadline for completeness review of the application by the Review Authority;~~  
~~July 1st — Application deadline for submittal of the final application;~~  
~~October — Planning Commission public hearings commence;~~  
~~December — Council public hearing.~~
  - b. ~~Incomplete applications or applications submitted after the July 1st deadline established in subsection (B)(1)(a) of this section will not be processed.~~

## **Key Considerations:**



A City Code Text Amendment shall be evaluated based on the following findings:

**A. Finding #1: The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan;**

The proposed amendment supports the objectives and policies of the General Plan by supporting the process and procedures for major plan amendments.

**B. Finding #2: The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City;**

The proposed amendment is to ensure City Code is in alignment with current state law and to correct a conflict between procedures listed in two separate divisions of City Code.

**C. Finding #3: The proposed amendment is internally consistent with other applicable provisions of City Code.**

The proposed amendment corrects an internal conflict between Title 10, Zoning Code and Title 11, General Plans and Subdivision and updates City Code with recent Arizona legislative changes.

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**Attachments:**     Ord. 2022-25  
                              Application

## **ORDINANCE NO. 2022-25**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, TITLE 11, GENERAL PLANS AND SUBDIVISION, DIVISION 11-10.20: ADDITIONAL PROCEDURES FOR COMPREHENSIVE PLAN UPDATES, NEW ELEMENTS, AND MAJOR AMENDMENTS TO THE GENERAL PLAN, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

#### **RECITALS:**

WHEREAS, the City of Flagstaff wishes to amend Flagstaff City Code Title 11, General Plans and Subdivision, Division 11-10.20: Additional Procedures for Comprehensive Plan Updates, New Elements, and Major Amendments to the General Plan; and

WHEREAS, the Arizona Revised Statutes have been amended to modify the application review timeframes for Major Regional Plan Amendments (HB 2482); and

WHEREAS, the Planning and Zoning Commission held a public hearing on September 14, 2022, and provided a recommendation to City Council on the proposed City Code text amendment; and

WHEREAS, the Council has read and considered the staff report prepared by the Planning and Development Services section of the Community Development division and all attachments to those reports, and the Council finds that the proposed City Code text amendment to be in compliance with Arizona Revised Statutes.

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. The Flagstaff City Code, Title 11, General Plans and Subdivision, Division 11-10.20: Additional Procedures for Comprehensive Plan Updates, New Elements, and Major Amendments to the General Plan, is hereby amended as follows:

#### **11-10.20.010 Comprehensive Plan Updates**

A. A Comprehensive Plan update shall be initiated by the City and includes the adoption of a new General Plan or readoption of the City General Plan pursuant to A.R.S. Section 9-461.06.

B. The adoption of a new General Plan or readoption of the General Plan shall follow the common procedures for General Plan amendments (Section 11-10.10.020) and the procedures for a major plan amendment (Section 11-10.20.020), except that it need not be heard at a single public hearing held during the calendar year in which the application was filed.

C. The adoption of a new General Plan or readoption of the General Plan shall be approved by resolution of the Council by an affirmative vote of at least two-thirds (2/3) of the members of the Council, and ratified by the voters pursuant to A.R.S. Section 9-461.06.

D. Pursuant to A.R.S. Section 9-461.06, a comprehensive update of the General Plan must be conducted and ratified by the citizens of Flagstaff at least once every ten (10) years. However, changing conditions may warrant a comprehensive update on a more frequent basis as determined by the Council.

~~E. All Comprehensive Plan updates are subject to the public participation procedures established in Section 10-20.30.060, Neighborhood Meeting.~~

F. Ratification.

1. Each new or readopted General Plan shall be submitted to the voters for ratification at the next regularly scheduled municipal election or at a special election scheduled at least one hundred twenty (120) days after the governing body adopted the General Plan pursuant to A.R.S. Section 16-204. The Council shall include a general description of the General Plan and its elements in the municipal election pamphlet and shall provide copies of the proposed General Plan to the public in at least two (2) locations that are easily accessible to the public, which may include posting on the City's official Internet website.

2. If a majority of the qualified electors voting on the proposition approves the new or readopted General Plan, it shall become effective as provided by law.

3. If a majority of the qualified electors voting on the proposition fails to approve the new or readopted General Plan, the current General Plan remains in effect until a new or readopted General Plan is approved by the voters pursuant to this section. The Council may resubmit the proposed new or readopted General Plan, or revise the new or readopted General Plan as provided by this section for subsequent submission to the voters. (Ord. 2015-13, Amended, 06/02/2015)

#### **11-10.20.020 Major Plan Amendments and New Elements**

A. Major Plan Amendment Criteria. Major amendments to the General Plan are substantial alterations of the City's land use mixture or balance as established in the City's existing General Plan land use element and which involve changes that have an impact on large areas of the General Plan and/or can affect other issues or policies. These amendments alter the substance or intent of major General Plan policies. The criteria for determining whether a proposed change, including an annexation or a specific plan, will be treated as a major plan amendment can be found in the General Plan.

B. Supplemental Procedures for Major Plan Amendments. In addition to the common procedures provided in Section 11-10.10.020, a major amendment to the General Plan shall be adopted in the following manner:

1. Application Deadline.

- a. All applications for major plan amendments to the General Plan shall be **PRESENTED AT A CITY COUNCIL PUBLIC HEARING WITHIN TWELVE MONTHS OF THE DATE OF SUBMISSION OF A COMPLETE APPLICATION.** ~~heard by the Council at a single public~~

~~hearing during the calendar year in which they are filed. In order to provide sufficient time for comprehensive review of an application for a major plan amendment, the Director shall determine the application date each year for major plan amendment requests. The following typical submittal dates apply:~~

~~April 1st — Pre-application meeting deadline;~~

~~May 1st — Application deadline for completeness review of the application by the Review Authority;~~

~~July 1st — Application deadline for submittal of the final application;~~

~~October — Planning Commission public hearings commence;~~

~~December — Council public hearing.~~

~~b. Incomplete applications or applications submitted after the July 1st deadline established in subsection (B)(1)(a) of this section will not be processed.~~

SECTION 3. The amendment is consistent with and conforms to the goals of the Regional Plan (General Plan).

SECTION 4. The amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, and will add to the public good as described in the General Plan.

SECTION 5. The amendment is internally consistent with other applicable provisions of this Zoning Code.

#### SECTION 6. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

#### SECTION 7. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

#### SECTION 8. Clerical Corrections

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

#### SECTION 9. Effective Date

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 4th day of October, 2022.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY



# City of Flagstaff

## Community Development Division

211 W. Aspen Ave  
Flagstaff, AZ 86001  
www.flagstaff.az.gov

P: (928) 213-2618  
F: (928) 213-2609

Date Received 8/8/22	<b>Application for Zoning Code Text Amendment</b>		File Number
Applicant(s)/Property Owner(s) City of Flagstaff – PDS Planning Director	Title	Phone 928-213-2607	Email Michelle.McNulty@flagstaffaz.gov
Mailing Address 211 W Aspen Avenue		City, State, Zip Flagstaff, AZ 86001	
Representative (If applicable) Tiffany Antol	Title Zoning Code Manager	Phone 928-213-2605	Email tantol@flagstaffaz.gov
Mailing Address 211 W Aspen Avenue		City, State, Zip Flagstaff, AZ 86001	

Property Address N/A	City, State, Zip
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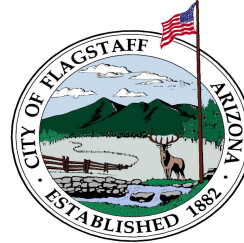
Application Name: <i>Title 11 Major Regional Plan Application Requirements</i>
Zoning Code Text Amendment
Chapter Name and Number: 11-10: General Plans
Division Name and Number: 11-10.20: Additional Procedures for Comprehensive Updates, New Elements, and Major Amendments to the General Plan
Section Name and Number: 11-10.20.010 Comprehensive Plan Updates & 11-10.20.020 Major Plan Amendments and New Elements
Chapter Name and Number:
Division Name and Number:
Section Name and Number:
Chapter Name and Number:
Division Name and Number:
Section Name and Number:

Additional Information:
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Owner's Signature (required) <i>Michelle McNulty</i>	Date: 8/29/22	Representative Signature (If applicable) <i>Tiffany Antol</i>	Date: 8/8/22
<b>For City Use</b>			
Date Filed:	File Number(s):	Fee Receipt Number:	
P & Z Hearing Date:	Publication and Posting Date:	Amount:	
Council Hearing Date:	Publication and Posting Date:	Date:	
Received by:	Comments:		

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Martin Ince, Multi-Modal Planner  
**Co-Submitter:** Robert Wallace, Open Space Specialist  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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**TITLE:**

**Consideration and Adoption of Ordinance No. 2022-26:** An ordinance of the Flagstaff City Council authorizing the acquisition of real property for open space and the Flagstaff Urban Trail System purposes; providing for delegation of authority, severability, repeal of conflicting ordinances, authority for clerical corrections, and establishing an effective date

**STAFF RECOMMENDED ACTION:**

At the September 20, 2022 Council Meeting:

- 1) Read Ordinance No. 2022-26 by title only for the first time
- 2) City Clerk reads Ordinance No. 2022-26 by title only (if approved above)

At the October 4, 2022 Council Meeting:

- 3) Read Ordinance No. 2022-26 by title only for the final time
- 4) City Clerk reads Ordinance No. 2022-26 by title only (if approved above)
- 5) Adopt Ordinance No. 2022-26

**Executive Summary:**

This ordinance will authorize acquisition of easements and parcels using \$2 million in remaining funds from the 2004 Neighborhood Open Space and FUTS Land Acquisition bond. These acquisitions will support expansion of the Flagstaff Urban Trails System (FUTS), preservation of natural areas within the community, and connectivity with regional trails and open space. The ordinance also establishes priorities for acquisition.

**Financial Impact:**

The 2004 bond funds have been allocated and budgeted. The City will use the approximate remainder of \$2M to complete the project.

**Policy Impact:**

- Contributes to the implementation of the Open Space and Greenways Plan
- Supports the FUTS Master Plan implementation
- Supports the Active Transportation Master Plan

**Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:**

### Related Priority Based Budget Key Community Priorities and Objectives:

- High Performance Governance:
  - Encourage public trust through transparency, accessibility & use of the City's public participation policy.
- Safe and Healthy Community:
  - Promote physical health through providing recreation opportunities, parks, open space, and multiple transportation options.
- Inclusive and Engaged Community:
  - Promote environmental justice and the fair distribution of environmental benefits.
- Sustainable, Innovative Infrastructure:
  - Utilize existing long-range plans that identify the community's future infrastructure needs and all associated costs.
- Robust Resilient Economy:
  - Embrace and invest in responsible tourism opportunities to promote economic development.
- Livable Community:
  - Provide amenities and activities that support a healthy lifestyle.
- Environmental Stewardship:
  - Promote, protect, and enhance a healthy, sustainable environment and its natural resources.

### Related Carbon Neutrality Plan Goals and Strategies:

This funding supports CNP implementation, especially Goal One: Achieve carbon neutrality by 2030; and Goal Two: Prepare Flagstaff's communities, systems, and resources to be more resilient to climate change impacts. The most aligned CNP carbon neutrality plan numbers are DD-3, DD-2, and ES-2.

- **Carbon Neutrality Plan Strategy 1** DD-3: Encourage Flagstaff residents and visitors to walk, bike, roll and take the bus.
- **Carbon Neutrality Plan Strategy 2** DD-2: Create inclusive networks for walking and biking that are continuous, attractive, safe, comprehensive, and convenient for people of all ages.
- **Carbon Neutrality Plan Strategy 3** ES-2: Proactively engage community members on an ongoing basis.

### Related Regional Plan Items:

- Goal OS.1. The region has a system of open lands, such as undeveloped natural areas, wildlife corridors and habitat areas, trails, access to public lands, and greenways to support the natural environment that sustains our quality of life, cultural heritage, and ecosystem health.
- Goal ED.7. Continue to promote and enhance Flagstaff's unique sense of place as an economic driver.
- Goal REC.1. Maintain and grow the region's healthy system of convenient and accessible parks, recreation facilities, and trails.
- Goal T.5. Increase the availability and use of pedestrian infrastructure, including FUTS, as a critical element of a safe and livable community.
- Goal T.6. Provide for bicycling as a safe and efficient means of transportation and recreation.
- Policy OS.1.2. While observing private property rights, preserve natural resources and priority open lands, under the general guidance of the Flagstaff Area Open Space and Greenways Plan and the Natural Environment maps.
- Policy OS.1.4. Use open space as opportunities for non-motorized connectivity, to interact with nature, and to enjoy the views and quiet.
- Policy LU.13.1. Prioritize connectivity for walking, biking, and driving within and between surrounding neighborhoods.
- Policy LU.13.9. Use open space and FUTS trails to provide walking and biking links from residential uses to employment, shopping, schools, parks, and neighborhoods.
- Policy LU.18.5. Plan for and support multi-modal activity centers and corridors with an emphasis on pedestrian and transit friendly design.



- Policy T.2.3. Provide safety programs and infrastructure to protect the most vulnerable travelers, including the young, elderly, mobility impaired, pedestrians, and bicyclists.

### **Has There Been Previous Council Decision on This:**

In December of 2009, the City Council approved Ordinance 2009-41, an ordinance of the City of Flagstaff Authorizing the acquisition of neighborhood open space and those urban trail easements necessary for the extension of the Flagstaff Urban Trails System. This action initially authorized the acquisition of property for the extension of the Flagstaff Urban Trail System and Open Space acquisition.

On September 13, 2022, the Council reviewed the updated acquisition plan for FUTS and open space during a Council work session.

### **Options and Alternatives:**

- Option A – Approve and adopt Ordinance No. 2022-26 as submitted authorizing the acquisition of neighborhood open space and those urban trail easements necessary for the extension of the Flagstaff Urban Trails System.
  - Generally, City staff will seek to acquire first-priority property interests by mutual agreement with property owners, but if no agreement is reached, City staff will seek to acquire second- or third-priority property interests. The City Council may authorize condemnation of property interests if no agreement can be reached.
- Option B - Approve and adopt Ordinance No. 2022-26, but amend Exhibit 1 to clarify or revise acquisition priorities due to funding limitations or for other reasons.
  - City Council may require complete acquisition of all first-priority property interests, before acquiring second- or third-priority property interests.
  - City Council may re-prioritize any property interest.
- Option C – Do not read and adopt Ordinance No. 2022-26. This would result in leaving the 2009 Ordinance in place as the direction for property acquisitions for open space and urban trail easements necessary for the extension of the Flagstaff Urban Trails System

### **Background/History:**

The Neighborhood Open Space and FUTS Land Acquisition bond was approved by Flagstaff voters in 2004 as Proposition 302. The bond provides a total of \$7.6 million for acquisition of neighborhood open space and FUTS corridors.

Since the bond was approved, proceeds have been used to acquire easements and parcels for a number of FUTS trails, including portions of the Arizona Trail, Fourth Street Trail, Karen Cooper Trail, Sheep Crossing Trail, and Switzer Canyon Trail, among others. Bond funds have also been used, in combination with other sources, to acquire several significant open space parcels, including the Picture Canyon Preserve and Observatory Mesa Natural Area.

Staff has been working to update the acquisition plan for the remainder of the bond funds, which is slightly more than \$2 million. The updated acquisition plan includes:

- Easements and parcels for FUTS trails that are shown on the FUTS master plan and identified as first-priority segments. The acquisition plan generally covers FUTS trails that are anticipated over the next 20 years.
- Property rights for other trails and facilities that support the FUTS, regional recreational trails, and open space, such as singletrack connecting trails, trailheads, and forest access points. These facilities are included in the draft Active Transportation Master Plan.
- Larger open space tracts identified and prioritized by the Open Spaces Commission.

The last category includes six tracts that were identified as open space opportunities, and subsequently

reviewed and ranked by the Open Spaces Commission. All of these parcels would help implement the Commission's strategy for a comprehensive and cohesive open space system. Of the six parcels, Hoffman Tank was ranked as the top priority for acquisition by the Commission. This area has several open space qualities, including connecting the Bow and Arrow and Rio de Flag greenways with the National Forest, allowing FUTS connectivity, providing a buffer for the Arizona National Scenic Trail, and maintaining an important wildlife corridor.

Staff has worked with the City's real estate manager to develop cost estimates for acquisitions on the list solely for planning purposes. The cost estimates are not based upon appraisals, and therefore are not a determination of fair market value or the amount the City will offer for purchase of the listed property interests.

Council authority is required for acquisition of land, easements, or other property rights. Previously, authority for acquisition with bond proceeds was granted via Ordinance 2009-41: An Ordinance of the Mayor and Council of the City of Flagstaff Authorizing the acquisition of neighborhood open space and those urban trail easements necessary for the extension of the Flagstaff Urban Trails System. The draft ordinance replaces Ordinance No. 2009-41 and authorizes acquisitions per the updated plan.

The Flagstaff Urban Trails System is a city-wide network of non-motorized, shared-use pathways that are used by bicyclists, walkers, hikers, runners, and other users for both recreation and transportation. FUTS trails vary from trails that are located along busy streets to traversing canyons, riparian areas, meadows, and forests – all within the urban area of Flagstaff. The system connects neighborhoods, shopping, places of employment, schools, parks, open space, and the surrounding National Forest, and allows users to combine transportation and recreation.

The Flagstaff Open Space System is a city-wide dispersed grouping of natural areas preserved by the City for the purpose of ensuring the quality of life will continue for generations to come. Qualities of the open space system include undeveloped or minimally developed lands designated to protect natural resources that serve as a buffer from development, add to Flagstaff's character and attraction, protect biodiversity, improve environmental quality, protect historic and cultural resources, provide for non-motorized transportation, enhance education, and provide opportunities for recreation. The open space system's goal is to provide a network of connected natural areas dispersed throughout the city to provide all Flagstaff residents with a 10-minute walking access time.

### **Key Considerations:**

Since voter approval of the 2004 bond fund, City staff have been working to complete the direction provided by Ordinance No. 2009-41 necessary for the extension of the Flagstaff Urban Trails System and Open Space System. Approval of the updated ordinance is sought to update the list of property interests to be acquired and is intended to help complete the project approved by the voters.

### **Expanded Financial Considerations:**

Funding for Open Space and FUTS acquisitions is provided by the Neighborhood Open Space and FUTS Land Acquisition bond. There is approximately \$2 million remaining in this bond fund.

### **Community Benefits and Considerations:**

#### *Community Growth*

- An integrated FUTS and open space system will reduce traffic congestion, noise, pollution, infrastructure deterioration, and changes in community character.
- Reducing transportation emissions is a priority in the CNP.

#### *Community Health*

- People living in walkable neighborhoods get about 35-45 more minutes of moderate-intensity physical activity per week and are substantially less likely to be overweight.
- Obesity rates have risen dramatically. Being physically active is more than a personal decision; community design and the availability of FUTS and Open Space strongly influence how active people are.

#### *Economic Benefit*

- Access to trails and nature is one of the key reasons people visit our community.
- Maintaining our communities' character with FUTS and Open Space dispersed throughout the city will promote Flagstaff as a highly desirable place to live and visit.

#### *Equity*

- Research shows trails and open space have a positive impact on low-income urban communities, by filling gaps in health inequalities.

#### *Resilience*

- Open Space captures precipitation, reduces stormwater management costs, reduces air pollution control costs, act as carbon sinks, and protects habitats that allow for stabilizing biodiversity.
- Trails and Open Space satisfy resilient framework strategies or green infrastructure, an interconnected network support environmental health and provide a wide array of benefits to people—including trail recreation— and wildlife.

#### **Community Involvement:**

Citizens first initiated the concept of open space and an urban trail system and have been involved in various committees throughout the evolution of the trail system and open space acquisition. They provide input in the Open Spaces Commission, Beautification and Public Art Commission, Parks and Recreation Commission, the Bicycle Advisory Committee, and the Pedestrian Advisory Committee.

Flagstaff Urban Trails System and Open Space were approved by voters in 2004 identifying these as desirable benefits to citizens city-wide.

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**Attachments:**     [Ord. 2022-26](#)  
                               [Acquisition summary](#)  
                               [Acquisition parcel list](#)  
                               [Acquisition maps](#)  
                               [Prop 302 language](#)  
                               [Council staff summary - Ordinance 2009-41](#)

## **ORDINANCE NO. 2022-26**

### **AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AUTHORIZING THE ACQUISITION OF REAL PROPERTY FOR OPEN SPACE AND FLAGSTAFF URBAN TRAIL SYSTEM PURPOSES; PROVIDING FOR DELEGATION OF AUTHORITY, SEVERABILITY, REPEAL OF CONFLICTING ORDINANCES, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

#### **RECITALS:**

WHEREAS, pursuant to Article VII, Section 5 of the Flagstaff City Charter the City shall acquire real property by ordinance; and

WHEREAS, pursuant to Article I, Section of the Flagstaff City Charter the City may acquire real property, easements, and other real property interests by purchase, gift, devise, exchange, or condemnation; and

WHEREAS, a majority of the qualified electors voting in the May 18, 2004, General Election and Bond Authorization Special Election, approved Proposition 302, authorizing the issuance of \$7.6 million in general obligation bonds for the purpose of acquiring real property for open space and Flagstaff Urban Trail System ("FUTS") purposes; and

WHEREAS, on December 15, 2009, the City Council approved Ordinance No. 2009-41 establishing priorities for acquisition of property for open space and FUTS purposes; and

WHEREAS, the City Council desires to update its priorities for acquisition of property for open space and FUTS purposes, and has considered the recommendations of the Parks and Recreation, Open Space, Pedestrian Advisory Commission, and Bicycle Advisory Committees, regarding priorities for acquisition of property for open space and FUTS purposes.

#### **ENACTMENTS:**

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

##### **SECTION 1. In General.**

The City of Flagstaff is hereby authorized to acquire real property interests for open space and the FUTS, as described and prioritized in the chart attached hereto as Exhibit 1 ("Properties") and generally located as shown in the map attached hereto as Exhibit 2, by purchase, gift, devise, exchange, or condemnation for a public use.

The City Council shall be consulted prior to the filing of any condemnation proceeding, and in its discretion may adopt a resolution authorizing the filing, referring to this ordinance, and including a legal description and map of the property to be acquired; said resolution shall be immediately effective.

**SECTION 2. Delegation of Authority.**

The Mayor, City Manager, City Attorney, City Engineer, City Clerk, Finance Director, Community Development Director, Real Estate Manager, or their delegates or agents, are hereby authorized and directed to take all steps and execute all documents necessary to acquire the Properties and to carry out the purpose and intent of this ordinance.

The City Council hereby gives its prior approval, and City Manager is hereby delegated authority to approve any purchase contract for a Property in an amount of \$50,000 or more, so long as the purchase price is reasonably consistent with the City's appraisal of just compensation to be paid.

**SECTION 2. Severability.**

That if any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the City Code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 3. Repeal of Conflicting Ordinances**

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. Ordinance No. 2009-41 is repealed as of the effective date of this ordinance.

**SECTION 4. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

**SECTION 5. Effective Date.**

This ordinance shall become effective thirty (30) days following adoption by the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Flagstaff this 4th day of October, 2022.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

Attachments:

Exhibit 1 Chart of Properties including Priorities for Acquisition

Exhibit 2 Map showing Location of Properties

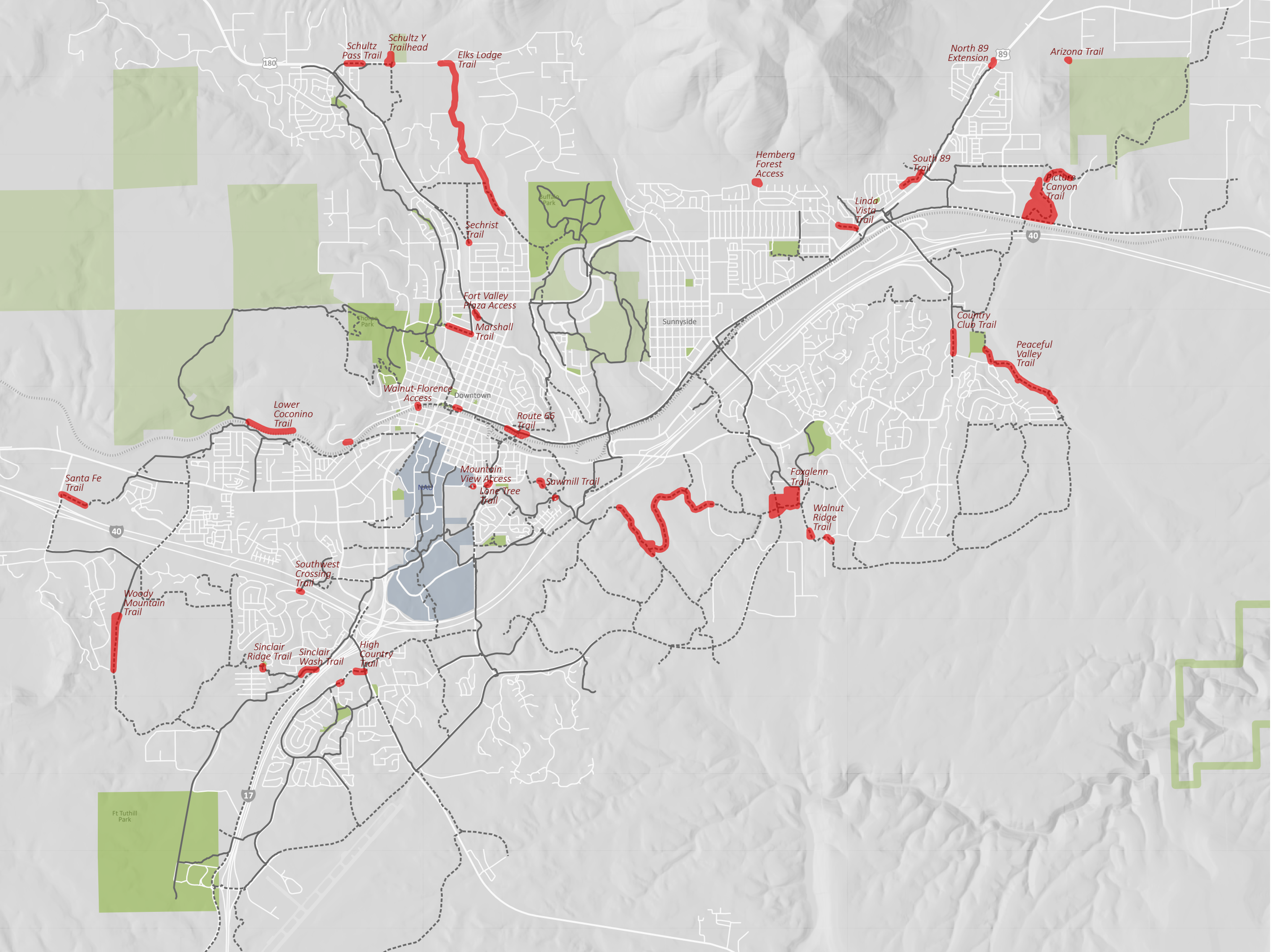
FUTS   first priority				
Project name	Count	Supports	Acres	Est cost
Arizona Trail	1	Singletrack	0.09	3,053
Country Club Trail	1	FUTS	0.52	295
Elks Lodge Trail	23	Singletrack	3.67	204,302
Fort Valley Plaza Access	1	FUTS	0.21	80,565
Foxglenn Trail	7	FUTS	26.14	197,359
Hemberg Forest Access	1	Forest access	0.49	223,860
High Country Trail	2	FUTS	0.54	16
Linda Vista Trail	2	FUTS	0.56	0
Lone Tree Trail	1	FUTS	0.07	50,242
Lower Coconino Trail	3	Singletrack	1.05	2,070
Marshall Trail	2	FUTS	0.55	89,646
Mountain View Access	1	FUTS	0.00	0
North 89 Extension	1	Singletrack	0.11	27,987
Peaceful Valley Trail	5	Singletrack	2.80	12,192
Picture Canyon Trail	3	Singletrack	26.65	255,389
Route 66 Trail	2	FUTS	0.92	136,530
Santa Fe Trail	2	Singletrack	0.81	82,268
Sawmill Trail	2	FUTS	0.21	46,824
Schultz Pass Trail	5	Singletrack	0.48	28,914
Schultz Y Trailhead	1	Tralhead	1.16	64,954
Sechrist Trail	2	FUTS	0.01	1,020
Sinclair Ridge Trail	2	FUTS	0.12	5,145
Sinclair Wash Trail	2	FUTS	0.52	12,900
South 89 Trail	4	FUTS	0.80	180,654
Southwest Crossing Trail	1	FUTS	0.03	11,043
Walnut Ridge Trail	4	Singletrack	0.64	42,655
Walnut-Florence Access	2	FUTS	0.10	9,121
Woody Mountain Trail	1	Singletrack	3.68	138,721
			72.95	1,907,725




Open space areas					
Area	Count	Supports	Acres	Est cost	Priority
OS1	7	Open space	60.56	--	3 Third
OS2	1	Open space	166.67	--	2 Second
OS3	4	Open space	35.45	--	2 Second
OS4	1	Open space	39.50	--	3 Third
OS5	2	Open space	71.08	958,182	1 First
OS6	2	Open space	16.00	--	2 Second
OS7	12	Open space	31.65	--	--
			420.93		

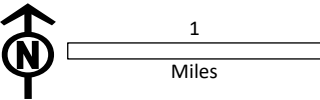


FUTS | open space acquisition plan

FUTS | first priority



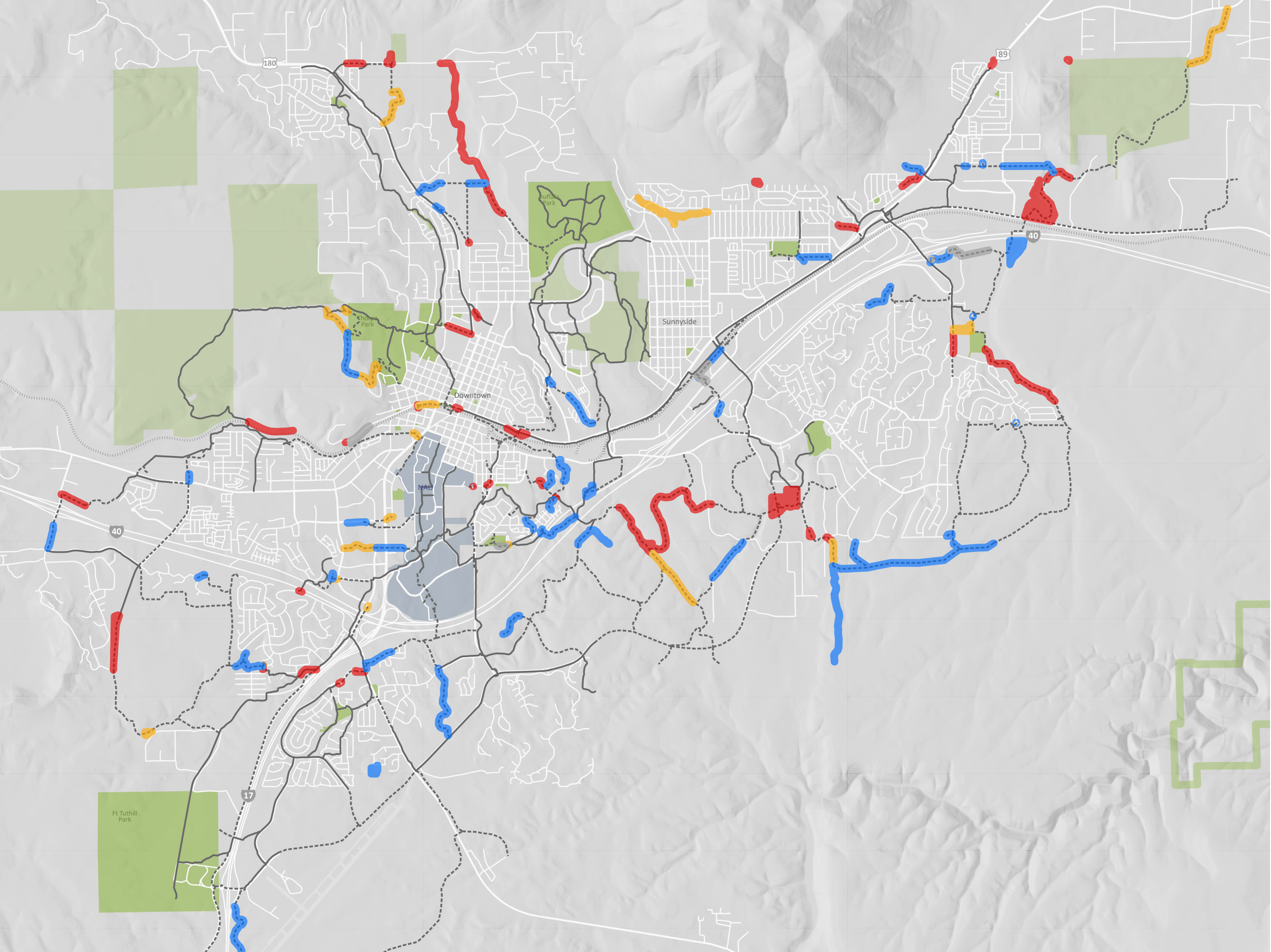
-  FUTS | first priority
-  Existing FUTS
-  Planned FUTS



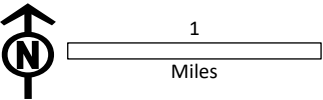


FUTS | open space acquisition plan

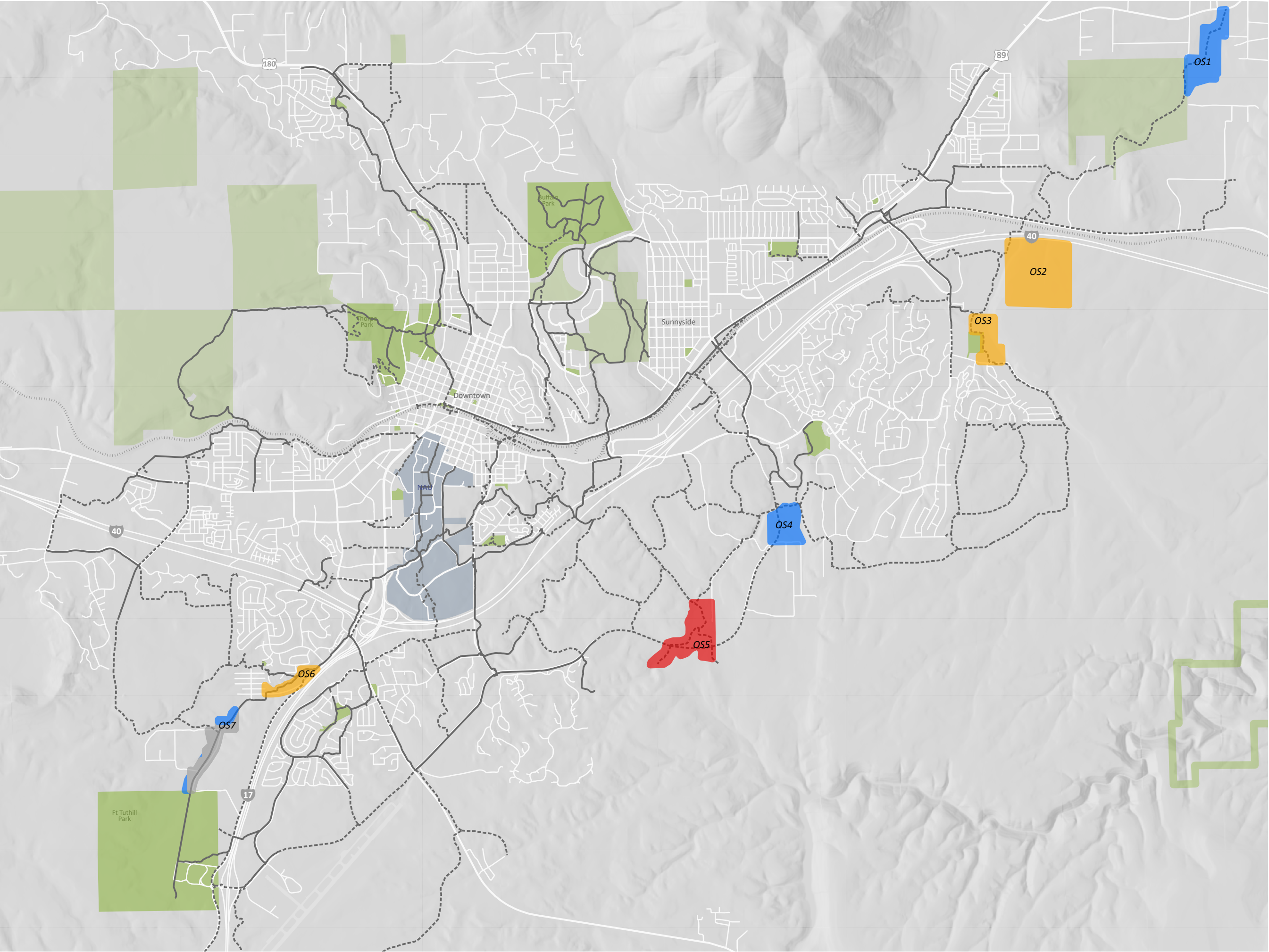
FUTS | by priority



- Priority
- 1 First
  - 2 Second
  - 3 Third
  - 
  - Existing FUTS
  - Planned FUTS



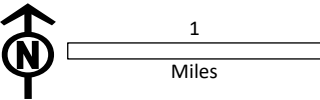




# FUTS | open space acquisition plan

Open space | by priority

- Priority
- 1 First
  - 2 Second
  - 3 Third
  -
- Existing FUTS
- Planned FUTS



FUTS-Open Space Acquisition Plan - Parcel List							
ID	Type	Method	Supports	APN	Acres	OS priority	Project name
101	Corridor	Easement	FUTS	100-01-007A	0.34	1 First	Marshall Trail
102	Corridor	Easement	FUTS	100-01-007B	0.21	1 First	Marshall Trail
103	Corridor	Easement	FUTS	100-14-001A	0.22	2 Second	Lowell Trail
104	Corridor	Easement	FUTS	100-14-001C	1.20	3 Third	Lowell Trail
105	Corridor	Easement	FUTS	100-14-001C	0.26	2 Second	Lowell Trail
106	Corridor	Easement	FUTS	100-14-001C	0.94	2 Second	Lowell Trail
107	Corridor	Permit	FUTS	100-43-001	0.30	2 Second	Colton Trail
108	Corridor	Permit	FUTS	100-43-001	0.07	1 First	Walnut-Florence Access
109	Corridor	Permit	FUTS	100-43-002A	0.27	2 Second	Colton Trail
110	Corridor	Permit	FUTS	100-43-002B	0.03	1 First	Walnut-Florence Access
111	Corridor	Easement	FUTS	100-44-006B	0.07	1 First	Route 66 Trail
112	Parcel	Purchase	FUTS	101-01-003D	0.21	1 First	Fort Valley Plaza Access
113	Corridor	Easement	FUTS	101-28-004B	0.18	3 Third	Quarry Trail
114	Corridor	Easement	FUTS	101-42-070	1.17	3 Third	Quarry Trail
115	Corridor	Easement	FUTS	102-02-056A	0.14	3 Third	Sechrist Trail
116	Corridor	Easement	FUTS	102-02-057C	0.80	3 Third	Beale Trail
117	Corridor	Easement	FUTS	102-07-002	0.00	1 First	Sechrist Trail
118	Corridor	Development	Singletrack	103-01-006A	1.82	--	Lower Coconino Trail
119	Corridor	Easement	FUTS	103-05-003	0.00	1 First	Mountain View Access
120	Corridor	Easement	FUTS	103-06-006A	0.09	2 Second	Santa Fe Trail
121	Corridor	Easement	FUTS	103-06-018A	0.02	2 Second	Santa Fe Trail
122	Corridor	Easement	FUTS	103-06-019	0.09	2 Second	Santa Fe Trail
123	Corridor	Easement	FUTS	103-21-024	0.17	3 Third	South Milton Trail
124	Corridor	Easement	FUTS	103-21-026	0.06	2 Second	South Milton Trail
125	Corridor	Easement	FUTS	103-22-004N	0.07	3 Third	South Milton Trail
126	Corridor	Easement	FUTS	103-22-004S	0.02	3 Third	South Milton Trail
127	Corridor	Easement	FUTS	103-22-004V	0.05	3 Third	South Milton Trail
128	Corridor	Easement	FUTS	103-22-005A	0.23	2 Second	Beulah Trail
129	Corridor	Easement	FUTS	103-23-001	0.44	3 Third	High Country Trail
130	Corridor	Easement	FUTS	103-23-028	0.06	3 Third	High Country Trail
131	Corridor	Easement	FUTS	103-23-029	0.10	3 Third	High Country Trail
132	Corridor	Easement	FUTS	103-24-002G	0.07	3 Third	South Milton Trail
133	Corridor	Easement	FUTS	103-24-002L	0.27	3 Third	South Milton Trail
134	Corridor	Easement	FUTS	103-24-010G	0.04	2 Second	South Beulah Trail
135	Corridor	Easement	FUTS	103-30-024	0.02	3 Third	High Country Trail
136	Corridor	Easement	FUTS	103-32-001	0.09	3 Third	South Milton Trail
137	Corridor	Easement	FUTS	103-32-008A	0.14	2 Second	South Milton Trail
138	Corridor	Easement	FUTS	104-02-073	0.07	1 First	Lone Tree Trail
139	Parcel	Purchase	FUTS	104-04-013B	0.85	1 First	Route 66 Trail
140	Parcel	Purchase	FUTS	104-12-001D	1.77	3 Third	Arizona Trail
141	Corridor	Easement	FUTS	104-12-004	0.61	3 Third	Bow & Arrow Trail
142	Corridor	Easement	FUTS	104-13-005H	0.64	3 Third	Southside Rio Trail
143	Corridor	Easement	FUTS	104-13-005P	1.22	3 Third	Southside Rio Trail
144	Corridor	Easement	FUTS	104-14-002C	0.86	3 Third	CCC Access
145	Corridor	Development	FUTS	104-14-003J	0.37	--	Arroyo Trail
146	Corridor	Easement	FUTS	104-16-006A	0.08	3 Third	River Run Access
147	Corridor	Easement	FUTS	104-16-007A	0.04	3 Third	River Run Access

FUTS-Open Space Acquisition Plan - Parcel List							
ID	Type	Method	Supports	APN	Acres	OS priority	Project name
148	Corridor	Easement	FUTS	104-16-007B	0.13	1 First	Sawmill Trail
149	Corridor	Easement	FUTS	104-16-007B	0.32	3 Third	River Run Access
150	Corridor	Easement	FUTS	104-16-008A	0.08	1 First	Sawmill Trail
151	Corridor	Easement	FUTS	104-17-177	0.20	3 Third	Rio Homes Access
152	Corridor	Easement	FUTS	104-17-177	0.06	3 Third	Rio Homes Access
153	Corridor	Easement	FUTS	104-17-177	0.34	3 Third	Pine Knoll Trail
154	Corridor	Purchase	FUTS	104-17-177	0.02	1 First	Sinclair Wash Trail
155	Corridor	Easement	FUTS	104-17-177	0.14	3 Third	Arroyo Trail
156	Corridor	Easement	FUTS	104-17-178	0.04	3 Third	Pine Knoll Trail
157	Corridor	Easement	FUTS	104-17-180	0.12	2 Second	Arroyo Trail
158	Parcel	Purchase	Forest access	105-12-001S	1.68	3 Third	Future trail
159	Parcel	Purchase	Forest access	105-17-034B	0.06	3 Third	Future trail
160	Corridor	Easement	FUTS	106-07-001C	0.30	3 Third	Rio South Trail
161	Corridor	Easement	FUTS	106-07-001R	0.08	3 Third	Rio South Trail
162	Corridor	Easement	FUTS	106-07-001S	0.20	3 Third	Rio South Trail
163	Corridor	Easement	FUTS	106-07-001V	0.11	3 Third	Rio South Trail
164	Corridor	Easement	FUTS	106-07-003C	0.18	3 Third	Rio South Trail
165	Corridor	Easement	FUTS	106-07-003D	0.22	3 Third	Rio South Trail
166	Corridor	Easement	FUTS	106-07-008	0.03	3 Third	Rio South Trail
167	Corridor	Easement	FUTS	106-07-009	0.27	3 Third	Rio South Trail
168	Corridor	Easement	FUTS	106-07-012A	0.04	3 Third	Rio South Trail
169	Parcel	Purchase	FUTS	106-08-003F	17.90	1 First	Foxglenn Trail
170	Tract	Purchase	Open space	106-08-003F	39.50	3 Third	--
171	Corridor	Easement	Singletrack	106-08-018	0.06	1 First	Walnut Ridge Trail
172	Corridor	Easement	Singletrack	106-08-019	0.39	1 First	Walnut Ridge Trail
173	Corridor	Easement	Singletrack	106-08-021	0.05	1 First	Walnut Ridge Trail
174	Corridor	Easement	Singletrack	106-08-022	0.14	1 First	Walnut Ridge Trail
175	Corridor	License	FUTS	106-09-001	1.34	1 First	Foxglenn Trail
176	Corridor	Easement	FUTS	106-09-002	0.66	3 Third	Arizona Trail
177	Corridor	License	FUTS	106-09-002	1.40	1 First	Foxglenn Trail
178	Corridor	License	FUTS	106-09-002	0.95	1 First	Foxglenn Trail
179	Corridor	License	FUTS	106-09-002	1.33	1 First	Foxglenn Trail
180	Corridor	License	Singletrack	106-10-001B	0.57	2 Second	Hoffman Tank Trail
181	Corridor	License	Singletrack	106-10-001D	0.56	2 Second	Hoffman Tank Trail
182	Corridor	License	FUTS	106-10-002	0.53	1 First	Foxglenn Trail
183	Corridor	License	Singletrack	106-10-002	0.82	2 Second	Hoffman Tank Trail
184	Tract	Purchase	Open space	106-10-003	28.97	1 First	Hoffman Tank Trail
185	Corridor	Development	FUTS	107-12-008S	0.60	--	Switzer Wash Trail
186	Corridor	Development	FUTS	107-12-008S	0.37	--	Aquaplex Trail
187	Corridor	Development	FUTS	107-12-009E	0.00	--	Switzer Wash Trail
188	Corridor	Easement	FUTS	107-12-009E	0.09	3 Third	Switzer Wash Trail
189	Corridor	Development	FUTS	107-12-012B	0.00	--	Switzer Wash Trail
190	Corridor	Easement	FUTS	107-13-011	0.25	3 Third	Aquaplex Trail
191	Corridor	Easement	Singletrack	107-18-140C	1.43	1 First	Peaceful Valley Trail
192	Corridor	Easement	FUTS	107-36-033	0.25	3 Third	Oakmont Trail
193	Corridor	Easement	FUTS	107-44-134	0.14	3 Third	Switzer Wash Trail
194	Corridor	Easement	FUTS	108-06-003C	0.14	3 Third	Thomas Trail

FUTS-Open Space Acquisition Plan - Parcel List							
ID	Type	Method	Supports	APN	Acres	OS priority	Project name
195	Corridor	Easement	FUTS	108-06-005G	0.62	3 Third	Thomas Trail
196	Corridor	Easement	FUTS	108-06-005G	0.08	3 Third	Park Santa Fe Access
197	Parcel	Purchase	Singletrack	108-22-028	0.49	1 First	Hemberg Forest Access
198	Corridor	Easement	Singletrack	109-04-060	0.20	2 Second	Paradise Trail
199	Parcel	Purchase	Singletrack	109-05-079F	0.72	2 Second	Paradise Trail
200	Corridor	Easement	Singletrack	109-07-006	0.76	2 Second	Paradise Trail
201	Corridor	Easement	Singletrack	109-07-007Y	0.01	2 Second	Monte Vista North Access
202	Parcel	Purchase	Singletrack	109-14-010B	1.11	2 Second	Paradise Trail
203	Corridor	Easement	Singletrack	110-02-001L	0.08	1 First	Elks Lodge Trail
204	Corridor	Easement	Singletrack	110-02-001S	0.02	1 First	Elks Lodge Trail
205	Corridor	Easement	Singletrack	110-02-001V	0.12	1 First	Elks Lodge Trail
206	Corridor	Easement	Singletrack	110-02-001W	0.11	1 First	Elks Lodge Trail
207	Corridor	Easement	FUTS	110-02-003A	0.01	1 First	Sechrist Trail
208	Corridor	Easement	Singletrack	110-02-008	0.25	1 First	Elks Lodge Trail
209	Corridor	Easement	Singletrack	110-02-009	0.13	1 First	Elks Lodge Trail
210	Corridor	Easement	FUTS	110-02-011	0.21	3 Third	Beale Trail
211	Corridor	Easement	FUTS	110-02-012	0.72	3 Third	Beale Trail
212	Corridor	Easement	FUTS	110-02-012	0.30	3 Third	Beale Trail
213	Corridor	Easement	Singletrack	110-03-004	0.03	1 First	Elks Lodge Trail
214	Corridor	Easement	Singletrack	110-12-002A	0.04	1 First	Elks Lodge Trail
215	Corridor	Easement	Singletrack	110-12-002E	0.22	1 First	Elks Lodge Trail
216	Corridor	Easement	Singletrack	110-12-002H	0.15	1 First	Elks Lodge Trail
217	Corridor	Easement	Singletrack	110-12-002K	0.24	1 First	Elks Lodge Trail
218	Corridor	Easement	Singletrack	110-12-017A	0.17	1 First	Elks Lodge Trail
219	Corridor	Easement	Singletrack	110-12-017F	0.11	1 First	Elks Lodge Trail
220	Corridor	Easement	Singletrack	110-12-017G	0.04	1 First	Elks Lodge Trail
221	Corridor	Easement	Singletrack	110-12-017G	0.07	1 First	Elks Lodge Trail
222	Corridor	Easement	Singletrack	110-12-017H	0.00	1 First	Elks Lodge Trail
223	Corridor	Easement	Singletrack	110-12-017J	0.11	1 First	Elks Lodge Trail
224	Corridor	Easement	Singletrack	110-12-018G	0.12	1 First	Elks Lodge Trail
225	Corridor	Easement	Singletrack	110-12-018H	0.13	1 First	Elks Lodge Trail
226	Corridor	Easement	Singletrack	110-12-018J	0.17	1 First	Elks Lodge Trail
227	Corridor	Easement	Singletrack	111-01-003E	0.02	1 First	Schultz Pass Trail
228	Corridor	Easement	Singletrack	111-01-003E	0.24	2 Second	Reservoir Trail
229	Corridor	Easement	Singletrack	111-01-005D	0.57	2 Second	Reservoir Trail
230	Corridor	Easement	Singletrack	111-01-005D	0.27	2 Second	Reservoir Trail
231	Corridor	Easement	Singletrack	111-01-021C	0.41	2 Second	Reservoir Trail
232	Corridor	Purchase	Singletrack	111-01-023	0.07	1 First	Elks Lodge Trail
233	Corridor	Easement	Singletrack	111-01-032	0.24	1 First	Elks Lodge Trail
234	Corridor	Purchase	Singletrack	111-01-034	1.05	1 First	Elks Lodge Trail
235	Corridor	Easement	FUTS	111-03-001B	0.16	2 Second	Mars Hill Trail
236	Corridor	Easement	FUTS	111-03-001B	1.05	2 Second	Mars Hill Trail
237	Corridor	Easement	FUTS	111-03-001B	0.31	3 Third	Lowell Trail
238	Corridor	Easement	Singletrack	111-03-001B	0.31	1 First	Lower Coconino Trail
239	Corridor	Development	Singletrack	112-04-001D	0.06	--	Lower Coconino Trail
240	Corridor	Easement	Singletrack	112-04-029	0.10	1 First	Lower Coconino Trail
241	Tract	Purchase	Open space	112-05-001S	6.02	2 Second	--



FUTS-Open Space Acquisition Plan - Parcel List							
ID	Type	Method	Supports	APN	Acres	OS priority	Project name
242	Corridor	Easement	FUTS	112-05-001S	0.51	1 First	Sinclair Wash Trail
243	Corridor	Easement	Singletrack	112-08-058	3.68	1 First	Woody Mountain Trail
244	Corridor	Easement	FUTS	112-09-001M	1.04	3 Third	Sinclair Ridge Trail
245	Corridor	Easement	FUTS	112-09-001M	0.29	3 Third	DeMiguel Access
246	Corridor	Easement	FUTS	112-09-001M	0.11	1 First	Sinclair Ridge Trail
247	Corridor	Easement	FUTS	112-09-004	0.01	1 First	Sinclair Ridge Trail
248	Tract	Development	Open space	112-10-001V	0.43	--	Switzer Wash Trail
249	Tract	Development	Open space	112-10-005T	2.55	--	Switzer Wash Trail
250	Tract	Development	Open space	112-10-006A	1.83	--	Switzer Wash Trail
251	Tract	Development	Open space	112-10-006C	3.02	--	Switzer Wash Trail
252	Tract	Development	Open space	112-10-012B	0.97	--	Switzer Wash Trail
253	Tract	Purchase	Open space	112-10-012C	0.70	3 Third	Switzer Wash Trail
254	Tract	Purchase	Open space	112-10-012C	1.13	3 Third	Switzer Wash Trail
255	Tract	Purchase	Open space	112-10-015	0.50	3 Third	Switzer Wash Trail
256	Parcel	Purchase	FUTS	112-10-022	0.76	2 Second	Sinclair Canyon Trail
257	Tract	Purchase	Open space	112-10-027D	2.28	3 Third	Switzer Wash Trail
258	Tract	Development	Open space	112-10-031	7.14	--	Switzer Wash Trail
259	Tract	Development	Open space	112-10-032	4.41	--	Switzer Wash Trail
260	Tract	Development	Open space	112-10-033	6.69	--	Switzer Wash Trail
261	Corridor	Easement	FUTS	112-16-068	0.03	1 First	Southwest Crossing Trail
262	Corridor	Easement	FUTS	112-24-015	0.23	3 Third	University Trail
263	Corridor	Easement	FUTS	112-24-015	0.34	2 Second	South Milton Trail
264	Corridor	Easement	FUTS	112-24-016	0.14	3 Third	University Trail
265	Corridor	Easement	FUTS	112-24-016	0.13	2 Second	South Milton Trail
266	Corridor	Easement	FUTS	112-28-005A	0.08	2 Second	South Milton Trail
267	Corridor	Easement	FUTS	112-28-007	0.22	2 Second	South Milton Trail
268	Corridor	Easement	FUTS	112-29-001D	0.09	3 Third	Mountain Trail Access
269	Corridor	Easement	FUTS	112-29-001E	0.37	3 Third	Mountain Trail Access
270	Corridor	Easement	FUTS	112-29-021D	0.02	2 Second	McConnell Trail
271	Corridor	Easement	FUTS	112-29-021E	0.11	2 Second	McConnell Trail
272	Corridor	Easement	FUTS	112-32-031B	0.32	3 Third	Equestrian Estates Trail
273	Corridor	Easement	FUTS	112-34-001B	0.65	3 Third	Santa Fe Trail
274	Corridor	Easement	FUTS	112-43-050A	0.06	3 Third	Mountain Trail Access
275	Tract	Purchase	Open space	112-47-033	9.99	2 Second	--
276	Corridor	Easement	FUTS	112-48-064A	0.43	1 First	High Country Trail
277	Corridor	Easement	FUTS	112-48-064A	0.11	1 First	High Country Trail
278	Corridor	Easement	Singletrack	112-49-124	0.64	1 First	Lower Coconino Trail
279	Tract	Easement	Singletrack	113-05-001	0.56	2 Second	Picture Canyon Trail
280	Tract	Purchase	Open space	113-05-001	10.01	3 Third	--
281	Tract	Purchase	Open space	113-05-015	10.44	3 Third	--
282	Tract	Purchase	Open space	113-05-016A	3.98	3 Third	--
283	Tract	Purchase	Open space	113-05-016B	5.17	3 Third	--
284	Tract	Purchase	Open space	113-05-017A	1.84	3 Third	--
285	Corridor	Easement	Forest access	113-10-001D	0.09	1 First	Arizona Trail
286	Corridor	Easement	Singletrack	113-10-003	0.88	1 First	Picture Canyon Trail
287	Corridor	Easement	FUTS	113-10-003	0.57	3 Third	Cliffs Trail
288	Corridor	Easement	FUTS	113-13-006	1.11	3 Third	Cliffs Trail

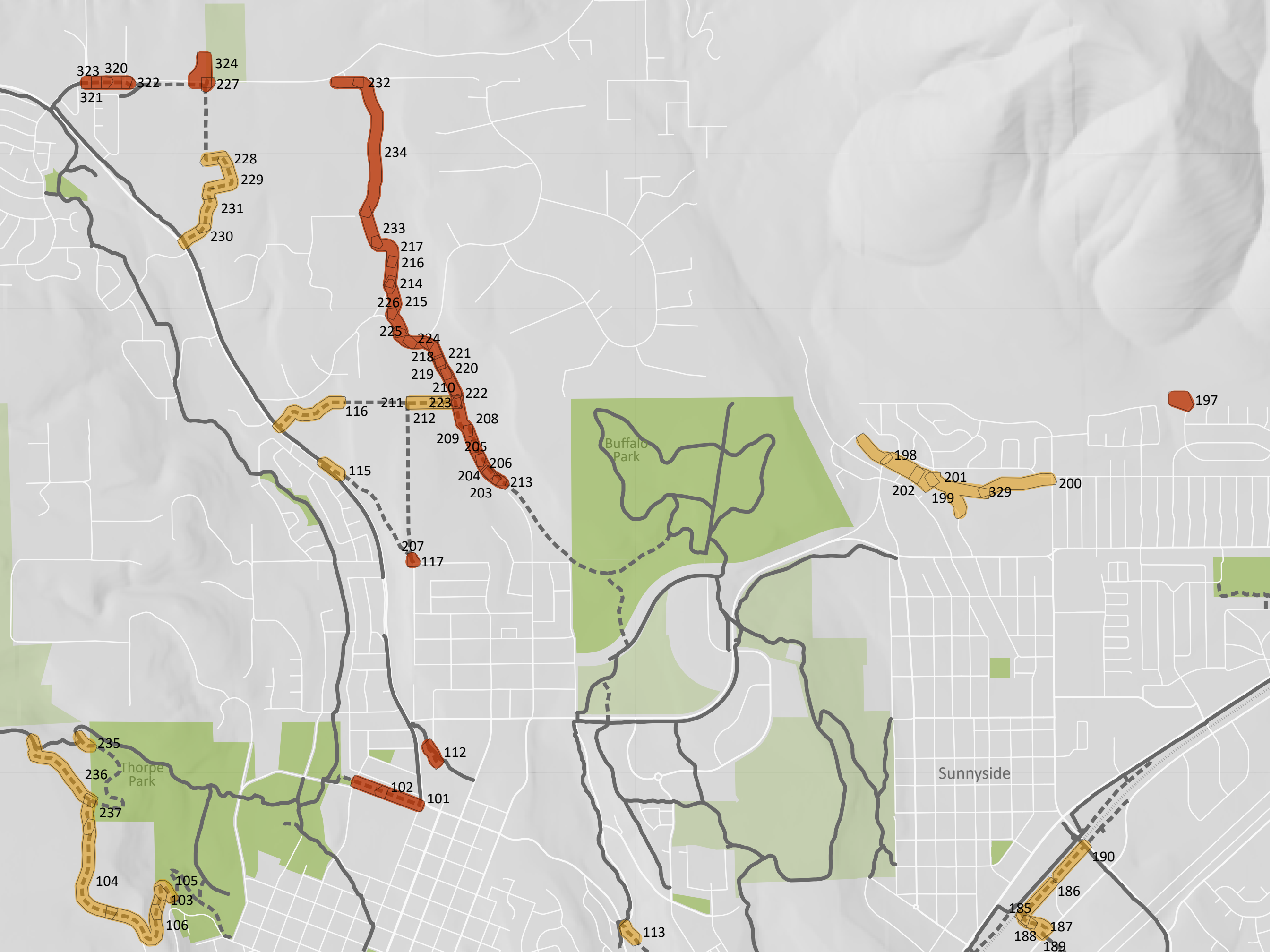
FUTS-Open Space Acquisition Plan - Parcel List							
ID	Type	Method	Supports	APN	Acres	OS priority	Project name
289	Corridor	Easement	FUTS	113-15-003Y	0.05	3 Third	Cliffs Trail
290	Corridor	Easement	Singletrack	113-17-008B	0.11	1 First	North 89 Extension
291	Corridor	Easement	FUTS	113-22-001S	0.21	1 First	Linda Vista Trail
292	Corridor	Easement	FUTS	113-22-001T	0.35	1 First	Linda Vista Trail
293	Corridor	Easement	FUTS	113-25-103	0.11	3 Third	Oakmont Trail
294	Corridor	Easement	FUTS	113-25-108F	0.53	3 Third	Oakmont Trail
295	Corridor	Easement	FUTS	113-25-108F	0.12	3 Third	Oakmont Trail
296	Corridor	Easement	FUTS	113-27-001P	0.19	1 First	South 89 Trail
297	Corridor	Easement	FUTS	113-27-001T	0.10	1 First	South 89 Trail
298	Corridor	Development	FUTS	113-29-005A	0.02	--	Cortland Trail
299	Corridor	Development	FUTS	113-37-001E	0.93	--	Cortland Trail
300	Corridor	Development	FUTS	113-37-001E	0.32	--	Cortland Trail
301	Parcel	Purchase	Singletrack	113-37-007A	3.51	1 First	Picture Canyon Trail
302	Corridor	Easement	FUTS	113-41-002	0.38	1 First	South 89 Trail
303	Corridor	Easement	FUTS	114-18-103A	0.50	3 Third	Abbey Access
304	Corridor	Easement	Singletrack	116-04-018	0.60	1 First	Santa Fe Trail
305	Corridor	Easement	Singletrack	116-04-019	0.21	1 First	Santa Fe Trail
306	Corridor	Easement	FUTS	116-61-007A	0.76	3 Third	Mountaineer Trail
307	Corridor	Easement	FUTS	116-61-013	0.57	3 Third	Mountaineer Trail
308	Parcel	Purchase	Open space	117-02-004H	2.74	2 Second	--
309	Tract	Purchase	Open space	117-02-005	7.42	2 Second	--
310	Tract	Purchase	Open space	117-02-007	7.39	2 Second	--
311	Tract	Purchase	Open space	117-02-008E	16.86	2 Second	--
312	Corridor	Easement	Singletrack	117-02-008E	0.08	1 First	Peaceful Valley Trail
313	Corridor	Easement	FUTS	117-02-008F	0.52	1 First	Country Club Trail
314	Tract	Purchase	Open space	117-02-011A	3.78	2 Second	--
315	Corridor	Easement	Singletrack	117-02-011A	0.35	1 First	Peaceful Valley Trail
316	Corridor	Easement	Singletrack	117-03-003	0.15	1 First	Peaceful Valley Trail
317	Corridor	Easement	FUTS	117-09-001B	0.26	3 Third	Oakmont Trail
318	Corridor	Easement	FUTS	117-29-047A	0.01	3 Third	Keystone Access
319	Corridor	Easement	FUTS	117-46-043A	0.01	3 Third	Peaceful Valley Trail
320	Corridor	Easement	Singletrack	300-47-001M	0.11	1 First	Schultz Pass Trail
321	Corridor	Easement	Singletrack	300-47-001P	0.11	1 First	Schultz Pass Trail
322	Corridor	Easement	Singletrack	300-47-002G	0.03	1 First	Schultz Pass Trail
323	Corridor	Easement	Singletrack	300-47-002W	0.21	1 First	Schultz Pass Trail
324	Parcel	Purchase	Trailhead	300-47-005C	1.16	1 First	Schultz Y Trailhead
325	Tract	Easement	Singletrack	301-17-038E	0.68	2 Second	Picture Canyon Trail
326	Tract	Purchase	Open space	301-17-038E	7.80	3 Third	--
327	Tract	Easement	Singletrack	301-17-038F	1.08	2 Second	Picture Canyon Trail
328	Tract	Purchase	Open space	301-17-038F	21.31	3 Third	--
329	Corridor	Easement	Singletrack	900-99-999	0.94	2 Second	Paradise Trail
330	Corridor	Permit	Singletrack	900-99-999	0.78	1 First	Peaceful Valley Trail
331	Corridor	Permit	FUTS	900-99-999	2.40	3 Third	Zuni Trail
332	Corridor	Permit	Singletrack	900-99-999	3.03	3 Third	Walnut Ridge Trail
333	Corridor	Permit	FUTS	900-99-999	1.35	3 Third	Peaceful Valley Trail
334	Parcel	Purchase	FUTS	900-99-999	2.70	1 First	Foxglenn Trail
335	Corridor	Easement	FUTS	900-99-999	0.06	3 Third	Woody Mountain Trail

FUTS-Open Space Acquisition Plan - Parcel List							
ID	Type	Method	Supports	APN	Acres	OS priority	Project name
336	Parcel	Purchase	Singletrack	900-99-999	22.26	1 First	Picture Canyon Trail
337	Tract	Purchase	Open space	900-99-999	166.67	2 Second	--
338	Tract	Purchase	Open space	900-99-999	44.34	1 First	Hoffman Tank Trail
339	Corridor	Easement	Singletrack	900-99-999	0.76	1 First	Walnut Ridge Trail
340	Corridor	Permit	FUTS	900-99-999	0.57	3 Third	El Paso Trail
341	Corridor	Permit	FUTS	900-99-999	0.14	1 First	South 89 Trail
342	Corridor	Permit	FUTS	900-99-999	3.51	3 Third	Mountaineer Trail
343	Corridor	Permit	FUTS	900-99-999	0.74	3 Third	Mountaineer Trail
344	Corridor	Easement	FUTS	900-99-999	3.70	3 Third	Peaceful Valley Trail
345	Corridor	Easement	FUTS	900-99-999	0.97	3 Third	Skyview Access
346	Corridor	Permit	FUTS	900-99-999	0.05	3 Third	Zuni Trail
347	Corridor	Permit	FUTS	900-99-999	0.26	3 Third	Section 20 Trail
348	Parcel	Purchase	FUTS	900-99-999	8.72	3 Third	Peaceful Valley Trail
349	Corridor	Easement	FUTS	999-99-999	0.22	3 Third	Woody Mountain Trail
350	Corridor	Easement	FUTS	999-99-999	0.08	3 Third	Miranda Access
351	Corridor	Permit	FUTS	ROW	1.10	3 Third	Arroyo Trail
352	Corridor	Permit	FUTS	ROW	0.12	3 Third	Arroyo Trail
353	Corridor	Permit	FUTS	ROW	0.11	3 Third	Cortland Trail
354	Corridor	Permit	FUTS	ROW	0.74	3 Third	Cortland Trail
355	Corridor	Easement	FUTS	UNK	0.04	3 Third	High Country Trail
356	Corridor	Easement	FUTS	UNK	0.03	3 Third	High Country Trail

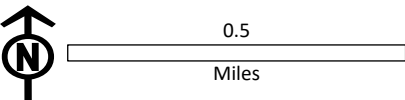


FUTS | open space acquisition plan

Map 1 Northwest

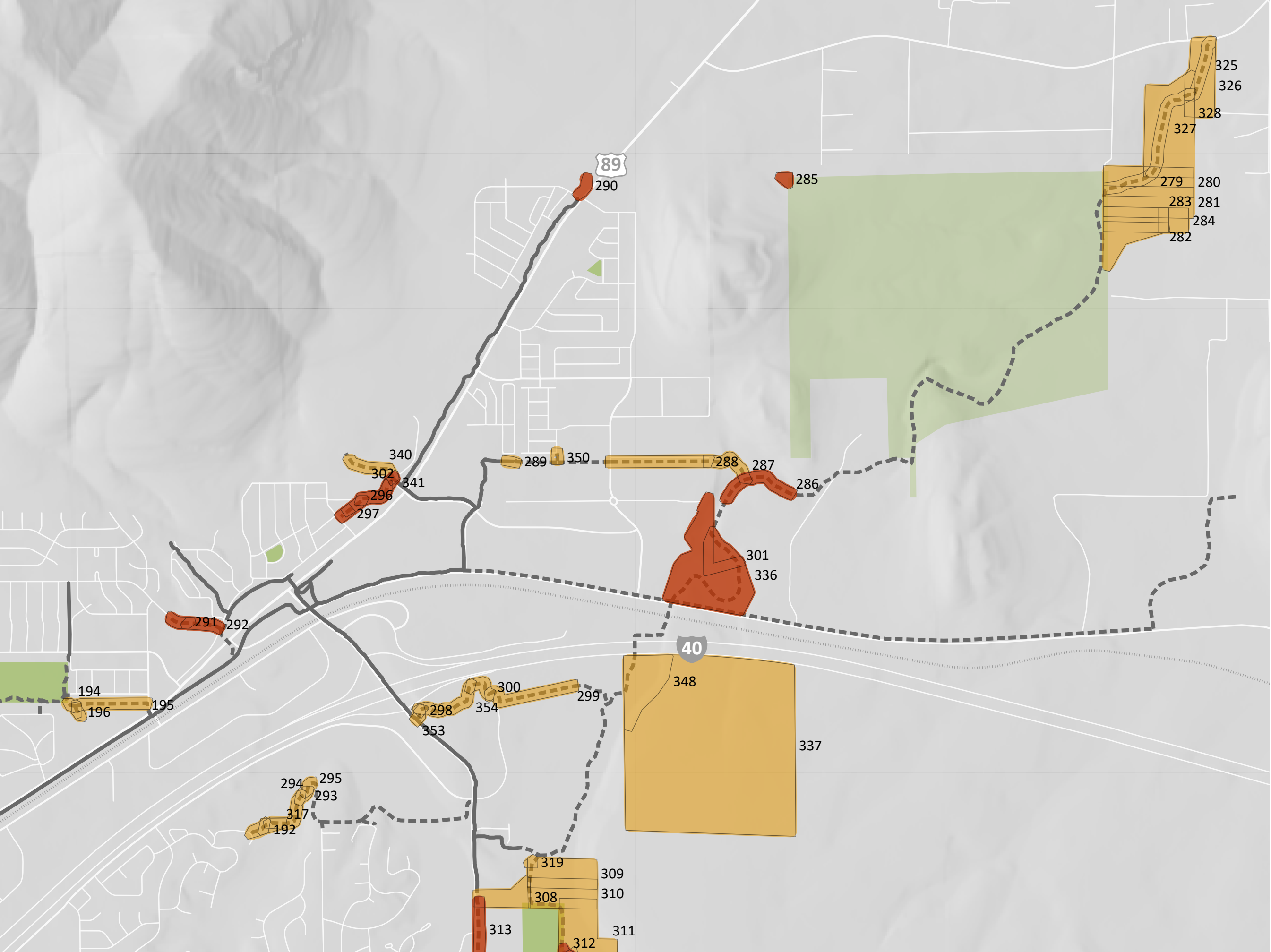


- FUTS/OS | first priority
- FUTS/OS | acquisition
- Existing FUTS
- Planned FUTS

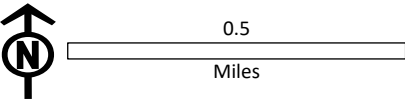


FUTS | open space acquisition plan

Map 2 Northeast



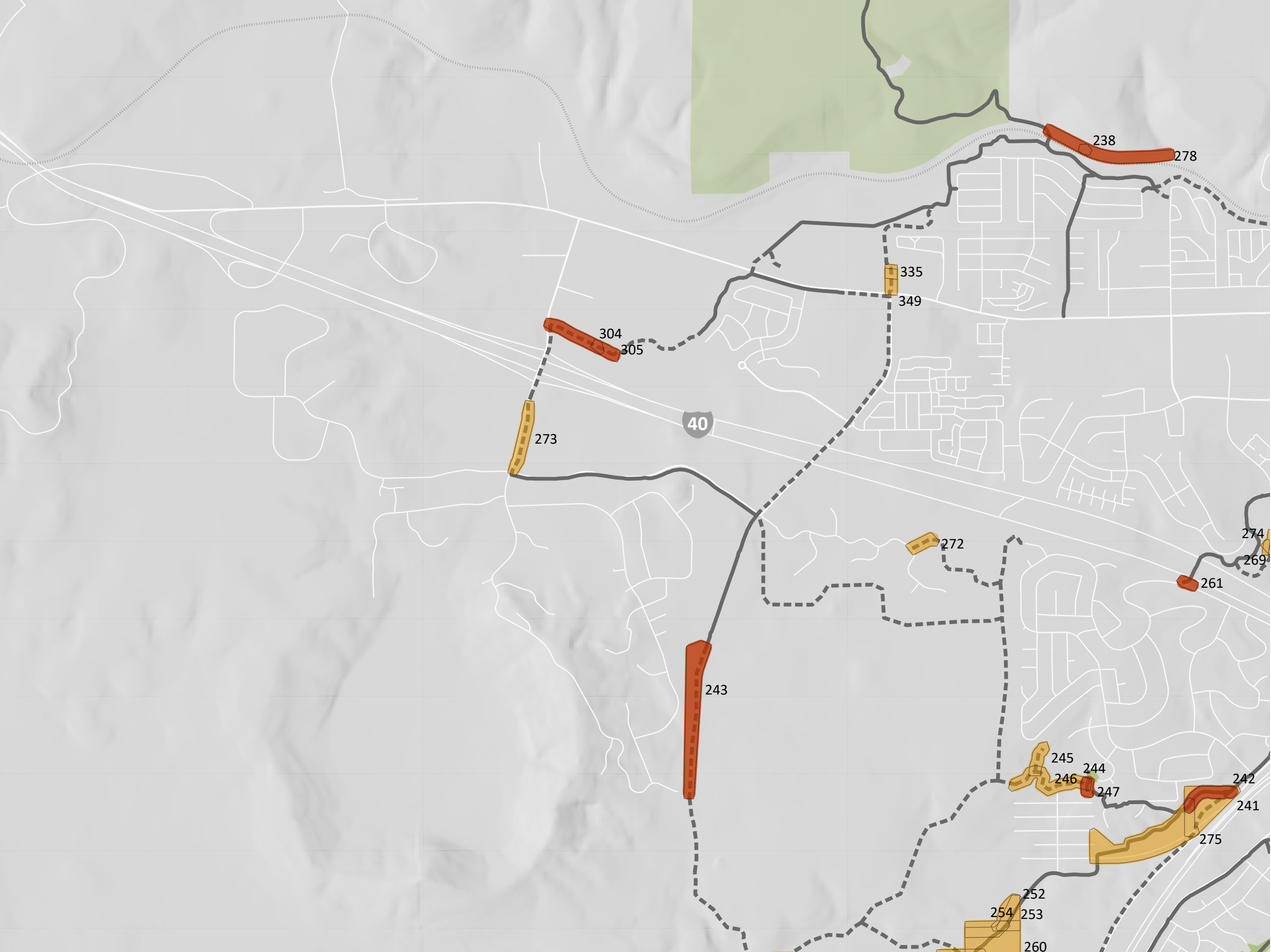
- FUTS/OS | first priority
- FUTS/OS | acquisition
- Existing FUTS
- Planned FUTS



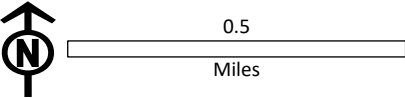
City of Flagstaff  
Sep 2022

FUTS | open space acquisition plan

Map 3 West



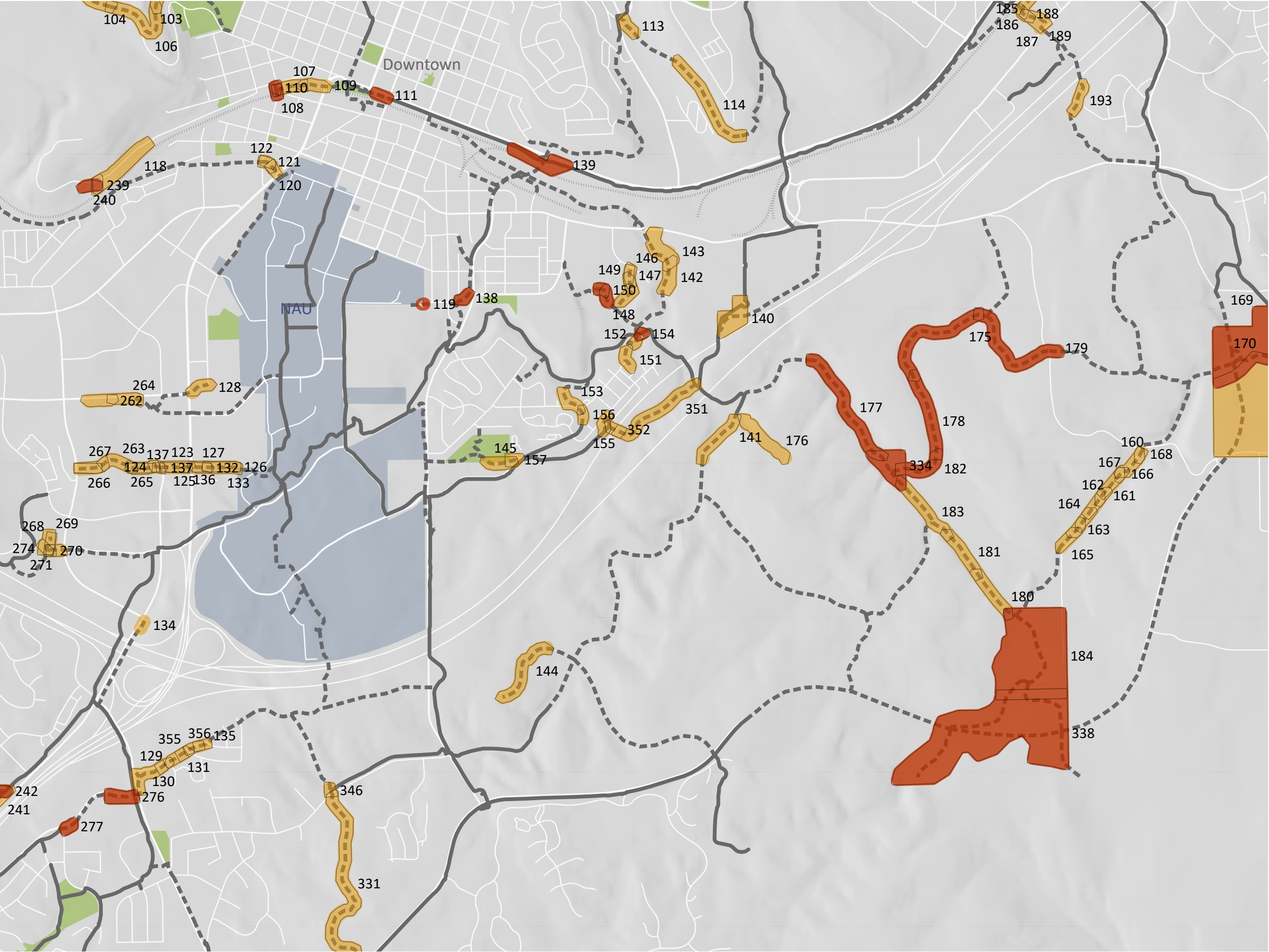
- FUTS/OS | first priority
- FUTS/OS | acquisition
- Existing FUTS
- Planned FUTS



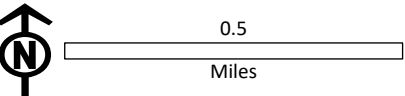


FUTS | open space acquisition plan

Map 4 Central

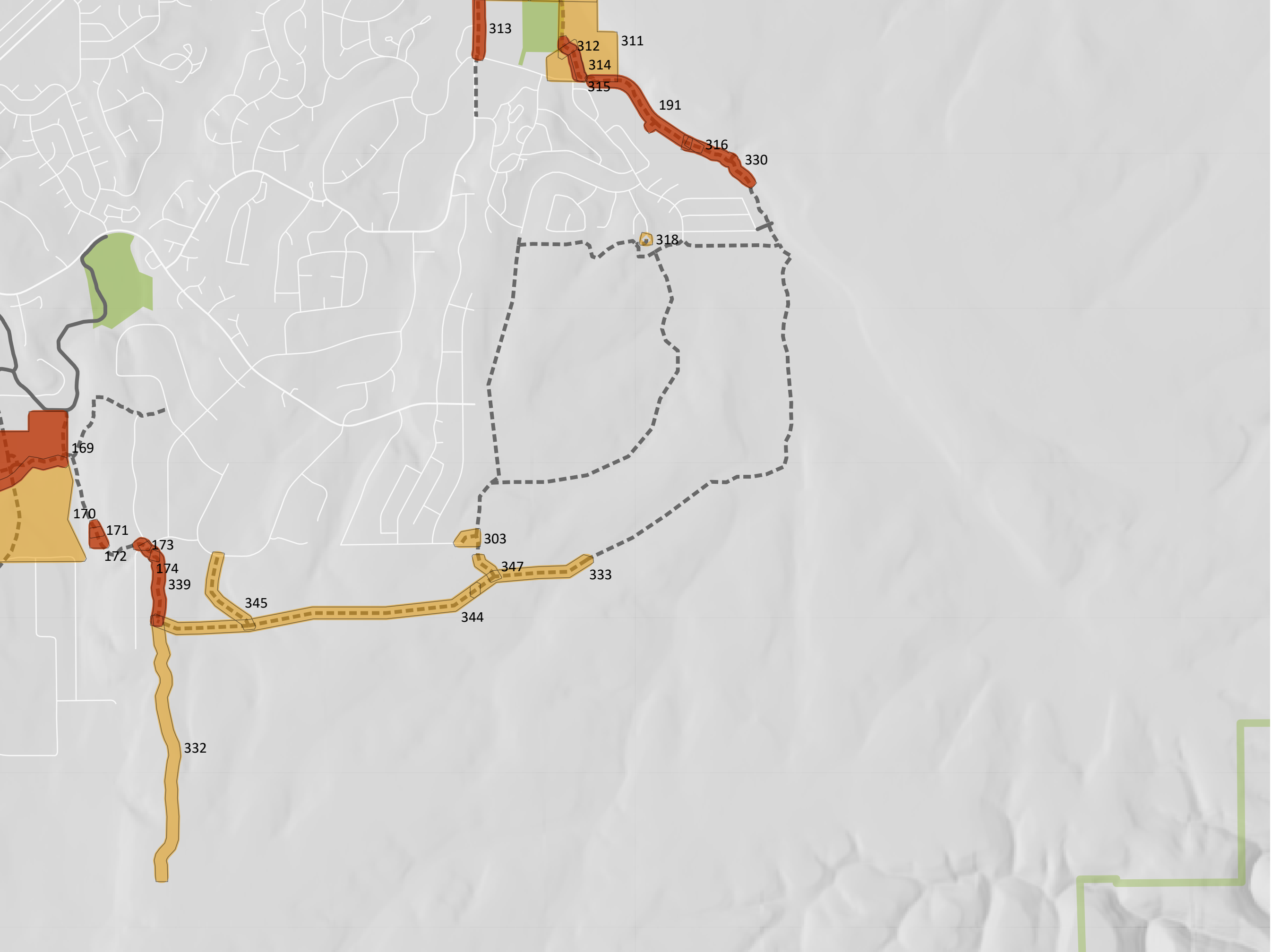


- FUTS/OS | first priority
- FUTS/OS | acquisition
- Existing FUTS
- Planned FUTS

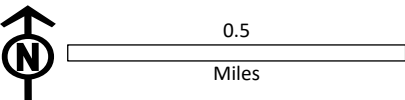


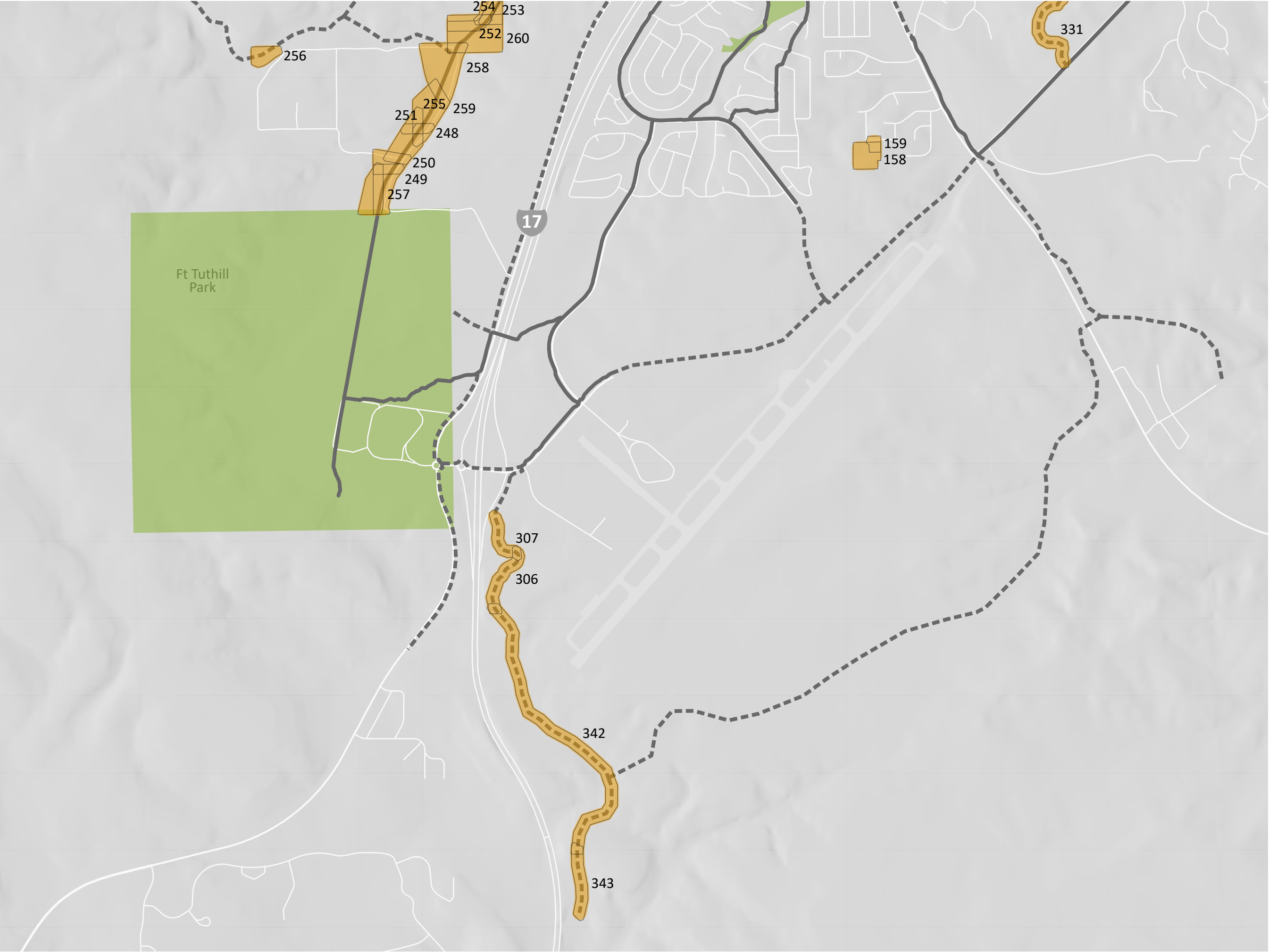
FUTS | open space acquisition plan

Map 5 East



- FUTS/OS | first priority
- FUTS/OS | acquisition
- Existing FUTS
- Planned FUTS

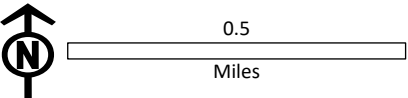




**FUTS | open space acquisition plan**

Map 6 Southwest

- FUTS/OS | first priority
- FUTS/OS | acquisition
- Existing FUTS
- Planned FUTS



## QUESTION NO. 302

### PURPOSE: Neighborhood Open Space and FUTS Land Acquisition

**Amount:** \$7,600,000

To provide neighborhood open spaces and land for the Flagstaff Urban Trail System, shall the City of Flagstaff be authorized to sell and issue general obligation bonds in the principal amount of up to \$7,600,000:

- for the acquisition of up to approximately 550 acres of open space lands in and around the City's neighborhoods consisting of wildlife habitat, geological features, riparian and scenic areas, and buffers spread throughout the City and for the connection of neighborhoods, parks, schools, employment, shopping and other areas with approximately 50 miles of the Flagstaff Urban Trails System; and
- to pay all costs and expenses properly incidental thereto and to the issuance of bonds?

The bonds will be in one or more series, will not mature more than 25 years from the date or dates of their issuance, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council.

**A vote for the bonds shall have the effect of allowing the City Council to issue up to \$7,600,000 in general obligation bonds for acquisition of land for the provision of neighborhood open spaces and the Flagstaff Urban Trails System.**

**A vote against the bonds shall have the effect of not allowing the City Council to issue up to \$7,600,000 in general obligation bonds for acquisition of land for the provision of neighborhood open spaces and the Flagstaff Urban Trails System.**

**Location:** Open space lands designated in the Flagstaff Area Regional Land Use and Transportation Plan located throughout the City and open space corridors in and near neighborhoods, parks, schools, employment, shopping and other areas with planned urban trail links. Up to 550 acres may be acquired for urban open space purposes and right-of-way needed for approximately 50 miles of FUTS trails.

**Timing:** This land acquisition is proposed to begin in 2005 and implementation is expected to continue throughout the ten-year capital improvement bond program.

**Financial Impact:** Implementing this project over time will not increase the City's secondary property tax rate above its current level. General obligation bonds will be issued and will be repaid by secondary property taxes. The City's total secondary tax rate is currently \$.9801 per \$100 of assessed property value.

**Contact Information:** City Planning Division, 779-7685, ext. 7268.



### TEXT OF BALLOT

QUESTION NO. 302	
<b>PURPOSE:</b>	<b>Neighborhood Open Space and FUTS Land Acquisition</b>
<b>AMOUNT:</b>	<b>\$7,600,000</b>
<input type="radio"/>	<b>FOR THE BONDS</b>
<input type="radio"/>	<b>AGAINST THE BONDS</b>

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and City Council

**From:** Denny Birkland, ext. 7623,

**Date:** November 25, 2009

**Meeting Date:** December 1, 2009



---

**TITLE: Consideration of Ordinance 2009-41 AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF AUTHORIZING THE ACQUISITION OF NEIGHBORHOOD OPEN SPACE AND THOSE URBAN TRAIL EASEMENTS NECESSARY FOR THE EXTENSION OF THE FLAGSTAFF URBAN TRAILS SYSTEM**

**RECOMMENDED ACTION:**

**Meeting of December 1, 2009 Read Ordinance 2009-41 by title only for the first time.**

**Meeting of December 15, 2009 Read Ordinance 2009-41 by title only for the final time and adopt.**

---

**ACTION SUMMARY:**

This action authorizes the acquisition of property for the extension of the Flagstaff Urban Trails System and Open Space Acquisition.

**DISCUSSION:**

**Background/History:**

In 2004, the voters approved a bond measure for "Neighborhood Open Space and FUTS Land Acquisition". The Open Space Commission was created to recommend possible Open Space acquisitions to the City Council. The FUTS Master Plan is developed by FMPO and the Community Design Section and is overseen by the Beautification and Public Art Commission. The FUTS Master Plan was presented to the Open Space Commission for coordination of the two objectives.

The **Flagstaff Urban Trails System** is a city-wide network of non-motorized, shared-use pathways that are used by bicyclists, walkers, hikers, runners, and other users for both recreation and transportation. Currently there are about 50 miles of FUTS trails in Flagstaff. The overall master plan shows about 80 miles of future trails, to complete a planned system of 130 miles.

FUTS trails vary from trails that are located along busy streets to traversing canyons, riparian areas, meadows, and forests - all within the urban area of Flagstaff. The system connects neighborhoods, shopping, places of employment, schools, parks, open space, and the surrounding National Forest, and allows users to combine transportation and recreation.



According to the *City of Flagstaff Citizen Survey 2009*, 78 percent of Flagstaff residents have used the FUTS trail system in the last year.

**Key Considerations:**

NA

**Community Benefits and Considerations:**

The Flagstaff Urban Trail System and Open Space were approved by voters in 2004, identifying these as desirable benefits to citizens city wide.

**Community Involvement:**

Citizens first initiated the concept of open space and an urban trail system and have been involved in various committees through out the evolution of the trail system and open space acquisition. They provide input in the Open Space Commission, Beautification and Public Art Commission, Parks & Recreation Commission, the Bicycle Advisory Committee and the Pedestrian Advisory Committee.

**Financial Implications:**

Funding for Open Space and FUTS acquisitions is provided by the Open Space Bond Fund.

**Options and Alternatives:**

Adopt Ordinance 2009-41  
Do Not Read Ordinance 2009-41

**Attachments/Exhibits:**

Ordinance 2009-41

Department Head					
INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS/CONTRACTS	_____	_____	IGAS	_____
_____	LEGAL	_____	_____	_____	_____

DATE OF COUNCIL APPROVAL: \_\_\_\_\_

**ORDINANCE NO. 2009-41**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF  
AUTHORIZING THE ACQUISITION OF NEIGHBORHOOD OPEN SPACE AND  
THOSE URBAN TRAIL EASEMENTS NECESSARY FOR THE EXTENSION OF THE  
FLAGSTAFF URBAN TRAILS SYSTEM.**

WHEREAS, in May 2004 the voters of the City of Flagstaff approved a bond measure for neighborhood open space and Flagstaff Urban Trail System land acquisition; and

WHEREAS, in November 2009 the Flagstaff City Council accepted the proposed Open Space Property Acquisition Plan (the "Open Space Plan") recommended by the Open Space Commission; and

WHEREAS, the Flagstaff City Council, through its approval and adoption of the Flagstaff Urban Trails System Master Plan (the "FUTS Master Plan"), has identified the need for acquiring certain urban trail easements necessary for the extension of the Flagstaff Urban Trails System; and

WHEREAS, the Flagstaff Municipal Planning Organization has identified the specific parcels of land over which the necessary urban trail easements are to run; and

WHEREAS, pursuant to Article 1, Section 3 of the Charter of the City of Flagstaff, the City has the power and authority to acquire real property as well as easements running over and across real property; and

WHEREAS, the owners of the real property in the Open Space Plan have been identified, and as the real property over which the urban trail easements necessary for the extension of the Flagstaff Urban Trails System have been identified, it is necessary to direct and authorize the the City Manager or his authorized designee to acquire those parcels of open space identified in the Open Space Plan as well as the easements needed for the extension of the Flagstaff Urban Trails System identified in the FUTS Master Plan;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF  
AS FOLLOWS:**

SECTION 1. That the City Manager or his or her designee is hereby authorized to negotiate with the owners of those parcels of real property identified in the Open Space Plan as well as the owners of private property across which the proposed urban trail easements necessary for the

extension of the Flagstaff Urban Trails System, as shown in the FUTS Master Plan, have been identified.

SECTION 2. That the City Manager or his or her designee is hereby authorized to acquire through purchase or exchange from the property owner(s) those parcels of real property identified in the Open Space Plan.

SECTION 3. That the City Manager or his or her designee is hereby authorized to acquire through purchase or exchange from the underlying property owner(s) the necessary urban trail easements needed for the extension of the Flagstaff Urban Trails System, as shown in the FUTS Master Plan.

SECTION 4. That the City Manager or his or her designee is authorized to execute all documents and take all actions necessary to consummate these acquisitions.

SECTION 5. The City Council reserves the right of final approval for these acquisitions.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

Property Identification	Source	Status	Type	FUTS	Acres	Cost/Acre	Cost		
<b>CANDIDATE PARCEL ACQUISITIONS via PURCHASE:</b>									
<b>X</b>	Thorpe Park 20 acre Parcel (265	Private	Prospect	Open		23.00	40,000	920,000	<b>KEY</b> Parcels marked with an X are "priority" parcels and the ones that are featured in the Power Point presentation  The remaining parcels are in consideration pending results of the priority list.
<b>X</b>	The "Y": at Schultz Creek Road	Private	Prospect	Open		2.00	60,000	120,000	
<b>X</b>	County Parcel by Sechrist (1/4 - 4	County	Prospect	Open	0.50	15.00	60,000	900,000	
<b>X</b>	"Will Grade" Route 66	Fann	Prospect	Open	0.00	4.00	245,000	980,000	
<b>X</b>	Hoffman Tank (\$1M Max. + Gran	Private	Prospect	Open	0.20	16.67	60,000	1,000,000	
	850 E. Route 66	Unclear	Prospect	Open	0.19	9.08	100,000	908,000	
	1901 N. Mesa Drive	Pollock	Prospect	Open	0.18	5.12	100,000	512,000	
	Lone Tree & I-40 (1/4 - Frontage)	NAU	Prospect	Open	0.00	7.50	200,000	1,500,000	
	Fort Valley (by Shell)	FMC	Prospect	Open	0.00	2.89	200,000	578,000	
	Fort Valley at Freemont	Herman	Prospect	Open	0.05	2.69	200,000	538,000	
	Switzer Wash (along Turquoise -	Cavan	Prospect	Open	0.27	6.00	150,000	900,000	
	Lockett (at Fanning)	Merritt	Prospect	Open	0.00	2.11	175,000	369,250	
	Sollere below CC (at EB On/Off F	Little A	Prospect	Open	0.00	2.20	150,000	330,000	
	2211 E. Hemberg		Prospect	Open	0.10	0.50	400,000	200,000	
	Weitzel School	USFS	Prospect	Open	0.00	10.78	150,000	1,617,000	
	Weitzel School	USFS	Prospect	Open	0.00	10.78	150,000	1,617,000	
	Weitzel School	USFS	Prospect	Open	0.00	10.78	150,000	1,617,000	
	Picture Canyon (Parcel not Trail)	ASLD	Prospect	Open	1.50	100.00	60,000	6,000,000	
	Sub-total (Parcels with "X"):							3,920,000	

## Northwest

Future FUTS

0.5  
Miles



This is a black and white map of a region in Oregon. The map shows various towns, roads, and geographical features. Key labels include:

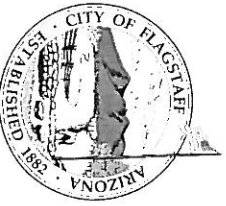
- Towns and Locations:** HUMPHREYS, BEAVER, SAN FRANCISCO, SMITH HILL, BUTLER, WINTERPARK, FOREST MEADOWS, MILTON, HOME TOWN, and CEDAR.
- Roads:** ROUTE 66, ROUTE 180, and ROUTE 181.
- Geographical Features:** WOODY MOUNTAIN, FOREST MEADOWS, and SMITH CANYON.
- Other Labels:** A large area is labeled "FOREST MEADOWS" in the upper right. A small area is labeled "HOME TOWN" in the lower left. A small area is labeled "CEDAR" in the lower right.

The map is oriented with North at the top. The roads are shown as solid lines, and the geographical features are shown as dashed lines. The towns are marked with small squares.

## Southwest

Future FUTS




0.5  
Miles



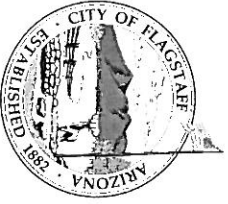
LAKE MARY

# FUTS Trails

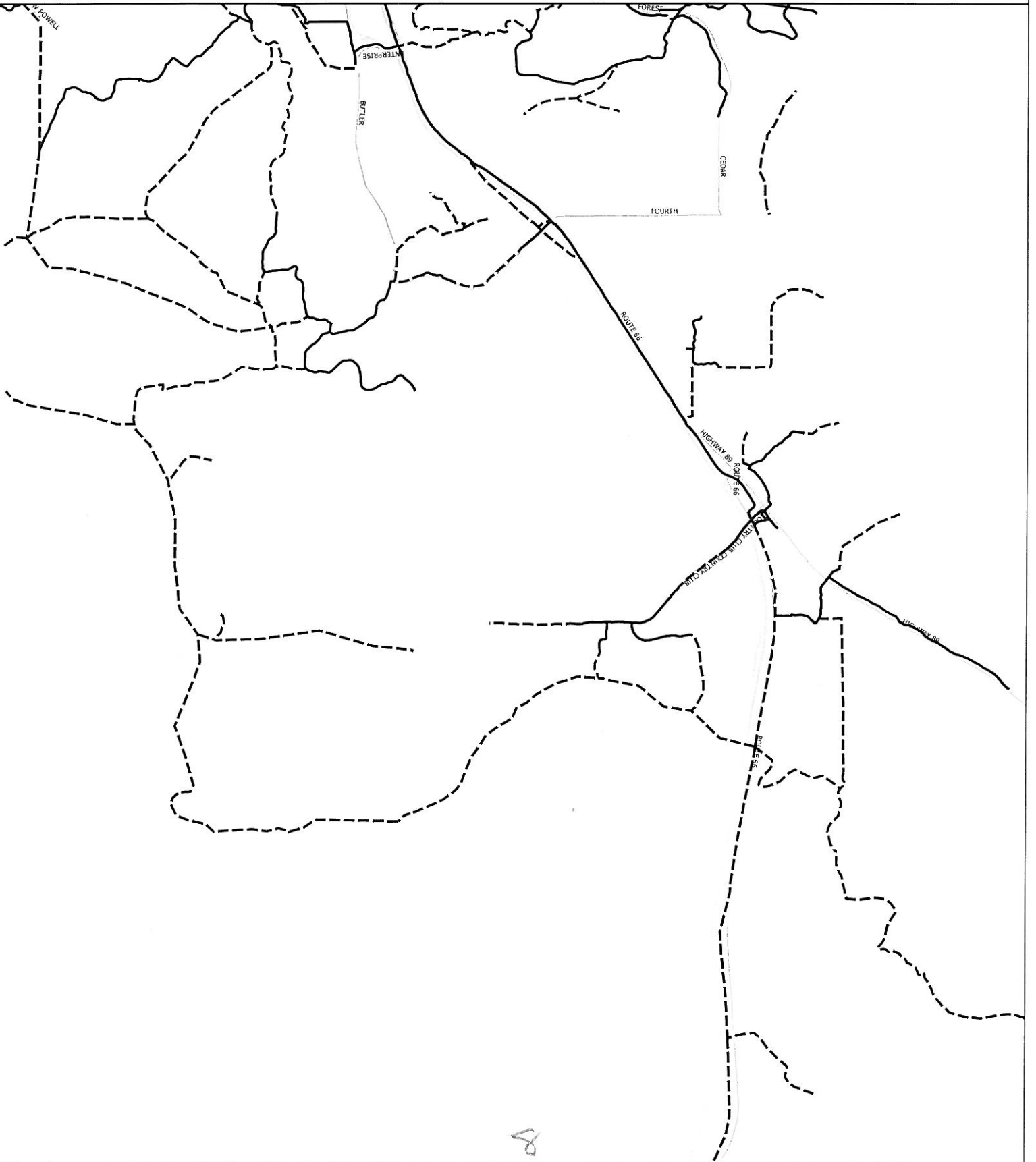
East

-  Existing FUTS
-  Future FUTS
-  Acquisition needed

0.5  
Miles

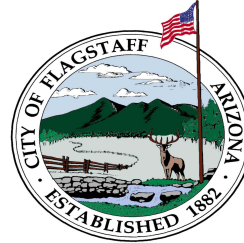


City of Flagstaff  
5 August 2009



**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Robert Wallace, Open Space Specialist  
**Co-Submitter:** Rebecca Sayers  
**Co-Submitter:** Rebecca Sayers  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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**TITLE:**

**Consideration and Adoption of Resolution No. 2022-46 and Approval of Grant Agreement:** A resolution of the Flagstaff City Council, authorizing the award of a Grant Agreement between the City of Flagstaff and Arizona State Parks, Recreational Trails Grant for the maintenance of Picture Canyon Preserve.

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2022-46 by title only.
- 2) City Clerk reads Resolution No. 2022-46 by title only (if approved above)
- 3) Adopt Resolution No. 2022-46
- 4) Authorize the Grant Agreement between the Arizona State Parks Board and the City of Flagstaff, Parks, Recreation, Open Space, and Events (PROSE) Division for the Recreational Trails Program Grant to support the maintenance of Picture Canyon Preserve, in the amount of \$126,270, with a participant match of \$30,300.

**Executive Summary:**

**PROJECT DESCRIPTION:**

Funding will allow the restoration and repair of trails at Picture Canyon Natural and Cultural Preserve. An extensive system of unauthorized roads and trails was mapped and photographed throughout the Preserve as part of a survey project. These abandoned roads and social routes cause erosional damage and directly impact vegetation and cultural resources. Restoration is needed to protect this National Register-listed cultural site and the plant and wildlife habitat.

Work funded by the grant will address delayed maintenance, including:

- Renovation and maintenance of existing trails, including repairing 0.78 miles and rerouting 0.08 miles of the Tom Moody/Don Weaver trails
- Mitigate and restore damage to areas surrounding trails through naturalizing closed roads/ unauthorized trails, including removing 0.61 miles of old roadbeds, and revegetating 4.27 miles or 45,000 sq ft of impacted areas
- Reinforce existing rules and regulations with the installation of regulation, boundary, archeological site, and trail signs
- Provide interpretation and trail information, through signs and publications



**Financial Impact:**

Grant funds will provide \$126,270, with a participant match of \$30,300, for a total project cost of \$156,570. The City of Flagstaff Open Space section will provide a \$4,500 in-kind match, while participant and volunteer match will provide \$25,800. The project will be completed by 6/30/2025. This grant was budgeted in the General Fund, under the PROSE Division in account 001-11-159-0665-5-4290.

**Policy Impact:**

Contributes to the implementation of the Open Space and Greenways Plan

**Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:****Priority Based Budget Key Community Priorities and Objectives**

- Safe and Healthy Community:
  - Promote physical health through providing recreation opportunities, parks, open space and multiple transportation options.
- Inclusive and Engaged Community:
  - Foster community pride and civic engagement by increasing opportunities for public involvement, in line with best practices and legal requirements.
  - Ensure city facilities, services, and programs are accessible for all residents and representative of Flagstaff's diverse community.
- Sustainable, Innovative Infrastructure:
  - Utilize existing long-range plans that identify the community's future infrastructure needs and all associated costs.
- Robust Resilient Economy:
  - Embrace and invest in responsible tourism opportunities to promote economic development.
- Livable Community:
  - Provide amenities and activities that support a healthy lifestyle.
- Environmental Stewardship:
  - Promote, protect and enhance a healthy, sustainable environment and its natural resources.
  - Engage community members through education and volunteer opportunities.
  - Increase the private sector's participation in environmental stewardship efforts.
  - Strengthen Flagstaff's resilience to climate change impacts on built, natural, economic, health, and social systems.

**Carbon Neutrality Plan**

This funding supports CNP implementation, especially Goal One: Achieve carbon neutrality by 2030; and Goal Two: Prepare Flagstaff's communities, systems, and resources to be more resilient to climate change impacts. The most aligned CNP carbon neutrality plan numbers are DD-3, DD-2, and ES-2:

**Carbon Neutrality Plan Strategy 1**

DD-3: Encourage Flagstaff residents and visitors to walk, bike, roll and take the bus.

**Carbon Neutrality Plan Strategy 2**

DD-2: Create inclusive networks for walking and biking that are continuous, attractive, safe, comprehensive, and convenient for people of all ages.

**Carbon Neutrality Plan Strategy 3**

ES-2: Proactively engage community members on an ongoing basis.

**Regional Plan**

Vision: In 2030, the Flagstaff region maintains a healthy system of open lands supporting the natural environment and our quality of life through stewardship by regional stakeholders.

- Goal LU.3. Continue to enhance the region's unique sense of place within the urban, suburban, and rural context (Policy LU.3.3).
- Goal CC.2. Preserve, restore, and rehabilitate heritage resources to better appreciate our culture.
- Goal ED.7. Continue to promote and enhance Flagstaff's unique sense of place as an economic driver.
- Policy OS.1.4. Use open space as opportunities for non-motorized connectivity, to interact with nature, and to enjoy the views and quiet.
- Policy OS.1.5. Integrate open space qualities into the built environment.

### **Has There Been Previous Council Decision on This:**

Consideration and Adoption of Resolution No. 2020-46: A resolution adopting the Management Plan for Legally-Designated Open Space Properties.

### **Options and Alternatives:**

Option A – Adopt Resolution No. 2022-XX as submitted and authorize the grant agreement between the Arizona State Parks Board (BOARD) and The City of Flagstaff, Parks, Recreation, Open Space, and Events (PROSE) (PROJECT SPONSOR) for the Recreational Trails Program Grant in the amount of \$126,270. with a participant match of \$30,300. This option allows staff to implement collaborative processes for maintaining and restoring roads and trails at the Picture Canyon Natural and Cultural Preserve for the benefit of the community. Option B – Do not adopt Resolution No. 2022-XX and do not authorize the grant agreement between the Arizona State Parks Board (BOARD) and The City of Flagstaff Parks, Recreation, Open Space, and Events (PROJECT SPONSOR) for the Recreational Trails Program Grant thus declining grant funds in the amount of \$126,270. This option does not allow staff to implement collaborative processes for maintaining and restoring roads and trails at the Picture Canyon Natural and Cultural Preserve for the benefit of the community.

### **Background/History:**

The City of Flagstaff's Open Space Program was founded in 1998 as an outgrowth of the Flagstaff Area Open Space and Greenways Plan. The program, now a section of the PROSE Division, exists to protect and restore Flagstaff's natural, cultural, and scenic resources to enhance recreational and educational opportunities for residents and visitors. Open Space properties managed by the section serve as a land resource, recreational destination, wildlife habitat, and transportation corridor while protecting other natural resources.

[Picture Canyon Natural and Cultural Preserve](#) is a 478-acre designated open space property on the east side of Flagstaff behind the Wildcat Wastewater Treatment Plant and Coconino County Public Works Yard. Picture Canyon features 700 petroglyphs and associated habitation and resource processing features, a waterfall fed by the Rio de Flag/reclaimed water, and an array of native plants and wildlife. Unmanaged public use of the property prior to the City's acquisition resulted in a network of unofficial, user-created roads traversing the Preserve. Many of these roads are unnecessary and lead to dead ends. Some are causing erosion, segmenting wildlife habitat, and facilitating illegal dumping and/or illegal vehicle trespass onto the property. Also, since the Preserve opened to the public numerous unauthorized routes have led to impacts on vegetation and cultural sites. Given that the City purchased this property using funding from the Arizona State Parks Growing Smarter grant, the City is required to manage it as a non-motorized property to protect the conservation values associated with the grant.

In addition, this project:

- Supports all 7 Priority Based Budget (PBB) Priorities
- Upholds Quadrant 2 level PBB programming

- Contributes to Carbon Neutrality Plan strategies

### **Key Considerations:**

The Management Plan for open space provides a framework for managing the natural, ecological, historical, and recreational resources to minimize conflict and degradation, and serves as a resource to guide decision-making processes for designated open space properties.

The Plan identifies five overarching management goals for designated open space properties, which are listed below. This resolution and grant agreement directly support all the goals.

1. To maintain, restore, and enhance the natural ecosystem processes of these properties, including watershed health (including intermittent streams), forest structure, native plant communities, and rare habitat types.
2. To protect cultural resources present within these properties.
3. To maintain and protect diverse and healthy wildlife populations.
4. To provide opportunities for public use of these properties through passive recreational use, resource interpretation, education, scientific research, and other compatible activities in a manner that is consistent with the preservation of the conservation values of the site and the management goals.
5. To maintain and develop partnerships that facilitate resource management, stewardship, and conservation.

### **Expanded Financial Considerations:**

On-going funding for maintenance and conservation are needed to keep up the Preserve. This work is funded by two primary sources. Some projects are included in the Open Space base budget of \$47,000. Additionally, volunteer groups donate their time to complete projects at no cost to the city. Though these means support maintenance needs, they do not cover all demands. This grant funding will allow the Open Space section to make progress toward addressing backlogged maintenance needs for trails and restoration.

### **Community Benefits and Considerations:**

This funding will permit the continuation of our current level of service. The Open Space section works hard to provide recreational opportunities and maintain open space but does not have the capacity to meet all needs.

- We offer the community great places to walk, bike, run, and participate in other outdoor activities.
- We are receiving the highest ever visitation. Trail counters installed at various locations at the three main regional preserves indicate that for FY 2021-22, we received over 99,000 visitors.
- We provided science programs (e.g., forest ecology, plants, astronomy, and wildlife) for students and visitors at multiple open space properties and in classrooms. Programming reached approximately 775 students and 382 adults for FY 2021-22.
- The Open Space Stewards program has 30 core year-round volunteers. During FY 2021-22, the section also coordinated an additional 147 volunteers who provided trash clean-up, graffiti mitigation, input on projects, and trail work for open space, contributing 1,061 hours of volunteer time.

### **Community Involvement:**

Staff collaborates with numerous educational partners. This application for the Recreational Trails Program Grant was supported by:

- Arizona Watchable Wildlife Experience
- Coconino Natural Resource Conservation District

- Conservation Study Forum
- Friends of the Rio de Flag
- Picture Canyon Working Group
- Open Spaces Commission
- Friends of Flagstaff's Future

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**Attachments:**    [Res. 2022-46](#)  
                          [Grant Agreement](#)  
                          [Presentation](#)  
                          [Regional Open Space Preserve Map](#)

## **RESOLUTION NO. 2022-46**

### **A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, AUTHORIZING THE GRANT AGREEMENT FOR AN ARIZONA STATE PARKS RECREATIONAL TRAILS PROGRAM GRANT**

#### **RECITALS:**

WHEREAS, the Congress of the United States has authorized the Recreational Trails Program Grant as a federal-aid assistance program for all kinds of recreational trail uses, such as pedestrian uses (hiking, running, wheelchair use), bicycling, equestrian use, cross-country skiing, and off-road motorized vehicles; and

WHEREAS, Arizona State Parks (Parks) is responsible for the administration of the Statewide appropriated Recreational Trails Program Funds, setting up necessary rules and procedures governing application by eligible project sponsors under the program; and

WHEREAS, said adopted procedures established by Parks require the project sponsor to certify by resolution the approval of applications, signature authorization, the availability of local matching funds (if applicable), and authorization to sign a Project Agreement with the Parks prior to grant funding allocations from Parks.

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. The City of Flagstaff hereby:

1. Approves the grant agreement for Recreational Trails Program Grant; and
2. Certifies that the agreement is consistent and compatible with all adopted plans and programs of the City of Flagstaff: for providing equitable opportunities for community health and education; and
3. Agrees to comply with all appropriate procedures, guidelines, and requirements established by the Parks as a part of the grant acceptance process; and
4. Certifies that the City of Flagstaff will comply with all appropriate state and federal regulations, policies, guidelines, and requirements as they relate to the grant agreement; and
5. Certifies that it has appropriate matching funds for this grant; and
6. Appoints an agent of the City of Flagstaff to conduct all negotiations, execute and submit all documents including, but not limited to, applications, agreements, amendments, billing statements, and so on which may be necessary for the completion of the aforementioned project.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 20th day of September, 2022.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**Arizona State Parks**  
1110 W Washington St, Phoenix, AZ 85007  
**PROJECT SPONSOR AGREEMENT**

This Agreement is entered into by and between the Arizona State Parks Board (BOARD) and the City of Flagstaff (PROJECT SPONSOR) and shall become effective on the date of signature by the authorized representative of Arizona State Parks.

<b>PROJECT TITLE:</b> Picture Canyon Trail Restoration				<b>PROJECT NUMBER:</b> ASPT #: 472303 ADOT #: M472303P Fed Aid #: RTP-F-101	
<b>THIRD PARTY PARTICIPANT'S NAME:</b>				<b>FY OF REVENUE:</b>  2023	
<b>PROJECT PERIOD:</b>  All expenses and match to be submitted prior to <u>6/30/2025</u>					
<b>GRANT PROGRAM:</b> Recreational Trails Program	<b>GRANT AMOUNT:</b>  \$126,270.00	%  81%	<b>PARTICIPANT MATCH:</b>  \$30,300.00	%  19%	<b>TOTAL PROJECT COST:</b>  \$156,570.00
<b>APPROVED SCOPE OF WORK AND SPECIAL CONDITIONS:</b> Attachment A & B					
<b>AUTHORITIES TO ENTER INTO THIS AGREEMENT:</b> (statute, resolution, minutes, etc.) STATUTE: A.R.S. §28-1176(E)(3) RESOLUTION: 2022-XX					
<b>AWARDING OFFICIAL ON BEHALF OF THE ARIZONA STATE PARKS BOARD:</b> _____ Signature _____ Date _____ <b>Kevin Brock</b> <b>Assistant Director</b>					
<b>ACCEPTANCE OF ALL TERMS OF THIS AGREEMENT AND ITS ATTACHMENTS IS ACKNOWLEDGED BY THE PROJECT SPONSOR'S SIGNATURE BELOW.</b>			<b>PARTICIPANT ATTORNEY APPROVAL AS TO FORM AND AS BEING WITHIN THE AUTHORITY OF THE PROJECT SPONSOR (optional)</b>		
_____ Greg Clifton, City Manager			_____ Attorney's Signature		
_____ Date _____			_____ Date _____		

The most recent version of the General Provisions based on the Project Sponsor and project type are attached and incorporated into this agreement.

**Arizona State Parks**  
**PROJECT SPONSOR AGREEMENT**

**Attachment A**  
**Approved Project Scope and Special Conditions**

**PROJECT SPONSOR:** City of Flagstaff

**PROJECT TITLE:** Picture Canyon Maintenance

**PROJECT NUMBER:** 472303

**PROJECT DESCRIPTION:**

This project will restore and repair non-motorized trails at Picture Canyon Natural and Cultural Preserve. Work will address delayed maintenance: Repair .78 mi and reroute .08 mi of Tom Moody/Don Weaver trails, and naturalize closed roads/unauthorized trails by ripping .61 mi and raking and revegetating 4.27 miles, or 45,000 sq ft. Regulation, boundary, archaeological site, and trail signs will be installed.

**APPROVED PROJECT SCOPE:**

Renovation and Maintenance of Existing Trails.....	\$ 45,840.00
Mitigate and Restore Damage to Areas Surrounding Trails.....	\$ 67,868.00
Enforce Existing Rules and Regulations.....	\$ 8,682.00
Provide and Install Trail Signs.....	\$ 14,180.00
Provide Maps and Trail Information.....	\$ 20,000.00
<b>TOTAL:</b>	<b>\$156,570.00</b>

**DESCRIPTION AND SOURCE(S) AND AMOUNTS FOR APPROVED MATCH**

The City of Flagstaff will provide \$30,300.00 in volunteer, staff and cash match for this project. A **minimum 5.7%** match will be required for each reimbursement.

**SPECIAL CONDITIONS:**

The administration of this grant agreement is additionally subject to the contents of the “Administrative Guidelines for Awarded Grants” found at:

[https://azstateparks.com/gallery/0004/0044/B6D9743DB7544D848A0648AD50F5D03D/Admin%20Guidelines%201\\_31\\_2022.pdf](https://azstateparks.com/gallery/0004/0044/B6D9743DB7544D848A0648AD50F5D03D/Admin%20Guidelines%201_31_2022.pdf)

To ensure the protection of all cultural resources located within the area of potential effects, the city of Flagstaff has provided written documentation stating that a qualified archaeologist would be employed to oversee and approve ground disturbing activities occurring within cultural resource site boundaries. The contracted archaeologist would ensure that the following measures are implemented and followed:

- Conduct pre-work consultation with SHPO.
- Field assessment of the trail and signage work proposed within the boundaries of, and within 50 feet of, the cultural resource sites located within the APE.



- Documentation of any archaeological materials with the trail rights-of-way and marking any areas for avoidance from ground disturbances.
- Conducting post-treatment inspections of trail and signage work occurring within, and adjacent to, cultural resources.
- Preparing a brief technical memorandum for submittal to the city of Flagstaff and SHPO.

Project applications are submitted as “shovel-ready” and project activities must begin immediately upon final execution of the project sponsor agreement.

**Detailed status quarterly reporting in ASPT’s on-line system is required. Failure to provide these reports when requested will result in points being deducted in future funding requests and project funds being withdrawn. Failure to provide status reports when required may result in funds being withdrawn (End of September, December, March, and June).**

See the General Provisions – Attachment B

#### **OTHER CONDITIONS**

Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

Allocated project funds can only be expended on the designated scope items.

Arizona State Parks and Trails  
GRANT PROJECT SPONSOR AGREEMENT  
**Attachment B**  
General Conditions Applicable to Project Grants

This Agreement applies to grants for motorized projects awarded pursuant to the Off-Highway Vehicle Program, the Recreational Trails Program, Heritage Fund Program and State Lake Improvement Fund Program.

**PART I – DEFINITIONS**

For purposes of this Agreement:

- A. “Agreement” means the Grant Project Sponsor Agreement and its attachments.
- B. “AORCC” is the Arizona Outdoor Recreation Coordinating Committee. Together, AORCC and the Board are “the Parties.”
- C. “BOARD” means the Arizona State Parks BOARD. Together, AORCC and the Board are “the Parties.”
- D. “Conversion” means the replacement of grant-funded facilities with new facilities that are of reasonably equivalent usefulness and location as the original.
- E. “Eligible Costs” mean direct costs attributed to the project grant program, such as: 1) compensation of hired employees for the time and efforts devoted specifically to the execution of the grant; 2) cost of materials acquired, consumed, or expended specifically for the purposes of the grant; 3) equipment and other capital expenditures; 4) other items of expense incurred specifically to carry out the participant agreement; and 5) direct services furnished specifically for the grant program by other agencies. These costs are identified by the PROJECT SPONSOR in the Estimated Project Cost Sheet that is submitted with the Certified Application Form and application packet. The costs are then approved by the BOARD or by an amendment to this Project Agreement. Generally, eligible costs are identified in the applicable grant manual.
- F. “Facilities” mean capital improvements.
- G. “Fund” means the Federal Recreational Trails Program.
- H. “Guidelines” mean the Administrative Guidelines for Awarded Grants and any other applicable program directives adopted by the BOARD.
- I. “Ineligible Costs” are those costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives of the project.
- J. “Match” includes cash, in-kind contributions, or donations, including volunteer time or materials contributed to the project with no intention of reimbursement.
- K. “Obsolescence” means that an area or facility may be determined obsolete during the Term of Public Use if (1) reasonable maintenance and repairs are not sufficient to keep the facility or equipment operating; (2) changing needs dictate a change in the type of facilities or equipment provided; (3) operating practices dictate a change in the type of facilities or equipment required; or (4) the facility or equipment is destroyed by fire, natural disaster, or vandalism. Declaring the facility obsolete means that the PROJECT SPONSOR receives a waiver of the replacement requirements. No later than 90 days after a facility or equipment is taken out of public use, the PROJECT SPONSOR may request a waiver of repayment or replacement requirements in writing. A determination of obsolescence may be made at the sole discretion of the BOARD.
- L. “PROJECT SPONSOR” means an eligible applicant that has been awarded a grant to develop a project or coordinate an education program.
- M. “Project” means the sum of the activities identified with specific costs in the grant application packet that are eligible under the referenced grant application manual and have been approved by the BOARD.
- N. “Project Period” means the period of time during which all approved work and related expenditures associated with development of the project are to be completed by the PROJECT SPONSOR.
- O. “Repayment” means returning grant money to the Fund in the event the PROJECT SPONSOR expends advanced funds for ineligible costs or fails to expend the advanced funds for eligible project costs during the term of this grant.
- P. “Sub-contract” means an Agreement/contract between the PROJECT SPONSOR and another individual or entity whereby labor, work, services, or other responsibilities are supplied or performed in furtherance

- of the PROJECT SPONSOR'S responsibilities under this Agreement
- Q. "Term of Public Use" means the time required for public use. The Term of Public Use of the grant-assisted facilities must be at least:
1. Equipment (personal property) grant investment of more than \$50,000 per item: 25 years
  2. Facilities (real property): 25 years
  3. Land: 99 years unless obsolescence applies. The Term of Public Use will begin on the date of completion identified in the Completion Certification Letter.

## PART II – PERFORMANCE

### A. ADMINISTRATION

1. Conditions - This Agreement is subject to the availability of grant funds and appropriate approvals, and is subject to the Constitution of the State of Arizona, the Arizona Revised Statutes, the Arizona Administrative Code, other acts of the Arizona Legislature, executive orders of the Governor, and the decisions and policies of the BOARD.
2. Incorporation of Application, Grant Manual, and Administrative Guidelines - The following documents are incorporated by reference into this agreement: The PROJECT SPONSOR'S grant application packet; the applicable grant manual; and the most recent revision of the Administrative Guidelines for Awarded Grants. In the event of a conflict or ambiguity, the terms of this Agreement and Attachments A and B to this Agreement must take precedence.
3. Use of Grant Funds - Awarded grant funds must be used solely for eligible purposes of the funding program, as defined by statute and as approved by the BOARD.
4. Transfer of Grant Funds - Awarded grant funds will be transferred to the PROJECT SPONSOR according to the terms of this Agreement. Staff will not process reimbursements requests for less than \$1,000 unless it is the final request.
5. Grant Retention - Ten percent (10%) of the grant amount will be retained from reimbursement until Staff notifies the PROJECT SPONSOR in writing that the project is officially closed and completed.
6. Grant Accountability - Grant funds must be managed separately within the PROJECT SPONSOR'S accounting system that identifies the name and number of this project. The funds must only be expended as authorized under the terms of this Agreement.
7. Accomplishment of Project - The project must be accomplished according to the terms of this Agreement and applicable State laws.
8. Amendments - This Agreement may be amended in writing by the Parties of the Agreement upon written request of the PROJECT SPONSOR, good cause shown, and approval by the BOARD. Eligible amendments include adjustments to the project period, funding amount, or minor changes to the scope items.
9. Use of Project - Project accomplishments must be open or available to the public as specified in the Term of Public Use. If the grant funded capital improvements are not maintained and kept open for public use for the term specified in the Term of Public Use, the PROJECT SPONSOR must refund to the BOARD the awarded grant amount within six (6) months of the date the improvements are no longer maintained or kept open for public use, unless the BOARD agrees that obsolescence or conversion is appropriate.
10. Special Conditions - Special conditions to this agreement are binding upon and inure to the benefit of the successors and assigns of each of the Parties to this agreement. Breach of any condition will be enforceable by any remedies available under applicable Federal or State law.
11. Conversion - No land or facilities acquired or developed with State assistance will, without the approval of the BOARD, be converted to other than public use during the Term of Public Use. The BOARD will approve such conversion only if it finds the replacement property to be in accord with the current grant statute. Conversions will require the substitution of other properties of at least equal fair market value and of reasonably equivalent usefulness and location, and concurrence of the landowner. The replacement property will then become subject to this agreement. In lieu of conversion, the PROJECT SPONSOR may apply for a declaration of obsolescence. In the event the BOARD provides grant assistance for the acquisition and/or development of real property subject to reversionary interests, with full knowledge of those reversionary interests and with written notice of those reversionary interests, conversion of said property to other than public uses as a result of such reversionary uses being exercised may be approved. The PROJECT SPONSOR must notify the BOARD of the conversion as soon as possible and seek approval of replacement property in accord with the conditions set forth in this

agreement. The PROJECT SPONSOR must accomplish such replacement within a reasonable time, acceptable to the BOARD, after the conversion of the property occurs. This paragraph also applies to (1) leased properties acquired and/or developed with Fund assistance, where such lease is terminated prior to its full term pursuant to lease provisions known and agreed to by the BOARD; and (2) properties subject to other outstanding rights and interests known to and agreed to by the BOARD.

#### B. RELATIONSHIP OF PROJECT COSTS TO THE PROJECT PERIOD

Except for pre-agreement costs approved by the BOARD, only those costs associated with approved project work incurred during the project period will be eligible for reimbursement according to the terms of this agreement. Combined pre-agreement and design and engineering costs must not exceed 10% of the approved grant award.

#### C. ACQUISITION

Values of property purchased with grant assistance must be appraised by an appraiser with active State certifications according to the Uniform Standards of Professional Appraisal Practice. This appraisal must be prepared within one year prior to the acquisition. Grant participation must be according to the grant award amount, the approved market value, or the purchase price, whichever is less.

#### D. CARE AND DISPOSITION OF EQUIPMENT

Equipment purchased with grant funds to develop a project may remain in the possession of the PROJECT SPONSOR for as long as the equipment is being used for eligible project work, at the sole discretion of State Parks. State Parks reserves the right to claim equipment purchased under this Agreement when it is no longer being used for the purpose for which it was purchased.

#### E. SUB-CONTRACTS

1. Sub-contracts awarded to accomplish the project must incorporate by reference, in each sub-contract, the provisions of this Agreement. The PROJECT SPONSOR bears full responsibility for acceptable performance under each sub-contract.
2. The PROJECT SPONSOR must pay when due any claim of a sub-contractor, employee, independent contractor, or any other employed individual performing the approved work for services pursuant to this Agreement.
3. Any sub-contract for employment by the PROJECT SPONSOR must be in writing and contain a provision whereby a person so employed or with whom a sub-contract has been entered acknowledges that the State of Arizona and the BOARD are not be liable for any costs, claims, damages, reimbursement, or payment of any kind relating to such sub-contract.

#### F. PROJECT REPORTING, REVIEWS, AND ON-SITE INSPECTIONS

1. The PROJECT SPONSOR must submit a project status report not less than quarterly. The status report will include, at a minimum, the following: (a) progress toward completing the approved scope of work; and (b) any problems encountered and solutions to problems regarding completion of the project. Failure to submit the reports will result in delays in grant reimbursement or advance processing. The PROJECT SPONSOR must consult with the BOARD, as needed, to review progress. The BOARD reserves the right to review the progress of the project and to conduct on-site inspections, as applicable and as needed, at any reasonable time during the project period or required Term of Public Use in order to assure compliance with the terms of this agreement.
2. The PROJECT SPONSOR must certify compliance with the Project Agreement every five years, until the end of the Term of Public Use, on a form to be provided by the BOARD. In addition, on-site inspections will be conducted periodically at the discretion of the BOARD. The following will be taken into consideration during the inspection of properties that have been acquired or developed with grant assistance: retention and use; appearance, and maintenance.
3. The PROJECT SPONSOR must provide the Board with written consent of the landowner to conduct on-site inspections; failure to do so is a failure to keep or maintain the property for public use.

#### G. EARNED INTEREST ON ADVANCED FUNDS

Interest generated from funds advanced to the PROJECT SPONSOR during the project period must be used to further the purposes of the specified project. Funds advanced, but not spent to complete the project, must be returned to the BOARD at the completion of the project.

#### H. PRODUCT OR PUBLISHABLE MATTER OWNERSHIP

With written permission from the BOARD or Arizona State Parks, the PROJECT SPONSOR may use products or publishable matter produced with grant assistance the BOARD will have nonexclusive license

to use and reproduce, without payment, such materials. The PROJECT SPONSOR must receive written permission from State Parks prior to utilizing publishable material for commercial or public purposes. This paragraph is not applicable to architectural or engineering plans produced with grant assistance.

#### I. FUND SOURCE RECOGNITION

The PROJECT SPONSOR must permanently and publicly acknowledge the grant program(s) that assisted project accomplishments (including, but not limited to: final documents; audio-visual recordings; photographs; plans; drawings; publications; advertisements; and project plaques). At a minimum, this acknowledgment must include the following: "This program was financed in part (or in full) by a grant from the Federal Recreational Trails Program administered by the Arizona State Parks."

#### J. PROJECT COST VERIFICATION

The PROJECT SPONSOR must submit project expenditure documents to the BOARD or State Parks for verification or audit purposes, upon request.

#### K. TRANSFER OF CONTRACTUAL RESPONSIBILITY

The PROJECT SPONSOR may transfer responsibilities under the terms of this agreement to another eligible participant, provided that approval has been granted by the BOARD in writing prior to the transfer.

### PART III – COMPLIANCE

#### A. ANTI-TRUST

Vendor and purchaser recognize that, in actual economic practice, overcharges from anti-trust violations are borne by purchaser. Therefore, the PROJECT SPONSOR hereby assigns to BOARD any and all claims for such overcharges.

#### B. ARBITRATION

In accordance with A.R.S. § 12-1518, the parties agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review except as may be required by other applicable statutes. Venue shall be in Maricopa County, Arizona.

#### C. APPLICABLE LAW

In accordance with A.R.S. § 51-2501, et seq, and A.A.C. R2-7-101, et seq. Agreement shall be governed and interpreted by the laws of the State of Arizona and the Arizona State Procurement Code.

#### D. NON-DISCRIMINATION

In accordance with A.R.S. § 41-1461, et seq, Agreement shall provide equal employment opportunities for all persons, regardless of race, color, creed, religion, sex, age, national origin, disability or political affiliation. PROJECT SPONSOR shall comply with all applicable provisions of the Arizona Americans with Disabilities Act of 1992, A.R.S. § 41-1492, et. seq. and the Americans with Disabilities Act, (Public Law 101-336, 42 U.S.C. 12101-12213 and 47 U.S.C. § 225 and 611), and applicable state rules and federal regulations under the Acts

#### E. E-VERIFY

In accordance with A.R.S. § 41-4401, PROJECT SPONSOR warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with AAC section A.R.S. § 23-214, Subsection A.

#### F. AUDIT AND RECORDS RETENTION

In accordance with A.R.S. § 35-214, the PROJECT SPONSOR shall retain and shall contractually require each subcontractor to retain all data, books and other records ("records") relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the PROJECT SPONSOR shall produce the original of any or all such records.

#### G. CONFLICT OF INTEREST

In accordance with A.R.S. § 38-511, state or project sponsor may within three years after execution cancel the Contract, without penalty or further obligation, if any person significantly involved in initiating negotiating, securing, drafting or creating the Agreement on behalf of the State, at Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

#### H. REMEDIES

1. The BOARD may temporarily suspend grant assistance obligated to the PROJECT SPONSOR pending

required corrective action by the PROJECT SPONSOR or pending a decision to terminate the grant by the BOARD.

2. The PROJECT SPONSOR may unilaterally terminate this Agreement at any time before the first payment is made. After the initial payment, this Agreement may be terminated, modified, or amended by the PROJECT SPONSOR only by written mutual agreement of the Parties.
3. The BOARD may terminate this Agreement in whole or in part at any time before the date of completion if it determines that the PROJECT SPONSOR has failed to comply with the terms or conditions of the grant. The BOARD will promptly notify the PROJECT SPONSOR in writing of the determination and the reasons for the termination, including the effective date. All payments made to the PROJECT SPONSOR must be returned to the BOARD if this Agreement is terminated for cause.
4. The BOARD or PROJECT SPONSOR may terminate this Agreement in whole or in part at any time before the date of completion when both Parties agree that the continuation of the development project would not produce beneficial results commensurate with the further expenditure of funds. The two Parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The PROJECT SPONSOR must not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. The BOARD may allow full credit to the PROJECT SPONSOR for the grant share of properly incurred obligations that cannot otherwise be cancelled before the effective termination date.
5. The BOARD may require specific performance of the terms of this Agreement or take legal steps necessary to recover the funds granted if the PROJECT SPONSOR fails to comply with the terms of the grant or breaches any condition or special condition of this Agreement.
6. The BOARD may request and the PROJECT SPONSOR must deliver repayment of funds advanced under this agreement in conjunction with the remedies in this section.
7. The remedies expressed in this Agreement do not limit the rights of the BOARD. This Agreement does not in any way abridge, defer, or limit the BOARD'S right to any right or remedy under law or equity that might otherwise be available to the BOARD.

#### I. CULTURAL RESOURCES

The PROJECT SPONSOR must meet the requirements of the State Historic Preservation Act (A.R.S. §41-861 to 41-864) before project initiation.

#### K. DISCLOSURE REQUIREMENTS

PROJECT SPONSOR must comply with the terms of A.R.S. § 35-181.03 or its successor statute(s) regarding audited financial statements provided to the BOARD.

#### L. INDEMNIFICATION

Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The State of Arizona, Arizona State Parks Board (ASPB) is selfinsured per A.R.S. 41-621.

In addition, should PROJECT SPONSOR utilize a contractor(s) and subcontractor(s) the indemnification clause between PROJECT SPONSOR and its contractor(s) and subcontractor(s) shall include the following:

To the fullest extent permitted by law, sub-contractor shall defend, indemnify, and hold harmless the PROJECT SPONSOR and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, , officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the contractor or

any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors shall name the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured and also include a waiver of subrogation in favor of the State.

#### M. INSURANCE REQUIREMENTS

PROJECT SPONSOR and sub-contractors must procure and maintain occurrence-based insurance policies that cover claims for injury or death to persons or damage to property that may arise from or in connection with the performance of the work hereunder by the PROJECT SPONSOR, its agents, representatives, employees or sub-contractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the PROJECT SPONSOR from liabilities that might arise out of the performance of the work under this agreement by the PROJECT SPONSOR, its agents, representatives, employees or sub-contractors, and PROJECT SPONSOR is free to purchase additional insurance.

Minimum Scope and Limits of Insurance: PROJECT SPONSOR shall provide coverage with limits of liability not less than those stated below.

##### 1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

• General Aggregate .....	\$2,000,000
• Products – Completed Operations Aggregate .....	\$1,000,000
• Personal and Advertising Injury .....	\$1,000,000
• Blanket Contractual Liability – Written and Oral .....	\$1,000,000
• Fire Legal Liability .....	\$ 50,000
• Each Occurrence .....	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the PROJECT SPONSOR.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the PROJECT SPONSOR.

##### 2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

• Combined Single Limit (CSL)	\$1,000,000
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- a. The policy must be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the PROJECT SPONSOR, involving automobiles owned, leased, hired or borrowed by the PROJECT SPONSOR."
- b. Policy must contain a waiver of subrogation against the State of Arizona, as departments, agencies,

boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the PROJECT SPONSOR.

### 3. Worker's Compensation and Employers' Liability

• Workers' Compensation	Statutory
•Employers' Liability	
- Each Accident .....	\$ 500,000
- Disease – Each Employee .....	\$ 500,000
- Disease – Policy Limit .....	\$1,000,000

- a. Policy must contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the PROJECT SPONSOR.
- b. This requirement does not apply to: Separately, EACH PROJECT SPONSOR or sub-contractor exempt under A.R.S. 23-901, and when such PROJECT SPONSOR or sub-contractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

#### Additional Insurance Requirements:

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the PROJECT SPONSOR, even if those limits of liability are in excess of those required by this Agreement.
2. The PROJECT SPONSOR'S insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the PROJECT SPONSOR shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

#### Notice of Cancellation:

Applicable to all insurance policies required within the Insurance Requirements of this Agreement, PROJECT SPONSOR'S insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, PROJECT SPONSOR must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

#### Acceptability of Insurers

PROJECT SPONSOR'S insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the PROJECT SPONSOR from potential insurer insolvency.

#### Verification of Coverage:

PROJECT SPONSOR shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that PROJECT SPONSOR has the insurance as required by this Agreement. An authorized representative of the insurer shall sign the certificates.

1. All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
2. Each insurance policy required by this Agreement must be in effect at, or prior to, commencement of



work under this Agreement. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.

3. All certificates required by this Agreement shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Agreement at any time.

Subcontractors:

PROJECT SPONSOR's certificate(s) shall include all subcontractors as insureds under its policies or PROJECT SPONSOR shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Agreement, proof from the PROJECT SPONSOR that its subcontractors have the required coverage.

Approval and Modifications:

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Agreement, as deemed necessary. Such action will not require a formal Agreement amendment, but may be made by administrative action.

Exceptions:

In the event the PROJECT SPONSOR or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the PROJECT SPONSOR or subcontract(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.



# Open Space Grant Resolution and Agreement Consideration



Robert Wallace, Open Space Supervisor



# Open Space Background – Who, What, How

## Who are we?

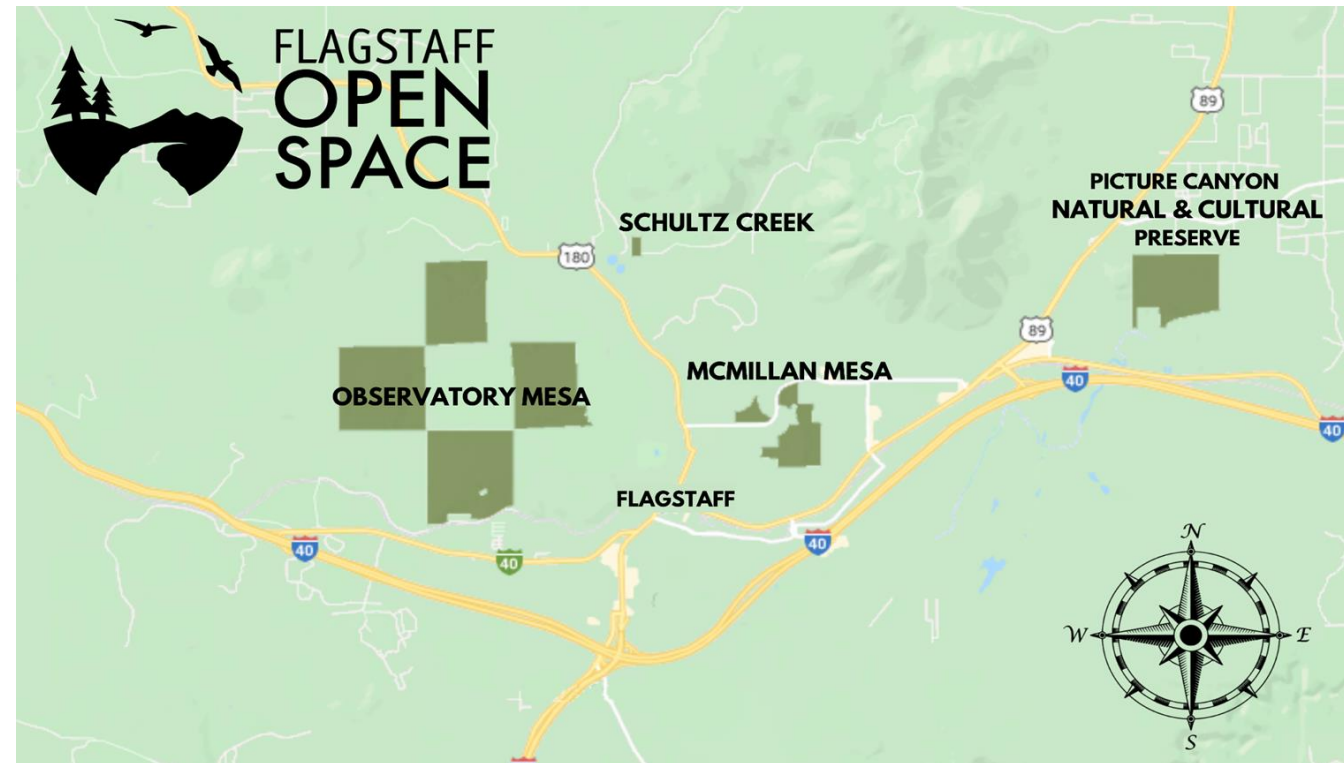
- One full-time supervisor
- One full-time coordinator
- One full-time grant funded position (1 year)

## What does Open Space maintain

- Manage 3,000 acres of community-accessible Open Space
- Offer educational programming.
  - 775 students and 382 adults. Total 1,157

## How are we moving forward

- Applied for the Recreational Trails Program grant to support maintenance and restoration







# What Will This Grant Achieve

Recreational Trails Program Grant allows maintenance and restoration of Picture Canyon: Contribute of \$126,270 for maintenance and conservation

## Objectives:

- Renovation and maintenance of existing trails
- Mitigate and restore damaged areas
- Enforce existing rules and regulations
- Provide interpretation and trail information

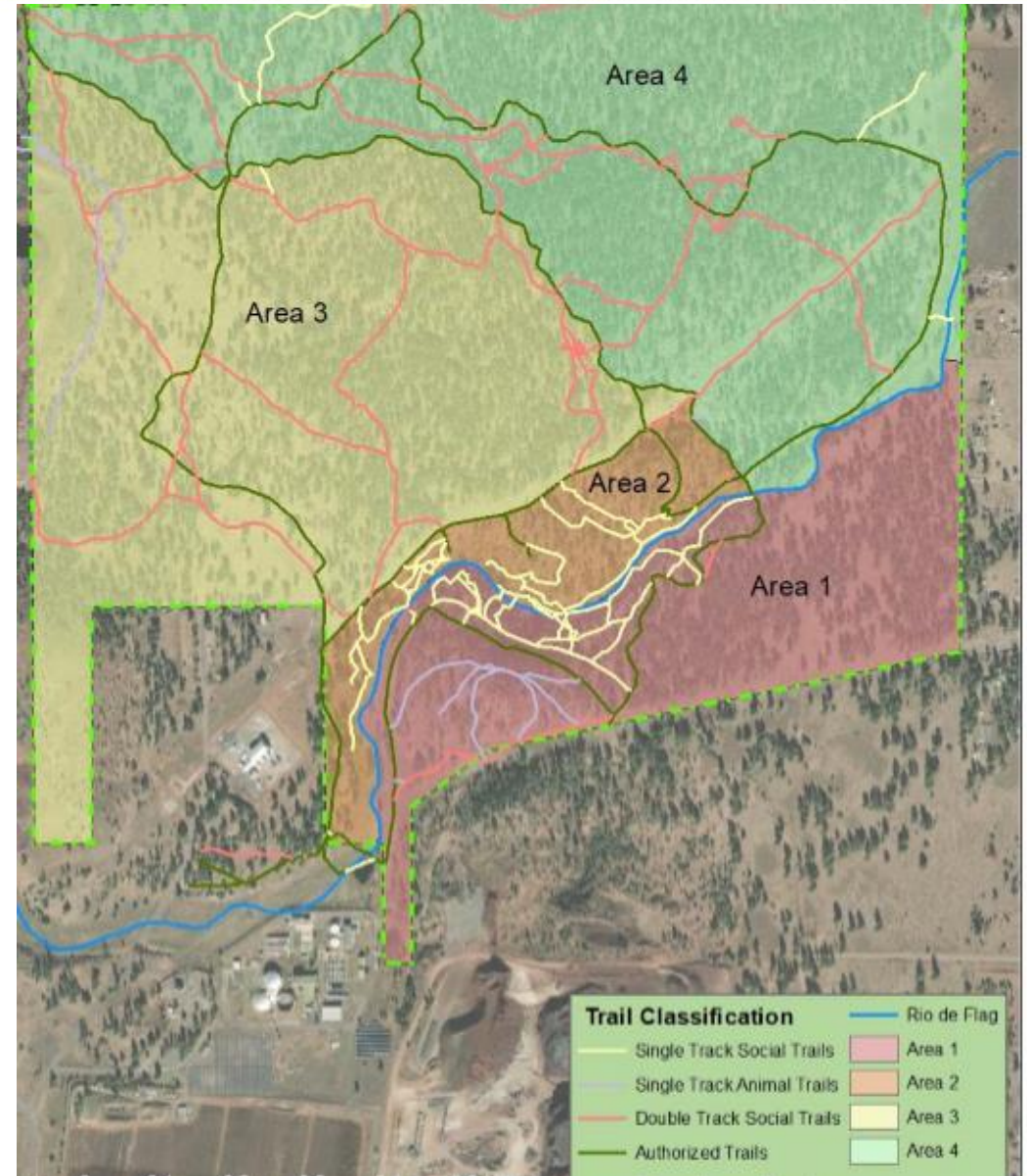






# What is the City agreeing to?

- A completed resolution
- Signed grant agreement
- Participant match of \$30,300
  - \$4,500 Open Space program in-kind cash match
  - Participant and volunteer match \$25,800.
- Quarterly reporting
- Project Deliverables







# How Grant Acceptance Meets City Goals

## Maintains Service Level

### Section goals:

- Supports customer service
- Maintains open space for the community
- Supports educational and recreational activities
- Facilitates continued partnerships
- Serves underprivileged populations
- Promotes responsible tourism
- Secures funding through a grant opportunity

### Community goals:

- Supports all 7 PBB Priorities
- CNP Natural Environment goals







# Options

Option A – Adopt the resolution as submitted and authorize the grant agreement for grant funds in the amount of \$126,270 with a match of \$30,300.

Option B – Do not adopt the resolution and do not authorize the grant agreement, thus declining grant funds in the amount of \$126,270.



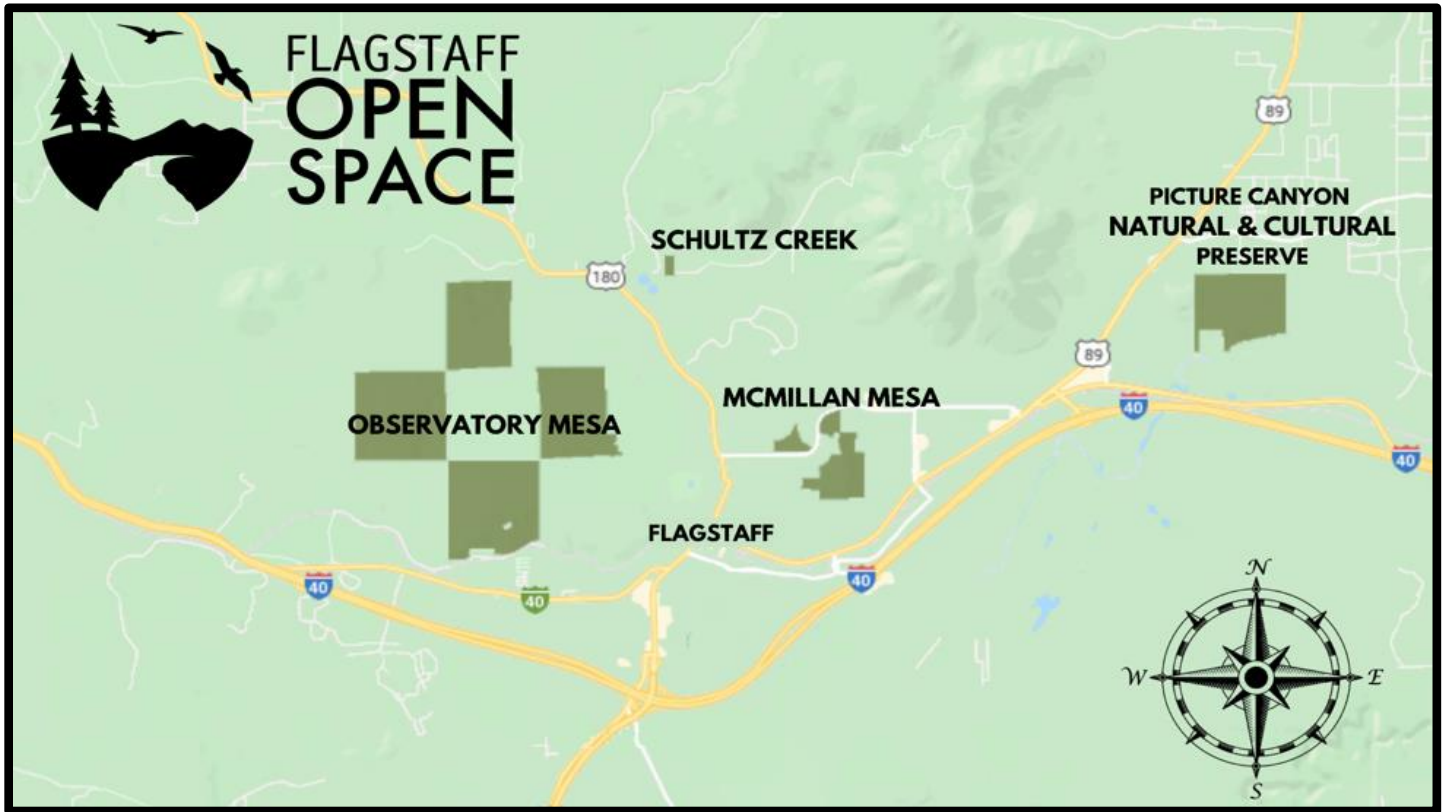


Questions?





## City of Flagstaff Open Space Locations



**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 09/13/2022  
**Meeting Date:** 09/20/2022



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**TITLE:**

**Future Agenda Item Request (F.A.I.R.):** A request by Councilmember House to place on a future agenda a discussion about how the city can assist NAU in building better relationships with the neighborhoods.

**STAFF RECOMMENDED ACTION:**

Council direction.

**Executive Summary:**

Rule 4.01, Procedures for Preparation of Council Agendas, of the City of Flagstaff City Council Rules of Procedure outlines the process for bringing items forward to a future agenda. Councilmember House has requested this item be placed on an agenda under Future Agenda Item Requests (F.A.I.R.) to determine if there are two other members of Council interested in placing it on a future agenda.

**Financial Impact:**

**Policy Impact:**

**Connection to PBB Key Community Priorities/Objectives & Regional Plan:**

**Previous Council Decision on This:**

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**Attachments:**