

**PUBLIC WORKS, PUBLIC SAFETY,
HOUSING AND COMMUNITY DEVELOPMENT AGENDA**
December 18, 2017 @ 5:00 p.m.
City Hall Council Chambers
1615 1st Avenue, South Sioux City, Nebraska

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Members: Dan Bousquet, Dennis Nelson, John Sanders, Jason Bowman.

A current copy of the Open Meetings Act is posted on the north wall in the rear of the Council Chambers and is available for review by all citizens in attendance. A sign-in sheet is available at the entrance to the Council Chambers. We ask your assistance by signing in as this is a Federal Grant requirement. It is strictly voluntary to complete the sign-in sheet.

The City of South Sioux City reserves the right to adjust the order of items on this agenda if necessary and may elect to take action on any of the items listed.

1. PUBLIC WORKS – Jason Bowman, Chairman

- a. Engineer's Report.
- b. Addressing Storm Water Issues
- c. 9th Street Lift Station Rehabilitation. Olsson Associates. Inv#291680, \$2,100.00. [Hyperlink](#).
- d. Paramedic Assistance Agreement. [Hyperlink](#).
- e. EMS Maintenance Contract. [Hyperlink](#).
- f. La Juanita No Parking-
- g. SSC Well No. 12. JEO Consulting. Inv#100152. \$5,920.00. [Hyperlink](#).

2. PUBLIC SAFETY - John Sanders, Chairman

a.

3. HOUSING AND COMMUNITY DEVELOPMENT – Dan Bousquet, Chairman

a.






4. MISCELLANEOUS/ UNFINISHED BUSINESS

a.

5. PUBLIC COMMENT PERIOD

- i. Every citizen speaking at the meeting shall begin his or her remarks by stating his or her name and postal address.
- ii. All citizens' remarks shall be directed to the Chairperson, who shall determine by whom any appropriate response shall be made.
- iii. Individuals wishing to address the Committee are asked to limit their comments to five minutes.

6. UPCOMING EVENTS

-  Council Meetings – Dec. 11 and Tuesday, Dec. 26, 2018 @ 5:00 p.m., City Hall.
-  Public Works Meetings – Dec. 4 & 18, 2017 @ 5:00 p.m., City Hall.
-  Finance Meetings– Dec. 6, 13, 201 & 27, 2017 @ 12:00 p.m. City Hall.
-  CDA Meetings – Dec. 14 & 28, @ 11:00 a.m., City Hall.
-  League of NE Municipalities Mid-winter Conference; Feb. 26 & 27, 2018; Cornhusker Marriott; Lincoln, NE.

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9th St. Lift Station Rehabilitation, Olsson Assoc. Inv#291680, \$,2,100.00

Invoice



601 P St Suite 200
PO Box 84608
Lincoln, NE 68501-4608
Tel 402.474.6311, Fax 402.474.5063

City of South Sioux City NE
1615 First Ave
South Sioux City, NE 68776-2245

December 12, 2017

Invoice No: 291680

Invoice Total \$2,100.00

OA Project No. 017-3099 So Sioux City 9th Street Lift Station Rehabilitation
Professional services rendered November 5, 2017 through December 2, 2017 for work completed in accordance with our
Letter Agreement dated September 20, 2017.

Phase 100 Design/Bidding Services
Fee

Billing Phase	Fee	Percent Complete	Billed To Date	Previous Fee Billing	Current Fee Billing
Phase I - III - Design	31,600.00	17.0886	5,400.00	3,300.00	2,100.00
Phase IV - Bidding	2,600.00	0.00	0.00	0.00	0.00
Total Fee	34,200.00		5,400.00	3,300.00	2,100.00
Subtotal					2,100.00
Total this Phase					\$2,100.00
AMOUNT DUE THIS INVOICE					\$2,100.00

Outstanding Invoices

Number	Date	Balance
290665	11/20/2017	3,300.00
Total		3,300.00

Robert Chiswick

Transmitted by email to: blivernmore@southsiouxcity.org; mmcclung@southsiouxcity.org; nwalsh@southsiouxcity.org

Authorized By: Jeremy Walker

INVOICE PAYMENT IS REQUESTED WITHIN 30 DAYS

End 9th St. Lift Station Rehabilitation, Olsson Assoc. Inv#291680, \$,2,100.00

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Paramedic Assistance Agreement

**CITY OF SOUTH SIOUX CITY
FIRE DEPARTMENT**

Phone (402) 494-7508
Fax: (402) 494-7599

E-MAIL: cmerithew@southsiouxcity.org

TO: Lance Hedquist, City Administrator
Rod Koch, Mayor
City Council

FROM: Clint Merithew, Fire Chief *cm*

SUBJECT: Paramedic Assistance Agreement

DATE: December 13, 2017



MEMORANDUM

The City Fire Department has conducted research and had meetings with area Fire Departments in part of developing a contractual agreement for Advanced Life Support assistance.

In part, with the reorganizing by Siouxland Paramedics (SPI) their ability to render assistance to area departments shall cease on January 1, 2018 at 8:00 AM which places area departments and agencies without Paramedic (ALS) services or assistance.

The attached contract is the effective collaboration of staff and legal department to assure the City and area departments which enter into agreement are protected by all rights and measures.

In review of the document, under "Exhibit A" would be a copy of the City's Resolution, "Exhibit B" is the requesting agencies Resolution and under "Exhibit C" shall be the jurisdictional mapping of their response district.

It is only under the terms of the signed agreement that the requesting agency shall receive a monthly, per patient contact billing. It is strongly urged to move forward to assure our neighboring communities and those outlying areas have the quality of Paramedicine available to them on a case by case need when their patients will benefit most from the City of South Sioux City Fire Department Paramedic staff.

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CITY OF SOUTH SIOUX CITY FIRE DEPARTMENT
1501 Dakota Ave., South Sioux City, NE 68776



Phone: (402) 494-7508

Fax: (402) 494-7599

E-MAIL: cmerrithew@southsiouxcity.org

**EMERGENCY MEDICAL SERVICE
AND ADVANCED LIFE SUPPORT
SUPPLEMENTAL ASSISTANCE AGREEMENT**

This Emergency Medical Service and Advanced Life Support Supplemental Assistance Agreement (this "Agreement") is hereby entered into this _____ day of _____, 20____, between the SOUTH SIOUX CITY FIRE DEPARTMENT ("SSCFD") and _____ ("Recipient").

WHEREAS, the parties desire to provide reliable, prompt, and high quality Emergency Medical Service, Advanced Life Support, and ambulance services (collectively, the "Services") for their residents and visitors;

WHEREAS, Recipient has identified a need for a backup or supplemental Services provider in its governmental jurisdiction;

WHEREAS, SSCFD currently provides the Services within its own governmental jurisdiction;

WHEREAS, SSCFD is willing to provide backup or supplemental Services to Recipient under the terms and conditions set forth in this Agreement and the City of South Sioux City has authorized SSCFD to enter into this Agreement to provide such Services in the Resolution attached hereto as Exhibit "A"; and

WHEREAS, Recipient desires to contract with SSCFD to provide the Services within the governmental jurisdiction of Recipient and the governing body of Recipient has authorized Recipient to enter into this Agreement for such Services in the Resolution attached hereto as Exhibit "B".

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SSCFD and Recipient agree as follows:

I. DESCRIPTION OF RESOURCES.

a. Priority. The primary response territory of SSCFD includes South Sioux City and Dakota County, Nebraska. The outlying counties of Dixon County, Nebraska and Thurston County, Nebraska are in SSCFD's secondary response territory. Recipient and SSCFD both acknowledge and agree that SSCFD's primary response territory shall receive first priority for the Services. The parties further acknowledge and agree that the SSCFD Fire Chief, Assistant Fire Chief, or other officer on duty has the discretion, authority, and responsibility to deploy the Services, including determining the order of priority in the event an emergency arises in multiple governmental jurisdictions at the same time. SSCFD shall make a reasonable effort to respond and provide the Services to every request under this Agreement, but Recipient expressly acknowledges that there is no guarantee SSCFD will be able to respond or will respond to a particular request for Services.

b. Ambulance Services. The SSCFD shall staff a minimum of one (1) Advanced Life Support Ambulance ("ALS Ambulance") on a 24 hours a day, 7 days a week basis. Additional ambulances may also be staffed from

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time to time as necessitated by special events or other anticipated increased demands for Emergency Medical Services ("EMS"). The ALS Ambulance will respond to 9-1-1 emergency responses (a "Response"), and may include 9-1-1 intercept services. Each ALS Ambulance will be staffed with two (2) NREMTs and/or NREMT-Paramedics at all times, or a combination of the two.

c. Single Resource Response. SSCFD may also staff a NREMT-Paramedic responding in a utility vehicle with complete ALS adjunct equipment (a "Single Resource Response").

II. DESCRIPTION OF SERVICES.

a. Response Type. The parties shall communicate all requests and respond through the Dakota County, Nebraska Law Enforcement Center, Central Dispatch ("LEC"). When requesting a Response, Recipient shall request the specific type of desired Response, namely, a full ALS Ambulance or a Single Resource Response. Recipient understands and acknowledges that the availability of the Services or a particular Response type are subject to availability and priority as set forth in Section I of this Agreement and are not guaranteed.

b. Response Time. SSCFD will respond to the LEC within the time required under applicable laws and regulations. The anticipated response time of SSCFD from initial LEC radio contact to reporting the status of equipment and personnel to the LEC is less than three (3) minutes.

c. Dispatch and Communication Systems. The LEC shall remain the sole dispatch authority to effectively and efficiently receive, dispatch, and communicate with the parties. The parties shall maintain communication systems including VHF mobile and portable radios programmed with all county fire and EMS radio channels and 800 MHz mobile and portable radios programmed with all city, town, village and tactical channels as specified in applicable Mutual Aid or Interlocal Agreements.

d. Mutual Aid Agreement. The parties acknowledge that SSCFD signed the Northeast Nebraska Mutual Aid District Mutual Aid Agreement on January 31, 2015 ("Mutual Aid Agreement"), whereby SSCFD pledged its fire defense assistance to neighboring communities. The parties further acknowledge and agree that the Services contemplated under this Agreement extend beyond the scope of the Mutual Aid Agreement.

III. GEOGRAPHIC AREA TO BE SERVED. Recipient requests SSCFD to provide the Services within the lawful jurisdictional boundaries set forth on Exhibit "C". Any modifications that occur to the identified response territory boundary due to annexations or other jurisdictional changes shall be communicated to SSCFD and the City of South Sioux City in writing within ninety (90) days of its effective date.

IV. TERM OF CONTRACT. The term of this Agreement shall commence on _____, 20____ at 12:01 a.m. and will expire at midnight on December 31, 20____, subject to the following:

a. Automatic Renewal. The term of this Agreement shall automatically renew for successive one (1) year renewal terms commencing on January 1 of each year following the commencement of this Agreement, and each January 1st thereafter, unless either party notifies the other, in writing, at least ninety (90) calendar days prior to the expiration date of the initial term or the applicable renewal term, as the case may be, of its intent to not so renew.

b. Exclusive Agreement. Recipient agrees that it will not contract for emergency ambulance services with any other public or private ambulance provider(s) for the duration of this Agreement without the written consent of SSCFD.

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V. **PATIENT PRIVACY.** Each party shall be solely responsible for complying with all applicable state and federal laws regarding patient information, privacy, and/or billing. This includes the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Each party shall be solely responsible to provide training to its own employees or volunteers who may be involved with the Services described in this Agreement.

VI. **BILLING FOR SERVICES.**

a. Response Billing. No fee is due upon the execution of this Agreement. Recipient shall pay SSCFD \$250.00 for each Response. Recipient agrees that this fee is reasonable. SSCFD or the City of South Sioux City's billing contractor shall directly bill Recipient the \$250.00 fee for each Response to Recipient. Recipient shall pay the bill within thirty (30) days of receipt of each bill.

b. Patient Billing. Recipient shall be solely responsible for any patient billing involved with a Response. SSCFD shall not be required to reimburse the Recipient for any uncollectible portion of any specific patient bill related to the Services provided in relation to a Response.

VII. **CONTROL AND OWNERSHIP.** SSCFD and the City of South Sioux City shall retain full control of all aspects of the Services, including personnel, availability, and ownership of all SSCFD equipment, vehicles, buildings, and physical assets.

VIII. **LIABILITY INSURANCE.** SSCFD and/or the City of South Sioux City shall acquire and maintain liability insurance throughout the term of this Agreement. Said liability insurance shall cover the Services provided by the City with the following coverage types and policy limits:

a. Vehicle liability insurance for bodily injury and property damage with a combined single limit of \$1,000,000 per occurrence.

b. General Liability and Professional Liability Insurance for bodily injury, personal injury, and property damage with a minimum \$1,000,000 per occurrence, and \$2,000,000 annual aggregate.

c. Worker's Compensation insurance as required under Nebraska law.

d. Umbrella Liability Insurance with \$5,000,000 per occurrence and a \$5,000,000 annual aggregate.

IX. **LIABILITY.** The parties shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold one another harmless against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from any action or inaction related to either entity which is redeemed by a court of law or arbitrator not to be an action or inaction of the other entity. Each entity at all times reserves the right to retain counsel of its own to defend its respective interests.

Notwithstanding the above, the parties both acknowledge and agree that SSCFD will make a reasonable effort to respond to all requests for Services under this Agreement under the circumstances, but SSCFD shall not be liable for any damages caused by failure to respond to a request, delay in arriving or providing Services, or the way or manner in which any Services are provided.

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X. **MODIFICATIONS AND AMENDMENTS.** SSCFD and Recipient agree that any modifications or amendments require written approval of each party, and may require a Resolution from the applicable governing body.

XI. **LEGAL RELATIONSHIP OF THE PARTIES.** The legal relationship of the parties shall be that of Independent Contractor. The employees of either party shall not be considered an agent or employee of the other party for any purpose

XII. **ASSIGNMENT.** This Agreement cannot be assigned without written consent of SSCFD and the City of South Sioux City.

XIII. **ENTIRE AGREEMENT.** This Agreement, including the other documents referred to herein or delivered pursuant hereto that form a part hereof, contains the entire understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

XIV. **GOVERNING LAW.** This Agreement and all Services contemplated hereunder shall be governed by and construed in accordance with the laws of the State of Nebraska.

XV. **FORCE MAJEURE.** It shall be agreed that Acts of God, riots, and other perils and occurrences which may arise beyond the control of either party shall not constitute any breach of Agreement.

XVI. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

CITY OF SOUTH SIOUX CITY FIRE DEPARTMENT

Signed _____
Printed Name _____
Title _____
Date _____

RECIPIENT

Signed _____
Printed Name _____
Title _____
Date _____

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EXHIBIT "A"
CITY COUNCIL RESOLUTION OF SOUTH SIOUX CITY, NEBRASKA

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EXHIBIT "B"
RESOLUTION OF RECEIPT'S GOVERNING BODY

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**EXHIBIT "C"
JURISDICTIONAL BOUNDARIES UNDER THIS AGREEMENT**

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SSC Well No. 12, JEO 100152, \$5,920.00



ENGINEERING ■ ARCHITECTURE ■ SURVEYING ■ PLANNING

Invoice

December 14, 2017

Project No: R161337.00

Invoice No: 100152

Invoice Amount: 5,920.00

Bob Livermore
City of South Sioux City
1615 1st Avenue
South Sioux City, NE 68776

Project Manager Ethan Joy
Project R161337.00 South Sioux City Well No. 12
Professional Services through December 8, 2017

	Contract Amount	Percent Complete	Billed-to-Date	Previous Billing	Current Billing
Lump Sum Phase(s)					
Test Well Coordination Phase	\$3,800.00	100 %	\$3,800.00	\$3,800.00	0.00
Design Phase	\$25,800.00	100 %	\$25,800.00	\$25,800.00	0.00
Bidding and Negotiation Phase	\$4,500.00	100 %	\$4,500.00	\$4,500.00	0.00
Construction Administration Phase	\$14,200.00	100 %	\$14,200.00	\$11,360.00	\$2,840.00
Post-Construction Phase	\$2,500.00	0 %	0.00	0.00	0.00
Hourly to a Maximum Phase(s)					
Construction Staking	\$2,200.00		\$2,010.00	\$2,010.00	0.00
RPR	\$17,500.00		\$16,490.00	\$13,810.00	\$2,680.00
SWPPP	\$3,500.00		\$780.00	\$380.00	\$400.00
Total	\$74,000.00		\$67,580.00	\$61,660.00	\$5,920.00

Total Amount Due Upon Receipt \$5,920.00

Robert Livermore

Outstanding Invoices

Number	Date	Balance
99609	11/15/2017	4,750.00
Total		4,750.00

Email Invoice To: Bob Livermore, blivermore@southsiouxcity.org
Email Invoice To: Marilyn McClung, mmcclung@southsiouxcity.org

JEO CONSULTING GROUP INC ■ JEO ARCHITECTURE INC
142 W. 11th Street | PO Box 207 | Wahoo, Nebraska 68066-0207 | p: 402.443.4661 | f: 402.443.3508
www.jeo.com

END SSC Well No. 12, JEO 100152, \$5,920.00

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Maintenance Agreement

**CITY OF SOUTH SIOUX CITY
FIRE DEPARTMENT**

Phone (402) 494-7508
Fax: (402) 494-7599

E-MAIL: cmerithew@southsiouxcity.org

TO: Lance Hedquist, City Administrator
Rod Koch, Mayor
Council Members

FROM: Clint Merithew, Fire Chief

SUBJECT: Maintenance Agreement

DATE: December 11 2017



MEMORANDUM

The South Sioux City Fire Department ambulance gurney power loads were purchased over two (2) years ago which came with a full two year warranty. During this time, the power gurneys had never received any service for care or maintenance to any unit.

On Wednesday, December 7, 2017 one of the power loads developed a serious issue with lack of power, retracting or going to the locked position. A repair request was made for service, which is when we discovered we were out of the warranty period.

To receive the appropriate repairs, the estimated repair costs and service were in the \$5,215 for the technician to come up and remediate the issue with one and service the second unit.

The company, Stryker, agreed to forego the invoice in lieu of signing the maintenance agreement for a five year period. This would entail five yearly payments of \$4,654.40 per annum.

The attached document is the agreement and asserted language to assure the power units are properly maintained to the status of readiness and endurance. This is an all-inclusive document.

I request your acknowledgement to move forward with the contract which in the long run will save City budget and any foreseeable downtime of the ambulances.

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ProCare Services Agreement

stryker

3800 E. Centre Ave

Portage, MI 49009

Sales Rep Name: Scott Pufahl
ProCare Service Rep: Steve Lutjemeier

Date: 12/11/2017
ID #: 171211124502

PROCARE PROPOSAL SUBMITTED TO:

Account Number: 1179940
Account Name: South Sioux City
Account Address: 1501 1st Ave
City, State Zip: South Sioux City, NE 68776

Name: Clint Merithew
Title:
Phone: 402-494-7808
Email: cmerithew@southsiouxcity.org

PROCARE COVERAGE

Item No.	Model Number	Model Description	ProCare Program	Qty	Yrs		Total
1	6390	Power-LOAD	EMS Protect	2	5		\$12,728.00
2	6506	Power-PRO XT	EMS Protect +	2	5		\$10,544.00

PROGRAM INCLUDES:

EMS Protect:

Includes parts, labor, travel, 1 annual PM inspection, unscheduled service and product equipment checklists. Replacement parts do not include mattresses, batteries, and other disposable or expendable parts.

EMS Protect +:

Includes parts, labor, travel, 1 annual PM inspection, unscheduled service, SMRT battery replacement & product equipment checklists. Replacement parts do not include mattresses, and other disposable or expendable parts.

Maintenance Inspection-Past Useful Life

This service contract may include products which are beyond their warranty period and tested expected service life. Any such product will be inspected to determine if the product meets the operations and maintenance manual guidelines for that particular product as of the date of inspection. Despite any such inspection, Stryker makes no claims or assurances as to future performance, including no express or implied warranty, for any product which was inspected outside of its warranty period or beyond its tested expected service life.

		ProCare Total	\$23,272.00
		FINAL TOTAL	\$23,272.00

Start Date: 12/11/2017
End Date: 12/10/2022

Stryker Signature

Date

Customer Signature

Date

Purchase Order Number (MUST INCLUDE HARD COPY)

COMMENTS:

Please fax signed Proposal and Purchase Order to Tom Tackabury at 269-321-3501.
All information contained within this quotation is considered confidential and proprietary and is not subject to public disclosure.
**Quote pricing valid for 30 days.

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PAYMENT SCHEDULE					
<u>Date</u>		<u>Payment</u>	<u>Int Paid</u>	<u>Prin. Remaining</u>	<u>Balance</u>
Starting Balance					\$ 23,272.00
12/11/2017	\$	4,654.40	\$ -	\$ 18,617.60	\$ 18,617.60
12/11/2018	\$	4,654.40	\$ -	\$ 13,963.20	\$ 13,963.20
12/11/2019	\$	4,654.40	\$ -	\$ 9,308.80	\$ 9,308.80
12/11/2020	\$	4,654.40	\$ -	\$ 4,654.40	\$ 4,654.40
12/11/2021	\$	4,654.40	\$ -	\$ -	\$ -

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SERIAL NUMBER SHEET		EXHIBIT A
Item No.	Model	Serial Number
1	6390	151139206
2	6390	151139205
3	6506	151140075
4	6506	151140076

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SERVICE AGREEMENT

This document sets forth the entire Product Service Plan Agreement ("Agreement") between Stryker Medical, (a division of Stryker Corporation), herein and after referred to as "Stryker", and South Sioux City, herein and after, referred to as the "Customer". This is the entire Agreement and no other oral modifications are valid. This Agreement shall remain in effect unless canceled or modified by either party according to the following terms and conditions.

1. SERVICE COVERAGE AND TERM

Stryker shall provide to Customer the services (the "Services") as defined on Page 1 of the Stryker Quote as the equipment ProCare Program (hereinafter each, a "Service Plan"). The equipment covered under said Service Plan is set forth on Exhibit A to the Quote (the "Equipment"). The Services and Service Plan are ancillary to and not a complete substitute for the requirements of Customer to adhere to the routine maintenance instructions provided by Stryker, its equipment and operations manuals, and accompanying labels and/or inserts for the Equipment. Customer covenants and agrees that its personnel will follow the instructions and contents of those manuals, labels and inserts. When Equipment or a component is replaced, the item provided in replacement will be the Customer's property (if Customer owns the Equipment) and the replaced item will be Stryker's property. Stryker may elect to use new or used parts related to the Services in its sole discretion. The Service Plan coverage, term, start date, and price of the Services appear on the Service Plan.

2. EQUIPMENT SCHEDULE CHANGES

During the term of the Agreement and upon each party's written consent, additional Equipment may be included in the Exhibit A. All additions are subject to the terms and conditions contained herein. Stryker shall adjust the charges and modify Exhibit A to reflect the additions.

3. INSPECTION SCHEDULING

Service inspections will be scheduled in advance at a mutually agreed upon time for such period of time as is reasonably necessary to complete the Services. Equipment not made available at the specified time will be serviced at the next scheduled service inspection unless specific arrangements are made with Stryker. Such arrangements will include travel and other special charges at Stryker's then current rates.

4. INSPECTION ACTIVITY

On each scheduled service inspection, Stryker's Service Representative will inspect each available item of Equipment as required in accordance with Stryker's then current Maintenance procedures for said Equipment. If there is any discrepancy or questions on the number of inspections, price, or Equipment, Stryker may amend this Agreement.

5. CUSTOMER OBLIGATIONS

Customer shall use commercially reasonable efforts to cooperate with Stryker in connection with Stryker's performance of the Services. Customer understands and acknowledges that Stryker employees will not provide surgical or medical advice, will not practice surgery or medicine, will not come in physical contact with the patient, will not enter the "sterile field" at any time, and will not direct equipment or instruments that come in contact with the patient during surgery. Customer's personnel will refrain from requesting Stryker employees to take any actions in violation of these requirements or in violation of applicable laws, rules or regulations, Customer policies, or the patient's informed consent. A refusal by Stryker employees to engage in such activities shall not be a breach of this Agreement. Customer consents to the presence of Stryker employees in its operating rooms, where applicable, in order for Stryker to provide Services under this Agreement and represents that it will obtain all necessary consents from patients.

6. SERVICE INVOICING

Invoices will be sent on the agreed payment method. All prices are exclusive of state and local use, sales or similar taxes. In states assessing upfront sales and use tax, Customer's payments will be adjusted to include all applicable sales and use tax amortized over the Service Plan term using a rate that preserves for Stryker, its affiliates and/or assigns, the intended economic yield for the transaction described in this Agreement. All invoices issued under this Agreement are to be paid within thirty (30) days of the date of the invoice. Failure to comply with Net 30 Day terms will constitute breach of contract and future Service will only be made on a prepaid or COD basis, or until the previous obligation is satisfied, or both. Stryker reserves the right, with no liability to Stryker, to cancel any contract on the basis of payment default for any previous equipment or service provided by Stryker or any of its affiliates.

7. PRICE CHANGES

The Service prices specified herein are those in effect as of the date of acceptance of this Agreement and will continue in effect throughout the term of the Service Plan.

8. INITIAL INSPECTION

This Agreement shall be applicable only to such Equipment as listed in Exhibit A, which has been determined by a Stryker's Representative to be in good operating condition upon his/her initial inspection thereof.

**PUBLIC WORKS, PUBLIC SAFETY,
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December 18, 2017 @ 5:00 p.m.
City Hall Council Chambers
1615 1st Avenue, South Sioux City, Nebraska**

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9. OPERATION MAINTENANCE

Stryker's Services are ancillary to and not a complete substitute for the requirements of Customer to adhere to the routine maintenance instructions provided by Stryker, its Equipment and operations manuals, and accompanying labels and/or inserts for each item of Equipment. Customer's appropriate user personnel should be entirely familiar with the instructions and contents of those manuals, labels and inserts and implement them accordingly.

10. SERVICE PLAN WARRANTY AND LIMITATIONS

Stryker represents and warrants that the Services shall be performed in a workmanlike manner and with professional diligence and skill. Services will comply with all applicable laws and regulations. During the term of the Service Plan, Stryker will maintain the Equipment in good working condition. Notwithstanding any other provision of this Agreement, the Service Plan does not include repairs or other services made necessary by or related to, the following: (1) abnormal wear or damage caused by misuse or by failure to perform normal and routine maintenance as set out in the Stryker maintenance manual or operating instructions. (2) accidents (3) catastrophe (4) acts of god (5) any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-Stryker authorized personnel (6) Equipment on which any original serial numbers or other identification marks have been removed or destroyed; or (7) Equipment that has been repaired with any unauthorized or non-Stryker components. In addition, in order to ensure safe operation of the Equipment, only Stryker accessories should be used. Stryker reserves the right to invalidate the Service Plan if Equipment is used with accessories not manufactured by Stryker.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES APPLICABLE TO THE SERVICES AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

11. WAIVER EXCLUSIONS

No failure to exercise and no delay by Stryker in exercising any right, power or privilege hereunder shall operate as a waiver thereof. No waiver of any breach of any provision by Stryker shall be deemed to be a waiver by Stryker of any preceding or succeeding breach of the same or any other provision. No extension of time by Stryker for performance of any obligations or other acts hereunder or under any other Agreement shall be deemed to be an extension of time for performances of any other obligations or any other acts by Stryker.

12. LIMITATION OF LIABILITY

EXCEPT FOR THIRD PARTY DAMAGES RELATED TO STRYKER'S INDEMNITY OBLIGATIONS UNDER SECTION 13, STRYKER'S LIABILITY ARISING UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF SERVICE FEES PAID DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. IN NO INSTANCE WILL STRYKER BE LIABLE TO CUSTOMER FOR INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR ATTORNEYS' FEES OR COSTS FOR ANY ACTIONS UNDER OR RELATED TO THIS AGREEMENT.

13. INDEMNIFICATION

Stryker shall indemnify and hold harmless Customer from any loss or damage brought by a third party which Customer may suffer directly as a result of the gross negligence or willful misconduct of Stryker or its employees or agents in the course of providing Services. The foregoing indemnification will not apply to any liability arising from: (i) an injury or damage due to the negligence of any person other than Stryker's employee or agent; (ii) the failure of any person other than Stryker's employee or agent to follow any instructions outlined in the labeling, manual, and/or instructions for use of the Equipment; (iii) the use of any equipment or part not purchased from Stryker or any equipment or any part thereof that has been modified, altered or repaired by any person other than Stryker's employee or agent; or (iv) any actions taken or omissions made by any Stryker employee while under the direction or control of Customer's staff. Customer agrees to hold Stryker harmless from and indemnify Stryker for any claims or losses or injuries arising from (i)-(iv) above resulting from Customer's or its employees' or agents' actions.

14. TERM AND TERMINATION

The Agreement shall commence on the date indicated on the first Service Plan entered into between the parties and shall continue until Stryker ceases to provide Services or the Agreement is canceled by either party by giving a ninety (90) days prior written notice of any such cancellation to the other party. If this Agreement is canceled during or before the expiration date of the Agreement, Customer will owe for the months covered up to the cancellation date of the Agreement and for any parts, labor, and travel charges, required to maintain Equipment, exceeding that already paid during the Agreement.

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15. FORCE MAJEURE

Except for Customer's payment obligations, which may only be delayed and not excused entirely, neither party to this Agreement will be liable for any delay or failure of performance that is the result of any happening or event that could not reasonably have been avoided or that is otherwise beyond its control, provided that the party hindered or delayed immediately notifies the other party describing the circumstances causing delay. Such happenings or events will include, but not be limited to, terrorism, acts of war, riots, civil disorder, rebellions, fire, flood, earthquake, explosion, action of the elements, acts of God, inability to obtain or shortage of material, equipment or transportation, governmental orders, restrictions, priorities or rationing, accidents and strikes, lockouts or other labor trouble or shortage.

16. INSURANCE REQUIREMENTS

Stryker shall maintain the following insurance coverage during the term of the Agreement: (i) commercial general liability coverage, including coverage for products and completed operations liability, with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate applying to bodily injury, personal injury, and property damage; (ii) automobile liability insurance with combined single limits of \$1,000,000.00 for owned, hired, and non-owned vehicles; and (iii) worker's compensation insurance as required by applicable law. At Customer's written request, certificates of insurance shall be provided by Stryker prior to commencement of the Services at any premises owned or operated by Customer. To the extent permitted by applicable laws and regulations, Stryker shall be permitted to meet the above requirements through a program of self-insurance.

17. WARRANTY OF NON-EXCLUSION

Each party represents and warrants that as of the Effective Date, neither it nor any of its employees, are or have been excluded terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs. Each party further represents that no final adverse action by the federal or state government has occurred or is pending or threatened against the party, its affiliates, or, to its knowledge, against any employee, Stryker, or agent engaged to provide Services under this Agreement. Each party also represents that if during the term of this Agreement it, or any of its employees becomes so excluded, terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs, such will promptly notify the other party. Each party retains the right to terminate or modify this Agreement in the event of the other party's exclusion from a federal or state health care program.

18. COMPLIANCE

Stryker, as supplier, hereby informs Customer, as buyer, of Customer's obligation to make all reports and disclosures required by law or contract, including without limitation properly reporting and appropriately reflecting actual prices paid for each item supplied hereunder net of any discount (including rebates and credits, if any) applicable to such item on Customer's Medicare cost reports, and as otherwise required under the Federal Medicare and Medicaid Anti-Kickback Statute and the regulations thereunder (42 CFR Part 1001.952(h)). Pricing under this Agreement (and each Service Plan) may constitute discounts on the purchase of Services. Customer represents that (i) it shall make all required cost reports, and (ii) it has the corporate power and authority to make or cause such cost reports to be made. To the extent required by law, Customer and Stryker agree to comply with the Omnibus Reconciliation Act of 1980 (P.L. 962499) and its implementing regulations (42 CFR, Part 420). To the extent applicable to the activities of Stryker hereunder, Stryker further specifically agrees that until the expiration of four (4) years after furnishing Services pursuant to this Agreement, Stryker shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Stryker that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Stryker further agrees that if Stryker carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

19. CONFIDENTIALITY

The parties hereto shall hold in confidence this Agreement and the terms and conditions contained herein (including Services Plan pricing) and any information and materials which are related to the business of the other or are designated as proprietary or confidential, herein or otherwise, or which a reasonable person would consider to be proprietary or confidential information; and (b) hereby covenant that they shall not disclose such information to any third party without prior written authorization of the one to whom such information relates. The rights and remedies available to a party hereunder shall not limit or preclude any other available equitable or legal remedies.

20. HIPAA

Stryker is not a "business associate" of Customer, as the term "business associate" is defined by HIPAA (the Health Insurance Portability and Accountability Act of 1996 and 45 C.F.R. parts 142 and 160-164, as amended). To the extent the parties mutually agree that Stryker becomes a business associate of Customer, the parties agree to negotiate to amend the Service Plan or this Agreement as necessary to comply with HIPAA, and if an agreement cannot be reached the applicable Service Plan will immediately terminate. All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived incidentally during the course of this Agreement, shall be treated by both parties as confidential, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. Notwithstanding the foregoing, Stryker may be considered a "business associate" of Customers related to any Service Plan for wireless products and/or other designated business associate services. If Stryker is considered a "business associate" of Customer, Stryker will agree to enter into a business associate agreement with Customer as required by HIPAA.

21. MISCELLANEOUS

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Neither party may assign or transfer their rights and/or benefits under this Agreement without the prior written consent of the other party, except that Stryker shall have the right to assign this Agreement or any rights under or interests in this Agreement to any parent, subsidiary or affiliate of Stryker. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by permitted successors and assigns of the parties to this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan. The invalidity, in whole or in part, of any of the foregoing paragraphs, where determined to be illegal, invalid, or unenforceable by a court or authority of competent jurisdiction, will not affect or impair the enforceability of the remainder of the Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations and agreements between the parties concerning the subject matter of this Agreement. In the event of an inconsistency or conflict between this Agreement and any purchase order, invoice, or similar document, this Agreement will control. Any inconsistency or conflict between the terms of this Agreement and a Service Plan shall be resolved in favor of the Service Plan. The sections entitled Limitation of Liability, Indemnification, Compliance, Confidentiality and Miscellaneous of this Agreement shall survive its termination or expiration.