



# City Commission Meeting

May 02, 2023 at 5:30 PM

118 W Central Ave, Arkansas City, KS

Please join our meeting <https://global.gotomeeting.com/join/187885901>  
Or dial in using your phone: United States: +1 (872) 240-3412 Access Code: 187 885 901

## I. Routine Business

1. Roll Call
2. Opening Prayer and Pledge of Allegiance
3. Additions or Deletions (**Voice Vote**)
4. Approval of the Agenda (**Voice Vote**)

## II. Awards and Proclamations

1. Recognize and honor Haylee McCorgary, Kamryn Mendoza, and Maycee Wolfenbarger as Arkansas City's Outstanding Student Award scholarship recipients for 2022-2023.
2. Proclaim May 4, 2023, as a Day of Prayer in Arkansas City.
3. Proclaim May 7-14, 2023, as National Music Week in Arkansas City.
4. Proclaim May 6-12, 2023, as National Nurses Week and May 7-13, 2023, as National Hospital Week in Arkansas City.

## III. Recognition of Visitors/Staff

1. Introduce and swear in new police officer Cody Hutchison.
2. Recognize the Arkansas City Police Department promotions of Combs, Horinek, Tuxhorn and Yzquierdo.

## IV. Consent Agenda (Voice Vote)

Note: All matters listed below on the Consent Agenda are considered under one motion and enacted by one motion. There should be no separate discussion. If such discussion is desired, any item may be removed from the Consent Agenda and then considered separately under Section VI: New Business.

1. Approve the April 18, 2023, regular meeting minutes as written.

## V. New Business

### City Manager Department

1. An Ordinance authorizing the vacating of all of Taylor Avenue adjoining Lot 1 of Block 15 and Lot 14 of Block 4, Sleeth Addition, Arkansas City, Cowley County, Kansas. (**Roll Call Vote**)

### Fire/EMS Department

- [1.](#) A Resolution authorizing the City of Arkansas City to purchase four (4), 16-foot industrial fans from Hunter Fan Company, for an amount not to exceed \$19,984.00. **(Voice Vote)**
  
- [2.](#) A Resolution authorizing the City of Arkansas City to purchase two (2) ZOLL X Series Advanced Cardiac Monitor/Defibrillators, from ZOLL Medical Corporation of Chelmsford, MA, for an amount not to exceed \$82,660.75. **(Voice Vote)**

## **VI. Items for Discussion by City Commissioners**

### **VII. Comments from the Audience for Items not on the Agenda**

*The public will be allowed to speak on issues or items that are not scheduled for discussion on the agenda. Individuals should address all comments and questions to the Commission. Comments should be limited to issues and items relevant to the business of the Governing Body. The Commission will not discuss or debate these items, nor will the Commission make decisions on items presented during this time. Each person will be limited to three (3) minutes.*

## **VIII. City Manager Reminders and Updates**

## **IX. Adjournment**



# City Commission Agenda Item

**Meeting Date:** May 2, 2023  
**From:** Randy Frazer, City Manager  
**Item:** 2023 Outstanding Student Award Recognitions

**Purpose:** Recognize and honor Haylee McCorgary, Kamryn Mendoza, and Maycee Wolfenbarger as Arkansas City’s Outstanding Student Award scholarship recipients for 2022-2023.

**Background:**

The **Outstanding Student Award** program was started in 1984. The City Commission implemented the program to recognize students who are outstanding examples of academic and civic excellence in our community. Each year, staff asks teachers, staff, and administrators at Ark City Christian Academy, Arkansas City Middle School, Arkansas City High School, and Cowley College to nominate students they think are qualified for this honor.

Each year, the **Outstanding Student Award Committee**, appointed by the Mayor and City Commission, receives all nominations from the three schools. Short, informal interviews are conducted with each nominee, and the committee then chooses three finalists from each school to represent the nominees.

From the nine (9) finalists, a top student is chosen for each school. Of the three top students, one (1) is chosen as the overall City of Arkansas City Outstanding Student for that year and awarded a **\$1,000** scholarship, the first runner-up receives a **\$500** scholarship, and the second runner-up receives a **\$250** scholarship from the City of Arkansas City.

This year’s Overall Outstanding Student for Arkansas City is Arkansas City High School student Kamryn Mendoza. The first runner-up is Cowley College student Macyee Wolfenbarger. The second runner-up is Arkansas City Middle School student Haylee McCorgary.

**Commission Options:**

1. Introduce and award Haylee McCorgary as second runner-up and formally present the \$250 scholarship.
2. Introduce and award Macyee Wolfenbarger as first runner-up and formally present the \$500 scholarship.
3. Introduce and award Kamryn Mendoza as the 2022-2023 Overall Outstanding Student and formally present the \$1,000 scholarship.

**Fiscal Impact:**

Amount: **\$1,700.00**

Fund: **01 - General** Department: **201 - Commission** Expense Code: **6217 - Contributions**

Included in budget       Grant       Bonds       Other Not Budgeted

**Approved for Agenda by:**

Randy Frazer, City Manager

*Office of the Mayor*  
**Arkansas City, Kansas**  
  
*Proclamation*

**WHEREAS**, the National Day of Prayer is a tradition first proclaimed by the Continental Congress in 1775; and

**WHEREAS**, the United States Congress, by a joint resolution on April 17, 1952, provided that the President “shall set aside and proclaim a suitable day each year, other than a Sunday, as a National Day of Prayer, on which the people of the United States may turn to God in prayer and meditation”; and

**WHEREAS**, in 1988, legislation setting aside the first Thursday of May in each year as a National Day of Prayer was passed unanimously by both houses of the United States Congress and signed by President Ronald Reagan; and

**WHEREAS**, the National Day of Prayer is an opportunity for all Americans to join in united prayer to acknowledge our dependence on God, give thanks for blessings received, request healing for wounds endured, and ask God to guide our leaders and bring wholeness to the United States and its citizens; and

**WHEREAS**, it is fitting and proper to give thanks to God by observing a day of prayer in the City of Arkansas City, Kansas, when all may acknowledge our blessings and express gratitude for them, while recognizing our dependence on God for our continued blessings and guidance.

**NOW, THEREFORE**, the Mayor of the City of Arkansas City, Kansas, does hereby proclaim **Thursday, May 4, 2023**, as

**A DAY OF PRAYER**

in Arkansas City, and encourage all citizens of the City of Arkansas City to observe this day in ways appropriate to its importance and significance, and recognizing this year’s theme: “Pray Fervently in Righteousness and Avail Much”, from bible verse James 5:16b.

*In witness thereof I have hereunto set my hand and caused this seal to be affixed:*

\_\_\_\_\_  
 Name/Title: *Diana L. Spielman, Mayor*  
 Date: *May 2, 2023*



*Office of the Mayor*  
**Arkansas City, Kansas**  
  
*Proclamation*

**WHEREAS**, music plays an increasingly important role in our world today; and

**WHEREAS**, music is one of the most sublime of human pursuits, and is subscribed to by all races and creeds; and

**WHEREAS**, music is the language of all peoples, and is one of the greatest forces in creating peace and harmony; and

**WHEREAS**, the National Federation of Music Clubs — dedicated to encouraging young musicians, increasing musical knowledge and advancing American music — and its cooperating organizations join forces annually in **May** to direct attention to the dynamic influence of music in everyday living.

**NOW, THEREFORE**, the Mayor of the City of Arkansas City, Kansas, does hereby proclaim **May 7-14, 2023**, as

**NATIONAL MUSIC WEEK**

in Arkansas City, and ask that all citizens of this community observe and take part in activities recognizing the importance of music, musicians, and musical organizations to the cultural life of our city, state, nation and world, and recognizing this year’s theme: “Music... is a Worldwide Adventure.”

*In witness whereof I have hereunto set my hand and caused this seal to be affixed.*

\_\_\_\_\_  
Name/Title: *Diana L. Spielman, Mayor*  
Date: *May 2, 2023*

*Office of the Mayor*  
  
**Arkansas City, Kansas**  
*Proclamation*

**WHEREAS**, in 1993, the American Nurses Association declared **May 6-12** as the national week to celebrate and elevate the nursing profession, and each year, the celebration ends on **May 12**, which was Florence Nightingale’s birthday; and

**WHEREAS**, National Nurses Week is a time for everyone — individuals, employers, other health care professionals, community leaders and nurses — to recognize the vast contributions and positive impact of America’s over 4 million registered nurses, for their service, dedication, and daily sacrifices in caring for others and improving the health of patient; and

**WHEREAS**, National Hospital Week is **May 7-13, 2023**; and

**WHEREAS**, National Hospital Week celebrates the hospitals, health systems, and men and women who support the health and well-being of communities through dedication and care from the heart; and

**WHEREAS**, celebrating National Hospital Week provides an opportunity to thank all the dedicated individuals — physicians, nurses, therapists, engineers, food service workers, volunteers, administrators and more — for their contributions; and

**WHEREAS**, the hard-working people who staff our nation’s hospitals, including the registered nurses and other personnel at SCK Health, deserve universal regard and appreciation for keeping our community healthy and safe.

**NOW, THEREFORE**, the Mayor of the City of Arkansas City, Kansas, does hereby proclaim **May 6-12, 2023**, as

**NATIONAL NURSES WEEK**

and **May 7-13, 2023**, as

**NATIONAL HOSPITAL WEEK**

in Arkansas City, and urge residents to express their appreciation for the people, facilities and technologies that make trustworthy, reliable health care possible in our community, and recognize this year’s National Nurses Week theme, “You Make a Difference”, and National Hospital Week theme, “We Are Healthcare”.

*In witness thereof I have hereunto set my hand and caused this seal to be affixed:*

\_\_\_\_\_  
 Name/Title: *Diana L. Spielman, Mayor*  
 Date: *May 2, 2023*



# City Commission Agenda Item

**Meeting Date:** May 2, 2023  
**From:** Eric Burr, Police Chief  
**Item:** Introduce and swear new police officer Cody Hutchinson

**Purpose:** Introduce and swear in new police officer Cody Hutchinson.

**Background:**

Cody Hutchinson began his career with the Arkansas City Police Department on April 12<sup>th</sup>, 2023. This is a swearing in with the City Clerk and introduction of the new officer.

**Commission Options:**

**Fiscal Impact:**

Amount:

Fund: Department: Expense Code:

Included in budget       Grant       Bonds       Other Not Budgeted

**Approved for Agenda by:**

Randy Frazer, City Manager



# City Commission Agenda Item

**Meeting Date:** May 2, 2023  
**From:** Eric Burr, Police Chief  
**Item:** Police Department Promotions

**Purpose:** Recognize the Arkansas City Police Department promotions of Combs, Horinek, Tuxhorn and Yzquierdo.

**Background:**

The Arkansas City Police Department recently completed a round of promotions to include: Sergeant Corey Combs to the rank of Lieutenant, Master Police Officer Kelsey Horinek to the rank of Sergeant, Master Police Officer Cori Tuxhorn to the rank of Sergeant, and Master Police Officer Mike Yzquierdo to the rank of Sergeant.

For the first time in recent history, two women have been promoted to supervisory positions within the police department. This is item is for recognition purposes.

**Commission Options:**

**Fiscal Impact:**

Amount:

Fund: Department: Expense Code:

Included in budget       Grant       Bonds       Other Not Budgeted

**Approved for Agenda by:**

Randy Frazer, City Manager



# City Commission Agenda Item

**Meeting Date:** May 2, 2023  
**From:** Tiffany Parsons, City Clerk  
**Item:** Approve the April 18, 2023, Regular Meeting Minutes

**Purpose:** Approve the April 18, 2023, regular meeting minutes as written.

**Background:**

Each meeting, the City Commission reviews and approves the minutes of its prior meeting(s).

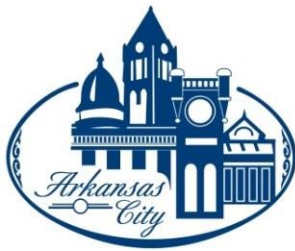
**Commission Options:**

- 1. Approve with consent agenda.
- 2. Remove item from consent agenda for further consideration.

**Approved for Agenda by:**

A handwritten signature in black ink, appearing to read "Randy Frazer", is written over a horizontal line.

Randy Frazer, City Manager



Tuesday, April 18, 2023  
Regular Meeting Minutes  
118 W Central Ave, Arkansas City, KS

**Routine Business**

- 1. Roll Call

**PRESENT**

Commissioner Kanyon Gingher  
Commissioner Charles Jennings  
Commissioner Scott Rogers  
Commissioner Jay Warren  
Mayor Diana Spielman

Also present from staff: City Manager Randy Frazer, City Attorney Larry Schwartz, Police Chief Eric Burr, Police Lieutenant Jason Legleiter, Public Services Superintendent Tony Tapia, Finance Director/Treasurer Jennifer Waggoner, Communications Director Shana Adkisson, and City Clerk Tiffany Parsons.

- 2. Opening Prayer and Pledge of Allegiance were led by Mayor Spielman.
- 3. There were no additions or deletions to the agenda.
- 4. Approval of the Agenda

*Motion made by Commissioner Rogers, Seconded by Commissioner Gingher to approve the agenda as written.*

*Voting Yea: Commissioner Gingher, Commissioner Jennings, Commissioner Rogers, Commissioner Warren, Mayor Spielman. Mayor Spielman declared motion approved.*

**Awards and Proclamations**

- 1. Proclamation read by Sarah Pate and her mother Nora Pate, proclaiming May 2023, as National Foster Care Month in Arkansas City.
- 2. Proclamation read by Levi Whatley and his mother Laura Hasty, proclaiming May 5, 2023, as Cinco de Mayo in Arkansas City.
- 3. Proclamation read by Mayor Spielman, proclaiming May 7-13, 2023 as Public Service Recognition Week in Arkansas City.

**Recognition of Visitors/Staff**

- 1. City Clerk Parsons presented the item to recognize citizens Johnna Haynes and Alice McKee for the "Good Neighbor" Award.

Lieutenant Jason Legleiter awarded Haynes and McKee with Good Neighbor Awards for their heroic efforts displayed on February 27, 2023, when Haynes, as an employee of the Arkansas City Postal Office,

noticed that mail belonging to a resident in her route had not been removed from the mail box for an extended period of time. Haynes notified her supervisor McKee of her concerns for the citizen. McKee immediately notified dispatch, requesting a welfare check be conducted at this residence. "When officers arrived at the residence, they learned an elderly occupant had fallen and could not move for at least one day. EMS staff was dispatched to the scene, and the patient was transported to the hospital" explained Legleiter. Had Haynes and McKee not acted upon as urgently, the injured resident would have continued to decline, based on the opinion of EMS. "Johnna's ability to see something and say something, and Alice taking the step to contact help, very well may have saved this citizen's life," Legleiter added.

**Consent Agenda**

Note: All matters listed below on the Consent Agenda are considered under one motion and enacted by one motion. There should be no separate discussion. If such discussion is desired, any item may be removed from the Consent Agenda and then considered separately under Section VI: New Business.

*Motion made by Commissioner Warren, Seconded by Commissioner Rogers to approve the consent agenda as written.*

- 1. Approve the April 6, 2023, regular meeting minutes as written.

*Voting Yea: Commissioner Gingher, Commissioner Jennings, Commissioner Rogers, Commissioner Warren, Mayor Spielman. Mayor Spielman declared motion approved.*

**New Business**

**City Manager Department**

- 1. City Clerk Parsons presented a resolution authorizing the City of Arkansas City to approve a change order submitted by Vogts-Parga Construction, LLC to allow additional concrete work on the alleyway, paving to extend the original project at the north end to the south side of 5th Ave., for an amount not to exceed \$28,509.20.

*Motion made by Commissioner Gingher, Seconded by Commissioner Rogers to authorize the City of Arkansas City to approve a change order submitted by Vogts-Parga Construction, LLC to allow additional concrete work on the alleyway, paving to extend the original project at the north end to the south side of 5<sup>th</sup> Ave., for an amount not to exceed \$28,509.20.*

*Commissioner Warren questioned why we have extra concrete work. Manager Frazer gave an explanation that this additional work would complete paving the alleyway from the manhole to south end of 5<sup>th</sup> that was not included in the original plans.*

*Voting Yea: Commissioner Gingher, Commissioner Jennings, Commissioner Rogers, Commissioner Warren, Mayor Spielman. Mayor Spielman declared motion approved.*

- 2. City Clerk Parsons A Resolution authorizing the City of Arkansas City to approve a change order submitted by Vogts-Parga Construction, LLC to install geogrid in the alleyway, to extend the original project at the north end to the south side of 5th Ave., for an amount not to exceed \$4,847.50.

Commissioner Warren verified, and City Manger Frazer confirmed, that this was not figured in with the original budget and the reason behind the geogrid is to provide stability to support the heavy truck traffic down the alleyway.

*Motion made by Commissioner Rogers, Seconded by Commissioner Warren to authorize the City of*

*Arkansas City to approve a change order submitted by Vogts-Parga Construction, LLC to install geogrid in the alleyway, to extend the original project at the north end to the south side of 5th Ave., for an amount not to exceed \$4,847.50.*

*Voting Yea: Commissioner Gingher, Commissioner Jennings, Commissioner Rogers, Commissioner Warren, Mayor Spielman. Mayor Spielman declared motion approved.*

- 3. City Clerk Parsons presented an Ordinance modifying Municipal Code Section 18-20, of The City of Arkansas City, KS, to exempt permanent established businesses with 100 or more employees, from licensing private security officers through the City of Arkansas City.

City Clerk Parsons elaborated that the reason behind the requested ordinance modification was that Securitas is already completed background checks a higher national level/FBI in addition to a mouth swap drug test, then per the current ordinance, city staff is completing a background check at the KBI level. Overall, the process makes for an unnecessary inconvenience to the applicant and staff involved both on the city and Securitas side. Upwards of 60 applications and background checks were ran in 2022 alone all of them being potential employees of Securitas. Commissioner Warren questioned if Police Chief Burr had any problems with the amendment. Burr requested that the commission consider is to maintain a record of the current security staff, something as simple as having Securitas submit a roster, that way the city has a record of who is actually working on premise. Mayor Spielman raised concern for smaller businesses being charged for background checks. Attorney Schwartz explained that it may seem that way, but the background check process is actually an added benefit to smaller businesses that otherwise would may have accesses or able to afford it, as only certain parties are qualified to run background check through the KBI.

*Motion made by Commissioner Warren, Seconded by Commissioner Warren to authorize an ordinance modifying Municipal Code Section 18-20, of The City of Arkansas City, KS, to exempt permanent established businesses with 100 or more employees, from licensing private security officers through the City of Arkansas City, with the added condition that they provide a monthly staffing report to the city.*

*Roll Call Voting Yea: Commissioner Gingher, Commissioner Jennings, Commissioner Rogers, Commissioner Warren, Mayor Spielman. Mayor Spielman declared motion approved.*

Police Department

- 1. City Clerk Parsons announced a Resolution approving the proposal submitted by Bankers Security, of Salina, KS, to upgrade the Police Department facility alarm, access control and digital video system, for an amount not to exceed \$12,357.00.

Chief Burr presented this item to the commission as a replacement and upgrade to the current out of date security system. This proposal is within budget.

Motion made by Commissioner Gingher, Seconded by Commissioner Rogers to approve the proposal submitted by Bankers Security, of Salina, KS, to upgrade the Police Department facility alarm, access control and digital video system, for an amount not to exceed \$12,357.00.

Voting Yea: Commissioner Gingher, Commissioner Jennings, Commissioner Rogers, Commissioner Warren, Mayor Spielman. Mayor Spielman declared the motion approved.



Public Services Department

1. City Clerk Parsons presented a Resolution authorizing the City of Arkansas City to accept a bid submitted by Armor Equipment, of Arnold MO, to purchase a 2024 Peterbuilt 537 with a Heil 20 Yard PT-1000 Rear Loader, for an amount not to exceed \$205,671.48.

Public Services Superintendent Tapia addressed the commission on the reasoning behind this choice of truck. Based on staff research, priced and other know cities that have had success. The bid price comes in under budget and includes a \$50,000 equipment trade in.

Motion made by Commissioner Warren, Seconded by Commissioner Gingher to approve a Resolution authorizing the City of Arkansas City to accept a bid submitted by Armor Equipment, of Arnold MO, to purchase a 2024 Peterbuilt 537 with a Heil 20 Yard PT-1000 Rear Loader, for an amount not to exceed \$205,671.48.

Voting Yea: Commissioner Gingher, Commissioner Jennings, Commissioner Rogers, Commissioner Warren, Mayor Spielman. Mayor Spielman declared the motion approved.

**Items for Discussion by City Commissioners**

Commissioner Warren suggested having further discussion regarding truck route violations at the next work session.

Commissioner Ginger inquired with City Manger Frazer about a second court date. Work session discussion to take place.

Commissioner Jennings spoke of hearing about City Manager Frazer making an appearance at the Cowley County Humane Society. Frazer elaborated that he and Winfield City Manager Taggart Wall met with the Humane Society board and took a tour of the facility. Both cities will continue to provide follow-up and support.

**Comments from the Audience for Items not on the Agenda**

*The public will be allowed to speak on issues or items that are not scheduled for discussion on the agenda. Individuals should address all comments and questions to the Commission. Comments should be limited to issues and items relevant to the business of the Governing Body. The Commission will not discuss or debate these items, nor will the Commission make decisions on items presented during this time. Each person will be limited to three (3) minutes.*

None.

**City Manager Reminders and Updates**

1. City Manager Frazer presented the following reminders and updates:
  - Madison St. Mil and Overlay set to begin in May from Summit to 8<sup>th</sup>
  - 15 Street Bridge Replacement set to begin May 1<sup>st</sup>
  - Outstanding Student Banquet Dinner April 24<sup>th</sup> at 6:30 PM in the Cowley College Brown Center
  - Heartland virtual meeting April 27<sup>th</sup> from 12:00-12:30 PM
  - Work Session April 28<sup>th</sup>
  - Work Session May 12<sup>th</sup> – Budget Retreat Beth with Ranson Financial will be there at 11am & Shawn Gordon will be there to give an audit report.
  - 1318 N 11<sup>th</sup> water complaint – Rod reached out to KRWA, they will work with KDHE
  - Preliminary engineering plans received on the water fill station
  - Engineering proposals for the water tower and projects on the east side
  - Financial Summary located at back of the packet

- 2. Chief Burr updated the commission on the Opioid Settlement Funds provided by State and local programs. On April 11, 2023, the Forever 15 Project took place, where the City of Arkansas City Police Department used Opioid funds, to fly presenter Janel Rodriguez and two deputies in from Texas to give presentations to four our local schools, including Winfield High School, reaching 1500 students and staff providing fentanyl awareness. Burr stated that, "something that was really impactful, was Janel Rodriguez who actually started the Forever 15 Project, lost her teenage son Noah, at just 15 years of age back in August of 2022. Her presentation was outstanding." Burr reported that county wide, statically there have been 64 overdoses and one fatality related to a combination of all opioids. There have been 7 Narcan appointments, which is the drug that when administered, reverses the effect of an opioid overdose. A Police Department goal is to have every officer carry at least one packet of Narcan.

**Adjournment**

*Motion made by Commissioner Warren, Seconded by Commissioner Gingher to adjourn the meeting.*

*Voting Yea: Commissioner Gingher, Commissioner Jennings, Commissioner Rogers, Commissioner Warren, Mayor Gingher. Mayor Spielman declared the meeting adjourned.*

**THE CITY OF ARKANSAS CITY  
BOARD OF CITY COMMISSIONERS**

\_\_\_\_\_  
Diana L. Spielman, Mayor

**ATTEST:**

\_\_\_\_\_  
Tiffany Parsons, City Clerk

**Prepared by:**

\_\_\_\_\_  
Tiffany Parsons, City Clerk



# City Commission Agenda Item

**Meeting Date:** May 2, 2023  
**From:** Josh White, Principal Planner  
**Item:** Taylor Ave Vacation

**Purpose:** An Ordinance authorizing the vacating of all of Taylor Avenue adjoining Lot 1 of Block 15 and Lot 14 of Block 4, Sleeth Addition, Arkansas City, Cowley County, Kansas. **(Roll Call Vote)**

**Background:**

Melody Vaden has filed a request to vacate a portion of Taylor Avenue between G & the alley to the west. She desires to expand her yard space and has been maintaining the area for some time. All adjacent property owners were notified. The Technical Advisory Committee noted that there are no utilities within the area to be vacated and has no concerns.

The Planning Commission held a public hearing on April 11, 2023 and voted to recommend approval of this vacation.

**Commission Options:**

1. Approve the Ordinance
2. Disapprove the Ordinance
3. Table the Resolution for further discussion

**Fiscal Impact:**

Amount: Cost of Publication

Fund: Department: Expense Code:

Included in budget       Grant       Bonds       Other Not Budgeted

**Approved for Agenda by:**

Randy Frazer, City Manager

**ORDINANCE NO. 2023-05-\_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE VACATING OF ALL OF TAYLOR AVENUE ADJOINING LOT 1 OF BLOCK 15 AND LOT 14 OF BLOCK 4, SLEETH ADDITION, ARKANSAS CITY, COWLEY COUNTY, KANSAS.**

**WHEREAS**, the City of Arkansas City Planning Commission, after providing notice and holding a hearing pursuant to K.S.A. § 12-504, has considered the proposed vacation of the public right-of-way at issue, and recommended the City grant the petition to vacate; and

**WHEREAS**, the City of Arkansas City Planning Commission and the Technical Advisory Committee determined that no easements would be necessary to maintain access; and

**WHEREAS**, the Governing Body of the City of Arkansas City, Kansas, after due investigation and consideration has determined that the nature and extent of the public use and interest to be subserved is such as to warrant the vacating of the public right-of-way at issue.

**NOW THEREFORE, IN CONSIDERATION OF THE AFORESTATED PREMISES, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE:** The property legally described as:

All of the Taylor Avenue Right of Way (platted as Washington Avenue) adjoining Lot 1 of Block 15 and Lot 14 of Block 4, Sleeth Addition to Arkansas City, Cowley County, Kansas.

IS HEREBY VACATED, but the city specifically reserves an access and utility easement over the entire described area for existing and/or future utilities as well as emergency vehicle access.

**SECTION TWO:** The City Clerk shall make proper notification of this Ordinance which shall be in full force and effect thirty (30) days after either (a) publication once in the official newspaper of the City, or (b) publication of a summary of this Ordinance certified as legally accurate and sufficient by the City Attorney unless one or more interested parties files a written protest before the expiration of such time with the office of City Clerk. If such written protest is filed, the Governing Body of the City of Arkansas City, Kansas, is required to convene a Public Hearing to consider any and all objections to the proposed Ordinance and, upon conclusion of the Hearing, is required to either confirm the vacating Ordinance and file the same with the County Clerk and Register of Deeds office or if not confirmed, the vacating Ordinance shall be void and have no force and effect.

**SECTION THREE:** A certified copy of this Ordinance signed by the City Clerk for the City of Arkansas City, Kansas, shall be recorded in the Office of the Register of Deeds, Cowley County, Kansas.

**PASSED AND ORDAINED** by the Governing Body of the City of Arkansas City, Kansas this 2<sup>nd</sup> day of May, 2023.

(Seal)

\_\_\_\_\_  
Diana L. Spielman, Mayor

ATTEST:

\_\_\_\_\_  
Tiffany Parsons, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 2023-05-\_\_\_\_\_ of the City of Arkansas City, Kansas adopted by the governing body on May 5, 2023 as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Tiffany Parsons, City Clerk



# STAFF REPORT

City of Arkansas City Neighborhood Services Division  
 Josh White, Principal Planner  
 118 W Central Ave, Arkansas City, KS 67005

Phone: 620-441-4420 Fax: 620-441-4403 Email: [jwhite@arkansascityks.gov](mailto:jwhite@arkansascityks.gov) Website: [www.arkcity.org](http://www.arkcity.org)

CASE NUMBER VR-2023-044	APPLICANT/PROPERTY OWNER Melody Vaden
PUBLIC HEARING DATE April 11, 2023	PROPERTY ADDRESS/LOCATION A portion of Taylor Ave from G Street west to the east line of the alley

**SUMMARY OF REQUEST**  
 Melody Vaden has filed a request to vacate a portion of Taylor Avenue between G & the alley to the west. She desires to expand her yard space and has been maintaining the area for some time. All adjacent property owners were notified. The Technical Advisory Committee noted that there are no utilities within the area to be vacated and has no concerns.



Map data ©2023 Esri World Topographic Map with overlays

EXISTING ZONING Not applicable	EXISTING LAND USE Vacant, platted as street	SURROUNDING ZONING & LAND USE North-R-2; Residential East-R-2; Residential South-R-2; Residential West-I-1; Industrial	SITE IMPROVEMENTS Gravel drive	SIZE OF PROPERTY Approx 0.24 acres
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**STAFF RECOMMENDATION**

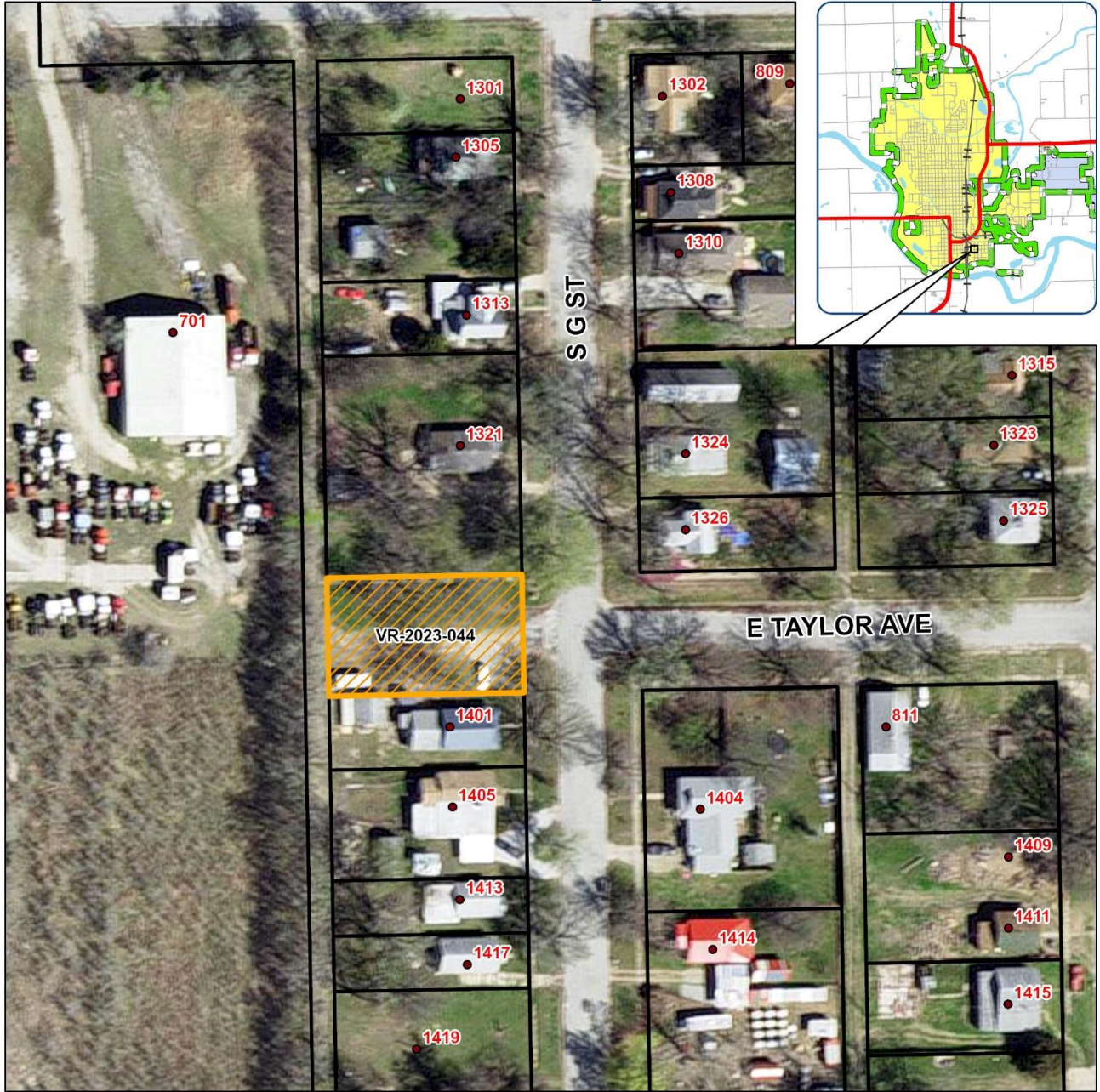
Staff recommends **approval**.

<b>TECHNICAL ADVISORY COMMITTEE COMMENTS</b> There are no utilities in the area to be vacated and no other concerns were expressed.	<b>PROPERTY HISTORY</b> This area was platted in 1888. At some point the railroad right of way took over the west half of the blocks in this area. No other land use cases were found for this area.
	<b>NOTICE GIVEN</b> Proper notice was published in the newspaper. Notices were sent to the property owners within 200 feet.

**PRIVATE RIGHTS /PUBLIC GAIN/LOSS**  
 No private rights will be injured or endangered. No utilities are present within the area to be vacated. The alley will remain open and can be used for rear access to the adjacent properties as well as for utility maintenance.



### Vacation Request



A request to vacate a portion of Taylor Avenue adjacent to Blocks 4 & 15, Sleeth Addition.

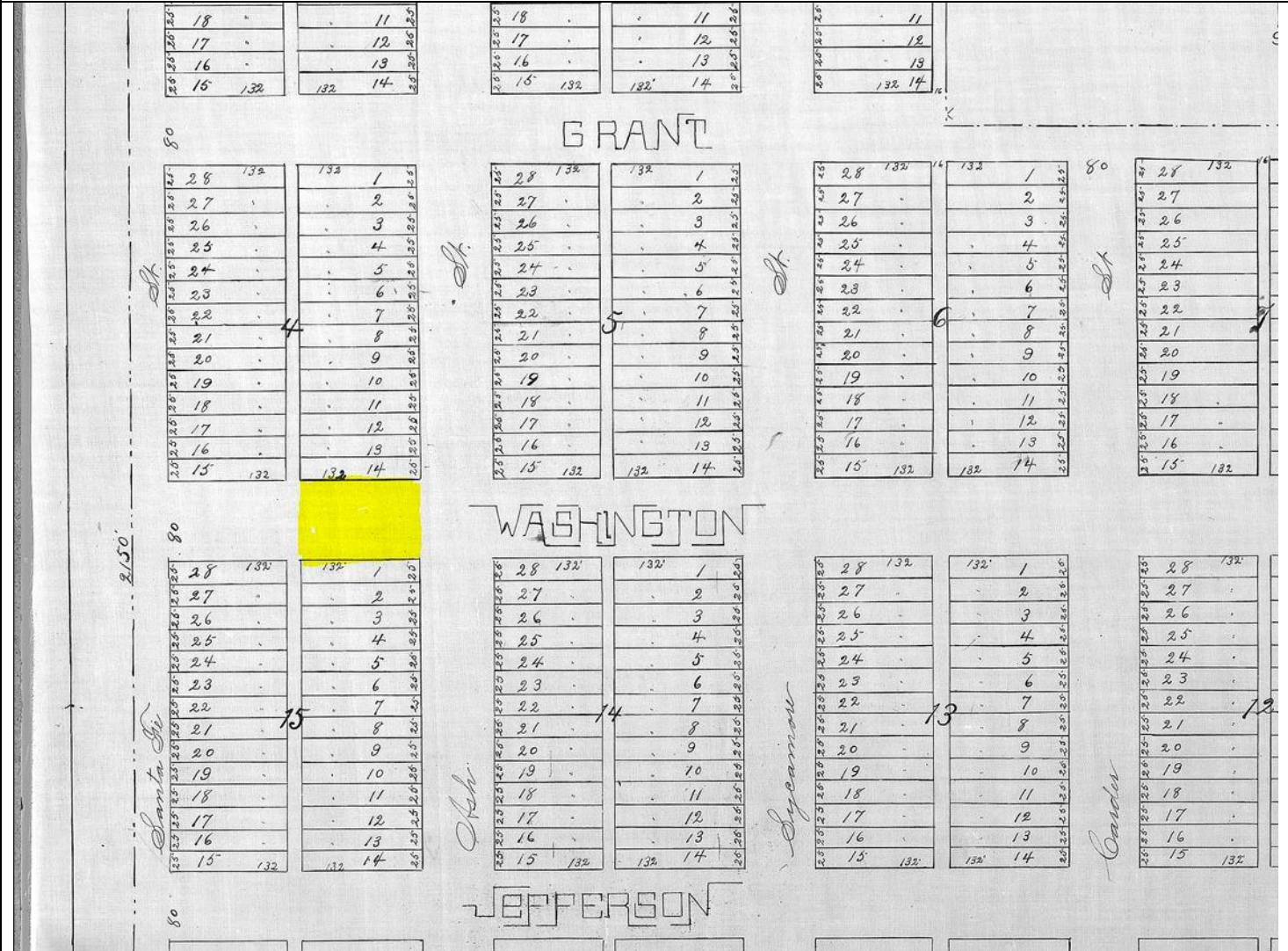
-  City Limits
-  Vacation Request
-  Property Lines

Produced by the  
 City of Arkansas City GIS  
 using the best available  
 data to date.  
 Created: February 21, 2023





Portion of Plat



This is a portion of the Sleeth Addition plat filed in 1888. Blocks 4 & 15 are located on the left of the image. The highlighted area shows the approximate location of the vacation request. Note that the name of the partial street to be vacated is Washington Avenue on this plat and was later renamed to Taylor Avenue. Also in this image, Grant Ave is now Polk Ave and Jefferson Avenue is now Filmore Avenue. Ash, Sycamore and Carder Streets are now G, H & J Streets respectively. The west half of Blocks 4 & 15 were vacated at some point although no records were found as to when this occurred. Santa Fe Street was vacated likely at the same time.



**Neighborhood Photos**



Taylor Avenue looking West



Taylor Avenue looking East



G Street looking South



G Street looking North



Alleyway provides sufficient access for utilities



# City Commission Agenda Item

**Meeting Date:** May 2, 2023  
**From:** Patrick Ramirez, Fire/EMS Department  
**Item:** Purchase Four (4) Hunter 16’ Industrial Fans

**Purpose:** A Resolution authorizing the City of Arkansas City to purchase four (4), 16-foot industrial fans from Hunter Fan Company, for an amount not to exceed \$19,984.00. **(Voice Vote)**

**Background:**

Currently, the Fire/EMS building has no way of moving air through the bays during the summer and winter months. This causes wear on the equipment stored in the bays, specifically the ambulances that carry medications that have to be kept within a certain temperature range. The Hunter fans in both the north and south bays will help alleviate the extreme summer and winter temperatures with air circulation.

In June 2022, the Fire/EMS Department received \$17,511.51 in HRSA Stimulus funds. The funds can be used for acquiring additional resources, including facilities, equipment, supplies, healthcare practices, staffing, and technology to expand or preserve care delivery. The funds have to be expended by June 30, 2023. We are requesting to use these available funds towards the purchase of the fans.

We compared 3 similar fans and determined Hunter to be the best choice due to features and price.

**Commission Options:**

1. Approve the Resolution
2. Disapprove the Resolution
3. Table the Resolution for further discussion

**Fiscal Impact:**

Amount: **\$19,984.00**

Fund: **01 (General)** Department: **310 (Fire)** Expense Code: **7204 (Building Materials & Repairs)**

Included in budget       Grant       Bonds       Other Not Budgeted

\$17,511.51 HRSA Stimulus Funds and \$2,472.49 budgeted funds

**Approved for Agenda by:**



Randy Frazer, City Manager

RESOLUTION NO. 2023-05-\_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY OF ARKANSAS CITY TO PURCHASE FOUR (4), 16-FOOT INDUSTRIAL FANS FROM HUNTER FAN COMPANY, FOR AN AMOUNT NOT TO EXCEED \$19,984.00.**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the City of Arkansas City, Kansas, purchase four (4), 16-foot industrial fans from Hunter Fan Company, for an amount not to exceed \$19,984.00.

**SECTION TWO:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the mayor and/or city staff of the City of Arkansas City, Kansas, to take such further and other necessary actions that are required to effectuate the intent and purposes of this Legislative Enactment.

**SECTION THREE:** This Resolution shall be in full force and effect from its date of passage by the Governing Body of the City of Arkansas City, Kansas.

**PASSED AND RESOLVED** by the Governing Body of the City of Arkansas City, Kansas, on this 2nd day of May, 2023.

(Seal)

\_\_\_\_\_  
Diana L. Spielman, Mayor

ATTEST:

\_\_\_\_\_  
Tiffany Parsons, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of Resolution No. 2023-05-\_\_\_\_\_ of the City of Arkansas City, Kansas, adopted by the Governing Body thereof on May 2, 2023. as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Tiffany Parsons, City Clerk





Quotation

Section , Item 1.

Quote #: Q-30827-2
Date: 4/7/2023 8:54 AM
Expires On: 5/7/2023

Hunter Fan

Phone: (844) 591-3267
Fax:
Email: industrialinfo@hunterfan.com

Ship To
Stuart (Chief) Cassaboom
Arkansas City Fire/EMS
115 S. D St.
Arkansas, KS 67005
USA
620-262-7589
scassaboom@arkansascityks.gov

Bill To
Arkansas City Fire/EMS
115 S. D St.
Arkansas, KS 67005
USA

Table with 5 columns: SALESPERSON, EXT, EMAIL, DELIVERY METHOD, PAYMENT METHOD. Row 1: Michael Lavender, x, mlavender@hunterfan.com, ,

Group1

Table with 3 columns: QTY, PART #, DESCRIPTION. Rows include ECO 16' BLADE PACK, ECO 12-16 MOTOR ASSEMBLY, VFD ASSY 240V/1P TCP/IP POE, 350 POE Controller, DOWNROD ASSY 31.5-49.5". Summary rows for Group1 Sub-Total and Group1 Total Net Price.

Install option (Not in Total)

Table with 3 columns: QTY, PART #, DESCRIPTION. Row 1: 4, II-GOLD, GOLD LEVEL MECHANICAL INSTALL. Summary rows for Install option (Not in Total) Sub-Total, Install option (Not in Total) Total Net Price, and a summary table for Net Price, Sales Tax, and Total Net Price.

Notes & Comments
Sales tax may apply
Freight included

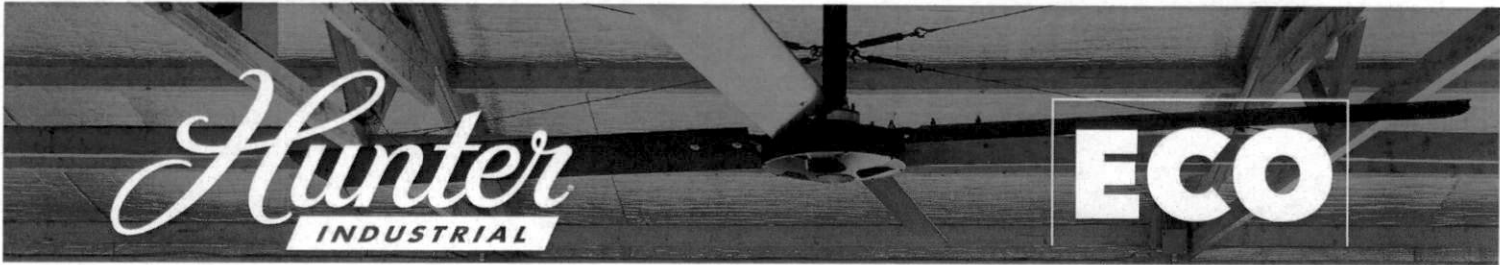
You are confirming the motor/control, voltage/phase, and the downrod length as specified in the quote above, are appropriate for your installation. All costs related to correcting voltage/phase and or downrod length after delivery of product are the sole responsibility of the Customer. For each fan with a change in voltage or downrod length, a \$250 charge plus cost of freight will be applied. Customer initials: \_\_\_\_\_

By signing this Quotation you are converting this document to an Order form and you (i) agree to purchase the products and services listed above at the above stated prices; and (ii) if installation services are purchased, you agree you have read, understood, and agree to be legally bound by the service terms and conditions available at https://industrialfans.hunterfan.com/pages/hunter-industrial-installation-services-terms-and-conditions in addition to those terms and conditions contained in this document.

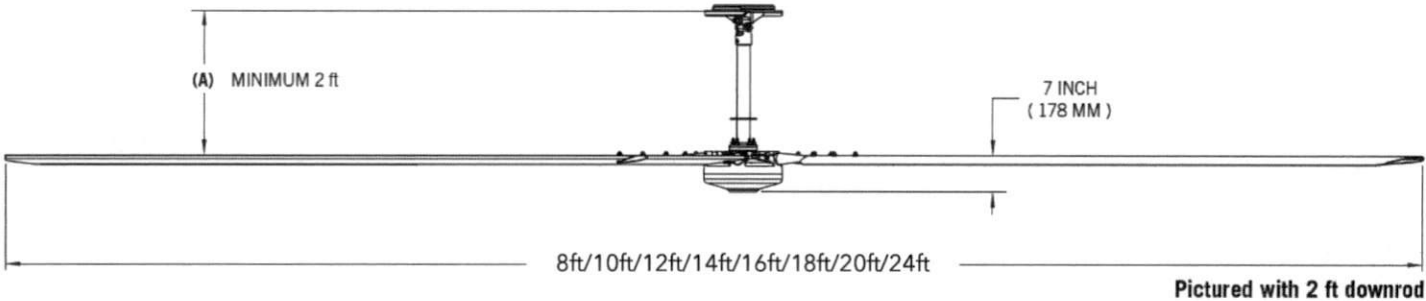
Signature: \_\_\_\_\_ Effective Date: \_\_\_\_/\_\_\_\_/\_\_\_\_
Name (Print): \_\_\_\_\_ Title: \_\_\_\_\_

Please sign and email to Michael Lavender at mlavender@hunterfan.com or fax to

THANK YOU FOR YOUR BUSINESS!



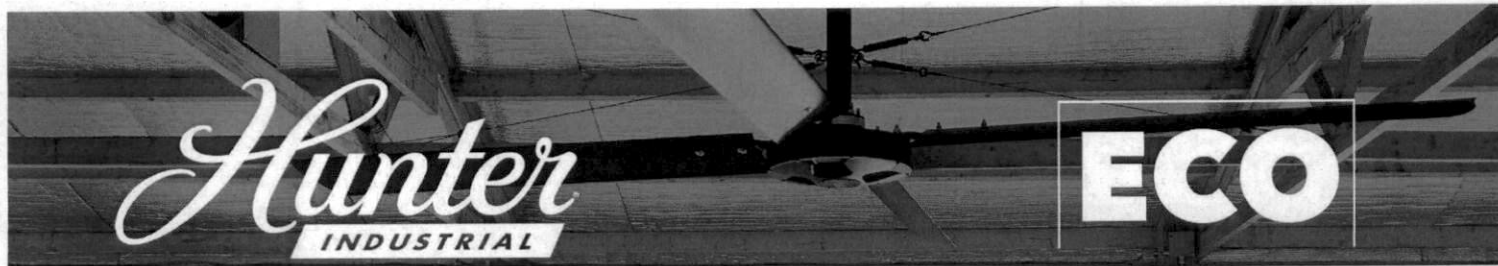
AIRFOIL DIAMETER	8ft	10ft	12ft	14ft	16ft	18ft	20ft	24ft
Airfoil Material	6005A Structural Grade Aluminum							
Airfoil Width	7 in							
Number of Airfoils	4							
Airfoil Color	Black Matte							



PERFORMANCE	8ft	10ft	12ft	14ft	16ft	18ft	20ft	24ft
Max Speed (RPM)	190	140	110	100	90	80	70	60
Recommended Spacing	32 ft	40 ft	48 ft	56 ft	64 ft	72 ft	80 ft	96 ft
Max Affected Area (SQFT)	1,600	2,500	3,600	4,900	6,400	8,100	10,000	14,400
Sound Level dBA at Max Speed	<55	<55	<55	<55	<55	<55	<55	<55
Air Volume (cfm)*	46,175	74,952	91,043	121,923	154,024	180,624	216,255	289,088

HANGING REQUIREMENTS	8ft	10ft	12ft	14ft	16ft	18ft	20ft	24ft
Hanging Weight (lbs)	87	97	101	128	135	138	145	159
Max Torque (ft*lb)	12.8	26	32.5	33.5	43.1	51.3	56.9	72.2

\* for AMCA 230-15 rating please see: <https://www.amca.org/certified-listed/products.html?c=3422&t=24#large-diameter-ceiling>



MOTOR AND DRIVE TRAIN	8ft	10ft	12ft	14ft	16ft	18ft	20ft	24ft
-----------------------	-----	------	------	------	------	------	------	------

Motor Type	Brushless Direct Current Motor							
Equivalent Horsepower Rating	5/8 HP							
Operating Temp Range	14° to 140° F (-10° to 60° C)							
Motor Color	Black Matte							

MAX AMP DRAW	8ft	10ft	12ft	14ft	16ft	18ft	20ft	24ft
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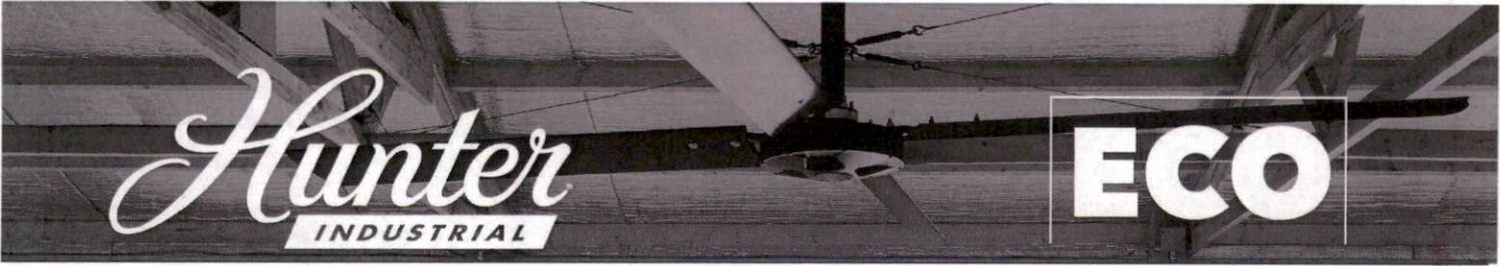
200-240V Single Phase	2.7 A	2.7 A	4.6 A	4.5 A	5.6 A	4.9 A	5.5 A	6.3 A
200-240V Three Phase	1.4 A	1.4 A	2.4 A	2.4 A	2.8 A	2.6 A	2.9 A	2.6 A
400-480V Three Phase	1.2 A	1.9 A	1.8 A	2.0 A	2.2 A	2.0 A	2.1 A	2.3 A

#### POWER AND CONTROLS

Power Source	AC 1PH 200-240V 50-60HZ, AC 3PH 200-240V 50-60HZ, AC 3PH 380-480V 50-60HZ
Main Controller	Variable Frequency Drive
Wall Control Options	Digital HMI 350, 500 or 700E Series
Building Management Control Options	BACnet MS/TP, BACnet IP, Modbus RTU

#### INSTALLATION

Mounting Options	I-Beam, Glulam, Unistrut or Perlin
Downrod Length	2ft - 10ft
Extension	Downrods available in 1 ft increments: 2 ft min., 10 ft max. Downrod length must be specified at time of order. Above 10ft inquire.
Motor Wiring	Pre-wired motor cables with twist lock connections
HMI Wiring	CAT5/RJ45 Power Over Ethernet (POE)

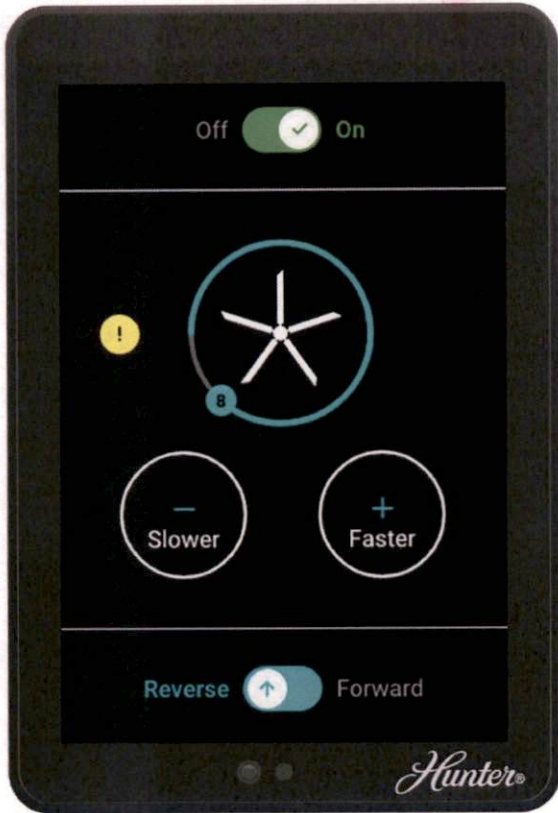


**RATINGS AND COMPLIANCE**

Fire and Sprinkler	NFPA 13 and NFPA 72 Compliant
Wash Down Duty Rating	Damp rated
Certifications	ETL/INTERTEK-CERTIFIED TO ANSI/UL 507 AND CSA C22.2 NO.113, IEC 61800-3, CE, AMCA Certified
Safety Features	Redundant Blade Attachment System, Safety Retention Cable, Motor & Drive Protections, Fire Relay
Warranty	Limited Lifetime Warranty



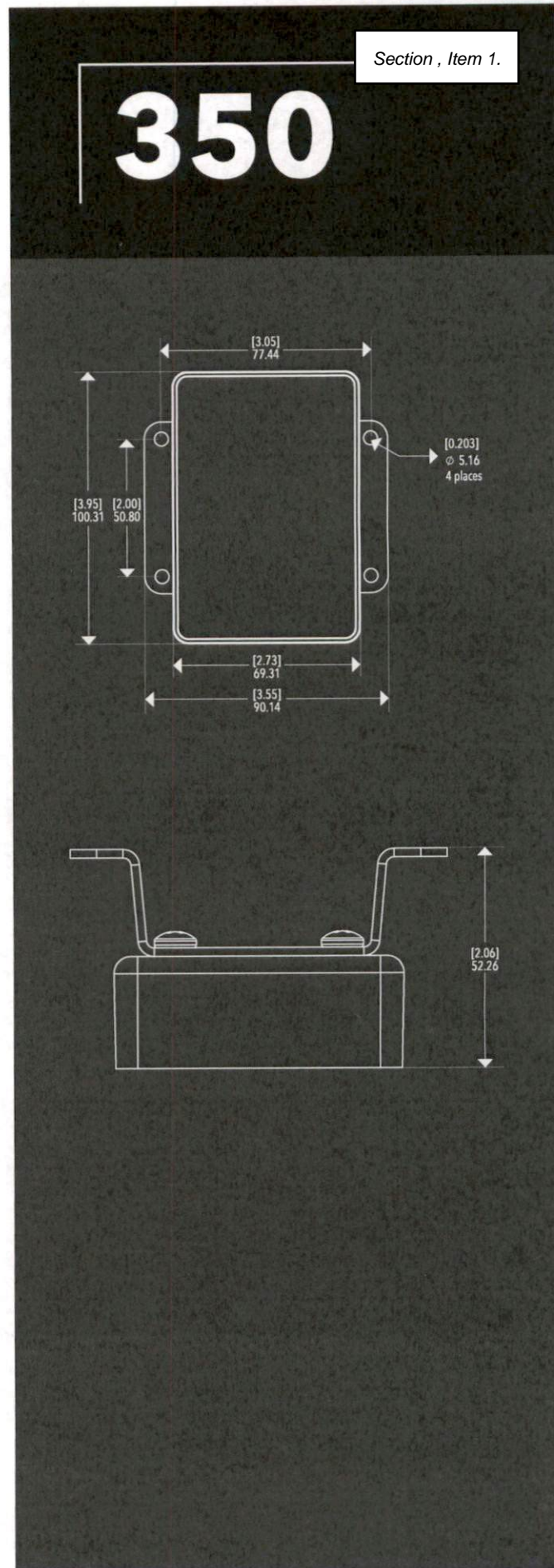
# Hunter.



Hunter's 350 Series Fan Controller is a simple and straightforward way to manage your facility's comfort over an Ethernet based network. No ancillary power needed as this control receives power from the VFD directly.

Manage all basic fan operations using the 3.5" color, digital touchscreen. This controller is network ready for a simple daisy chaining of up to 10 fans. Features a proximity sensor to "wake" the controller up when approached to help with a long service life.

- Simple intuitive user interface for basic fan control
- BMS Integration with optional gateway
- Fan fault notifications on screen
- Quick install, no additional power necessary



Section , Item 1.

# 350





# Installation Package Options

## Platinum Level Installation Package

Includes: Fan mounting, installation of the Variable Frequency Drive Enclosure and HMI Controller with 100' of Cat5e cable. Installation of supply power (maximum distance of 250', longer lengths priced upon request), commissioning, start-up, and training of fan operation to facility personnel (fire suppression system integration separate). Standard scissor lift included.

### EXCLUSIONS TO A PLATINUM LEVEL INSTALLATION

- Scaffolding, all-terrain lifts, booms or other special lifts • Weekend, holiday, incremental business hours rates
- Specialized or discontinued enclosures, disconnects, or circuit breakers • Cat5e enclosed in conduit • Cat5e cable in excess of 100ft per fan • Electrical wiring and conduit in excess of 250ft per fan • Electrical or fire permits and associated costs • Clean-up or rework of existing electrical runs • Relocation of obstacles such as light fixtures, electrical conduits, gas lines, water lines, sprinkler lines, etc. • Fire Alarm Cable installation; termination at either end of fire cable
- Mounting outside of Hunter's prescribed measures, including cosmetic finishing work

## Gold Level Installation Package

Includes: Fan mounting, installation of the Variable Frequency Drive Enclosure and HMI Controller with 100' of Cat5e cable. Commissioning, start up, and training of fan operation to facility personnel (electrical power supply wiring, conduit installation, connection, and integration to a fire suppression system will be done by others). Standard scissor lift included.

### EXCLUSIONS TO A GOLD LEVEL INSTALLATION

- Scaffolding, all-terrain lifts, booms or other special lifts • Supply power installation • Weekend, holiday, incremental business hour rates • Returning for commissioning/start-up, if supply power has not been provided prior to the installation being complete. • The addition of any electrical components not already present ( i.e. receptacles, conduit) • Cat5e cable enclosed in conduit • Cat5e cable in excess of 100ft per fan. • Fire alarm cable tie-in, fire cable installation, terminating at either end • Mounting outside of Hunter's prescribed measures, including cosmetic finishing work

## Fire Suppression Installation Package (add-on to above packages)

Supply and installation of fire relay alarm cable up to 250' per fan. Includes protective conduit from fire control panel to ceiling height (where applicable) and free-air installation of fire alarm cable at ceiling height. Configuration of Fire Relay per direction of customer. Work must be completed onsite during Platinum or Gold Level Installations.

### EXCLUSIONS TO A FIRE SUPPRESSION INSTALLATION

- Scaffolding, all-terrain lifts, booms or other special lifts • Weekend, holiday, incremental business hour rates • Clean-up or rework of existing electrical runs • Relocation of obstacles such as light fixtures, electrical conduits, gas lines, water lines, sprinkler lines, etc. • Fire alarm cable tie-in, or conduit at the Fire Control Panel • Preliminary work for electrical permits • Full cable-run inside conduit



**CONTACT A HUNTER INDUSTRIAL SALES REPRESENTATIVE FOR MORE INFORMATION**



## Limited Lifetime Warranty for HVLS Fans

Hunter Fan Company (“Hunter”) offers the following warranty for the products listed below that were purchased on or after January 1, 2021. This warranty is subject to all the conditions, limitations, and exclusions contained throughout this warranty document. Thank you for choosing Hunter!

### Products Covered and Warranty Period

Product Models	Item	Limited Warranty (Years)*
Titan, Eco, XP	Motor	Life
	Blades	Life
	Blade Holders	Life
	User Interface (Control)	8
	Down Rod	Life
	VFD	10

Product Model	Limited Warranty (Years) for All Components, except as noted
Titan	10 (8 for User Interface (Control))
Eco	7
XP	2

### What is Covered?

This warranty covers defects in materials or workmanship, as determined solely by Hunter, under normal use when the fan and other components are installed and operated correctly according to Hunter’s written installation and operation instructions.

### Who is Covered and When does Coverage Start?

Hunter grants this warranty to the original purchaser and subsequent owners so long as the fan remains at the original installation site. Warranty coverage begins when the fan is installed or 60 days from when the fan was purchased – whichever date is earlier. This warranty is only applicable to fans purchased and installed in the United States and Canada.



## What will Hunter do for You?

At Hunter's sole discretion, Hunter will offer one of the following options during the warranty period if Hunter determines that there is a defect in material or workmanship of one or more components:

- Repair or replace the defective component;
- Repair or replace the entire fan; or
- Refund the price you paid for the fan or the defective component.\*

If no replacement component or product can be provided for your fan, Hunter may provide a comparable or superior replacement component or product at its sole discretion. Hunter reserves the right to utilize quality refurbished components for warranty work. Hunter may ask you to ship a defective component or product back to Hunter utilizing Hunter provided shipping labels with a particular return goods authorization number. Failure to ship a defective component or product back to Hunter within thirty (30) days of receipt of replacement grants Hunter the right to invoice you for the component or product. You are responsible for packaging the fan or fan component in such a way to prevent damage during transport back to Hunter. Labor and associated costs (e.g. lift rental) are not included in this warranty.

If Hunter determines, in its sole discretion, that there is no defect in the materials or workmanship of the returned component or product, the return will be subject to Hunter's return policy, including any applicable restocking fees, and Hunter reserves the right to charge you for the shipping fees.

\* If no replacement component or product can be provided for your fan because the component or product has been discontinued, Hunter may, in its sole discretion, provide you a refund. The refund amount will be prorated based on the years you utilized the component or product. The maximum refund will be 100% of the purchase price, decreasing 15% each year for the first 5 years after installation, and 1% each year thereafter. Under this paragraph, if your product or component did not exceed the limited warranty period for non-registered products, you will receive a full refund.

## How to Obtain Warranty Coverage?

If the fan is not operating properly, turn it off immediately. Proof of purchase and proof of the date of installation are required when requesting warranty service.

Contact the Hunter Industrial division online at [www.hunterfan.com/pages/industrial-contact-us](http://www.hunterfan.com/pages/industrial-contact-us) or by phone at 1-844-593-FANS (3267).

## Your Responsibilities

In addition to anything else stated in this warranty document, you need to do the following in order to keep this warranty:

- Install the fan according to Hunter's installation instructions as well as according to all applicable federal, state and local laws, rules, codes, and regulations;

- For the electrical portions of the fan or component installation, utilize a licensed electrical contractor or other state-qualified contractor;
- Install the fan indoors only unless the fan is specifically rated for outdoor use;
- Perform any maintenance, if required, per Hunter instructions;
- Follow Hunter's operating instructions;
- Use only fan controls supplied or authorized by Hunter;
- Report possible defects to Hunter within thirty (30) days of discovery;
- Do not remove and reinstall the fan at another location; and
- Keep the fan operating in a safe environment free from exposure to chemicals, salt water, pool water, corrosive elements, and excessive heat, humidity, or wind.

### **What is Excluded from this Warranty?**

Labor Excluded. This warranty does not cover any costs or fees associated with the labor required to install, reinstall, disassemble, reassemble, remove, or replace a fan or fan component including related to shipping a fan or fan component back to Hunter. Installation associated costs (e.g. lift rental) are also excluded.

There is no warranty coverage for the following: fans that have been moved or reinstalled at a new location; fans purchased or installed outside the United States or Canada; fans for which proof of purchase and proof of installation has not been established; fans purchased from an unauthorized reseller; ordinary wear and tear; minor cosmetic blemishes; normal operating noises; adverse site conditions including excessive heat, humidity, wind, dust, or corrosive elements; refurbished fans; fans with removed or defaced serial numbers; defects reported more than 30 days from when they were discovered; and fans that are damaged due to any of the following: improper installation, misuse, abuse, improper care, failure to follow Hunter instructions including the requirements under the "Your Responsibilities" section of this warranty document, misapplication, accidental damage caused by the fan owner or related parties, modifications to the fan, improper or incorrectly performed maintenance or repair, improper voltage/current supply or power surge, use of improper parts or accessories, failure to provide maintenance to the fan, or acts of God (e.g. flood).

Except for the warranties provided in this warranty document, no other written or oral warranties apply and no other person (e.g. employee, rep, or dealer) is authorized to give additional or different warranties on behalf of Hunter.

ORIGINAL PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR A CLAIM OF ANY KIND WITH RESPECT TO THIS PRODUCT SHALL BE THE REMEDIES SET FORTH HEREIN. HUNTER FAN COMPANY IS NOT RESPONSIBLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, DUE TO PRODUCT FAILURE, WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, OR OTHERWISE. Some states/provinces/territories do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO THIS PRODUCT ARE LIMITED IN DURATION TO THE PERIOD OF COVERAGE OF THE APPLICABLE

LIMITED WARRANTIES SET FORTH ABOVE. Some states/provinces/territories do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

In addition to the rights herein, you may also have other rights which vary from states/provinces/territories to states/provinces/territories.



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

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

Quote No: Q-30165 Version: 4

Arkansas City Fire-EMS Department  
 115 South D Street  
 Arkansas City, KS 67005

Quote No: Q-30165  
 Version: 4

ZOLL Customer No: 121203

Issued Date: April 21, 2023  
 Expiration Date: June 30, 2023

Jeri Wheatley  
 (620) 441-4430  
 jsmith@arkansascityks.gov

Terms: NET 30 DAYS

FOB: Shipping Point  
 Freight: Prepay & Add

Prepared by: Lori Rohling  
 EMS Territory Manager  
 lrohling@zoll.com  
 +1 7734740916

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
1	1146055	601-2241112-01	<p><b>X Series Advanced Monitor/Defibrillator - 12-Lead ECG, Pacing, SpO2, SpCO, SpMet, EtCO2, BVM, NIBP, CPR Expansion Pack, Remote View</b></p> <p>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.</p> <p>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, SpMet with Signal Extraction Technology (SET), Rainbow SET® • EtCO2 Oridion Microstream Technology. Microstream tubing set sold separately •</p>	2	\$55,430.00	\$38,436.88	\$76,873.76
2	1146055	8000-001128	<b>Accuvent Flow Tube (Box of 10)</b>	1	\$762.00	\$527.87	\$527.87



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

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

Arkansas City Fire-EMS Department  
 Quote No: Q-30165 Version: 4

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
3	1146055	8000-0895	<b>Cuff Kit with Welch Allyn Small Adult, Large Adult and Thigh Cuffs</b>	2	\$186.00	\$129.15	\$258.30
4	1146055	REUSE-09-2MQ	<b>Welch Allyn REUSE-09-2MQ Cuff, Child, 2-Tube, Twist Lock connector</b>	2	\$63.00	\$43.05	\$86.10
5	1146055	REUSE-08-2MQ	<b>Welch Allyn REUSE-08-2MQ Cuff, Small Child, 2-Tube, Twist Lock connector</b>	2	\$63.00	\$43.05	\$86.10
6	1146055	8000-001392	<b>Masimo rainbow® RC-4 - 4FT, Reusable EMS Patient Cable</b>	2	\$299.00	\$206.93	\$413.86
7	1146055	8000-000371	<b>rainbow® DCI® SpO2/SpCO/SpMet Adult Reusable Sensor with connector (3 ft)</b>	2	\$1,029.00	\$713.69	\$1,427.38
8	1146055	8000-000372	<b>rainbow® DCI-P® SpO2/SpCO/SpMet Pediatric Reusable Sensor</b>	2	\$1,029.00	\$713.69	\$1,427.38
9		8000-000393-01	<b>X Series Carry Case, Premium</b>	2	\$424.00	\$385.00	\$770.00
10		8778-89003-WF	<p><b>X Series - Worry-Free Service Plan - 3 Years At Time of Sale</b></p> <p>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.</p>	2	\$5,695.00	\$4,635.00	\$9,270.00
11		8400-110045	<p><b>CaseReview Premium Subscription, R Series and X Series, 5 Year- Hosted</b></p> <p>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.</p>	2	\$2,430.00	\$2,260.00	\$4,520.00
12		6008-9901-61	<p><b>ZOLL X Series Trade In Allowance (EMS Group)</b></p> <p>See Trade Unit Considerations.</p>	2		(\$6,500.00)	(\$13,000.00)



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Chelmsford, MA 01824-4105  
Federal ID# 04-2711626

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

Arkansas City Fire-EMS Department  
Quote No: Q-30165 Version: 4

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
						Subtotal:	\$82,660.75
						<b>Total:</b>	<b>\$82,660.75</b>

Contract Reference	Description
1146055	Reflects PSAI/Savvik 2021 contract Pricing. Notwithstanding anything to the contrary herein, the terms and conditions set forth in PSAI /Savvik Buying Group Contract No. 2021-06 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, 2023 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.

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. Delivery will be made upon availability.
2. This Quote expires on June 30, 2023. Pricing is subject to change after this date.
3. Applicable tax, shipping & handling will be added at the time of invoicing.
4. All purchase orders are subject to credit approval before being accepted by ZOLL.
5. 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.
6. All discounts from list price are contingent upon payment within the agreed upon terms.
7. Place your future accessory orders online by visiting [www.zollwebstore.com](http://www.zollwebstore.com).





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

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

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**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.

**Arkansas City Fire-EMS 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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**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.

**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





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(“**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 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.**





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**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. 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



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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 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.



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 Fax: (978) 421-0015  
 Email: esales@zoll.com

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**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 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.

**Customer**

Signature:

\_\_\_\_\_

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

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

Company: \_\_\_\_\_

Company Address: \_\_\_\_\_

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



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**ZOLL Medical Corporation**

Section , Item 2.

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)



# City Commission Agenda Item

**Meeting Date:** May, 2, 2023  
**From:** Jeri Wheatley, Fire-EMS Department  
**Item:** Replace (2) ZOLL X-Series, Advanced Cardiac Monitor/Defibrillators

**Purpose:** A Resolution authorizing the City of Arkansas City to purchase two (2) ZOLL X Series Advanced Cardiac Monitor/Defibrillators, from ZOLL Medical Corporation of Chelmsford, MA, for an amount not to exceed \$82,660.75. **(Voice Vote)**

**Background:**

Our current cardiac monitors were purchased in 2014-2015 and the software can no longer be upgraded. Typically, these monitors should be replaced every 6-8 years. We budgeted to replace two (2) this year and will budget to replace two (2) next year.

ZOLL monitor/defibrillators are specific to ZOLL, as they are the ONLY Company that manufactures and distributes ZOLL monitor/defibrillators. ZOLL is allowing us a trade in allowance for two (2) of our old units amounting to \$13,000 toward our replacement purchase.

**Commission Options:**

1. Approve the Resolution
2. Disapprove the Resolution
3. Table the Resolution for further discussion

**Fiscal Impact:**

Amount: **\$82,660.75**

Fund: **01-General** Department: **350 - EMS** Expense Code: **7405 – Machinery/Equipment**

Included in budget       Grant       Bonds       Other Not Budgeted

**Approved for Agenda by:**

Randy Frazer, City Manager



RESOLUTION NO. 2023-05-\_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY OF ARKANSAS CITY TO PURCHASE TWO (2) ZOLL X SERIES ADVANCED CARDIAC MONITOR/DEFIBRILLATORS, FROM ZOLL MEDICAL CORPORATION, OF CHELMSFORD MA, FOR AN AMOUNT NOT TO EXCEED \$82,660.75.**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ARKANSAS CITY, KANSAS:**

**SECTION ONE:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the City of Arkansas City, Kansas, to purchase two (2) ZOLL X Series Advanced Cardiac Monitor/Defibrillators, from ZOLL Medical Corporation of Chelmsford, MA, for an amount not to exceed \$82,660.75.

**SECTION TWO:** The Governing Body of the City of Arkansas City, Kansas, hereby authorizes the mayor and/or city staff of the City of Arkansas City, Kansas, to take such further and other necessary actions that are required to effectuate the intent and purposes of this Legislative Enactment.

**SECTION THREE:** This Resolution shall be in full force and effect from its date of passage by the Governing Body of the City of Arkansas City, Kansas.

**PASSED AND RESOLVED** by the Governing Body of the City of Arkansas City, Kansas, on this 2nd day of May, 2023.

(Seal)

\_\_\_\_\_  
Diana L. Spielman, Mayor

ATTEST:

\_\_\_\_\_  
Tiffany Parsons, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry R. Schwartz, City Attorney

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of Resolution No. 2023-05-\_\_\_\_\_ of the City of Arkansas City, Kansas, adopted by the Governing Body thereof on May 2, 2023. as the same appears of record in my office.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Tiffany Parsons, City Clerk