

## SERVICE AGREEMENT CITY OF NORTH PORT, FLORIDA (APRIL 2018)

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

### 1. COVERAGE AND TERM

The product service plan coverage, term, start date, and price of the Service Plan appear on the ProCare Proposal # 180110131031 attached as Exhibit A and the Service Plan Covers the equipment set forth on Exhibit B to the ProCare Proposal (collectively, the "Equipment").

### 2. EQUIPMENT SCHEDULE CHANGES

During the term of the Agreement and upon each party's written consent, additional Equipment may be included in the Exhibit A. All additions are subject to the terms and conditions contained herein. Stryker shall adjust the charges and modify the schedule to reflect the additions. The City Manager or designee may agree to amendments and additions to this Agreement and Exhibit A that do not increase compensation to Stryker. The City Commission shall approve all increases in compensation under this Agreement.

### 3. INSPECTION SCHEDULING

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

### 4. INSPECTION ACTIVITY

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

### 5. SERVICE INVOICING

Invoices will be sent on the agreed payment method. All prices are exclusive of state and local use, sales or similar taxes. In states assessing upfront sales and use tax, your payments will be adjusted to include all applicable sales and use tax amortized over the Service Plan term using a rate that preserves for Stryker, its affiliates and /or assigns, the intended economic yield for the transaction described in this Agreement. All invoices issued under this Agreement are to be paid in accordance with the Local Government Prompt Payment Act, Florida Statutes Section 218.70, et seq. Failure to comply with said payment terms will constitute breach of contract and future service will only be made on a prepaid or COD basis, or until the previous obligation is satisfied, or both. Stryker reserves the right, with no liability to Stryker, to cancel any contract on the basis of payment default for any previous product or service provided by Stryker Sales Corporation or any of its affiliates.

### 6. PRICE CHANGES

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

### 7. INITIAL INSPECTION

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

### 8. OPERATION MAINTENANCE

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

### 9. SERVICE PLAN WARRANTY AND LIMITATIONS

During the term of the Service Plan, Stryker will maintain the Equipment in good working condition. Equipment and Equipment components repaired or replaced under this Service Plan continue to be warranted as described herein during the Service Plan term. When Equipment or component is replaced, the item provided in replacement will be the customer's property and the replaced item will be Stryker's property. If a refund is provided by Stryker, the Equipment for which the refund is provided must be returned to Stryker and will become Stryker's property. There are no express or implied warranties by Stryker other than the warranties hereinabove described with respect to the Service Plan or the Equipment covered thereunder, including without limitation, warranty of merchantability or fitness for a particular purpose. Notwithstanding any other provision of this Agreement, the Service Plan does not include repairs or other services made necessary by or related to, the following: (1) Abnormal wear or damage caused by misuse or by failure to perform normal and routine maintenance as set out in the Stryker Maintenance Manual or Operating Instructions. (2) Accidents (3) Catastrophe (4) Acts of God (5) Any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-Stryker authorized personnel (6) Equipment on which any original serial numbers or other identification marks have been removed or destroyed; or (7) Equipment that has been repaired with any unauthorized or non-Stryker components. In addition, in order to ensure safe operation of Stryker Equipment, only Stryker accessories should be used. Stryker reserves the right to invalidate the Service Plan and complimentary loaner programs if Equipment is used with accessories not manufactured by Stryker.

#### 10. WAIVER EXCLUSIONS

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

#### 11. LIMITATION OF LIABILITY

Stryker's liability on any claim whether in contract or otherwise, for any loss or damage arising out of, connected with or resulting from the repair of any product furnished hereunder shall in no event exceed the price paid for said repair which gives rise to the claim. In no event shall Stryker be liable for incidental, consequential or special damages. Notwithstanding the foregoing, nothing herein shall be deemed to disclaim Stryker's liability to third parties resulting from the sole negligence of Stryker as determined by a court of law.

#### 12. TERMINATION

The Agreement may be cancelled by either party by giving a ninety (90) days prior written notice of any such cancellation to the other party. If this Agreement is cancelled during or before the expiration date of the Agreement, Stryker shall deduct from the Customer's prepaid balance a prorated amount, calculated by dividing the total invoice by the number of months, for the months covered up to the cancellation date of the Agreement and for any parts, labor, and travel charges, required to maintain Equipment. Within thirty (30) days of cancellation date, Stryker shall refund the remaining balance of Customer's prepaid funds.

#### 13. FORCE MAJEURE

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

#### 14. INDEMNIFICATION

**Stryker shall indemnify and hold Customer harmless from any loss, damage, cost or expense that Customer may incur by reason of or arising out of (1) any injury (including death) to any person arising from Stryker's providing services pursuant to this Agreement, not caused by the gross negligence or willful misconduct or omission of Customer, or (2) any property damage caused by the gross negligence or willful misconduct or omissions by Stryker or Stryker's employees agents, or contractors. The foregoing indemnification will not apply to any liability arising from (i) an injury due to the negligence of any person other than Stryker's employee or agent, (ii) the failure of any person other than Stryker's employee or agent to follow any instructions outlined in the labeling, manual, and/or instructions for use of a product(s), or (iii) the use of any product or part not purchased from Stryker or product or part that has been modified, altered or repaired by any person other than Stryker's employee or agent. Except as specifically provided herein, Stryker is not responsible for any losses or injuries arising from the selection, manufacture, installation, operation, condition, possession, or use of a Product. Customer agrees to hold Stryker harmless from and indemnify Stryker for any claims or losses or injuries arising from (i), (ii), or (iii) above arising as a result of Customer's or its employees', representatives' or agents' actions.**

#### 15. INSURANCE REQUIREMENTS

Stryker shall maintain from insurers) the following insurance coverages during the term of this Agreement: (i) commercial general liability coverage with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate applying to bodily injury, personal injury, and property damage; (ii) automobile insurance with combined single limits of \$1,000,000 for owned, hired, and non-owned vehicles; (iii) worker's compensation insurance as required by applicable law. Stryker's general liability insurance policy shall include Customer as an additional insured. Certificates of insurance shall be provided by Stryker prior to commencement of the services at any premises owned or operated by Customer. To the extent permitted by applicable laws and regulations, Stryker shall be permitted to meet the above requirements through a program of self-insurance. If we elect to self-insure, such self-insurance shall also be administered pursuant to a reasonable self-insurance program crafted by Stryker and reasonably accepted by Customer.

**16. WARRANTY OF NON-EXCLUSION**

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

**17. COMPLIANCE**

To the extent required by law the following provision applies: Customer and Stryker agree to comply with the Omnibus Reconciliation Act of 1980 (P.L. 96Z499) and it's implementing regulations (42 CFR, Part 420). To the extent applicable to the activities of Stryker hereunder, Stryker further specifically agrees that until the expiration of four (4) years after furnishing services and/or products pursuant to this Agreement, Stryker shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Stryker that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Stryker further agrees that if Stryker carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

**18. HIPAA**

All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived from or obtained during the course of the Agreement, shall be treated by both parties as confidential so as to comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. Stryker is not a "business associate" of Customer, as the term "business associate" is defined by HIPAA (the Health Insurance Portability and Accountability Act of 1996 and 45 C.F.R. parts 142 and 160Z164, as amended). To the extent Stryker in the future becomes a business associate of Customer, the parties agree to negotiate to amend the Agreement as necessary to comply with HIPAA, and if an agreement cannot be reached the Agreement will immediately terminate.

**19. ASSIGNMENT**

Neither party may assign or transfer their rights and/or benefits under this Agreement without the prior written consent of the other party, except that Stryker shall have the right to assign this Agreement or any rights under or interests in this Agreement to any parent, subsidiary or affiliate of Stryker. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by successors and assigns of the parties to this Agreement.

**20. SEVERABILITY OF PROVISIONS**

The invalidity, in whole or in part, of any of the foregoing paragraphs, where determined to be illegal, invalid, or unenforceable by a court or authority of competent jurisdiction, will not affect or impair the enforceability of the remainder of the Agreement.

**21. GOVERNING LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in Sarasota County, Florida.

**22. NONDISCRIMINATION**

The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services.

 3/5/10  
\_\_\_\_\_  
Stryker Signature

\_\_\_\_\_  
Peter D. Lear, CPA CGMA, City Manager

\_\_\_\_\_  
Attest: Patsy C. Adkins, City Clerk, MMC

\_\_\_\_\_  
Approved as to Form and Correctness: Amber Slayton, City Attorney

Sales Rep Name: Summer McPhillips  
 ProCare Service Rep: Milton Fernandez

3800 E. Centre Ave  
 Portage, MI 49009

Date: 3/2/2018  
 ID #: 180110131031

**PROCARE PROPOSAL SUBMITTED TO:**

Account Number: 1150095	Name: Richard Berman
Account Name: North Port Fire Rescue	Title: EMS Chief
Account Address: 4980 City Center Blvd.	Phone: 941-240-8189
City, State Zip: North Port, FL 34286	Email: rberman@cityofnorthport.com

**PROCARE COVERAGE**

Item No.	Model Number	Model Description	ProCare Program	Qty	Yrs	Total
1	6390	Power-LOAD	EMS Protect	2	7	\$10,900.00
2	6506	Power-PRO XT	EMS Protect +	4	7	\$15,400.00

**PROGRAM INCLUDES:**

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

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

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

	<b>ProCare Total</b>	<b>\$26,300.00</b>
	<b>FINAL TOTAL</b>	<b>\$26,300.00</b>

Term Start Date: 4/1/2018  
 Term End Date: 3/31/2025

Stryker Signature \_\_\_\_\_ Date 3-5-18  
 Tom Tackabury  
 Sales manager

\_\_\_\_\_ Date  
 Peter D. Lear, CPA, CGMA  
 City Manager

Purchase Order Number (MUST INCLUDE HARD COPY)

**COMMENTS:**

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

Exhibit B to Service Agreement

SERIAL NUMBER SHEET		
Item No.	Model	Serial Number
1	6506	171241586
2	6506	171241587
3	6506	171241588
4	6506	171241589

5. Two (2) additional PowerLoad units (model 6390) are included - Serial numbers to be determined