

RIDER TO SHORT FORM LEASE AGREEMENT 0110077950

THIS AGREEMENT is entered into this _____ day of _____, 20____, by the **CITY OF POMPANO BEACH**, a Florida municipal corporation (“**Customer**”) and **STRYKER SALES CORPORATION**, a Michigan corporation authorized to do business in Florida (“**Owner**”), collectively referred to as “the Parties.”

WHEREAS, Customer currently possesses twenty-on (21) LifePak ECG monitors (lifesaving devices) that are used by the Customer’s Fire Department, and desires to participate in the Owner’s interest free Life Safety Device Purchase Program, which offers incentives for future equipment purchases; and

WHEREAS, the Parties desire to enter into a leasing relationship for acquisition of future Equipment needs, which the Owner is able and prepared to provide as Customer requires, under those terms and conditions set forth.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth, the parties agree as follows:

1. *Contract Documents.* The Contract Documents consist of this Rider and Short Form Lease Agreement No. 0110077950; and the manufacturer’s Warranty, Indemnification and Compliance Statement; and all written change orders and modifications issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. . In the event of any conflict or inconsistency between this Rider and the provisions in the incorporated Contract Documents, resolution shall be attained by giving precedence in the following order: (i) this Rider, and (ii) Lease Agreement No. 0110077950.

2. *Purpose.* Financing of life saving equipment to Customer upon the terms of this agreement.

3. *Invoices.* Owner shall submit the invoices to Customer.

4. *Public Records.* Owner shall comply with all provisions of Florida Statutes Chapter 119. Specifically Owner shall: 1. Keep and maintain public records required by the Customer in order to perform the service; 2. Upon request from the Customer’s custodian of public records, provide the Customer with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Owner does not transfer the records to the Customer; and 4. Upon completion of the contract, transfer, at no cost to the Customer, all public records in possession of Owner, or keep and maintain

public records required by the Customer to perform the service. If Owner transfers all public records to the Customer upon completion of the contract, Owner shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Owner keeps and maintains public records upon completion of the contract, Owner shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer, upon request from the Customer's custodian of public records in a format that is compatible with the information technology systems of the Customer.

Failure to comply with said statutory requirements may subject Owner to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN IF OWNER HAS
QUESTIONS REGARDING THE APPLICATION
OF CHAPTER 119, FLORIDA STATUTES, TO
OWNER'S DUTY TO PROVIDE PUBLIC
RECORDS RELATING TO THIS CONTRACT,
CONTACT THE CUSTODIAN OF PUBLIC
RECORDS AT:**

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611**

5. *Force Majeure.* Owner shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Owner. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

6. *Entire Agreement.* This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

7. *Confidentiality.* Upon receipt of any confidential information by City of Pompano Beach, said information becomes "a public record" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. If Owner wishes to claim an exemption to disclosure, they shall provide the specific statutory authority for the claimed exemption, identifying the data or other materials to be protected and stating the reasons why such exclusion from public disclosure is necessary. However, if a request is made of the City of Pompano Beach, pursuant to chapter 119, Florida Statute, for public disclosure of proprietary property of Owner, the City of

Pompano Beach shall advise Owner of such request and it shall be Owner's sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the courts and to immediately serve notice of the same upon the party requesting the public records. The City of Pompano Beach shall, at all times, comply with the public records disclosure requirement of Chapter 119 Florida Statutes and shall not be subject to any liability for its compliance with Florida Statute Chapter 119.

8. *Sovereign Immunity.* Nothing in this Agreement shall constitute a waiver by the City of Pompano Beach of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

9. *Severability.* Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

10. The Customer promises and agrees with the Owner to employ and does employ the Owner to provide the materials to pay for the same according to the attached specifications and the schedule of unit or itemized prices attached, at the time and in the manner and upon the conditions provided for in this contract.

11. The Owner for itself and its successors and assigns, does agree to the full performance of all the covenants contained in the Contract Documents upon the part of the Owner.

12. It is further provided that no liability shall be attached to the Customer by reason of entering into this contract, except as expressly provided herein.

13. Customer represents and warrants to Owner that as of the date of, and throughout the Term of, this Agreement: (a) Customer is a political subdivision of the state or commonwealth in which it is located and is organized and existing under the constitution and laws of such state or commonwealth; (b) Customer has complied, and will comply, fully with all applicable laws, rules, ordinances, and regulations governing open meetings, public bidding and appropriations required in connection with the Agreement, the performance of its obligations under the Agreement and the acquisition and use of the Equipment; (c) the persons signing the Agreement and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents") have the authority to do so, are acting with the full authorization of Customer's governing body, and hold the offices indicated below their signatures, each of which are genuine; (d) the Documents are and will remain valid, legal and binding agreements, and are and will remain enforceable against Customer in accordance with their terms; and (e) the Equipment is essential to the immediate performance of a governmental or proprietary function by Customer within the scope of its authority and will be used during the Term of the Agreement only by Customer and only to perform such function. Customer further represents and warrants to Owner that, as of the date each item of Equipment becomes subject to the Agreement and any applicable schedule, the Customer has funds available to pay all Agreement payments until the end of Customer's then current fiscal year, and, in this regard and upon Owner's request, Customer shall deliver in a form acceptable to Owner and enacted by Customer's governing body, authorization for the

appropriation of funds for the payment of Customer's obligations under the Agreement during Customer's then current fiscal year.

14. To the extent permitted by applicable law, Customer agrees to take all necessary and timely action during the Agreement Term to obtain and maintain funds appropriations sufficient to satisfy its payment obligations under the Agreement (the "Obligations"), including, without limitation, providing for the Obligations in each budget submitted to obtain applicable appropriations, causing approval of such budget, and exhausting all available reviews and appeals if an appropriation sufficient to satisfy the Obligations is not made.

15. Notwithstanding anything to the contrary provided in the Agreement, if Customer does not appropriate funds sufficient to make all payments due during any fiscal year under the Agreement and Customer does not otherwise have funds available to lawfully pay the Agreement payments (a "Non-Appropriation Event"), and provided Customer is not in default of any of Customer's obligations under such Agreement as of the effective date of such termination, Customer may terminate such Agreement effective as of the end of Customer's last funded fiscal year ("Termination Date") without liability for future monthly charges or the early termination charge under such Agreement, if any, by giving at least 60 days' prior written notice of termination ("Termination Notice") to Owner.

16. If Customer terminates the Agreement prior to the expiration of the end of the Agreement's initial (primary) term, or any extension or renewal, as permitted under Section 15 above, Customer shall (i) on or before the Termination Date, at its expense, pack and insure the related Equipment and send it freight prepaid to a location designated by Owner in the contiguous 48 states of the United States and all Equipment upon its return to Owner shall be in the same condition and appearance as when delivered to Customer, excepting only reasonable wear and tear from proper use and all such Equipment shall be eligible for manufacturer's maintenance, (ii) provide in the Termination Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (iii) deliver to Owner, upon request by Owner, an opinion of Customer's counsel (addressed to Owner) verifying that the Non-Appropriation Event as set forth in the Termination Notice has occurred, and (iv) pay Owner all sums payable to Owner under the Agreement up to and including the Termination Date.

17. Upgrade of Equipment. The Customer may upgrade the Equipment within the same product class and with like technology, upon Owner's offering such upgraded Equipment for general sale, under terms and conditions as mutually agreed upon at the time of upgrade, including the interest rate applicable to the upgrade transaction, amount financed, payment, term and tax rates. In the event the Customer elects to upgrade the Equipment as provided, the Customer shall give Owner 30 days' prior written notice. Any Equipment upgrade is subject to the credit approval at that time and subject to the execution of mutually acceptable documentation; it being agreed to and understood that this option will not change Obligations under the Agreement, unless and until new mutually acceptable documentation is executed.

18. Customer shall provide insurance coverage, where required, including, but not limited to, fire, extended coverage, vandalism and theft, and shall cover Owner or its agent or assignee as additional insured and Lender's loss payee with regard to all equipment financed or

acquired for use under Contract Documents. The Customer shall provide a certificate consistent with this provision to the Owner.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

“OWNER”

STRYKER SALES CORPORATION,
a Michigan corporation

Witnesses:

(Print or Type Name)

By:_____

Print Name:_____

Title:_____

(Print or Type Name)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ as _____ of STRYKER SALES CORPORATION, a Michigan corporation authorized to do business in Florida on behalf of the corporation. He or she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF _____

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

JES:jrm
11/25/2019
L:agr/fire/2020-311