

# City of Fontana

8353 Sierra Avenue  
Fontana, CA 92335



## Regular Agenda

**Next Reso. FFD 2024-003**

**Tuesday, June 25, 2024**

**2:00 PM**

**Grover W. Taylor Council Chambers**

## **Fire Protection District**

*Phillip Cothran - President*  
*John Roberts - Vice President*  
*Jesus "Jesse" Sandoval - Commissioner*  
*Peter A. Garcia- Commissioner*  
*Acquanetta Warren - Commissioner*  
*Janet Koehler Brooks - City Treasurer*  
*Germaine Key - District Secretary*

## **Welcome to the Meeting!**

Welcome to the City of Fontana meeting. Meetings are held at the Grover W. Taylor Council Chambers 8353 Sierra Avenue Fontana, CA 92335. To address the Council, please fill out a card located at the entrance to the right indicating your desire to speak on either a specific agenda item or under Public Communications and give it to the City Clerk. Your name will be called when it is your turn to speak. In compliance with Americans with Disabilities Act of 1990 (42 USC § 12132), the Council Chambers is wheelchair accessible, and a portable microphone is available. Upon request, this agenda will be made available in appropriate alternative forms to persons with disabilities, as required by Section 12132 of the Americans with Disabilities Act of 1990. Any person with a disability who requires accommodation to participate in a meeting should direct such a request to the City Clerk's Office at (909) 350-7602 at least 48 hours before the meeting, if possible. Any public record, relating to an open session agenda item, that is distributed within 72 hours prior to the meeting is available for public inspection at the City Clerk's Office.

Para traducción en Español, comuníquese con la oficina, "City Clerk" al (909) 350-7602.

The City of Fontana is committed to ensuring a safe and secure environment for its residents to engage with the government. No oversized bags or backpacks (size limit of 14"x14"x6") will be allowed inside the Council Chambers. All bags are subject to search. Face masks are prohibited in the Council Chambers, but clear masks will be provided upon request to accommodate individuals with medical needs, ensuring their safety and well-being. Before entering the Council Chambers, you may be subject to a metal detector screening. The City Manager retains the discretion to grant any exemptions. Fontana aims to provide safe buildings for our community members, employees, and visitors.

## **CALL TO ORDER/ROLL CALL:**

### **A. Call the Meeting to Order**

## **PUBLIC COMMUNICATIONS:**

This is an opportunity for citizens to speak to the members of the meeting for up to 3 minutes on items not on the Agenda, but within the District's jurisdiction. The District is prohibited by law from discussing or taking immediate action on non-agendized items.

### **A. Public Communications**

## **CONSENT CALENDAR:**

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below - there will be no separate discussion on these items prior to the time they are voted on, unless a member requests a specific item be removed from the Consent Calendar for discussion. Does any member of the public wish to address the District regarding any item on the Consent Calendar before the vote is taken?

### **A. Approval of Minutes**

[21-3101](#)

Approve the minutes of the June 18, 2024, Fire Protection District Meeting.

**Attachments:** [Fire Protection District Meeting Minutes 06-18-2024.pdf](#)

**B. Purchase X Series Advance Defibrillators [21-3029](#)**

1. Authorize Finance to procure the Monitors/Defibrillators utilizing the Purchasing Policy and Procedure Manual Section 3.1.5 Non-Competitive Proposal - Purchased by Another Agency.
2. Authorize Purchasing Division to use the National Purchasing Partners Government (NPPAGOV) Contract No. PS20200 to purchase defibrillators from Zoll Medical Corporation in the amount of \$159,110.12.

**Attachments:** [Fontana EMS - Q-69114 - Version 1.pdf](#)  
[Non-Competitive Source Justification Selection Form - Zoll .pdf](#)

**C. Handheld Mass Spectrometer Chemical Detection System [21-3030](#)**

1. Authorize Finance to procure the Handheld Mass Spectrometer Chemical Detection System utilizing the Purchasing Policy and Procedure Manual Section 3.1.5 Non-Competitive Proposal - Purchase by Another Agency.
2. Authorize Purchasing Division to utilize the Orange County Fire Authority Contract IFB No. JA2650 to purchase the handheld chemical detection system from 908 Devices, Inc. of Boston, MA in the amount of \$114,838.

**Attachments:** [SanBernardinoCoFD MX908S5 AeroTrace +2XTRATrainings.4.pdf](#)  
[Non-Competitive Source Justification Selection Form .pdf](#)

**D. Tolling Agreement between the Fontana Fire Protection District and San Bernardino County Fire Protection District. [21-3102](#)**

**Attachments:** [Fontana Fire District Tolling Agreement - Extension-c1-c1.docx](#)

## **EXECUTIVE DIRECTOR'S COMMUNICATIONS:**

**A. Executive Director's Communications**

## **ELECTED OFFICIALS COMMUNICATIONS/COMMITTEE REPORTS:**

**A. Elected Officials Communications/Committee Reports**

## **ADJOURNMENT:**

**A. Adjournment**

Adjourn to the next Regular Fire Protection District Meeting in the Grover W. Taylor Council Chambers located at 8353 Sierra Avenue, Fontana, California.



# City of Fontana

8353 Sierra Avenue  
Fontana, CA 92335

## Action Report

### Fire Protection District

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**File #:** 21-3101

**Agenda #:** A.

**Agenda Date:** 6/25/2024

**Category:** Consent Calendar

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**FROM:**

City Clerk

**SUBJECT:**

Approval of Minutes

**RECOMMENDATION:**

Approve the minutes of the June 18, 2024, Fire Protection District Meeting.

**COUNCIL GOALS:**

- Create and maintain a dynamic team by supporting the decisions of the majority once made.
- Create and maintain a dynamic team by communicating Goals and Objectives to all commissions and employees.

**DISCUSSION:**

The District will consider approval of the minutes of the June 18, 2024, Fire Protection District meeting. The draft minutes are attached to this report for District review and approval.

**FISCAL IMPACT:**

None.

**MOTION:**

Approve staff recommendation.

# City of Fontana

8353 Sierra Avenue  
Fontana, CA 92335



## Minutes

**Tuesday, June 18, 2024**

**2:00 PM**

**Grover W. Taylor Council Chambers**

## **Fire Protection District**

*Phillip Cothran - President*  
*John Roberts - Vice President*  
*Jesus "Jesse" Sandoval - Commissioner*  
*Peter A. Garcia- Commissioner*  
*Acquanetta Warren - Commissioner*  
*Janet Koehler Brooks - City Treasurer*  
*Germaine Key - District Secretary*

## **CALL TO ORDER/ROLL CALL:**

### **A. 2:00 P.M. Call the Meeting to Order**

A Special Meeting of the Fontana Fire Protection District was held in the Grover W. Taylor Council Chambers, 8353 Sierra Avenue, Fontana, CA 92335, on Tuesday, June 18, 2024.

President Cothran called the meeting to order at 2:11 p.m.

## **ROLL CALL:**

**PRESENT:** President Cothran, Vice-President Roberts, Commissioners Warren and Garcia.

City Treasurer Koehler-Brooks and District Secretary Key were also in attendance.

**ABSENT:** Commissioner Sandoval

## **PUBLIC COMMUNICATIONS:**

### **A. Public Communications**

No public communications were received.

## **CONSENT CALENDAR:**

**ACTION:** Motion was made by President Cothran, seconded by Vice-President Roberts, and passed by a vote of 4-0 to approve Consent Calendar Item "A." The motion carried by the following vote: **AYES:** Warren, Cothran, Roberts, and Garcia; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Sandoval

### **A. Approval of Minutes 21-3058**

Approve the minutes of the May 28, 2024, Fire Protection District Meeting.

## **NEW BUSINESS:**

### **New Business:**

#### **A. Fiscal Year 2024/25 Fontana Fire District Supplemental Budget 21-3052**

1. Approve the recommended Fiscal Year 2024/25 Supplemental Budget adjustments.
2. Adopt **Resolution No. FFD 2024-002**, of the Fontana Fire Protection District establishing an appropriations limit of \$191,938,135, pursuant to Article XIII (B) of the California Constitution for Fiscal Year 2024/2025.
3. Authorize the carryforward of the available budget at fiscal yearend to the

following fiscal year for all capital improvement projects and obligations funded with grants and other one-time funding.

Chief Financial Officer Jessica Brown provided the staff report.

**ACTION:** Motion was made by Vice-President Roberts, seconded by Commissioner Garcia, and passed by a vote of 4-0 to approve New Business Item "A." The motion carried by the following vote: **AYES:** Warren, Garcia, Cothran and Roberts; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Sandoval

## **ELECTED OFFICIALS COMMUNICATIONS/COMMITTEE REPORTS:**

### **A. Elected Officials Communications/Committee Reports**

No Elected Officials Communications were received.

## **ADJOURNMENT:**

### **A. Adjournment**

President Cothran adjourned the meeting at 3:01 p.m.

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Phillip Cothran  
District President

THE FOREGOING MINUTES WERE ADOPTED AND APPROVED BY THE FONTANA FIRE PROTECTION DISTRICT ON JUNE 25, 2024.

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Germaine Key  
District Secretary



# City of Fontana

8353 Sierra Avenue  
Fontana, CA 92335

## Action Report

### Fire Protection District

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**File #:** 21-3029

**Agenda #:** B.

**Agenda Date:** 6/25/2024

**Category:** Consent Calendar

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**FROM:**

Finance

**SUBJECT:**

Purchase X Series Advance Defibrillators

**RECOMMENDATION:**

1. Authorize Finance to procure the Monitors/Defibrillators utilizing the Purchasing Policy and Procedure Manual Section 3.1.5 Non-Competitive Proposal - Purchased by Another Agency.
2. Authorize Purchasing Division to use the National Purchasing Partners Government (NPPAGOV) Contract No. PS20200 to purchase defibrillators from Zoll Medical Corporation in the amount of \$159,110.12.

**COUNCIL GOALS:**

- Improve public safety by increasing operational efficiency, visibility and availability.
- Improve public safety by maximizing fire and emergency medical service resources.
- Practice sound fiscal management by living within our means while investing in the future.

**DISCUSSION:**

Fontana Fire Protection District is requesting to purchase defibrillators for the District's EMS units. These defibrillators are standard equipment for all District's fire stations and provides the highest quality solution for both adult and pediatric patient conditions for cardiac arrest.

Per the City's Purchasing Policies and Procedures Manual, Section 3.1.5 Non-Competitive Proposal may be used when a product is being purchased when the product being required was awarded a bid by another agency at the same price offered to the City of Fontana.

**FISCAL IMPACT:**

Funds are currently available in FY 2023/2024 budget (21050000)

**MOTION:**

Approve Staff Recommendation



**ZOLL Medical Corporation**

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

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

Quote No: Q-69114 Version: 1

San Bernardino County Fire Protection District / Fontana Fire Protection District  
17001 Upland Avenue  
Fontana, CA 92335

ZOLL Customer No: 101208

\*Michael Obier  
(909) 350-7605  
mobier@sbcfire.org

Quote No: Q-69114  
Version: 1

Issued Date: May 16, 2024  
Expiration Date: June 30, 2024

Terms: NET 30 DAYS

FOB: Shipping Point  
Freight: Prepay & Add

Prepared by: Duane Anderson  
EMS Territory Manager  
duane.anderson@zoll.com  
+1 6266640471

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
1	1374349	601-2221112-01	<b>X Series Advanced Monitor/Defibrillator - 12-Lead ECG, Pacing, SpO2, EtCO2, BVM, NIBP, CPR Expansion Pack, Remote View</b>  Includes: TBI Dashboard, 4 trace tri-mode display monitor/ defibrillator/ printer, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5in ( 16.5cm) diagonal screen. Accessories Included: MFC cable and CPR connector, A/C power cord, One (1) roll printer paper, 6.6 Ah Li-ion battery, Operators Manual, Quick Reference Guide, and One (1)-year EMS warranty.  Parameter Details: Real CPR Help - Dashboard display of CPR Depth and Rate for Adult and Pediatric patients, Visual and audio prompts to coach CPR depth (Adult patient only), Release bar to ensure adequate release off the chest, Metronome to coach rate for Adult and Pediatric patients. See-Thru ® CPR artifact filtering • Interpretative 12-Lead ECG (Full 12 ECG lead view with both dynamic and static 12-lead mode display. 12-Lead OneStep ECG cable - includes 4-Lead limb lead cable and removable precordial 6-Lead set) • ZOLL Noninvasive Pacing Technology • Real BVM Help: Dashboard provides real-time ventilation feedback on both volume and rate for intubated and non-intubated patients. AccuVent Cable included. (Accuvent disposable sensors sold separately) • Welch Allyn NIBP with Smartcuff. 10 foot Dual Lumen hose and SureBP Reusable Adult Medium Cuff • Masimo Pulse Oximetry with Signal Extraction Technology (SET), Rainbow SET® • EtCO2 Oridion Microstream Technology. Microstream tubing set sold separately •	3	\$51,622.00	\$40,507.18	\$121,521.54
2	1347882	8000-001128	<b>Accuvent Flow Tube (Box of 10)</b>	3	\$797.00	\$605.72	\$1,817.16

**ZOLL Medical Corporation**

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

Phone: (800) 348-9011

Fax: (978) 421-0015

Email: esales@zoll.com

San Bernardino County Fire Protection District / Fontana Fire Protection District  
Quote No: Q-69114 Version: 1

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
3	1374349	8000-0895	<b>Cuff Kit with Welch Allyn Small Adult, Large Adult and Thigh Cuffs</b>	3	\$195.00	\$152.52	\$457.56
4	1374349	REUSE-09-2MQ	<b>Welch Allyn REUSE-09-2MQ Cuff, Child, 2-Tube, Twist Lock connector</b>	3	\$66.00	\$51.66	\$154.98
5	1347882	8000-000151	<b>RD Rainbow SET MD20-04 EMS Patient Cable, 4ft</b>	3	\$313.00	\$237.88	\$713.64
6	1347882	8000-001814	<b>RD SET DCI Adult Reusable Sensor, 3ft</b>	3	\$377.00	\$286.52	\$859.56
7	1347882	8000-0580-01	<b>Six Hour Rechargeable, SurePower II Smart Battery</b>	6	\$1,001.00	\$760.76	\$4,564.56
8	1374349	8707-000502-01	<b>X Series Accessory Carry Case - Printer Chute with Single Zipper</b>	3	\$663.00	\$0.00	\$0.00
9		8778-89033-WF	<b>X Series - Worry-Free Service Plan - 3 Years On-Site At Time of Sale</b>  Includes: Annual preventive maintenance, 27% discount on new cables, 27% discount on additional SurePower II Batteries, discount on parameter upgrades, 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 device outer housing replacement per year per device. This coverage excludes devices that are deemed beyond repair and/or catastrophic damage. Cosmetic damage that does not affect the integrity of the device would not require outer housing replacement. • BATTERY REPLACEMENT PROGRAM: Batteries must be maintained per ZOLL recommended maintenance program - Batteries are replaced upon failure, one for one, throughout the term of the ExpertCare Service contract, should the SurePower II 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. - Up to three batteries per device will be covered for batteries acquired from ZOLL in last 24 months for batteries that fail during the Worry-Free service contract period. (When Service Contract purchased post-sale) - For batteries acquired from ZOLL over 24 months ago, one battery per device will be covered for batteries that fail during the Worry-Free service contract period. (When Service Contract purchased post-sale)	3	\$6,510.00	\$5,859.00	\$17,577.00

Subtotal: \$147,666.00

**Total: \$147,666.00**

**ZOLL Medical Corporation**

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

Phone: (800) 348-9011

Fax: (978) 421-0015

Email: [esales@zoll.com](mailto:esales@zoll.com)

San Bernardino County Fire Protection District / Fontana Fire Protection District  
Quote No: Q-69114 Version: 1

Contract Reference	Description
1347882	Reflects 1347882 CHM SERVICE CONTRACT PRECISION X SERIES pricing.
1374349	Reflects GPO NPP 2020 - Contract No. PS20200 contract pricing. Notwithstanding anything to the contrary herein, the terms and conditions set forth in NPP 2020 - Contract No. PS20200 shall apply to the customer's purchase of the products set forth on this quote.

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, 2024. 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 the ZOLL web store.

**ZOLL Medical Corporation**

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

Phone: (800) 348-9011

Fax: (978) 421-0015

Email: esales@zoll.com

San Bernardino County Fire Protection District / Fontana Fire Protection District  
Quote No: Q-69114 Version: 1

**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.

**San Bernardino County Fire Protection District /  
Fontana Fire Protection District**

Authorized Signature:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



# CITY OF FONTANA NON-COMPETITIVE SOURCE SELECTION JUSTIFICATION

<b>Contract/Req. No.:</b>		<b>Amendment No.:</b>		<b>Requestor:</b>		<b>Date:</b>	
<b>Pre-Tax Amount:</b>	\$	<b>Tax:</b>	\$	<b>Freight:</b>	\$	<b>Total Amount:</b>	\$
<b>Vendor Name:</b>							

## FUNDING SOURCE AND AUTHORIZATION (check as applicable)

<b>City Resources</b>	<input type="checkbox"/>	<b>Gov't Grant</b>	<input type="checkbox"/>	<b>Other</b>	<input type="checkbox"/>				
<b>Certifications:</b>		<b>Debarment<sup>4</sup></b>	<input type="checkbox"/>	<b>Anti-Lobby<sup>5</sup></b>	<input type="checkbox"/>	<b>Certificate(s) Attached</b>	<input type="checkbox"/>	<b>Not Applicable</b>	<input type="checkbox"/>
<b>Fund:</b>					<b>Object Code:</b>				
<b>Equipment Screening<sup>6</sup>:</b>	<b>Yes</b>	<input type="checkbox"/>	<b>Not Applicable</b>	<input type="checkbox"/>			<b>Title Vests: -</b>		
<b>Purchase Description:</b>									

1. Source Selection - Competition is impracticable (Check appropriate box):

- ☐ **UNAVAILABLE FROM ANY OTHER SOURCE.** No competitive advantage would be gained from competitive pricing, such as when equipment, goods, materials, supplies, personal property, or services are unique and are only available from one source. (Explain below. Include all contacts made to verify the sole source or single source situation.)
- ☐ **COOPERATIVE PURCHASING AGREEMENT.** This product or service required is being purchased under a cooperative purchasing agreement. (Explain below).
- ☐ **SAME PRICE PURCHASED BY ANOTHER PUBLIC AGENCY.** The product or service required was awarded a bid by another public agency that has purchasing procedures substantially similar to those that the city would have been required to use, and the vendor offers the same price(s) to the city that it offered to the other agency.
- ☐ **EMERGENCY.** This product or service required is due to an emergency, determined by the City Manager, which could not have been anticipated and critical need precludes any form of competition. (Purchases more than \$100,000 must be presented at the next regular City Council Meeting for ratification by the City Council. Please attach supporting documentation and approval from City Manager).
- ☐ **OTHER REASON(S).** (Explain below).

Detail information to support above justification(s):

<sup>4</sup> Applies to purchases under a Federal Grant equal to or more than \$25,000

<sup>5</sup> Applies to purchases under a Federal Grant equal to or more than \$100,000

<sup>6</sup> Applies to equipment purchases under a Federal Grant equal to or more than \$5,000

2. Price/Cost Analysis (**ONLY APPLICABLE TO PURCHASES/CONTRACTS THAT EXCEED \$100,000**):

The action taken in verifying price reasonableness is indicated below. Identify the method(s) listed below used to verify price reasonableness. Check one or more paragraphs below as applicable.

- ☐ Current price schedule (verifiable catalogue, published price list, etc.)  
Schedule Name/No.: \_\_\_\_\_ Unit Price: \$ \_\_\_\_\_  
Supplier Contact: \_\_\_\_\_ Date of Schedule: \_\_\_\_\_
- ☐ Previous purchase.  
Supplier: \_\_\_\_\_ Unit Price: \_\_\_\_\_  
PO No.: \_\_\_\_\_ PO Date: \_\_\_\_\_
- ☐ Similar item in related industry.  
Price Source: \_\_\_\_\_ Unit Price: \_\_\_\_\_  
Supplier: \_\_\_\_\_ Date: \_\_\_\_\_
- ☐ Any other Reasonable basis:

3. Small Business' Solicited (**Federally Funded Procurements Only**)

- ☐ Document whether Small Business, HUBZone Small Business, Small Disadvantaged Business, Women Owned Small Business or Service Disabled Veterans Owned Business or Veterans of Vietnam Era Owned Business concerns were solicited and, if not, why not.
- ☐ Applicable Businesses' referenced above were solicited.
- ☐ No Applicable Businesses referenced above were solicited because

-----Attach additional sheets as needed-----

**Required Signatures:**

\_\_\_\_\_  
Requestor Name (Print)

\_\_\_\_\_  
Requestor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Department Director Name (Print)

\_\_\_\_\_  
Department Director Signature

\_\_\_\_\_  
Date



# City of Fontana

8353 Sierra Avenue  
Fontana, CA 92335

## Action Report

### Fire Protection District

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**File #:** 21-3030

**Agenda #:** C.

**Agenda Date:** 6/25/2024

**Category:** Consent Calendar

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**FROM:**

Finance

**SUBJECT:**

Handheld Mass Spectrometer Chemical Detection System

**RECOMMENDATION:**

1. Authorize Finance to procure the Handheld Mass Spectrometer Chemical Detection System utilizing the Purchasing Policy and Procedure Manual Section 3.1.5 Non-Competitive Proposal - Purchase by Another Agency.
2. Authorize Purchasing Division to utilize the Orange County Fire Authority Contract IFB No. JA2650 to purchase the handheld chemical detection system from 908 Devices, Inc. of Boston, MA in the amount of \$114,838.

**COUNCIL GOALS:**

- Improve public safety by increasing operational efficiency, visibility and availability.
- Improve public safety by maximizing fire and emergency medical service resources.

**DISCUSSION:**

Fontana Fire Protection District is requesting to purchase handheld chemical detection system for Fire Station No. 73. The handheld devices provide first responders conducting chemical, explosive, priority drug and HazMat response the highest quality solution for detecting compounds at trace levels of sensitivity. These detectors are standard equipment for all District's fire stations.

Per the City's Purchasing Policies and Procedures Manual, Section 3.1.5 Non-Competitive Proposal may be used when a product is being purchased at the same price purchased by another public agency.

**FISCAL IMPACT:**

Funds are currently available in FY 2023/2024 budget (2115000-8318)

**MOTION:**

Approve Staff Recommendation



645 Summer Street  
Boston, MA 02210

Prepared By	Tom Keller	Created Date	6/11/2024
Email	tkeller@908devices.com	Quote Number	90810840
		Expiration Date	6/30/2024

#### Customer

Contact Name Kyle Hauducoeur  
Phone (909) 215-9965  
Email khauducoeur@sbcfire.org

Bill To Name	San Bernardino County Fire Department	Ship To Name	San Bernardino County Fire Department
Bill To	620 South E St. San Bernardino, California United States	Ship To	California United States

Product Code	Product	Product Description	Sales Price	Quantity	Discount (Percentage)	Total Price
820-00807	Extended Vapor Probe, MX908	Extended Vapor Probe, coiled Teflon tubing, extendable from 2' - 5' (.6 - 1.5m), MX908	USD 205.00	1.00	1.00%	USD 202.95
820-00907	Foam-tipped Applicator Swabs, MX908	Foam-tipped Applicator Swabs, 6 in (15 cm), plastic shaft, MX908 (50 count)	USD 44.00	1.00	1.00%	USD 43.56
MX908-05-1-0-06-01	MX908-c S5 (Trace, Aero), US Mfr	MX908-c, handheld mass spec chemical detection system for gas/vapor, liquids, solids and aerosols. Includes one (1) Training Kit, Chemical Samples (415-00044), five (5) years warranty and support; one (1) on-site training class (10 students max, expires 6 months after purchase, CONUS only); Type A plugs; Trace, Aero Modules. Available to US customers or with pre-approval/export license as required. US Manufactured. Berry and TAA compliant.	USD 102,103.00	1.00	1.00%	USD 101,081.97
415-00042	Trace Sampling Swabs, MX908 (100 count)	Trace Sampling Swabs, MX908 (2 hard cases, 100 swab count total).	USD 199.00	3.00	1.00%	USD 591.03
415-00044	Training Kit, Chemical samples, MX908	Chemical training kit for MX908	USD 205.00	1.00	1.00%	USD 202.95
900-00606	Training, MX908,	On-site Operator Training (US+Canada), MX908; add-on class; requires purchase of instrument with training or standalone training course (900-00601). Must be scheduled during the same visit as initial	USD	2.00	1.00%	USD





645 Summer Street  
Boston, MA 02210

	Add-on Class, US+CA	training. 4 to 6 hour training covering basic operation, safety and sampling recommendations. Limited to 10 students per class.	2,250.00			4,455.00
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Grand Total USD 106,577.46

#### Delivery, Banking & Payment Information

**DELIVERY:** <90 Days ARO

**PAYMENT TERMS:** NET 30 Days

**SHIPPING TERMS:** FOB Origin, Freight Prepaid

CAGE 6RTZ6

DUNS 078437853

TaxID 45-4524096

#### Payment Information

##### To Pay By ACH/Wire:

Routing (ACH) - 121000358

Routing (Wire) - 026009593

SWIFT - BOFAUS3N

Account - 1416818468

##### **Bank:**

Bank of America N.A.

8001 Villa Park Drive

Henrico, VA 23228

United States of America

Payments made via credit card will be subject to a 3.15% convenience fee.

#### Terms & Conditions

##### Terms of Sale

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. GENERAL. 908 Devices Inc., ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in this Agreement differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's document.

Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

2. PRICE. All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

3. TAXES AND OTHER CHARGES. Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

4. TERMS OF PAYMENT. Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars. Buyer agrees to pay for all fees associated with the method of payment (e.g. wire fees). Payment by credit card will be subject to a 3.15% fee.



645 Summer Street  
Boston, MA 02210

5. **DELIVERY; CANCELLATION OR CHANGES BY BUYER.** The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's shipping point. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller.

6. **TITLE AND RISK OF LOSS.** Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

7. **WARRANTY.** Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the Seller's quote, for Products, or if none indicated then as specified in. Seller's product documentation, published specifications or package inserts. If a period of time is not specified in Seller's quote, product documentation, published specifications or package inserts, the warranty period shall be one (1) year. The warranty period will start 30 days from the date of shipment to Buyer for equipment (the "Warranty Period"). Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

#### 8. INDEMNIFICATION.

8.1 By Seller. Seller agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based

on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

8.2 By Buyer. Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.

9. SOFTWARE. With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

10. INTELLECTUAL PROPERTY RIGHTS. 908 Devices exclusively owns and retains all intellectual property rights in and to the Products and technology that is in and included with the Products. No license or other rights, either express or implied, are granted by 908 Devices to Buyer under these Terms of Sale with respect to any such intellectual property rights. For more information about 908 Devices' patent portfolio, see [www.908devices.com/patents](http://www.908devices.com/patents).

The Product may not be disassembled or otherwise reverse engineered or analyzed by chemical, radiograph or other nondestructive tests or scans; for example, and not by way of limitation, any housing or other enclosure encasing any component of the Product may not be opened and any security locks, stickers, seals or notices that are affixed to the Product may not be opened or removed.

Buyer acknowledged and agrees that there can be no adequate remedy at law for any breach by Buyer of its obligations hereunder, that any such breach or any unauthorized use of the Product or of any of 908 Devices' intellectual property will result in irreparable harm to 908 Devices and therefore, that upon any such breach, unauthorized use or any threat thereof, 908 Devices will be entitled to appropriate equitable relief in addition, to whatever remedies it might have at law and to be indemnified by the Buyer from any loss or harm, including, without limitation, attorney's fees, in connection with any breach or enforcement of Buyer's obligations hereunder or the unauthorized use of the Product or any of 908 Devices' intellectual property, Buyer will notify 908 Devices in writing immediately upon the occurrence of any such unauthorized use or other breach of which it is aware.

Buyer will not to sell, assign, pledge, mortgage, hypothecate, encumber, dispose or otherwise provide, transfer or make available the Product to any third party unless Buyer has entered into a written agreement with such third party that (i) contains in substance at least the terms of Sections 11 and this Section 10 of these Terms of Sale, and (ii) provides that 908 Devices is an intended third-party beneficiary of such agreement.

11. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 7 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THEREFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

## 12. EXPORT RESTRICTIONS

Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer shall, if requested by Seller, provide information on the end user and end use of any Item exported or to be exported by Buyer. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, or agents.



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Boston, MA 02210

13. Resale. Subject to the terms and conditions herein, Buyer shall have the right to resell or transfer the Products to any third party (an "End User"), provided that (a) Buyer makes such sale pursuant to binding terms and conditions no less protective of Seller and the Product hereunder and Buyer makes no representation or warranty on behalf of Seller, (c) Buyer fairly and accurately represents the Product at all times only in accordance with the express statements in Seller's written documentation, and (d) Buyer ensures that Seller's user manual and all applicable warnings are delivered to each and every End User of the Product.

14. U.S. Government. The use, duplication, reproduction, release, modification, disclosure or transfer of software Products, or any related documentation of any kind (including, without limitation, technical data or manuals), is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation 227.7202 for military agencies. The software Products are "commercial items" and commercial computer software and the related documentation is commercial computer software documentation. The use of the software Products and related documentation is further restricted in accordance with the terms of this Agreement and any software license included or provided with a particular software Product.

15. MISCELLANEOUS. (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Seller, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the county and state of Seller, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (c) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (d) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (e) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (f) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (g) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.



# CITY OF FONTANA NON-COMPETITIVE SOURCE SELECTION JUSTIFICATION

<b>Contract/Req. No.:</b>		<b>Amendment No.:</b>		<b>Requestor:</b>		<b>Date:</b>	
<b>Pre-Tax Amount:</b>	\$	<b>Tax:</b>	\$	<b>Freight:</b>	\$	<b>Total Amount:</b>	\$
<b>Vendor Name:</b>							

## FUNDING SOURCE AND AUTHORIZATION (check as applicable)

<b>City Resources</b>	<input type="checkbox"/>	<b>Gov't Grant</b>	<input type="checkbox"/>	<b>Other</b>	<input type="checkbox"/>
<b>Certifications:</b>		<b>Debarment<sup>4</sup></b>	<input type="checkbox"/>	<b>Anti-Lobby<sup>5</sup></b>	<input type="checkbox"/>
				<b>Certificate(s) Attached</b>	<input type="checkbox"/>
		<b>Not Applicable</b>	<input type="checkbox"/>		
<b>Fund:</b>				<b>Object Code:</b>	
<b>Equipment Screening<sup>6</sup>:</b>	<b>Yes</b>	<input type="checkbox"/>	<b>Not Applicable</b>	<input type="checkbox"/>	<b>Title Vests: -</b>
<b>Purchase Description:</b>					

1. Source Selection - Competition is impracticable (Check appropriate box):

- ☐ **UNAVAILABLE FROM ANY OTHER SOURCE.** No competitive advantage would be gained from competitive pricing, such as when equipment, goods, materials, supplies, personal property, or services are unique and are only available from one source. (Explain below. Include all contacts made to verify the sole source or single source situation.)
- ☐ **COOPERATIVE PURCHASING AGREEMENT.** This product or service required is being purchased under a cooperative purchasing agreement. (Explain below).
- ☐ **SAME PRICE PURCHASED BY ANOTHER PUBLIC AGENCY.** The product or service required was awarded a bid by another public agency that has purchasing procedures substantially similar to those that the city would have been required to use, and the vendor offers the same price(s) to the city that it offered to the other agency.
- ☐ **EMERGENCY.** This product or service required is due to an emergency, determined by the City Manager, which could not have been anticipated and critical need precludes any form of competition. (Purchases more than \$100,000 must be presented at the next regular City Council Meeting for ratification by the City Council. Please attach supporting documentation and approval from City Manager).
- ☐ **OTHER REASON(S).** (Explain below).

Detail information to support above justification(s):

<sup>4</sup> Applies to purchases under a Federal Grant equal to or more than \$25,000

<sup>5</sup> Applies to purchases under a Federal Grant equal to or more than \$100,000

<sup>6</sup> Applies to equipment purchases under a Federal Grant equal to or more than \$5,000

2. Price/Cost Analysis (**ONLY APPLICABLE TO PURCHASES/CONTRACTS THAT EXCEED \$100,000**):

The action taken in verifying price reasonableness is indicated below. Identify the method(s) listed below used to verify price reasonableness. Check one or more paragraphs below as applicable.

- ☐ Current price schedule (verifiable catalogue, published price list, etc.)  
Schedule Name/No.: \_\_\_\_\_ Unit Price: \$ \_\_\_\_\_  
Supplier Contact: \_\_\_\_\_ Date of Schedule: \_\_\_\_\_
- ☐ Previous purchase.  
Supplier: \_\_\_\_\_ Unit Price: \_\_\_\_\_  
PO No.: \_\_\_\_\_ PO Date: \_\_\_\_\_
- ☐ Similar item in related industry.  
Price Source: \_\_\_\_\_ Unit Price: \_\_\_\_\_  
Supplier: \_\_\_\_\_ Date: \_\_\_\_\_
- ☐ Any other Reasonable basis:

3. Small Business' Solicited (**Federally Funded Procurements Only**)

- ☐ Document whether Small Business, HUBZone Small Business, Small Disadvantaged Business, Women Owned Small Business or Service Disabled Veterans Owned Business or Veterans of Vietnam Era Owned Business concerns were solicited and, if not, why not.
- ☐ Applicable Businesses' referenced above were solicited.
- ☐ No Applicable Businesses referenced above were solicited because

-----Attach additional sheets as needed-----

**Required Signatures:**

\_\_\_\_\_  
Requestor Name (Print)

\_\_\_\_\_  
Requestor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Department Director Name (Print)

\_\_\_\_\_  
Department Director Signature

\_\_\_\_\_  
Date





# City of Fontana

8353 Sierra Avenue  
Fontana, CA 92335

## Action Report

### Fire Protection District

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**File #:** 21-3102

**Agenda #:** D.

**Agenda Date:** 6/25/2024

**Category:** Consent Calendar

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**FROM:**

City Manager's Office

**SUBJECT:**

Tolling Agreement between the Fontana Fire Protection District and San Bernardino County Fire Protection District.

**RECOMMENDATION:**

Approve Amendment to Tolling Agreement Dated August 8, 2023, between the Fontana Fire Protection District and San Bernardino County Fire Protection District extending the automatic termination date by an additional 92 days.

**COUNCIL GOALS:**

- To operate in a businesslike manner by correcting problems immediately.
- To practice sound fiscal management by producing timely and accurate financial information.
- To practice sound fiscal management by fully funding liabilities and reserves.
- To practice sound fiscal management by developing long-term funding and debt management plans.
- To improve public safety by increasing operational efficiency, visibility, and availability.
- To improve public safety by maximizing fire and emergency medical service resources.
- To concentrate on inter-governmental relations by working cooperatively with neighboring jurisdictions.
- To concentrate on inter-governmental relations by establishing partnerships and positive working relationships with other public agencies providing services to residents.
- To concentrate on inter-governmental relations by pursuing financial participation from county, state and federal governments.
- To concentrate on inter-governmental relations by advocating Fontana's position in regional, state, and federal organizations.

**DISCUSSION:**

San Bernardino County Fire Protection District (SBCFPD) has provided contract fire protection and emergency medical services to the Fontana Fire Protection District (District) since July 2018. Both parties entered into Contract No. 18-357 (Contract) effective July 1, 2018, for said services and the Contract has since been amended annually through Amendments No. 1 through 8.

Upon review of the Contract, the District engaged SBCFPD regarding the overall detailed calculation of the annual fee including certain pension costs. As such, a dispute arose between the District and SBCFPD regarding these costs. In the parties desire to move forward to avoid any interruption in performance under the Contract, and to deter or avoid litigation at that time, the District and SBCFPD entered into a tolling agreement. The terms of the tolling agreement ensured that the period from October 1, 2022 through June 30, 2024, would be excluded from, and not be counted in, the computation of time for the purposes of any statute of limitations, time to sue provisions, or any other time-based limitations or defenses.

At this time, the District and SBCFD are in the process of concluding their discussions on the aforementioned dispute and request to extend the tolling agreement, set to expire on June 30, 2024, for an additional 92 days, thereby extending the tolling agreement through to September 30, 2024.

**FISCAL IMPACT:**

There is no fiscal impact associated with the approval of this item.

**MOTION:**

Approve staff's recommendation.



## **AMENDMENT NO. 1 TO TOLLING AGREEMENT**

This Amendment No. 1 to the Tolling Agreement, dated August 8, 2023 (“Tolling Agreement”), is made as of the “Effective Date” defined herein by and between the Fontana Fire Protection District (“District”) and San Bernardino County Fire Protection District (“SBCFPD”). Fontana and SBCFPD may be referred to collectively as “Parties” and individually as “Party.”

### **RECITALS**

A. The Parties entered into a Fire Protection and Emergency Medical Services Agreement effective July 1, 2018 (Contract No. 18-357), in which SBCFPD agreed to provide District with certain fire protection and emergency medical services. The Agreement has been amended by those certain Amendments No. 1 through No. 8, which together with the Agreement is referred to herein as the “Contract”.

B. A dispute has arisen between the Parties with regards to certain pension costs which are included in the calculation of the annual fee that is payable by District to SBCFPD pursuant to the Contract (“Dispute”).

C. The Parties entered into the Tolling Agreement, Contract No. 23-885, in August of 2023, to toll the time the Parties would have to bring an action regarding the Dispute pursuant to the terms of the Contract. The automatic termination date of the Tolling Agreement is June 30, 2024, unless renewed by the Parties.

D. The Parties desire to enter into this Amendment No. 1 to the Tolling Agreement to extend the automatic termination date of the Tolling Agreement by an additional 92 days, such that notwithstanding the maximum period imposed by California Code of Civil Procedure section 360.5, the Parties agree that the Tolling Agreement and the Tolling Period shall automatically terminate on September 30, 2024 (“Effective Termination”) unless renewed in writing signed by both Parties.

E. By entering into the Tolling Agreement and this Amendment No. 1, the Parties do not admit to the veracity or merit of any disputes, allegations, claims, causes of actions, rights, damages, or losses arising out of or in connection with the Dispute.

### **TERMS**

The Parties, incorporating the above recitals as part of this Amendment No. 1 to the Tolling Agreement and in consideration of the mutual promises and obligations as contained herein, agree as follows:

1. Section 2 of the Tolling Agreement is deleted and replaced with a new Section 2, which shall read as follows:

2. This Tolling Agreement is intended to satisfy California Code of Civil Procedure section 360.5 and any other provision of law necessary to extend any statute of limitations or statute of repose. Notwithstanding the maximum period imposed by California Code of Civil Procedure section 360.5, the Parties agree that this Tolling Agreement and the Tolling Period shall automatically terminate on

September 30, 2024 (“Effective Termination”) unless renewed in writing signed by both Parties.

3. All other terms and conditions of the Tolling Agreement shall remain the same.

4. This Amendment No. 1 to the Tolling Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Amendment No. 1 (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Amendment No. 1 upon request.

5. By signing this Amendment No. 1 to the Tolling Agreement, each party warrants and acknowledges that the party has read this Amendment No. 1 to the Tolling Agreement, understands it, and has the legal authority to sign for the party represented by his or her signature.

6. This Amendment No. 1 to the Tolling Agreement shall take effect (“Effective Date”) on the date it is approved by authorized representatives of both Parties.

*signature page follows*

*Signature Page to Amendment No. 1 to the Tolling Agreement Between  
Fontana Fire Protection District and San Bernardino County Fire  
Protection District*

**FONTANA FIRE PROTECTION DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*Approved as to form:*

By: \_\_\_\_\_  
Ruben Duran, Partner  
Best Best & Krieger LLP

**SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*Approved as to form:*

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