

BILL NO.: 4800

ORDINANCE NO.: \_\_\_\_\_

Introduced by: City Manager Debra M. Irvin

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH STRYKER CORPORATION TO PURCHASE MECHANICAL CPR DEVICES**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:**

**Section 1.** The Berkeley City Council hereby authorize the City Manager to enter into and execute an agreement with Stryker Corporation through the Savvak Group (nationwide cooperative purchasing group) for the purchase of four new Lucas mechanical CPR devices for \$77,981.88

**Section 2.** The agreement will be incorporated and made a part of this ordinance, as if fully set out herein.

**Section 3.** This Ordinance shall be in full force and effect from and after its passage.

1st Reading this 21<sup>st</sup> day of September 2020

2nd Reading this \_\_\_\_\_ day of \_\_\_\_\_ 2020

3rd Reading, PASSED and APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_ 2020

\_\_\_\_\_  
Babatunde Deinbo, Mayor

ATTEST:

\_\_\_\_\_  
Deanna L. Jones, City Clerk

\_\_\_\_\_  
Approved as To Form:  
Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Mitchell	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Williams	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Anthony	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman Hindeleh	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman-at-Large Greene	Aye ___	Nay ___	Absent ___	Abstain ___
Mayor Deinbo	Aye ___	Nay ___	Absent ___	Abstain ___

# MEMORANDUM



**TO:** Honorable Mayor Babatunde Dienbo &  
Honorable City Council Members

**THRU:** Debra Irvin, City Manager

**FROM:** Chief James Linhardt, Berkeley Fire Department

**DATE:** September 16, 2020

**SUBJECT:** Purchase of Mechanical CPR devices

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**Recommendation:** The Fire Department has reviewed all aspects of purchasing four (4) Mechanical CPR devices. It is my recommendation that the purchase be made thru the Savvak group (nationwide cooperative purchasing group) to the Stryker corporation for the purchase of the new Lucas CPR devices. By using this buying group, it eliminates the need for any bidding to be done as it has already been completed by the group.

**Stryker Corporation (4) mechanical CPR devices: \$77,981.88**

**Background:** The City of Berkeley was awarded a grant from FEMA for the amount of **\$76,190.48** for the purchase of these four (4) devices. That will leave a minimal amount for the City to pay. Fire department members from every rank in the department have met with every vendor for the different types of mechanical CPR devices. That committee developed detailed specifications for the devices to meet the needs of the Berkeley Fire Department. They recommended the Lucas device after review of the three (3) different ones.

The fire department has the legal right to specify any equipment listed in the bid documents based on the following:

The Fire Department (for the remainder of this section referred to as the "specifier") chooses to exercise its Legal Right to Specify as determined by the U.S. Supreme Court's affirmation of the decision handed down in the case of

Whitten Corp. vs. Paddock, by the U.S. District Court of Massachusetts, the First Federal District Court, which in effect states: 1) That as trained professionals, specifiers make informed judgments on products that they feel best serve their needs. Also, that proprietary specifications (if chosen) DO NOT violate any antitrust laws. Technically, very few brands of material or equipment are exactly alike, and if the specifier wants to limit the specification to one source, he/she has the right to do so and enforce it. 2) Only the specifier has the responsibility and judgment for determining whether a proposed substitution is an “or equal”. 3) That from start to finish in the purchasing process, only the specifier can ultimately decide if another desirable product is available in lieu of the specification. 4) Finally, that the courts concluded “the burden is on the supplier or manufacturer, who has NOT been specified, to convince the specifier that their product is equal for the purpose of a particular project”. The specifier has determined that this product specification shall represent the product to which all offerings shall be compared. Due to the fact that firefighting, medical services is an ULTRAHAZARDOUS, UNAVOIDABLY DANGEROUS activity, only trained Fire Department personnel with specific knowledge in the area of EMS equipment and equipment shall be allowed to make the final determining decision on the selection of the appropriate product to serve the Fire Department’s needs.

**Supporting Documents:** See attached Savvak buying group information along with discounted pricing quote from the Stryker corporation, along with sole source documentation from the Stryker corporation  
Statements from Fire Captains on recommendation.

**Potential Objection:** None foreseen as majority of the money for the purchase is coming from Grant received and the balance will come from the Fire Equipment Fund

**Staff Reference:** If you have any questions please feel free to contact me at (314) 400.3600 or email [Linhardt@ci.berkeley.mo.us](mailto:Linhardt@ci.berkeley.mo.us)  
Or contact Captain Scott Lembke, Captain Michael Hurtado at 314 400-3698 email [Lembke@ci.berkeley.mo.us](mailto:Lembke@ci.berkeley.mo.us), [Hurtado@ci.berkeley.mo.us](mailto:Hurtado@ci.berkeley.mo.us)