

BILL NO.: 4801

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 LEO M. ELLEBRACHT TO PURCHASE LOOSE FIRE EQUIPMENT**

**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 Leo M. Ellebracht for the purchase of loose fire equipment according to Bid #907, which will include a thermal camera and an air bags system for \$14,235.00

**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 15, 2020

**SUBJECT:** Bid No. 907 – Berkeley Fire Department Loose Equipment

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**Recommendation:** The Fire Department has reviewed all aspects contained in the loose equipment bids received from the Leo Ellebracht Co., Sentinel Fire Equipment, Banner Fire, Alex Air Apparatus (see attached bid tally sheets). The bids that were received did not all adhere completely to the Berkeley Fire Department specifications. There were exceptions taken and not all items were bid on all of the specifications received. The new equipment will be placed onto the new fire engine that is currently on order set for delivery in mid-November. The equipment from the winning bidders will 100% meet the Berkeley Fire Department’s needs and specifications. The new equipment will be delivered prior to the new fire engine arrival date. Delivery is expected four to six weeks from the contract award date. There were no complete bids that met all items specified. There is no clear “low” bid, out of four bidders only one of the bidders provided pricing for all items. It is recommended that the equipment purchase be split between Leo M. Ellebracht, Banner Fire and Sentinel Emergency Solutions selecting the lower priced equipment or the equipment that was the closest to what was sent out for bid.

<b>Leo M. Ellebracht: Thermal Camera, Air Bags System</b>	<b>\$14,235.00</b>
<b>Sentinel Emergency Solutions: Hurst Rescue Tools</b>	<b>\$27,241.52</b>
<b>Banner Fire Equipment: Fire Hose</b>	<b>\$9,378.95</b>

**Background:** The City of Berkeley posted a Request for Bids for loose equipment. The purpose of the bid was to outfit the new fire engine with new up to date equipment. Equipment cannot be removed from the fire engine it is

replacing as the existing fire truck will become a reserve apparatus and must remain fully stocked and equipped in the event that any front line apparatus is out of service.

The fire department has the legal right to specify the loose 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 is an ULTRAHAZARDOUS, UNAVOIDABLY DANGEROUS activity, only trained Fire Department personnel with specific knowledge in the area of fire apparatus 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.

Fire department members from every rank in the department was established and has met on this and the new fire engine project. That committee developed detailed specifications for the loose equipment to meet the needs of the Berkeley Fire Department.

**Supporting Documents:** See attached bid package and bid tally sheet.

**Potential Objection:** None foreseen as adequate funds are available in the fire department equipment line item. Additionally, this purchase was planned for in the total cost of the new fire engine.

**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)