

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: July 23, 2013		DATE SUBMITTED: July, 9 2013	
DEPARTMENT OF ORIGIN: Fire Department		SUBMITTED BY: R. McGregor	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consider award of "Annual Price Agreement for Emergency Medical Supplies and Pharmaceuticals for the Bryan Fire Department" to Bound Tree Medical LLC (Dublin, OH). Estimated annual expenditure for this contract is \$275,000.00.			
SUMMARY STATEMENT: Three (3) bid responses were received and publicly opened on June 6, 2013. The best value of these three (3) bids was submitted by Bound Tree Medical, LLC. Bids were divided into eleven (11) groups. Bidders were not required to bid on all groups but were required to bid all-or-none within a group. Bound Tree Medical submitted the lowest bid that contained complete bids for all eleven (11) groups. When comparing packaging/per cost differences it was found Bound Tree Medical gave the best value to the City.			
The contract amount for the last five (5) years has been \$388,492.88; that is, the contract amount requested with this action form is a reduction when compared to previous years. Historically, actual expenses have been:			
<ul style="list-style-type: none"> • 2007: \$176,283 • 2008: \$187,476 • 2009: \$228,011 • 2010: \$200,210 • 2011: \$174,479 • 2012: \$176,324 			
STAFF ANALYSIS AND RECOMMENDATION: City of Bryan staff recommends approving the proposed contract to Bound Tree Medical, LLC (Dublin, OH). In comparing packaging/per cost differences, Bound Tree Medical appears to be the best value to the City. The amount requested (\$275,000) should be sufficient to cover unplanned costs; that amount is a not to exceed amount. As demonstrated in previous years, staff expends only what is necessary to continue to provide appropriate services.			
OPTIONS (In Suggested Order of Staff Preference):			
<ol style="list-style-type: none"> 1. Approve contract with Bound Tree Medical, LLC (Dublin, OH) 2. Do not approve the contract and re-bid. 			
ATTACHMENTS: Bid Summary & Bid Tabulation			
FUNDING SOURCE: General Fund			
APPROVALS: R. McGregor; Hugh R. Walker, 07/09/2013			
APPROVED FOR SUBMITTAL: CITY MANAGER			
APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton 07-15-2013			

**CONTRACT FOR EMERGENCY MEDICAL SUPPLIES AND PHARMACEUTICALS
FOR BRYAN FIRE DEPARTMENT
RFB #13-043**

This Contract, dated _____, 2013, is between the **City of Bryan**, a Texas home-rule municipal corporation, (the City) and **Bound Tree Medical, LLC** (the Service Provider), whereby the Service Provider agrees to provide the City with certain services as described herein and the City agrees to pay the Service Provider for those services.

1. Scope of Services

In consideration of the compensation stated in **paragraph 2**, the Service Provider agrees to provide the City with the services as described in Exhibit A, RFB #13-043, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows:

*Annual Contract for Emergency Medical Supplies and Pharmaceuticals for Bryan Fire
Department*

2. Payment

In consideration of the Service Providers provision of the services in compliance with all terms and conditions of this Contract, the City shall pay the Service Provider according to the terms set forth in Exhibit B, Bid Forms. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all services provided under this Contract may not exceed \$275,000.00.

3. Time of Performance

A. All work and services provided under this Contract must be completed according to the Scope of Services described in Exhibit A, RFB #13-043.

B. **Time is of the essence of this Contract.** The Service Provider shall be prepared to provide the services in the most expedient and efficient manner possible in order to complete the work by the times specified and described in Exhibit A, RFB #13-043

4. Warranty, Indemnification, Release & Insurance

A. As an experienced and qualified Service Provider, the Service Provider agrees that the services provided by the Service Provider reflect the professional and industry standards, procedures, and performances. The Service Provider agrees the selection and supervision of personnel, and the performance of services under this Contract, will be pursuant to the standard of performance in the profession. The Service Provider agrees that the Service Provider will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Service Provider, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy, competency and

quality of the services provided, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid services provided by the Service Provider, its employees, associates, agents, or subcontractors.

B. The Service Provider shall promptly correct any defective work furnished by the Service Provider at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the services hereunder itself shall in no way alter the Service Providers obligations or the City's rights hereunder.

C. In all activities or services performed hereunder, the Service Provider is an independent contractor and not an agent or employee of the City. The Service Provider and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Service Provider shall be responsible for the services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Service Provider shall supply all materials, equipment, and labor required for the services to be provided under this Contract. The Service Provider shall have ultimate control over the execution of the services. The Service Provider shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Service Provider or any of the Service Providers subcontractors.

D. The Service Provider must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Service Provider, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

E. Responsibility for damage claims (indemnification): Service Provider shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the Service Provider's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. Service Provider shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Service Provider's negligence.

F. **Release.** The Service Provider releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Service Provider or its employees and any loss of or damage to any property of the Service Provider or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Service Provider's negligent performance of the work. Both the City and the Service

Provider expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

5. Termination

A. The City may terminate this Contract at any time upon **thirty (30)-calendar** days written notice. Upon the Service Provider's receipt of such notice, the Service Provider shall cease work immediately. The Service Provider shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, the Service Provider fails to fulfill its obligations under this Contract, or if the Service Provider violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Service Provider **five (5)** calendar days written notice. The Service Provider will be compensated for the services satisfactorily performed before the termination date.

C. No term or provision of this Contract shall be construed to relieve the Service Provider of liability to the City for damages sustained by the City because of any breach of contract by the Service Provider. The City may withhold payments to the Service Provider for the purpose of setoff until the exact amount of damages due the City from the Service Provider is determined and paid.

6. Miscellaneous Terms

A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan
Attn: Susan Chmelar, Buyer
P.O. Box 1000
Bryan, Texas 77805

The Service Provider:
Bound Tree Medical, LLC
Attn: Jennifer Butler
5000 Tuttle Crossing Blvd.
Dublin, Ohio 43016

C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Contract represents the entire and integrated agreement between the City and the Service provider and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

E. This Contract and all rights and obligations contained herein may not be assigned by the Service Provider without the prior written approval of the City.

F. The Service Provider, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Service Provider must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

G. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

CITY OF BRYAN:

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney
Date: _____

Jason P. Bienski, Mayor
Date: _____

ATTEST:

Mary Lynne Stratta, City Secretary
Date: _____

SERVICE PROVIDER:

By: _____

(Service Provider - Corporate Seal)

Printed Name: _____

Title: _____

Date: _____

STATE OF TEXAS

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ACKNOWLEDGEMENT

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COUNTY OF _____

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This instrument was acknowledged before me on the _____ day of _____,
2013, by _____ on behalf of
_____.

Notary Public in and for
The State of Texas