



Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement (the **Agreement**) by and between Axon Enterprise, Inc., (**Axon or Party**) a Delaware corporation having its principal place of business at 17800 N 85th Street, Scottsdale, Arizona, 85255, and City of Fort Lauderdale, (**Agency, Party, City** or collectively **Parties**), is entered into the later of (a) the last signature date on this Agreement, or (b) the signature date on the quote (**the Effective Date**).

This Agreement sets forth the terms and conditions for the purchase, delivery, use, and support of Axon products and services as detailed in the Quote Appendix (the **Quote**), which is hereby incorporated by reference. It is the intent of the Parties that this Agreement shall act as a master agreement governing all subsequent purchases by Agency of the same Axon Products or Services accepted by Agency and shall be incorporated by reference as a Quote. In consideration of this Agreement, the Parties agree as follows:

1 Term. This Agreement will commence on the Effective Date and will remain in full force and effect until terminated by either Party. Axon services will not be authorized until a signed Quote or Purchase Order is accepted by Axon, whichever is first.

2 Definitions.

"Confidential Information" means any documents or information that is deemed confidential, confidential and exempt, or a trade secret as defined by Florida law or federal law.

"Evidence.com Service" means Axon web services for Evidence.com, the Evidence.com site, Evidence Sync software, Axon Capture App, Axon View App, other software, maintenance, storage, and any product or service provided by Axon under this Agreement for use with Evidence.com. This does not include any third party applications, hardware warranties, or the my.evidence.com services.

"Policies" means the Trademark Use Guidelines, all restrictions described on the Axon website, and any other policy or terms referenced in or incorporated into this Agreement. Policies do not include whitepapers or other marketing materials.

"Products" means all Axon hardware, software, cloud based services, Documentation and software maintenance releases and updates provided by Axon under this Agreement.

"Quote" is an offer to sell, and is valid only for products and services listed on the quote at prices on the quote. Any terms and conditions contained within the Agency's purchase order in response to the Quote will be null and void and shall have no force or effect. Axon is not responsible for pricing, typographical, or other errors in any offer by Axon and Axon reserves the right to cancel any orders resulting from such errors. Axon reserves the right to adjust prices or Products unless otherwise specified in the Quote.

"Services" means all services provided by Axon pursuant to this Agreement.

3 Payment Terms. Invoices are due to be paid within 30 days of the date of invoice, unless otherwise specified by Axon. All orders are subject to prior credit approval. Payment obligations are non-cancelable and fees paid are non-refundable and all amounts payable will be made without setoff,



deduction, or withholding. If a delinquent account is sent to collections, the Agency is responsible for all collection and attorneys' fees. In the event the Agency chooses a phased deployment for the Products in the Quote, the Quote pricing is subject to change if the phased deployment changes.

- 4 **Fiscal.** In the event the term of this Agreement extends beyond the end of any fiscal year of the City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds.
- 5 **Compensation.** Axon agrees to provide services and/or materials as specified in this Agreement at the cost specified herein. It is acknowledged and agreed by Axon that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Axon for their services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Axon's obligation to perform all items of work as described in this Agreement. Except as otherwise provided in this Agreement, no amount shall be paid to Axon to reimburse Axon's expenses.
- 6 **Indemnification.** Axon shall protect and defend at Axon's expense, counsel being subject to the City's approval and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any negligent act, error or omission, or willful misconduct by Axon or by any officer, employee, agent, invitee, subcontractor, or sublicensee of Axon. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Axon under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.
- 7 **Intellectual Property.** Axon shall protect and defend at Axon's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with Axon's or the City's use of any copyrighted, patented, or unpatented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If Axon uses any design, device, or materials covered by letters, patent, or copyright, it is mutually agreed and understood without exception that the City's compensation addressed in this Agreement shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

Axon has no liability to the Agency or any third party if any alleged infringement or claim of infringement is to any extent based upon: (a) any modification of the Evidence.com Services by the Agency or any third party not approved by Axon; (b) use of the Evidence.com Services in connection or in combination with equipment, devices, or services not approved or recommended by Axon; (c) the use of Evidence.com Services other than as permitted under this Agreement or in a manner for which it was not intended; or (d) the use of other than the most current release or version of any software provided by Axon as part of or in connection with the Evidence.com Services. Nothing in this Section will affect any warranties in favor of the Agency that are otherwise provided in or arise out of this Agreement.

- 8 **Taxes.** Unless Axon is provided with a valid and correct tax exemption certificate applicable to the purchase and ship-to location, the Agency is responsible for sales and other taxes associated with the order.
- 9 **Shipping; Title; Risk of Loss; Rejection.** Axon reserves the right to make partial shipments and Products may ship from multiple locations. All shipments are E.X.W. via common carrier and title and risk of loss pass to the Agency upon delivery to the common carrier by Axon. The Agency is responsible for all freight charges. The Agency may reject Products that do not match the Products listed in the Quote or are damaged or non-functional upon receipt (**Nonconforming Product**) by providing Axon written notice of rejection within 10 days of shipment. In the event the Agency receives a Nonconforming Product, the Agency's sole remedy is to return the Product to Axon for repair or replacement as further described in Section 7 – Warranties. Failure to notify Axon within the 10-day rejection period will be deemed as acceptance of Product.
- 10 **Returns.** All sales are final and no refunds or exchanges are allowed, except for warranty returns or as provided by state or federal law.
- 11 **Warranties.**
- 11.1 **Hardware Limited Warranty.** Axon warrants that its law enforcement hardware products are free from defects in workmanship and materials for a period of ONE (1) YEAR from the date of receipt. Extended warranties run from the date of purchase of the extended warranty through the balance of the 1-year limited warranty term plus the term of the extended warranty measured after the expiration of the 1-year limited warranty. Axon-Manufactured Accessories are covered under a limited 90-DAY warranty from the date of receipt. Non-Axon manufactured accessories are covered under the manufacturer's warranty. If Axon determines that a valid warranty claim is received within the warranty period, as further described in the Warranty Limitations section, Axon agrees to repair or replace the Product. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.
- 11.2 **Warranty Limitations.**
- 11.2.1 The warranties do not apply and Axon will not be responsible for any loss, data loss, damage, or other liabilities arising from: (a) damage from failure to follow instructions relating to the Product's use; (b) damage caused by use with non-Axon products or other parts, components or accessories that are not manufactured or recommended by Axon; (c) damage caused by abuse, misuse, intentional or deliberate damage to the product, or force majeure; (d) damage to a Product or part that has been repaired or modified by persons other than Axon authorized personnel or without the written permission of Axon; or (e) if any Axon serial number has been removed or defaced.
- 11.2.2 **To the extent permitted by law, the warranties and the remedies set forth above are exclusive and Axon disclaims all other warranties, remedies, and conditions, whether oral or written, statutory, or implied, as permitted by applicable law. If statutory or implied warranties cannot be lawfully disclaimed, then all such warranties are limited to the duration of the express warranty described above and limited by the other provisions contained in this Agreement.**



11.2.3 Axon's cumulative liability to any Party for any loss or damage resulting from any claims, demands, or actions arising out of or relating to any Axon product will not exceed the purchase price paid to Axon for the product or if for services, the amount paid for such services over the prior 12 months preceding the claim. In no event will either Party be liable for any direct, special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory.

11.3 Warranty Returns. If a valid warranty claim is received by Axon within the warranty period, Axon agrees to repair or replace the Product that Axon determines in its sole discretion to be defective under normal use, as defined in the Product instructions. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.

11.3.1 For warranty return and repair procedures, including troubleshooting guides, please go to Axon's websites www.axon.com/support or www.evidence.com, as indicated in the appropriate product user manual or quick start guide.

11.3.2 Before delivering product for warranty service, it is the Agency's responsibility to upload the data contained in the product to the Evidence.com services or download the product data and keep a separate backup copy of the contents. Axon is not responsible for any loss of software programs, data, or other information contained on the storage media or any other part of the product services.

11.3.3 A replacement product will be new or like new and have the remaining warranty period of the original product or 90 days from the date of replacement or repair, whichever period is longer. When a product or part is exchanged, any replacement item becomes Purchaser's property and the replaced item becomes Axon's property.

12 Product Warnings. See Axon's website at www.axon.com/legal for the most current product warnings.

13 Design Changes. Axon reserves the right to make changes in the design of any of Axon's products and services without incurring any obligation to notify the Agency or to make the same change to products and services previously purchased.

14 Insurance. Axon shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at Axon's expense.

The City of Fort Lauderdale shall be given notice 30 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of Axon to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

Axon's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized



to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by Axon that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes

Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at www.fldfs.com.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors

Automobile Liability Insurance

Covering all owned, hired and non-owned automobile equipment.

Limits: Bodily injury	\$250,000 each person, \$500,000 each occurrence
Property damage	\$100,000 each occurrence

Technology Errors & Omissions)

Consultants

Limits: \$1,000,000 per claim

Certificate holder should be addressed as follows:



City of Fort Lauderdale
Procurement Services Division
100 North Andrews Avenue, Room 619
Fort Lauderdale, FL 33301

- 15 IP Rights.** Axon owns and reserves all right, title, and interest in the Axon Products and Services, and related software, as well as any suggestions made to Axon.
- 16 Agency Responsibilities.** The Agency is responsible for (i) use of Axon Products (including any activities under the Agency Evidence.com account and use by Agency employees and agents), (ii) breach of this Agreement or violation of applicable law by the Agency or any of the Agency's end users, (iii) Agency Content or the combination of Agency Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights by Agency Content or by the use of Agency Content, (iv) a dispute between the Agency and any third party over Agency use of Axon products or the collection or use of Agency Content, (v) any hardware or networks that the Agency connects to the Evidence.com Services, and (vi) any security settings the Agency establishes to interact with or on the Evidence.com Services.
- 17 Termination.**
- 19.1 By Either Party.** Either Party may terminate for cause upon 30 days advance notice to the other Party if there is any material default or breach of this Agreement by the other Party, unless the defaulting Party has cured the material default or breach within the 30-day notice period. In the event that the Agency terminates this Agreement due to Axon's failure to cure the material breach or default, Axon will issue a refund of any prepaid amounts on a prorated basis from the date of notice of termination.
- 19.2 By Agency.** The Agency is obligated to pay the fees under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the Agency's then current fiscal year. In the event that sufficient funds will not be appropriated or are not otherwise legally available to pay the fees required under this Agreement, this Agreement may be terminated by the Agency. The Agency agrees to deliver notice of termination under this Section at least 90 days prior to the end of the Agency's then current fiscal year, or as soon as reasonably practicable under the circumstances.
- 19.3 Effect of Termination.** Upon any termination of this Agreement: (a) all Agency rights under this Agreement immediately terminate; (b) the Agency remains responsible for all fees and charges incurred through the date of termination; and (c) Payment Terms, Warranty, Product Warnings, Indemnification, and Agency Responsibilities Sections, as well as the Evidence.com Terms of Use Appendix Sections on Agency Owns Agency Content, Data Storage, Fees and Payment, Software Services Warranty, IP Rights and License Restrictions will continue to apply in accordance with their terms. If the Agency purchases Products for a value less than MSRP and this Agreement is terminated before the end of the term then (a) the Agency will be invoiced for the remainder of the MSRP for the Products received and not already paid for; or (b) only in the case of termination for non-appropriations, return the Products to Axon within 30 days of the date of termination.
- 20 Public Records.** Pursuant to Section 119.0701, Florida Statutes (2016), to the extent that Axon is a contractor as defined in Section 119.0701(1)(a), Florida statutes (2016), Axon shall:



- (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost as further described in Sections 11-12 of the Evidence.com Terms of Use Appendix, to the City, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE FORT LAUDERDALE POLICE DEPARTMENT CUSTODIAN OF PUBLIC RECORDS AT 1300 WEST BROWARD BOULEVARD, FORT LAUDERDALE, FLORIDA 33312, TELEPHONE: 954-828-5465 E-MAIL: PublicRecords@fortlauderdale.gov

21 General.

- 21.1 Confidentiality.** Both Parties will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of either Party's Confidential Information. Except as required by applicable law, neither Party will disclose either Party's Confidential Information during the Term or at any time during the 5-year period following the end of the Term. Unless the Agency is legally required to disclose Axon's pricing, all Axon pricing is considered confidential and competition sensitive. To the extent allowable by law, Agency will provide notice to Axon prior to any such disclosure.
- 21.2 Excusable delays.** Axon will use commercially reasonable efforts to deliver all products and services ordered as soon as reasonably practicable. In the event of interruption of any delivery due to causes beyond Axon's reasonable control, Axon has the right to delay or terminate the delivery with reasonable notice.
- 21.3 Force Majeure.** Neither Party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond the Parties' reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other



elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

- 21.4 Proprietary Information.** The Agency agrees that Axon has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute Axon products and services, and that the Agency will not directly or indirectly cause any proprietary rights to be violated.
- 21.5 Independent Contractors.** The Parties are independent contractors. Neither Party, nor any of their respective affiliates, has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 21.6 No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.
- 21.7 Non-discrimination and Equal Opportunity.** During the performance of this Agreement, neither the Parties nor the Party's employees will discriminate against any person, whether employed by a Party or otherwise, on the basis of basis of race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief. In all solicitations or advertisements for employees, agents, subcontractors or others to be engaged by a Party or placed by or on behalf of a Party, the solicitation or advertisement shall state all qualified applicants shall receive consideration for employment without regard to race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief.
- 21.8 U.S. Government Rights.** Any Evidence.com Services provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" will have the same rights and restrictions generally applicable to the Evidence.com Services. If the Agency is using the Evidence.com Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, the Agency will immediately discontinue use of the Evidence.com Services. The terms "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- 21.9 Import and Export Compliance.** In connection with this Agreement, each Party will comply with all applicable import, re- import, export, and re-export control laws and regulations.
- 21.10 Assignment.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Axon may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.
- 21.11 No Waivers.** The failure by either Party to enforce any provision of this Agreement will not



constitute a present or future waiver of the provision nor limit the Party's right to enforce the provision at a later time.

21.12 Severability. This Agreement is contractual and not a mere recital. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

21.13 Governing Law; Venue. The laws of the state where the Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the Parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

21.14 Notices. All communications and notices to be made or given pursuant to this Agreement must be in the English language. Notices provided by posting on the Agency's Evidence.com site will be effective upon posting and notices provided by email will be effective when the email was sent. Notices provided by personal delivery will be effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
ATTN: Contracts
17800 N. 85th Street
Scottsdale, Arizona 85255
contracts@axon.com

AGENCY:

21.15 Entire Agreement. This Agreement, including the APPENDICES attached hereto, and the Policies and the quote provided by Axon, represents the entire agreement between the Parties. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Parties, whether written or verbal, regarding the subject matter of this Agreement. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the Parties to this Agreement. If Axon provides a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

21.16 Counterparts. If this Agreement form requires the signatures of the Parties, then this Agreement may be executed by electronic signature in multiple counterparts, each of which is considered an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories, whose signatures appear below, have been and are, on the date of signature, duly authorized to execute this Agreement.

Axon Enterprise, Inc.
Signature: [Handwritten Signature]
Name: Robert Driscoll
Title: VP, Sales Operations
Date: 11/21/17

City of Fort Lauderdale
Signature: SEE ATTACHED SIGNATURE PAGE
Name: _____
Title: _____
Date: _____

CITY OF FORT LAUDERDALE:



LEE R. FELDMAN 11/14/17
DATE

For CITY MANAGER
Pursuant to §§2-173, 2-176(6)(e)(2)
and 2-1818(f)(2)
City of Fort Lauderdale Code of Ordinances

[Municipal Seal]

ATTEST:



JEFFREY A. MODARELLI 11/15/2017
CITY CLERK DATE

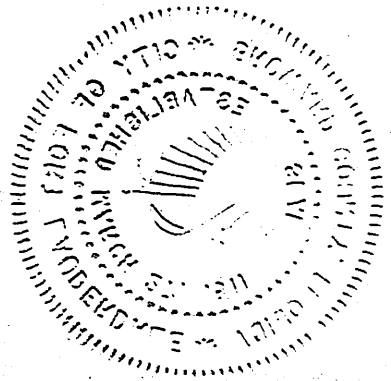
Approved as to form:
Cynthia A. Everett, City Attorney

By: 

BRADLEY H. WEISSMAN 11/13/17
ASSISTANT CITY ATTORNEY DATE

11/11/11

[Handwritten signature]



Evidence.com Terms of Use

Appendix

1 **Evidence.com Subscription Term.** The Evidence.com Subscription will begin after shipment of the Axon interview room cameras. If shipped in 1st half of the month, the start date is on the 1st of the following month. If shipped in the last half of the month, the start date is on the 15th of the following month. For phased deployments, the Evidence.com Subscription begins upon the shipment of the first phase. For purchases that consist solely of Evidence.com licenses, the Subscription will begin upon the Effective Date.

2 **Access Rights. "Agency Content"** means software, data, text, audio, video, images or other Agency content or any of the Agency's end users (a) run on the Evidence.com Services, (b) cause to interface with the Evidence.com Services, or (c) upload to the Evidence.com Services under the Agency account or otherwise transfer, process, use or store in connection with the Agency account. Upon the purchase or granting of a subscription from Axon and the opening of an Evidence.com account, the Agency will have access and use of the Evidence.com Services for the storage and management of Agency Content during the subscription term (**Term**).

The Evidence.com Service may not be accessed by more than the number of end users specified in the Quote. If Agency becomes aware of any violation of this Agreement by an end user, the Agency will immediately terminate that end user's access to Agency Content and the Evidence.com Services. For Evidence.com Lite licenses, the Agency will have access and use of Evidence.com Lite for only the storage and management of data from TASER CEWs and the TASER CAM during the subscription Term. The Evidence.com Lite Service may not be accessed to upload any non-TASER CAM video or any other files.

3 **Agency Owns Agency Content.** The Agency controls and owns all right, title, and interest in and to Agency Content and except as otherwise outlined herein, Axon obtains no interest in the Agency Content, and the Agency Content are not business records of Axon. The Agency is solely responsible for the uploading, sharing, withdrawal, management and deletion of Agency Content. Axon will have limited access to Agency Content solely for providing and supporting the Evidence.com Services to the Agency and Agency end users. The Agency represents that the Agency owns Agency Content; and that none of Agency Content or Agency end users' use of Agency Content or the Evidence.com Services will violate this Agreement or applicable laws.

4 **Evidence.com Data Security.**

4.1. **Generally.** Axon will implement commercially reasonable and appropriate measures designed to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive Information Security Program (**ISP**) that includes logical and physical access management, vulnerability management, configuration management, incident monitoring and response, encryption of digital evidence uploaded, security education, risk management, and data protection. The Agency is responsible for maintaining the security of end user names and passwords and taking steps to maintain appropriate security and access by end users to Agency

Content. Login credentials are for Agency internal use only and Agency may not sell, transfer, or sublicense them to any other entity or person. The Agency agrees to be responsible for all activities undertaken by the Agency, Agency employees, Agency contractors or agents, and Agency end users that result in unauthorized access to the Agency account or Agency Content. Audit log tracking for the video data is an automatic feature of the Services that provides details as to who accesses the video data and may be downloaded by the Agency at any time. The Agency shall contact Axon immediately if an unauthorized third party may be using the Agency account or Agency Content or if account information is lost or stolen.

4.2. FBI CJIS Security Addendum. Axon agrees to the terms and requirements set forth in the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Addendum for the Term of this Agreement.

- 5. Axon's Support.** Axon will make available updates as released by Axon to the Evidence.com Services. Updates may be provided electronically via the Internet. Axon will use reasonable efforts to continue supporting the previous version of any software for 6 months after the change (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities. The Agency is responsible for maintaining the computer equipment and Internet connections necessary for use of the Evidence.com Services.
- 6. Data Privacy.** Axon will not disclose Agency Content or any information about the Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content so the Agency may file an objection with the court or administrative body. The Agency agrees to allow Axon access to certain information from the Agency in order to: (a) perform troubleshooting services upon request or as part of Axon's regular diagnostic screenings; (b) enforce this agreement or policies governing use of Evidence.com Services; or (c) perform analytic and diagnostic evaluations of the systems.
- 7. Data Storage.** Axon will determine the locations of the data centers in which Agency Content will be stored and accessible by Agency end users. For United States customers, Axon will ensure that all Agency Content stored in the Evidence.com Services remains within the United States, including any backup data, replication sites, and disaster recovery sites. Axon may transfer Agency Content to third parties for the purpose of storage of Agency Content. Third party subcontractors responsible for storage of Agency Content are contracted by Axon for data storage services. Ownership of Agency Content remains with the Agency. For use of an Axon Interview Room Unlimited Evidence.com License, unlimited data may be stored in the Agency's Evidence.com account only if the data originates from an Axon Interview Room Camera or. In the event the Agency utilizes its Axon Interview Room Unlimited Evidence.com License to store data not generated from an Axon Interview Room camera, Axon reserves the right to invoice that non-Axon Interview Room data at a rate not to exceed \$0.75 per GB. The Agency may download its data at any time during the term of this Agreement, as well as during the post-termination period further described in Section 11 of this Appendix. If Agency requests that Axon export its data, Axon may charge for this service at a rate of \$2,000.00 per day. Axon will not charge Agency for download services to

the extent it relates to any Axon warranty obligations. Axon may place into archival storage any data stored in the Agency's Evidence.com accounts that has not been viewed or accessed for 6 months. Data stored in archival storage will not have immediate availability, and may take up to 24 hours to access.

8 Suspension of Evidence.com Services. Axon may suspend Agency access or any end user's right to access or use any portion or all of the Evidence.com Services immediately upon notice, in accordance with the following:

- 8.1.** The Termination provisions of the Master Service Agreement apply;
- 8.2.** The Agency or an end user's use of or registration for the Evidence.com Services (i) poses a security risk to the Evidence.com Services or any third party, (ii) may adversely impact the Evidence.com Services or the systems or content of any other customer, (iii) may subject Axon, Axon's affiliates, or any third party to liability, or (iv) may be fraudulent;
- 8.3.** If Axon suspends the right to access or use any portion or all of the Evidence.com Services, the Agency remains responsible for all fees and charges incurred through the date of suspension without any credits for any period of suspension. Axon will not delete any of Agency Content on Evidence.com as a result of a suspension, except as specified elsewhere in this Agreement.

9 Software Services Warranty. Axon warrants that the Evidence.com Services will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party. Axon disclaims any warranties or responsibility for data corruption or errors before the data is uploaded to the Evidence.com Services.

10 License Restrictions. Neither the Agency nor any Agency end users (including, without limitation, employees, contractors, agents, officers, volunteers, and directors), may, or may attempt to: (a) permit any third party to access the Evidence.com Services, except as permitted in this Agreement; (b) modify, alter, tamper with, repair, or otherwise create derivative works of any of the Evidence.com Services; (c) reverse engineer, disassemble, or decompile the Evidence.com Services or apply any other process or procedure to derive the source code of any software included in the Evidence.com Services, or allow any others to do the same; (d) access or use the Evidence.com Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas; (e) copy the Evidence.com Services in whole or part, except as expressly permitted in this Agreement; (f) use trade secret information contained in the Evidence.com Services, except as expressly permitted in this Agreement; (g) resell, rent, loan, or sublicense the Evidence.com Services; (h) access the Evidence.com Services in order to build a competitive product or service or copy any features, functions, or graphics of the Evidence.com Services; (i) remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within the Evidence.com Services or any copies of the Evidence.com Services; or (j) use the Evidence.com Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, to store or transmit material in violation of third party privacy rights, or to store or transmit malicious code. All licenses granted in this Agreement are conditional on continued compliance this Agreement, and will immediately and automatically terminate if the Agency does not comply with any term or condition of this Agreement. The Agency may only use Axon's trademarks in accordance with

the Axon Trademark Use Guidelines (located at www.axon.com).

- 11 After Termination.** Axon will not delete any Agency Content as a result of a termination during a period of 90 days following termination. During this 90-day period the Agency may retrieve Agency Content only if all amounts due have been paid (there will be no application functionality of the Evidence.com Services during this 90-day period other than the ability to retrieve Agency Content). The Agency will not incur any additional fees if Agency Content is downloaded from Evidence.com during this 90-day period. Axon has no obligation to maintain or provide any Agency Content after this 90-day period and will thereafter, unless legally prohibited delete all of Agency Content stored in the Evidence.com Services. Upon request, Axon will provide written proof that all Agency Content has been successfully deleted and fully removed from the Evidence.com Services.
- 12 Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.

Axon Interview Room Appendix

Axon Interview Room has been purchased as part of the Quote attached to this Agreement.

- 1 **Statement of Work.** The Axon Interview Room Statement of Work (**Interview Room SOW**) attached to this Appendix will detail Axon's respect to the professional services deliverables. Axon is responsible to perform only the services described in this Interview Room SOW. Any additional services discussed or implied that are not defined explicitly by the Interview Room SOW will be considered outside the scope of this Agreement. Axon may subcontract any part of the Interview Room SOW to a qualified subcontractor.

- 2 **Axon Interview Room Warranty.** Axon Interview Room Products are covered under the applicable manufacturer's warranty.
 - 2.1. **Warranty Returns.** The terms and conditions in the "Warranty Returns" section of the main body of the MSPA apply to warranty returns related to Hardware Maintenance.

 - 2.2. **Product Repair or Replacement.** If Axon determines that a valid warranty claim is received within the Hardware Maintenance Term, Axon agrees to repair or replace the hardware that Axon determines in its sole discretion to be defective under normal use. Axon's sole responsibility under this warranty is to either repair or replace damaged or defective hardware with the same or like hardware, at Axon's discretion. Axon is not obligated to repair or replace hardware that is damaged as a result of intentional or deliberate damage.

- 3 **Hardware Maintenance Warranty Coverage.** If the Agency purchased Axon Interview Room Hardware Maintenance warranty coverage, the Axon Interview Room hardware listed in the Quote will receive extended warranty coverage during the term purchased in the Quote (**Hardware Maintenance Term**). The Hardware Maintenance Term start date begins upon the Agency's receipt of the hardware covered under the Hardware Maintenance. Hardware Maintenance only applies to the Axon Interview Room hardware listed in the Quote. The Agency may not buy more than one Hardware Maintenance for any one covered Product. Hardware Maintenance includes the extended warranty coverage described in the current hardware warranty. Hardware Maintenance warranty coverage starts at the beginning of the Hardware Maintenance Term and continues throughout the Hardware Maintenance Term and as long the Agency continues to pay the required annual fees for Hardware Maintenance.
 - 3.1. **Hardware Maintenance Termination.** If an invoice for Hardware Maintenance is more than 30 days past due Axon may terminate Hardware Maintenance. Axon will provide notification that Hardware Maintenance coverage is terminated. Once Hardware Maintenance coverage is terminated for any reason, then:
 - 3.1.1. Hardware Maintenance coverage will terminate as of the date of termination and no refunds will be given.

3.1.2. Axon will not, and has no obligation to, provide future support or services for the hardware covered by Axon Interview Room Hardware Maintenance.

- 4** **Support.** Axon will provide remote customer service for troubleshooting hardware issues. In the event Axon deems it necessary, and at Axon's sole discretion, Axon will provide an on-site technician for support.
- 5** **Axon Interview Unlimited.** For use of an Axon Interview Room Unlimited Evidence.com License, unlimited data may be stored as part of the Axon Interview Room unlimited storage only if the data originates from Axon Interview Room hardware.

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COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

Today's Date: 11/27/17

DOCUMENT TITLE: Axon Master Services and Purchasing Agreement

COMM. MTG. DATE: 7/11/17 CAM #: 17-0864 ITEM #: _____ CAM attached: YES NO

Routing Origin: CAO Router Name/Ext: Beverly C/5622

CIP FUNDED: YES NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) City Attorney's Office # of originals attached: _____ Approved as to Form: YES NO

Date to CCO: _____
Initials _____

2) City Clerk's Office: # of originals: _____ Routed to: _____ Date: _____

3) City Manager's Office: CMO LOG #: _____ Date received from CCO: _____

Assigned to: L. FELDMAN S. HAWTHORNE C. LAGERBLOOM
L. FELDMAN as CRA Executive Director

APPROVED FOR LEE FELDMAN'S SIGNATURE N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE _____ (Initial/Date) C. LAGERBLOOM _____
(Initial/Date) PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward _____ originals to Mayor CCO Date: _____

4) Mayor/CRA Chairman: Please sign as indicated. Forward _____ originals to CCO for attestation/City seal (as applicable) Date: _____

INSTRUCTIONS TO CLERK'S OFFICE

City Clerk: Retains 1 original and forwards 0 original(s) to: N/A (Name/Dept/Ext)

Attach _____ certified Reso # _____ YES NO Original Route form to _____