

**TROY CITY COUNCIL
FINANCE COMMITTEE AGENDA
October 1, 2020
6:00 P.M.**

Pledge of Allegiance
Roll Call
Approval of Minutes
Presentation of Agenda
Public Forum (*see end of agenda for instructions)

LOCAL LAWS

ORDINANCES

71. Ordinance Amending The 2020 General Fund Budget To Appropriate Additional Funding From The NYS Governor’s Traffic Safety Committee For Pedestrian/Bicyclist Education And Enforcement (Council President Mantello) (At The Request Of The Administration)

72. Ordinance Amending The 2020 General Fund Budget To Appropriate Additional Funding From The NYS Governor’s Traffic Safety Committee For The Child Passenger Safety Program (Council President Mantello) (At The Request Of The Administration)

73. Ordinance Amending The 2020 General Fund Budget To Appropriate Additional Funding From The NYS Governor’s Traffic Safety Committee For Police Traffic Services (Council President Mantello) (At The Request Of The Administration)

74. Ordinance Transferring Funds Within The 2020 General Fund Budget (Council President Mantello) (At The Request Of The Administration)

75. Ordinance Transferring Funds Within The 2020 General Fund Budget (Council President Mantello) (At The Request Of The Administration)

76. Ordinance Authorizing Settlement Of Claim, To Wit: City Of Troy Against Spectrum Northeast, LLC, Doing Business Locally As Charter Communications (Council President Mantello) (At The Request Of The Administration)

RESOLUTIONS

96. A Resolution To Commemorate The Life Of Ayshawn Davis By Designating A Portion Of Old Sixth Avenue, “Ayshawn’s Place” (Council President Mantello, Council Member Zalewski)

97. Resolution Authorizing The Mayor To Enter Into An Agreement With Eclipse Network Solutions For The Purchase, Installation, And Maintenance Of City Surveillance Cameras (Council President Mantello) (At The Request Of The Administration)

98. Resolution Authorizing The Mayor To Enter Into A Master Services And Purchasing Agreement With Axon Enterprises, Inc., For The Purpose Of Supplying And Maintaining Body Worn Cameras And Tasers For Troy Police Officers (Council President Mantello) (At The Request Of The Administration)

***PUBLIC FORUM**

Due to the current COVID-19 crisis and pursuant to Governor Andrew Cuomo's Executive Order No. 202.1, this meeting shall be held remotely via videoconference and live-streamed on the City Council's [YouTube channel](#). Troy residents who wish to comment during the public forum at the beginning of the meeting must have the ability to join the Zoom meeting via computer or phone and will be required to pre-register for the meeting. The link to register for the meeting will be posted at least 24 hours before the meeting on the Council [Agenda and Minutes](#) page and sent out through the City Clerk's public notices [email list](#). You must register for the meeting by 3 pm on the day of the meeting. Comments for the Finance Committee meeting must be regarding agenda items.

Per the City Council, written comments will not be read aloud at this meeting but will be added to the meeting minutes. Written comments to be added to the meeting minutes should be sent to mara.drogan@troyny.gov and must be received by 3 pm on the day of the meeting. You must include your full name and residential address, as required by Council rules. Written comments received after 3 pm shall be treated as correspondence and forwarded to the Council for their review.

**ORDINANCE AMENDING THE 2020 GENERAL FUND BUDGET TO APPROPRIATE
ADDITIONAL FUNDING FROM THE NYS GOVERNOR'S TRAFFIC SAFETY
COMMITTEE FOR PEDESTRIAN/BICYCLIST EDUCATION AND ENFORCEMENT**

The City of Troy, convened in City Council, ordains as follows:

Section 1. The City of Troy 2020 General Fund Budget is herein amended as set forth in Schedule A entitled:

**Public Safety - Police
Pedestrian/Bicyclist Education and Enforcement**

which is attached hereto and made a part hereof.

Section 2. This act shall take effect immediately.

Approved as to form, _____, 2020

Richard T. Morrissey, Corporation Counsel

MEMO IN SUPPORT

To amend the 2020 Police Budget for the receipt of an additional \$4,600.00 to participate in the NYS Highway Safety Program in an effort to reduce the number of crashes, injuries and deaths involving pedestrians and bicyclists on New York roads. The grant period for this award is October 1, 2020 through September 30, 2021. Should funding remain unspent, such funds and appropriations of the grant will be re-allocated in the Proposed 2021 City Budget.

Schedule A
Public Safety - Police
Pedestrian/Bicyclist Education and Enforcement

ORD71

2020 Budget Amendment

	<u>Original *</u> <u>Budget</u>	<u>Change</u>	<u>Revised</u> <u>Budget</u>
<u>General Fund</u>			
Revenue			
A.3000.3389.0418 NYS Governor's Traffic Safety Committee	\$0.00	\$4,600.00	\$4,600.00
Total Revenue Increase		<u>\$4,600.00</u>	
Expenditures			
A.3120.0103.0418 Pedestrian Education & Safety Overtime	\$0.00	\$4,600.00	\$4,600.00
Total Expenditures Increase		<u>\$4,600.00</u>	

*Or as previously amended

July 27, 2020

Salvatore Carello
Traffic Sergeant
Troy City Police Department
55 State Street
Troy, NY 12180-3329

Re: HS1-2021-Troy City PD -00192-(042)
Pedestrian/Bicyclist Education and Enforcement
SA00001897
CFDA #: 20.616
EFFECTIVE DATE: October 1, 2020

Dear Traffic Sergeant Salvatore Carello:

On behalf of the Governor's Traffic Safety Committee, I am pleased to notify you that the Troy City Police Department has been awarded \$4,600 to participate in the New York State's Highway Safety Program. Our goal is to reduce the number of crashes, injuries and deaths on New York's roads.

Before incurring any project related expenses, login to eGrants to review your approved budget as it may have been reduced or otherwise changed from what was requested. Grant agreements will be effective only upon final approval by the New York State Office of the State Comptroller. Crucial documents regarding your grant, the claims process, equipment, and other grant related topics can be found by visiting <https://trafficsafety.ny.gov/highway-safety-grant-program#grant-award>.

Thank you for participating in New York State's Highway Safety Program. I wish you success in your efforts. If you have any questions, please contact the Governor's Traffic Safety Committee at (518) 474-5111.

Sincerely,



Charles R. DeWeese
Assistant Commissioner

CRD:bp
cc: Selena Skiba

**ORDINANCE AMENDING THE 2020 GENERAL FUND BUDGET TO APPROPRIATE
ADDITIONAL FUNDING FROM THE NYS GOVERNOR'S TRAFFIC SAFETY
COMMITTEE FOR THE CHILD PASSENGER SAFETY PROGRAM**

The City of Troy, convened in City Council, ordains as follows:

Section 1. The City of Troy 2020 General Fund Budget is herein amended as set forth in Schedule A entitled:

**Public Safety - Police
Child Passenger Safety Program**

which is attached hereto and made a part hereof.

Section 2. This act shall take effect immediately.

Approved as to form, _____, 2020

Richard T. Morrissey, Corporation Counsel

MEMO IN SUPPORT

To amend the 2020 Police Budget for the receipt of an additional \$1,200.00 to participate in the statewide Child Passenger Safety Program in an effort to increase the proper use and installation of child safety seats in NYS. The grant period for this award is October 1, 2020 through September 30, 2021. Should funding remain unspent, such funds and appropriations of the grant will be re-allocated in the Proposed 2021 City Budget.

Schedule A
Public Safety - Police
Child Passenger Safety Program

ORD72

2020 Budget Amendment

	<u>Original *</u> <u>Budget</u>	<u>Change</u>	<u>Revised</u> <u>Budget</u>
<u>General Fund</u>			
Revenue			
A.3000.3389.0082 NYS Governor's Traffic Safety Committee	\$0.00	\$1,200.00	\$1,200.00
Total Revenue Increase		<u>\$1,200.00</u>	
Expenditures			
A.3120.0303.0082 Other Materials and Supplies - Child Passenger Safety Program	\$0.00	\$1,200.00	\$1,200.00
Total Expenditures Increase		<u>\$1,200.00</u>	

*Or as previously amended

August 11, 2020

Salvatore Carello
Traffic Sergeant
Troy City Police Department
55 State Street
Troy, NY 12180-3329

Re: CPS-2021-Troy City PD -00189-(042)
Child Passenger Safety Program
SA00001924
CFDA #: 20.616
EFFECTIVE DATE: October 1, 2020

Dear Traffic Sergeant Salvatore Carello:

On behalf of the Governor's Traffic Safety Committee, I am pleased to notify you that the Troy City Police Department has been awarded \$1,200 to participate in the statewide "Child Passenger Safety" program. Our goal is to increase the proper use and installation of child safety seats in New York State.

Before incurring any project related expenses, login to eGrants to review your approved budget as it may have been reduced or otherwise changed from what was requested. Crucial documents regarding your grant, the claims process, equipment, and other grant related topics can be found by visiting <https://trafficsafety.ny.gov/highway-safety-grant-program#grant-award>.

Thank you for participating in this very important statewide program. I wish you success in your efforts. If you have any questions, please contact the Governor's Traffic Safety Committee at (518) 474-5111.

Sincerely,



Charles R. DeWeese
Assistant Commissioner

CRD:bp
cc: Selena Skiba

**ORDINANCE AMENDING THE 2020 GENERAL FUND BUDGET TO APPROPRIATE
ADDITIONAL FUNDING FROM THE NYS GOVERNOR'S TRAFFIC SAFETY
COMMITTEE FOR POLICE TRAFFIC SERVICES**

The City of Troy, convened in City Council, ordains as follows:

Section 1. The City of Troy 2020 General Fund Budget is herein amended as set forth in Schedule A entitled:

**Public Safety - Police
Police Traffic Services**

which is attached hereto and made a part hereof.

Section 2. This act shall take effect immediately.

Approved as to form, _____, 2020

Richard T. Morrissey, Corporation Counsel

MEMO IN SUPPORT

To amend the 2020 Police Budget for the receipt of an additional \$19,900 to participate in the statewide Police Traffic Services Program with a goal to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and death from traffic crashes. The grant period for this award is October 1, 2020 through September 30, 2021. Should funding remain unspent, such funds and appropriations of the grant will be re-allocated in the Proposed 2021 City Budget.

Schedule A
Public Safety - Police
Police Traffic Services

ORD73

2020 Budget Amendment

	<u>Original *</u> <u>Budget</u>	<u>Change</u>	<u>Revised</u> <u>Budget</u>
<u>General Fund</u>			
Revenue			
A.3000.3389.0088 NYS Governor's Traffic Safety Committee	\$0.00	\$19,900.00	\$19,900.00
Total Revenue Increase		<u><u>\$19,900.00</u></u>	
Expenditures			
A.3120.0103.0088 Police Traffic Services Overtime	\$0.00	\$19,500.00	\$19,500.00
A.3120.0410.0088 Police Traffic Services Training	\$0.00	\$400.00	\$400.00
Total Expenditures Increase		<u><u>\$19,900.00</u></u>	

*Or as previously amended

August 7, 2020

Salvatore Carello
 Traffic Sergeant
 Troy City Police Department
 55 State Street
 Troy, NY 12180-3329

Re: PTS-2021-Troy City PD -00305-(042)
 Police Traffic Services
 T006693
 CFDA #: 20.600
 EFFECTIVE DATE: October 1, 2020

Dear Traffic Sergeant Salvatore Carello:

On behalf of the Governor's Traffic Safety Committee, I am pleased to notify you that the Troy City Police Department has been awarded a total of \$19,900 to participate in the statewide Police Traffic Services Program. Our goal is to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and death from traffic crashes. A breakdown of your grant award amount is as follows:

Category	Award Amount
Seat Belt Mobilization Enforcement	\$2,600
Regular PTS Enforcement	\$16,900
Other Than Personal Services	\$400
Grand Total	\$19,900

Before incurring any project related expenses, login to eGrants to review your approved budget as it may have been reduced or otherwise changed from what was requested. Crucial documents regarding your grant, the claims process, equipment, and other grant related topics can be found by visiting <https://trafficsafety.ny.gov/highway-safety-grant-program#grant-award>.

Attached to this email are the contract and a signatory page with instructions. There is a new process for the FFY 2021 contracts. Please follow the instructions to facilitate the prompt processing of your contract. The contract will only be effective after the Signature page has been signed by the County, City, Town or Village, and notarized, then returned to, **and** signed by, the New York State Governor's Traffic Safety Committee.

Thank you for participating in this very important statewide enforcement program. I wish you success in your efforts. If you have any questions, please contact the Governor's Traffic Safety Committee at (518) 474-5111.

Sincerely,



Charles R. DeWeese
 Assistant Commissioner

CRD:bp
 Enclosure
 cc: Selena Skiba

**ORDINANCE TRANSFERRING FUNDS WITHIN THE 2020 GENERAL FUND
BUDGET**

The City of Troy, convened in City Council, ordains as follows:

Section 1. The City of Troy 2020 budget is herein amended as set forth in Schedule A entitled:

2020 Budget Transfer(s) – General Fund

which is attached hereto and made a part hereof

Section 2. This act will take effect immediately.

Approved as to form, _____, 2020

Richard T. Morrissey, Corporation Counsel

MEMO IN SUPPORT

Throughout the fiscal year the Comptroller's Office works with all departments within the City for necessary budget transfers within the General Fund in the 2020 fiscal year. This ordinance transfers funds within the 2020 General Fund Budget for the following reason(s). Please note that the number indicated below references to the name as indicated in the "Reference" column on the Schedule attached hereto.

1. Transfer(s) to provide additional funding as requested by the Office of General Services.
2. Various transfers within the Police Department budget to fund accounts for the remainder of the 2020 fiscal year.
3. A transfer from Contingency for Bond & Note Expense in the amount of \$50,000 due to the unanticipated extreme work volume needed this year particularly in relation to the financial impact of the Covid-19 pandemic.

Schedule A

ORD74

2020 Budget Transfer(s) – General Fund

Department	Account No.	Description	Original Budget*	Change (+ / -)	Revised Budget	Reference
Traffic	A.3310.0401.0072.0000	Utilities - Traffic Signals	65,000.00	27,000.00	92,000.00	1
Streets	A5110.0409.0000.0000	Consultant Services	90,000.00	(27,000.00)	63,000.00	1
Golf Course	A.7180.0405.0068.0000	Rentals - Equipment	99,000.00	10,000.00	109,000.00	1
Golf Course	A.7180.0102.0000.0000	Temporary Salaries	88,000.00	(2,500.00)	85,500.00	1
Golf Course	A.7180.0409.0000.0000	Consultant Services	45,000.00	(7,500.00)	37,500.00	1
Police	A.3120.0411.0000.0000	Travel	16,000.00	(6,000.00)	10,000.00	2
Police	A.3120.0423.0000.0000	Uniforms	64,539.00	6,000.00	70,539.00	2
Police	A.3120.0201.0000.0000	Office Equipment	35,000.00	(3,000.00)	32,000.00	2
Police	A.3120.0404.0068.0000	Repairs - Equipment	72,000.00	3,000.00	75,000.00	2
Police	A.3120.0405.0068.0000	Rentals - Others	35,000.00	(8,000.00)	27,000.00	2
Police	A.3120.0304.0058.0000	Vehicle - Repairs	54,000.00	8,000.00	62,000.00	2
Corporation Counsel	A.1420.0409.0003.0000	Bond & Note Expense	100,000.00	50,000.00	150,000.00	3
Contingency	A.1990.0418.0000.0000	Contingency	640,702.00	(50,000.00)	590,702.00	3
Net Impact On General Fund				<u>0.00</u>		

* Or as previously amended

**ORDINANCE TRANSFERRING FUNDS WITHIN THE 2020 GENERAL FUND
BUDGET**

The City of Troy, convened in City Council, ordains as follows:

Section 1. The City of Troy 2020 budget is herein amended as set forth in Schedule A entitled:

2020 Budget Transfer(s) – Police Body Worn Cameras

which is attached hereto and made a part hereof

Section 2. This act will take effect immediately.

Approved as to form, _____, 2020

Richard T. Morrissey, Corporation Counsel

MEMO IN SUPPORT

This budget transfer is for the purpose of funding the year-one costs of the body worn camera program to be purchased from Axon Enterprises, Inc. The amount of \$119,717.05 is being transferred from the General Fund's Contingency account.

The prior City Council approved a bond resolution for the acquisition of the body worn cameras from Axon. However, under New York State Finance Laws, those monies cannot be used for anything other than capital expenditures, i.e., hardware. This transfer is meant to cover the costs of the services that Axon will be furnishing.

Schedule A

ORD75

2020 Budget Transfer(s) – Police Body Worn Cameras

Department	Account No.	Description	Original Budget*	Change (+ / -)	Revised Budget
Contingency	A.1990.0418.0000.0000	Contingency	651,467.00	(119,717.05)	531,749.95
Police	A.3120.0303.0017.0000	Other Material & Supplies	91,175.00	119,717.05	210,892.05
Net Impact On General Fund				<u>0.00</u>	

* Or as previously amended

**ORDINANCE AUTHORIZING SETTLEMENT OF CLAIM, TO WIT: CITY OF TROY
AGAINST SPECTRUM NORTHEAST, LLC, DOING BUSINESS LOCALLY AS
CHARTER COMMUNICATIONS (“CHARTER”)**

The City of Troy, in City Council convened, ordains as follows:

Section 1. The City commissioned an audit of the franchise fees paid by Charter for the period January 1, 2009 to December 31, 2018, and concluded that Charter had underpaid franchise fees during the audit period. The City made a claim against Charter that Charter disputed.

Section 2. The Corporation Counsel is authorized to settle the above claim in a manner that conforms in all material respects with and in the amount identified in the attached Settlement and Release Agreement in full satisfaction of the City’s claim, and the Mayor is authorized to execute the Settlement and Release Agreement.

Section 3. The Comptroller is authorized and directed to accept the sums payable to the City pursuant to the Settlement and Release Agreement.

Section 4. This Ordinance shall take effect immediately.

Approved as to form, _____, 2020

Richard T. Morrissey, Corporation Counsel

MEMORANDUM IN SUPPORT

Charter operates a cable system in the City of Troy and pays franchise fees pursuant to a franchise agreement. As the result of an audit covering the period January 1, 2009 to December 31, 2018, the City found that Charter had underpaid its franchise fees during the audit period. The City claimed against Charter. Charter denied all liability. Through long negotiations, the parties reached an accord.

Under the terms of the Settlement and Release Agreement, the total amount of the Settlement is \$431,791.00. Charter shall submit an initial payment to the City of \$ 215,896.00 within thirty days following the execution of the Agreement by both parties, and the City shall immediately withdraw its complaint filed with the Public Service Commission. In addition, Charter shall submit a second payment of \$215,895.00 to the City within thirty days following approval and execution by the City and Charter of a mutually agreed renewal of Charter's cable television franchise. The two payments will fully and forever settle all past claims of the City for franchise fees through the end of the audit period, December 31, 2018. Slightly less than one third of the gross settlement amount will be payable to Troy & Banks, LLC, the City's cable franchise consultant and auditor.

Charter has agreed that if the parties mutually approve and execute a renewal of Charter's cable television franchise agreement with the City within ninety days of the effective date of the Settlement and Release Agreement, Charter will not attempt to recover the Settlement Amount from subscribers as a line item on their bills. But if such a renewal is not approved within ninety days of the effective date, Charter may avail itself of any and all rights it has under applicable law to recover the Settlement Amount as a line item on subscribers' bills. Also, Charter states that it has revised its payment practices since the audit period.

The recommendation to settle this case is a business decision taken in full consideration of the defenses available to Charter, including statute of limitations, and the City's proof of its claims. The underpayment claim has been pending since at least 2015, with many protracted and unavailing negotiations. The current settlement proposal is far more substantial and reasonable than Charter or its predecessor TWC ever offered before. It provides certainty, finality, and much needed revenue to the City without the expenditures and risks of litigation. Charter understands that the proposed settlement is conditioned upon approval of the City Council and the Mayor. If the terms of the settlement are not approved and fully executed, the parties will continue the case at the PSC and likely commence litigation in Supreme Court.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “Settlement Agreement”) is made this ___ day of _____, 2020 (“Effective Date”) by and among the City of Troy, New York (the “City”) and Spectrum Northeast, LLC, locally known as Charter Communications (“Charter”).

RECITALS

WHEREAS, Charter operates a cable system in the City and pays franchise fees pursuant to a franchise agreement between the parties (the “Franchise”);

WHEREAS, the City conducted an audit of the franchise fee payments made by Charter for the period from January 1, 2009 to December 31, 2018 (the “Audit Period”) and concluded that Charter underpaid franchise fees for the Audit Period. Charter disputed the claim and arrived at a different conclusion than the City;

WHEREAS, Charter states that it has revised its payment practices for periods following the Audit Period to comport with this Settlement Agreement;

WHEREAS, Charter agrees to submit payment to the City in the amount of four hundred thirty one thousand seven hundred ninety one dollars (\$431,791) to forever settle past claims on franchise fees due the City for the Audit Period;

WHEREAS, the City and Charter now desire to conclude, settle, release and discharge once and forever, all rights, claims, causes of actions, liabilities, disputes and demands relating to the City’s past claims on franchise fees due the City;

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and obligations hereinafter set forth, and for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Settlement Agreement hereto agree as follows:

AGREEMENT

1. SETTLEMENT AMOUNT

The City and Charter have agreed that Charter shall submit a payment of two hundred fifteen thousand eight hundred and ninety six dollars (\$215,896) to the City within thirty (30) days following the execution of this Agreement by both parties. The City and Charter have agreed that Charter shall submit a second and final payment of two hundred fifteen thousand

eight hundred and ninety five dollars (\$215,895) to the City within thirty (30) days following the approval and execution by the City and Charter of a mutually agreed upon renewal of Charter's cable television franchise agreement with the City. The two payments totaling \$431,791 ("Settlement Amount") fully settle all past claims on franchise fees for the Audit Period. It is expressly understood and agreed that the Settlement Amount represents full and complete satisfaction and compromise of any and all claims, actions, causes of action, controversies, demands, damages, debts, agreements, obligations, liabilities, interest, liens, expenses, costs, attorneys' fees and demands of any kind or nature, known or unknown, arising out of or in any way related to the City's past claims on franchise fees due the City during the Audit Period. For the purposes of this Agreement only, and given the unique circumstances of this audit, Charter agrees that if the Parties mutually approve and execute a renewal of Charter's cable television franchise agreement with the City within ninety (90) days of the Effective Date, Charter will not recover the Settlement Amount from subscribers as a line item on their bills. If such a renewal is not approved within ninety (90) days of the Effective Date, Charter shall retain any and all rights it has under applicable law to recover the Settlement Amount as a line item on subscribers' bills.

2. RELEASE OF CLAIMS

For the consideration set forth in this Settlement Agreement, the City does hereby release and forever discharge Charter, and its parents, subsidiaries, related affiliates and their respective officers, directors, shareholders, owners, partners, employees, agents, contractors, representatives, predecessors, successors, assigns, insurers and attorneys, and each of them, from any and all claims, demands, actions, causes of action, liabilities, obligations, losses, accounts, debts, damages, judgments, costs, interest, expenses, attorney's fees and demands of any kind or nature, known or unknown, arising out of or in any way related to the City's past claims on franchise fees due the City during the Audit Period. Furthermore, the City expressly agrees that this settlement, and/or the events leading up to it, including the dispute with respect to the payment of franchise fees during the Audit Period, may not be used in any way in any subsequent judicial or administrative proceeding against Charter other than to enforce the terms of this Settlement Agreement. The City shall dismiss its complaint filed against Charter with the New York Public Service Commission within ten (10) days of receipt of the Settlement Amount.

3. **VOLUNTARY AGREEMENT**

This Settlement Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement. It is understood and agreed by the City and Charter that nothing herein shall be deemed to be an admission of liability by Charter with respect to the matter of this Settlement Agreement.

4. **AUTHORITY AND BINDING EFFECT**

The City and Charter represent and warrant to the other that each has the legal right, power and authority to enter into this Settlement Agreement and to perform its obligations hereunder. This Settlement Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns. The parties for themselves and their respective successors and assigns agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Settlement Agreement.

5. **ENTIRE AGREEMENT**

This Settlement Agreement sets forth the entire agreement between the City and Charter relating to the subject matter of this Settlement Agreement.

6. **GOVERNING LAW**

This Settlement Agreement, and any controversies arising hereunder, shall be interpreted in accordance with the laws of the State of New York, and adjudicated in a state or federal court of competent jurisdiction located in the State of New York.

7. **CONFIDENTIALITY**

The existence, nature, terms and conditions of this Settlement Agreement are confidential and shall not be disclosed by either party in any manner or form, directly or indirectly, to any person or entity under any circumstances, unless required by court order or applicable law, except that Charter understands and agrees that this Settlement Agreement must be presented to and approved by the Troy City Council.

**A RESOLUTION TO COMMEMORATE THE LIFE OF AYSHAWN DAVIS BY
DESIGNATING A PORTION OF OLD SIXTH AVENUE, “AYSHAWN’S PLACE”**

WHEREAS, on September 13, 2020, Ayshawn Davis, a beloved eleven year old boy, was shot and killed on Old Sixth Avenue in the City of Troy; and

WHEREAS, Ayshawn - precocious, good natured, and industrious, with just the right amount of boyish mischievousness - was adored by his family, his friends, and his community, and still fell the innocent and unintended victim of a senseless crime of gun violence; and

WHEREAS, the family of Ayshawn is devastated by unfathomable grief and loss; and

WHEREAS, in the midst of their mourning, the family of Ayshawn has expressed the desire that his all too brief life and sudden tragic death not be forgotten, not have been for nothing, and serve as a memorial to the indisputable truth that our children’s lives must matter to everyone in our community; and

WHEREAS, the people of Troy desire to pay respect to the family of Ayshawn in their grief, and to honor and memorialize the life of Ayshawn, and to deter other acts of senseless violence to whatever extent possible by setting a marker that may remind us of the unthinkable costs of such acts; and

WHEREAS, the people of Troy, in conformity with the intentions and desires of Ayshawn’s family, wish to set that marker and pay tribute to Ayshawn by designating with appropriate signage the beginning of Old Sixth Avenue at the intersection with Jacob Street as “Ayshawn’s Place”.

NOW, THEREFORE, BE IT RESOLVED that the beginning of Old Sixth Avenue at the intersection with Jacob Street shall bear the honorary designation of “Ayshawn’s Place”, and that a memorial street sign which shall reflect the honorary designation may be placed at or near the beginning of Old Sixth Avenue, or other appropriate location(s) as approved by the City Engineer; and

BE IT FURTHER RESOLVED that this honorary designation shall not alter or change in any way the official street name of Old Sixth Avenue, nor in any way alter the official City map.

Approved as to form, _____, 2020

Richard T. Morrissey, Corporation Counsel

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT
WITH ECLIPSE NETWORK SOLUTIONS FOR THE PURCHASE, INSTALLATION,
AND MAINTENANCE OF CITY SURVEILLANCE CAMERAS**

WHEREAS, the City of Troy has street surveillance cameras that do not function properly and need to be replaced; and

WHEREAS, the City of Troy has requested bid proposals from qualified vendors for the purchase, installation, and maintenance of street surveillance cameras; and

WHEREAS, after thorough review of the bid proposals, the administration and the police department have selected Eclipse Network Solutions to provide and maintain the new street camera surveillance system.

NOW, THEREFORE, BE IT RESOLVED, that the Troy City Council hereby authorizes the Mayor to enter into an agreement with Eclipse Network Solutions for the purchase, installation, and maintenance of City street surveillance cameras, substantially in conformance with the proposed agreement attached hereto and made a part hereof.

Approved as to form _____, 2020

Richard T. Morrissey, Corporation Counsel

Memo In Support

This resolution authorizes the execution of a contract to install and connect 120 cameras on City streets for the purpose of enabling surveillance by the Troy Police Department.

The vendor was selected after solicitation of a bid and a thorough review of the responding vendors. All responses were also reviewed by the Troy Police Department.

The contract will be for the purchase, installation, and ongoing maintenance of the cameras and supporting video system.

AGREEMENT BETWEEN
THE CITY OF TROY, NEW YORK
AND
ECLIPSE NETWORK SOLUTIONS

This AGREEMENT, made and entered into this _____ day of _____ 2020, hereinafter called the "AGREEMENT", the "CONTRACT" or the "AGREEMENT & CONTRACT", by and between the City of Troy, New York, a municipal corporation with principal offices located at City Hall, Troy, New York, hereinafter called the "City" and Eclipse Network Solutions with principal offices located at 122 Karner Road, Albany, NY 12205 hereinafter called the "vendor".

WITNESSETH:

WHEREAS, the City of Troy is desirous of obtaining the product of the Vendor and

WHEREAS, the Vendor is desirous of furnishing and delivering its product to the City and

WHEREAS, the City and the Vendor have determined to enter into this agreement and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, and in order to secure the services described below, the parties hereto, each binding itself, its respective representatives, successors, and assigns, do mutually agree as follows:

Section 1: General Provisions:

1.1 Service to Troy The Vendor shall provide **City Surveillance Video System** as described in the Bid Documents hereinafter called the "DOCUMENTS". The work shall be provided within the time frames, if any set out in the documents.

Section 2: Term:

2.1 Term This agreement shall commence on the _____ day of _____, 2020 and to be completed by August 31, 2021.

In the event the Vendor is unable to deliver or fails to deliver the service and product, as required by the Bid Proposal, the City shall have the right to purchase the same or similar product from a different source. Any additional costs and/or expenses incurred by the City by reason of the purchase from a different source shall be reimbursed to the City by the Vendor, immediately upon receipt by the Vendor of a letter from the City, setting forth the additional costs and/or expenses.

All bidding/proposal documents issued by the City of Troy shall be considered part of the executed contract that is issued.

2.2 Contract Time: (City of Troy's standard clause omitted. Not applicable to this contract.)

Section 3: Payment:

3.1 Payment Payment for **City Surveillance Video System** under this Agreement: the City shall pay Eclipse Network Solutions the amount of **Ninety Five Thousand Eight Hundred Twenty Three Dollars and Ninety Two Cents (\$95,823.92.)**

3.2 Executory Clause In accordance with Section 41 of the State Finance Law, the City shall have no liability under this Contract to the Vendor or to anyone else beyond funds appropriated and available for this Contract.

3.3 Non Assignment Clause In accordance with Section 138 of the State Finance Law, this Agreement may

not be assigned by the Vendor or its right, title or interest therein assigned, transferred conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the City and any attempts to assign the Contract without the City's written consent are null and void. The Vendor may, however, assign its right to receive payment without the City's prior written consent unless this Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

Section 4: Workers' Compensation Benefits:

4.1 Workers' Compensation

Benefits

In accordance with Section 142 of the State Finance Law, this Contract shall be void and of no force and effect unless the Vendor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

Section 5: Non Discrimination Requirements:

5.1 Non Discrimination

Requirements

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-c of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Vendor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Vendor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Vendor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 229 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

Section 6: Wage and Hours Provision:

6.1 Wage and Hours

Provisions

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Vendor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Vendor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

Section 7: Non-Collusive Bidding Requirement:**7.1 Non-Collusive**

Bidding Requirement In accordance with Section 139-d of the State Finance Law, if this Contract was awarded based upon the submission of bids, Vendor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Vendor further warrants that, at the time Vendor submitted its bid, an authorized and responsible person executed and delivered to the City a non-collusion bidding certificate on Vendor's behalf.

Section 8: Identifying Information and Privacy Notification:**8.1 Federal Employer Identification****Number and/or Federal Social Security Number**

All invoices or City of Troy standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the City must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does have such number or numbers, the payee, on its invoice or City of Troy standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

Section 9: Equal Employment Opportunities for Minorities and Women:**9.1(a)**

In accordance with Section 312 of the Executive law:
The vendor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

9.1 (b)

In accordance with Section 312 of the Executive law:
At the request of the City, the Vendor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Vendor's obligations herein; and the Vendor shall state in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Section 10: Conflicting Terms:**10.1 Conflicting Terms**

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

Section 11: Governing Law:

11.1 Governing Law This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

Section 12: Service of Process:

12.1 Service of Process In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Vendor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Vendor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Vendor must promptly notify the City, in writing, of each and every change of address to which service of process can be made. Service by the City to the last known address shall be sufficient. Vendor will have thirty (30) calendar days after service hereunder is complete in which to respond.

Section 13: Miscellaneous Provisions:

13.1 Amendment Amendment the provisions, terms and conditions of this Contract shall be modified, amended, waived or additional terms entered into only upon mutual agreement in writing between both parties.

Section 14: Insurance:

The selected proposer will be required to procure and maintain at their own expense the following insurance coverage:

1. Commercial general liability and contractual liability on an occurrence basis with the following limits of coverage: bodily injury, property damage and personal injury, One Million Dollars (\$1,000,000) each occurrence/Two Million Dollars (\$2,000,000) general aggregate.
 - a. Liability Insurance policies will not be accepted that:
 - i. Remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f in the ISO CGL policy or equivalent) so as to limit coverage against claims that arise out of work; or
 - ii. Remove or modify the "insured Contract" exception to the employers liability exclusion; or
 - iii. Do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors.
 - b. Contractor shall require any subcontractors hired, carry insurance with the same limits and provisions provided here in. The contractor will maintain certificates of insurance for all subcontractors hired as part of the contractor's records.
2. Professional Liability/Errors & Omissions of at least One Million Dollars (\$1,000,000) each occurrence/Two Million Dollars (\$2,000,000) aggregate (*If applicable*).
3. Workers compensation insurance as required by law and including employer's liability insurance. Statutory disability benefits insurance as may be required by law.
4. Comprehensive Automobile Liability coverage on owned, hired, leased, or Non-owned autos with limits not less than One Million Dollars (\$1,000,000) combined for each accident because of bodily injury sickness, or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobile.
5. Commercial umbrella coverage of Five Million Dollars (\$5,000,000).

Each policy of insurance required shall be in form and content satisfactory to the City Corporation Counsel, and shall provide that:

1. The City of Troy is named additional insured on a primary and non-contributing basis.
2. The Certificate of Insurance shall state the following in the "remarks" section of the Certificate: "The insurance scheduled on this Certificate complies with Section 1.0 Insurance {of the BID or RFP} in its entirety."
3. The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the City of Troy Corporation Counsel's Office.
4. The insurance policies shall be automatically renewed upon expiration and continued in force unless the City of Troy Corporation Counsel's Office is given sixty (60) days written notice to the contrary.

No work shall be commenced under the contract until the selected proposer has delivered to the City or his/her designee proof of issuance of all policies of insurance required by the Contract to be procured by the selected proposer. If at any time, any of said policies shall be or become unsatisfactory to the City, the selected proposer shall promptly obtain a new policy and submit proof of insurance of the same to the City for approval. Upon failure of the selected proposer to furnish, deliver and maintain such insurance as above provided, this Contract may, at the election of the City, be forthwith declared suspended, discontinued or terminated. Failure of the selected proposer to procure and maintain any required insurance shall not relieve the selected proposer from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the selected proposer concerning indemnification.

Section 15: Termination For Cause:

The City of Troy reserves the right to terminate this contract at any time for cause. The violation of any provision or condition contained in this contract, or the refusal, failure, or inability to carry out any provisions of this contract shall constitute sufficient grounds to terminate this contract for cause. Should The City of Troy elect to terminate this contract for cause, The City of Troy will notify the Contractor 10 days prior to the termination date and shall specify the cause for termination as well as the date the termination shall be effective. This termination notice will be issued via a written letter sent by certified U.S. mail. Immediate dismissals may be executed if deemed necessary by The City of Troy.

Section 16: Termination Without Cause:

The City of Troy may terminate this contract without cause. Written notice of termination must be sent via certified U.S. mail no later than thirty (30) days prior to the termination date.

Section 17: Indemnification:

In addition, the selected vendor/proposer shall defend and indemnify the City of Troy with respect to any and all activities occurring on property owned by the City of Troy.

Section 18: Apprenticeship Program

Resolution #72 dated October 3, 2019 requires any Contractor or Sub-Contractor of the City entering into a construction contract with a total dollar amount of \$100,000 or more to have a NYS Commissioner of Labor approved Apprenticeship Program in place. This resolution shall apply to construction contracts advertised for bid on or after November 1, 2019.

IN WITNESS WHERE OF, the parties have executed this Contract/Agreement on the day and year first written above.

Approved as to form:

City of Troy, New York

By: _____
Richard T. Morrissey
Corporation Counsel

By: _____
Wm. Patrick Madden
Mayor

Eclipse Network Solutions

By: _____
Printed Name: _____
Title: _____

STATE OF NEW YORK)
COUNTY OF RENSSELAER) SS:
CITY OF TROY)

On this _____ day of _____, 20__ , before me, the undersigned, personally appeared Wm. Patrick Madden, Mayor of the City of Troy, New York, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that, by his signature on this instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

NOTARY PUBLIC: STATE OF NEW YORK

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MASTER SERVICES AND PURCHASING AGREEMENT WITH AXON ENTERPRISES, INC., FOR THE PURPOSE OF SUPPLYING AND MAINTAINING BODY WORN CAMERAS AND TASERS FOR TROY POLICE OFFICERS

WHEREAS, the City of Troy has decided to implement a body worn camera program for Troy Police Officers; and

WHEREAS, the City of Troy has utilized the services of Sourcewell, a cooperative purchasing and procurement agent, to identify vendors qualified to supply and maintain a body worn camera program; and

WHEREAS, the City of Troy has selected Axon Enterprises, Inc., to provide body worn cameras, train personnel, and maintain the cameras and supporting systems; and

WHEREAS, Axon Enterprises, Inc., already provides tasers and supporting systems to the Troy Police Department and will continue to do so in addition to providing the items and services for the new body worn camera program;

NOW, THEREFORE, BE IT RESOLVED, that the Troy City Council hereby authorizes the Mayor to enter into a Master Services and Purchasing Agreement with Axon Enterprises, Inc., for the purchase and maintenance of body worn cameras and tasers to be used by Troy Police Officers in the performance of their official duties, the Agreement to be in substantial conformance with the Agreement attached hereto and made a part hereof.

Approved as to form _____, 2020

Richard T. Morrissey, Corporation Counsel

Memo In Support

This resolution authorizes the Mayor to enter into a Master Services and Purchasing Agreement between the City of Troy and Axon Enterprises, Inc., for police body worn camera and Taser systems. The agreement addresses supply and maintenance for a 5 year period. The vendor was procured by the Troy Police Department through Sourcewell, a cooperative purchasing and procurement agent used by multiple public entities to secure specialized services on favorable terms in lieu of conducting their own independent competitive bidding.



Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement (“**Agreement**”) is between Axon Enterprise, Inc., a Delaware corporation (“**Axon**”), and City of Troy, New York (“**Agency**”). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote (“**Effective Date**”). Axon and Agency are each a “**Party**” and collectively “**Parties**”. This Agreement governs Agency’s purchase and use of the Axon Devices and Services detailed in the Quote Appendix (“**Quote**”). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

“**Axon Cloud Services**” means Axon’s web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

“**Axon Device**” means all hardware provided by Axon under this Agreement.

“**Quote**” means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency’s purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

“**Services**” means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated (“**Term**”).

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote (“**Subscription Term**”).

Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years (“**Renewal Term**”). For purchase of TASER 7 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3 **Payment.** Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys’ fees.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon’s delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6 **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

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Master Services and Purchasing Agreement

7 Warranty.

7.1 Hardware Limited Warranty. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("CEW") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

7.2 Claims. If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

7.3 Spare Axon Devices. Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices will replace broken or non-functioning units. If Agency utilizes a Spare Axon Device, Agency must return to Axon, through Axon's warranty return process, any broken or non-functioning units. Axon will repair or replace the unit with a replacement Axon Device. Upon termination, Axon will invoice Agency the MSRP then in effect for all Spare Axon Devices provided. If Agency returns the Spare Axon Devices to Axon within 30 days of the invoice date, Axon will issue a credit and apply it against the invoice.

7.4 Limitations. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

8 Statement of Work. Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.



Master Services and Purchasing Agreement

The SOW is incorporated into this Agreement by reference.

- 9 **Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.
- 10 **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
- 11 **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
- 12 **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
- 13 **Indemnification.** Axon will indemnify Agency's officers, directors, and employees ("**Agency Indemnitees**") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.
- 14 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 15 **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 16 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.
- 17 **Termination.**
- 17.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
- 17.2 **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
- 17.3 **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual

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Master Services and Purchasing Agreement

components.

- 18** **Confidentiality.** “**Confidential Information**” means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party’s Confidential Information. Unless required by law, neither Party will disclose the other Party’s Confidential Information during the Term and for 5-years thereafter. But Axon understands and agrees that this contract and the pricing of the products and services to be purchased are subject to Troy City Council review and approval, and as such are subject to public disclosure.
- 19** **General.**
- 19.1 Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party’s reasonable control.
- 19.2 Independent Contractors.** The Parties are independent contractors. Neither Party 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.
- 19.3 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 19.4 Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 19.5 Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 19.6 Assignment.** Neither Party may assign this Agreement without the other Party’s prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 19.7 Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 19.8 Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 19.9 Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 19.10 Governing Law.** The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.



Master Services and Purchasing Agreement

19.11 Notices. All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices by mail are effective upon receipt. Contact information for notices:

Axon: Axon Enterprise, Inc.

Attn: Legal
17800 N. 85th Street
Scottsdale, Arizona 85255
legal@axon.com

BY MAIL ONLY

Agency: City of Troy, New York
Attn: Mayor Wm. P. Madden
433 River Street, Suite 5001
Troy, NY 12180

AND

Attn: Corporation Counsel
433 River Street, Suite 5001
Troy, NY 12180

19.12 Entire Agreement. This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc.

City of Troy, New York

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Axon Cloud Services Terms of Use Appendix

1 **Definitions.**

“Agency Content” is data uploaded into, ingested by, or created in Axon Cloud Services within Agency’s tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

“Evidence” is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

“Non-Content Data” is data, configuration, and usage information about Agency’s Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

“Personal Data” means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2 **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data (**“TASER Data”**). Agency may not upload non-TASER Data to Axon Evidence Lite.

3 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content are not business records of Axon. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will have limited access to Agency Content solely for providing and supporting Axon Cloud Services to Agency and Agency end users.

4 **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5 **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user’s use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user’s access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency’s account or Agency Content, or if

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- account information is lost or stolen.
- 6** **Privacy.** Axon will not disclose Agency Content or information about Agency except as compelled by a court or administrative body or required by law or regulation. If Axon receives a disclosure request for Agency Content, Axon will give Agency notice, unless legally prohibited from doing so, to allow Agency to file an objection with the court or administrative body. Agency agrees to allow Axon access to certain information from Agency to (a) perform troubleshooting services upon request or as part of regular diagnostic screening; (b) enforce this Agreement or policies governing the use of Axon Evidence; or (c) perform analytic and diagnostic evaluations of the systems.
- 7** **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
- 8** **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- 9** **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
- 10** **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.
- Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
- 11** **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12** **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

- 13** **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 13.1** copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2** reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 13.3** access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 13.4** use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 13.5** access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 13.6** 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 Axon Cloud Services; or
 - 13.7** use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 14** **After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 15** **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, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
- 16** **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud 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, Agency will immediately discontinue use of Axon Cloud Services.
- 17** **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.

Professional Services Appendix

- 1 **Utilization of Services.** Agency must use professional services as outlined in the Quote and this Appendix within 6 months of the Effective Date.
- 2 **Body-Worn Camera Starter Service (BWC Starter).** BWC Starter includes advance remote project planning and configuration support and one day of on-site Services and a professional services manager to work closely with Agency to assess Agency’s deployment and determine which Services are appropriate. If Agency requires more than 1 day of on-site Services, Agency must purchase additional on-site Services. The BWC Starter options include:

<p>System set up and configuration (Remote Support)</p> <ul style="list-style-type: none"> • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories & custom roles based on Agency need • Troubleshoot IT issues with Axon Evidence and Axon Dock (“Dock”) access
<p>Dock configuration</p> <ul style="list-style-type: none"> • Work with Agency to decide the ideal location of Dock setup and set configurations on Dock • Authenticate Dock with Axon Evidence using “Administrator” credentials from Agency • Does not include physical mounting of docks
<p>Axon instructor training (Train the Trainer) Training for Agency’s in-house instructors who can support Agency’s Axon camera and Axon Evidence training needs after Axon’s has fulfilled its contracted on-site obligations</p>
<p>End user go-live training and support sessions</p> <ul style="list-style-type: none"> • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
<p>Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide</p>

- 3 **Body-Worn Camera Virtual 1-Day Service (BWC Virtual).** BWC Virtual includes all items in the BWC Starter Service Package, except one day of on-site services.
- 4 **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
- 5 **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.
- 6 **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.
- 7 **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices (“**User Documentation**”). User Documentation will include all required environmental specifications for the professional Services and Axon Devices to operate per the

Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed (“**Installation Site**”) per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it

- 8 **Acceptance.** When Axon completes professional Services, Axon will present an acceptance form (“**Acceptance Form**”) to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional Services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within 7 calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within 7 calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional Services.

- 9 **Agency Network.** For work performed by Axon transiting or making use of Agency’s network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency’s network from any cause.

Technology Assurance Plan Appendix

If Technology Assurance Plan (“TAP”) or a bundle including TAP is on the Quote, this appendix applies.

- 1 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.
- 2 **Officer Safety Plan.** If Agency purchases an Officer Safety Plan (“OSP”), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
- 3 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month (“**OSP 7 Term**”).
- 4 **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera (“**BWC Upgrade**”) as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon’s option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
- 5 **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote (“**Dock Upgrade**”). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon’s option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon’s option.
- 6 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.
- 7 **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
- 8 **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
- 9 **Termination.** If Agency’s payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1 TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
 - 9.2 Axon will not and has no obligation to provide the Upgrade Models.
 - 9.3 Agency must make any missed payments due to the termination before Agency may



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purchase any future TAP or OSP.

TASER 7 Appendix

This TASER 7 Appendix applies to Agency's TASER 7, OSP 7, or OSP 7 Plus purchase from Axon.

- 1 **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
- 2 **Training.** If the Quote includes a training voucher, Agency must use the voucher within 1 year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
- 3 **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a 5-year term, which includes the hardware manufacturer's warranty plus the 4-year extended term.
- 4 **Trade-in.** If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

Agency Size	Days to Return from Start Date of TASER 7 Subscription
Less than 100 officers	30 days
100 to 499 officers	90 days
500+ officers	180 days

- 5 **TASER 7 Subscription Term.** The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 Start date.
- 6 **Access Rights.** Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not upload any non-TASER 7 data or any other files to Axon Evidence. Agency may not exceed the number of end users than the Quote specifies.
- 7 **Privacy.** Axon will not disclose Agency Content or any information about 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 Agency may file an objection with the court or administrative body. Agency acknowledges and agrees that Axon may access Agency Content to: (a) perform troubleshooting services upon request or as part of Axon's maintenance or diagnostic screenings; (b) enforce this Agreement or policies governing use of Axon Evidence; (c) generate aggregated data, excluding information that can be used to

distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual (collectively, "PII"), to improve, analyze, support, and operate Axon's current and future devices and services.

- 8** **Termination.** If payment for TASER 7 is more than 30 days past due, Axon may terminate Agency's TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:
- 8.1** TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.
 - 8.2** Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within 30 days of the date of termination.
 - 8.3** Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.



Axon Aware Appendix

This Axon Aware Appendix applies to both Axon Aware and Axon Aware Plus.

- 1 **Axon Aware Subscription Term.** If Agency purchases Axon Aware as part of a bundled offering, the Axon Aware subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Aware to Agency.

If Agency purchases Axon Aware as a standalone, the Axon Aware subscription begins the later of the (1) date Axon provisions Axon Aware to Agency, or (2) first day of the month following the Effective Date.

The Axon Aware subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Aware.

- 2 **Scope of Axon Aware.** The scope of Axon Aware is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Aware outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Aware to better meet Agency's needs.

- 3 **Axon Body 3 LTE Requirements.** Axon Aware is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.

- 4 **Axon Fleet 3 LTE Requirements.** Axon Aware is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.

- 5 **Axon Aware Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

- 6 **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Aware or bundles that include Axon Aware, Axon will end Aware services, including any Axon-provided LTE service.