

ORIGINAL

AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

**AXON ENTERPRISE, INC.
(AXON)**

**For Body Worn Camera
(BWC) and BWC System
Solution**

DOCUMENT NO RR-313119
FILED JUN 23 2020
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

AGREEMENT

This Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and Axon Enterprise, Inc. (Axon), a Delaware corporation (Contractor).

RECITALS

- A. City wishes to retain Contractor for the goods and services, Body Worn Camera (BWC) and BWC System Solutions, as further described in the Scope of Work, attached hereto as Exhibit A. The Contractor has the expertise, experience, and personnel necessary to provide the Services.
- B. City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Goods and Services.
- C. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(d) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

ARTICLE 1 CONTRACTOR SERVICES

- 1.1 Scope of Services.** Contractor shall provide the Goods in the quantities and at the prices stated in Exhibit A and the Services to the City as described in Exhibit A, Scope of Work, which is incorporated herein by reference.
- 1.2 Contract Administrator.** The San Diego Police Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Operational Support Lieutenant
1401 Broadway, San Diego, CA 92101
San Diego Police Department
(619) 531-2149
mcarranza@pd.sandiego.gov

- 1.3 General Contract Terms and Provisions.** This Agreement incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit B.

1.3.1 Article 2.2 of the General Terms & Provisions, is revised in part to include:

Notices to the Contractor shall be sent to:

Legal
Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, AZ 85255

1.3.2 Article 3.1 of the General Terms & Provisions, is revised in part to read as follows:

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and annually in advance for services provided in accordance with the terms and provisions specified in the Contract. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. City will pay invoices without setoff, deduction, or withholding. City is responsible for sales and other taxes associated with the order unless City provides Contractor a valid tax exemption certificate.

1.3.3 Article 4.3.2 of the General Terms & Provisions, is revised in part, to read as follows:

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

1.3.4 Article 4 of the General Terms & Provisions, is revised in part to include additional provisions:

4.7 Contractor's Right to Termination. Contractor may terminate this Agreement for cause if it provides 60 days written notice of the breach to the City, and the breach remains uncured at the end of 60 days.

4.7.1. Upon termination of this Contract for any reason, the City remains responsible for all fees incurred before the effective date of termination.

4.7.2 If the City purchases Contractor hardware ("Devices") for less than the manufacturer's suggested retail price ("MSRP") and this Contract terminates before the end of the Term, Axon will invoice the City the difference between the MSRP for Devices received and amounts paid towards those Devices. Only if terminating for non-appropriation, the City may return Devices to Contractor within 30 days of termination. MSRP is the standalone price of the individual

Device at the time of sale. For bundled Devices, MSRP is the standalone price of all individual components.

1.3.5 Article 5.1 Inspection and Acceptance of the General Terms & Provisions, is revised in part to include, at the end of the paragraph to read as follows:

The City must provide written notice of rejection of any goods within 21 days of receipt or the goods will be deemed accepted.

1.3.6 Article 5.2 Responsibility for Lost and Damaged Shipments of the General Terms & Provisions, is revised in part, the first sentence should read as follows:

Contractor bears title and the risk of loss or damage to goods prior to the time of their receipt and acceptance by City.

1.3.7 Article 5.7 Warranties of the General Terms & Provisions, is revised in part to include additional provisions to read:

Contractor warrants that Contractor-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of City's receipt, except Signal Sidearm, which Contractor warrants for 30 months from the date of City's receipt. Contractor warrants its Contractor-manufactured accessories for 90-days from the date of City's receipt. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Contractor manufactured Devices are not covered by Contractor's warranty. City should contact the manufacturer for support of non-Contractor manufactured Devices.

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

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

Contractor may provide City a predetermined number of spare Devices as detailed in the Quote ("Spare Devices"). Spare Devices will replace broken or

non-functioning units. If City utilizes a Spare Device, City must return to Contractor, through Contractor's warranty return process, any broken or non-functioning units. Contractor will repair or replace the unit with a replacement Device. Upon termination, Contractor will invoice City the MSRP then in effect for all Spare Devices provided. If City returns the Spare Devices to Contractor within 30 days of the invoice date, Contractor will issue a credit and apply it against the invoice.

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

To the extent permitted by law, the above warranties and remedies are exclusive. Contractor 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.

Contractor'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 Contractor Device or Service will not exceed the purchase price paid to Contractor for the Device, or if for Services, the amount paid for such Services over the 24 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. The limitation on liability contained in this section does not apply to or in any way limit Contractor's liability with regards to Contractor's gross negligence, fraud, or willful misconduct, nor shall it apply to Axon's indemnification obligations set forth in Article 7.1. In the event of any conflict between this section and Article 7.1, the language in Article 7.1 shall control. With respect to any data breach or data loss, Contractor's liability shall be limited to \$5,000,000. Notwithstanding any limitation on liability contained herein, in the event Contractor's insurance would cover City's claim, City shall be able to recover up to the full value of Contractor's insurance coverage for any claim.

1.3.8 Article 5.13.1 Criminal Background Certification of the General Terms and Provisions, is revised in part to read as follows:

5.1.3 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any felony charge and any charges

related to violence or theft. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

1.3.9 Article 6, Intellectual Property Rights, is revised in part, to read as follows:

6.1 Rights in Data. Contractor owns and reserves all right, title, and interest in Contractor devices and services and suggestions to Contractor, including all related intellectual property rights. City will not cause any Contractor proprietary rights to be violated.

6.2 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). City must promptly provide Contractor with written notice of such claim, tender to Contractor the defense or settlement of such claim at Contractor's expense and cooperate fully with Contractor in the defense or settlement of such claim. Contractor acknowledges and agrees that any settlement is subject to approval by the City Council. Contractor's IP indemnification obligations do not apply to claims based on (a) modification of Contractor Devices or Services by City or a third-party not approved by Contractor; (b) use of Contractor Devices and Services in combination with hardware or services not approved by Contractor; (c) use of Contractor Devices and Services other than as permitted in this Agreement; or (d) use of Contractor software that is not the most current release provided by Contractor.

6.3 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the

occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.4 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract. City must promptly provide Contractor with written notice of such claim, tender to Contractor the defense or settlement of such claim at Contractor's expense and cooperate fully with Contractor in the defense or settlement of such claim. Contractor acknowledges and agrees that any settlement is subject to approval by the City Council. Contractor's IP indemnification obligations do not apply to claims based on (a) modification of Contractor Devices or Services by City or a third-party not approved by Contractor; (b) use of Contractor Devices and Services in combination with hardware or services not approved by Contractor; (c) use of Contractor Devices and Services other than as permitted in this Agreement; or (d) use of Contractor software that is not the most current release provided by Contractor.

1.3.10 Article 7.1 Indemnification of the General Terms & Provisions, is revised in part, and to read as follows:

To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expenses, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part any third party claim against an Indemnified Party relating to the negligent act, error or omission, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control under this, any goods provided or performance of services under this Contract by Contractor, any

subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties. If judgment is entered against Contractor and the City by a court of competent jurisdiction because of the concurrent active negligence of County or the City Indemnitees, Contractor and the City agree that liability will be apportioned as determined by the court.

1.4 Submittals Required with the Agreement. Contractor is required to submit all forms and information delineated in Exhibit C before the Agreement is executed.

ARTICLE 2 DURATION OF AGREEMENT

2.1 Term. This Agreement shall be for a term of three (3) years beginning on the Effective Date.

2.2 Effective Date. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40 (Effective Date).

ARTICLE 3 COMPENSATION

3.1 Amount of Compensation. City shall pay Contractor for Goods and performance of all Services rendered in accordance with this Agreement in an amount not to exceed \$8,367,892.78.

ARTICLE 4 WAGE REQUIREMENTS

4.1 Wage Requirements [Reserved].

ARTICLE 5 CONTRACT DOCUMENTS

5.1 Contract Documents. This Agreement including its Exhibits A through D and Attachments 1 through 6 completely describes the goods and services to be provided.

5.2 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

Axon Enterprise, Inc.
A Delaware Corporation

CITY OF SAN DIEGO
A Municipal Corporation

By: 

By: 

Name: CHRIS KIRBY

Name: Kristina Peraita

Title: VP, US Sales

Director, Purchasing & Contracting

Date: June 22, 2020

Date: 26 JUN 2020

Approved as to form this 29 day of
JUNE, 2020
MARA W. ELLIOTT, City Attorney

By: 
Deputy City Attorney

MARA W. ELLIOTT
Print Name

EXHIBIT A SCOPE OF WORK

A. SPECIFICATIONS

1. Background.

The San Diego Police Department (SDPD) has over 1700 sworn law enforcement officers serving a diverse city of over 1.4 million residents. SDPD strives to advance the highest levels of public safety, trust, and professionalism by strengthening community partnerships through fair and impartial policing while fostering employee enrichment and growth to ensure we remain America's Finest police department.

The use of body worn cameras (BWCs) has proven effective in reducing violent confrontations and complaints against officers. Cameras provide additional documentation of police/public encounters and are an important tool for collecting evidence and maintaining public trust.

AXON Enterprise, Inc. has been the supplier of all BWC-related equipment to the San Diego Police Department since the inception of the BWC Program. Currently, the Department has over 1500 BWCs produced by AXON in service and assigned to Department members. The Department's current 5-year contract with AXON concludes on July 31, 2020.

2. Statement of Work.

The City of San Diego (City) is contracting with AXON for 3 years to provide a user-friendly, cloud-based BWC System Solution. The BWC System Solution shall be a tool to demonstrate SDPD's commitment to transparency, ensure the accountability of its members, increase the public's trust in officers, and protect its members from unjustified complaints of misconduct. The purpose of this contract is to outfit current employees as well as recruits graduating from the Academy (expected 200 recruits per year).

AXON will be expected to provide the City with a complete BWC System Solution that will include the following: Body Worn Cameras (hardware), Video Management/Storage, licensing, configuration, implementation, training services and ongoing maintenance support services, throughout the term of the contract.

Services will commence on, or about, August 1, 2020. As described in the Specifications, starting at the earliest part of the first year of this contract with

an option to purchase additional equipment over the term of the contract.

In addition to the cameras, the City will be purchasing the necessary viewers/smart devices, mounting systems, docking solutions, as well as licensing, storage and video management software. The City reserves the right to request equipment and services as-and-when required throughout the duration of the contract.

3. Pricing Schedule.

The Pricing Quotation from AXON is included as Attachment 1 to this Scope of Work. The prices in Attachment 1 will remain firm during the Term of the Agreement for the quantities and items listed in Attachment 1.

4. BWC Specifications.

AXON will provide hardware and software that meet the following minimum requirements over the term of the contract:

Hardware Technical Specifications:

1. All BWCs must be factory new with no previous owner. They shall be the latest model in current production or, if multiple models are available, the model chosen by the City.
2. BWC must attach to the chest/upper torso area (patrol and investigations).
3. Smaller cameras capable of being attached to specialized unit helmets must be available.
4. BWC must be functional in all potential operating temperatures in San Diego County.
5. BWC must be functional in relative humidity up to 80% (non-condensing).
6. BWC must have an estimated useful life: Approximately 5 years
7. BWC will have a rechargeable lithium-ion battery or similar capable of lasting at least a working shift of 12 hours on a single charge.
8. BWC must have multiple microphones built into the camera for clearer sound.
9. BWC must be available with a variety of mounts to attach to uniforms or other equipment including MOLLE mounts.
10. BWC must be Bluetooth and Wi-Fi enabled.
11. BWC must have at least 64 GB of internal memory.
12. All BWCs must have a full replacement warranty of at least 1 year
13. BWC must have the capability to attach camera accessories fitting a wide range of mounts for special purpose units.

Software Technical Specifications:

1. BWC must be a full color audio/video camera.
2. Ability to record in multiple color video resolutions that can be selected by the City.
3. Pre-event audio/video buffer that is configurable by the City.
4. BWC must be able to effectively record in low-light.
5. The image field of view must be at least 65 degrees vertical, 120 degrees horizontal and 140 degrees diagonal.
6. BWC must be encrypted.
7. BWC should have immediate playback capability via a separate viewer/smart device/cell phone application.

Design Requirements:

1. BWC shall be ruggedized and constructed of a highly durable material.
2. The City's BWC color preference is black.
3. The BWC will be no more than 4" in height.
4. The BWC will be no more than 3" wide.
5. The BWC will be no more than 1.5" in depth.
6. The BWC will be of a weight that does not impede the officer from engaging in normal police activities.
7. The BWC will have a large on/off button to start/stop recording.
8. The BWC will have an indicator light to show operational status of the camera.
9. The BWC will have a display screen which will minimally indicate the battery status and recording status of the camera.
10. BWC shall have an audible chime/beep that sounds intermittently to notify the user that they are in recording mode. The user must be able to control the volume level of this notification including turning it off so they are in "stealth mode."

5. Training Requirements.

1. Axon shall provide any training documented in the Quote. San Diego Police Department may obtain free of charge training through Axon Academy.
2. San Diego Police Department Operational Support Administration personnel shall be recognized by Axon as certified BWC instructors for the Department.
3. All Department personnel trained by the San Diego Police Operational Support Administration in the use of BWC shall be recognized by Axon as being properly and sufficiently trained in the use of the BWC.

6. Docking Station Specifications.

AXON must meet the following minimum docking station specifications:

1. Availability of multiple docking options including multiple bay and single bay docks.
2. Primary video upload method must be via docking station or a mechanism imbedded in the camera itself.
3. Attachment to a computer cannot be the primary method of uploading videos.

7. Video Management/Storage System Specifications.

AXON must meet the following minimum video management system specifications:

1. Unlimited video Storage.
2. User-friendly video management system.
3. Ability to export video in an industry standard file format.
4. Acknowledgment that all data is property of the City and must be made available at no additional cost.
5. Storage solution compliance with policies outlined in the U.S. Department of Justice Information Services (CJIS) Security Policy and the City of San Diego Information Security Standards and Guidelines. See Attachments 2 and 3 for further information.
6. Capability to produce digitally authenticated duplicates.
7. Cloud-based storage service that meets requirements of the City's Information Security Standards and Guidelines, as noted above, see Attachment 3 and AXON Cloud Services Terms of Use, see Attachment 4,
8. Ability for retrieve/search video footage.
9. Comprehensive metadata storage capability.
10. Storage system must be able to quickly extract segments of needed footage.
11. Audit trail capability.
12. Ability for video management administrator to assign different access roles based on user's assignment.
13. Users must be able to attach data to the videos in the field. Data is used to make videos searchable.
14. System must be capable of accepting photos and other non-body worn camera up to the storage limits as described in the Agreement, in addition to videos.
15. System must have file and case sharing capabilities.
16. Ability for automatic file deletion schedules in addition to the ability of the administrator to change the preset schedules.
17. Videos should be watermarked for security purposes.

18. Ability for customizable reports/logs.
19. System must be capable of allowing victims/witnesses/citizens to upload videos at the request of investigators.
20. Technology Assurance Plan. See Attachment 5.

8. Auto Tagging

AXON will provide an "Auto Tagging" feature to the City which will allow event data to be automatically added to each video based on an integration with the City's CAD vendor Hexagon. The City will provide all necessary IT assistance to support this feature. If the City's CAD vendor changes during the contract period, the City will provide any needed IT assistance to assure a continuing integration with the new CAD vendor. See Attachment 6 for further information.

9. City Responsibilities

The City agrees to the following conditions:

1. Make available City's relevant systems for assessment by AXON prior to their arrival at the Installation Site;
2. Ensure that prior to AXON's arrival at the Installation Site that City's network and systems comply with the following system requirements posted at <http://www.taser.com/products/digital-evidence-management/evidence>;
3. Make any required modifications, upgrades or alterations to City's hardware, facilities, systems and networks related to AXON's performance of the Services prior to AXON's arrival at the Installation Site;
4. Provide access to the building facilities and where AXON is to perform the Services, subject to safety and security restrictions imposed by the City (including providing security passes or other necessary documentation to AXON's representatives performing the Services permitting them to enter and exit the City's premises with laptop personal computers and any other materials needed to perform the Services);
5. Provide suitable workspace with telephone and Internet access for AXON's personnel while working at the Installation Site and in the City's facilities;
6. Timely implementation of operating procedures, audit controls, and other procedures necessary for the City's intended use of the Products;
7. Provide all necessary infrastructure information (TCP/IP addresses, node names and network configuration) necessary for AXON to provide the Services;
8. Promptly install and implement any and all software updates provided by AXON;
9. Provide to AXON the assistance, participation, review and approvals and participate in testing of the Products as requested by AXON;
10. Provide AXON with monitored remote access to the City's EVIDENCE.com account when required for AXON to perform the Services;

11. Designate a representative who will be the main point of contact for all communication with AXON and who has the authority to act on the City's behalf in matters regarding the performance of the Services;
12. Ensure the reasonable availability by phone or email of knowledgeable staff and personnel, system administrators and operators to provide timely, accurate, complete and up-to-date documentation and information for the duration of the Term (these contacts are to provide background information and clarification of information required to perform the Services);
13. Instruct the City's personnel so that they are, at all times, educated and trained in the proper use and operation of the Products and that the Products are used in accordance with applicable TASER manuals and instructions; and
14. Identify in advance any holidays, non-workdays, or major events that may impact the project.

10. Delivery

All deliveries under this contract shall be made to San Diego Police Department Headquarters located at:

San Diego Police Department – Operational Support
1401 Broadway
San Diego, CA 92101

B. TECHNICAL REPRESENTATIVE. The Technical Representative for this Contract is identified in the notice of intent to award and will provide daily oversight of this Contract to ensure compliance to the scope of work and performance to Contract specifications. The Technical Representative, or designee, is also responsible for oversight of all invoice payments and billing questions for purchase orders issued under this Contract.

The Purchasing Agent shall be responsible for all contractual matters and is the only entity authorized to make changes of any kind to the Contract. The Contractor shall not rely upon any oral change from anyone, or a written request for change from someone other than the Purchasing Agent. All changes must be in writing and signed by the Purchasing Agent.