



POLICE ACCOUNTABILITY BOARD

REGULAR MEETING AGENDA

Wednesday, March 29, 2023

6:30 P.M.

Board Members:

JOHN MOORE III. (CHAIR)
KITTY CALAVITA

REGINA HARRIS (VICE-CHAIR)
JULIE LEFTWICH

CHERYL OWENS
DEBORAH LEVINE

MEETING LOCATION

Live Oak Community Center
1301 Shattuck Ave,
Berkeley, CA 94709

PUBLIC ADVISORY

The PAB has resumed in-person meetings and encourages community members to attend in person. Community members attending in person should observe the “Health and Safety Protocols for In-person Meetings of Berkeley Boards and Commissions” as outlined by the City of Berkeley.

***The PAB acknowledges that physical attendance may not be feasible for all community members. To this end, the Office of the Director of Police Accountability (ODPA) has been exploring the option of allowing for remote participation at the PAB meetings. Please note that the ODPA and PAB are in the early stages of implementing this hybrid meeting format so there is a possibility for technical glitches and errors. Your patience and understanding are greatly appreciated. ***

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82653396072>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on “rename” to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **826 5359 6072**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

LAND ACKNOWLEDGEMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

AGENDA

1. **INTRODUCTION TO IN-PERSON MEETINGS** (2 minutes)
2. **CALL TO ORDER & ROLL CALL** (2 minutes)
3. **APPROVAL OF AGENDA** (5 MINUTES)
4. **PUBLIC COMMENT** (TBD)
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)
5. **APPROVAL OF MINUTES** (5 MINUTES)
Regular meeting of March 15, 2023
6. **ODPA STAFF REPORT** (10 MINUTES)
Announcements, updates, and other items.
7. **CHAIR AND BOARD MEMBERS' REPORTS** (5 MINUTES)
Announcements, updates and other items.
8. **CHIEF OF POLICE'S REPORT** (20 minutes)
Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.
 - a. Discussion on drone usage (Chair Moore)
 - i. drone use incident on March 7th

- ii. the BPD’s exigent circumstances standard for the deployment of drones
 - b. Discussion and action- Appointment of board members to the BWC policy subcommittee (Vice Chair Harris)
 - i. Preliminary discussions with the Chief on BWC policy
 - ii. Preliminary review of the policy
9. **SUBCOMMITTEE REPORTS (discussion and action) (10 min)***
 Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:
- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
 - b. Regulations Subcommittee (Chair: Calavita)
 - c. Fair and Impartial Subcommittee (Chair: Calavita)- Appointment of an additional board member to the Fair and Impartial Policing subcommittee
10. **OLD BUSINESS (discussion) (10 min)**
- a. Report of status on items (records, information, and advice) requested from the PAB to:
 - i. ODPA
 - ii. CAO
 - iii. BPD
11. **NEW BUSINESS (discussion and action) (10 min)**
- a. PAB Retreat
 - i. Recap (Chair Moore)
 - ii. Next Steps; Letter to Council (Board member Calavita)
 - b. Discussion and action regarding the supplemental information report to the City Council's public safety policy committee regarding surveillance technology:
 - i. Unmanned Aerial Systems (UAS) (Board member Levine) – (10 minutes)
 - ii. Fixed Video Surveillance Cameras (Board member Calavita) – (10 minutes)
 - c. Creation and appointment of board members to a subcommittee to explore issues and solutions regarding conflicts of interest with legal counsel (Board member Leftwich) - (10 Minutes)

* When used under the subcommittee reports section, “Chair” refers to the Chairperson of the respective subcommittee, not the PAB Chair. *

12. PUBLIC COMMENT (TBD)

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

CLOSED SESSION

Pursuant to the Court's order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):

13. Case updates – (10 min)

END OF CLOSED SESSION

14. ANNOUNCEMENT OF CLOSED SESSION ACTION (1 minute)

15. ADJOURNMENT (1 minute)

Communications Disclaimer

Communications to the Police Accountability Board, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the Board Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the Board Secretary for further information.

 **Communication Access Information (A.R. 1.12)**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

Contact the Director of Police Accountability (Board Secretary) at:

1947 Center Street, 5th Floor, Berkeley, CA 94704
TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info



**REGULAR MEETING ATTACHMENTS
March 29th, 2023**

<u>INFORMATIONAL MATERIAL</u>		
Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions		Pg. 5
<u>AGENDA-RELATED</u>		
Item 5	March 15, 2023 Meeting Minutes	Pg. 7
Item 8	ODPA Memo to the PAB: Preliminary Research on Body-Worn Cameras	Pg. 12
Item 9	PAB Active Subcommittee List.	Pg. 68
Item 11.b.	DRAFT Supplemental Information Reports to the City Council's Public Safety Policy Committee Regarding Unmanned Aerial Systems (UAS) and Fixed Camera Surveillance Systems	Pg. 70
Item 11.c.	ODPA Memo to the PAB: Preliminary Research on Independent Counsel and Civilian Oversight	Pg. 83
<u>COMMUNICATIONS</u>		
None		

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

The policy below applies to in-person meetings of Berkeley Boards and Commissioners held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

Issued By: City Manager's Office

Date: February 14, 2023

I. **Vaccination Status**

All attendees are encouraged to be fully up to date on their vaccinations, including any boosters for which they are eligible.

II. **Health Status Precautions**

For members of the public who are feeling sick, including but not limited to cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, it is recommended that they do not attend the meeting in-person as a public health precaution. In these cases, the public may submit comments in writing in lieu of attending in-person.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to wear a well-fitting mask (N95s, KN95s, KF94s are best), test for COVID-19 3-5 days from last exposure, and consider submitting comments in writing in lieu of attending in-person.

Close contact is defined as someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane, etc., for a cumulative total of 15 minutes or more over a 24-hour period within 2 days before symptoms of the infected person appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign-in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

Members of City Commissions are encouraged to take a rapid COVID-19 test on the day of the meeting.

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are encouraged for all commissioners, staff, and attendees at an in-person City Commission meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of Commissions, city staff, and the public are encouraged to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium, although masking is encouraged even when speaking.

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. Capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons that need to distance for personal health reasons.

Distancing will be implemented for the dais as space allows.

V. Protocols for Teleconference Participation by Commissioners

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for Commissioners participating remotely due to an approved ADA accommodation. For Commissioners participating remotely, the agenda must be posted at the remote location, the remote location must be accessible to the public, and the public must be able to participate and give public comment from the remote location.

- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

Air filtration devices are used at all meeting locations. Window ventilation may be used if weather conditions allow.



POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, March 15, 2023, 6:30 P.M.

MEETING LOCATION
Live Oak Community Center
1301 Shattuck Ave,
Berkeley, CA 94709

RECORDER ON

1. INTRODUCTION TO IN-PERSON MEETINGS

2. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 6:30 P.M.

Present: Board Member John Moore (Chair)
Board Member Regina Harris (Vice-Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens

Absent: None

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Beneba Thomas, DPA Investigator

BPD Staff: Jennifer Louis, Interim Chief ; Jen Tate, Lieutenant

3. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Calavita / Owens) **Motion Carried / Failed**

Ayes: Unanimous

Noes: None

Abstain: None

Absent: None

4. PUBLIC COMMENT (TIME SPEAKERS)

3 speakers.

- 1) Former Board Member Ramsey (now United States Attorney for The Northern District Of California) went before the Board to express his gratitude for the commitment of his colleagues. He expressed gratitude for the BPD, ODPa staff, the CAO, the various City Departments and the community.
- 2) Community member expressed concerns about the data in the BPD annual report. Specifically, she discussed the issues regarding racial disparities.
- 3) Community member expressed additional concerns about the BPD data. Specifically, the community member expressed concerns about the pretextual stops and racial disparities.

5. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of February 22, 2023

Moved/Second (VC Harris/Leftwich) **Motion Carried / Failed**

Ayes: Unanimous

Noes: None

Abstain: None

Absent: None

Board member Leftwich made a correction regarding attendance: Board Member Calavita was noted as absent but was in fact present for the meeting.

Motion to approve Special Meeting Minutes of March 8, 2023

Moved/Second (Calavita/Harris) **Motion Carried / Failed**

Ayes: Unanimous consent

Noes: None

Abstain: None

Absent: None

6. ODPa STAFF REPORT

ODPa Director reported:

1. Staff report to be presented at March 29, 2022 regarding past requests to BPD and CAO:
 2. Staff is currently piloting new technology for hybrid meetings. We appreciate the community's patience as we implement these new procedures. We welcome any constructive feedback that can help us better implement this technology and make the PAB's meetings accessible to everyone.
2. The first PAB Annual Retreat is planned for March 25th, 2023. It will be hosted at the Judge Henry Ramsey Jr South Berkeley Senior Center from 9:00 am to 4:30 pm. Facilitated by Brian Corr (past President of NACOLE)

3. Staff continues to work on the PAB's annual report. We appreciate the community's patience and look forward to presenting it.
4. The review of BPD Report on Controlled Equipment pursuant to City Ordinance 2.100 is still pending. Currently, only Chair Moore is on the subcommittee. The Board may want to consider adding another member to that subcommittee or delegate it to staff to review the report and provide any recommendations. The item will be posted for a full Board discussion at our next regular meeting.
5. As the Board may be aware, Board member Ramsey was nominated and confirmed to be the next U.S. Attorney for the Northern District of California. The Board is currently down to six members and the appointments for the current vacancies are pending.
6. Debriefed the Board about the communications with the City Manager's Office. Presented Deputy City Manager Anne Cardwell to the Board- the liaison for the ODP/PAB assigned by the City Manager.

Board Member Leftwich commented that there will be training hours credited for the retreat.

Board Member Owens asked about the status report of the training for members. Director Aguilar indicated that report will be provided by the end of the week. Board member Owens also asked about the "report" that is given to Council on new members. Director Aguilar explained the Director's role in Board member appointments is limited to raising awareness, but that he would circle back with the information about the reports.

Board member Calavita expressed words of appreciation for former Board Member Ramsey and his contributions to the PRC and the PAB.

7. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore reported: that he was grateful that Vice Chair Harris stepped up during his absence at last meeting. The Chair made a "formal request" for Council to appoint people to the vacant positions on the Board.

No additional Board Member reports were made during this segment.

8. CHIEF OF POLICE'S REPORT

Interim Chief Louis reported on :

- Staffing status
 - Current sworn personnel numbers (145 out of 181 authorized)
 - non-sworn personnel numbers (24 out of 36 authorized)

- improving the referral program to empower the community and staff to recommend new officers.
- Fatal vehicle collision
- The Board's policy recommendations on surveillance.
- A deployment of a drone on March 7, 2023

Several Board members asked questions about liaisons, EWS, racial disparities, grants, data and more.

9. SUBCOMMITTEE REPORTS (DISCUSSION AND ACTION)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
 - i. Chair reported that subcommittee is meeting weekly.
 - ii. Attempting to have public engagement.
- b. Regulations Subcommittee (Chair: Calavita)
 - i. Meeting regularly
 - ii. Hope to report back to full Board soon.

10. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Discussion on the proposal for a comprehensive review of BPD's body-worn camera policies (Board member Harris)
 - i. Open up discussion and asked questions to Lt. Tate who participated remotely.
 - ii. Asked questions about audits, capabilities to live monitor, costs, etc.

Motion to create a subcommittee to review the BPD BWC policy.

Moved/Second (Harris/Leftwich) **Motion Carried** / **Failed**

Ayes: Calavita, Harris, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: None

11. PUBLIC COMMENT (TIME SPEAKERS)

1 speakers.

Community member wants to volunteer on BWC subcommittee.

CLOSED SESSION

Pursuant to the Court's order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):

12. PRESENTATION OF COMPLAINT CASE NO. 26

Motion to adopt the ODPa recommendations.

Moved/Second (Harris/Levine) **Motion Carried / Failed**

Ayes: Calavita, Harris, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: Calavita

Absent: None

13. CASE UPDATES

END OF CLOSED SESSION

UNLOCK WEBINAR AND RESUME RECORDING

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

15. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Leftwich/Harris) **By general consent, the meeting was adjourned at 8:30 p.m.**

Minutes Approved on: _____

Hansel Aguilar, Commission Secretary: _____



March 22, 2023

TO: Regina Harris, Vice Chair of the Police Accountability Board (PAB)
FROM: Hansel Aguilar, Director of Police Accountability (ODPA) *HA*
CC: Police Accountability Board (PAB)
Subject: Preliminary Research on Body Worn Cameras (BWC)

The purpose of this memorandum is to provide Vice Chair Harris and the PAB members with some preliminary research on Body-worn cameras (BWC) to inform their review of the BPD Policy 425 which went into effect in October 2017.

Specifically, this memo provides the following information:

- Investigatory observations from the ODPA regarding the BPD policies. The list is by no means exhaustive, but rather an initial compilation of observations regarding BWC usage from the ODPA investigatory experience. (see ATTACHMENT 1)
- A suggested reading list regarding empirical research on BWC. The curated list includes recent studies and meta-analyses that review the impacts of BWCs on reducing the use of force and or citizen complaints. (see ATTACHMENT 2)
- Tools for consideration (see ATTACHMENT 3)
 - The Leadership Conference on Civil and Human Rights & Upturn Police Body Worn Cameras: A Policy Scorecard by <https://www.bwccscorecard.org/>
 - CNA Training and Technical Assistance (TTA) team
 - BWC Policy Certification Form
 - BWC Policy Review Scorecard: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fbwctta.com%2Fsites%2Fdefault%2Ffiles%2Finline-files%2FBWC%2520Policy%2520Review%2520Scorecard.20%2520%25282%2529_2.xlsx&wdOrigin=BROWSELINK
- AXON Contract (see ATTACHMENT 4)
- Payment Summary (see ATTACHMENT 5)

ATTACHMENT 1

**INVESTIGATORY OBSERVATIONS FROM THE ODPA
REGARDING THE BPD POLICY FOR BWC**

OBSERVATION	BPD POLICY SECTION	CONCERNS
<p>No requirement for advisement that an individual is being recorded:</p>	<p>Policy 425.5 <i>Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.</i></p>	<p>As noted by CM Dee Williams- Ridley June 21, 2022 Memo to City Council, “ <i>The community, the City, Berkeley Police Officers, and the Police Accountability Board all see value in equipping the Berkeley Police Department with this equipment which provides valuable evidence in police investigations, and promotes a higher level of accountability for all parties involved in community - police interactions.</i>”</p> <p>To ensure the City’s BWC investment is having an impact on accountability for all parties and improving the “civilizing effect” (i.e. whereby the presence of the camera calms citizen/officer behavior -See Patterson and White (2021)), BPD should consider notifying community members that they are being recorded (if and when it does not jeopardize officer safety). Community member awareness is a pre-condition to determine if there is a civilizing effect in the interaction (See Patterson and White (2021). For potential language to address this, consider MPD (DC) Police General Order SPT-302.13</p> <p><i>When practicable, members shall inform contact subjects that they are being recorded at the beginning of the contact (e.g., “Ma’am/Sir, I am advising you that our interaction is being recorded.”)</i></p> <p>https://go.mpdconline.com/GO/GO_302_13.pdf</p>

<p>Cessation of recording</p>	<p>Policy 425.11</p> <p><i>Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:</i></p> <p><i>(a) Discussion of tactical or confidential information with other law enforcement personnel.</i></p> <p><i>(b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.</i></p> <p><i>(c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.</i></p> <p><i>(d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.</i></p> <p><i>Decisions regarding the reason for muting or BWC deactivation</i></p>	<p>This occurrence has come up in several investigations conducted by the ODPa. When officers mute or deactivate their BWC on the scene, this prevents the ODPa (and any investigator) from assessing on-the-scene conversations that may have relevance to the allegations of police misconduct.</p> <p>This practice and subsection of the policy is inconsistent with the International Association of Chiefs of Police April 2019 Body-Worn Cameras report:</p> <p><i>"Once the BWC is activated, the entire incident or encounter should be recorded without interruption. The BWC should not be deactivated until the event that prompted the activation has concluded and/or the officer has physically left the scene."</i> (pg. 4)</p> <p>https://www.theiacp.org/sites/default/files/2020-06/BWCs%20June%202020.pdf</p>

	<p><i>shall be noted on the recording, or otherwise documented.</i></p> <p><i>Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.</i></p>	
<p>Restricted evidence.com access</p>	<p>Policy 425.18.1 POLICE REVIEW COMMISSION (PRC)</p> <p><i>“The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry</i></p>	<p>The ODPa currently has access to BWC which is facilitated by the IA. This creates limitations for the ODPa investigative process for two reasons.</p> <p>First, the ODPa cannot independently verify if there are any BWC videos other than the ones provided by the BPD that may be relevant to the investigation. While the ODPa does not have specific reasons to believe the BPD is withholding relevant videos, the ODPa is unable to independently conclude in any given case whether all the relevant BWC videos were reviewed without looking at the catalog of videos recorded on the day of the encounter. Evidence.com has innovative investigatory features that</p>

	<p><i>members during a Board of Inquiry.”</i></p>	<p>enhance the ability of a reviewer of facts to review digital evidence.</p> <p>Second, because of the restricted access that ODPa currently receives, the ODPa has faced “blackout” periods where access to the videos is temporarily lost to the ODPa investigators. While the BPD has been able to rectify these issues as they occur, losing access to videos during a time-limited investigation can have significant repercussions to include the inability to comply with Charter mandated deadlines in a thorough manner.</p> <p>The other issue with the policy, as currently written, is that it does not allow for PAB members to view BWC without the ODPa. This creates an undue administrative burden for the ODPa. The ODPa team strives to be flexible for the PAB members whenever possible, but it is not practicable at all times to be available to several Board members that are viewing several hours of BWC footage. Additionally, not allowing PAB members with more direct access to BWC naturally removes their time to review and assess the BWC footage. The ODPa believes a revision of this can enhance the thoroughness of the administrative hearings for the officers and the complainants.</p>
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ATTACHMENT 2

Suggested readings regarding Body-worn cameras

Body-worn cameras have become an increasingly popular tool for law enforcement agencies across the globe, with the aim of enhancing accountability, transparency, and reducing conflicts between the police and the public. This curated reading list provides relevant research studies that investigate the impacts of body-worn cameras on policing. The studies explore the effectiveness of body-worn cameras in reducing police use of force and complaints against the police, as well as the relationship between cameras and police behavior. While the results of these studies are varied, they all contribute to our understanding of the potential benefits and limitations of body-worn cameras as a tool for policing.

The effect of police body-worn cameras on use of force and citizens' complaints against the police: A randomized controlled trial

Ariel, B., Farrar, W. A., & Sutherland, A. (2015). The effect of police body-worn cameras on use of force and citizens' complaints against the police: A randomized controlled trial. *Journal of quantitative criminology*, 31, 509-535.

The question the authors try to answer is: do body worn-cameras reduce the prevalence of use-of-force and/or citizens' complaints against the police? The authors found that the likelihood of force being used in control conditions was roughly twice that in experimental conditions. Similarly, a pre/post analysis of use-of-force and complaints data also supports this result: the number of complaints filed against officers dropped from 0.7 complaints per 1,000 contacts to 0.07 per 1,000 contacts. The authors discuss the findings in terms of theory, research methods, policy, and future avenues of research on body worn-videos.

Evaluating the effects of police body-worn cameras: A randomized controlled trial

Yokum, D., Ravishankar, A., & Coppock, A. (2017). Evaluating the effects of police body-worn cameras: A randomized controlled trial. *LAB@ DC*.

The study found that the use of body-worn cameras did not have a statistically significant effect on the overall use of force by police officers, but did lead to a statistically significant reduction in the number of complaints against officers. The study also found that body-worn cameras had no significant effect on officer activity levels, time spent on proactive policing, or officer safety.

Police reform through data-driven management

Morgan, T. H. S., Murphy, D., & Horwitz, B. (2017). Police reform through data-driven management. *Police Quarterly*, 20(3), 275-294.

Through frequent audits, NOPD has produced dramatic, swift compliance improvements. Concurrently, NOPD leadership introduced a data-driven management framework that addressed all facets of management: MAX (Management Analytics for Excellence). This article presents the viewpoints of two sides of the consent decree: NOPD and the federal judge overseeing the implementation of the consent decree. NOPD and its monitoring partners use MAX's performance metrics to monitor reform implementation and address areas requiring improvement. This article details how to implement reforms through a data-driven management approach.

Exploring the potential for body-worn cameras to reduce violence in police-citizen encounters

White, M. D., Gaub, J. E., & Todak, N. (2018). Exploring the potential for body-worn cameras to reduce violence in police–citizen encounters. *Policing: a journal of policy and practice*, 12(1), 66-76.

This randomized controlled trial examined the effects of body-worn cameras on police use of force in Spokane, WA. The study explores the effects of BWCs on the use of force, complaints against officers, and officer injuries, using more than three years of official department data pre- and post-BWC deployment. The outcomes of interest are rare in Spokane, which limited both statistical power and the results from significance testing. However, the within-group trends are consistent with a positive effect, particularly for percent change. Following BWC deployment, the percentage of officers with a complaint in each group declined by 50% and 78% (Control and Treatment, respectively); the percentage of officers with a use of force declined notably (39%) for one group only. The reductions disappeared after 6 months for the Treatment group. There was no relationship between BWCs and officer injuries.

A randomized control trial evaluating the effects of police body-worn cameras

Yokum, D., Ravishankar, A., & Coppock, A. (2019). A randomized control trial evaluating the effects of police body-worn cameras. *Proceedings of the National Academy of Sciences*, 116(21), 10329-10332.

This article presents the findings of a randomized controlled trial conducted by the Metropolitan Police Department in Washington, D.C. to evaluate the effects of police body-worn cameras on various outcomes related to police behavior and community perceptions. The authors randomly assigned officers to either wear body-worn cameras or not and collected data on officer behavior, use of force, complaints against officers, and other outcomes.

This article is a follow-up to their 2017 working paper.

Body-worn cameras' effects on police officers and citizen behavior: A systematic review

Lum, C., Koper, C. S., Wilson, D. B., Stoltz, M., Goodier, M., Eggins, E., ... & Mazerolle, L. (2020). Body-worn cameras' effects on police officers and citizen behavior: A systematic review. *Campbell Systematic Reviews*, 16(3), Article-number.

This systematic review and meta-analysis of 70 studies examined the effectiveness of body-worn cameras in policing. The authors found that body-worn cameras can be effective in reducing police use of force and complaints against the police, but their effectiveness can be influenced by factors such as the implementation of policies and the training of police officers.

When no one is watching: evaluating the impact of body-worn cameras on use of force incidents

Koslicki, W. M., Makin, D. A., & Willits, D. (2020). When no one is watching: evaluating the impact of body-worn cameras on use of force incidents. *Policing and society*, 30(5), 569-582.

Using an interrupted time series analysis, this study examines whether the implementation of BWCs had an effect on use of force incidents within a United States department that independently adopted BWCs and did not participate in a collaborative research trial. Results show that while there was a non-significant drop in use of force incidents at the month of BWC implementation, there was a steady, significant increase in use of force incidents for every month following implementation. The number of incidents reaches pre-BWC implementation frequencies after three years. These findings indicate that BWCs may influence police behavior immediately following implementation, though this influence weakens over time as BWCs become normalized with daily police use.

Do the effects of police body-worn cameras on the use of force and complaints change over time? results from a panel analysis in the Milwaukee police department

Peterson, B. E., & Lawrence, D. S. (2021). Do the effects of police body-worn cameras on the use of force and complaints change over time? results from a panel analysis in the Milwaukee police department. *Criminal justice and behavior*, 48(6), 734-754.

This study extends prior BWC research by using a panel analysis design with a measure of treatment duration to examine how the effects of BWCs change over time. Using data from the Milwaukee Police Department (N = 1,009), we propose and test two competing hypotheses: The program maturity hypothesis suggests that BWCs will be more effective at reducing use of force and complaints over time, whereas the program fatigue hypothesis expects BWCs to be less effective the longer officers wear BWCs. We find that BWCs reduced complaints overall and that, over time, each additional month with a camera resulted in 6% fewer complaints. There was no overall relationship between BWCs and use of force, but our treatment duration model suggests that there was an immediate decrease in use of force incidents, followed by a gradual increase in subsequent months.

Is There a Civilizing Effect on Citizens? Testing the Pre-Conditions for Body-Worn Camera-Induced Behavior Change

Patterson, Q., & White, M. D. (2021). Is there a civilizing effect on citizens? Testing the pre-conditions for body-worn camera-induced behavior change. *Police Quarterly*, 24(4), 411-437.

The cause(s) of reduced use of force and complaints following police body-worn camera (BWC) deployment remain unclear, though some argue that BWCs generate a civilizing effect on citizen behavior. This potential effect rests on four pre-conditions: (1) BWC presence and citizen awareness; (2) BWC activation; (3) Escalated citizen behavior or the potential for escalation; (4) Citizen mental capacity for BWC awareness. Prior research has not established the civilizing effect's existence, or how often these pre-conditions are met; this study aims to fill that gap. Data was collected during systematic social observation (SSO) of 166 encounters between citizens and officers in the Tempe, Arizona Police Department. The results tell a simple story. Two pre-conditions (activation, citizen mental capacity) are consistently met; awareness and escalated behavior are not. Overall, 1.2% of encounters saw all pre-conditions met. The paper concludes with a discussion of the implications for research on BWCs.

The Downstream Effects of Body-worn Cameras: A Systematic Review and Meta-analysis

Petersen, K., & Lu, Y. F. (2023). The Downstream Effects of Body-worn Cameras: A Systematic Review and Meta-analysis. *Justice Quarterly*, 1-26.

A systematic review and meta-analysis of 12 experimental and quasi-experimental studies examining the impact of BWCs on prosecutorial and court-related outcomes. In aggregate, the authors find no significant effects of BWCs across any reported outcome measure, however, we find that studies focused on domestic violence offenses are associated with significant and large treatment effects across most outcome measures. While these results show promise, extant domestic violence studies are generally quasi-experimental in nature, and thus the effect of crime type cannot currently be separated from that of research design. Policy implications and directions for future research are discussed.

IACP Law Enforcement Policy Center April 2019 Report on Body-Worn Cameras

The IACP Law Enforcement Policy Center creates four types of documents: Model Policies, Considerations Documents, Concepts & Issues Papers, and Need to Know one-page

summaries. Typically, for each topic, either a Model Policy or a Considerations Document is created, supplemented with a Concepts & Issues Paper. This file contains the following documents:

- Considerations Document: Offered as an alternative to the bright-line directives found in a Model Policy. Instead of providing exact policy language, the Considerations Document outlines items that agencies should address and provides options that agencies should examine when developing their own policies on the topic.
- Concepts & Issues Paper: Designed to provide context and background information to support a Model Policy or Considerations Document for a deeper understanding of the topic.
- Need to Know...: Synthesizes the key points of the topic into a brief, one-page overview. This document is developed by Policy Center staff following the final approval of the policy and paper.

ATTACHMENT 3

1. The Leadership Conference on Civil and Human Rights & Upturn Police Body Worn Cameras: A Policy Scorecard

The Leadership Conference on Civil and Human Rights, in collaboration with Upturn, developed a policy scorecard to evaluate the policies governing police body-worn cameras across the United States. The scorecard assesses eight critical aspects of body-worn camera policies, including whether the policy addresses officer review of footage before filing reports, when officers are required to turn on the cameras, and whether individuals are allowed to view footage of themselves. The scorecard provides valuable insights into the strengths and weaknesses of body-worn camera policies and serves as a useful tool for policymakers, law enforcement agencies, and civil rights advocates.

Link: <https://www.bwcscorecard.org/>

2. CNA Training and Technical Assistance (TTA) Team: BWC Policy Certification Form and BWC Policy Review Scorecard

The BWC Policy Certification Form and BWC Policy Review Scorecard are tools used by the CNA Training and Technical Assistance (TTA) team to evaluate the policies governing police body-worn cameras. The BWC Policy Certification Form is a document that agencies complete to certify that their body-worn camera policy meets certain minimum requirements. The form covers a range of policy areas, including camera activation and deactivation, use of cameras during certain incidents, and data storage and retention.

The BWC Policy Review Scorecard, on the other hand, is a more comprehensive tool that evaluates body-worn camera policies in eight critical areas, including officer review of footage before filing reports, requirements for turning on cameras, and procedures for releasing footage to the public. The scorecard provides an objective assessment of an agency's body-worn camera policy and can be used to identify areas where improvements can be made.

Both the BWC Policy Certification Form and the BWC Policy Review Scorecard are important resources that help the CNA TTA team and their clients ensure that body-worn camera policies are comprehensive, effective, and in line with best practices.

Link:

- <https://www.cna.org/centers-and-divisions/ipr/jri/technical-assistance>
- <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fbwctta.com%2Fsites%2Fdefault%2Ffiles%2Finline-files%2FBWC%2520Policy%2520Review%2520Scorecard.2020%2520%25282%2529%202.xlsx&wdOrigin=BROWSELINK>

ATTACHMENT 4

RECEIVED
EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: NEW CONTRACT

JUL 03 2017

CMS # RTDVW
 (To be filled in by department)

CITY AUDITOR

Contract # 10662
 (To be filled in by Auditor)

CONTRACTOR NAME: Axon Enterprise, INC.

Subject of Contract: Body Worn Cameras – Axon products and support services

This contract package contains: 3 Original Contracts (Department, Vital Record and Vendor) in folders	Attached	Waiver Attached	Not Required
*The Vital Record contract MUST be in a folder. *Optional: In lieu of folders, Department and Vendor copies may be assembled with an Acco-fastener.			
1. CONTRACT BOILERPLATE <i>Boilerplate email</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Scope of Services (Exhibit A @ boilerplate) Did not use boilerplate	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Payment Provisions (Exhibit B @ boilerplate) Did not use boilerplate	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Evidence of Competitive Solicitation OR Waiver by CM or by Council Resolution <i>Under Nat. IPA</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. CERTIFICATIONS			
a. Workforce Composition (businesses with 5 or more employees)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Nuclear Free Berkeley Disclosure	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Oppressive States Disclosure (Exception: Community-based, non-profit organizations)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Certification of Compliance with Living Wage Ordinance (LWO): use current form on web*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Certification of Compliance with Equal Benefits Ordinance: use current form on web*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Community Agency: Certification of Anti-Lobbying	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Community Agency: Certification of Drug-Free Workplace	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (originals, not copies)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Authorizing Council Resolution # <i>68,060-N.S. 6/27/17</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Consultant Contracts: Form 700, Statement of Economic Interests	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Federally Funded Project Requirement: Debarment status printout	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Berkeley Business License # BL-007644
Requisition # _____ (Hard copy attached)
Budget Code 010-7101-420-70-47

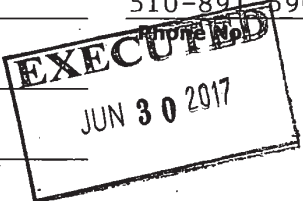
Contract Amount \$ 250,000.00
Council Approved Amount \$ 1,250,000.00
 (5 years)

Was there any advance payment? No Yes **If Yes, Advanced Amount \$** _____
If Yes, Purchase Order # _____

Routing and signatures:

All elements of the contract package, including information provided above, have been reviewed for completeness and accuracy and evidenced by the following signatures (Project Manager please print name):

- Lt. Joseon Deier Police 510-891-5900 6/28/17
 Project Manager (PRINT NAME) & Department Phone No. Date
- Chris Butts 6/28/17
 Department Administrative Officer/Accounting Date
- Robert R. ... 6/28/17
 Department Head Date
- Charlotte ... 6/29/17
 Contract Administrator Date
- Dr. ... 6/30/17
 Budget Manager Date



Routing continues to the following persons, who sign directly on the contract:

- City Manager** (Will not sign unless all signatures and dates appear above)
[Signature]

* For current vendor forms, go to City of Berkeley website: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=5418>

City of Berkeley
Contract Amendment Data Transmittal
(To be completed by Project Manager)

7. **City Auditor** (Initial _____) 8. **City Clerk:** CMS Login _____ Destruct _____ Review _____



MASTER SERVICES AND PURCHASING AGREEMENT

between

AXON ENTERPRISE, INC.

and

City of Berkeley - CA

CITY Agreement Number:

MASTER SERVICES AND PURCHASING AGREEMENT

This Master Agreement (the **Agreement**) by and between Axon Enterprise, Inc., (**Axon or Party**) a Delaware corporation having its principal place of business at 17800 N 85th Street, Scottsdale, Arizona, 85255, and City of Berkeley - CA, (**Agency, Party** or collectively **Parties**) having its principal place of business at 2180 Milvia Street, Berkeley, CA, 94704, is entered into as of June 30, 2017 (**the Effective Date**).

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

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

1.1 Evidence.com Subscription Term: The Initial Term of the Subscription services will begin after shipment of the Product. If shipped in 1st half of the month, the start date is on the 1st of the following month. If shipped in the last half of the month, the start date is on the 15th of the following month. Subscription Services will automatically renew for additional successive Terms of one (1) year after completion of the initial Term at the list price then in effect, unless the Agency gives Axon written notice of termination within sixty (60) days prior to the end of a one (1) year period.

1.2 Professional Services Term: Amounts pre-paid for professional services as outlined in the Quote and the Professional Service Appendix must be used within 6 months of the Effective Date.

2 **Definitions.**

"Business Day" means Monday through Friday, excluding holidays.

"Confidential Information" means all nonpublic information disclosed by Axon, Axon affiliates, business partners of Axon or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential.

"Documentation" means the (i) specifications, explanatory or informational materials, whether in paper or electronic form, that relate to the Services provided under this Agreement, or (ii) user manuals, technical manuals, training manuals, warnings, specification or other explanatory or informational materials, whether in paper or electronic form, that relate to the Products provided under this Agreement.

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

"Installation Site" means the location(s) where the Products are to be installed.



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

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

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

"Resolution Time" means the elapsed time between Axon's acknowledgment of an issue until the problem in the Services has been resolved, which does not include time delays caused by the Agency or by third parties outside of Axon's reasonable control.

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

"Agency Content" means software, data, text, audio, video, images or other Agency content or any of the Agency's end users (a) run on the Evidence.com Services, (b) cause to interface with the Evidence.com Services, or (c) upload to the Evidence.com Services under the Agency account or otherwise transfer, process, use or store in connection with the Agency account.

- 3 **Payment Terms.** Invoices are due to be paid within 30 days of the date of invoice. All orders are subject to prior credit approval. Payment obligations are non-cancelable and fees paid are non-refundable and all amounts payable will be made without setoff, deduction, or withholding. If a delinquent account is sent to collections, the Agency is responsible for all collection and attorneys' fees.
- 4 **Taxes.** Unless Axon is provided with a valid and correct tax exemption certificate applicable to the purchase and ship-to location, the Agency is responsible for sales and other taxes associated with the order.
- 5 **Shipping; Title; Risk of Loss; Rejection.** Axon reserves the right to make partial shipments and products may ship from multiple locations. All shipments are FOB Destination and title and risk of loss pass to the Agency upon delivery to the Agency. The Agency is responsible for all freight charges. Shipping dates are estimates only. The Agency may reject nonconforming Product by providing Axon written notice of rejection within 10 days of shipment. Failure to notify Axon within the 10 day rejection period will be deemed as acceptance of Product.
- 6 **Returns.** All sales are final and no refunds or exchanges are allowed, except for warranty returns or as provided by state or federal law.



7 Warranties.

7.1 Hardware Limited Warranty. Axon warrants that its law enforcement hardware products are free from defects in workmanship and materials for a period of ONE (1) YEAR from the date of receipt. Extended warranties run from the date of purchase of the extended warranty through the balance of the 1-year limited warranty term plus the term of the extended warranty measured after the expiration of the 1-year limited warranty. CEW cartridges and Smart cartridges that are expended are deemed to have operated properly. Axon-Manufactured Accessories are covered under a limited 90-DAY warranty from the date of receipt. Non-Axon manufactured accessories are covered under the manufacturer's warranty. If Axon determines that a valid warranty claim is received within the warranty period, Axon agrees to repair or replace the Product. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.

For Axon Interview Room purchases only: For Axon Interview Room Products, the following warranties apply:

Hardware	Warranty Period
Axis Products	3 years
POS-X Touch Panel	3 years
Industrial Computer Servers	2 years
Louroe Products	1 year
Cisco Switch	1 year
HP Switch	1 year
Broadberry	3 years

7.2 Warranty Limitations.

7.2.1 The warranties do not apply and Axon will not be responsible for any loss, data loss, damage, or other liabilities arising from: (a) damage from failure to follow instructions relating to the Product's use; (b) damage caused by use with non-Axon products or from the use of cartridges, batteries or other parts, components or accessories that are not manufactured or recommended by Axon; (c) damage caused by abuse, misuse, intentional or deliberate damage to the product, or force majeure; (d) damage to a Product or part that has been repaired or modified by persons other than Axon authorized personnel or without the written permission of Axon; or (e) if any Axon serial number has been removed or defaced.

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

7.2.3 Axon's cumulative liability to any Party for any loss or damage resulting from



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

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

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

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

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

8 Product Warnings. See our website at www.axon.com for the most current product warnings.

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

10 Insurance. Axon will maintain at Axon's own expense and in effect during the Term, Commercial General Liability Insurance, Workers' Compensation Insurance and Commercial Automobile Insurance and will furnish certificates of insurance or self-insurance upon request.

11 Indemnification. Axon will indemnify and defend the Agency Indemnitees (the Agency's officers, directors, and employees) from and against all claims, demands, losses, liabilities, reasonable costs and expenses arising out of a claim by a third party against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct of Axon under or related to this Agreement, except in the case of negligent acts, omissions or willful misconduct of the Agency or claims that fall under Workers Compensation coverage.

12 IP Rights. Axon owns and reserves all right, title, and interest in the Axon Products and related software, as well as any suggestions made to Axon.



- 13 IP Indemnification.** Axon will defend, indemnify, and hold the Agency Indemnitees harmless from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim alleging that use of Axon Products or Services as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party. The Agency must provide Axon with prompt written notice of such a claim, tender to us the defense or settlement of such a claim at our expense, and cooperate fully with us in the defense or settlement of such a claim.

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

- 14 Agency Responsibilities.** The Agency is responsible for (i) use of Axon Products (including any activities under the Agency Evidence.com account and use by Agency employees and agents), (ii) breach of this Agreement or violation of applicable law by the Agency or any of the Agency's end users, (iii) Agency Content or the combination of Agency Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights by Agency Content or by the use of Agency Content, (iv) a dispute between the Agency and any third party over Agency use of Axon products or the collection or use of Agency Content, (v) any hardware or networks that the Agency connects to the Evidence.com Services, and (vi) any security settings the Agency establishes to interact with or on the Evidence.com Services.

For Cradlepoint purchases only: The Agency is responsible for complying with the Cradlepoint end user license agreement. The Agency acknowledges that the term of the Cradlepoint license may differ from the term of the Evidence.com license. The Agency further acknowledges that Cradlepoint installation services are not within the scope of this Agreement.

15 Termination.

15.1 By Either Party. Either Party may terminate for cause upon 30 days advance notice to the other Party if there is any material default or breach of this Agreement by the other Party, unless the defaulting Party has cured the material default or breach within the 30-day notice period. In the event that the Agency terminates this Agreement under this Section and Axon fails to cure the material breach or default, Axon will issue a refund of any prepaid amounts on a prorated basis.

15.2 By Agency. The Agency is obligated to pay the fees under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the then current fiscal year. In the event that sufficient funds will not be appropriated or are not otherwise legally



available to pay the fees required under this Agreement, this Agreement may be terminated by the Agency. The Agency agrees to deliver notice of termination under this Section at least 90 days prior to the end of the then current fiscal year:

15.3 Effect of Termination. Upon any termination of this Agreement: (a) all Agency rights under this Agreement immediately terminate; (b) the Agency remains responsible for all fees and charges incurred through the date of termination; and (c) Payment Terms, Warranty, Product Warnings, Indemnification, and Agency Responsibilities Sections, as well as the Evidence.com Terms of Use Appendix Sections on Agency Owns Agency Content, Data Storage, Fees and Payment, Software Services Warranty, IP Rights and License Restrictions will continue to apply in accordance with their terms.

15.4 After Termination. Axon will not delete any Agency Content as a result of a termination during a period of 180 days following termination. During this 180-day period the Agency may retrieve Agency Content only if all amounts due have been paid (there will be no application functionality of the Evidence.com Services during this 180-day period other than the ability to retrieve Agency Content). The Agency will not incur any additional fees if Agency Content is downloaded from Evidence.com during this 180-day period. Axon has no obligation to maintain or provide any Agency Content after this 180-day period and will thereafter, unless legally prohibited, delete all of Agency Content stored in the Evidence.com Services. Upon request, Axon will provide written proof that all Agency Content has been successfully deleted and fully removed from the Evidence.com Services.

15.5 Post-Termination Assistance. Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.

16 General.

16.1 Confidentiality. Both Parties will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of either Party's Confidential Information. Except as required by applicable law, neither Party will disclose either Party's Confidential Information during the Term or at any time during the 5-year period following the end of the Term. In the event a request pursuant to the California Public Records Act is made upon Agency which seeks disclosure of Axon's Confidential Information, the City shall provide prompt written notice of such request to Axon. If Axon instructs Agency to withhold release of the Confidential Information, Axon agrees to defend, indemnify and hold harmless Agency against any action or proceeding brought to compel Agency to disclose the Confidential Information. Axon further agrees to indemnify Agency with respect to attorney's fees and costs which a court may order Agency to pay in connection with such a request.

16.2 Excusable delays. Axon will use commercially reasonable efforts to deliver all products and services ordered as soon as reasonably practicable. In the event of interruption of any delivery due to causes beyond Axon's reasonable control Axon has the right to delay or terminate the delivery with reasonable notice.



- 16.3 Force Majeure.** Neither Party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond the Parties' reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.
- 16.4 Proprietary Information.** The Agency agrees that Axon has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute Axon products and services, and that the Agency will not directly or indirectly cause any proprietary rights to be violated.
- 16.5 Independent Contractors.** The Parties are independent contractors. Neither Party, nor any of their respective affiliates, has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 16.6 No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.
- 16.7 Non-discrimination and Equal Opportunity.** During the performance of this Agreement, neither the Parties nor the Party's employees will discriminate against any person, whether employed by a Party or otherwise, on the basis of race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief. In all solicitations or advertisements for employees, agents, subcontractors or others to be engaged by a Party or placed by or on behalf of a Party, the solicitation or advertisement shall state all qualified applicants shall receive consideration for employment without regard to race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief.
- 16.8 U.S. Government Rights.** Any Evidence.com Services provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" will have the same rights and restrictions generally applicable to the Evidence.com Services. If the Agency is using the Evidence.com Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, the Agency will immediately discontinue use of the Evidence.com Services. The terms "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- 16.9 Import and Export Compliance.** In connection with this Agreement, each Party will comply with all applicable import, re-import, export, and re-export control laws and regulations.
- 16.10 Assignment.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Axon may assign or otherwise transfer this Agreement or any of our rights or obligations under this Agreement without consent (a) for financing



purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of our assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.

- 16.11 No Waivers.** The failure by either Party to enforce any provision of this Agreement will not constitute a present or future waiver of the provision nor limit the Party's right to enforce the provision at a later time.
- 16.12 Severability.** This Agreement is contractual and not a mere recital. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect.
- 16.13 Governing Law; Venue.** The laws of the state where the Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the Parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 16.14 Notices.** All communications and notices to be made or given pursuant to this Agreement must be in the English language. Notices provided by posting on the Agency's Evidence.com site will be effective upon posting and notices provided by email will be effective when the email was sent. Notices provided by personal delivery will be effective immediately. Contact information for notices:

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

AGENCY: City of Berkeley
Berkeley Police Department
2100 Martin Luther King, Jr. Way
Berkeley, CA, 94704
Lt. Joe Okies

- 16.15 Entire Agreement.** This Agreement, including the APPENDICES attached hereto, and the Policies and the quote provided by Axon, represents the entire agreement between the Parties. The following Appendices are attached and incorporate herein:

- 16.15.1** The Quote Appendix – Quote number Q-99955 (Confidential)
- 16.15.2** Evidence.com Terms of Use Appendix
- 16.15.3** Professional Services Appendix
- 16.15.4** TASER Assurance Plan Appendix
- 16.15.5** Axon Integration Services Appendix
- 16.15.6** City of Berkeley Terms and Conditions

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



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

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

Axon Enterprise, Inc.
Signature: [Signature]
Name: Robert Driscoll
Title: VP Sales Operations
Date: 6/20/17

City of Berkeley
Signature: [Signature]
Name: Dee Williams-Ridley
Title: City Manager
Date: 6/30/17
Address: 2180 Milvia Street, Berkeley, CA, 94704

Registered by:

Approved by: [Signature]
CITY ATTORNEY
[Signature]
CITY AUDITOR

Attest:

[Signature]
CITY CLERK



Evidence.com Terms of Use Appendix

- 1 **Access Rights.** Upon the purchase or granting of a subscription from Axon and the opening of an Evidence.com account the Agency will have access and use of the Evidence.com Services for the storage and management of Agency Content during the subscription term (**Term**). The Evidence.com Service and data storage are subject to usage limits. The Evidence.com Service may not be accessed by more than the number of end users specified in the Quote. If Agency becomes aware of any violation of this Agreement by an end user, the Agency will immediately terminate that end user's access to Agency Content and the Evidence.com Services.

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

- 3 **Evidence.com Data Security.**
 - 3.1. **Generally.** Axon will implement commercially reasonable and appropriate measures designed to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive Information Security Program (**ISP**) that includes logical and physical access management, vulnerability management, configuration management, incident monitoring and response, encryption of digital evidence uploaded, security education, risk management, and data protection. The Agency is responsible for maintaining the security of end user names and passwords and taking steps to maintain appropriate security and access by end users to Agency Content. Log-in credentials are for Agency internal use only and Agency may not sell, transfer, or sublicense them to any other entity or person. The Agency agrees to be responsible for all activities undertaken by the Agency, Agency employees, Agency contractors or agents, and Agency end users which result in unauthorized access to the Agency account or Agency Content. Audit log tracking for the video data is an automatic feature of the Services which provides details as to who accesses the video data and may be downloaded by the Agency at any time. The Agency shall contact Axon immediately if an unauthorized third party may be using the Agency account or Agency Content or if account information is lost or stolen.

 - 3.2. **FBI CJIS Security Addendum.** For customers based in the United States, Axon agrees to the terms and requirements set forth in the Federal Bureau of Investigation (**FBI**) Criminal Justice Information Services (**CJIS**) Security Addendum for the Term of this Agreement.

- 4 **Our Support.** Axon will make available updates as released by Axon to the Evidence.com Services. Updates may be provided electronically via the Internet. Axon will use reasonable efforts to continue supporting the previous version of any API or software for 6 months after



the change (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities. The Agency is responsible for maintaining the computer equipment and Internet connections necessary for use of the Evidence.com Services.

- 5 **Data Privacy.** Axon will not disclose Agency Content or any information about the Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content so the Agency may file an objection with the court or administrative body. The Agency agrees to allow Axon access to certain information from the Agency in order to: (a) perform troubleshooting services for the account upon request or as part of our regular diagnostic screenings; (b) enforce this agreement or policies governing use of Evidence.com Services; or (c) perform analytic and diagnostic evaluations of the systems.
- 6 **Data Storage.** Axon will determine the locations of the data centers in which Agency Content will be stored and accessible by Agency end users. For United States customers, Axon will ensure that all Agency Content stored in the Evidence.com Services remains within the United States including any backup data, replication sites, and disaster recovery sites. Axon may transfer Agency Content to third parties for the purpose of storage of Agency Content. Third party subcontractors responsible for storage of Agency Content are contracted by Axon for data storage services, and are bound by the same security obligations as stated herein. Ownership of Agency Content remains with the Agency. For use of an Unlimited Evidence.com License unlimited data may be stored in the Agency's Evidence.com account if the data originates from a Axon device.
- 7 **Fees and Payment.** Additional end users may be added during the Term at the pricing in effect at the time of purchase of additional end users, prorated for the duration of the Term. Additional end user accounts will terminate on the same date as the pre-existing subscriptions. Axon reserves the right to charge additional fees for exceeding purchased storage amounts or for Axon's assistance in the downloading or exporting of Agency Content.
- 8 **Suspension of Evidence.com Services.** Axon may suspend Agency access or any end user's right to access or use any portion or all of the Evidence.com Services immediately upon notice in accordance with the following:
 - 8.1. The Termination provisions of the Master Service Agreement apply;
 - 8.2. The Agency or an end user's use of or registration for the Evidence.com Services (i) poses a security risk to the Evidence.com Services or any third party, (ii) may adversely impact the Evidence.com Services or the systems or content of any other customer, (iii) may subject Axon, Axon's affiliates, or any third party to liability, or (iv) may be fraudulent;
 - 8.3. If Axon suspends the right to access or use any portion or all of the Evidence.com Services, the Agency remains responsible for all fees and charges incurred through the date of suspension without any credits for any period of suspension. Axon will not delete any of Agency Content on Evidence.com as a result of a suspension, except as specified elsewhere in this Agreement.



- 9 **Software Services Warranty.** Axon warrants that the Evidence.com Services will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party. Axon disclaims any warranties or responsibility for data corruption or errors before the data is uploaded to the Evidence.com Services.
- 10 **License Restrictions.** Neither the Agency nor any Agency end users may, or attempt to: (a) permit any third party to access the Evidence.com Services except as permitted in this Agreement; (b) modify, alter, tamper with, repair, or otherwise create derivative works of any of the Evidence.com Services; (c) reverse engineer, disassemble, or decompile the Evidence.com Services or apply any other process or procedure to derive the source code of any software included in the Evidence.com Services, or allow any others to do the same; (d) access or use the Evidence.com Services in a way intended to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas; (e) copy the Evidence.com Services in whole or part, except as expressly permitted in this Agreement; (f) use trade secret information contained in the Evidence.com Services, except as expressly permitted in this Agreement; (g) resell, rent, loan, or sublicense the Evidence.com Services; (h) access the Evidence.com Services in order to build a competitive product or service or copy any features, functions, or graphics of the Evidence.com Services; (i) remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of ours or our licensors on or within the Evidence.com Services or any copies of the Evidence.com Services; or (j) use the Evidence.com Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, to store or transmit material in violation of third party privacy rights, or to store or transmit malicious code. All licenses granted in this Agreement are conditional on continued compliance this Agreement, and will immediately and automatically terminate if the Agency does not comply with any term or condition of this Agreement. The Agency may only use our trademarks in accordance with the Axon Trademark Use Guidelines (located at www.axon.com).



Professional Services Appendix

1 **Scope of Services.** The project scope will consist of the Services identified on the Quote.

1.1. The Package for the Axon and Evidence.com related Services are detailed below:

<p>System set up and configuration Setup Axon View on smart phones (if applicable). Configure categories & custom roles based on Agency need. Troubleshoot IT issues with Evidence.com and Axon Dock (Dock) access. Work with IT to install Evidence Sync software on locked-down computers (if applicable). For the Full Service Package: One on-site session included For the Starter Package: Virtual Assistance Included</p>
<p>Dock installation Work with Agency to decide ideal location of Dock setup and set configurations on Dock if necessary. Authenticate Dock with Evidence.com using "admin" credentials from Agency. Work with Agency's IT to configure its network to allow for maximum bandwidth and proper operation within Agency's network environment. For Full Service: On site Assistance Included For the Starter Package: Virtual Assistance Included</p>
<p>Dedicated Project Manager Assignment of a specific Axon representative for all aspects of planning the Product rollout (Project Manager). Ideally, the Project Manager will be assigned to the Agency 4-6 weeks prior to rollout.</p>
<p>Weekly project planning meetings Project Manager will develop a Microsoft Project plan for the rollout of Axon camera units, Docks and Evidence.com account training based on size, timing of rollout and Agency's desired level of training. Up to 4 weekly meetings leading up to the Evidence.com Dock installation of not more than 30 minutes in length.</p>
<p>Best practice implementation planning session—1 on-site session to: (only included in Full Service Package) Provide considerations for establishment of video policy and system operations best practices based on Axon's observations with other agencies. Discuss importance of entering metadata in the field for organization purposes and other best practice for digital data management. Provide referrals of other agencies using the Axon camera products and Evidence.com services Create project plan for larger deployments. Recommend rollout plan based on review of shift schedules.</p>
<p>System Admin and troubleshooting training sessions (only included in Full Service Package) 2 on-site sessions—each providing a step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Evidence.com.</p>
<p>Axon instructor training Prior to general user training on Axon camera systems and Evidence.com services, Axon's on-site professional services team will provide training for instructors who can support the Agency's subsequent Axon camera and Evidence.com training needs.</p>
<p>End user go live training and support sessions Provide individual device set up and configuration assistance; pairing with viewers when applicable; and training on device use, Evidence.com and Evidence Sync.</p>



Implementation document packet

Evidence.com administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

Post go live review session

- 1.2. Additional training days may be added on to any service package for additional fees set forth in the Quote.
2. **Out of Scope Services.** Axon is responsible to perform only the Services described on the Quote. Any additional services discussed or implied that are not defined explicitly by the Quote will be considered out of the scope.
3. **Delivery of Services.**
 - 3.1. **Hours and Travel.** Axon personnel will work within normal business hours, Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays unless otherwise agreed in advance. All tasks on-site will be performed over a consecutive timeframe unless otherwise agreed to by the Parties in advance. Travel time by Axon personnel to Agency premises will not be charged as work hours performed.
 - 3.2. **Changes to Services.** Changes to the scope of Services must be documented and agreed upon by the Parties in a change order. Changes may require an equitable adjustment in the charges or schedule.
4. **Authorization to Access Computer Systems to Perform Services.** The Agency authorizes Axon to access relevant Agency computers and network systems solely for the purpose of performing the Services. Axon will work diligently to identify as soon as reasonably practicable the resources and information Axon expects to use, and will provide an initial itemized list to the Agency. The 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 the Agency.
5. **Site Preparation and Installation.** Prior to delivering any Services, Axon will provide 1 copy of the then-current user documentation for the Services and related Products in paper or electronic form (**Product User Documentation**). The Product User Documentation will include all environmental specifications that must be met in order for the Services and related Products to operate in accordance with the Product User Documentation. Prior to the installation of Product (whether performed by the Agency or Axon), the Agency must prepare the Installation Site in accordance with the environmental specifications set forth in the Product User Documentation. Following the installation of the Products, the Agency must maintain the Installation Site where the Products have been installed in accordance with the environmental specifications set forth in the Product User Documentation. In the event that there are any updates or modifications to the Product User Documentation for any Products provided by Axon under this Agreement, including the environmental specifications for the Products, Axon will provide the updates or modifications to Agency when they are generally released by Axon to Axon customers.



- 6 **Acceptance Checklist.** Axon will present an Acceptance Checklist (**Checklist**) upon completion of the Services that will exactly mirror the description of services within this Section. The Agency will sign the Checklist acknowledging completion of the Services once the on-site service session has been completed. If the Agency reasonably believes that Axon did not complete the Services in substantial conformance with this Agreement, the Agency must notify Axon in writing of the specific reasons for rejection of the Services within 7 calendar days from delivery of the Checklist. Axon will address the issues and then will re-present the Checklist for approval and signature. If Axon does not receive the signed Checklist or a written notification of the reasons for the rejection of the performance of the Services within 7 calendar days of delivery of the Checklist, the absence of the Agency response will constitute affirmative acceptance of the Services, and a waiver of any right of rejection.
- 7 **Liability for Loss or Corruption of Data.** The Agency is responsible for: (i) instituting proper and timely backup procedures for any files and programs on the Agency's network, not including any Agency Content on Evidence.com (Agency Software and Data); (ii) creating timely backup copies of Agency Software and Data that may be damaged, lost, or corrupted due to our provision of Services; and (iii) using backup copies to restore any Agency Software and Data in the event of any loss of, damage to, or corruption of the operational version of Agency Software and Data, even if such damage, loss, or corruption is due to Axon negligence. However, regardless of any assistance provided by Axon: (i) Axon will in no way be liable for the accuracy, completeness, success, or results of efforts to restore Agency Software and Data; (ii) any assistance provided by Axon under this Section is without warranty, express or implied; and (iii) in no event will Axon be liable for loss of, damage to, or corruption of Agency data from any cause.



TASER Assurance Plan Appendix

The TASER Assurance Plan or "TAP" has been purchased as part of the Quote attached to this Agreement. TAP provides hardware extended warranty coverage, Spare Products, and Upgrade Models at the end of the TAP Term. TAP only applies to the Axon Product listed in the Quote with the exception of any initial hardware or any software services offered for, by, or through the Evidence.com website. The Agency may not buy more than one TAP for any one covered Product.

- 1 **TAP Warranty Coverage.** TAP includes the extended warranty coverage described in the current hardware warranty. TAP warranty coverage starts at the beginning of the TAP Term and continues as long as the Agency continues to pay the required annual fees for TAP. The Agency may not have both an optional extended warranty and TAP on the Axon camera/Dock product. TAP for the Axon camera products also includes free replacement of the Axon flex controller battery and Axon body battery during the TAP Term for any failure that is not specifically excluded from the Hardware Warranty.
- 2 **TAP Term.** TAP Term start date is based upon the shipment date of the hardware covered under TAP. If the shipment of the hardware occurred in the first half of the month, then the Term starts on the 1st of the following month. If the shipment of the hardware occurred in the second half of the month, then the Term starts on the 15th of the following month.
- 3 **SPARE Product.** Axon will provide a predetermined number of spare Products for those hardware items and accessories listed in the Quote (collectively the "Spare Products") to keep at the Agency location to replace broken or non-functioning units in order to improve the availability of the units to officers in the field. The Agency must return to Axon, through Axon's RMA process, any broken or non-functioning units for which a Spare Product is utilized, and Axon will repair or replace the non-functioning unit with a replacement product. Axon warrants it will repair or replace the unit which fails to function for any reason not excluded by the TAP warranty coverage, during the TAP Term with the same product or a like product, at Axon's sole option. The Agency may not buy a new TAP for the replacement product or the Spare Product.
 - 3.1. Within 30 days of the end of the TAP Term the Agency must return to Axon all Spare Products. The Agency will be invoiced for and are obligated to pay to Axon the MSRP then in effect for all Spare Products not returned to Axon. If all the Spare Products are returned to Axon, then Axon will refresh the allotted number of Spare Products with Upgrade Models if the Agency purchases a new TAP for the Upgrade Models.
- 4 **TAP Upgrade Models.** Upgrade Models are to be provided as follows during and/or after the TAP Term: (i) an upgrade will provided in year 3 if the Agency purchased 3 years of Evidence.com services with Ultimate Licenses or Unlimited Licenses and all TAP payments are made; or (ii) 2.5 years after the Effective Date and once again 5 years after the Effective Date if the Agency purchased 5 years of Evidence.com services with an Ultimate License or Unlimited Licenses or OSP and made all TAP payments.



Any products replaced within the six months prior to the scheduled upgrade will be deemed the Upgrade Model. Thirty days after the Upgrade Models are received, the Agency must return the products to Axon or Axon will deactivate the serial numbers for the products received unless the Agency purchases additional Evidence.com licenses for the Axon camera products the Agency is keeping. The Agency may buy a new TAP for any Upgraded Model.

4.1. TAP Axon Camera Upgrade Models.

4.1.1. If the Agency purchased TAP for Axon Cameras as a stand-alone service, then Axon will upgrade the Axon camera (and controller if applicable), free of charge, with a new on-officer video camera that is the same product or a like product, at Axon's sole option. Axon makes no guarantee that the Upgrade Model will utilize the same accessories or Dock. If the Agency would like to change product models for the Upgrade Model, then the Agency must pay the price difference in effect at the time of the upgrade between the MSRP for the offered Upgrade Model and the MSRP for the model that will be acquired. No refund will be provided if the MSRP of the new model is less than the MSRP of the offered Upgrade Model.

4.1.2. If the Agency purchased Unlimited License or OSP, then Axon will upgrade the Axon camera (and controller if applicable), free of charge, with a new on-officer video camera of the Agency's choice.

4.2. TAP Dock Upgrade Models. Axon will upgrade the Dock free of charge, with a new Dock with the same number of bays that is the same product or a like product, at Axon's sole option. If the Agency would like to change product models for the Upgrade Model or add additional bays, then the Agency must pay the price difference in effect at the time of the upgrade between the MSRP for the offered Upgrade Model and the MSRP for the model desired. No refund will be provided if the MSRP of the new model is less than the MSRP of the offered Upgrade Model.

5. TAP Termination. If an invoice for TAP is more than 30 days past due or the Agency defaults on its payments for the Evidence.com services then Axon may terminate TAP and all outstanding Product related TAPs. Axon will provide notification that TAP coverage is terminated. Once TAP coverage is terminated for any reason, then:

5.1. TAP coverage will terminate as of the date of termination and no refunds will be given.

5.2. Axon will not and has no obligation to provide the free Upgrade Models.

5.3. The Agency will be invoiced for and are obligated to pay to Axon the MSRP then in effect for all Spare Products provided under TAP. If the Spare Products are returned within 30 days of the Spare Product invoice date, credit will be issued and applied against the Spare Product invoice.

5.4. The Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TAP.

5.5. If the Agency received Axon Products free of charge and TAP is terminated before the



end of the term then (a) the Agency will be invoiced for the remainder of the MSRP for the Products received and not already paid as part of the TAP before the termination date; or (b) only in the case of termination for non-appropriations, return the Products to Axon within 30 days of the date of termination.



Axon Integration Services Appendix

1. **Term.** The term of this SOW commences on the Effective Date. The actual work to be performed by Axon is not authorized to begin until Axon receives the signed Quote or a purchase order for the Integration Services, whichever is first.
2. **Scope of Integration Services.** The project scope will consist of the development of an integration module that allows the [Evidence.com](#) services to interact with the Agency's RMS so that Agency's licensees may use the integration module to automatically tag the Axon recorded videos with a case ID, category, and location. The integration module will allow the Integration Module License holders to auto populate the Axon video meta-data saved to the [Evidence.com](#) services based on data already maintained in the Agency's RMS. Axon is responsible to perform only the Integration Services described in this SOW and any additional services discussed or implied that are not defined explicitly by this SOW will be considered out of the scope and may result in additional fees.
3. **Pricing.** All Integration Services performed by Axon will be rendered in accordance with the fees and payment terms set forth in the Quote.
4. **Delivery of Integration Services.**
 - 4.1 **Support After Completion of the Integration Services.** After completion of the Integration Services and acceptance by the Agency, Axon will provide up to 5 hours of remote (phone or Web-based) support services at no additional charge to the Agency. Axon will also provide support services that result because of a change or modification in the [Evidence.com](#) services at no additional charge as long as the Agency maintains [Evidence.com](#) subscription licenses and Integration Module Licenses, and as long as the change is not required because the Agency changes its RMS. Thereafter, any additional support services provided to the Agency will be charged at Axon's then current standard professional services rate.
 - 4.2 **Changes to Services.** Changes to the scope of the Integration Services must be documented and agreed upon by the Parties in a change order. If the changes cause an increase or decrease in any charges or cause a scheduling change from that originally agreed upon, an equitable adjustment in the charges or schedule will be agreed upon by the Parties and included in the change order, signed by both Parties.
 - 4.3 **Warranty.** Axon warrants that it will perform the Integration Services in a good and workmanlike manner.
5. **Acceptance.** Axon will present Agency with a completed Checklist (**Checklist**) certifying Axon's completion of the Integration Services. If Agency reasonably believes that Axon did not complete the Integration Services in substantial conformance with this SOW, Agency must notify Axon in writing of its specific reasons for rejection within 7 calendar days from delivery of the Checklist to the Agency. Axon will address the Agency's issues and will re-present the Checklist for the Agency's review. If Axon does not receive a written notification of the reasons



for rejection of the Checklist, the absence of a response will constitute Agency's affirmative acceptance of the Integration Services, and a waiver of any right of rejection.

6 Agency's Responsibilities. Axon's successful performance of the Integration Services depends upon the Agency's:

- 6.1 Making available its relevant systems, including its current RMS, for assessment by Axon (including making these systems available to Axon via remote access if possible);
- 6.2 Making any required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of the Integration Services;
- 6.3 Providing access to the building facilities and where Axon is to perform the Integration Services, subject to safety and security restrictions imposed by the Agency (including providing security passes or other necessary documentation to Axon representatives performing the Integration Services permitting them to enter and exit Agency premises with laptop personal computers and any other materials needed to perform the Integration Services);
- 6.4 Providing all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) necessary for Axon to provide the Integration Services;
- 6.5 Promptly installing and implementing any and all software updates provided by Axon;
- 6.6 Ensuring that all appropriate data backups are performed;
- 6.7 Providing to Axon the assistance, participation, review and approvals and participating in testing of the Integration Services as requested by Axon;
- 6.8 Providing Axon with remote access to the Agency's Evidence.com account when required for Axon to perform the Integration Services;
- 6.9 Notifying Axon of any network or machine maintenance that may impact the performance of the integration module at the Agency; and
- 6.10 Ensuring 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 to Axon (these contacts are to provide background information and clarification of information required to perform the Integration Services).

7 Authorization to Access Computer Systems to Perform Services. Agency authorizes Axon to access Agency's relevant computers, network systems, and RMS solely for the purpose of performing the Integration Services. Axon will work diligently to identify as soon as reasonably practicable the 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.

8 Definitions. "Integration Services" means the professional services provided by us pursuant to this SOW.



City of Berkeley Terms and Conditions

1. Non Discrimination

Axon agrees to comply with the provisions of the Berkeley Municipal Code (“B.M.C.”) Chapter 13.26, including, but not limited to, the following:

- i. Axon shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
- ii. Axon shall permit the City access to records of employment, employment advertisements, application forms, EEO-11 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Axon shall submit forms supplied by the City to monitor this non-discrimination provision.
- iii. Axon shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act and any and all other applicable federal, state and local disability rights legislation. Axon agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Axon, its subcontractors, employees, representatives, agents or assigns shall constitute a material breach of this Agreement.

2. Conflicts of Interest Prohibited

- a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Axon nor any employee, officer, director, partner or member of Axon, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Agreement.
- b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee, employee or consultant of Axon, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Axon.
- c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

3. Nuclear Free Berkeley

Axon agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

4. Oppressive States Contracting Prohibition

- a. In accordance with Resolution No. 59,853-N.S., Axon certifies that it has no contractual relations with, and agrees during the term of this Agreement to forego contractual relations to provide personal services to, the following entities:
 - (1) The governing regime in any Oppressive State.
 - (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
 - (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its agreement with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.



b. For purposes of this Agreement, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

c. Axon's failure to comply with this section shall constitute a default of this Agreement and City may terminate this Agreement pursuant to Section 3. In the event that the City terminates Axon due to a default under this provision, City may deem Axon a non-responsible bidder for not more than five (5) years from the date this Agreement is terminated.

5. Berkeley Living Wage Ordinance

a. Axon hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Axon is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Axon will be required to provide all eligible employees with City mandated minimum compensation during the term of this Agreement, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Axon expressly acknowledges that, even if Axon is not currently subject to the Living Wage Ordinance, cumulative agreements with City may subject Axon to the requirements under B.M.C. Chapter 13.27 in subsequent agreements.

b. If Axon is currently subject to the Berkeley Living Wage Ordinance, Axon shall be required to maintain monthly records of those employees providing service under the Agreement. These records shall include the total number of hours worked, the number of hours spent providing service under this Agreement, the hourly rate paid, and the amount paid by Axon for health benefits, if any, for each of its employees providing services under the Agreement. These records are expressly subject to the auditing terms described in Section 177.

c. If Axon is currently subject to the Berkeley Living Wage Ordinance, Axon shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Axon engages to execute its responsibilities under this Agreement. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Agreement shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If Axon fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

e. Axon's failure to comply with this Section shall constitute a material breach of the Agreement, upon which City may terminate this Agreement pursuant to Section 3. In the event that City terminates Axon due to a default under this provision, City may deem Axon a non-responsible bidder for not more than five (5) years from the date this Agreement is terminated.

In addition, at City's sole discretion, Axon may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Axon's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Axon's breach. City may deduct any assessed liquidated damages from any payments otherwise due Axon.

6. Berkeley Equal Benefits Ordinance

a. Axon hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Axon is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Axon will be required to provide all eligible



employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this agreement, as well as comply with the terms enumerated herein.

b. If Axon is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Axon agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 7 of this agreement.

c. If Axon fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

d. Axon's failure to comply with this Section shall constitute a material breach of the Agreement, upon which City may terminate this agreement pursuant to Section 3. In the event the City terminates this agreement due to a default by Axon under this provision, the City may deem Axon a non-responsible bidder for not more than five (5) years from the date this Agreement is terminated.

In addition, at City's sole discretion, Axon may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Axon's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Axon's breach. City may deduct any assessed liquidated damages from any payments otherwise due Axon.

7. Audit

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Axon's financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. In the event of such audit, Axonr agrees to provide the City Auditor with reasonable access to Axon's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Axon an opportunity to discuss and respond to any findings before a final audit report is filed.

8. SETOFF AGAINST DEBTS

Axon agrees that City may deduct from any payments due to Axon under this Agreement any monies that Axon owes City under any ordinance, agreement or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

9. COMPANY TO SUBMIT STATEMENTS OF ECONOMIC INTEREST

The City's Conflict of Interest Code, Resolution No. 60,788-N.S., as amended, requires providers who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code of Regs. § 18700, as amended from time to time, to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Axon agrees to file such statements with the City Clerk at the beginning of the agreement period and upon termination of the Axon's service.

10. INSURANCE

10.1 Prior to the execution of this Agreement, Axon shall furnish to City satisfactory proof that Axon has taken out for the entire period covered by this Agreement, as further defined below, the following insurance in a form satisfactory to City and with an insurance carrier satisfactory to City, authorized to do



business in California and rated by A. M. Best & Company A minus or better, financial category size seven (7) or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the services of Axon for which Axon may be legally liable, whether performed by Axon, or by those employed directly or indirectly by it, or by anyone for whose acts Axon may be liable:

10.1.1 Commercial general liability insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities, liability for slander, false arrest and invasion of privacy arising out of construction management operations, blanket contractual liability, broad form endorsement, a construction management endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than \$2,000,000 general aggregate and \$2,000,000 each occurrence, subject to a deductible of not more than \$25,000 payable by Company.

10.1.2 Business automobile liability insurance with limits not less than \$1,000,000 each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than \$10,000 payable by Axon.

10.1.3 Full workers' compensation insurance for all persons whom Axon may employ in carrying out Work contemplated under Agreement, in accordance with Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act", approved May 26, 1913, and all Acts amendatory or supplemental thereto. Workers' compensation policy shall include Employer Liability Insurance with limits not less than \$1,000,000 each accident.

10.1.4 Professional Liability Insurance, specific to this Project only, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, and any deductible not to exceed \$50,000 each claim, with no exclusion for claims of one insured against another insured.

10.2 Insurance policies shall contain an endorsement containing the following terms:

10.2.1 City, and its directors, officers, partners, representatives, employees, contractors, subcontractors, and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.

10.2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

10.2.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to City thirty (30) days in advance of the effective date thereof.

10.2.4 Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than the Axon shall be called upon to contribute to a loss covered by insurance for the named insured.

10.3 Certificates of Insurance and Endorsements shall have clearly typed thereon the title of the Agreement, shall clearly describe the coverage and shall contain a provision requiring the giving of written notice described above in subparagraph 10.2.3.

10.4 At the time of making an application for an extension of time, Axon shall submit evidence that insurance policies will be in effect during requested additional period of time.



10.5 Nothing herein contained shall be construed as limiting in any way the extent to which Axon or any of its permitted subcontractors or consultants may be held responsible for payment of damages resulting from their operations.

10.6 If Axon fails to maintain any required insurance, City may take out such insurance, and deduct and retain amount of premium from any sums due Axon under this Agreement.

10.7 Axon shall forward all insurance documents to, Debra Montgomery, Department of Information Technology, 2180 Milvia Street, 4th Floor, Berkeley, CA 94704.

11. City Business License, Payment of Taxes, Tax ID Number

Axon has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Axon is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Axon shall pay all state and federal income taxes and any other taxes due. Axon certifies under penalty of perjury that the taxpayer identification number written below is correct.

- a. Business License Number
- b. B.M.C. §
- c. Taxpayer ID Number
- d.

NON-DISCRIMINATION/WORKFORCE COMPOSITION

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

To assist the City of Berkeley in implementing its Non-Discrimination policy, you're requested to furnish information regarding your personnel, as indicated below, and return this form to the City Department handling your contract.

ORGANIZATION Axon Enterprise, Inc.
ADDRESS 17800 N. 85th St., Scottsdale, AZ 85255
BUSINESS LICENSE # F-0979240-7

You may complete this online & make entries in these cells, they will be automatically totaled at the bottom, or print the form & complete by hand/typewriter.

Occupational Category (see page 2 for definitions)	ALL EMPLOYEES		WHITE		BLACK		ASIAN		HISPANIC		OTHER (specify)**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials/Administrators	109	30	89	26	5	1	10	1	5	2	-	-
Professionals	179	57	139	42	2	-	24	10	14	5	-	-
Technicians	22	2	18	2	-	-	-	-	4	-	-	-
Protective Service Workers	-	-	-	-	-	-	-	-	-	-	-	-
Para-professionals/Sales	94	13	84	12	4	-	2	-	4	1	-	-
Office/Clerical	64	56	42	42	2	2	12	6	8	6	-	-
Skilled Craft Workers	3	-	-	-	-	-	1	-	2	-	-	-
Service/Maintenance	-	-	-	-	-	-	-	-	-	-	-	-
Other Occupation: Specify*	70	159	29	69	2	2	11	9	28	78	-	-
Totals	541	317	401	193	15	5	60	26	65	91	-	2

*Specify other occupation: Operatives (semi-skilled)
 **Specify other ethnicity: American Indian or Alaskan Native

Is your business MBE/WBE/DBE certified? NO YES If Yes, by what agency? _____
 If Yes, please specify: or ethnic identification: _____

Do you have a policy of non-discrimination? Yes No
 Signature: [Signature] Date: 10/29/17

Print/Type Name of Signer: Josh Isher, EVP Global Sales
 Verified by: _____ Date: _____
 City of Berkeley Contract Administrator



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
06/19/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Insurance Services West, Inc. Phoenix AZ Office 2555 East Camelback Rd. Suite 700 Phoenix AZ 85016 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105		
	E-MAIL ADDRESS:		
INSURED Axon Enterprise, Inc. 17800 N. 85th Street Scottsdale AZ 85255 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Twin City Fire Insurance Company		29459
	INSURER B: Hartford Casualty Insurance Co		29424
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES **CERTIFICATE NUMBER: 570066959115** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMPI/OP AGG
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			59 UUN ZM9776	09/30/2016	09/30/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION						EACH OCCURRENCE AGGREGATE
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			59WEPE1196	09/11/2016	09/11/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 The City of Berkeley, its officers, agents, employees and volunteers are included as Additional Insured in accordance with the policy provisions of the Automobile Liability policy.

CERTIFICATE HOLDER City of Berkeley 2100 Martin Luther King, Jr. Way Berkeley CA 94704 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Insurance Services West, Inc.</i>

Holder Identifier :

Certificate No : 570066959115

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ACORD 25 (2016/03)

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ENDORSEMENT

This endorsement, effective 12:01 AM 12/15/2016

Forms a part of policy no.: 021391643

Issued to: TASER INTERNATIONAL, INC.

By: LEXINGTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED REQUIRED BY WRITTEN CONTRACT

The City of Berkeley, it's officers, agents, employees, and volunteers
2100 Martin Luther King, Jr. Way
Berkeley CA 94704 USA

- A. Section II - Who Is An Insured** is amended to include any person or organization you are required to include as an additional insured on this policy by a written contract or written agreement in effect during this policy period and executed prior to the "occurrence" of the "bodily injury" or "property damage."
- B.** The insurance provided to the above described additional insured under this endorsement is limited as follows:
1. **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE** (Section I - Coverages) only.
 2. The person or organization is only an additional insured with respect to liability arising out of "your work" or "your product" for that additional insured.
 3. In the event that the Limits of Insurance provided by this policy exceed the Limits of Insurance required by the written contract or written agreement, the insurance provided by this endorsement shall be limited to the Limits of Insurance required by the written contract or written agreement. This endorsement shall not increase the Limits of Insurance stated in the Declarations under Item 3. Limits of Insurance pertaining to the coverage provided herein.
 4. The insurance provided to such an additional insured does not apply to "bodily injury" or "property damage" arising out of an architect's, engineer's or surveyor's rendering of or failure to render any professional services including:
 - i The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - ii Supervisory, inspection, architectural or engineering activities.
 5. This insurance does not apply to "bodily injury" or "property damage" arising out of "your work" or "your product" included in the "products-completed operations hazard" unless you are required to provide such coverage by written contract or written agreement and then only for the period of time required by the written contract or written agreement and in no event beyond the expiration date of the policy.

6. Any coverage provided by this endorsement to an additional insured shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance apply on a primary or non-contributory basis.
- C. Subparagraph (1)(a) of the Pollution exclusion paragraph 2.f, Exclusions of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) does not apply to you if the "bodily injury" or "property damage" arises out of "your work" or "your product" performed on premises which are owned or rented by the additional insured at the time "your work" or "your product" is performed.
- D. In accordance with the terms and conditions of the policy and as more fully explained in the policy, as soon as practicable, each additional insured must give us prompt notice of any "occurrence" which may result in a claim, forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with all of the policy's terms and conditions.



Authorized Representative



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
06/19/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Insurance Services West, Inc. Phoenix AZ Office 2555 East Camelback Rd. Suite 700 Phoenix AZ 85016 USA	CONTACT NAME: PHONE (A/C, No. Ext): (866) 283-7122 FAX (A/C, No.): (800) 363-0105	
	E-MAIL ADDRESS:	
INSURED Axon Enterprise, Inc. 17800 N. 85th Street Scottsdale AZ 85255 USA	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Colony Insurance Company	NAIC # 39993
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES **CERTIFICATE NUMBER: 570066959122** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION						EACH OCCURRENCE AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NJ) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT
A	E&O-Technology			E0407121 Cyber & Professional E&O	09/18/2016	09/30/2017	Per Claim \$5,000,000 Aggregate \$5,000,000 Deductible \$75,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 The City of Berkeley, its officers, agents, employees and volunteers are included as Additional Insured in accordance with the policy provisions of the Cyber Liability policy.

CERTIFICATE HOLDER City of Berkeley 2100 Martin Luther King, Jr. way Berkeley CA 94704 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Aon Risk Insurance Services West Inc.</i>
--	--

Holder Identifier :

Certificate No : 570066959122

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ACORD 25 (2016/03)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER
FROM OTHERS ENDORSEMENT**

Policy Number: 59 WE PE1196

Endorsement Number:

Effective Date: 09/11/16 Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: TASER INTERNATIONAL INC

17800 N 85TH ST
SCOTTSDALE, AZ 85255

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

ANY PERSON OR ORGANIZATION
FROM WHOM YOU ARE REQUIRED
BY WRITTEN CONTRACT OR
AGREEMENT TO OBTAIN THIS
WAIVER OF RIGHT FROM US

Countersigned by _____
Authorized Representative

Form WC 00 03 13 Printed in U.S.A.
Process Date: 09/21/16

Policy Expiration Date: 09/11/17

ENDORSEMENT

This endorsement, effective 12:01 AM 12/15/2016

Forms a part of policy no.: 028182385

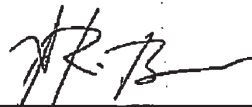
Issued to: TASER INTERNATIONAL, INC.

By: LEXINGTON INSURANCE COMPANY

**WAIVER OF SUBROGATION
(BLANKET)**

It is agreed that we, in the event of a payment under this policy, waive our right of subrogation against any person or organization where the insured has waived liability of such person or organization as part of a written contractual agreement between the insured and such person or organization entered into prior to the "occurrence" or offense.

All other terms and conditions remain unchanged.



Authorized Representative OR
Countersignature (In states where applicable)



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
05/31/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER Aon Risk Insurance Services west, Inc. Phoenix AZ Office 2555 East Camelback Rd. Suite 700 Phoenix AZ 85016 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122		FAX (A/C. No.): (800) 363-0105
	E-MAIL ADDRESS:		
INSURED Axon Enterprise, Inc. 17800 N. 85th Street Scottsdale AZ 85255 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Lexington Insurance Company		19437
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER:** 570066587661 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Claims Made Policy for ECD Taser Only <input checked="" type="checkbox"/> Occurrence Policy for Non-ECD GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: /			028182385 GL - Claims Made 021391643 GL - Occurrence	12/15/2016	12/15/2017	EACH OCCURRENCE \$10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) Excluded MED EXP (Any one person) Excluded PERSONAL & ADV INJURY Included GENERAL AGGREGATE \$10,000,000 PRODUCTS - COMP/OP AGG \$10,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT

Certificate No : 570066587661

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The General Liability Occurrence policy and the Claims Made policy share the limit. City of Berkeley, its Officers, Agents, Employees and volunteers are included as Additional Insured in accordance with the policy provisions of the General Liability policy.

CERTIFICATE HOLDER City of Berkeley 2100 Martin Luther King, Jr. Way Berkeley CA 94704 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Insurance Services West Inc.</i>

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED AND RIGHTS OF RECOVERY AGAINST OTHERS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

- A. Any person or organization whom you are required by contract to name as additional insured is an "insured" for LIABILITY COVERAGE but only to the extent that person or organization qualifies as an "insured" under the WHO IS AN INSURED provision of Section II - LIABILITY COVERAGE.
- B. For any person or organization for whom you are required by contract to provide a waiver of subrogation, the Loss Condition - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US is applicable.

68,060

RESOLUTION NO. ###,###-N.S.

CONTRACT: AXON FOR TWO HUNDRED BODY WORN CAMERAS ALONG WITH RELATED HARDWARE, SOFTWARE, AND STORAGE

WHEREAS, 200 body worn cameras are needed by the Berkeley Police Department to provide evidence in criminal investigations and better document police interactions with the community; and

WHEREAS, Charter section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City is using pricing obtained by another public entity through a competitive process; and

WHEREAS, National Intergovernmental Purchasing Alliance (National IPA) agreements are available for purchasing by state and local governments; and

WHEREAS, the National IPA has Cooperative Purchasing Agreements with vendors, thus providing lower costs on commodities and equipment to participating public agencies; and

WHEREAS, the Berkeley Police Department and Finance-General Services reviewed the specifications and determined the National IPA contract meets the needs of the Police Department; and

WHEREAS, the cost of 200 cameras, related hardware, software licenses, storage and support for 5 years will not exceed \$1,250,000 and funds will be available in FY2018 as follows: \$250,000.00 in 010-7101-420-70-47 and for each fiscal year through FY2022.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that pursuant to the National IPA bid procedures and specifications, the City Manager is hereby authorized under Charter section 672 to negotiate and execute a contract and any amendments to purchase 200 new body worn cameras along with the related hardware, software licenses, storage and support for five years from Axon in an amount not to exceed \$1,250,000.

6/27/2017
#24 Consent

ATTACHMENT 5

BPD BWC PAYMENT SUMMARY

Payment Summary

Date	Subtotal	Tax	Total
Aug 2022	\$216,562.00	\$5,880.63	\$222,442.63
Aug 2023	\$216,562.00	\$5,880.63	\$222,442.63
Aug 2024	\$216,562.00	\$5,880.63	\$222,442.63
Aug 2025	\$216,562.00	\$5,880.63	\$222,442.63
Aug 2026	\$216,562.00	\$5,880.63	\$222,442.63
Total	\$1,082,810.00	\$29,403.15	\$1,112,213.15

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
3-9-2023**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21 Renewed 6-22-22	Calavita Leftwich Owens <u>Public:</u> Kitt Saginor		Lt. Dan Montgomery
Fair & Impartial Policing Implementation Formed 8-4-21 Renewed 9-14-22	Calavita Moore Owens <u>Public:</u> George Lippman Elliot Halpern	Calavita	Sgt. Peter Lee
Mental Health Response Formed 11-10-21 Scope expanded 3-9-22	Harris Levine <u>Public:</u> Elena Auerbach		Sgt. Joe LeDoux
Fixed Surveillance Cameras (Policy 351) Formed 2-9-22	Calavita		
Controlled Equipment Use & Reporting Formed 5-11-22	Moore	Moore	Sgt. Peter Lee Sgt. Joe LeDoux
Chief of Police Process Formed 9-30-22	Leftwich Levine Moore		

Drone Use Policy Formed 11-9-22	Requires Assignment		
Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations Formed 11-15-22	Calavita Moore Owens	Owens	



SUPPLEMENTAL INFORMATION REPORT

Date: Monday, March 27, 2023
To: Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability (DPA) *HA*
Jose Murillo, Policy Analyst (ODPA) *JM*
Subject: Berkeley Police Department Surveillance Ordinance Policies Related to Unmanned Aerial System (“Drones”) (Policy 611, Policy 1303 and Related Surveillance Acquisition Report)

Background:

The Police Accountability Board (PAB) made recommendations on BPD policies 611, 1303, and the related surveillance acquisition report for Drone usage to Interim Chief Louis and the Honorable members of the City Council on Thursday, February 23, 2023. In this report, the PAB recommended that the Council and BPD not implement the proposed policies. Instead, the PAB suggested that these policies be further revised to limit the use of drones in the most critical situations and reduce the risk of constitutional violations.

On March 20, 2023, the Public Safety Policy Committee (hereinafter the “Committee”) convened a meeting to discuss the proposed policies and review the PAB's recommendations, to determine any further actions necessary for the BPD or PAB. Jose Murillo, ODPAs Policy Analyst, was virtually present at the meeting. During the meeting, the Committee requested additional information from the PAB on the following matters:

1. Could the PAB further elaborate on potential threats to civil rights and liberties that may arise from the proposed policies?
2. Does the PAB have any recommended resources or model policies available that the Council can use as a reference for best practices regarding drone usage?

The purpose of this memorandum is to present to the PAB additional information to assist the members in answering the Committee's inquiries.

Response:

The PAB may wish to consider the following when responding to the questions posed by the Committee:

1. Potential Threats to Civil Rights and Liberties Arising from Proposed Drone Policies

*"The use of drones is limited only by one's creativity."
— Deputy Chief Tony Zucaro, Virginia Beach Police Department*

In its policy review report dated February 23, 2023, the PAB expressed apprehensions regarding the possible consequences for civil liberties and constitutional rights. The PAB stated that the use of drones could potentially endanger the First Amendment rights to assemble freely and peacefully (U.S. Const. amend. I) and Fourth Amendment protection that safeguards "the privacy and security of individuals against arbitrary invasions by governmental officials" (*Camara v. Municipal Court of City and County of San Francisco*, 1967). These concerns arise from the proposed authorized use of drones for "other unforeseen exigent circumstances," as well as the absence of a prohibition on using drones to collect or retain data on private citizens peacefully exercising their constitutional rights of free speech and assembly. The PAB is concerned that the definition of "exigent circumstances" is too broad in this case and that it could result in unintended uses of this technology.

As it relates to the definition of "exigent circumstances," BMC 2.99 defines an exigent circumstance as the "City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires the use of the surveillance technology or the information it provides" (BMC 2.99.020(5)). The Supreme Court of the United States has weighed in on this definition throughout the decades. In *United States v. McConney* (1982), the Court defined exigent circumstances as "circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or other consequence improperly frustrating legitimate law enforcement efforts." Later on in *Michigan v. Fisher* (2009) and in *Missouri v. McNeely* (2013) the Court expanded on the previous definition to include a variety of other circumstances (i.e. provide emergency medical assistance) that would allow for a lawful search without warrants. As a general point, it is important to maintain certain aspects of the policy broad to be able to address unforeseen circumstances; however, to remain consistent with previous positions the PAB has expressed, the definition should be narrowed down.

One specific incident that has guided this stance arose from a policy complaint the Board received in October of 2022. This complaint involved the alleged acquisition of

Alameda County Sheriff's Office (ASCO) drones by the BPD to provide additional security in the Solano Stroll event. The PAB's inquiry into the incident later revealed that the BPD had not requested these drones (the request was made by Albany PD) and that the submitted surveillance technology report was a result of a misunderstanding. Nevertheless, the PAB took issue with the surveillance use reporting because the exigent circumstances articulated were based on "unfortunate recent attacks on similar events¹". Under the PAB's assessment, such justification would not have met the threshold to deploy surveillance technology at a public gathering.

As a result of this incident, the PAB has expressed that it is vital to define an exigent circumstance in the context of this policy as well as specifically prohibit the use of drones to monitor and collect data of private citizens exercising their first amendment rights. It should be noted, however, that case law as it relates to the fourth amendment and law enforcement use of drones is far more extensive than it is for the implications of the first amendment and law enforcement surveillance of lawful assemblies. Although the BPD has removed the monitoring of social events and public gatherings from its proposed policies, which are primarily based on Oakland PD's current policy², it does not prohibit it. In *United States v. Jones* (2011), the Supreme Court rejected the argument that there is no reasonable expectation of privacy in a person's movement on public thoroughfares as it relates to the fourth amendment. In her concurring opinion, Justice Sotomayor made the following observation:

Awareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse...

Additionally, she draws from *United States v. Cuevas-Perez*, 640 F. 3d 272, 285 (CA7 2011) to express concerns about what unfettered discretion to track data can do to community relations. Specifically, she quotes that it may, "alter the relationship between citizen and government in a way that is inimical to a democratic society". Taking this context into account as well as Berkeley's rich history of first amendment advocacy, the PAB should consider emphasizing that drones in public gatherings should be prohibited (barring exigent circumstances).

It is under these considerations that the PAB should consider presenting its concerns back to the Committee to further guide the discussion on civil rights and liberties. The PAB has not rejected the notion that drones can be an important tool but it has been consistent in its stance that there is a need to add safeguards that ensure the maximum protection of the first and fourth amendments.

¹ See Attachment 1, which contains a letter from Interim Chief Louis to the City Council. The letter, dated September 30, 2022, pertains to the use of Unmanned Aerial Vehicle (Drone) and bears the subject line "Notification regarding use of Unmanned Aerial Vehicle (Drone)."

² See Attachment 2, Oakland PD General Order I-25 "Unmanned Aerial Systems"

2. Recommended Resources, Model Policies, or Best Practices Related to Drone Usage by Police Departments

The sudden appearance of police drones and the increased attention they are receiving has raised questions about their origin and purpose. While consumer drones became readily available in the early 2010s, strict regulations regarding civilian drone use initially restricted police use of drones. However, in 2016, the Federal Aviation Administration (FAA) implemented the “Part 107” rule, which allowed non-hobby drone use in American airspace. This rule change led to a surge in police drone usage, with a record number of agencies acquiring drones in 2017 (Greenwood, 2020). Naturally, concerns about their use and data collection have been raised which has led the 1,500+ jurisdictions in possession of drones to implement various policies to address the needs and concerns of their community.

Although the use of drone technology in law enforcement has gained popularity, it is still a relatively new implementation, making it premature to label any policy as a "model policy." As an alternative, the ODPa suggests referring to the guidelines outlined in the Community Policing & Unmanned Aircraft Systems (UAS) report from the Community Oriented Policing Services (COPS), which offer a framework for the acquisition and usage of drones and enable the creation of a tailored policy that caters to the specific needs of the community. Specifically, guidelines on how to address community concerns & liabilities, identifying the community’s role in a UAS program, deciding on needs, and developing UAS policy and procedures (Valdovinos, et al., 2016). Additionally, the report also highlights the following prohibitions that should be considered based on the responses of focus groups and advisory board members across the country:

- A prohibition on any use of force involving a UAS, including weaponization.
- A prohibition on *generalized* patrol and intelligence-gathering missions.
- A prohibition on data-driven information gathering, such as crowd monitoring or estimating during peaceful demonstrations; or revenue-generating such as monitoring traffic or parking areas.

These prohibitions directly address some of the concerns that have been presented by the community (Valdovinos, et al., 2016).

An additional resource the PAB may wish to recommend to the Committee is the 2020 Police Executive Research Forum (PERF) publication titled Drones A Report on the Use of Drones by Public Safety Agencies—and a Wake-Up Call about the Threat of Malicious Drone Attacks. That report was published after a February 2019, two-day conference in Washington, D.C that was convened to discuss the policy and operational issues regarding the implementation and use of drones. The agencies that brought the conference together included the COPS Office, the PERF, and the U.S. Department of Homeland Security (DHS). The publication synthesizes information presented and discussed by the conference participants; lessons learned; and promising practices gathered from interviews, policy reviews, and survey data to provide law enforcement agencies with guidance on implementing a drone program. The ODPa urges the City’s

decision-makers to pay close attention to the important pre-implementation recommendations from the report concerning community outreach:

- Engage with the community before implementing a drone program to ensure support for the program.
 - Proactively reach out to community organizations that are likely to have reservations about drone use, such as civil liberties or privacy interest groups, prior to program implementation. This can help the agency to get ahead of concerns, address them properly, and avoid misunderstandings.
 - Solicit feedback from community stakeholders to ensure that community concerns are addressed properly.
 - Host outreach events during a variety of days and times to ensure that a large majority of community members will be able to attend such events.
- Communicate with the public and community stakeholders about the authorized and official purposes of your drone program to ease privacy concerns about the uses of drones and alleviate concerns about unauthorized uses or purposes.
 - Stress that the use of drones is to promote public safety and not for loosely defined surveillance purposes.
 - Use print, broadcast, and social media to inform and engage the public.
 - Involve your agency's public information officer to share information widely.
- Be transparent about your agency's drone policies and practices both prior to and after implementation. (pg. xiv-xv)

Table of Authorities

- ❖ Berkeley Municipal Code §2.99
- ❖ California Constitution. (n.d.). Article I, section 2, subdivision (a).
- ❖ U.S. Const. amend. I.
- ❖ *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967).
- ❖ *United States v. McConney*. (1982). 728 F.2d 1195. *United States v. McConney*. (1982). 728 F.2d 1195.
- ❖ *Michigan v. Fisher* (2009). 558 U.S. 45.
- ❖ *Missouri v. McNeely*, 569 U.S. 141 (2013)
- ❖ *United States v. Jones*, 565 U.S. 400 (2012).

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Greenwood, F. (2020, September 24). *How to regulate police use of drones*. Brookings. <https://www.brookings.edu/techstream/how-to-regulate-police-use-of-drones/>

Police Executive Research Forum. *Drones: A Report on the Use of Drones by Public Safety Agencies—and a Wake-Up Call about the Threat of Malicious Drone Attacks*. Washington, DC: Office of Community Oriented Policing Services, (2020).

Valdovinos, Maria, Specht, James, and Zeunik, Jennifer 2016. *Community Policing & Unmanned Aircraft Systems (UAS): Guidelines to Enhance Community Trust*. Washington, DC: Office of Community Oriented Policing Services.



SUPPLEMENTAL INFORMATION REPORT

Date: Monday, March 27, 2023
To: Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability (DPA) *HA*
Jose Murillo, Policy Analyst (ODPA) *JM*
Cc:
Subject: Berkeley Police Department Surveillance Ordinance Policies Related to Fixed Surveillance Cameras (Policy 351, Policy 1304, and Related Surveillance Acquisition Report)

Background:

The Police Accountability Board (PAB) made recommendations on BPD policies 351, 1304, and the related surveillance acquisition report for fixed camera surveillance systems to Interim Chief Louis and the Honorable members of the City Council on Friday, March 10, 2023. The PAB noted several inconsistencies between what was perceived to be the Council's original intent and the proposed policies. The PAB also sought clarity as to why two different policies were drafted for the same technology and why "exigent circumstances" were not defined within the policies.

On March 20, 2023, the Public Safety Policy Committee (hereinafter the "Committee") convened a meeting to discuss the proposed policies and review the PAB's recommendations, to determine any further actions necessary for the BPD or PAB. Jose Murillo, ODPa Policy Analyst, was virtually present at the meeting. During the meeting, the committee requested additional information from the PAB on the following matters:

1. What is the PAB's stance on the use of fixed camera surveillance systems for oversight activities and traffic investigations?

2. Does the PAB have any further information on the effectiveness of fixed video camera surveillance in reducing crime and deterring criminal activity?

The purpose of this memorandum is to present to the PAB additional information to assist the members in answering the Committee's inquiries.

Response:

The PAB may wish to consider the following when responding to the questions posed by the Committee:

1. **The PAB's Stance on the Use of Fixed Camera Surveillance Systems for Oversight Activities and Traffic Investigations**

In reviewing these policies, the PAB did not take a formal stance on whether or not additional fixed video camera surveillance systems should be implemented. Instead, it chose to flag the sections of the policy that were inconsistent with the original proposal of the Council and provide resources that the Council could use to make a research-driven decision. As such, the PAB recommended that the BPD revise these policies to reflect the original proposal. Additionally, the PAB notes that further research may be required to be able to make an informed decision as it relates to the effectiveness of the proposed technology and its implementation.

At the Committee's March 20, 2023, the PAB was asked for their stance on the potential use of fixed video surveillance cameras as an oversight tool. Given the information provided and the PAB's research, the ODPa believes the PAB should maintain its stance that further research is required before a decision is made on the impacts of surveillance cameras for oversight activity. In posing this question to the PAB, the Committee referenced the tragic death of Tyre Nichols as an example of how fixed video surveillance cameras could be used for oversight purposes. The claim is that through the implementation of this technology, an additional oversight tool could be made available to the PAB. However, the ODPa notes that the context behind the fixed video camera incident was, to an extent, a coincidence. The video of this tragic and horrendous incident was only captured because an operator at a 24/7 surveillance center adjusted the camera to capture the incident, otherwise, the angle at which the camera was originally placed would have not captured the incident (Neus, 2023). Memphis has spent over 10 million dollars buying and installing more than 2,100 cameras and related

technologies—not including the staff that monitors them (Stoud, 2023). Despite this investment, violent crime rates in Memphis have risen consistently during the past decade (Stoud, 2023).

Additionally, the Committee sought the perspective of the PAB on the potential for surveillance cameras to assist in fatal traffic investigations. At this time, the ODPA does not have enough information to determine how effective they would be in helping traffic investigations in the City. Without this data, it is difficult to weigh in on whether the fiscal and social costs of implementing such technology are outweighed by the hypothetical benefits. However, the BPD’s most recent annual report provided historical data on fatal collisions in the City of Berkeley (see Figure 1). It is unclear why the BPD or the City would make an investment of this magnitude to address a public safety issue that has historically not been a top concern (i.e. fatal collisions have accounted for less than 1% of the total annual collisions).

The following provides historical data on fatal collisions in the City of Berkeley:

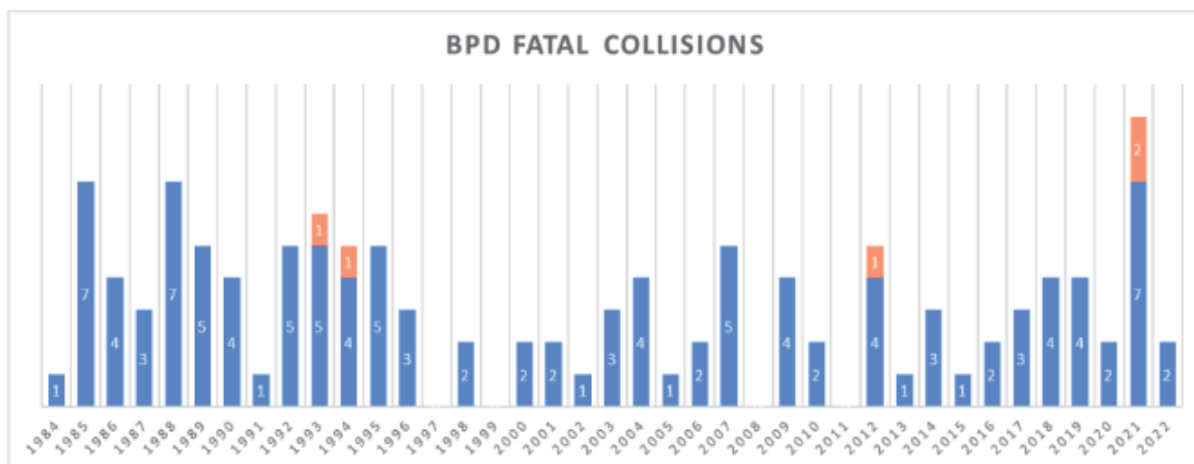


Figure 1 FATAL COLLISIONS IN THE CITY OF BERKELEY
Source: BPD (2023)

The PAB should consider maintaining the position that, as an advisory body, it would be inconsistent and antithetical to its work, to take a stance on an issue without conclusive evidence or research to justify the effectiveness of a technology. Further studies are needed to gain a better understanding of the technology’s potential benefits

within the City of Berkeley. In their report, the PAB provided additional studies on the matter, which are summarized in the following section.

2. Effectiveness of Fixed Video Camera Surveillance in Reducing Crime and Detering Criminal Activity: Further Information by the PAB

The PAB's March 10th report referenced a research study by the Urban Institute titled "Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention," which analyzed the public surveillance systems in Baltimore, Chicago, and Washington D.C. The study evaluated the selection and implementation of each system, as well as their effectiveness in achieving their intended purposes. According to the report, Baltimore and Chicago experienced a varied decrease in crime, while Washington D.C. did not. The report also highlighted that the jurisdictions with reduced crime rates monitored the cameras in real-time and had a wide range of coverage across the city—drastically increasing their expenditure (La Vigne et al., Page xii). In addition to citing the Urban Institute's research report, the PAB provided five additional analyses and reports on the subject matter.

Piza, E. L., Welsh, B. C., Farrington, D. P., & Thomas, A. L. (2019). "CCTV surveillance for crime prevention: A 40-year systematic review with meta-analysis." *Criminology & public policy*, 18(1), 135-159.

This report, which analyzed 40 years of evaluation, supports the ongoing use of CCTV for preventing crime. The findings specifically underscore the importance of targeting CCTV towards vehicle crime and property crime, rather than relying on it as a sole crime prevention measure. CCTV was found to have a substantial impact on reducing both vehicle crime and property crime but did not demonstrate significant effects on violent crime. The findings suggest that public safety agencies that are dealing with violent crime issues may need to reevaluate their resource allocation and consider other crime prevention measures.

For jurisdictions that already have CCTV systems in place, the research found that public safety agencies may need to modify their existing strategies to more effectively combat violence such as the introduction of live monitoring cameras. One advantage identified by the study was that live monitoring CCTV cameras were the ability to identify

incidents of concern in real-time and dispatch officers to the scene before the situation escalates into serious violence. However, it is noted that actively-monitored CCTV systems require a greater commitment of resources than less effective passive systems. **Piza, E.L. (2018). "The crime prevention effect of CCTV in public places: A propensity score analysis." *Journal of Crime and Justice*, 41(1), 14-30.**

This text discusses the effectiveness of closed-circuit television (CCTV) as a crime prevention strategy, particularly in relation to motor vehicle crime in Newark, New Jersey. The research indicates that CCTV works best in preventing motor vehicle crime, with the current study finding an exclusive reduction in auto theft. However, the CCTV's effect on auto theft in the current study is classified as extremely modest, and the alternate calculations of the odds ratio only approach statistical significance. CCTV seems like a more promising strategy to combat auto theft than theft violent crime. The research suggests that CCTV works best when integrated alongside other crime control strategies and when camera coverage is high. CCTV has not consistently reduced street-level crime in public places, but it can be cost-beneficial to society as a whole. The study's findings have implications for criminological theory, and CCTV is commonly considered a situational crime prevention strategy that seeks to increase the risk of offending by strengthening formal surveillance and place management. However, the largely null effects reported in the current study suggest that CCTV may not significantly influence offender decision-making without ensuring the participation of capable human agents who can effectively respond to criminal behavior observed on camera.

National Academies of Sciences, Engineering, and Medicine. (2018). "Proactive policing: Effects on crime and communities." *National Academic Press*.

This review discusses the use of CCTV as a technology to enhance police capacity for proactive intervention at specific locations. CCTV can be utilized either passively or proactively. Although the studies examining the introduction of CCTV camera schemes have shown mixed results, passive monitoring approaches tend to have modest outcomes in reducing property crimes at high-crime places. However, there is inadequate evidence to conclude the impact of proactive CCTV use on crime and disorder reduction.

Alexandrie, G. (2017) "Surveillance cameras and crime: a review of randomized and natural experiments." *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 18(2), 210-222.

In this review, the effectiveness of surveillance cameras in reducing crime was examined based on several studies. The studies found that surveillance cameras can lead to a reduction in overall crime rates by 24-28% in public street settings and urban subway stations, but not in commuter parking facilities or suburban subway stations. The review also showed that surveillance cameras were particularly effective in reducing property crimes such as theft or pickpocketing. Additionally, some studies indicated that surveillance cameras can reduce certain types of violent crime, including unruly spectator behavior and robbery. However, no significant effects were found in aggregate violent crime, homicide, assault, or sexual offenses. It should be noted that the statistical significance of the results varied across different model specifications.

Lum, C., Koper, C.S., & Willis, J. (2017). *Understanding the limits of technology's impact on police effectiveness. Police Quarterly*, 20(2), 135-163.

The article discusses how technology can impact police effectiveness and efficiency, but there are complex linkages between the acquisition, implementation, and uses of technology and desired outcomes. The organizational and technological frames mediate the relationship between the adoption, implementation, and use of technology, and the outcomes sought. The reactive standard model of policing that dominates law enforcement practice creates strong organizational and technological frames, which powerfully mediate the effects of technology on discretion, efficiency, and effectiveness. Police officers' views on technology are strongly shaped by the value they place on technical efficiency, which is a dominant technological frame. This explains why commanders, supervisors, and detectives who use records management and report writing systems less were more positive about technology's cost benefits than patrol officers who had to struggle with laborious data entry processes. The study found that the absence of a clear and consistent relationship between technological advances and improved performance in policing is due to various factors such as the incongruence of technological frames across ranks or units within an agency, and the resistance of officers to use technologies that they do not consider efficient. The article also suggests that the

success of technological innovation depends on factors such as ease of use, familiarity with technology, and management practices.


Figure 1 FATAL COLLISIONS IN THE CITY OF BERKELEY..... 3

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- Piza, E. L., Welsh, B. C., Farrington, D. P., & Thomas, A. L. (2019). “CCTV surveillance for crime prevention: A 40-year systematic review with meta-analysis.” *Criminology & public policy*, 18(1), 135-159.
- Piza, E.L. (2018). “The crime prevention effect of CCTV in public places: A propensity score analysis.” *Journal of Crime and Justice*, 41(1), 14-30.
- Stoud, Matt. *10 years. \$10M. 2,100 SkyCop cameras. And a crime increases of 57%*. (n.d.). McGraw Center for Business Journalism. Retrieved March 24, 2023, from <https://www.mcgrawcenter.org/stories/10-years-10m-2100-skycop-cameras-and-a-crime-increase-of-57/#:~:text=Since%202010%2C%20the%20City%20of>
- Weisburd, & Majmundar, M. K. (2018). *Proactive policing: effects on crime and communities* (Weisburd & M. K. Majmundar, Eds.). National Academies Press.



March 27, 2023

TO: Julie Leftwich, Board Member
FROM: Hansel Aguilar, Director of Police Accountability (DPA) 
CC: Police Accountability Board (PAB)
Subject: Preliminary Research on Independent Counsel and Civilian Oversight

The purpose of this memorandum is to provide Board Member Leftwich and the PAB members with some preliminary research on Independent Counsel and civilian oversight to inform the discussions on conflicts of interest.

Civilian oversight of law enforcement agencies in the United States refers to the various mechanisms and processes put in place to monitor and regulate the conduct of law enforcement agencies and their personnel. One important aspect of civilian oversight is the use of independent counsel, which refers to the appointment of an outside lawyer or legal team to review and provide legal advice on cases involving law enforcement agencies.

A preliminary review of civilian oversight of law enforcement agencies in the US shows that many have some form of independent counsel in place. However, the specific nature and scope of the independent counsel vary from one jurisdiction to another.

For example, in New York City, the Civilian Complaint Review Board (CCRB) has its own General Counsel. The General Counsel provides legal guidance to the Board and all divisions of the CCRB. The General Counsel also oversees all outside litigation matters involving the CCRB; ensures that the CCRB follows all applicable federal, state, and local laws; and coordinates with NYC Law Department on policy and legislative matters. More information about the CCRB can be found here: <https://www.nyc.gov/site/ccrb/index.page>

Similarly, in Los Angeles, the Police Commission has an Office of the Inspector General, which serves as an independent counsel for the commission. The inspector general's office has the power to conduct investigations and audits of the

police department and to issue recommendations to the commission on matters related to police misconduct.

More information about the OIG can be found here: <https://www.oig.lacity.org/>

In other cities like the Washington DC Office of Police Complaints operates under the supervision of its executive director, who is appointed by the Police Complaints Board. The office has its own investigative staff, which consists of two investigations managers, three senior investigators, and seven investigators. The management team and investigative staff are assisted by a legal counsel, executive assistant, research analyst, public affairs specialist, staff assistant, program coordinator, investigative clerk, and receptionist. More information about the OPC can be found here: <https://policecomplaints.dc.gov/>

However, not all jurisdictions in the US have independent counsel for their civilian oversight bodies. Some cities rely on the city attorney's office or the police department's internal legal counsel for legal advice and support, which may not provide the necessary level of independence and objectivity required for effective civilian oversight.

Overall, while many jurisdictions in the US have some form of independent counsel for their civilian oversight bodies, there is still a need for greater standardization and consistency in the way that independent counsel is appointed and utilized. This will help to ensure that civilian oversight is effective and impartial, and that law enforcement agencies are held accountable for their actions.

Of relevance to this discussion is also Formal Opinion No. 2001-156 issued by the State Bar of California Standing Committee on Professional Responsibility and Conduct. The opinion addresses conflicts of interest when “constituent sub-entities or officials of a city (e.g., the city council and the mayor) seek legal advice on the same matter and the constituents' positions on the matter are antagonistic.”

The Opinion notes, “Constituent sub-entities may become separate clients only if they have lawful authority to act independently of the public entity and if they take a position contrary to the overall public entity's position on a matter within the ambit of the constituent sub-entities' independent authority.” For the complete opinion please visit: <https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/2001-156.htm>