

RESOLUTION R-2023-06

A RESOLUTION AUTHORIZING THE PURCHASE OF AXON IN-SQUAD CAMERAS FROM AXON ENTERPRISE, INC. IN ACCORDANCE WITH THE SOURCEWELL PURCHASING COOPERATIVE FOR A FIVE (5) YEAR TERM AND A TOTAL AMOUNT NOT TO EXCEED \$216,121.20 (\$43,224.24 ANNUALLY)

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, pursuant to the Illinois Governmental Joint Purchasing Act (30 ILCS 525/1, et seq.), the City may purchase personal property, supplies, and services joining with other governmental units; and Illinois State Statutes authorize municipal governments to jointly purchase supplies; and

WHEREAS, Sourcewell is a state of Minnesota local government unit and service cooperative purchasing program created by the Minnesota legislature under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) and is authorized to contract with eligible entities to perform governmental functions including the purchase of goods and services; and

WHEREAS, the City participates in the Sourcewell cooperative purchasing program, which establishes contracts for a variety of products and services through public and competitive solicitations, and permits member governments to purchase products and services through those contracts; and

WHEREAS, Sourcewell contract #010720-AXN has been publicly and competitively bid for Public Safety Video Surveillance Solutions with Related Equipment, Software and Accessories; and

WHEREAS, Sourcewell has identified Axon Enterprise, Inc. located in Scottsdale, Arizona, as the low responsible bidder for Sourcewell contract #010720-AXN; and

WHEREAS, the City budgeted funds for in-squad cameras in the General Fund - Cannabis Use Tax Expenditures account in the amount of \$47,424; and

WHEREAS, the corporate authorities of the City of Wheaton have determined that it is in the best interest of the City to procure Axon in-squad cameras from Axon Enterprise, Inc. located at 17800 N. 85th St., Scottsdale, Arizona, 85255, in accordance with Sourcewell contract #010720-AXN for a total amount not to exceed \$216,121.20.

NOW THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, Illinois, that:

The Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to City of Wheaton Agreement No. 349 with Axon Enterprise, Inc. for Axon in-squad cameras in accordance with Sourcewell contract #010720-AXN for a five (5) year term and a total amount not to exceed \$216,121.20; a copy of Agreement No. 349 and Sourcewell contract #010720-AXN are on file with the City Clerk's office, and is incorporated herein as if fully set forth as Exhibit A.

ADOPTED this 6TH day of February 2023.

Mayor

ATTEST:

Andrea Rosedale
City Clerk

Roll Call Vote:

Ayes: Councilwoman Fitch
Councilwoman Robbins
Councilman Weller
Councilman Barbier
Councilwoman Bray-Parker
Councilman Brown
Mayor Suess

Nays: None

Absent: None

Motion Carried Unanimously

**ADDENDUM TO MASTER SERVICES AND PURCHASING AGREEMENT
INCLUDED IN SOURCEWELL CONTRACT NO. 010720-AXN
AND AXON QUOTE #333154-44932.823JS, DATED 01/06/2023**

THIS ADDENDUM to the Master Services Purchasing Agreement included in Sourcewell Contract No. 010720 is entered into this 7th day of February, 2023 ("Effective Date", between the City of Wheaton, an Illinois home rule municipal corporation (the "City") and Axon Enterprise, Inc., a Delaware Corporation ("Axon"), collectively the "Parties."

RECITALS

WHEREAS, pursuant to the Illinois Governmental Joint Purchasing Act (30 ILCS 525/1, *et seq.*), the City may purchase personal property, supplies, and services joining with other governmental units; and Illinois State Statutes authorize municipal governments to jointly purchase supplies; and

WHEREAS, pursuant to the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), the City may contract or otherwise associate with any political subdivisions of another State to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law; and

WHEREAS, Sourcewell is a state of Minnesota local governmental unit and service cooperative purchasing program created by the Minnesota legislature under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) and is authorized to contract with eligible entities to perform governmental functions including the purchase of goods and services; and

WHEREAS, the City participates in the Sourcewell cooperative purchasing program, which establishes contracts for a variety of products and services through public and competitive solicitations, and permits member governments to purchase products and services through those contracts; and

WHEREAS, on February 21, 2020, under a Sourcewell Cooperative Purchasing Agreement, the State of Minnesota entered into a contract with Axon to purchase the goods and services described in the contract #010720-AXN ("Cooperative Purchasing Agreement"), which is attached hereto as **Exhibit A**; and

WHEREAS, the City desires to contract with Axon for supplies or services identical, or nearly identical, to the supplies or services Axon is providing other units of government under the Cooperative Purchasing Agreement; and

WHEREAS, Sourcewell contract #010720-AXN includes an Axon Master Services and Purchasing Agreement ("Master Agreement"); and

WHEREAS, City and Axon have determined that is for their mutual benefit to enter into this Addendum ("Addendum") to the Master Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the parties agree as follows:

1. The terms and conditions specific to the Master Agreement, unless specifically modified herein, shall remain in full force and effect, and shall apply to this Addendum as though they were

expressly set forth herein. No prior Master Services and Purchasing Agreement entered into by the Parties shall apply to the goods and services purchased under Axon Quote #333154-44932.832JS, dated 01/06/2023.

2. In the event of any inconsistency between the provisions of this Addendum and any provisions of the Master Agreement, the provisions of this Addendum shall in all respects govern and control.
3. Payment. City's payment of any and all invoices submitted to it by Axon are subject to the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*, as amended from time to time (the "Act"), and payment of each invoice will be made by City in accordance with the Act. Nothing in this Addendum, the Master Agreement, or in any invoice shall be deemed a waiver by either party of the Act, and to the extent that any portion of this Addendum, the Master Agreement, or any invoice conflicts with the Act, the Act shall control.
4. Account Records. Axon shall maintain for a minimum of three (3) years after the completion of the Master Agreement, or for three (3) years after termination of the Master Agreement, whichever comes later, adequate books, records and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the Master Agreement. All books, records, and supporting documents related to the Master Agreement shall be available for review and audit by the City and to the extent any Federal and/or State funds are used to pay for or reimburse the City for its financial obligation under the Master Agreement by any Federal and/or State grant funding entity or Federal awarding entity, if applicable, and Axon agrees to cooperate fully with any audit conducted by the City, State and/or Federal government, and to permit the authorized representative of the City, State and/or Federal government to inspect, audit and make copies of all materials which directly relate to amounts paid under this Master Agreement, provided that City, State and/or Federal government provides thirty (30) days' notice of such audit and such audit may be conducted one (1) time per calendar year, at such time and place as may be agreed between the Parties. All such records shall be clearly identifiable. The records shall be made available to the City, State and/or Federal government auditing entity during normal business hours. Any such review or audit shall be at the City, State and/or Federal government's expense.
5. Freedom of Information Act. Axon shall, within nine (9) business days of the City's request, provide any documents in Axon's possession related to this Addendum and/or the Master Agreement which City is required to disclose to a requester under the Illinois Freedom of Information Act ("FOIA"). This provision is a material covenant of the Master Agreement. Axon agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to an FOIA request. Should Axon request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Axon agrees to pay all costs connected therewith (such as reasonable attorneys' fees and witness fees, filing fees, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Axon agrees to pay all costs in connection therewith (such as reasonable attorneys' and witness fees, filing fees, and any other reasonable expenses) to defend any denial of a FOIA request by Axon's request to utilize a lawful exemption to City.

6. News Releases. Axon shall not issue any news releases or other public statements regarding the Master Agreement or this Addendum without the prior approval of the City of Wheaton, City Manager.
7. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of any and all privileges, immunities, or defenses provided to or enjoyed by City under common law or pursuant to statute, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-101 *et. Seq.*
8. Compliance with Law. Axon shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its obligations under the Master Agreement. Any clause required by any law, ordinance, rule, or regulation to be included in a contract/agreement of the type evidenced by this document shall be deemed to be incorporated herein. Axon shall execute the legally required certifications and compliance with laws documents which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit B**.
9. Term of Agreement. The City is purchasing products and/or services from Axon pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was February 25, 2020, until the date the contract expires on, which is February 21, 2024, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond February 21, 2025. Both Parties agree that with respect to the City's purchase(s) under the Cooperative Purchasing Agreement, that the Master Agreement, this Addendum, the Axon Quote issued to the City on January 6, 2023 ("Quote"), a copy of which is attached hereto and incorporated by reference herein as **Exhibit C**, and any future amendments to those documents shall survive the expiration of the Cooperative Purchasing Agreement or the termination of the Cooperative Purchasing Agreement by the original contracting parties and shall expire on February 8, 2028.
10. Additional Contract Clauses. Goods and services purchased by City from Axon which may be funded in whole or in part through a State of Illinois grant or Federal funds require compliance with the provisions contained in the attached **Exhibit D**, which is attached hereto and incorporated by reference as if fully set forth herein as **Exhibit D** and are made a part of the Master Agreement.
11. Illinois Law Enforcement Training Board. In the event that goods and/or services purchased by City from Axon are funded in whole or in part through grant funds from the State of Illinois, Axon and its subcontractors shall grant the Illinois Law Enforcement Training Board or its duly authorized representative or any duly authorized agent of the State of Illinois full access to and the right to examine any pertinent books, documents, papers, and records, related to the Master Agreement and the grant funds awarded to the City pertaining to the City's purchase from Axon. All subcontractors shall be required to comply with this provision and Axon shall include this requirement in all contracts it has with all subcontractors involved with the goods and/or services purchased by City from Axon.

12. Termination Without Cause. Notwithstanding any other provision hereof, City may terminate the Master Agreement, with or without cause, at any time upon thirty (30) days prior written notice to Axon. In the event that the Master Agreement is so terminated, City shall pay Axon for the services performed and actually incurred as of the effective date of termination, less any sums attributable, directly, or indirectly, to Axon's breach of the Master Agreement.
13. Cradlepoint Services. Both Parties acknowledge and agree that the City is not purchasing any goods or services from third-party provider, Cradlepoint Enterprise Cloud Manager.
14. Equipment Removal. Axon shall remove old equipment from City vehicles.

Axon Enterprise, Inc.

Signature: 

Name: Robert E. Dniscoll, Jr.

Title: VP, Associate General Counsel

Date: 1/30/2023

City of Wheaton

Signature: 

Name: Philip J. Suess

Title: Mayor

Date: 2/7/2023