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# **CITY OF OCALA**

## **CITY COUNCIL REPORT**

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**Council Meeting Date: 11/21/17**

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Subject: TASER Unlimited Cartridge Plan Subscription

Submitted By: Greg Graham

Department: Police Department

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**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item (ID # 11602) five-year contract with Axon Enterprise to provide TASER unlimited cartridges and batteries for all Ocala Police Department TASERs in the amount of \$83,627

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**OCALA'S RELEVANT STRATEGIC GOALS:** Fiscally Sustainable

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**PROOF OF PUBLICATION:** N/A

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**BACKGROUND:**

TASER duty cartridges, batteries and training cartridges have previously been budgeted as separate items and were difficult to estimate an accurate number of each that would be needed throughout the fiscal year.

**FINDINGS AND CONCLUSIONS:**

The use of TASER weapons by the Police Department enhances public and police safety. Having a fixed, per-user cost for all of these items each year eliminates estimation and over-purchase of items that will go unused as well as shortages that leave field equipment unfit for duty. The Unlimited Cartridge Program offered by Axon Enterprise Inc. also locks in the current price of TASER Smart Cartridges and batteries for the entire 5-year term of the contract.

**FISCAL IMPACT:**

The 2017-2018 budget includes \$21,050 to cover all 138 police department TASERs as part of this program. This reduces the previously budgeted amount by approximately \$3,300 annually and will have an increased impact each time TASER raises their prices for consumers that are not taking part in the locked-in pricing. Budgeted in 001-18-822-521-52010.

**PROCUREMENT REVIEW:**

This agreement has been approved in compliance with the City's procurement policies.

**LEGAL REVIEW:** The agreement has been reviewed and approved by the City Attorney, Patrick G. Gilligan.

**ALTERNATIVE:**

Table for further discussion and guidance.

**SUPPORT MATERIALS:**

Contract for OPD Taser Cartridges (PDF)

**Axon Enterprise, Inc.***Protect Life.*

17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 Phone: (800) 978-2737  
 Fax: 480-991-0791



**Jared Sieg**  
 (352) 789-3010  
 jsieg@ocalapd.org

**Quotation**

**Quote:** Q-100840-3  
**Date:** 10/16/2017 11:52 AM  
**Quote Expiration:** 11/17/2017  
**Contract Start Date\*:** 4/1/2017  
**Contract Term:** 5 years

**AX Account Number:**  
 114242

**Bill To:**  
 Ocala Police Dept. - FL  
 402 S. PINE AVE.  
 Ocala, FL 34471  
 US

**Ship To:**  
 Jared Sieg  
 Ocala Police Dept. - FL  
 402 S. PINE AVE.  
 Ocala, FL 34471  
 US

SALESPERSON	PHONE	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Georgia Leacox	800-978-2737	georgia@taser.com	Fedex - Ground	Net 30

\*Note this will vary based on the shipment date of the product.

## Year 1 - TASER Smart Unlimited -Due Net 30

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL BEFORE DISCOUNT	DISCOUNT (\$)	NET TOTAL
138	88135	UCP SMART - YEAR 1 PAYMENT	USD 119.88	USD 16,543.44	USD 0.00	USD 16,543.44
414	22157	CARTRIDGE, PERFORMANCE, SMART, TRAINING, 25'	USD 0.00	USD 0.00	USD 0.00	USD 0.00
414	22151	CARTRIDGE, PERFORMANCE, SMART, 25'	USD 0.00	USD 0.00	USD 0.00	USD 0.00
<b>Year 1 - TASER Smart Unlimited -Due Net 30 Total Before Discounts:</b>						USD 16,543.44
<b>Year 1 - TASER Smart Unlimited -Due Net 30 Net Amount Due:</b>						USD 16,543.44

## Year 2 - TASER Smart Unlimited

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL BEFORE DISCOUNT	DISCOUNT (\$)	NET TOTAL
138	88136	UCP SMART - YEAR 2 PAYMENT	USD 119.88	USD 16,543.44	USD 0.00	USD 16,543.44
<b>Year 2 - TASER Smart Unlimited Total Before Discounts:</b>						USD 16,543.44
<b>Year 2 - TASER Smart Unlimited Net Amount Due:</b>						USD 16,543.44

Year 3 - TASER Smart Unlimited

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL BEFORE DISCOUNT	DISCOUNT (\$)	NET TOTAL
138	88137	UCP SMART - YEAR 3 PAYMENT	USD 119.88	USD 16,543.44	USD 0.00	USD 16,543.44
Year 3 - TASER Smart Unlimited Total Before Discounts:						USD 16,543.44
Year 3 - TASER Smart Unlimited Net Amount Due:						USD 16,543.44

Year 4 - TASER Smart Unlimited

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL BEFORE DISCOUNT	DISCOUNT (\$)	NET TOTAL
138	88138	UCP SMART - YEAR 4 PAYMENT	USD 119.88	USD 16,543.44	USD 0.00	USD 16,543.44
Year 4 - TASER Smart Unlimited Total Before Discounts:						USD 16,543.44
Year 4 - TASER Smart Unlimited Net Amount Due:						USD 16,543.44

Year 5 - TASER Smart Unlimited

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL BEFORE DISCOUNT	DISCOUNT (\$)	NET TOTAL
138	88139	UCP SMART - YEAR 5 PAYMENT	USD 119.88	USD 16,543.44	USD 0.00	USD 16,543.44
Year 5 - TASER Smart Unlimited Total Before Discounts:						USD 16,543.44
Year 5 - TASER Smart Unlimited Net Amount Due:						USD 16,543.44

Subtotal	USD 82,717.20
Estimated Shipping & Handling Cost	USD 909.89
Grand Total	USD 83,627.09

Hardware Shipping Estimate

Typically, hardware shipment occurs between 4 – 6 weeks after purchase date. Product availability for new or high demand products may impact delivery time.

**Axon Enterprise, Inc.'s Sales Terms and Conditions  
for Direct Sales to End User Purchasers**

By signing this Quote, you are entering into a contract and you certify that you have read and agree to the provisions set forth in this Quote ~~and Axon's Master Services and Purchasing Agreement posted at <https://www.axon.com/legal/sales-terms-and-conditions>~~. You represent that you are lawfully able to enter into contracts and if you are entering into this agreement for an entity, such as the company, municipality, or government agency you work for, you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, do not sign this Quote.

<b>Signature:</b>	_____	<b>Date:</b>	_____
<b>Name (Print):</b>	_____	<b>Title:</b>	_____
<b>PO# (if needed):</b>	_____		

Quote: Q-100840-3

Please sign and email to Georgia Leacox at [georgia@taser.com](mailto:georgia@taser.com) or fax to 480-991-0791

THANK YOU FOR YOUR BUSINESS!

'Protect Life'© and TASER® are registered trademarks of Axon Enterprise, Inc, registered in the U.S.  
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**Approved as to form and legality:**

**Attest:**

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Patrick G. Gilligan, City Attorney

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Angel B. Jacobs, City Clerk

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These Axon Enterprise, Inc. (**Axon**) Unlimited Cartridge Plan Terms and Conditions (**Agreement**) apply to your (**Agency**) purchase under the Axon Unlimited Cartridge Plan (**UCP**). In the initial delivery, and each year thereafter, the Agency will receive 3 training cartridges. For the initial delivery of duty cartridges, X26 users will receive 2 duty cartridges, while X2 users will receive 3 duty cartridges. One PPM battery per user will be delivered to the Agency in Year 3 of this Agreement, unless otherwise requested. In the event the Agency is purchasing UCP for use with TASER CAM, the Agency will not receive the PPM or a substitute.

1. **UCP Term.** The UCP Term start date is based upon the ship date of the initial delivery (**Start Date**) The UCP Term will end 5 years after the Start Date (**Term**).
2. **UCP Requirements.** In order to make a purchase under the UCP, the Agency must purchase the UCP for each TASER Conducted Electrical Weapon (**CEW**) user. A CEW user includes an officer that uses a CEW in the line of duty, as well as officers that only use a CEW for training purposes. The Agency may not resell cartridges or batteries received under the UCP. The Agency may only request additional PPMs and duty cartridges as PPMs and duty cartridges are consumed in the line of duty. Upon reasonable notice, Axon reserves the right to audit the Agency's use of force records if the Agency is ordering more cartridges or batteries than is customary compared to an Agency of similar size. In the event the audit determines the Agency's use of force records do not support the Agency's reported cartridge and battery use, the Agency will pay the MSRP of each cartridge and battery delivered to the Agency beyond what was supported by the Agency's use of force records.
3. **Payment Terms.** Axon invoices for the UCP on an annual basis. Agency will be invoiced upon the Start Date and then upon the anniversary of the Start Date for the remainder of the Term. Invoices are due to be paid within 30 days of the date of invoice.

Payment obligations are non-cancelable and fees paid are non-refundable and all amounts payable will be made without setoff, deduction, or withholding. Additional users may be added during the term. For users added in the middle of any annual cycle, the Agency will pay a true-up fee for those additional users. These additional licenses will be co-terminated with the Agency's existing licenses. Additional users that are added before the third year payment will receive a PPM, while additional users that are added after the third year payment will not receive a PPM.

4. **Taxes.** Unless the Agency provides 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 E.X.W. via common carrier and title and risk of loss pass to the Agency upon delivery to the common carrier by Axon. The Agency is responsible for all freight charges. Any loss or damage that occurs during shipment is Axon's responsibility. Shipping dates are estimates only.
  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. **Hardware Limited Warranty.** Axon warrants its law enforcement hardware products are free from defects in workmanship and materials for a period of ONE (1) YEAR from 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
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replace with the same or like Product, at Axon's option.

8. **Warranty Limitations.**

The warranties do not apply and Axon will not be responsible for any 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.

**To the extent permitted by law, the warranties and 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.**

**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, strict liability, tort or under any other legal theory.**

9. **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. For warranty return and repair procedures, including troubleshooting guides, please go to Axon's website [www.axon.com/support](http://www.axon.com/support).

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. Any replacement item becomes Purchaser's property and the replaced item becomes Axon's property.

10. **Product Warnings.** See our website at [www.axon.com](http://www.axon.com) for the most current product warnings.
11. **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. TASER may replace end of life products with the next generation of that product without notifying the Agency

12. **UCP Termination.**

- a. **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.
  - b. **By the 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
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- 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. In the event the Agency terminates this Agreement after the Agency receives the PPM, the Agency will be invoiced and obligated to pay for the remainder of the MSRP for the PPM received before the termination date. In the case of termination for non-appropriations, Axon will not invoice the Agency if the Agency returns the PPM to Axon within 30 days of the date of termination.
- c. Effect of Termination.** Upon termination for any reason, Axon will discontinue shipments to the Agency on the effective date of termination.
13. **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.
  14. **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.
  15. **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. **Assignment.** The Agency may not may assign or otherwise transfer this Agreement without the prior written approval of Axon.
  17. **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.
  18. **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.
  19. **Entire Agreement.** This Agreement and the quote provided by Axon, represents the entire agreement between the Parties. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Parties, whether written or verbal, regarding the subject matter of this Agreement. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the Parties to this Agreement.

□□AXON, Axon, X2, X26, TASER CAM, and TASER are trademarks of Axon Enterprise, Inc., some of which are registered in the US and other countries. For more information, visit [www.axon.com/legal](http://www.axon.com/legal). All rights reserved. © 2017 Axon Enterprise, Inc.