City of Fayetteville Staff Review Form

2019-0342

Legistar File ID

7/2/2019

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Greg Tabor	6/5/2019	POLICE (200)
Submitted By	Submitted Date	Division / Department

Action Recommendation:

Staff recommends approval to utilize the National Association of State Procurement Officers (NASPO) contract number OK-MA-145-010 for the purchase and implementation of Mobile Video Recorder (MVR) system replacement for the Fayetteville Police Department from Watch Guard, Inc. in the amount of $409,433 and approval of a budget adjustment in the amount of $234,433.

Budget Impact:

4470.200.8200-5210.00	Sales Tax Capital Improvements
Account Number	Fund
15015-1	Police MVR Replacement
Project Number	Project Title

Budgeted Item?	Yes	Current Budget	$	175,000.00
		Funds Obligated	$	-
		Current Balance	$	175,000.00
Does item have a cost?	Yes	Item Cost	$	409,433.00
Budget Adjustment Attached?	Yes	Budget Adjustment	$	234,433.00
		Remaining Budget	$	-

V20180321

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

CITY OF
FAYETTEVILLE
ARKANSAS

CITY COUNCIL MEMO

MEETING OF JULY 2, 2019

TO: Mayor and City Council

FROM: Greg Tabor, Chief of Police

DATE: May 29, 2019

SUBJECT: **Mobile Video Recorder System Replacement**

RECOMMENDATION:

Staff recommends authorization to utilize the National Association of State Procurement Officers (NASPO) contract number OK-MA-145-010 for the purchase and implementation of Mobile Video Recorder (MVR) system replacement for the Fayetteville Police Department from Watch Guard, Inc. in the amount of $409,433 and approval of a budget adjustment in the amount of $234,433.

BACKGROUND:

The Fayetteville Police Department first researched, bid and purchased in-car video systems from L-3 Communications Mobile Vision, Inc. in April of 2003. Over the past fifteen years, in-car camera technology has advanced from video cassette recording systems to digital recording systems, and today, digital recording systems with cloud storage. Currently, the L-3 cameras are used in all marked Fayetteville Police Department patrol vehicles and interview rooms inside the police station. The MVR systems have been used to build trust and legitimacy with our community by accurately documenting officer/citizen encounters and evidence. The Fayetteville Police Department is requesting approval for the scheduled replacement of our L-3 current "end-of-life" MVR systems throughout our patrol fleet and interview rooms. This Capital Improvement Program replacement was extended more than a year past its regularly scheduled date.

DISCUSSION:

The current MVR systems have been in use for over six years and have reached the end of their useful life. The MVR systems are the foundation layer of the transparency and accountability of police officer actions in the field. The MVR's help capture evidence during traffic stops, critical incidents, and officer/citizen encounters. These MVR systems have cameras that record actions outside the patrol vehicle, as well as the rear seat transport area. The audio/video evidence captured by the MVR systems are critical for successful prosecutions of offenders and provide transparency to our community. Our citizens have come to expect the actions of Fayetteville police officers to be recorded and available for review.

The Fayetteville Police Department researched and evaluated several different MVR systems. After careful consideration, the Fayetteville Police Department selected the WatchGuard Inc. 4RE Standard MVR system. Via the NASPO contract number OK-MA-145-

010, we will be able to purchase these MVR systems through a five-year agreement with WatchGuard Inc. The initial purchase and implementation of the MVR Systems will cost $409,433 with maintenance and storage expenses of $18,983.75 in years two through five. The total five-year cost of this MVR Replacement project is $485,368, which includes CJIS compliant cloud storage. The cloud storage will make operations more efficient, and evidence storage more secure.

BUDGET/STAFF IMPACT:

A Budget adjustment of project savings to MVR replacement project in the amount of $234,433. $200,000 was budgeted in the MVR Replacement project in prior years, but reallocated to the body-worn camera/taser project in 2017. Scheduled funding in the amount of $200,000 for taser replacement in 2019 will now replenish the MVR Replacement project. Additional funds in the amount of $34,433 will be adjusted from savings in mobile computer terminal replacement project. There is no staff impact associated with this purchase.

Attachments:

Quote from Watch Guard, Inc.
NASPO Contract # OK-MA-145-010
Software as a Service Subscription Agreement

Agreement No. [●]

SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT
For
EVIDENCELIBRARY.COM

This Software as a Service Agreement (this "**Agreement**") is entered into on _____ by and between WatchGuard, Inc., a Delaware corporation with offices located at 415 E. Exchange Parkway, Allen, TX 75002 ("**Provider**", "**we**" or "**us**") and the City of Fayetteville, Arkansas ("**City**" or "**you**"), to become effective on the Service Date, as defined below.

WHEREAS, Provider provides access to its software-as-a-service offerings to its customers;

WHEREAS, City desires to access certain software-as-a-service offerings described herein, and Provider desires to provide City access to such offerings, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

"**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity, or otherwise.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise/ownership of more than 50% of the voting securities of a Person.

"**Authorized User**" means City's employees, consultants, contractors, and agents (i) who are authorized by City to access and use the Services under the rights granted to City pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

"**Confidential Information**" has the meaning set forth in Section 9.1.

"**City Data**" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from City or an Authorized User by or through the Services or that incorporates or is derived from the Processing of such information, data, or content by or through the Services. For the avoidance of doubt, City Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of City or any Authorized User.

"**City Failure**" has the meaning set forth in Section 4.2.

"**City Indemnitee**" has the meaning set forth in Section 12.1.

"**City Systems**" means the City's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by City or through the use of third-party services.

"**Disclosing Party**" has the meaning set forth in Section 9.1.

"**Documentation**" means any manuals, instructions, or other documents or materials that the Provider provides or makes available to City in any form or medium and which describe the functionality, components, features, or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

"**Fees**" has the meaning set forth in Section 8.1.

"**Force Majeure Event**" has the meaning set forth in Section 15.9.

"**Harmful Code**" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby, or (b) prevent City or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

"**Indemnitee**" has the meaning set forth in Section 12.3.

"**Indemnitor**" has the meaning set forth in Section 12.3.

"**Initial Term**" has the meaning set forth in Section 14.1.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"**Losses**" means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Permitted Use**" means any use of the Services by an Authorized User for the benefit of City in the ordinary course of its internal business operations.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"**Process**" means to take any action or perform any operation or set of operations that the Services are capable of

taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy . **"Processing"** and **"Processed"** have correlative meanings.

"Provider Disabling Device" means any software, hardware, or other technology, device, or means used by Provider or its designee to disable City's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

"Provider Indemnitee" has the meaning set forth in Section 12.2.

"Provider Materials" means the Services, Specifications, Documentation, and Provider Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data, or other content derived from Provider's monitoring of City's access to or use of the Services, but do not include City Data.

"Provider Personnel" means all individuals involved in the performance of Services as employees, agents, or independent contractors of Provider or any Subcontractor.

"Provider Systems" means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Provider or through the use of third-party services.

"Receiving Party" has the meaning set forth in Section 9.1.

"Renewal Term" has the meaning set forth in Section 14.2.

"Representatives" means, with respect to a party, that party's and its Affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

"Resultant Data" means data and information related to City's use of the Services and/or information compiled from City Data that is used by Provider in an aggregate and anonymized manner, for one or more of the following purposes: (i) to compile statistical and performance information related to the provision and operation of the Services; (ii) to provide routine or City-requested maintenance, repairs, analytical or diagnostic services related to the Services, Provider Systems or City Data; (iii) to ensure compliance with, or provide updates or revisions to, this Agreement, Service Level performance metrics, or the Services, and policies and protocols related thereto; or (iv) to compile analytical and statistical information for purposes of developing and improving our products and services.

"Scheduled Downtime" has the meaning set forth in Exhibit B.

"Service Allocation" has the meaning set forth in Section 3.4.

"Service Credit" has the meaning set forth in Exhibit B.

"Service Date" is the date on which the City begins to use the Services.

"Service Level Failure" has the meaning set forth in Exhibit B.

"**Services**" means the software-as-a-service offering described in Exhibit A.

"**Specifications**" means the specifications for the Services set forth in Exhibit B.

"**Subcontractor**" has the meaning set forth in Section 2.7.

"**Support Services**" has the meaning set forth in Section 5.4.

"**Term**" has the meaning set forth in Section 14.2.

"**Third-Party Materials**" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Provider.

2. Services.

2.1 Access and Use. Subject to and conditioned on you and your Authorized Users' compliance with the terms and conditions of this Agreement, we hereby grant to you a non-exclusive, non-transferable (except in compliance with Section 15.8)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to your internal use. We will provide you with Access Credentials as of the Service Date.

2.2 Documentation License. We hereby grant you a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 15.8) license to use the Documentation during the Term solely for your internal business purposes in connection with its use of the Services.

2.3 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(a) We have and will retain sole control over the operation, provision, maintenance, and management of the Provider Materials; and

(b) You have and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the City Systems, and sole responsibility for all access to and use of the Provider Materials by any Person by or through the City Systems or any other means controlled by you or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or us; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions, or actions based on such use.

2.4 Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Provider Materials, and the Third-Party Materials are and will remain with us and the respective rights holders in the Third-Party Materials.

2.5 Service Management. Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity.

2.6 Changes. (a) Changes to the Services. We reserve the right, in our sole discretion, to make any changes to the Services and Provider Materials that we deem necessary or useful to: (1) maintain or enhance (i) the quality or delivery of our services to our customers, (ii) the competitive strength of or market for our services, or (iii) the Services' cost

efficiency or performance; or (2) to comply with applicable Law. We will notify you of any material change to the Services or Provider Materials.

(b) Changes to this Agreement. We may revise, update or supplement this Agreement from time to time. Any such revision, update or supplement shall become effective immediately. We will notify you of any changes to this Agreement at least thirty (30) days in advance of the effective date of such revision, update or supplement, and your continued use of the Services following your receipt of notice means that you agree to the terms and conditions of this Agreement as revised, updated or supplemented. If you do not agree to the changes, you may terminate this Agreement without penalty prior to the changes taking effect.

2.7 Subcontractors. We may from time to time in our discretion engage third parties to perform Services (each, a **"Subcontractor"**).

2.8 Suspension or Termination of Services. We may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate, or otherwise deny your, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) we receive a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires us to do so; or (b) we reasonably believe that: (i) you or any Authorized User have failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Specifications; (ii) you or any Authorized User are, have been, or are likely (in our reasonable judgment) to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. If we suspend your right to access the Services you will remain responsible for payment of Fees you incur during the period of suspension and you will not be entitled to Service Credits during the period of suspension. This Section 2.8 does not limit any of our other rights or remedies, whether at law, in equity, or under this Agreement.

3. Use Restrictions; Service Usage and Data Storage.

3.1 Use Restrictions. You shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, you shall not, except as this Agreement expressly permits:

(a) copy, modify, or create derivative works or improvements of the Services or Provider Materials;

(b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software-as-a-service, cloud, or other technology or service;

(c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part;

(d) bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

(e) input, upload, transmit, or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

(f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Provider Systems, or Provider's provision of services to any third party, in whole or in part;

(g) remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;

(h) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Provider City), or that violates any applicable Law;

(i) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision, or use of a competing software service or product or any other purpose that is to our detriment or commercial disadvantage; or

(j) otherwise access or use the Services or Provider Materials beyond the scope of or is inconsistent with the authorization granted under this Section 3.1.

3.2 Service Usage. Exhibit A sets forth the subscription terms and Fees for the two designated levels of usage and data storage available for City Data (each a **"Service Allocation"**). We will use commercially reasonable efforts to notify you in writing if your use of the Services exceeds the storage limits or other use parameters of the Service Allocation you have selected, at which point we may mutually agree to adjust your Service Allocation and corresponding Fee obligations in accordance with applicable Specifications. You acknowledge that exceeding your then-current Service Allocation may result in service degradation for you and other of our customers, and you therefore agree that (a) we have no obligation to allow you to exceed your then-current Service Allocation; and (b) you are not entitled to any Service Level Credits for periods during which your use of the Services exceeds your then-current Service Allocation, regardless of whether the Services fail to meet the availability requirements (as defined in Exhibit B) during such period.

3.3 Data Storage. The City Data will be stored in a secure, general purpose storage account in a Microsoft Azure data center (**"Microsoft"** and **"MS Data Center"**) that is located within the United States and that will be compliant with the FBI's Criminal Justice Information Services (**"CJIS"**) requirements. You agree that we may transfer the City Data to the MS Data Center; provided, however, that except as otherwise provided in this Agreement, you shall retain all right, title and interest in and to the City Data at all times, wherever located or stored, and whether in transit or at rest.

4. City Obligations.

4.1 City Systems and Cooperation. You shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all City Systems on or through which the Services are accessed or used; (b) provide Provider Personnel with such access to your premises and City Systems as is necessary for Provider to perform the Services in accordance with the Availability Requirement and Specifications; (c) provide all cooperation and assistance as we may reasonably request to enable us to exercise our rights and perform our obligations under and in connection with this Agreement; (d) ensure that your use of the Services is in compliance with applicable laws, rules and regulations; (e) set up and enable any hardware or networks that connect to the Services and ensure that all such hardware and networks properly interact with the Services and its hardware and software component parts; (f) maintain responsibility for the City Data before it is uploaded to the Services platform; and (g) establish any security settings you deem necessary and appropriate for your network and City Data .

4.2 Effect of City Failure or Delay. We are not responsible or liable for any delay or failure of performance caused in whole or in part by your delay in performing, or failure to perform, any of your obligations under this Agreement (each, a **"City Failure"**).

4.3 Corrective Action and Notice. If you become aware of any actual or threatened activity prohibited by Section 3.1, you shall, and shall cause your Authorized Users to, immediately: (a) take all reasonable and lawful measures within your

or their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify us of any such actual or threatened activity.

5. Service Levels and Credits.

5.1 Service Levels. Subject to the terms and conditions of this Agreement, we will use commercially reasonable efforts to make the Services Available as set forth in Exhibit B.

5.2 Service Level Failures and Remedies. In the event of a Service Level Failure, we shall issue a credit to you according to the process specified in Exhibit B.

5.3 Scheduled Downtime. We will use commercially reasonable efforts to schedule Scheduled Downtime at the times and according to the processes set forth in Exhibit B.

5.4 Service Support. The Services include our standard customer support services (**"Support Services"**) in accordance with our service support schedule then in effect from time to time.

6. Data Backup and Redundancy. We will take reasonable measures to provide for City Data redundancy by providing for three (3) copies of the City Data to be maintained in locally redundant storage (**"LRS"**) within the MS Data Center in which the City Data resides. At your request, we may provide for geo-redundant storage (**"GRS"**) for replication of the City Data in a secondary MS Data Center that is geographically distant from the first MS Data Center. A GRS election is considered an upgrade of the standard LRS account and will require payment of additional Fees and execution of an addendum to this Agreement. You are responsible for implementing and maintaining all such City Data backup and disaster recovery processes you deem appropriate for your local computer systems and information technology infrastructure.

7. Security.

7.1 Provider Systems and Security Obligations. Without limiting the representations, warranties and disclaimers in Section 11 or your obligations under Sections 6, 7.4 and 7.5, we will implement reasonable and appropriate measures designed to help you secure the City Data against unlawful loss, access or disclosure. However, (i) we are not responsible for the accuracy, completeness or success of any efforts for replication, restoration, or recovery of City Data that you or Microsoft may take; and (ii) we are not liable for damage to, or loss or corruption of City Data from any cause, including failure of any storage, replication or redundancy capabilities of any MS Data Center(s) in which City Data may be located.

7.2 Data Privacy. Subject to the rights granted to us in Section 10.3, we will not access or use City Data except as necessary to maintain or provide the Services, or as necessary to comply with applicable Law or a binding order of a court or governmental agency. We will not (a) disclose City Data to any government, government agency or third party, or (b) subject to Section 3.2, move City Data except as necessary to comply with applicable Law or a binding order of a court or governmental agency. Unless we are prohibited from doing so by applicable Law, we will give you notice of any such legal requirement or order.

7.3 Prohibited Data. You acknowledge that the Services are not designed with security and access management for Processing the following categories of information: (a) data that is classified and or used on the U.S. Munitions list, including software and technical data; (c) articles, services, and related technical data designated as defense articles or defense services; and (d) International Traffic in Arms Regulations (**"ITAR"**) related data, (each of the foregoing, **"Prohibited Data"**). You shall not, and shall not permit any Authorized User or other Person to, provide any Prohibited Data to, or Process any Prohibited Data through, the Services, the Provider Systems, or any Provider Personnel. You are solely responsible for reviewing all City Data and shall ensure that no City Data constitutes or contains any Prohibited Data.

7.4 City Control and Responsibility. (a) You have and will retain sole responsibility for: (1) all City Data, including its content and use; (2) all information, instructions, and materials provided by or on your behalf or by or on behalf of any Authorized User in connection with the Services; (3) your information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by you or through the use of third-party services (**"City Systems"**); (4) the security and use of Access Credentials by you and your Authorized Users; and (5) all access to and use of the Services and Provider Materials directly or indirectly by or through the City Systems or your or your Authorized Users' Access Credentials, with or without your knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

(b) You understand and agree that all transactions you undertake using the Services are between you and the parties with which you are transacting. Certain features and capabilities of the Services may link you to or provide you with access to third-party content such as networks, websites, and information databases that we do not operate or control (**"Third-Party Services"**). We are not responsible for your contact with, access to or use of any Third-Party Services or any losses or damage you may experience from such contact, use or access, unless such losses or damages directly resulted from our material breach of our obligations under this Agreement.

7.5 Access and Security. You agree to employ all physical, administrative, and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of City Data, including the uploading or other provision of City Data for Processing by the Services.

8. Fees and Payment

8.1 Fees. You agree to pay us the fees set forth in Exhibit A (**"Fees"**) in accordance with this Section 8.

8.2 Taxes. All Fees and other amounts payable by you under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, you are responsible for all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by you hereunder, other than any taxes imposed on our income.

8.3 Late Payment. If you fail to make any payment when due then, in addition to all other remedies that may be available:

(a) Deleted. ;

(b) you shall reimburse us for all costs we incur in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and

(c) if such failure continues for thirty (30) days following written notice thereof, we may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to you or any other Person by reason of such suspension.

8.4 No Deductions or Setoffs. All amounts payable to us under this Agreement shall be paid by you in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to Section 5.2 or any deduction or withholding of tax as may be required by applicable Law).

9. Confidentiality.

9.1 Confidential Information. In connection with this Agreement each party (as the **"Disclosing Party"**) may disclose or make available Confidential Information to the other party (as the **"Receiving Party"**). Subject to Section 9.2, **"Confidential Information"** means information in any form or medium (whether oral, written, electronic, or other) that

the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential".

9.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b) except as may be permitted by and subject to its compliance with Section 9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9;

(c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;

(d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and

(e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9.

(f) notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

10. Intellectual Property Rights.

10.1 Provider Materials. We retain all right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. You have no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 3.1. We expressly retain all other rights in and to the Provider Materials. In furtherance of the foregoing, you hereby unconditionally and irrevocably grant to us an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

10.2 City Data. As between you and us, you are and will remain the sole and exclusive owner of all right, title, and interest in and to all City Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 10.3.

10.3 Consent to Use City Data. You hereby irrevocably grant all such rights and permissions in or relating to City Data as are necessary or useful to us, our Subcontractors, and Provider Personnel to (a) provide the Services, (b) enforce this Agreement, (c) compile the Resultant Data, and (d) exercise such rights as we, our Subcontractors, and Provider Personnel may require to perform our obligations hereunder.

11. Representations and Warranties.

11.1 Provider Representations, Warranties, and Covenants. We represent, warrant, and covenant to you that we will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet our obligations under this Agreement.

11.2 City Representations, Warranties, and Covenants. You represent, warrant, and covenant to us that you own or otherwise have and will maintain the necessary rights and consents in and relating to the City Data so that, as received by us and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

11.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 11.1 AND 11.2, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS." WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. Indemnification.

12.1 Provider Indemnification. We agree to indemnify, defend, and hold harmless you and your officers, directors, employees, agents, permitted successors, and permitted assigns (each, a **"City Indemnitee"**) from and against any and all Losses incurred by you or a City Indemnitee resulting from any Action by a third party (other than your Affiliate) that your use or an Authorized User's use of the Services (excluding City Data and Third-Party Materials) in accordance with this Agreement (including the Specifications) infringes or misappropriates such third party's U.S. Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

(a) Third-Party Materials or City Data;

(b) access to or use of the Provider Materials in combination with any hardware, system, software, network, or other materials or service that we did not provide or that was not specified for your use in the Documentation;

(c) modification of the Provider Materials other than: (i) by or on behalf of us; or (ii) with our written approval in accordance with our written specification;

(d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to you by or on behalf of us; or

(e) act, omission, or other matter described, in Section 12.2(a) Section 12.2(b), Section 12.2(c), or Section 12.2(d), whether or not the same results in any Action against or Losses by any Provider Indemnitee.

12.2 City Indemnification. Deleted.

12.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 12.1 or Section 12.2, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate.

12.4 Mitigation. If any of the Services or Provider Materials are, or in our opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if you or any Authorized User's use of the Services or Provider Materials is enjoined or threatened to be enjoined, we may, at our option and sole cost and expense:

(a) obtain the right for you to continue to use the Services and Provider Materials materially as contemplated by this Agreement;

(b) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or

(c) by written notice to you, terminate this Agreement with respect to all or part of the Services and Provider Materials, and require that you immediately cease any use of the Services and Provider Materials or any specified part or feature thereof.

12.5 Sole Remedy. THIS SECTION 12 SETS FORTH YOUR SOLE REMEDIES AND OUR SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

13. Limitations of Liability.

13.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL WE OR ANY OF OUR LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5.2, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (d) COST OF REPLACEMENT GOODS OR SERVICES, (e) LOSS OF GOODWILL OR REPUTATION, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THREE TIMES (3X) THE TOTAL AMOUNTS PAID TO US UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14. Term and Termination.

14.1 Initial Term. The initial term of this Agreement commences as of the Service Date and, unless terminated earlier pursuant any of this Agreement's express provisions, will continue in effect until three (3) years from such date (the "**Initial Term**").

14.2 Renewal Term. Upon expiration of the Initial Term this Agreement will automatically renew for successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least 90 days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

14.3 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) we may terminate this Agreement, effective on written notice to you, if you: (i) fail to pay any amount when due hereunder, and such failure continues more than 30 days after we provide you with written notice thereof; or (ii) breach any of your obligations under Section 3.1, Section 7.3, or Section 9;

(b) either party may terminate this Agreement, effective on 30 days written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

14.4 Effect of Termination or Expiration. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately

terminate;

(b) we agree to immediately cease all use of any City Data or your Confidential Information and (i) promptly return to you, or at your written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on City Data or your Confidential Information; and (ii) subject to Section 14.5, permanently erase all City Data and your Confidential Information from all systems we directly or indirectly control; provided that, for clarity, our obligations under this Section 14.4(b) do not apply to any Resultant Data;

(c) you agree to immediately cease all use of any Services or Provider Materials and (i) promptly return to us, or at our written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Provider Materials or our Confidential Information, and (ii) permanently erase all Provider Materials and our Confidential Information from all systems you directly or indirectly control;

(d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; (ii) we may retain City Data; and (iii) you may retain Provider Materials, in the case of each of subclause (i), (ii) and (iii), in its then current state and solely to the extent and for so long as required by applicable Law; (iv) we may also retain City Data in our backups, archives, and disaster recovery systems until such City Data is deleted in the ordinary course pursuant to Section 14.5; and (v) all information and materials described in this Section 14.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

(e) we may disable your Authorized User's access to the Services and the Provider Materials;

(f) if you terminate this Agreement pursuant to Section 14.3(b), you will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and we will: (i) refund to you Fees paid in advance for Services that we have not performed as of the effective date of termination; and (ii) pay to you any unpaid Service Credits to which you may be entitled; and

(g) if we terminate this Agreement pursuant to Section 14.3(a) or Section 14.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and you agree to pay such Fees, together with all previously-accrued but not yet paid Fees on receipt of our invoice therefor.

14.5 Return of City Data.

(a) During the Term. You may retrieve City Data at any time during the Term.

(b) Upon Termination. We will not delete City Data for a period of 60 days following termination (the **"Post - Termination Retention Period"**). During the Post-Termination Retention Period you may retrieve City Data only if you have paid all amount due under this Agreement. We will make the City Data available to you in a non-proprietary format and assist you with retrieval during the Post-Termination Retention Period. You agree to pay our reasonable expenses, on a time and materials basis, for the assistance we provide in assisting you with retrieval of the City Data. WE HAVE NO OBLIGATION TO MAINTAIN THE CITY DATA BEYOND THE POST-TEMINATION RETENTION PERIOD, AND WE MAY THEREAFTER DELETE THE CITY DATA, UNLESS LEGALLY PROHIBITED FROM DOING SO, OR UNLESS AN EXTENSION OF THE POST-TERMINATION RETENTION PERIOD IS AGREED TO. Upon your request and provided that you have paid all amounts due under this Agreement, we may agree to a reasonable extension of the Post-Termination Retention Period. If we are legally prevented from deleting the City Data beyond the Post-Termination Retention Period you agree to pay all costs associated with continued storage until the City Data is either deleted or retrieved by you.

14.6 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any

expiration or termination of this Agreement: Section 3.1, Section 9, Section 11.4, Section 12, Section 13, Section 14.4, Section 14.5, this Section 14.6, and Section 15.

15. Miscellaneous.

15.1 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

15.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.3 Public Announcements. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that we may, without your consent, include or display your name, logo and other indicia in our lists of current or former customers in promotional and marketing materials.

15.4 Notices. Any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.4):

If to Provider:
415 E. Exchange Parkway, Allen, TX 75002
Facsimile: 214.383.9661
Email: legal@watchguardvideo.com
Attention: General Counsel

If to City:
113 W. Mountain Street
Fayetteville, AR 72701
Facsimile: 479.575.8257
Email: mayor@fayetteville-ar.gov
Attention: Lioneld Jordan, Mayor

with a copy (which shall not constitute notice) to:

Blake Pennington
Assistant City Attorney
bpennington@fayetteville-ar.gov

Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof,"

"hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, and attachments mean the sections of, and exhibits, schedules, and attachments attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, and attachments referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

15.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.7 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, and attachments and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, and attachments; (b) second, the exhibits, schedules, and attachments to this Agreement ; and (c) third, any other documents incorporated herein by reference.

15.8 Assignment. Neither party may assign or transfer this Agreement or its rights or obligations hereunder without the prior consent of the other party; provided, that we may assign or transfer this Agreement or any of our rights or obligations hereunder without your consent in connection with (a) the sale of all or substantially all of our stock or assets; (b) a merger or acquisition, whether we are the surviving or disappearing entity; (c) a corporate reorganization; or (d) transfer to a subsidiary or affiliate entity. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

15.9 Force Majeure.

(a) No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a **"Force Majeure Event"**), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 30 days or more.

(b) Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other

Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

15.11 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.12 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.13 U.S. Government Rights. The Services are provided to the U.S. government as "commercial items", "commercial computer software", commercial computer software documentation", and "technical data", with the same rights and restrictions generally applicable to the Services. If you are using the 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, you agree to immediately discontinue use of the Services. The terms as "commercial items", "commercial computer software", commercial computer software documentation", and "technical data" as used in this Section 15.13 have the same meaning as in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

15.14 Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the state in which your principal headquarters is located. The United Nations Convention for International Sale of Goods does not apply to this Agreement.

15.15 Dispute Resolution. Any dispute or claim relating in any way to this Agreement, your use of the Services, or the Provider Materials will be resolved in a court of competent jurisdiction in Washington County, Arkansas. Neither party waives its right to a jury trial.

15.15 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF FAYETTEVILLE, ARKANSAS	WATCHGUARD, INC.
By: _____	By: _____
Name Printed: _____	Name Printed: ROD J. McDONALD
Title: _____	Title: SECRETARY

EXHIBIT A

SERVICES, SERVICE ALLOCATION and FEES

The Services: Cloud-based, software-as-a-service evidence management data storage platform using Microsoft Azure Government Cloud Storage services fully-hosted in one or more secure Microsoft data centers.

Service Allocations and Fees:

Plan I (Unlimited)

Unlimited Storage available for customers with data retention policies as follows:

- a one-year storage period for non-evidentiary recordings;
- a 10-year storage period for evidentiary recordings; and
- the video recording policy is event-based (i.e. policies that do not require officers to record entire shifts). Agencies with non-qualifying retention or recording policies will need to use the "Actual Usage Plan

For purposes of this Plan, the term "evidentiary recordings" refers to data having relevance to a legal trial or regulatory hearing.

Plan costs are based on a per-device basis, which means that the Plan does not have a per-user fee, meaning that an unlimited number of users (i.e. administrators, supervisors, evidence technicians, officers, etc.) can access data using the Services.

This Plan also features data sharing, using the Company's CLOUD-SHARE on-premises software.

Additionally, this Plan allows the City to use their EvidenceLibrary.com cloud storage to store up to 100 GB of data (for each device under the plan) that was not generated by WatchGuard cameras (i.e. images, video from other devices, documents, etc.). If the City is storing more than 100 GB of non-WatchGuard generated data per device, there would be an additional storage fee equal to $0.03 per GB per month for the actual data usage beyond the 100 GB allowance.

Plan cost is based upon the City's choice of two options: (a) a per-device fee of $495 per contract year for assigned (i.e., individual use) devices, or (b) a per-device fee of $695 per contract year for pooled (i.e., shared) devices. There is also a $0.03 per GB per device per month for storage that does not meet these requirements.

When the actual usage across all devices averages less than 300 GB per device over a contract year, at the end of each calendar year the City the agency will receive a rebate of $100 for every device under the plan. The rebate is offered in cash or as a credit against future charges for the Services.

Plan II (Actual Usage)

Plan cost is based upon a per-device fee of $295 per calendar year for assigned (i.e., individual) devices, or $395 per device per calendar year for pooled (i.e., shared) devices, plus a

flat fee of $0.03 per GB per device per month.

There are no limitations on the number of users who may access data using the Services under this Plan.

This Plan is available for both event-based and shift-based video recording policies.

EXHIBIT B

SERVICE LEVEL AGREEMENT

(See attached)