

AGREEMENT FOR PROFESSIONAL SERVICES

THIS Agreement is made and entered into this ____ day of _____, 2007 by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter referred to as “City”, and TASER International, Inc., hereinafter referred to “Vendor.”

SECTION I - SCOPE OF WORK

City desires to purchase TASER® devices and accessories (Collectively referred to as “Devices”) and to obtain training in the proper use and operation of the Devices. Vendor is willing and able to sell Devices to City and to provide the proper training for the Consideration set forth in Section II, below.

SECTION II – CONSIDERATION

The Vendor will provide the following Devices and services to the City at the following costs:

<u>ITEM/SERVICE</u>	<u>PRICE PER ITEM</u>
X-26 TASER UG Yellow Blade-Tek #26024	\$814.95
15’ Training Cartridges #34200	\$17.97
25’ Duty Cartridges #44203	\$22.97
Data Download	\$148.95
Practice Targets #80002	\$6.95
Training Alligators Clips #85000	\$45.00
TASER Cam	\$399.95
Training Course to certify TASER Trainers (not end users)	\$225.00 (4 free slots)
Extended Warranty	\$179.95

The City will pay actual freight costs associated with the delivery of the Devices. All current Vendor warranty provisions are applicable to each purchase. The warranty is attached hereto and incorporated herein as Exhibit A.

SECTION III – TAXES

The City is a tax-exempt as a political subdivision under Section 4221(a) of the Internal Revenue Code and K.S.A. 79-3606 (a). Vendor shall remove any taxes from the billing if City provides Vendor with the City’s tax exempt certificate.

SECTION IV – RISK OF LOSS, SHIPMENT, PACKAGING

Title to and risk of loss and damage to equipment prior to the time of its receipt and acceptance by the City is upon Vendor. The City has no obligation to accept damaged shipments and reserves the right to return, at Vendor’s expense, damaged merchandise even though the damage was not apparent or discovered until after receipt of such damaged equipment, pursuant to Vendor’s warranty provisions. All items shall be properly packaged, packed, labeled and identified in accordance with commercial standards acceptable to the trade and in compliance with ICC and other federal and state regulations. Packing slips will accompany the shipment. Vendor shall deliver items within six weeks of the order being placed.

SECTION V - DISPUTE RESOLUTION

City and Vendor agree that disputes relative to any interpretation, performance, or breach of this Agreement shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, that no dispute will be submitted to arbitration without the parties' express written consent.

SECTION VI - TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement at their convenience by giving the other party written notice. Agreement will be terminated on the first day of the month following the month in which a termination notice is received by either party.

SECTION VII - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Vendor and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement. In the event that the City issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the City's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

SECTION VIII - INDEPENDENT VENDOR STATUS

Vendor is an independent Vendor and as such neither Vendor nor its personnel are agents or employees of the City. Vendor is responsible for payment of any and all federal, state and local taxes.

SECTION IX - INDEMNIFICATION

- A. **Definitions:** For purposes of indemnification requirements as set forth throughout the Agreement, the following terms shall have the meanings set forth below:
1. **"Vendor"** means and includes Vendor, all of its affiliates and subsidiaries, its Sub-Vendors and materialmen and their respective officers, directors, servants, agents and employees; and
 2. **"Loss"** means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement, whether arising before or after the completion of the performance required hereunder.
- B. **The Indemnity:** For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Agreement, Vendor shall

indemnify, defend and hold harmless the City against all losses that arise out of or relate to any negligent act or omission of Vendor. Vendor's obligations shall not apply to any liability or damage arising from the misuse of the Devices or to the extent resulting from the negligence of the City.

- C. **General Limitation:** Nothing in this section shall be deemed to impose liability on the Vendor to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss.
- D. **Waiver of Statutory Defenses:** With respect to the City's rights as set forth herein, the Vendor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this section.

SECTION X - NON-DISCRIMINATION AND OTHER LAWS

A. The Vendor agrees that:

1. the Vendor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry or age;
2. in all solicitations or advertisements for employees, the Vendor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. if the Vendor fails to comply with the manner in which the Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Vendor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
4. if the Vendor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Vendor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and
5. the Vendor shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subVendor or vendor.

The provisions of this section shall not apply to a contract entered into by a Vendor :

- (a) who employs fewer than four employees during the term of such contract; or
- (b) whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

B. The Vendor further agrees that the Vendor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION XI - APPLICABLE LAW, NONWAIVER

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas. The waiver of or failure to enforce any term or condition of this Agreement shall not be construed as a waiver of any other term or condition. If any provision is held to be unenforceable by a court or other tribunal, the enforceability of the other provisions shall not be affected.

SECTION XII – AGREEMENT TERM

This Agreement shall be effective _____2007, and shall continue in effect until _____2008. Thereafter, this agreement shall automatically renew annually on _____ unless either party gives the other written notice of their intent not to renew within ninety (90) days of the automatic renewal date. Either party may terminate this agreement at any time for their convenience as described in Section VI, above.

SECTION XIII – SUBCONTRACTORS

Vendor shall not subcontract any of the work or services required by this Agreement without the prior written approval of the City. Should Vendor request and the City agree to work being subcontracted, the Vendor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said sub-contractors, as Vendor is for the acts and omissions of the persons it directly employs.

SECTION XIV - INSURANCE REQUIREMENTS

The Vendor shall provide the City a Certificate of Liability Insurance confirming an in-force Commercial General Liability insurance policy, including product liability, in an amount no less than \$1,000,000 per occurrence. The insurer must maintain an A.M. Best rating of no less than A-VI. The form must state any applicable deductible or retention which shall not exceed \$10,000 without prior approval by the City."

SECTION XV – ADJUSTMENT TO CONTRACT TERMS

Changes to the terms of this Agreement may be made only in writing and must be approved by the City and the Vendor. Should a decision be made to amend the terms of this Agreement, the City and the Vendor must mutually agree in writing to the amended terms.

SECTION XVI - SEVERABILITY CLAUSE.

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

SECTION XVII – CASH BASIS

Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City's then current budget Year (i.e. January 1 to December 31) or from funds made available from

any lawfully operated, revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify Vendor of such termination, which shall not constitute a default under the Agreement, as least sixty (60) days prior to the end of the City's then current budget year. This paragraph shall not be construed so as to permit City to terminate the Agreement in order to acquire any other functionally similar product or service or to allocate funds directly or indirectly to perform essentially the same application for which the product or service under the agreement is intended.

SECTION XVIII – AFID REGISTRATION

City agrees to complete and return to Vendor the Anti-Felon Identification (“AFID”) registration card that is included with the TASER Devices. Failure to promptly return the AFID registration card will void any Vendor warranty.

SECTION XIX - EXECUTION OF CONTRACT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officials on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

Mayor Carl Gerlach

Attest

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

TASER International, Inc.:

Attest

CORPORATE ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT REMEMBERED, That on this ____ day of _____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of _____, a corporation duly organized, incorporated and existing under and by virtue of the laws of Delaware; and _____, who is personally known to me to be such officer and who is personally known to me to be the same person who executed as such officer within instrument on behalf of said Corporation, and such person duly acknowledged the execution of the same to be the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

EXHIBIT A