

## FOR BOARD ACTION

Agenda Item # 8.

Meeting Date:

12/13/07

**SUBJECT:** Amendment to the Master Services Agreement with Axon Solutions Inc.

**PREPARED BY:** Sue Parker, Director of Corporate Services

ITEM DESCRIPTION:

In September 2006, the Board authorized the Customer Care System project and authorized staff to execute agreements to support the implementation. One of the agreements is the Master Services Agreement with Axon Solutions Inc for the implementation of the SAP Customer Care System (CCS).

The amendment to the Master Services Agreement is the on-going support of the CCS project and other SAP solutions. The support agreement is for three years with the ability to extend it to five years. In addition, the agreement allows for early termination with proper notice.

The first year of support is included in the 2008 budget and has been forecasted into the remaining years.

The agreement is attached and has been reviewed by the City Attorney.

UTILITY BOARD ACTION REQUESTED:

The Board is requested to approve the amendment to the Master Services Agreement for a total of \$1,933,680 for the three year period and request the Common Council to approve and authorize the Mayor and the City Clerk to execute the Amendment subject to the approval of the 2008 RPU budget by the Board and Council for the 2008 portion of the agreement cost and review of the documents by the City Attorney.

  
General Manager

  
Date

**ROCHESTER PUBLIC UTILITIES**

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***Axon Solutions Inc***

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***Master Services Agreement***

***For***

***Rochester Public Utilities***

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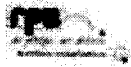
***Final***

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***February 23, 2007***

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**DOCUMENT CONTROL**

<b>Owner</b>	Alan Smith
<b>Status</b>	Final

<b>Version</b>	<b>Description of Change</b>	<b>Date</b>	<b>Author</b>
1.0	First Draft	1-10-07	Alan Smith
2.0	Second Draft	2-20-07	Alan Smith
Final	Final	2-23-07	Alan Smith



**THIS MASTER SERVICES AGREEMENT** ("Agreement") is entered into as of this 23rd day of February, 2007 (the "Agreement Date") by and between **Axon SOLUTIONS INC**, a Delaware Corporation, with principal offices at One Exchange Place, 10<sup>th</sup> Floor, Jersey City, New Jersey, 07302 (hereinafter "Axon"), and the City of Rochester acting through its public utility, Rochester Public Utilities, a municipal utility organized under the laws of the State of Minnesota, with offices at 4000 East River Road Northeast Rochester, MN 55905 (hereinafter "Client").

**Background Statements**

(A) Axon provides a range of services and deliverables with a view to achieving a business solution which meets the identified requirements of Client;

(B) Client wishes to engage Axon generally, and Axon agrees, to provide such of the services and/or deliverables as may be required from time to time on the terms set out herein; and

(C) This Agreement sets out the terms which will govern the provision of all services and/or deliverables to Client by Axon.

**Agreement**

In consideration of the mutual obligations contained in this Agreement, the parties hereto agree for themselves, their successors and assigns as follows:

**1. Definitions.**

Upper case terms in this Agreement not otherwise defined in the context in which they are used shall have the following meanings:

**"Acceptance Testing"** means the acceptance tests detailed in Section 5 below, with "Acceptance" being construed accordingly.

**"Affiliate"** means, with respect to either party, any Person directly or indirectly controlling, controlled by, or under common control with such party. The terms "controlling" and "controlled" mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policy of a Person, whether through the ownership of voting securities, by contract, or otherwise.

**"Axon Consultants"** means Axon's employees, subcontractors, and agents engaged in providing one or more Services identified in this Agreement and/or in any Statement of Work.

**"Blueprint Specification"** means such project documentation identified as a blueprint specification and produced in relation to a specific Project and as such specification is Accepted in accordance with Section 5 below.

**"Change in Control"** means, with respect to any entity, the occurrence of one or more of the following events: (i) any Person, including any Affiliate of such Person, shall have become the direct or indirect beneficial owner of fifty (50) percent or more of the equity power (measured by the right to elect members to the Board of Directors or similar governing body) of such entity; (ii) any Person shall have obtained, by contract or otherwise, the power to direct the affairs of or elect a majority of the directors (or other members of the governing body) of such entity; or (iii) any sale, lease,



exchange, or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the operating assets of such entity to any Person including any Affiliate of such Person.

**“Change Order”**

shall have the meaning given to such term in **Section 3.4**.

**“Confidential Information”**

means all business or technical information of either party that is not generally known to the public. Confidential Information includes but is not limited to this Agreement and each Statement of Work, and any other information relating to either party's customers, employees, products, operations, methodologies, processes, developments, know-how, trade secrets, business affairs, labor costs, financial and accounting information, pricing and commercial terms.

**“Deliverables”**

shall have the meaning given to such term in **Section 3.2**.

**“FRICE”**

means all development objects that fall within the following SAP defined categories Forms; Reports; Interfaces; Conversions; Interfaces; Enhancements; Workflow; EDI / iDOC Messages; Computer Aided Test Tool (CATT); and Legacy Systems Migration Workbench (LSMW)

**“Go Live”**

means the first live use of the whole or any part of the System as identified under a Statement of Works

**“Intellectual Property”**

means, whether now or hereafter existing: data, information, ideas, discoveries, improvements, know-how, work product, copyrights, trademarks, trade secrets, computer software, industrial property, patents, inventions, and all other like and unlike forms of intellectual property, whether or not patentable. It is understood that "know-how" also includes information comprised in or derived from formulae, designs, specifications, processes, techniques, drawings, component lists, product documentation, manuals, instructions, plans, and catalogs, each in whatever form held or presented.

**“Interface”**

means any software program that facilitates or carries out the exchange of data, calls or commands between the SAP Software and any other application program, operating system or utility.

**“Person”**

means any corporation, natural person, firm, joint venture, partnership, limited liability company, trust, unincorporated organization, or government, foreign or domestic, or any agency or political subdivision thereof.

**“Pre-existing IP”**

shall have the meaning given to such term in **Section 9.1.1**.

**“Project”**

means the project for the provision of Services pursuant to any Statement of Work.

**“SAP Software”**

means the version of the SAP software program described in each Statement of Work, in object code format, together with all new releases of such software that are provided to Client from time to time, and together with all third party software programs that are embedded in the SAP software.

**“Services”**

shall have the meaning given to such term in **Section 3.2**.



- “Software Component”** shall have the meaning given to such term in **Section 5.2**.
- “Statement of Work”** means a Statement of work, substantially in the form of **Exhibit A**, created for each separately defined and executed work package. Each Statement of Work shall be attached hereto and incorporated herein by reference.
- “System”** means the Client’s own SAP Software, as modified by Axon under each Statement of Work, together with any other Deliverables and Interfaces to be provided by Axon under each Statement of Work.
- “Working Day”** means any day other than a Saturday or Sunday, a legal holiday or a day on which commercial banks in Rochester, MN are authorized or required by law to be closed.

**2. Term and Termination.**

- 2.1** This Agreement shall commence on the Agreement Date and shall continue in force until terminated as provided in this Agreement. Each Statement of Work or any portion thereof executed hereunder may be terminated as provided in this Agreement or in accordance with the terms set forth in the applicable Statement of Work. Upon any termination of any Statement of Work, the terminating party has the option, but not the obligation, to terminate this Agreement and all other outstanding Statements of Work.
- 2.2** Either party may terminate this Agreement or any Statement of Work executed hereunder: (i) for cause in the event of a material breach of the terms of this Agreement or such Statement of Work by the other party hereto that is not corrected within thirty (30) calendar days following written notice thereof; or (ii) in the event the other party terminates or suspends its business, becomes insolvent, or becomes subject to any bankruptcy, liquidation or insolvency proceeding under federal or state law.
- 2.3** Either Party may terminate this Agreement or any Statement of Work executed hereunder for convenience by giving the other Party forty-five (45) calendar days prior written notice. To the extent Client terminates this Agreement or any Statement of Work for convenience pursuant to this Section, Axon shall be paid for all Services delivered up to such termination date, including payment for any performance milestones completed prior to such termination date, and payment for any wind-down or transition activities agreed to by both parties.
- 2.4** In the event of termination of this Agreement for any reason, (i) each party shall immediately return all information in the possession of such party that belongs to the other party, including but not be limited to Confidential Information, and (ii) the terms of **Articles 8, 9, 10 and 12** shall survive such termination, and shall continue in effect to the benefit of, and be binding upon, both parties and their successors and assigns, for a duration as outlined in each respective Article. Termination of this Agreement, or any of the obligations under any Statement of Work hereunder, by either party shall be in addition to any other legal or equitable remedies available to such party, except to the extent that remedies are otherwise limited hereunder.
- 2.5** In the event of termination of this Agreement or any Statement of Work executed hereunder, unless otherwise requested by Client, Axon will continue to provide Services hereunder or under the applicable Statement of Work through the effective date of such termination and during any transition period (as described below). Axon agrees to cooperate with and assist Client to effect the transition of the Services to Client or a third party system integrator designated by Client in an orderly fashion with no, or in the worst case, minimal, interruption to the SAP implementation. If Client terminates this Agreement pursuant to **Section 2.3**, or if Client terminates this Agreement pursuant to **Section 2.2** and Axon disputes it has committed a material breach, or if Axon



terminates this Agreement pursuant to **Section 2.2**, Client shall pay Axon for the transition services described above at Axon's standard rates. If Client terminates this Agreement pursuant to **Section 2.2** and Axon accepts it has caused a material breach, Axon will provide the transition services described above at no additional charge subject to an agreed transition plan, and in any event for a period not to exceed thirty (30) calendar days. If the Client requires transition services after thirty (30) days, the Client shall pay for transition services for each work day completed after the thirty (30) day period. It is understood by the parties that the transition period noted above shall commence upon the effective termination date of the Agreement or any such Statement of Work.

**3. Services, Statements of Work and Change Orders.**

**3.1** Upon execution of this Agreement, each party shall designate a person who has the authority to review, approve and execute Statements of Work and Change Orders (as described in **Section 3.4**) on behalf of such party (the "Authorized Representative"). The initial Authorized Representative of Axon is Stephen Wilkes and the Authorized Representative of Client is dependent on different authority levels with Larry Koshire being the Authorized Representative who will serve as the point of contact. Each party may change its Authorized Representative from time to time, by notice of such change given by the Authorized Representative of the notifying party, or a president or vice-president of such party, to the other party. The specified Authorized Representative may delegate his or her authority to one or more other Authorized Representatives (which may include specified limits on the duties or level of authority of each such person) by notice of such change given by the Authorized Representative of the notifying party to the other party.

**3.2** Axon will perform the consulting, software development and other tasks described in each Statement of Work (the "Services"). The Services may include the configuration of the SAP Software, the development of Interfaces or custom modifications or extensions to the SAP Software, or the delivery to Client of a variety of materials, reports, design documents and specifications, end-user documentation and other work product or deliverables, either developed independently by Axon or developed jointly by Axon and Client (collectively referred to in this Agreement as the "Deliverables"). Each Statement of Work will use the template attached as **Exhibit A** and, at a minimum, will set forth (i) the applicable phase of the SAP implementation; (ii) a description of the detailed project scope, timeline, milestones and assumptions; (iii) a description of the Services, any required level of performance, the required specifications for each Deliverable or the manner in which such specifications are to be developed, including each party's responsibility for the creation thereof and delivery dates; (iv) acceptance criteria for each Deliverable; (v) milestone completion dates; (vi) identification of key Axon Consultants who will be performing the Services; (vii) the category of each Deliverable and a list of any included third party deliverables; and (viii) statement of fees due for the delivery of Services and an associated payment terms. Each Statement of Work will become a contractual obligation of the parties upon execution of such Statement of Work by Authorized Representatives of both parties (whether or not such Statement of Work uses the template or includes all of the required elements described above), and neither party will have any obligation under a proposed Statement of Work that has not been executed by Authorized Representatives of both of the parties. Unless otherwise agreed between Authorized Representatives of both parties, each Statement of Work will exist independently of any other Statement of Work and termination of one Statement of Work will not necessarily affect the existence of another Statement of Work.

**3.3** Upon the execution of this Agreement, the parties shall jointly establish and maintain a program steering committee (the "Program Steering Committee") that shall monitor progress of project status and provide appropriate senior management guidance. The initial representative of Axon on the Program Steering Committee will be Stephen Wilkes and the initial representative of Client on the Program Steering Committee will be Patty Hanson. Each party may change its representative on the Program Steering Committee from time to time, by notice of such change to



the other party. Each party shall designate a representative to the Program Steering Committee who has an appropriate level of authority and responsibility for the particular Services then being performed. Unless otherwise set forth in any Statement of Work, during any period when Services are being provided under this Agreement:

Axon shall provide Client with weekly status reports including a description of the activities performed under each Statement of Work during the prior week, the milestones achieved, progress relative to plan, any corrective actions that may be needed, planned activities for the upcoming week and any other documentation and information that Client may reasonably request; and the Program Steering Committee shall meet on an as agreed basis, but in any event with a frequency of no less than monthly, to review program status, develop plans to correct any delays or problems, review any pending change orders, attempt to resolve disputes by mutual agreement and undertake such other responsibilities as the parties may mutually agree upon from time to time.

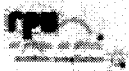
- 3.4** Either party may from time to time propose prospective changes to the scope, nature, deliverables, time or schedule of the Services being performed under any Statement of Work. Any such proposal must be submitted to the other party in writing, describe the proposed change in reasonable detail and, describe the likely effect of the change on the cost and the schedule for performing Services. Within ten (10) working days, or as otherwise agreed for each specific Change Request, after its receipt of any such request from Client, Axon shall provide a written report to Client including a technical outline of the change request and its assessment of the impact and cost of the proposed change, taking into account the resources required, any other Services or Deliverables that may be required, and the magnitude of any likely delay in any other project. Any additional costs relating to any proposed change shall be calculated and charged in accordance with the rates, if any, set forth in the applicable Statement of Work. Each change proposed by either party that impacts Program Timeline, Scope and Costs shall be discussed and reviewed by the Program Steering Committee. Any proposed change to any Statement of Work shall be implemented and become a "Change Order" if, but only if, the Authorized Representatives approve the change in writing after, where appropriate, the review of the proposed change by the Program Steering Committee. Each party shall be responsible for its own costs associated with preparing, investigating and evaluating each proposed change to any Statement of Work, except where specified in the appropriate Statement of Work.
- 3.5** Without limiting the foregoing, Axon shall not propose a change to, or seek relief from the agreed commercial arrangements contained in any Statement of Work executed hereunder based on an error or omission of Axon (an "E&O"). E&Os may arise from: (a) inaccurate assumptions that form the basis of Axon's estimates for the project as contained in any Statement of Work except where those assumptions derive from facts and matters supplied to Axon by Client or Client controlled 3<sup>rd</sup> Parties; (b) inadequate levels of effort by Axon except where these levels of effort derive from facts and matters supplied to Axon by Client or Client controlled 3<sup>rd</sup> Parties; (c) unsatisfactory Axon staff performance, including absences, or (d) Axon not otherwise meeting its project obligations. In the event of such an E&O, Axon will allocate the resources necessary to meet the project timeline and delivery requirements, at no additional charge to Client.

**4. Warranties.**

**4.1** Axon represents and warrants as follows:

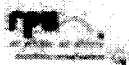
- 4.1.1** Axon has the legal right, power, and authority to effectively and validly enter in to this Agreement and each Statement of Work.
- 4.1.2** Axon is not a party to any agreement, contract, obligation or understanding, whether of employment, confidentiality or otherwise, that would in any way restrict or prohibit it from





entering into this Agreement or undertaking or performing the Services in accordance with the terms and conditions of this Agreement.

- 4.1.3 Axon shall perform the Services in a timely and professional manner using competent personnel having expertise suitable to their assignments.
  - 4.1.4 The Services and Deliverables shall conform to the specifications described herein and in the Statements of Work, as well as the standards generally observed in the industry for similar services.
  - 4.1.5 The Services and Deliverables supplied hereunder shall be free of defects in workmanship, design and material in all material respects.
  - 4.1.6 Axon shall provide the Services in compliance with Client's workplace and information technology policies, rules and regulations, as disclosed to Axon in writing, and all applicable laws.
  - 4.1.7 Axon has not and will not infringe any intellectual property rights of any third party in the course of performing the Services.
  - 4.1.8 Notwithstanding **Section 4.3**, for a period of sixty (60) calendar days from the date of final acceptance with respect to each Statement of Work pursuant to **Section 5.3**, the System will operate, perform and function in accordance with the agreed upon specifications in the applicable Statement of Work and any other documentation delivered to Client by Axon describing the functionality or specifications of the System, and as verified by the client performed Acceptance Testing.
  - 4.1.9 The System will not contain, and Axon shall take all reasonable precautions to prevent the introduction into the System of any disabling code or similar device (including, without limitation, any software lock, time bomb, trap door, Trojan horse, worm, or virus) that might prevent Client from using the System for its intended purpose.
- 4.2 Client must give Axon written notice of any warranty claim within a reasonable period of time, and in any case not later than the expiration of the sixty (60) calendar day warranty period described in **Section 4.1.8** above. On receiving such notice from Client, Axon shall at its own expense, and within a reasonable period of time not to exceed fifteen (15) Working Days, either correct the non-conforming Services or components of the System or replace the non-conforming Services or components of the System with Services and components that comply with the foregoing warranties. If Axon is unable to correct or replace the non-conforming Services or components of the System within a reasonable period of time, Client shall be entitled to give notice to Axon under Article 2.2, subject to the limitations in **Article 12**. Axon is not liable for any delay in correcting or replacing a non-conforming Service or component of the System caused by Client's delay in giving Axon notice of the claim. Axon is not liable for any damages relating to any specific warranty claim should Client's unreasonable delay in giving Axon notice of that warranty claim make it impossible for Axon to re-create the claimed defect. Axon shall have no obligation to make warranty repairs with respect to, and no warranty shall apply to, any defect directly and solely attributable to a Client or a 3<sup>rd</sup> party failure or modification unless such modification is made by Client following Axon's failure to remedy a defect in the System in accordance with this Agreement.
- 4.3 Axon shall not be responsible for any failure of the System to conform with the specifications to the extent such non-conformance is due to the failure of any client or 3<sup>rd</sup> party hardware or software, to conform to its published specifications, including performance standards or Client network infrastructure or other systems that cause the System non-conformance. Axon's Warranty excludes all software bugs attributable to Client procured software or 3<sup>rd</sup> party software.



- 4.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR OTHERWISE, AND SUBJECT TO APPLICABLE LAWS, Axon MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE SERVICES, SYSTEM AND OTHER DELIVERABLES EXCEPT FOR THOSE CONTAINED HEREIN, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES ARISING BY OPERATION OF APPLICABLE LAW WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
5. **Acceptance Testing.**
- 5.1 Acceptance testing criteria for each acceptance test conducted pursuant to **Sections 5.2** and **5.3**, including without limitation the detailed test scripts, test cases, test data and expected results, shall be developed by the parties under each applicable Statement of Work (the "Acceptance Criteria"). Client shall use complete and thorough acceptance testing procedures ("Acceptance Testing Procedures") to evaluate whether each Deliverable, Software Component, and the System as a whole, satisfy the Acceptance Criteria. At Client's request, Axon shall assist in the development and performance of the Acceptance Testing Procedures. The Acceptance Testing Procedures shall include: (i) unit testing (i.e., individual testing of each field, screen, screen related action, and module or program); (ii) system testing (i.e., testing of the applicable Deliverable, Software Component, or the System as a whole, and its integration and interfacing with Client's other applicable software and systems); and (iii) volume and stress testing (i.e., testing of the applicable Deliverable, Software Component, or the System as a whole, under peak and extreme conditions to measure response times and reaction to load).
- 5.2 After Axon has completed installation and configuration of a Deliverable or group of Deliverables that constitute a component of the System (each such group of Deliverables, a "Software Component") Axon shall certify to Client that such Deliverable or Software Component is ready for acceptance testing. Client shall then have ten (10) Working Days to validate and test such Deliverable or Software Component using the Acceptance Testing Procedures to confirm whether each such Deliverable or Software Component performs in accordance with the applicable Acceptance Criteria. Notwithstanding **Section 5.4**, in the event that a Deliverable or Software Component fails to meet the Acceptance Criteria, Client shall notify Axon prior to the end of the 10-Working Day acceptance testing period and shall provide Axon with a description of the specific way in which the Deliverable or Software Component fails to perform. Axon shall have thirty (30) calendar days from receipt of such notice to correct all such identified defects, at no additional expense or cost to Client. Axon shall thereafter certify that the such Deliverable or Software Component is ready for re-testing. Upon any such certification, Client shall have ten (10) calendar days for re-testing. Should the re-testing indicate that Axon has failed to remedy all of the identified defects in such Deliverable or Software Component without the creation of new problems, Client may elect to either (i) accept the Deliverable or Software Component notwithstanding the remaining defects, in which event Axon shall correct all remaining identified defects at its sole expense as quickly as reasonably possible; (ii) provide Axon with notice of the remaining defects and permit Axon a reasonable period of time to correct the defects and re-certify that the Deliverable or Software Component is ready for re-testing in the manner provided above, or (iii) reject the applicable Deliverable or Software Components. Notwithstanding **Section 5.4**, if Client elects to reject a Deliverable or Software Component pursuant to clause (iii) above, (A) Client shall cease use of the applicable Deliverable or Software Component and shall have no further right or license to any Intellectual Property owned by Axon contained therein, and (B) Axon shall refund to Client all amounts paid to Axon with respect to such defective Deliverable following agreement of a formal claim relating to amounts associated with the creation of said defective Deliverable.
- 5.3 For the purpose of the acceptance test under **Sections 5.2**, each Deliverable or Software Component, and the System in its entirety, will be deemed to be accepted, notwithstanding its failure to pass the acceptance test described above, should Client elect to commence actual



productive use thereof. In such event, Axon shall correct all remaining identified defects at its sole expense as quickly as reasonably possible.

- 5.4 If any Deliverable or Software Component fails to meet the Acceptance Criteria due to performance issues with client procured or 3<sup>rd</sup> party supplied hardware or software, the Client will rectify any such performance issues within ten (10) working days following identification of the performance issue.

**6. Personnel.**

- 6.1 Axon shall be responsible for the selection of the Axon Consultants, including, engaging subcontractors to carry out its Services, provided that Axon shall notify Client in advance of the use of any Axon Consultant that is not an employee of Axon. In addition, Axon shall ensure that all of the Axon Consultants have sufficient skill and experience in relevant areas and adequate training to permit them to perform their assigned tasks in an efficient and workmanlike manner. Notwithstanding the foregoing, Client shall retain the right to refuse to accept any Axon Consultants, at its reasonable discretion.

6.1.1 Axon shall notify Client prior to selecting each Axon Consultant and, upon Client's request, will provide Client with the opportunity to interview such person and review the person's resume and application.

6.1.2 Client may require that any Axon Consultant be removed and replaced if Client has a reason to be dissatisfied with such consultant where such consultant is in breach of any obligations under this agreement or there is any cause for concern in relation to the consultant's conduct or performance.

- 6.2 Axon shall be responsible for the day-to-day management of the Axon Consultants. Axon further agrees that it shall not remove or replace any of the key Axon Consultants performing Services under any Statement of Work (as identified in such Statement of Work) without Client's prior consent, which will not be unreasonably withheld if Axon offers to substitute a comparably skilled Axon Consultant who can reasonably be expected to perform the same functions without any adverse consequences for Client. Without such consent, Axon may only replace such key Axon Consultants in the event of the death, disability or resignation of any such person or Axon's termination or suspension of any such person. Axon will have the right to reassign and remove other Axon Consultants from the performance of the Services as it may determine is necessary in the exercise of its reasonable business judgment. Axon shall ensure that no change in personnel hereunder results in additional expense to Client or the delay in the delivery of any Services.

- 6.3 Subject to approval by Client, which will not be unreasonably withheld, Axon Consultants will be allowed to maintain flexible weekday schedules in order to accommodate travel time required to and from Client's location, provided that such Axon Consultants effectively work forty (40) productive hours per week. Client will use commercially reasonable efforts to allow Axon Consultants to adjust their working location, including remote working or re-assignment to another engagement, to avoid Client reimbursable expenses becoming taxable income.

- 6.4 Axon shall be solely responsible for the conduct of its Axon Consultants, including ensuring compliance with Client's policies and applicable laws when on-site at Client's facilities or accessing Client's systems remotely. In addition, all Axon Consultants under this Agreement shall have valid and legal residency and work authorization to deliver the Services at the required Client location. Axon shall be fully responsible for all payments due any Axon Consultant, including, without limitation, any overtime wages.



## 7. Fees and Payment Terms.

- 7.1 Client shall pay the applicable fees for Services in the amount, and in accordance with the payment terms specified in the applicable Statement of Work. In addition, and subject to the terms of the applicable Statement of Work, Client shall reimburse Axon for travel, living and other expenses incurred by Axon Consultants while providing Services hereunder at Client's facilities, subject to Axon's compliance with Client's standard policies on the reasonableness and documentation of expenses, and as specified in the Schedules to this Agreement.
- 7.2 Axon shall invoice Client for all amounts due in accordance with the terms of this Agreement. Each invoice must include a reference to the applicable Statement of Work number, itemization of charges, dates that services were rendered and a list of Axon Consultants who have provided services and a summary of the services provided by each Axon Consultant. Client shall pay complete and undisputed invoices rendered under this Agreement within thirty (30) calendar days after the receipt of the invoice. The date of invoice receipt shall be deemed to be two Working Days after such invoice is sent by Axon to the Client. In the event that Client disputes in good faith any such complete invoice, Client shall pay the undisputed amounts within thirty (30) calendar days of receipt of the invoice, and shall pay any remaining amount due promptly upon resolution of the dispute.
- 7.3 If Client has failed to make any undisputed payment in accordance with **Section 7.2**, Axon may (i) charge interest at the rate of 1% per month on any undisputed balances until such payment is made by Client, and (ii) may suspend any further delivery of Services under the applicable Statement of Work; provided, however, that Axon may not exercise such rights unless Axon has sent notice of such failure to make payment to Client and Client has failed to make such payment within ten (10) calendar days of such notice.
- 7.4 All invoices shall be in *[Insert Billing Currency]* and are exclusive of any taxes. If Axon is required to pay or collect local, sales, goods, services or other similar taxes or duties in connection with this Agreement, then all such taxes and duties shall be billed to Client. Client shall not be liable for payroll taxes incurred by or on behalf of Axon Consultants or any taxes measured or based upon Axon's income.

## 8. Confidential Information.

- 8.1 The obligations of confidentiality set forth below apply to all information of either party (the "Discloser") that is disclosed to the other party (the "Recipient"). Recipient agrees that it will: (i) hold the Discloser's Confidential Information in strict confidence; (ii) use the Discloser's Confidential Information only for the purposes permitted hereunder; (iii) use the same degree of care in protecting the confidentiality of Discloser's Confidential Information that it uses to protect its own confidential information of like importance; (iv) not copy or reproduce in any manner all or part of the Discloser's Confidential Information except as reasonably required for the purposes permitted by this Agreement; and (v) not disclose the Discloser's Confidential Information to any Person other than its employees, contract employees, agents, accountants and attorneys, except as otherwise permitted by this Agreement or as required by the Minnesota Government Data Practices Act.
- 8.2 The Recipient's obligations under **Section 8.1** shall not apply to any portion of the Discloser's Confidential Information that: (i) at the time of disclosure to Recipient was in the public domain or subsequently becomes a part of the public domain through no act or omission of Recipient; or (ii) Recipient subsequently develops without any use of or reference to the Confidential Information.
- 8.3 Should Recipient become legally compelled to disclose any portion of the Discloser's Confidential Information in connection with a lawsuit, a request for public data or similar proceeding, Recipient shall give Discloser prompt notice of that fact, including in its notice the legal basis for the



required disclosure and the nature of the Confidential Information that must be disclosed. Recipient shall cooperate fully with Discloser in obtaining a protective order or other appropriate protection relating to the disclosure and subsequent use of such Confidential Information. Recipient shall disclose only that portion of the Discloser's Confidential Information that is legally required to be disclosed.

- 8.4 The furnishing by Discloser of Confidential Information to Recipient shall not be construed as granting Recipient any right or license whatsoever in Discloser's Confidential Information, except as otherwise provided in this Agreement.
- 8.5 Recipient acknowledges that Discloser would have no adequate remedy at law should Recipient breach its obligations under this **Article 8** and agrees that Discloser shall be entitled to enforce its rights under this **Article 8** by obtaining appropriate equitable relief including a temporary restraining order and an injunction.
- 8.6 The parties agree that the confidentiality obligations set forth in this **Article 8** shall survive for ten (10) years following the termination of this Agreement. Notwithstanding the foregoing, the terms of this **Article 8** shall survive beyond such ten (10) year period with respect to any Confidential Information that is a trade secret under Delaware law for as long as such information remains a trade secret.

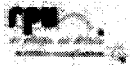
**9. Ownership of Deliverables.**

9.1 The rights of the parties in each Deliverable will depend upon the nature of the Deliverable. The parties shall attempt to ensure that each Statement of Work or Change Order identifies each Deliverable as being a Category A, B, C or D Deliverable. The designation by the parties of the Category for any Deliverable shall be conclusive, notwithstanding any contrary language in the following descriptions that might indicate that the Deliverable could be included within a different Category. In the event that the parties fail to so designate the Category for any specific Deliverable, it shall be deemed to fall within the Category that most closely describes the nature of the Deliverable, in accordance with the descriptions set forth below:

- 9.1.1 *Category A Deliverables* – Category A Deliverables include all Intellectual Property owned or developed by Axon (i) prior to the Agreement Date, or (ii) independently from the performance of Services hereunder (the “Pre-Existing IP”).
- 9.1.2 *Category B Deliverables* – Category B Deliverables are those generic Deliverables that are created or developed by Axon (either solely through its own efforts or in concert with Client or others) under a given Statement of Work and that are generally usable by Axon in its business. Category B Deliverables include modified versions of the Pre-Existing IP that continue to perform only generic functions.
- 9.1.3 *Category C Deliverables* – Category C Deliverables are those Deliverables that are created or developed by Axon (either solely through its own efforts or in concert with Client or others) under a given Statement of Work and that relate specifically to Client or its business, have been specifically requested by Client, or that incorporate Client proprietary concepts or information. Category C Deliverables include (i) custom modifications or extensions of the SAP software that relate specifically to Client's business or processes, (ii) Interfaces from the SAP Software to Client's existing software systems, and (iii) modified versions of the Pre-Existing IP that perform functions that relate specifically to Client's business or processes.
- 9.1.4 *Category D Deliverables* – Category D Deliverables are those Deliverables that are developed under circumstances that evidence the intent of the parties jointly to own, control and market the Deliverable.



- 9.2 Axon will have and/or retain all right, title and interest in Category A and Category B Deliverables and in all Intellectual Property rights in the Category A and Category B Deliverables. Notwithstanding the foregoing, Axon grants to Client a non-exclusive, world-wide, royalty free license to execute, reproduce, perform, distribute in connection with Client's internal business purposes, and use such Category A and Category B Deliverables. Subject to Client's rights to use such Deliverables in accordance with the preceding sentence, Category A and Category B Deliverables shall be treated as being Confidential Information of Axon, provided that any Confidential Information independently provided by Client in connection with the development of any Category B Deliverable will remain the Confidential Information of Client.
- 9.3 Client will have and/or retain all right, title and interest in Category C Deliverables and in all intellectual property rights in the Category C Deliverables. Category C Deliverables will be considered "works made for hire" under applicable law. To the extent that any Category C Deliverable is not deemed a "work made for hire" under applicable law, Axon hereby irrevocably assigns and transfers to Client all right, title and interest in the Category C Deliverables. To the extent that any software is included in any Category C Deliverable, the Category C Deliverable includes a fully documented source code version of that software. Except as provided below, Category C Deliverables will be treated as being Client's Confidential Information for purposes of this Agreement. Axon shall not use, reproduce, or otherwise distribute such Category C Deliverable to any Person, including, without limitation, any competitor of Client, without the prior written consent of Client; provided, however, Axon will have the right and license to retain one copy of each Category C Deliverable for internal archival and reference purposes. The above notwithstanding, Category C Deliverables may include Pre-Existing IP in which Axon retains all rights (all of which must be specifically identified in the Statement of Work relating to any Category C Deliverable). Client's right and license in any such Pre-Existing IP is specified in **Section 9.2** of this Agreement.
- 9.4 Category D Deliverables, and all of the Intellectual Property rights therein, will be owned jointly by the parties. Each party will have the right to disclose, license, assign, transfer, market and otherwise provide any Category D Deliverable to any third party to the extent, but only to the extent, expressly provided in the applicable Statement of Work or in a subsequent agreement between the parties. Each party will otherwise have only the right to use, copy, display, modify and prepare derivative works of the Category D Deliverables for its internal business purposes.
- 9.5 Nothing in this **Article 9** shall be construed as limiting the right of either party to use its own ideas, know-how, approaches, methodologies, concepts, skills, tools, techniques and processes developed independently of any Statement of Work entered into under this Agreement; provided that such party can do so without infringing any proprietary right of the other party or disclosing any Confidential Information of the other party.
- 9.6 The parties shall cooperate with each other and make such further assignments and execute such other documents as may be necessary and appropriate to perfect ownership and licensing rights granted in this Agreement.
- 10. Non-Solicitation.**
- 10.1 Neither party shall directly solicit or induce employees of the other party who have been directly involved in any Statement of Work executed hereunder (whether in the delivery of the Services and/or Deliverables or in the ordering of the same) to terminate their respective employment or to act as a contractor or agent for the other party during the term of this Agreement and for a period of six (6) months following the termination of this Agreement; provided, however, that it shall not be deemed a breach of the foregoing to hire any such employee who at the time of the initial contact with such party regarding employment is responding to a general advertisement or other non-directed search inquiry.



**11. Client's Obligations.**

- 11.1** In addition to any project-specific requirements of Client that may be contained in any Statement of Work, Client agrees to: (i) provide reasonable access to its office facilities including space, communications/phone and office applications for Axon Consultants working at Client's premises; (ii) if required in order to complete a Deliverable, provide remote access to Client's development SAP instance(s) to Axon Consultants; (iii) allow remote working for approved SAP implementation project team members where such remote working would not adversely impact the Services, project Deliverables or schedule; (iv) dedicate Client staff to the project on a full time basis in accordance with any staffing requirements in any Statement of Work or otherwise agreed upon by the parties; (v) provide and make available personnel who are reasonably qualified to perform the tasks for which they are assigned; and (vi) ensure that Axon Consultants have full and timely access to all staff, including senior management and potential users of the system to the extent required by Axon to make decisions and perform the obligations of Axon under this Agreement
- 11.2** Axon shall provide Client with written notice if it believes that Client has failed to meet its obligations hereunder. Axon shall give client a commercially reasonable timeframe to cure such failure before Axon may seek a change order or other recourse or remedy hereunder.
- 11.3** Client recognizes that Axon needs positive customer endorsements to generate repeat business and, to the extent satisfied with Axon's Services provided hereunder, will make commercially reasonable efforts to comply with requests from Axon for customer reference endorsements.

**12. Indemnifications, Liability Limitation and Insurance.**

- 12.1** Subject to Section 12.4 below, Axon shall indemnify, defend and hold harmless Client, its subsidiaries, and their directors, officers, employees, and agents from and against any and all claims, suits, actions, proceedings, costs, damages and other liabilities (including without limitation reasonable attorney's fees, amounts paid in settlement of any such claim and amounts awarded in any judgment relating to such claim) related to or arising from:
- 12.1.1** Any act or omission (negligent or otherwise) by Axon or any Axon Consultant in connection with its performance under this Agreement resulting in any real property damage, personal injury or death (including, without limitation, injury to, or death of, any Axon Consultant); and
- 12.1.2** Any infringement of any copyright, patent, trade secret, trademark or other Intellectual Property right of any third party.
- 12.2** Client shall provide Axon (i) prompt written notice of the existence of any indemnity claim, suit, action or proceeding, (ii) sole control over the defense or settlement of such claim, suit, action or proceeding (provided that any settlement containing an admission by Client of liability or other obligation or payment imposed upon Client shall require Client's written consent), and (iii) assistance at Axon's request, and at Axon's sole expense, to the extent reasonably necessary for the defense of such claim, suit, action or proceeding. Client may, at its own expense, participate in the defense of such claim with counsel of its own choosing.
- 12.3** The indemnification set forth in **Section 12.1.2** above shall not apply to the extent that any such claim is based on (i) any Client software incorporated in or combined with the System or any Deliverable where in the absence of such incorporated item, no infringement would have occurred, (ii) the System or any Deliverable that has been altered or modified by Client or any third party where, in the absence of such alteration or modification, no infringement would have occurred; and (iii) any use of an outmoded version of the System or any Deliverable for which Axon has made available, an updated, revised or repaired, non-infringing version that performs all of the same functionality as the outmoded version without any degradation in performance.



Should Client's use of the System or any Deliverable be held by a court to be infringing as a result of any matter within the scope of this indemnification, Axon shall either obtain a royalty-free right for Client to continue to use the infringing System and Deliverables in the manner permitted hereunder or replace or modify the infringing System and Deliverables so that they continue to perform all of the same functions without any degradation in performance and continue to be compatible with Client's other programs and systems, but are no longer infringing. In the event that Axon, using commercially reasonable efforts, is unable to cure the infringement in the manner described above, Client may, at its election, return the infringing Deliverable and receive a full refund of all amounts paid in connection therewith or terminate this Agreement in its entirety and receive a full refund of all amounts paid hereunder.

**12.4 EXCEPT AS MAY ARISE FROM A BREACH OF CONFIDENTIALITY PURSUANT TO ARTICLE 8 OR UNDER INDEMNIFICATION PURSUANT TO SECTION 12.1:**

12.4.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, REVENUE, OR DATA), HOWEVER CAUSED, WHETHER ARISING UNDER TORT, CONTRACT, STATUTE, REGULATION, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, WHETHER OR NOT FORESEEABLE, AND EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

12.4.2 EACH PARTY'S LIABILITY TO THE OTHER PARTY WITH RESPECT TO ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR IN CONNECTION WITH OR RESULTING FROM THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL IN NO CASE EXCEED:

- (i) IN RELATION TO CLAIMS FOR DAMAGE TO REAL PROPERTY OF THE CLIENT, \$10,000,000; AND
- (ii) IN RELATION TO ALL OTHER CLAIMS, THE GREATER OF (A) \$1,000,000 AND (B) ONE HUNDRED TWENTY FIVE PERCENT (125%) OF ALL AMOUNTS PAID BY CLIENT TO Axon PURSUANT TO THIS AGREEMENT AND EACH STATEMENT OF WORK RELATED HERETO.

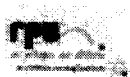
**12.5 Beginning on the Agreement Date and until termination or expiration of this Agreement, Axon shall, and shall require each of its subcontractors that shall provide Services hereunder to, procure and maintain insurance coverage. Such insurance shall be in a form and with insurers rated in the United States as investment grade by one or more nationally known insurance rating firms (e.g., AMBest, S&P etc.), and shall comply with the following minimum requirements:**

12.5.1 Comprehensive general liability insurance (including products, premises-operations, contractual liability and completed operations coverage if listed as separate coverage parts), listing Client as an additional insured, with available limits of not less than \$2 million per occurrence for bodily injury and property damage combined up to a maximum of \$8,000,000 in the aggregate.

12.5.2 Professional indemnity insurance including errors and omissions with policy limits of not less than \$5,000,000 each claim. Such insurance shall include coverage for infringement of copyright, title, slogan, trademark, trade name, trade dress or service name under implied contract or other misappropriation of property rights, ideas of information as relates to Axon's performance of technology services.

12.5.3 Workers' compensation and other employers' liability insurance as may be required by applicable law with respect to all of Axon's Consultants providing Services on or about





Client's premises. If Client is required by any applicable law to pay any workers' compensation premiums with respect to any Axon Consultant, Axon shall reimburse Client for such payment.

Prior to commencement of any Services under this Agreement or any applicable Statement of Work, Axon shall provide certificates of insurance or other documentation evidencing full compliance with the requirements set forth in this **Section 12.5**. Such certificates or documentary evidence (i) shall be kept current and in compliance throughout the period when Services are being performed, (ii) shall name Client as additional insured (other than with respect to the workers' compensation policy), and (iii) shall provide for thirty (30) calendar days prior written notice to Client in the event of any proposed cancellation or material change. Failure of Axon to furnish certificates of insurance or documentary evidence, or to procure and maintain the insurance required in this **Section 12.5** or failure of Client to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of the respective Axon's obligations hereunder.

**13. Assignment and Subcontracting.**

**13.1** The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Except as expressly permitted hereunder or in any Statement of Work, neither party may assign, delegate, subcontract or otherwise transfer any of its rights, interests or obligations in the Agreement without the prior written approval of the other party. Notwithstanding the foregoing, Client may assign any or all of its rights or interests, or delegate any or all of its obligations, in the Agreement upon a Change in Control.

**13.2** Notwithstanding the above, Axon shall be permitted to subcontract its obligations under any Statement of Work to any third party, provided that (i) Axon obtains Client's prior approval of any such subcontracting, which shall not be unreasonably withheld, and (ii) such subcontracting shall not relieve Axon of its obligations to Client hereunder, and Axon shall remain liable to Client for any and all actions of such subcontractor.

**14. Governing Law and Venue.**

**14.1** This Agreement shall be governed by and interpreted in accordance with the laws of Delaware without regard to conflict of law principles thereof, except to the extent that it conflicts with the Minnesota Government Data Practices Act in which case the latter will control.

**14.2** In the event that either party to this Agreement commences a court action or other proceeding relating to or arising out of this Agreement, the parties agree and consent that any such action will be brought solely in the state or federal courts located in Minnesota. Each party hereby irrevocably waives its right to bring any court action or proceeding against the other except in accordance with the preceding sentence and waives any claim of *forum non conveniens* in any suit, action or proceeding brought in any of the above-mentioned courts. Each party agrees that service of process in any such suit, may be served on any party anywhere in the world.

**15. Entire Agreement.**

**15.1** This Agreement and each Statement of Work executed hereunder represent the entire agreement between the parties with respect of the subject matter of this Agreement, and supersede all prior agreements, commitments and understandings, whether oral or written with respect to the transactions contemplated hereby.



**16. Modification, Waiver and Severability.**

- 16.1 No modification, course of conduct, amendment, supplement to, or waiver of, this Agreement or any Statement of Work shall be binding upon the parties unless made in writing and duly signed by both parties.
- 16.2 No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter.
- 16.3 In the event that any one or more provisions in this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the parties shall incorporate into this Agreement a replacement provision having a legal and economic effect as nearly similar as legally possible to the invalid, illegal or unenforceable provision.

**17. Notice.**

- 17.1 All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given when delivered by hand or by a reputable national over-night courier service or by facsimile transmission or three (3) Working Days after mailing when mailed by registered or certified mail (return receipt requested), postage prepaid, to the Authorized Representative of a party at the address for such party set forth in the head of this Agreement. Either party may change the address to which notice is to be given by notice given in the manner set forth above.

**18. Force Majeure.**

- 18.1 Subject to the limitations set forth below, any obligation (other than the obligation to pay money) of either party hereto shall be excused to the extent and for the period of time necessitated by the occurrence of any act of God, fire, casualty, flood, war, failure of public utilities, accident, epidemic, riot, insurrection or similar event that was not contemplated by the parties in entering into this Agreement and that is beyond the reasonable control of the party asserting the event of force majeure as an excuse. The occurrence of an event of force majeure shall not excuse the performance by a party unless that party promptly notifies the other party of the event of force majeure and promptly takes all commercially reasonable steps to provide substitute performance. Should either party be delayed in the performance of any material obligation hereunder for a period of more than ninety (90) calendar days as a result of an event of force majeure, the other party may elect to terminate this Agreement.

**19. Dispute Resolution.**

- 19.1 If a claim or controversy (each, a "Dispute") arises from or in connection with this Agreement or any Statement of Work it shall be resolved in accordance as follows procedures:

- 19.1.1 Client and Axon will initially attempt to settle any Dispute through consultation and negotiation in good faith and with a spirit of mutual cooperation. If attempts to resolve a Dispute by Client and Axon are unsuccessful after ten (10) calendar days, either party may, upon notice to the other, request that such controversy or claim be referred to the appropriate management personnel of each party for negotiation and resolution. If such a request is made, the applicable and appropriate management-level personnel of the parties shall meet in person or by telephone within ten (10) calendar days after such request and shall review and attempt to negotiate a mutually acceptable resolution of the Dispute. If the management-level personnel are unable to resolve such dispute within twenty (20) calendar days thereafter, the parties agree to submit such Dispute to binding arbitration in accordance with **Sections 19.1.2.**



**MASTER SERVICES AGREEMENT**



19.1.2 If the parties are unable to resolve any Dispute in accordance with the internal procedure set forth in **Section 19.1.1**, such Dispute shall be resolved through mediation conducted pursuant to the provisions of the Minnesota Civil Mediation Act, Minn. Stat. Section 572.31, et. Seq.

If the mediation is not successful, either party may pursue its own legal remedies through any available legal proceeding. Any civil lawsuit must be venued in Olmsted County, Minnesota.

19.2 Notwithstanding anything to the contrary in this Agreement, nothing contained in this Agreement shall prevent or otherwise restrict either party from pursuing its equitable rights, including injunctive relief, and specific performance in the event of any material breach by the other party.



**MASTER SERVICES AGREEMENT**



**IN WITNESS WHEREOF**, a duly authorized representative of each party has executed this Agreement on the Agreement Date.

Dated: February 23, 2007

**ROCHESTER PUBLIC UTILITIES**

Authorized Representative: \_\_\_\_\_

General Manager: \_\_\_\_\_

**CITY OF ROCHESTER**

Mayor: \_\_\_\_\_

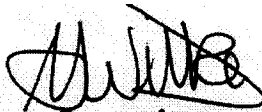
Attest

City Clerk: \_\_\_\_\_

Reviewed by

City Attorney: \_\_\_\_\_

**AXON SOLUTIONS, INC**

By:  \_\_\_\_\_

Name: Stephen J. Wilkes

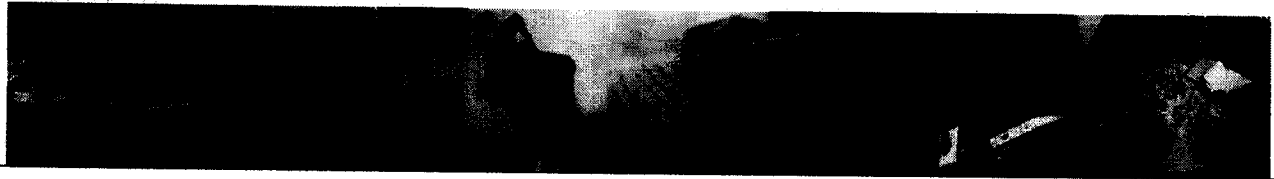
Title: Executive Vice President



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***Rochester Public Utilities (RPU)***

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***SAP IS-U/CCS  
Application Management Support  
Statement of Work***

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*Version 0.5 - Draft*

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*November 27<sup>th</sup> 2007*

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**DOCUMENT CONTROL**

<b>Owner</b>	Stephen Wilkes
<b>Status</b>	Draft

<b>Version</b>	<b>Description of Change</b>	<b>Date</b>	<b>Author</b>
0.1	Initial Draft	November 9, 2007	Stephen Wilkes
0.2	Updated following internal review	November 13, 2007	Stephen Wilkes
0.3	Updated following client review	November 21, 2007	Stephen Wilkes
0.4	Updated following client review	November 26, 2007	Stephen Wilkes
0.5	Final adjustments from client	November 27, 2007	Stephen Wilkes

NOTE: This document does not constitute an offer and or a contract and or any other form of legally binding agreement between Axon and RPU until the Status is agreed to be "Final" and changed and until signed by both parties on page 4. Until such time as the above conditions are met, changes can be proposed to this document by either party and incorporated or removed based upon mutual agreement.



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**STATEMENT OF WORK**

**THIS STATEMENT OF WORK** (“SOW”) is entered into as of this November 30, 2007 (the “Effective Date”) by and between **AXON SOLUTIONS INC**, a Delaware Corporation, with principal offices at 15 Exchange Place, Suite 730, Jersey City, New Jersey, 07302 (hereinafter “Axon”), and the City of Rochester working by and through it’s Public Utility Board, Rochester Public Utilities (hereinafter “RPU”), a Minnesota municipal corporation with offices at 4000 East River Road Northeast, Rochester, MN 55906 (hereinafter “Client” or “RPU”).

This **Statement of Work** is supplemental to the **Master Services Agreement** between Axon and RPU dated February 23, 2007 (the “Agreement Date”) as of even date therewith. Capitalized terms not defined herein shall have the meanings attached to them in the **Master Services Agreement**.

**IN WITNESS WHEREOF**, a duly authorized representative of each party has executed this Statement of Work on the Effective Date.

Dated:

**ROCHESTER PUBLIC UTILITES**

Authorized Representative:

\_\_\_\_\_

General Manager:

\_\_\_\_\_

**CITY OF ROCHESTER**

Mayor:

\_\_\_\_\_

Attest:

City Clerk:

\_\_\_\_\_

Reviewed By:

City Attorney:

\_\_\_\_\_

**AXON SOLUTIONS, INC**

Name: Stephen J. Wilkes

\_\_\_\_\_

Title: Executive Vice President





## 1 Introduction

RPU and Axon have agreed to enter into a multi-year Application Management (AM) Support arrangement, whereby Axon provides RPU with an agreed level of support throughout the duration of this agreement and RPU agrees to pay Axon a fixed amount for such services rendered with a payment schedule as outlined in this agreement.

The service will commence on Monday December 17th 2007 and will end on December 31st 2010 (Agreement Completion Date).



## 2 Scope of Services

The following sections present an overview of the proposed scope of services to be delivered as part of the AM Support arrangement.

### 2.1 Services and Constraints

- RPU requires access to resources from Axon to provide support to the RPU SAP user base.
- RPU acknowledges that:
  - Resources provided by Axon through this AM Support arrangement will be supplemental to internal RPU support resources
  - RPU will determine how best to utilize the Axon support resources
  - RPU is responsible for the day-to-day direction and management of Axon support resources.
- Axon and RPU have agreed a resource profile for each month during the duration of this agreement, as outlined in section 3. The specific type and amount of hours worked might vary (by agreement) than that indicated, however the total equivalent number of hours of support included in the agreement on a Calendar Week by Calendar Week or Calendar Month by Calendar Month or Calendar Quarter by Calendar Quarter basis will not exceed those shown in section 3.
- Any such requirements that do exceed the agreed upon number of hours for any given Calendar Week, Calendar Month, or Calendar Quarter will be charged to RPU at the rate shown in the Axon Rate Card contained in section 4.5.
- Within the constraints contained within the immediately preceding paragraph, the exact number and specific types of resources and / or skills required will vary on a periodic basis and RPU and Axon will meet every month (“Monthly Service Review Meeting”) and agree resource requirements (“Planned Resources”) utilizing a three Calendar Months rolling outlook (“Planning Period”). For example, in December, RPU and Axon will agree resource requirements for January, February and March; then in January, RPU and Axon will agree resource requirements for February, March and April. It is understood by RPU that resource requirements which are requested with a lead time that is less than three (3) Calendar Months, or changes to previously agreed Planned Resources, will be provided by Axon on a best endeavors basis (i.e. Axon is not contractually bound to adjust Planned Resources or provide additional resources with less than three Calendar Months advance notice). This clause is required to provide Axon with sufficient time to source agreed levels of resource requirements.
- If, during the Monthly Service Review Meeting, the support resource requirements agreed are less than those shown in section 3 then RPU acknowledges that it is not entitled to any reduction in fees from Axon. RPU will, however, be able to “Roll-over” any unused hours of support, for the applicable resource type, to the next Planning Period provided that, on any particular date, Planned Resources within the following six (6) weeks period cannot be modified below the planned upon level and RPU is not entitled to Roll-over hours associated with non-utilization of any such Planned Resources. All Roll-over hours are lost upon the earliest of the Agreement Completion Date or the Termination Date (per section 4.4), where applicable.
- RPU has an option to extend the duration of this agreement to either four (4) years or five (5) years as outlined in section 4.2.2. If either of these options is taken up by RPU the Agreement Completion Date will be extended appropriately.



## 2.2 Roles and Responsibilities

- Axon will assign an individual to act as the Service Delivery Manager (Axon SDM) who will be the single point of contact within Axon in relation to day-to-day service delivery activities and resource assignment to RPU.
- RPU will assign an individual to act as the Applications Management Support Manager (RPU AMS Manager) who will be the single point of contact within RPU in relation to day-to-day service delivery activities related to this agreement.
- The Axon SDM will liaise with the RPU AMS Manager on a monthly basis to agree and outlook specific resource requirements over the next three (3) months period. This meeting will be known as the Monthly Service Review Meeting.
- The Axon SDM is responsible for identifying and scheduling the resources agreed with the RPU AMS Manager. Any scheduling conflicts / challenges will be discussed with the RPU AMS Manager.
- Axon will be responsible for scheduling the availability of agreed resources with a minimum of three (3) months advance notice. Where RPU requests resource requirements with less than three (3) months advance notice, Axon will use best endeavors to provide such requested resources at the required time but if Axon is unable to meet these requirements Axon cannot be penalized or deemed in breach of this agreement in any way whatsoever.
- It is envisaged that most support will be delivered remotely (i.e. not physically on-site at RPU). It is however understood that, particularly in the initial three to four months of support, that RPU will require some support to be provided on-site in Rochester, MN (per table in section 3.2). Where such on-site support is requested by RPU and delivered by Axon, RPU will be responsible for providing appropriate working space and facilities as normally expected for a professional IT consultant including, but not limited to, the following:
  - Desk, chair and other such furniture and space as may be required to deliver support services
  - Access to both the RPU network, as necessary, and the internet and Axon connectivity as required for effective support to be delivered
  - Access to telecommunication services as required to deliver effective support services including, but not limited to, international calling capability where appropriate
  - Facilities to enable printing of support documents and test outputs as required
  - Access to RPU technical environments as necessary to allow effective delivery of support services.

## 2.3 Post Go-Live Open Items

- Prior to commencement of this agreement, Axon and RPU will agree any Post Go-Live Open Items which are remaining against contracted deliverables from the CCS implementation and which Axon is still required to deliver as part of that contract.
- Axon resources will have a separate project code, in the Axon time recording system, against which any time applicable to the delivery of Post Go-Live Open Items will be booked.
- The above will ensure that RPU support hours, contained within this agreement, are not consumed when Axon resources are performing work on Post Go-Live Open Items.



### 3 Axon Resources

#### 3.1 Resource Levels

The following table shows the hours by resource across:

- (a) The initial term (December 17<sup>th</sup>, 2007 through December 31<sup>st</sup>, 2010)
- (b) The optional extended term (Agreement Termination Date changed to either December 31<sup>st</sup> 2011 or December 31<sup>st</sup> 2012, as appropriate):

**Resource Effort (hours)**

Consultant Role	Year 1 – Hours												Year 2 – Hours			Year 3 – Hours				
	Dec	Jan	Feb	Mar	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
Service Delivery Manager	8	8	8	8	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24
BI	0	192	120	76	52	51	50	26	26	26	25	26	26	26	26	26	26	26	26	25
General Functional *	0	0	0	0	390	384	378	384	390	384	378	384	390	384	390	384	390	384	384	378
ABAP / Basis	128	384	320	160	1,040	896	630	640	650	640	630	640	650	640	650	640	650	640	630	504
Billing (see note 2)	64	192	160	120																
Customer Service	64	192	160	160																
FI-CA	64	192	160	144																
E-Services/Portal/Workflow	128	192	160	120																
<b>Total Hours</b>	<b>456</b>	<b>1,352</b>	<b>1,088</b>	<b>788</b>	<b>1,506</b>	<b>1,355</b>	<b>1,082</b>	<b>1,074</b>	<b>1,090</b>	<b>1,074</b>	<b>1,057</b>	<b>946</b>	<b>960</b>	<b>946</b>	<b>946</b>	<b>960</b>	<b>946</b>	<b>946</b>	<b>946</b>	<b>931</b>

Consultant Role	Year 4 – Hours				Year 5 – Hours			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Service Delivery Manager	24	24	24	24	24	24	24	24
BI	26	26	26	25	26	26	26	25
General Functional *	512	520	512	504	512	520	512	504
ABAP / Basis	960	975	960	945	960	975	960	945
<b>Total Hours</b>	<b>1,522</b>	<b>1,545</b>	<b>1,522</b>	<b>1,498</b>	<b>1,522</b>	<b>1,545</b>	<b>1,522</b>	<b>1,498</b>

- General Functional can be a mix of Axon functional consultants, but excludes SAP sourced resources

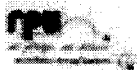


### 3.2 Resource Locations

The following table identifies the location of individual resources providing support to RPU as part of this agreement. The location has been used as the basis for arriving at the costs and estimated expenses pertaining to this agreement.

**Resource Locations**

Consultant Role	12/17 - 12/21	December 2007 12/26 - 12/28	12/31 - 1/5	January 2008 1/7 - 1/31	February 2008 all	March 2008 all	On-going all
Service Delivery Manager	On-site	Off-site	Off-site	On-site	On-site	On-site	On-site
BI	-	Off-site	Off-site	Off-site	Off-site	Off-site	Off-site
General Functional	-	-	-	-	-	-	-
ABAP / Basis (offshore)	Offshore	Offshore	Offshore	Offshore	Offshore	Offshore	Offshore
Billing (SAP resource)	On-site	Off-site	Off-site	On-site	On-site	On-site	-
Customer Service	On-site	Off-site	Off-site	On-site	On-site	On-site	-
FI-CA	On-site	Off-site	Off-site	On-site	On-site	On-site	-
E-Services/Portal/Workflow	On-site	Off-site	Off-site	Off-site	Off-site	Off-site	-



## 4 Pricing and Payment

### 4.1 Fixed Price

The amount payable by RPU to Axon pursuant to this Work Order is **\$1,933,680** (“the Fixed Price”) for the three (3) years support arrangement outlined in the resource model contained in section 3.

The Fixed Price is subject to variation based on the ‘true-up’ of expenses outlined in section 5.5.

<b>Agreement Term: 3 Years</b>
<b>Total for Agreement Term: 3 Years = \$ 1,933,680</b>

Annual Summary	Year 1 Total	Year 2	Year 3
Billed to RPU	\$624,000	\$640,020	\$669,660

Month	Labor	Expenses	Labor	Expenses	Labor	Expenses
January	\$22,880	\$29,120	\$52,380	\$955	\$54,802	\$1,003
February	\$29,250	\$22,750	\$52,380	\$955	\$54,802	\$1,003
March	\$43,810	\$8,190	\$52,380	\$955	\$54,802	\$1,003
April	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003
May	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003
June	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003
July	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003
August	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003
September	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003
October	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003
November	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003
December	\$51,090	\$910	\$52,380	\$955	\$54,802	\$1,003

**Notes:**

- The Fixed Price is subject to variation based on the ‘true-up’ of expenses outlined in section 5.5.
- All invoices from Axon will be payable 30 days net and will include all relevant taxes (which are not included in the above table).



## 4.2 Fixed Price Options for Extending Term of Agreement

Based upon an agreed Fixed Price RPU has the option to extend the term of the agreement to either four (4) years or five (5) years as outlined below.

### 4.2.1 Notice to Axon

RPU is required to inform Axon that it requires extending the agreement to either four (4) years or five (5) years on or before March 31<sup>st</sup> 2009.

### 4.2.2 Fixed Price and Monthly Costs for Years 4 & 5

- Four (4) Years – for an additional Fixed Price amount of \$685,980 (Agreement Termination Date changed to December 31st 2011). The monthly labor charge for Year 4 will be \$56,112 plus \$1,053 estimated expenses.
- Five (5) Years – for an additional Fixed Price of \$1,119,780 comprising \$685,980 for Year 4 and \$734,520 for Year 5 (Agreement Termination Date changed to December 31st 2012). The monthly labor charge for Year 4 will be \$56,112 plus \$1,053 estimated expenses; the monthly labor charge for Year 5 will be \$60,104 plus \$1,106 estimated expenses.
- The above costs are based on the resource effort outlined in section 3.

## 4.3 Payment

Invoices will be sent to RPU on a calendar month basis. Terms are 'Net including all applicable taxes', with payment to Axon due within 30 days of invoice date.

## 4.4 Termination of Agreement

Given the long-term nature of this agreement, termination of this agreement can only be given by RPU as follows:

- Six (6) months ("Notice Period") advance written notice to Axon, with the Notice Period commencing on the first day of the calendar month following the date of notice and the "Termination Date" being the last working day of the Notice Period.
- All fees due up to and including the final month of the Notice Period will be paid to Axon in full within the normal payment due period without deduction.
- During the Notice Period Axon will transition knowledge to internal RPU resources under the direction and responsibility of RPU. To be clear, RPU is entirely responsible for ensuring any knowledge transfer required during the Notice Period.
- In addition, Axon will invoice RPU for the value of the Backlog shown in the table included in section 6 against the final calendar month at the end of the Notice Period (this represents unbilled delivered amounts). For example: If notice is given on February 10th 2009, the notice period will commence on March 1st 2009 and end on August 31st 2009. The Backlog Payment, per the table, would be \$263,751.
- Note: in the event that the agreement has been extended, a new table will be included based upon the new Agreement Termination Date and the date on which this became effective. The principles will be the same as that outlined above.



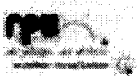
### 4.5 Axon Rate Card

If any additional work outside of the Fixed Price is requested by RPU and delivered by Axon the Consulting Fees listed below will be used to compute the costs plus any associated expenses.

Axon Rate Card												
Consultant Role	Year 1		Year 2		Year 3		Year 4		Year 5		Hourly	
	Daily	Hourly	Daily	Hourly	Daily	Hourly	Daily	Hourly	Daily	Hourly		
Service Delivery Manager	\$ 1,800.00	\$ 225.00	\$ 1,935.00	\$ 241.88	\$ 2,080.00	\$ 260.00	\$ 2,236.00	\$ 279.50	\$ 2,404.00	\$ 300.50	\$ 2,404.00	\$ 300.50
Functional Consultant	\$ 1,400.00	\$ 175.00	\$ 1,505.00	\$ 188.13	\$ 1,618.00	\$ 202.25	\$ 1,739.00	\$ 217.38	\$ 1,869.00	\$ 233.63	\$ 1,869.00	\$ 233.63
BI / BW Consultant	\$ 1,400.00	\$ 175.00	\$ 1,505.00	\$ 188.13	\$ 1,618.00	\$ 202.25	\$ 1,739.00	\$ 217.38	\$ 1,869.00	\$ 233.63	\$ 1,869.00	\$ 233.63
ABAP Lead (onshore)	\$ 1,200.00	\$ 150.00	\$ 1,290.00	\$ 161.25	\$ 1,387.00	\$ 173.38	\$ 1,491.00	\$ 186.38	\$ 1,603.00	\$ 200.38	\$ 1,603.00	\$ 200.38
ABAP Developer (onshore)	\$ 900.00	\$ 112.50	\$ 968.00	\$ 121.00	\$ 1,041.00	\$ 130.13	\$ 1,119.00	\$ 139.88	\$ 1,203.00	\$ 150.38	\$ 1,203.00	\$ 150.38
ABAP Lead (offshore)	\$ 400.00	\$ 50.00	\$ 430.00	\$ 53.75	\$ 462.00	\$ 57.75	\$ 497.00	\$ 62.13	\$ 534.00	\$ 66.75	\$ 534.00	\$ 66.75
ABAP Developer (offshore)	\$ 300.00	\$ 37.50	\$ 323.00	\$ 40.38	\$ 347.00	\$ 43.38	\$ 373.00	\$ 46.63	\$ 401.00	\$ 50.13	\$ 401.00	\$ 50.13
BASIS Lead (onshore)	\$ 1,200.00	\$ 150.00	\$ 1,290.00	\$ 161.25	\$ 1,387.00	\$ 173.38	\$ 1,491.00	\$ 186.38	\$ 1,603.00	\$ 200.38	\$ 1,603.00	\$ 200.38
BASIS Developer (onshore)	\$ 900.00	\$ 112.50	\$ 968.00	\$ 121.00	\$ 1,041.00	\$ 130.13	\$ 1,119.00	\$ 139.88	\$ 1,203.00	\$ 150.38	\$ 1,203.00	\$ 150.38
BASIS Lead (offshore)	\$ 400.00	\$ 50.00	\$ 430.00	\$ 53.75	\$ 462.00	\$ 57.75	\$ 497.00	\$ 62.13	\$ 534.00	\$ 66.75	\$ 534.00	\$ 66.75
BASIS Developer (offshore)	\$ 300.00	\$ 37.50	\$ 323.00	\$ 40.38	\$ 347.00	\$ 43.38	\$ 373.00	\$ 46.63	\$ 401.00	\$ 50.13	\$ 401.00	\$ 50.13

NOTE: External Consultants specifically requested by RPU will be charged at cost + 20%





## 5 Support Service Assumptions

### 5.1 Service Delivery Assumptions

- Axon will not make any modifications to SAP source code.
- RPU will provide access to all systems, information and staff required to perform the defined services. Where these systems, information or staff are managed or held by 3rd Parties, RPU will ensure that appropriate access rights are agreed with these 3rd parties. All required access will be provided in a timely manner such that program milestones are not adversely impacted.
- RPU will be responsible for developing all policies and procedures in support of the implemented business processes supported by the SAP system, as well as all training relating to the implementation of any related changes to, additions to, or removal of implemented business procedures. RPU will ensure decision making and delivery of documented policies and procedures will be provided in a timely manner.
- RPU will coordinate the system testing and user acceptance testing activity.
- RPU will be responsible for end-user training and the development of end-user training materials.

### 5.2 People Assumptions

- Axon will provide SAP resources consistent with the resource requirements agreed between the RPU AMS Manager and the Axon SDM.
- Axon resources are supplemental to RPU support resources.
- Whenever on-site support is provided by Axon these will be co-located with the RPU applications support resources, as appropriate and necessary for them to be effective in the provision of support services.
- Axon support resources are expected to take normal vacation and locally observed Holiday days, where 'local' means the location from which a resource is providing support services to RPU (e.g. an Axon resource delivering support services from Malaysia will observe Malaysian Holiday days).
- Where an Axon resource is required to attend training and personal development initiatives, and such initiatives will interrupt agreed to support availability, any such absence will be agreed in advance with RPU.
- RPU will make available necessary facilities for Axon personnel while on-site including: office space and supplies; outside network connection; individual access to e-mail and voice mail; conference call and meeting facilities; and administrative support when required (i.e., large volume copying or word processing).
- RPU will ensure that Axon staff has access to all relevant RPU sites and 3rd party partner locations.
- Axon reserves the right to adjust specific resources at its discretion. However, if a conflict arises between an Axon and RPU resource, RPU will have the right to make reasonable requests that an Axon resource is replaced. RPU recognizes that the changing of resources can place strain on the Axon organization and will not make these decisions without a thorough review by RPU prior to the request and a reasonable reason for making such request. In addition, RPU accepts that any such request is likely to result in an adverse impact on support levels and services and Axon will use best endeavors to find a replacement resource and minimize the impact on current services / project.

### 5.3 Technology Assumptions

- RPU is responsible for providing all aspects of necessary technology infrastructure and environments in order for support to be effectively delivered. This will include, but is not limited to, the following:
  - Host LAN and SAP access will be provided to Axon resources in a timely fashion.
  - Fully functioning workstations will be provided for all Axon team members required to deliver services on-site, unless otherwise agreed with the Axon SDM.
  - Hardware and software infrastructure and environments will be supported by RPU and available to Axon so as not to adversely affect the level of services delivered.
  - RPU is responsible for ensuring that the productive network and operational infrastructure are appropriately configured, adequately sized, and functioning properly.
  - RPU is responsible for ensuring that all required support team software is appropriately licensed for both Axon and RPU team members.

### 5.4 Process Assumptions

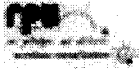
- RPU is responsible for ensuring prompt decision-making and problem resolution.
- RPU will provide day-to-day management and direction to all Axon support resources.
- RPU will notify Axon of any change in circumstances that may lead to a change in requirements, scope or approach relating to support services.
- When appropriate, Axon may work from its offices or other suitable off-site location.

### 5.5 Travel and Expense Assumptions

- All travel and related expenses recoverable from RPU at cost.
- The expense amounts included in the Fixed Price are, therefore, estimated and a true-up will be performed every three (3) months as necessary through the appropriate Monthly Service Review Meeting.
- Where a 'true-up' of expenses results in actual expenses exceeding those estimated and contained with the Fixed Price, Axon will send RPU an invoice for the difference. Where a 'true-up' of expenses results in actual expenses being less than those estimated and contained with the Fixed Price, Axon will send RPU a credit for the difference.

### 5.6 Connectivity of Axon Laptops to RPU Network Resources

- If it is agreed that Axon consultants will use Axon laptop computers, RPU will ensure that accessibility to the required support web sites, SAP, and the RPU Network / Documentation is available.
- Axon laptop computers shall be provided access to RPU network, including SAP access, file shares, APSE, and e-mail, with such access being equivalent to access provided to RPU support personnel.
- Axon shall maintain virus protection acceptable to RPU with current virus software and signature files.
- As and when requested by RPU, Axon will provide RPU IT personnel with access to Axon laptop computers to review and verify that virus protection and Microsoft security patches are adequately maintained.
- Axon is responsible to update virus software and signature files to maintain current versions.



- Axon is responsible to license all standard Microsoft Office software installed on Axon laptop computers (i.e. Microsoft Office, Project, Visio, etc.).
- Axon is responsible for installation and configuration of all software required on Axon notebook computers.
- In the event of a virus outbreak, Axon will remove their notebook computers from RPU network if requested.
- In the event of a virus outbreak, Axon will be responsible for cleansing all Axon notebook computers, regardless of the source of the virus.
- Axon personnel will comply with RPU employee policies regarding acceptable use of Internet and e-mail when using RPU or Axon computers at all times Axon personnel are at RPU facility, or connected to RPU network remotely. This also includes all content stored on Axon laptop computers brought into RPU facility.
- Axon personnel shall not copy or distribute licensed software purchased by RPU.
- Axon personnel shall not distribute licensed software to RPU personnel or computers without proper verification that software has been licensed by RPU.
- If the connectivity and general PC requirements cannot be met to allow Axon Laptops to be attached to the RPU network then RPU shall make available to Axon personnel desktop PCs or laptops, as is reasonably necessary and appropriate for them to deliver the program, and to otherwise fulfill obligations under this Agreement.

## 5.7 Customer's Facilities

- RPU shall be responsible for provision of extended hours technical and infrastructure support (as necessary) in-line with the working hours of the support team after taking into account critical activities and any support team resources working in other geographies.
- RPU will be responsible for reasonable telecommunications charges of Axon Personnel incurred in making calls from telephones at RPU facilities in the performance of duties under this agreement, including communication with the off-shore facility.
- Office space and furnishings will be reasonably commensurate with those facilities provided to RPU personnel working in similar roles.



## 6 Early Termination Table

The table below shows the value delivered to RPU compared to the amount billed, with the difference being the backlog amortized over the term of the agreement. The backlog figure is cumulative and will be used to calculate the Early Termination Fee in the event of early termination of the contract by RPU:

<b>Agreement Term: 3 Years</b>			
<b>Annual Summary</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Billed to RPU</b>	<b>\$624,000</b>	<b>\$640,020</b>	<b>\$669,660</b>

<b>Month Year</b>	<b>Delivered</b>	<b>Billed</b>	<b>Backlog</b>
December 2007	\$77,604	\$0	\$77,604
January 2008	\$216,547	\$52,000	\$242,151
February 2008	\$183,242	\$52,000	\$373,394
March 2008	\$148,764	\$52,000	\$470,157
April 2008	\$44,574	\$52,000	\$462,731
May 2008	\$44,521	\$52,000	\$455,252
June 2008	\$44,468	\$52,000	\$447,720
July 2008	\$42,204	\$52,000	\$437,923
August 2008	\$42,136	\$52,000	\$428,059
September 2008	\$42,068	\$52,000	\$418,127
October 2008	\$38,254	\$52,000	\$404,381
November 2008	\$38,161	\$52,000	\$390,543
December 2008	\$38,069	\$52,000	\$376,612
January 2009	\$39,571	\$53,335	\$362,848
February 2009	\$39,473	\$53,335	\$348,986
March 2009	\$39,375	\$53,335	\$335,026
April 2009	\$39,277	\$53,335	\$320,968
May 2009	\$39,178	\$53,335	\$306,811
June 2009	\$39,080	\$53,335	\$292,556
July 2009	\$38,982	\$53,335	\$278,203
August 2009	\$38,883	\$53,335	\$263,751
September 2009	\$38,785	\$53,335	\$249,201
October 2009	\$38,687	\$53,335	\$234,553
November 2009	\$38,588	\$53,335	\$219,806
December 2009	\$38,490	\$53,335	\$204,961
January 2010	\$39,296	\$55,805	\$188,452
February 2010	\$39,187	\$55,805	\$171,834
March 2010	\$39,077	\$55,805	\$155,106
April 2010	\$38,968	\$55,805	\$138,268
May 2010	\$38,858	\$55,805	\$121,321
June 2010	\$38,748	\$55,805	\$104,265
July 2010	\$38,639	\$55,805	\$87,099
August 2010	\$38,529	\$55,805	\$69,823
September 2010	\$38,420	\$55,805	\$52,438
October 2010	\$38,310	\$55,805	\$34,944
November 2010	\$38,201	\$55,805	\$17,340
December 2010	\$38,091	\$55,805	\$(374)
<b>Total over 3 Years</b>	<b>\$1,933,306</b>	<b>\$1,933,680</b>	



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve a contract amendment with Axon Solutions Inc. and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for

Amendment to the Master Services Agreement for Ongoing Support  
Of the SAP Customer Care System (CCS) for a Three Year Period  
With the Ability To Extend The Contract to Five Years

The amount of the amendment to be ONE MILLION NINE HUNDRED THIRTY-THREE THOUSAND SIX HUNDRED EIGHTY AND 00/100 DOLLARS (\$1,933,680.00) for a three year period.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 13<sup>th</sup> day of December, 2007.

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President

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Secretary