

AGENDA  
CITY OF DENTON CITY COUNCIL  
October 4, 2004

After determining that a quorum is present, the City Council of the City of Denton, Texas will convene in a Special Called Work Session on Monday, October 4, 2004 at 11:30 a.m. in the Council Work Session Room, 215 E. McKinney, Denton, Texas at which the following items will be considered:

1. Receive a report, hold a discussion, and give staff direction regarding the use of automated red light enforcement cameras at selected intersections in the City of Denton.
2. Closed Meeting:
  - A. Consultation with Attorney — Under TEXAS GOVERNMENT CODE Section 551.071.
    1. Discuss and consider legal issues concerning the City of Denton's proposed Automated Red Light Enforcement Camera Program patterned on an existing City of Garland Program including the legal enforceability of such a program under the City of Denton's home rule authority, the Texas Transportation Code and other applicable law, including the legal aspects of enforcement as a criminal violation or as a civil penalty where to discuss these legal issues in public would conflict with the duty of the City's attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

ANY FINAL ACTION, DECISION, OR VOTE ON A MATTER DELIBERATED IN A CLOSED MEETING WILL ONLY BE TAKEN IN AN OPEN MEETING THAT IS HELD IN COMPLIANCE WITH TEXAS GOVERNMENT CODE, CHAPTER 551, EXCEPT TO THE EXTENT SUCH FINAL ACTION, DECISION, OR VOTE IS TAKEN IN THE CLOSED MEETING IN ACCORDANCE WITH THE PROVISIONS OF §551.086 OF THE TEXAS GOVERNMENT CODE (THE 'PUBLIC POWER EXCEPTION'). THE CITY COUNCIL RESERVES THE RIGHT TO ADJOURN INTO A CLOSED MEETING OR EXECUTIVE SESSION AS AUTHORIZED BY TEX. GOV'T. CODE, §551.001, ET SEQ. (THE TEXAS OPEN MEETINGS ACT) ON ANY ITEM ON ITS OPEN MEETING AGENDA OR TO RECONVENE IN A CONTINUATION OF THE CLOSED MEETING ON THE CLOSED MEETING ITEMS NOTED ABOVE, IN ACCORDANCE WITH THE TEXAS OPEN MEETINGS ACT, INCLUDING, WITHOUT LIMITATION §551.071-551.086 OF THE TEXAS OPEN MEETINGS ACT.

C E R T I F I C A T E

I certify that the above notice of meeting was posted on the bulletin board at the City Hall of the City of Denton, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004 at \_\_\_\_\_ o'clock (a.m.) (p.m.)

\_\_\_\_\_  
CITY SECRETARY

NOTE: THE CITY OF DENTON COUNCIL WORK SESSION ROOM IS ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT A SIGN LANGUAGE INTERPRETER CAN BE SCHEDULED THROUGH THE CITY SECRETARY'S OFFICE.

## AGENDA INFORMATION SHEET

**AGENDA DATE:** October 4, 2004

**DEPARTMENT:** Police

**ACM:** Jon Fortune, Assistant City Manager *JF*

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### SUBJECT

Receive a report, hold a discussion, and give staff direction regarding the use of automated red light enforcement cameras at selected intersections in the City of Denton.

### BACKGROUND

Drivers who run red lights pose a danger to themselves and, especially, other drivers on the roadway. The Federal Highway Administration has identified red light running as one of the leading causes of urban accidents in the United States. Across the country each year, drivers running red lights account for approximately 100,000 accidents resulting in close to 1,000 deaths and about 90,000 injuries. More than half of the red light running-related fatalities are pedestrians and occupants in other vehicles hit by the red light runners. The number of red light runners continues to climb at an alarming pace. From 1992 through 1998, accidents from red light violations increased by eighteen percent. This violation of the law is one of the most feared by drivers on the roadway. One national study conducted by the Federal Highway Administration showed that 96 percent of drivers fear being hit by a red light runner.



In the State of Texas, Department of Public Safety records indicate that the number of people killed or injured in red light running crashes increased by 250 percent from 1975 to 1999. In 1998, red light fatalities in the State of Texas ranked as the second highest in the country, with 11 percent of the national total. The societal costs of these accidents is staggering. In 1999, these costs, excluding property damage, were estimated as high as 3 billion dollars.

In Denton, statistics for 2002 – 2004 indicate that there were 213 accidents involving red light violations and police officers issued an additional 2,354 citations for red light violations across the city. As the city continues to grow in population and traffic volume, the number of red light violations is projected to increase.

## **Traditional Enforcement**

Traditional enforcement of red light intersections involves the positioning of a police officer at a specific intersection to visually observe violations of the law. This type of enforcement has shown to have tremendous deterrent effect on would-be violators of most traffic laws during the time the officer is present. In many cases, the mere presence of the officer near the intersection, or the presence of an officer actively engaged in a traffic stop near the location is an effective reminder for other drivers to obey traffic laws. Where violations are observed, the officer contacts the offending driver and issues a citation for the violation.

However, while the public generally views traditional enforcement as effective, employing this practice at red light intersections is often challenging for police agencies. Traditional red light enforcement is challenging in terms of effectiveness, efficiency, and safety.

### Effectiveness

Police agencies typically face a limited number of resources to address a host of public safety and community concerns. They are charged with providing emergency response to life-threatening situations, the investigation of motor vehicle accidents and criminal cases, and responding to calls for service throughout the city. In addition, they proactively work to control traffic violations to provide safer streets for drivers and pedestrians. The ability of most police agencies to place a significant emphasis on any one problem is difficult at best. Most police departments prioritize problems and assign resources based on these priorities. While traffic problems are a chief concern cited by most citizens, they are still one of several major areas of priority for a police department. Among traffic concerns, the problem of red light running is significant, but it must share priority with other hazardous traffic violations, such as DWI, speeding, and many other reckless driving violations that endanger lives. The vast number of red light intersections makes it impractical to consistently provide a visible presence at even a small portion of the intersections during the busiest traffic times. Currently, the City of Denton has one hundred and one red light intersections. On any given shift, it is difficult, if not impossible, to assign sufficient manpower to have any effective impact on red light violations.

### Efficiency

The use of traditional enforcement for red light violations is not an efficient use of limited resources. Studies have shown that consistent red light enforcement at a specific intersection will reduce the frequency of violations at that intersection during the times the officer is present. However, once the officer is no longer there, the frequency of violations quickly escalates and is back to the previous levels in less than two weeks.

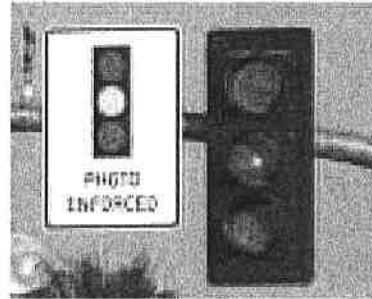
### Safety

Traditional enforcement at red light intersections places the individual police officer in a difficult situation. When a violation occurs at an intersection, the officer has to stop traffic and enter the intersection to stop the violator. This places the officer and other drivers in the intersection at additional risk. Because of these dangers, many departments

have turned to enforcement “packs”, where multiple officers work a given location. One officer is positioned at the intersection and calls out violators via radio to other officers positioned a safe distance down the road. While this enforcement method helps to mitigate some of the officer safety issues, it multiplies the efficiency issues outlined above.

### Use of Automated Enforcement

Because of the difficult challenges associated with traditional enforcement of red light violations, the use of automated enforcement cameras is a growing trend for cities across the United States and in several other countries. There are currently more than 100 communities in the United States using automated red light enforcement programs. As opposed to traditional enforcement methods, automated red light enforcement is a safer, more effective, and more efficient method of



addressing the problem of red light running. This technology allows for the consistent monitoring of intersections around the clock and seven days a week. Proponents of these automated systems cite their effectiveness in reducing the number of accidents involving red light violations. The State of California currently has the highest number of cities using automated red light enforcement systems. A review of the red light camera programs in California from the State Board of Audits found a ten percent reduction statewide in accidents caused by motorists running red lights. The city of Oxnard, California reported a reduction in accidents at red light camera intersections of more than forty-five percent. New York City reported a reduction of red light accidents at automated enforcement intersections of more than sixty percent. Red light camera proponents also point out the effectiveness of these cameras in reducing the number of red light violations. The city of Fairfax, Virginia reported a reduction in red light violations at automated enforcement intersections of forty percent. In Texas, the City of Garland is currently the only city using automated red light enforcement. In their first year of operation, they report a reduction of violations at their four monitored intersections of fifteen percent. Based in part on the success in Garland, several other communities in North Texas are in the process of investigating and instituting similar programs.

Proponents of automated red light enforcement also point out the effective deterrent value of these systems. Because of the recording capabilities of these automated systems, they



are much more effective in terms of notifying violators than traditional enforcement efforts. The City of Plano ran a program to concentrate on red light violations for several years using traditional enforcement methods. During this program, their officers issued more than six thousand red light citations a year. Using the automated enforcement system, the City of Garland issued notices of red light violations to more than twenty-four thousand

violators at four intersections in a period of eight months. Of note, the City of Plano recently moved to institute an automated enforcement program. Automated enforcement proponents also cite the spillover, or “halo” effect these systems have on red light violations throughout a participating municipality. The City of Oxnard, California has automated enforcement at just eleven of the city’s one hundred twenty-five intersections. However, research showed that red light violations dropped throughout the city at the same proportions at intersections with and without cameras. Programs in other cities have shown similar results.

### **Legal Issues**

There are four general areas of legal issues related to the use of automated red light enforcement: criminal versus civil offense, liability of the owner or operator, privacy rights, and revenue structure.

#### Criminal versus Civil Offense

Traditional enforcement by a police officer is done by issuing a citation to the driver of a vehicle for a criminal violation of the Texas Transportation Code. These violations are processed through the Municipal Court. When a violator either pleads or is found guilty of the violation, the conviction is noted on their driving record and may have a future impact in other areas, such as insurance rates. Because of the criminal nature of the offense, and subsequent impact from a potential conviction, the burden of proof for the prosecution is significantly higher. In a criminal case, the prosecution has to prove beyond a reasonable doubt that the person charged committed the offense. Challenges can be made to any number of factors involved, and therefore the length of time involved in a criminal prosecution can be substantial.

In contrast to the traditional criminal avenue, automated red light enforcement works under the civil process. In the civil venue, the burden of proof is based upon the preponderance, or greater weight, of the evidence. Civil penalties do not appear on a person’s driving record or have any additional impact like criminal convictions. Because there are no “criminal” issues related to the violation, the process is generally handled much more efficiently and the related fees can be substantially lower than the fines imposed in a criminal case.

#### Liability of the owner or operator

In the traditional enforcement of a red light violation under criminal law, the operator of the vehicle is liable for the infraction. With the automated red light enforcement program, civil violations of the city ordinance are charged against the registered owner of the offending vehicle. The ordinance is crafted so that the registered owner of the vehicle is responsible for the violation. The civil penalty is applied the same as a city fee for excessive false alarms at a residence or business. In many aspects, the presumption that the owner of the vehicle is liable for a red light violation is consistent with the presumption that the owner of the vehicle is responsible for parking violations made with their vehicle.

### Privacy Issues

One of the chief arguments against red light cameras is based on the idea that taking a photograph of the driver of a vehicle infringes on that individual's privacy, which is protected by the Fourth Amendment of the U.S. Constitution. The Supreme Court has consistently ruled that photographing a driver of a vehicle operating on a public roadway is not in conflict with any expectation of privacy afforded under the Fourth Amendment. In addition, cameras are quite pervasive in today's society, being in use at ATM



machines, convenience stores, office buildings, banks, and many other locations. These cameras make constant recordings of individuals in these settings. Red light cameras only take photographs of drivers when they are in violation of an applicable ordinance. In jurisdictions using civil penalties and owner liability, the red light cameras are designed to photograph only the rear of the vehicle and the license plate. The driver of the car is not identified in any of the photographs.

### Revenue Structure

The fee and revenue structure used in the automated red light enforcement program is an important issue. The intention of using automated red light cameras is the education and alteration of driving behavior that is dangerous to the citizenry. These systems should not be viewed as any sort of long-term revenue source, as the use of automated camera enforcement has consistently shown a significant reduction in the number of violations at an intersection. It only stands to reason that with the reduction of violations at a given location, the money generated from such programs would decrease over time. Many critics, based on the success of several programs, argue that these systems are intended to generate funds for communities that are short on resources and in need of operating revenue. To combat this perception, most cities utilizing automated enforcement establish a special fund where all revenue generated above and beyond the operating costs of the system are deposited. These funds are used solely for public safety improvements and enforcement, such as the purchase of improved signals and signage for intersections and school speed zones, self-funded grants to pay for officers to conduct additional traffic enforcement, and many other public safety programs. These programs and purchases help make the automated enforcement system a true "workforce multiplier". The fact that these additional public safety programs are funded through the fees paid by red light violators helps to offset some of the financial burden for public safety initiatives on the tax-paying citizen.

Critics of automated enforcement point to the fact that a company that is involved in the installation, maintenance, and application of such a system has a vested interest in the number of violations processed by that system. In contrast, many of the companies involved in automated enforcement systems work on a set contract. The contract

establishes a monthly cost for individual cameras that is not based on any sort of sliding or weighted scale regarding the number of violations. The cost of a single camera at a specific location remains the same over the course of a contract whether that camera fails to produce enough violations to offset the monthly cost or if it generates significantly more revenue than is needed to cover the monthly cost.

An additional financial argument against the use of automated enforcement systems is that tax dollars are being used to subsidize a system that generates a profit for a private company. In reality, most of these systems are designed to be self-funded based on the fees generated through the recorded violations. It takes approximately 3 – 4 paid violations per day from a single camera at an intersection to cover the monthly cost of that camera. Because of the necessary delay between the time a camera is turned on and the time the first payments for violations are made, most companies include a “grace period” for payments. Additionally, most contracts for automated systems can be structured to include a “no risk” clause. This clause ensures that no tax dollars are spent on the system. For instance, if the contract cost of a system is \$6,000 dollars each month, and the system only generated \$3,000 in a given month, the city would not be obligated to pay the balance out of other funds. Where there is an overage in any subsequent month, that overage would be applied to any shortages in previous months. If the contract ended with a shortage, that burden falls to the company. This helps to ensure that no citizen tax money is used to subsidize the private company.

### **Automated Enforcement Process**

#### Detection Technology

Automated enforcement involves the use of a fixed, mounted camera to record violations on a specific approach to a given intersection. The cameras are mounted on poles and connected to the traffic signal at the intersection. As the light turns red for the recorded lanes of traffic, the camera is activated. Buried under the pavement in the recorded lanes just prior to the intersection is a loop sensor that records the speed of a

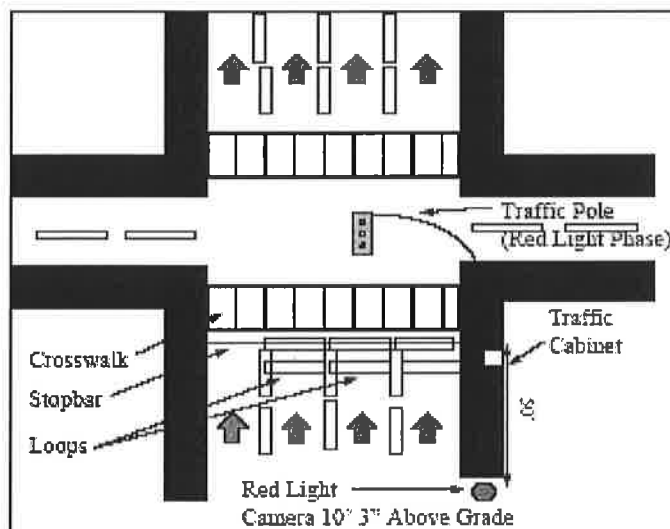


Figure 2. Automated Enforcement Configuration Used in New York City (20)

vehicle traveling across it. If the speed of an approaching vehicle is above a minimum set speed, the camera will photograph the vehicle as it enters the intersection on the red light. It will take a second photograph of the vehicle as it continues through the intersection. Embedded on the photograph is a display of the date and time, the intersection, the posted speed limit for the roadway, the vehicle speed at the time of the photograph, the length of

the yellow interval, and the length of time the light had been red at the time of the photograph. The camera is positioned to take a photograph of the vehicle and the rear license plate.

### Camera Technology

There are generally three types of cameras used for red light enforcement: 35-mm wet film cameras, digital cameras, and video cameras. The majority of current systems use 35-mm wet film, but with the recent developments regarding digital technology, digital cameras are becoming quite popular. Video camera systems are available, but their use is currently limited and primarily for documentation as opposed to actual enforcement. As the technology continues to develop, additional options with digital cameras and digital video will become available.



The 35-mm wet film cameras are currently the most popular choice for enforcement programs. They are generally less expensive than digital cameras and are viewed by many as having a distinct advantage in that it is difficult to tamper with the film. However, they require frequent maintenance in terms of film retrieval and replacement. Additionally, the need to develop the film necessitates a longer period of time to process, prepare, and mail notifications of violations.

Digital cameras are quickly becoming the standard for red light enforcement. This increase in popularity is primarily due to improvements in technology that addresses tampering issues, produces better resolution photographs, provides for better definition of license plates, and a reduction of smears, blurs, and reflections from headlights. Digital cameras are more expensive than 35-mm wet film cameras, but the cost savings in maintenance and film helps to offset the difference. The biggest advantage of digital cameras is in the reduced processing time and increased automation of violator notification.

Video cameras are primarily used to record intersections over a length of time for documentation. These systems can provide insight in to the events that occur over a set period of time, but currently, they are rarely used for the enforcement of violations. There are some newer systems being introduced that are intended for use in monitoring and enforcement at red light intersections. These systems use “virtual” detectors in place of the loop sensors. These systems are still being developed, and they currently show about a 67% successful detection rate. As the technology continues to improve, the inclusion of digital video loops in the detection and enforcement process may well become the industry standard.

### Violation Procedures

Typically, the vendor processes recorded violations, which are then forwarded to a police officer to review and verify the violation. Once verified by the officer, the vendor sends a notice to the registered owner of the vehicle in violation. Included in the notice is an



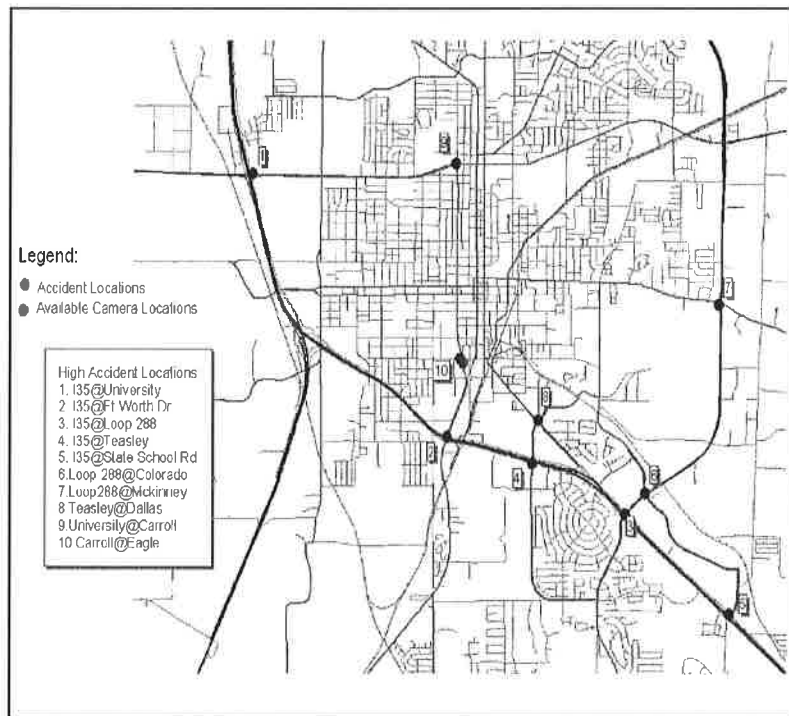
explanation of the violation, a photograph of the vehicle in the intersection, and a complete explanation of the process to handle the violation. The vendor provides customer service for the violation notices and handles the collection process, eliminating any extra burden on the Municipal Court. For those owners who wish to contest the violation, a hearing before a city-employed hearing officer can be scheduled. The hearing officer reviews the photographed violation, hears any argument from the owner, and makes a determination of whether or not the owner is liable under city ordinance. If the owner is found liable at the hearing, an additional hearing fee can be applied to the original fee. Should the owner wish to appeal the decision of the hearing officer, they can schedule a hearing before the Municipal Court Judge. Procedures are established to handle cases where the owner was not driving the vehicle or where they previously sold the vehicle but the registration was not changed.

### **Application in Denton**

Use of automated red light enforcement cameras in Denton is a complex issue. Our city faces a couple of distinct challenges that have the potential to impact our program. While neither of these challenges serve to preclude the use of the automated enforcement, they do substantially alter our options and should be noted.

### Placement of Cameras

The Texas Department of Transportation (TXDOT) will not allow for the placement of automated enforcement cameras at intersections involving roadways they maintain. For most cities, this is not problematic. However, for the City of Denton, this is a significant issue. With the presence of so many TXDOT roadways, we are very limited on where we can place red light cameras. Of the top ten intersections in terms of red light accidents for the past two years, only one does not involve a



TXDOT road. The map pictured here depicts the top ten high-hazard accident intersections and the single location among them where a camera could be installed. The elimination of TXDOT roadways leaves a few intersections that are high-volume and could likely benefit from the use of automated enforcement. Primary among these are the intersections of Eagle at Carroll (#10 high hazard intersection), Bell at E. Hickory, and Bell at McKinney. There are other intersections that could be selected. Additional

research on the frequency of violations at potential intersections would be a requisite step in the implementation process.

#### Legality of the System

This information will be forthcoming via the October 1 City Attorney Status Report.

#### Public Awareness Campaign

The intention of the red light camera program is to educate drivers on the danger of red light running to themselves and others. One of the best ways to enhance the effectiveness of the program is to couple it with a public awareness campaign regarding red light violations and the automated enforcement program. This campaign could include public-access television spots, information on the city website, and mailers in city utility bills that all serve to make drivers aware of the program and the need to stop for red lights. This campaign also helps to mitigate the claims of opponents to the red light cameras that they are intended as a revenue source for the city.

#### Process Implementation Timeline

Once the decision is made to pursue the use of automated red light enforcement, there are a number of necessary steps that need to be accomplished before the system can be operational:

1. Draft and approval of the city ordinance used as the basis for enforcement under the red light camera program.
2. Request for Proposal process.
3. Selection of vendor.
4. Contract discussion and Council approval.
5. Study and selection of intersections.
6. Installation of equipment.

Provided that there are no major problems encountered during these steps, it is anticipated that the red light camera program could be operational within a year.

#### OPTIONS

1. Council can endorse the use of automated red light enforcement cameras and direct staff to proceed with the process to implement the program.
2. Council can direct staff to conduct further research and provide additional information on the use of automated red light enforcement cameras.
3. Council can reject the use of automated red light enforcement cameras.

## **RECOMMENDATION**

Staff recommends Council endorse the use of automated red light cameras and direct staff to proceed with the process to implement the program.

## **PRIOR ACTION/REVIEW**

None

## **FISCAL IMPACT**

While not designed to be a revenue-generating endeavor, the automated red light enforcement camera program is intended to produce enough revenue from collected fees to offset the operating costs. In several cases, these programs have been able to pay for the operating costs and produce a fairly significant net gain. In gauging the potential fiscal impact for the city from such a program, a number of factors must be considered. First and foremost, determining the variables necessary to calculate the related costs and gains are somewhat problematic. There are a number of costs that are dependent on the number of cameras utilized, the specific vendor chosen for the program, and several potential underlying costs associated with road preparation and program operation. Many of these costs cannot be accurately determined until a later point in the process. On the revenue side, it is difficult to accurately determine the average number of violations and the percentage of paid violations for each camera. Because the automated cameras capture violations at an intersection consistently, there is no means to accurately project the number of violations.

Currently, the City of Garland is the only municipality in Texas with an operational program. Based on their figures for the first year of operation, we can extrapolate some basic numbers and percentages and apply them to our city. The accuracy of the projections for our program is solely based on our ability to produce similar numbers.

### **Program Costs**

A single camera typically costs approximately \$6,000 each month. This cost normally includes all associated maintenance and service for the camera, the customer-service work provided by the vendor, and a pro-rated portion of the installation costs of the system at that intersection. Most vendors provide for the process of violation notification, the collection of fees, and the scheduling of requested hearings on violations. In addition to the monthly camera costs, there are several additional costs necessary to support the program. The city would need to provide a part-time hearing officer, which would necessitate the addition of half an FTE, as well as provide office space and related technology equipment for the hearing officer.

### **Program Revenue**

Each paid violation from the red light cameras yields \$75. Given the rate for paid violations and the recurring monthly costs for the program, we would need to average just less than 4 paid violations per camera per day to break even. Research on a number

of automated red light programs indicates a reduction of up to fifteen percent after the first year of operation, and an average reduction of forty percent over 5 years. Based on this, the number of violations should drop significantly over the course of several years. An additional factor to consider is an increased awareness of red light cameras as more cities in the region implement automated enforcement. This increased awareness will likely have an impact on the frequency of red light violations in Denton and the surrounding cities.

Respectfully submitted,

Charles Wiley  
Chief of Police

Prepared by:  
Lt. Scott Fletcher – Police  
Stephanie Berry – Legal  
Antonio Puente - Finance  
Tim Smith – Police

## CITY OF DENTON CITY COUNCIL MINUTES

October 4, 2004

After determining that a quorum was present, the City Council convened in a Special Called Work Session on Monday, October 4, 2004 at 11:30 a.m. in the Council Work Session Room.

PRESENT: Mayor Brock; Mayor Pro Tem McNeill; Council Members Kamp, Montgomery, Mulroy, and Thomson.

ABSENT: Council Member Redmon

1. The Council received a report, held a discussion, and gave staff direction regarding the use of automated red light enforcement cameras at selected intersections in the City of Denton.

Lt. Scott Fletcher, Denton Police Department, presented information regarding red light enforcement and accidents that occur because of red light accidents. He stated that in Texas there had been a 250% increase in accidents since 1975. In Denton there had been more than 200 red light accidents since 2002. More than 2350 citations for red light violations had been issued. The exact extent of the problem was not really known outside of accidents and tickets issued. Traditional enforcement had been ineffective, inefficient, and dangerous as an officer would be present at the intersection to physically write tickets. Driver behavior would change while an officer was present but would go back to prior behavior when the officer was no longer present. Automated enforcement was the current method for red light enforcement. It was effective on reducing the number of red light accidents, violator reductions, reduction of violations at similar intersections without cameras. The automated enforcement was also cost efficient in terms of manpower and enforcement coverage. Red light camera issues included criminal versus civil violation, owner versus operator liability, right to privacy, and revenue structures.

Council Member Redmon joined the meeting.

Fletcher continued with the red light camera process. The process included recording the violation, processing and verification, violator notification and hearing and appeal. The placement of cameras was an issue because of the top ten intersections in terms of red light accidents for the past two years, only one did not involve a TxDot road. The Texas Department of Transportation would not allow the placement of automated enforcement cameras at intersections involving roadways they maintained. A public awareness campaign would be necessary to inform citizens of the program.

Council discussion included:

- An automated violation was a civil violation as opposed to a criminal violation if issued by an officer.
- TxDot would not allow cameras to be placed at intersections involving roadways they maintained.
- How to pursue collection of fees for nonpayment.
- The number of officers currently involved in red light enforcement.
- This was a method to expand enforcement of traffic regulations without expending officer time on the procedures.
- Violations should go down as the time factor was involved.

Consensus of Council was to proceed with the proposal.

2. Closed Meeting:

A. Consultation with Attorney — Under TEXAS GOVERNMENT CODE Section 551.071.

1. Discuss and consider legal issues concerning the City of Denton's proposed Automated Red Light Enforcement Camera Program patterned on an existing City of Garland Program including the legal enforceability of such a program under the City of Denton's home rule authority, the Texas Transportation Code and other applicable law, including the legal aspects of enforcement as a criminal violation or as a civil penalty where to discuss these legal issues in public would conflict with the duty of the City's attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

Council did not meet in Closed Session.

With no further business, the meeting was adjourned 1:20 p.m.

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS

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EULINE BROCK  
MAYOR  
CITY OF DENTON, TEXAS

## AGENDA INFORMATION SHEET

**AGENDA DATE:** December 7, 2004

**DEPARTMENT:** Police

**CM/DCM/ACM:** Jon Fortune, Assistant City Manager 

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### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, Texas, amending the Code of Ordinances of the City of Denton, by amending Chapter 18 to add Article IX Automated Traffic Signal Enforcement; providing a repealing clause; providing a severability clause; providing for the imposition of civil penalties from a minimum of \$75 to a maximum of \$150 for third and subsequent offenses; and providing an effective date.

### **BACKGROUND**

On October 4, 2004, Council received a report from staff regarding the potential use of automated red light enforcement in the City of Denton. Following that presentation, Council directed staff to proceed with the process of implementing red light cameras in the City of Denton. The initial step in this process is the creation and adoption of an ordinance establishing the use of automated red light cameras for enforcement. Following the adoption of this ordinance, the City will begin the process of evaluating prospective vendors of automated red light camera systems.

The proposed ordinance relies heavily on the ordinances adopted in the Cities of Garland, Frisco, and Plano. The ordinance in Garland has been in effect for more than a year. The ordinances in Plano and Frisco were passed within the past few months. This proposed ordinance is in keeping with applicable laws of the State of Texas and with existing opinions of the State Attorney General regarding the use of automated enforcement.

The proposed ordinance would establish our ability to use automated enforcement for red light violations at specific intersections to be determined at a later date. It would also establish a civil penalty of seventy-five dollars for such violations, a late fee of twenty-five dollars for delinquent payment, and a penalty of one hundred-fifty dollars for three or more violations within a year. The proposed ordinance establishes a hearing process for contested violations. Finally, the proposed ordinance provides for the creation of a public safety fund for the deposit of any revenue generated by the red light camera system for the payment of the system contract, related costs, and the expenditure of funds generated over and above the costs of the system.

**OPTIONS**

1. Council can adopt the ordinance as written.
2. Council can direct staff to make revisions or amend the ordinance and present it for future consideration.
3. Council can reject the proposed ordinance.

**RECOMMENDATION**

Staff recommends Council adopt the ordinance as written.

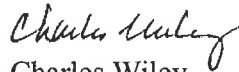
**PRIOR ACTION/REVIEW**

Council Work Session October 4, 2004.

**FISCAL IMPACT**

This ordinance would establish the civil penalty and other related penalties for violations handled through the automated red light cameras. As explained in the previous work session back up material, the red light camera system is intended to generate sufficient revenue to pay for the incurred costs. It can be anticipated that such a system might generate additional revenue over and above the monthly costs, but this revenue must be viewed as a short-term revenue source. Further, as presented in the work session back up material and because of criticism surrounding the use of these cameras, excess revenue should be specifically applied to traffic safety purchases and/or programs, such as improved signage, signals, enforcement, and equipment.

Respectfully submitted,



Charles Wiley  
Chief of Police

Prepared by:  
Scott Fletcher  
Lieutenant  
Operations Bureau



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DENTON, BY AMENDING CHAPTER 18 TO ADD ARTICLE IX AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE IMPOSITION OF CIVIL PENALTIES FROM A MINIMUM OF \$75 TO A MAXIMUM OF \$150 FOR THIRD AND SUBSEQUENT OFFENSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the city of Denton, Texas ("City Council") under the authority of Article XI, Section 5 of the Texas Constitution, investigated and determined that it would be advantageous and beneficial to the City of Denton, Texas ("Denton") and its inhabitants to implement an automated red light enforcement program; and

WHEREAS, upon investigation it has been determined that red light running is the cause of approximately 260,000 collisions and 240,000 injuries each year in the United States; and

WHEREAS, upon investigation it has been determined that red light running causes the death of approximately 100 people in the State of Texas each year; and

WHEREAS, red light enforcement programs have proven to reduce the number of red light runners in that Washington, D.C. has reduced red light running by 68 percent and Wilmington, Delaware has reduced red light running by 62 percent with their red light enforcement programs; and

WHEREAS, the local community of the City of Garland began its automated red light enforcement program in September 2003 and has already experienced a 13 percent reduction in violations; and

WHEREAS, it is in the interest of the public health, safety and welfare to implement traffic regulation and safety programs; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. Chapter 18 of the Code of Ordinances of the City of Denton, Texas, is hereby amended to add Article IX Automated Traffic Signal Enforcement to read as follows:

**ARTICLE IX AUTOMATED TRAFFIC SIGNAL ENFORCEMENT**

**Sec. 18-230. Definitions.**

In this article:

- (1) *Department* shall mean the Police Department of the City of Denton, Texas.
- (2) *Intersection* shall mean the place or area where two or more streets intersect.
- (3) *Owner* shall mean the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.
- (4) *Photographic Traffic Signal Enforcement System* shall mean a system that:
  - (a) consists of a camera system installed to work in conjunction with an electrically operated traffic-control signal; and
  - (b) is capable of producing at least two recorded images that depicts the license plate attached to the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.
- (5) *Recorded Image* means an image recorded by a photographic traffic monitoring system that depicts the rear of a motor vehicle and is automatically recorded on a photograph or digital image.
- (6) *System Location* means the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.
- (7) *Traffic Control Signal* shall mean a traffic control device that displays alternating red, amber and green lights that directs traffic when to stop at or proceed through an intersection.

**Sec. 18-231. Imposition of Civil Penalty for Violations.**

(a) The City Council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.

(b) Except as provided in (c) and (d) below, the owner of a motor vehicle is liable for a civil penalty of seventy-five dollars (\$75) if the motor vehicle proceeds into an intersection at a system location when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal.

(c) For a third or subsequent violation committed by the owner of the same motor vehicle during any 12-month period, the amount of the civil penalty shall be one hundred fifty dollars (\$150).

(d) A owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of twenty-five dollars (\$25).

**Sec. 18-232. Enforcement; procedures.**

(a) The Department is responsible for the enforcement and administration of this article.

(b) In order to impose a civil penalty under this article, the Department shall mail a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than the 30<sup>th</sup> day after the date the violation is alleged to have occurred to:

- (1) the owner's address as shown on the registration records of the Texas Department of Transportation; or
- (2) if the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Transportation.

(c) A notice of violation issued under this article shall contain the following:

- (1) a description of the violation alleged;
- (2) the date, time, and location of the violation;
- (3) a copy of a recorded image of the vehicle involved in the violation.
- (4) the amount of the civil penalty to be imposed for the violation;
- (5) the date by which the civil penalty must be paid;
- (6) a statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative adjudication hearing.

- (7) information that informs the person named in the notice of violation:
    - (A) of the right to contest the imposition of the civil penalty in an administrative adjudication;
    - (B) of the manner and time in which to contest the imposition of the civil penalty; and
    - (C) that failure to pay the civil penalty or to contest liability is an admission of liability;
  - (8) a statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;
  - (9) a statement that failure to pay the civil penalty within the time allowed shall result in the imposition of a late penalty of \$25.00; and
  - (10) any other information deemed necessary by the department.
- (d) A notice of violation under this article is presumed to have been received on the 10<sup>th</sup> day after the date of notice of violation is mailed.
  - (e) In lieu of issuing a notice of violation, the Department may mail a warning notice to the owner.

**Sec. 18-233. Administrative adjudication hearing.**

(a) A person who receives a notice of violation may contest the imposition of the civil penalty by request in writing an administrative adjudication of the civil penalty within fifteen (15) days after receipt of the notice of violation. Upon receipt of a timely request, the Department shall notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a hearing officer appointed by the City Manager.

(b) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty assessed in the notice of violation, and is a waiver of the right to appeal under section 18-233(i).

(c) The civil penalty shall not be assessed if after a hearing, the hearing officer enters a finding of no liability.

(d) In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the City or the entity with which the city contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the city that alleges a violation based on an inspection of the pertinent recorded image, is admissible in a proceeding under this article and is evidence of the facts contained in the affidavit.

(e) A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of \$25.00 in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within 10 days of the hearing.

(f) It shall be an affirmative defense to the imposition of civil liability under this article, to be proven by a preponderance of the evidence, that;

- (1) the traffic-control signal was not in proper position and sufficiently legible to an ordinarily observant person;
- (2) the operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;
- (3) the operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle.
- (4) the motor vehicle was being operating as an authorized emergency vehicle under Chapter 546 of the Texas Transportation Code and that the operator was acting in compliance with that Chapter;
- (5) the motor vehicle was a stolen vehicle and being operated by a person other than the owner of the vehicle without the effective consent of the owner;
- (6) the license plate depicted in the recorded image of the violation was a stolen plate and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;
- (7) the presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed and would make

compliance with this article more dangerous under the circumstances than non-compliance; or

- (8) the person who received the notice of violation was not the owner of the motor-vehicle at the time of the violation.

(g) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate, the owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

(h) Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:

- (1) the person files an affidavit with the hearing officer stating the date on which the person received the notice of violation that was mailed to the person; and
- (2) within the same period required by Sec. 18-232(c)(7)(B) for a hearing to be timely requested but measured from the date the mailed notice was received as stated in the affidavit filed under Subdivision (1), the person requests an administrative adjudication hearing.

(i) A person who is found liable after an administrative adjudication hearing may appeal that finding of civil liability to the Municipal Court by filing a notice of appeal with the clerk of the Municipal Court. The notice of appeal must be filed not later than the 31<sup>st</sup> day after the date on which the administrative adjudication hearing officer entered the finding of civil liability. Unless the person, on or before the filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the Municipal Court by trial de novo. The affidavits submitted under Section 18-233(d) shall be admitted by the municipal judge in the trial de novo, and the issues must be proved by a preponderance of the evidence. A person found liable by the Municipal Court shall pay an appellate filing fee of \$50.00 in addition to the civil penalty and any other fees due the City.

**Sec. 18-234. Order.**

(a) The hearing officer at any administrative hearing under this article shall issue an order stating:

- (1) whether the person charged with the violation is liable for the violation; and

- (2) the amount of any civil penalty, late penalty, and administrative adjudication cost assessed against the person.

(b) The orders issued under subsection (a) may be filed with the office of the hearing examiner. The hearing examiner shall keep the orders in a separate index and file. The orders may be recorded using microfilm, microfiche, or data processing techniques.

**Sec. 18-235. Effect of liability; exclusion of civil remedy.**

(a) The imposition of a civil penalty under this article is not a criminal conviction for any purpose.

(b) A civil penalty may not be imposed under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for the same violation of Section 544.007(d) of the Texas Transportation Code recorded by the photographic traffic signal enforcement system.

(c) An owner who fails to pay the civil penalty or to timely contest liability for the penalty is considered to admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person.

(d) The City Attorney is authorized to file suit to enforce collection of a civil penalty imposed under this article.

**Sec. 18-236. Traffic Safety Fund.**

The penalties and fees collected from the imposition of civil liability under this article shall be deposited in the Traffic Safety Fund account established by the City Council. Funds from the Traffic Safety Fund may be expended only for the costs of automated signal enforcement under this article, public traffic or pedestrian safety programs, traffic enforcement and intersection improvements.

**SECTION 3.** That all provisions of the ordinances of the City of Denton in conflict with the provision of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Denton not in conflict with the provision of this Ordinance shall remain in full force and effect.

**SECTION 4.** That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

**SECTION 5.** This ordinance providing for a penalty shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, the official newspaper of the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
EULINE BROCK, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM  
HERBERT L. PROUTY

BY: Herbert L. Prouty



The following ordinance was considered:

NO. 2004-388

AN ORDINANCE ACCEPTING COMPETITIVE BIDS AND AWARDING A CONTRACT FOR PURCHASE OF TWO BOMB TECHNICIAN RESPONSE VEHICLES FOR THE CITY OF DENTON FIRE DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING FOR AN EFFECTIVE DATE (BID 3248 – BOMB TECHNICIAN RESPONSE VEHICLE AWARDED TO SAM PACK’S FIVE STAR FORD IN THE AMOUNT OF \$81,051.06).

Mulroy motioned, Kamp seconded to adopt the ordinance. On roll vote, Kamp “aye”, McNeill “aye”, Montgomery “aye”, Mulroy “aye”, Redmon “aye”, Thomson “aye” and Mayor Brock “aye”. Motion carried unanimously.

G. The Council considered adoption of an ordinance of the City of Denton, Texas, amending the Code of Ordinances of the City of Denton, by amending Chapter 18 to add Article IX Automated Traffic Signal Enforcement; providing a repealing clause; providing a severability clause; providing for the imposition of civil penalties from a minimum of \$75 to a maximum of \$150 for third and subsequent offenses; and providing an effective date.

Scott Fletcher, Lieutenant in the Denton Police Department, stated that this ordinance would establish the use of automated red light cameras for enforcement. Then the City could begin the process of evaluating prospective vendors of automated red light camera systems.

The following ordinance was considered:

NO. 2004-389

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DENTON, BY AMENDING CHAPTER 18 TO ADD ARTICLE IX AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE IMPOSITION OF CIVIL PENALTIES FROM A MINIMUM OF \$75 TO A MAXIMUM OF \$150 FOR THIRD AND SUBSEQUENT OFFENSES; AND PROVIDING AN EFFECTIVE DATE.

Redmon motioned, Montgomery seconded to adopt the ordinance. On roll vote, Kamp “aye”, McNeill “aye”, Montgomery “aye”, Mulroy “aye”, Redmon “aye”, Thomson “aye” and Mayor Brock “aye”. Motion carried unanimously.

H. Consider nominations/appointments to the City’s Boards and Commissions.

Thomson motioned, Mulroy seconded to approve the prior nomination of Ann Barnett to the Traffic Safety Commission. On roll vote, Kamp “aye”, McNeill “aye”, Montgomery “aye”,

ORDINANCE NO. 2004-309

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DENTON, BY AMENDING CHAPTER 18 TO ADD ARTICLE IX AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE IMPOSITION OF CIVIL PENALTIES FROM A MINIMUM OF \$75 TO A MAXIMUM OF \$150 FOR THIRD AND SUBSEQUENT OFFENSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the city of Denton, Texas ("City Council") under the authority of Article XI, Section 5 of the Texas Constitution, investigated and determined that it would be advantageous and beneficial to the City of Denton, Texas ("Denton") and its inhabitants to implement an automated red light enforcement program; and

WHEREAS, upon investigation it has been determined that red light running is the cause of approximately 260,000 collisions and 240,000 injuries each year in the United States; and

WHEREAS, upon investigation it has been determined that red light running causes the death of approximately 100 people in the State of Texas each year; and

WHEREAS, red light enforcement programs have proven to reduce the number of red light runners in that Washington, D.C. has reduced red light running by 68 percent and Wilmington, Delaware has reduced red light running by 62 percent with their red light enforcement programs; and

WHEREAS, the local community of the City of Garland began its automated red light enforcement program in September 2003 and has already experienced a 13 percent reduction in violations; and

WHEREAS, it is in the interest of the public health, safety and welfare to implement traffic regulation and safety programs; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. Chapter 18 of the Code of Ordinances of the City of Denton, Texas, is hereby amended to add Article IX Automated Traffic Signal Enforcement to read as follows:

**ARTICLE IX AUTOMATED TRAFFIC SIGNAL ENFORCEMENT**

**Sec. 18-230. Definitions.**

In this article:

- (1) *Department* shall mean the Police Department of the City of Denton, Texas.
- (2) *Intersection* shall mean the place or area where two or more streets intersect.
- (3) *Owner* shall mean the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.
- (4) *Photographic Traffic Signal Enforcement System* shall mean a system that:
  - (a) consists of a camera system installed to work in conjunction with an electrically operated traffic-control signal; and
  - (b) is capable of producing at least two recorded images that depicts the license plate attached to the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.
- (5) *Recorded Image* means an image recorded by a photographic traffic monitoring system that depicts the rear of a motor vehicle and is automatically recorded on a photograph or digital image.
- (6) *System Location* means the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.
- (7) *Traffic Control Signal* shall mean a traffic control device that displays alternating red, amber and green lights that directs traffic when to stop at or proceed through an intersection.

**Sec. 18-231. Imposition of Civil Penalty for Violations.**

(a) The City Council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.

(b) Except as provided in (c) and (d) below, the owner of a motor vehicle is liable for a civil penalty of seventy-five dollars (\$75) if the motor vehicle proceeds into an intersection at a system location when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal.

(c) For a third or subsequent violation committed by the owner of the same motor vehicle during any 12-month period, the amount of the civil penalty shall be one hundred fifty dollars (\$150).

(d) A owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of twenty-five dollars (\$25).

**Sec. 18-232. Enforcement; procedures.**

(a) The Department is responsible for the enforcement and administration of this article.

(b) In order to impose a civil penalty under this article, the Department shall mail a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than the 30<sup>th</sup> day after the date the violation is alleged to have occurred to:

- (1) the owner's address as shown on the registration records of the Texas Department of Transportation; or
- (2) if the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Transportation.

(c) A notice of violation issued under this article shall contain the following:

- (1) a description of the violation alleged;
- (2) the date, time, and location of the violation;
- (3) a copy of a recorded image of the vehicle involved in the violation.
- (4) the amount of the civil penalty to be imposed for the violation;
- (5) the date by which the civil penalty must be paid;
- (6) a statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative adjudication hearing.

- (7) information that informs the person named in the notice of violation:
  - (A) of the right to contest the imposition of the civil penalty in an administrative adjudication;
  - (B) of the manner and time in which to contest the imposition of the civil penalty; and
  - (C) that failure to pay the civil penalty or to contest liability is an admission of liability;
- (8) a statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;
- (9) a statement that failure to pay the civil penalty within the time allowed shall result in the imposition of a late penalty of \$25.00; and
- (10) any other information deemed necessary by the department.
- (d) A notice of violation under this article is presumed to have been received on the 10<sup>th</sup> day after the date of notice of violation is mailed.
- (e) In lieu of issuing a notice of violation, the Department may mail a warning notice to the owner.

**Sec. 18-233. Administrative adjudication hearing.**

(a) A person who receives a notice of violation may contest the imposition of the civil penalty by request in writing an administrative adjudication of the civil penalty within fifteen (15) days after receipt of the notice of violation. Upon receipt of a timely request, the Department shall notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a hearing officer appointed by the City Manager.

(b) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty assessed in the notice of violation, and is a waiver of the right to appeal under section 18-233(i).

(c) The civil penalty shall not be assessed if after a hearing, the hearing officer enters a finding of no liability.

(d) In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the City or the entity with which the city contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the city that alleges a violation based on an inspection of the pertinent recorded image, is admissible in a proceeding under this article and is evidence of the facts contained in the affidavit.

(e) A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of \$25.00 in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within 10 days of the hearing.

(f) It shall be an affirmative defense to the imposition of civil liability under this article, to be proven by a preponderance of the evidence, that;

- (1) the traffic-control signal was not in proper position and sufficiently legible to an ordinarily observant person;
- (2) the operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;
- (3) the operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle.
- (4) the motor vehicle was being operating as an authorized emergency vehicle under Chapter 546 of the Texas Transportation Code and that the operator was acting in compliance with that Chapter;
- (5) the motor vehicle was a stolen vehicle and being operated by a person other than the owner of the vehicle without the effective consent of the owner;
- (6) the license plate depicted in the recorded image of the violation was a stolen plate and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;
- (7) the presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed and would make

compliance with this article more dangerous under the circumstances than non-compliance; or

- (8) the person who received the notice of violation was not the owner of the motor-vehicle at the time of the violation.

(g) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate, the owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

(h) Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:

- (1) the person files an affidavit with the hearing officer stating the date on which the person received the notice of violation that was mailed to the person; and
- (2) within the same period required by Sec. 18-232(c)(7)(B) for a hearing to be timely requested but measured from the date the mailed notice was received as stated in the affidavit filed under Subdivision (1), the person requests an administrative adjudication hearing.

(i) A person who is found liable after an administrative adjudication hearing may appeal that finding of civil liability to the Municipal Court by filing a notice of appeal with the clerk of the Municipal Court. The notice of appeal must be filed not later than the 31<sup>st</sup> day after the date on which the administrative adjudication hearing officer entered the finding of civil liability. Unless the person, on or before the filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the Municipal Court by trial de novo. The affidavits submitted under Section 18-233(d) shall be admitted by the municipal judge in the trial de novo, and the issues must be proved by a preponderance of the evidence. A person found liable by the Municipal Court shall pay an appellate filing fee of \$50.00 in addition to the civil penalty and any other fees due the City.

**Sec. 18-234. Order.**

(a) The hearing officer at any administrative hearing under this article shall issue an order stating:

- (1) whether the person charged with the violation is liable for the violation; and

- (2) the amount of any civil penalty, late penalty, and administrative adjudication cost assessed against the person.

(b) The orders issued under subsection (a) may be filed with the office of the hearing examiner. The hearing examiner shall keep the orders in a separate index and file. The orders may be recorded using microfilm, microfiche, or data processing techniques.

**Sec. 18-235. Effect of liability; exclusion of civil remedy.**

(a) The imposition of a civil penalty under this article is not a criminal conviction for any purpose.

(b) A civil penalty may not be imposed under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for the same violation of Section 544.007(d) of the Texas Transportation Code recorded by the photographic traffic signal enforcement system.

(c) An owner who fails to pay the civil penalty or to timely contest liability for the penalty is considered to admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person.

(d) The City Attorney is authorized to file suit to enforce collection of a civil penalty imposed under this article.

**Sec. 18-236. Traffic Safety Fund.**

The penalties and fees collected from the imposition of civil liability under this article shall be deposited in the Traffic Safety Fund account established by the City Council. Funds from the Traffic Safety Fund may be expended only for the costs of automated signal enforcement under this article, public traffic or pedestrian safety programs, traffic enforcement and intersection improvements.

**SECTION 3.** That all provisions of the ordinances of the City of Denton in conflict with the provision of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Denton not in conflict with the provision of this Ordinance shall remain in full force and effect.

**SECTION 4.** That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.



**SECTION 5.** This ordinance providing for a penalty shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, the official newspaper of the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the 7th day of December, 2004.

*Euline Brock*

EULINE BROCK, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: *Jane Richardson, Asst.*

APPROVED AS TO LEGAL FORM  
HERBERT L. PROUTY

BY: *Stephanie M. Berry*

## AGENDA INFORMATION SHEET

**AGENDA DATE:** October 3, 2005

**DEPARTMENT:** Police

**ACM:** Jon Fortune, Assistant City Manager



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### SUBJECT

Receive a report, hold a discussion, and give staff direction regarding the vendor selection process for the automated traffic signal enforcement program.

### BACKGROUND

On October 4, 2004 staff made a presentation to Council in work session on the use of automated traffic signal enforcement. On December 7, 2004, Council adopted an ordinance authorizing the use of red light cameras and instructed staff to develop and pursue the project. In December 2004, the Cities of Plano, Richardson, and Frisco joined together and launched an RFP for the purpose of selecting a vendor for red light cameras for their respective cities. The City of Denton attempted to join in with these other cities on their RFP, but due to logistical complications, we were not able to formally join their consortium. However, these three cities openly welcomed our staff to meet with them and observe the RFP process. City staff members attended committee meetings and vendor presentations in January and February 2005. The City of Denton had two possible routes to take in selecting a red light camera vendor: work through existing interlocal agreements and use the vendor selected by the cities of Plano, Richardson, and Frisco; or develop an RFP and seek proposals from red light vendors on our own. City Staff met in March 2005 and decided that the city had more flexibility and better options if we pursued vendors through our own RFP process.

As staff began the RFP development, a number of legal challenges were made to the enabling legislation during the Texas Legislature's regular session. None of the challenges passed during the regular session, and an attempt during the first Special Session failed as well. With these legal challenges no longer a threat, the decision was made to move forward with the red light camera RFP. The RFP was developed and released in August 2005. The RFP set out the criteria to be used in selecting a vendor: Back Office Performance (35%), Technology and Hardware (20%), Experience and Qualifications (10%), Project Termination Plan (10%), Overall Cost of the Program (20%), and Overall Project Approach (5%). Each of these sections is explained below.

#### **Back Office Performance (35%)**

Back office performance is the largest section in the grading criteria, carrying the heaviest weight of any single category. Back office performance includes a subsection on evidence, such as the overall quality of photographs and video and the quality of

individual violation photographs. It also includes a subsection on processing, covering issues such as the vendor's capability to process those photos and video in a timely manner, the vendor's ability to obtain motor vehicle registration information, the vendor's software and access to both police and violators over the Internet, and the ability to produce violation notices within seven days. Back office performance also includes the vendor's analytical capabilities on captured data, and their public education program.

**Technology and Hardware Performance (20%)**

This section covers the issue of what type of cameras the vendor uses and the overall functionality of the camera system. It includes criteria on Detection, Portability, Installation, and Maintenance. Detection involves the vendor's ability to monitor and capture violations on varying lane types and numbers, capture multiple violations during a single light phase, and the type of detection technology the vendor employees. Portability centers on the vendor's ability to provide equipment for up to ten intersections and their capability to provide a "turn key" solution. Installation concerns the vendor's ability to have the system installed within ninety days from the notice to proceed and their use of subcontractors for the project. Finally, Maintenance involves the ability of the vendor to make timely repairs and adjustments on the system within a minimum timeframe of forty-eight hours.

**Experience and Qualifications (10%)**

Research into the field of automated traffic signal enforcement provides a clear picture that there have been many companies that entered the field, but many of them have failed to last for very long. There are a number of vendors who have either filed for bankruptcy or were sold to other competitors. This section reviews the experience of the vendor, including the amount of time they have been in business, prior experience with other cities, and the list of references with other projects.

**Project Termination Plan (10%)**

Given the recent legal challenges to the enabling legislation at the State level, there is some concern about entering into a long-term contract without some assurance as to what happens if the legislation is later overturned. This section examines the vendor's position on this issue and the city's financial liability in the event there are legal changes that prevent the use of the system.

**Overall Cost (20%)**

The RFP asked for a flat rate monthly price per camera. This section examines the monthly rate, the cost of "dummy" systems, and any contractual guarantees regarding cost and performance.

**Project Approach (5%)**

This section takes a comprehensive look at the vendor's approach to the city's desired program. Essentially, this section would be scored based on how each vendor compares to the other vendors.

After the RFP was released, the city received proposals from five vendors. A red light camera committee was selected to review the proposals and make a recommendation to Council. The members of the committee are:

Curt Arndt, Traffic Operations Manager  
Stephanie Berry, Assistant City Attorney  
Lieutenant Loyd Burns, Support Bureau, Police  
Lieutenant Scott Fletcher, Operations Bureau, Police  
Keith Gabbard, Streets and Drainage Supervisor  
Captain Scott Langford, Operations Bureau, Police  
Tom Shaw, Purchasing Agent  
Scott Wilson, Lead Signal Technician, Traffic Operations

The red light camera committee members met September 1, 2005 and discussed the vendor proposals. At this meeting, the committee ranked the five vendors using the grading criteria from the RFP. The vendors were ranked as follows:

1. Redflex
2. ATS
3. Nestor
4. Peek
5. Lasercraft

The top two vendors were invited to make a one-hour oral presentation to the committee. These presentations were made on September 12, 2005. The committee contacted reference cities provided by these two vendors. The committee met again following the presentations and each committee member submitted a grade sheet for the top two vendors.

A breakdown of the top two vendors is provided below. A full composite grade sheet is attached in appendix A.

### **Redflex**

Redflex currently has more than 480 operational systems in the United States, including programs in Chicago, IL and Scottsdale, AZ. Redflex was recently awarded contracts with the cities of Plano, Richardson, Frisco. They have the capability to process more than 140,000 violations a month. They have a proven track record of running the type of program the City of Denton is looking to employ. They utilize a non-invasive video detection system and employ multiple digital cameras and a video camera to capture violations. They provide a twelve second video of each violation – six seconds before and after each violation. They indicate a willingness to customize much of their program to suit the individual needs of their customer. Their system also provides a live feed that can be used to monitor traffic problems. They provide a fully automated traffic statistics program for use by their customers without the need to request specific reports.

Every reference city provided by Redflex expressed their complete satisfaction with the product and the company. Each of these cities, despite the wide variations in the number of cameras systems they have in operation, praised the level of customer service, the work of the company during the design and installation process, and the overall performance of the camera systems. Each of these reference cities have been working with Redflex for at least a year, and several have been operational for a number of years. Two of the five reference cities contacted offered that they have recently extended the Redflex contract or are in the process of expanding the Redflex program. Several staff members of the reference cities stated that Redflex far exceeded their expectations in every area of the program. One city administrator commented that Redflex was the best vendor, in any capacity, that he had worked with throughout the city.

Finally, Redflex offers a guaranteed contract to the city. They will adjust the monthly pricing of our system to ensure that there is no net loss – thus preventing the need to supplement the red light camera program with the city's budget. They also have an advantageous project termination plan. In the event the red light program becomes untenable due to legislative changes or judicial rulings, Redflex will terminate the program at no cost to us. Further, should the city become dissatisfied with the program's performance, Redflex will terminate the program without cost to the city. In either case, Redflex will return the affected intersections to their original operating condition.

#### **ATS**

ATS has been involved in photo enforcement programs for a number of years. They were recently partnered with Mulvihill, another photo enforcement company. They have since acquired Mulvihill. ATS has a number of red light camera contracts, including programs in New York, NY and Philadelphia, PA. ATS uses non-invasive video detection and provides high-resolution digital still photographs. They also offer a ten second video clip of each violation. For an additional monthly fee, ATS can provide additional (non violation) cameras for a full video view of an enforcement intersection. ATS offers statistical reports to the city to audit the operation and effectiveness of the red light camera program.

Several of the reference cities provided by ATS expressed complete satisfaction with the program. However, none of these cities appear to be operating the complete system that ATS proposes to the City of Denton. In New York, ATS operates the camera system. However, NY City officials conduct all of the back office work on processing and issuing violation notices and the collection of payments. It is also notable that the NY City officials consistently referred to Mulvihill and their staff when speaking of the program assets. Finally, ATS stated in their proposal that they were set to install an additional 50 cameras in NY City by September 2005. NY City staff stated that they were supportive of adding cameras to their system. Unfortunately, due to existing State legislative restrictions, they could not add any cameras to their system without changes to the enabling legislation at the State level. In Philadelphia, city staff members were more than pleased with their system and the performance of ATS. By law, Pennsylvania requires the use of 35mm wet film. Therefore, Philadelphia could not provide any feedback on the digital camera system performance. The third reference provided was Scottsdale, AZ.

Redflex also listed this city as a reference. ATS operated the red light camera program in Scottsdale from 1996 – 1999, when they sold their red light camera business contracts to Redflex. One final issue with references came up with the city of Ft. Collins, CO. This city was listed in the ATS proposal on a reference list of “key programs under development, or delivered and operated by many of the same team members being proposed to the City of Denton”. When contacted, Ft. Collins officials stated that they have a red light camera program being run by Redflex and were not aware of any relationship to ATS.

In terms of program costs, ATS offers a very competitive monthly rate for their camera systems. However, ATS requires some additional payments for some services that have the potential to inflate the monthly cost. The installation of the four-way video system, as stated above, would add more than one hundred dollars each month per intersection. The monthly rate offered only includes registration information from Texas. There is an additional per violation charge to look up and retrieve out-of-state license plate/registration data. ATS offers a no-cost termination plan in the event of a legislative change that prohibits the use of red light cameras. They do not offer a no-cost termination for any other reason. Finally, ATS does not offer a contract guarantee for the performance of the program. Should the income from paid violations fail to cover the monthly cost of the camera systems, the city would be liable to make up the price difference. The company president did make such an offer during his oral presentation in response to a question, but this guarantee was not provided in writing with the original proposal.

### **Recommendation**

Based on the information in the written and oral presentations, along with the comments provided by other cities using these companies, the red light camera committee unanimously recommends Redflex as the vendor for the City of Denton Automated Traffic Signal Enforcement Program. Redflex scored higher in every category on every committee member’s grading sheet. (See Attachment 1)

### **OPTIONS**

1. Council can direct staff to pursue a contract with Redflex as the vendor for the city’s Automated Traffic Signal Enforcement Program.
2. Council can direct staff to conduct additional research on vendors for the city’s Automated Traffic Signal Enforcement Program.

### **RECOMMENDATION**

Staff recommends pursuing a contract with Redflex for the city’s Automated Traffic Signal Enforcement Program.

### **PRIOR ACTION/REVIEW**

10/04/04 – Council Work Session on Red Light Cameras.

12/07/04 – Council adoption of Red Light Camera Ordinance.

**FISCAL IMPACT**

Should Council approve the recommendation of Redflex as the vendor for the program, there will be a fairly minimal impact on the city budget. Because Redflex offers a guaranteed contract, there should be no additional cost to the city from the contract with Redflex. Should the program produce any revenue above the monthly cost of the contract, the existing ordinance provides for the revenue to be deposited in a "Public Safety" account. This account is dedicated to expenditures for the operation of the camera program and can only be used for this purpose or to fund specific public safety programs and improvements, such as signal/intersection improvements, law enforcement traffic enforcement programs, and other related activities.

Regardless of which vendor is selected, the city is responsible for establishing a part time Hearing Officer to listen to appeals of citizens who receive violation notices. Revenues, as stated above, could cover this Hearing Officer position, as it is part of the overall program. However, this position is not included in the vendor contract. As such, it is not covered by the contract guarantee provided by Redflex. The city is obligated to fund this position in the event there are not sufficient revenues to pay for it.

**ATTACHMENT**

1. Composite Grading Sheet

Respectfully submitted,



Charles Wiley  
Chief of Police

Prepared by:



Lt. Scott Fletcher  
Operations Bureau

**Automated Traffic Signal Enforcement Program  
RFSP #3364  
Composite Grading Sheet**

Redflex	1	2	3	4	5	6	7	8	Aver
Back Office Performance (possible 35 points)	33	33	30	30	35	30	29	33	31.63
Technology and Hardware Performance (possible 20 points)	20	18	20	20	18	18	15	18	18.38
Experience and Qualifications (possible 10 points)	10	9	10	10	10	10	9	10	9.75
Project Termination Plan (possible 10 points)	9	10	10	10	10	10	8	10	9.63
Overall Cost of Program (possible 20 points)	20	20	20	18	20	18	17	19	19.00
Project Approach (possible 5 points)	5	5	5	5	5	4	4	5	4.75
Total Score (possible 100 points)	97	95	95	93	98	90	82	95	93.13

ATS	1	2	3	4	5	6	7	8	Aver
Back Office Performance (possible 35 points)	30	25	25	20	30	24	24	28	25.75
Technology and Hardware Performance (possible 20 points)	17	12	20	17	15	16	11	13	15.13
Experience and Qualifications (possible 10 points)	5	6	3	5	5	7	5	7	5.38
Project Termination Plan (possible 10 points)	7	8	3	9	9	7	6	7	7.00
Overall Cost of Program (possible 20 points)	17	17	10	20	15	17	7	16	14.88
Project Approach (possible 5 points)	4	3	1	4	4	3	4	4	3.38
Total Score (possible 100 points)	80	71	62	75	78	74	57	75	71.50



CITY OF DENTON CITY COUNCIL MINUTES  
October 3, 2005

After determining that a quorum was present, the City Council convened in a Special Called Meeting on Monday, October 3, 2005 at 11:30 a.m. in the Council Work Session Room.

PRESENT: Mayor Brock; Mayor Pro Tem McNeill; Council Members Heggins, Montgomery, Mulroy, and Thomson.

ABSENT: Council Member Kamp

1. The Council received a report, held a discussion, and gave staff direction regarding the vendor selection process for the automated traffic signal enforcement program.

Lt. Scott Fletcher, Denton Police Department, reviewed the history of the automated traffic signal enforcement program. The evaluation criteria for the request for proposal were also discussed. That criteria included back office performance, technology and hardware, program cost, experience/qualifications, termination plan and project approach. Five vendors responded to the request for proposal. A red light camera committee was selected to review the proposals and make a recommendation to Council. The Committee ranked the five vendors based on the criteria and heard one-hour oral presentations from the top two vendors. Based on the information received in the written and oral presentations, along with the comments provided by other cities using the companies, the red light camera committee unanimously recommended Redflex as the vendor for the City's automated traffic signal enforcement program.

Council Member Kamp arrived at the meeting.

Council discussion-

- There will be a need for a part-time hearing officer position.
- What portion of revenue stream would the State take - Fletcher responded none of the revenue would be going to the State at this point in time.
- Need to discuss with TxDot to allow the City to place red light cameras at intersections on State controlled roadways.
- This was a health and safety issue as opposed to a revenue stream issue.

Consensus of the Council was to proceed with the contract with Redflex as recommended by staff.

2. The Council received a report, held a discussion and gave staff direction on the design and impact of the proposed design changes to the Texas wholesale electric market design.

John Rainey stated that the Public Utility Commission of Texas had made a decision to redesign the Texas wholesale electric market to a system based on nodal locational market pricing, effective January 1, 2009. He stated that a nodal implied that there was a price determined at every "node" on the system. A "node" was a monitored point such as a substation, generator, demand meter, transmission line element, or customer. This system was not a solutions model; it was a pricing model. It was not a market design model; it was a settlement model. The Nodal system did not fix congestion; it priced congestion. It also collected more money from loads

than the actual cost of the generator redispatch used to fix congestion and paid the extra money collected to holders of hedging rights. In Texas, the market design auctions the hedging rights to the highest bidder and required loads to pay higher congestion costs and distributed that money to players in a separate commodity market. A Nodal LMP model did not guarantee the lowest cost generators would be used, did not guarantee the most efficient generators would be used, based generator dispatch decisions on bids/offers that were not related to actual costs, allowed "virtual" players to bid/offer in the market without having actual generation or load and sent "prices" to loads who were the least able to directly influence market behavior.

Council discussed the various aspects of the nodal locational market pricing system. The suggested process to follow was to start working with other elected officials in the Metroplex to understand why this was a challenge for cities and then to have them try and influence State elected officials.

3. The Council received a report, held a discussion and gave staff direction regarding a petition of JNC Partners Denton, LLC requesting consent to the creation of a Water Control and Improvement District at Craver Ranch, located within the City's extraterritorial jurisdiction ("ETJ"); and also annexation of real property in the City's northern ETJ under annexation case no. A05-0002. The City Council reserved the right to convene into closed session to consult with its attorneys under Texas Government Code Section 551.071 regarding any legal issues related to this matter where a public discussion would conflict with the duty of the City's attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas or would jeopardize the City's legal position in any administrative proceedings or potential litigation.

The Council convened into Closed Session to discuss this item.

With no further business, the meeting was adjourned.

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EULINE BROCK  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS

## AGENDA INFORMATION SHEET

**AGENDA DATE:** November 15, 2005

Questions concerning this acquisition may be directed to Charles Wiley 349-7925

**DEPARTMENT:** Materials Management

**ACM:** Jon Fortune



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### **SUBJECT**

Consider adoption of an Ordinance accepting competitive proposals and awarding a contract for the purchase of an automated traffic signal enforcement system; providing for the expenditure of funds therefore; and providing an effective date (RFP 3364-Automated Traffic Signal Enforcement System awarded to Redflex Traffic Systems USA).

### **RFP INFORMATION**

City Council reviewed this Request for Proposals for Automated Traffic Signal Enforcement System at its October 3, 2005 Work Session. The agenda information sheet that was presented at this meeting is included as Attachment 1. The composite grading sheet, which ranks the two top proposals submitted is included as Attachment 2.

### **RECOMMENDATION**

Award a contract for operation of the City's Automated Traffic Signal Enhancement Program to Redflex Traffic Systems USA.

### **PRINCIPAL PLACE OF BUSINESS**

Redflex Traffic Systems USA  
Culver City, CA

### **ESTIMATED SCHEDULE OF PROJECT**

This is a three-year contract effective from the date of award or notice to proceed as determined by the City of Denton Purchasing Department. The contract may be renewed for additional one-year periods with all prices, terms, and conditions remaining the same.

Agenda Information Sheet  
November 15, 2005  
Page 2

**FISCAL INFORMATION**

Reference Fiscal Impact section of Attachment 1: October 3, 2005 Agenda Information Sheet.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Tom Shaw", written in a cursive style.

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Tom Shaw, C.P.M., 349-7100  
Purchasing Agent

Attachment 1: Agenda Sheet from October 3 Council Work Session  
Attachment 2: Composite Grading Sheet  
1-AIS-RFP 3364

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** October 3, 2005

**DEPARTMENT:** Police

**ACM:** Jon Fortune, Assistant City Manager 

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**SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding the vendor selection process for the automated traffic signal enforcement program.

**BACKGROUND**

On October 4, 2004 staff made a presentation to Council in work session on the use of automated traffic signal enforcement. On December 7, 2004, Council adopted an ordinance authorizing the use of red light cameras and instructed staff to develop and pursue the project. In December 2004, the Cities of Plano, Richardson, and Frisco joined together and launched an RFP for the purpose of selecting a vendor for red light cameras for their respective cities. The City of Denton attempted to join in with these other cities on their RFP, but due to logistical complications, we were not able to formally join their consortium. However, these three cities openly welcomed our staff to meet with them and observe the RFP process. City staff members attended committee meetings and vendor presentations in January and February 2005. The City of Denton had two possible routes to take in selecting a red light camera vendor: work through existing interlocal agreements and use the vendor selected by the cities of Plano, Richardson, and Frisco; or develop an RFP and seek proposals from red light vendors on our own. City Staff met in March 2005 and decided that the city had more flexibility and better options if we pursued vendors through our own RFP process.

As staff began the RFP development, a number of legal challenges were made to the enabling legislation during the Texas Legislature's regular session. None of the challenges passed during the regular session, and an attempt during the first Special Session failed as well. With these legal challenges no longer a threat, the decision was made to move forward with the red light camera RFP. The RFP was developed and released in August 2005. The RFP set out the criteria to be used in selecting a vendor: Back Office Performance (35%), Technology and Hardware (20%), Experience and Qualifications (10%), Project Termination Plan (10%), Overall Cost of the Program (20%), and Overall Project Approach (5%). Each of these sections is explained below.

**Back Office Performance (35%)**

Back office performance is the largest section in the grading criteria, carrying the heaviest weight of any single category. Back office performance includes a subsection on evidence, such as the overall quality of photographs and video and the quality of

individual violation photographs. It also includes a subsection on processing, covering issues such as the vendor's capability to process those photos and video in a timely manner, the vendor's ability to obtain motor vehicle registration information, the vendor's software and access to both police and violators over the Internet, and the ability to produce violation notices within seven days. Back office performance also includes the vendor's analytical capabilities on captured data, and their public education program.

#### **Technology and Hardware Performance (20%)**

This section covers the issue of what type of cameras the vendor uses and the overall functionality of the camera system. It includes criteria on Detection, Portability, Installation, and Maintenance. Detection involves the vendor's ability to monitor and capture violations on varying lane types and numbers, capture multiple violations during a single light phase, and the type of detection technology the vendor employees. Portability centers on the vendor's ability to provide equipment for up to ten intersections and their capability to provide a "turn key" solution. Installation concerns the vendor's ability to have the system installed within ninety days from the notice to proceed and their use of subcontractors for the project. Finally, Maintenance involves the ability of the vendor to make timely repairs and adjustments on the system within a minimum timeframe of forty-eight hours.

#### **Experience and Qualifications (10%)**

Research into the field of automated traffic signal enforcement provides a clear picture that there have been many companies that entered the field, but many of them have failed to last for very long. There are a number of vendors who have either filed for bankruptcy or were sold to other competitors. This section reviews the experience of the vendor, including the amount of time they have been in business, prior experience with other cities, and the list of references with other projects.

#### **Project Termination Plan (10%)**

Given the recent legal challenges to the enabling legislation at the State level, there is some concern about entering into a long-term contract without some assurance as to what happens if the legislation is later overturned. This section examines the vendor's position on this issue and the city's financial liability in the event there are legal changes that prevent the use of the system.

#### **Overall Cost (20%)**

The RFP asked for a flat rate monthly price per camera. This section examines the monthly rate, the cost of "dummy" systems, and any contractual guarantees regarding cost and performance.

#### **Project Approach (5%)**

This section takes a comprehensive look at the vendor's approach to the city's desired program. Essentially, this section would be scored based on how each vendor compares to the other vendors.

After the RFP was released, the city received proposals from five vendors. A red light camera committee was selected to review the proposals and make a recommendation to Council. The members of the committee are:

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The red light camera committee members met September 1, 2005 and discussed the vendor proposals. At this meeting, the committee ranked the five vendors using the grading criteria from the RFP. The vendors were ranked as follows:

1. Redflex
2. ATS
3. Nestor
4. Peek
5. Lasercraft

The top two vendors were invited to make a one-hour oral presentation to the committee. These presentations were made on September 12, 2005. The committee contacted reference cities provided by these two vendors. The committee met again following the presentations and each committee member submitted a grade sheet for the top two vendors.

A breakdown of the top two vendors is provided below. A full composite grade sheet is attached in appendix A.

#### **Redflex**

Redflex currently has more than 480 operational systems in the United States, including programs in Chicago, IL and Scottsdale, AZ. Redflex was recently awarded contracts with the cities of Plano, Richardson, Frisco. They have the capability to process more than 140,000 violations a month. They have a proven track record of running the type of program the City of Denton is looking to employ. They utilize a non-invasive video detection system and employ multiple digital cameras and a video camera to capture violations. They provide a twelve second video of each violation – six seconds before and after each violation. They indicate a willingness to customize much of their program to suit the individual needs of their customer. Their system also provides a live feed that can be used to monitor traffic problems. They provide a fully automated traffic statistics program for use by their customers without the need to request specific reports.

Every reference city provided by Redflex expressed their complete satisfaction with the product and the company. Each of these cities, despite the wide variations in the number of cameras systems they have in operation, praised the level of customer service, the work of the company during the design and installation process, and the overall performance of the camera systems. Each of these reference cities have been working with Redflex for at least a year, and several have been operational for a number of years. Two of the five reference cities contacted offered that they have recently extended the Redflex contract or are in the process of expanding the Redflex program. Several staff members of the reference cities stated that Redflex far exceeded their expectations in every area of the program. One city administrator commented that Redflex was the best vendor, in any capacity, that he had worked with throughout the city.

Finally, Redflex offers a guaranteed contract to the city. They will adjust the monthly pricing of our system to ensure that there is no net loss – thus preventing the need to supplement the red light camera program with the city's budget. They also have an advantageous project termination plan. In the event the red light program becomes untenable due to legislative changes or judicial rulings, Redflex will terminate the program at no cost to us. Further, should the city become dissatisfied with the program's performance, Redflex will terminate the program without cost to the city. In either case, Redflex will return the affected intersections to their original operating condition.

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Several of the reference cities provided by ATS expressed complete satisfaction with the program. However, none of these cities appear to be operating the complete system that ATS proposes to the City of Denton. In New York, ATS operates the camera system. However, NY City officials conduct all of the back office work on processing and issuing violation notices and the collection of payments. It is also notable that the NY City officials consistently referred to Mulvihill and their staff when speaking of the program assets. Finally, ATS stated in their proposal that they were set to install an additional 50 cameras in NY City by September 2005. NY City staff stated that they were supportive of adding cameras to their system. Unfortunately, due to existing State legislative restrictions, they could not add any cameras to their system without changes to the enabling legislation at the State level. In Philadelphia, city staff members were more than pleased with their system and the performance of ATS. By law, Pennsylvania requires the use of 35mm wet film. Therefore, Philadelphia could not provide any feedback on the digital camera system performance. The third reference provided was Scottsdale, AZ.



Redflex also listed this city as a reference. ATS operated the red light camera program in Scottsdale from 1996 – 1999, when they sold their red light camera business contracts to Redflex. One final issue with references came up with the city of Ft. Collins, CO. This city was listed in the ATS proposal on a reference list of “key programs under development, or delivered and operated by many of the same team members being proposed to the City of Denton”. When contacted, Ft. Collins officials stated that they have a red light camera program being run by Redflex and were not aware of any relationship to ATS.

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#### **Recommendation**

Based on the information in the written and oral presentations, along with the comments provided by other cities using these companies, the red light camera committee unanimously recommends Redflex as the vendor for the City of Denton Automated Traffic Signal Enforcement Program. Redflex scored higher in every category on every committee member’s grading sheet. (See Attachment 1)

#### **OPTIONS**

1. Council can direct staff to pursue a contract with Redflex as the vendor for the city’s Automated Traffic Signal Enforcement Program.
2. Council can direct staff to conduct additional research on vendors for the city’s Automated Traffic Signal Enforcement Program.

#### **RECOMMENDATION**

Staff recommends pursuing a contract with Redflex for the city’s Automated Traffic Signal Enforcement Program.

#### **PRIOR ACTION/REVIEW**

10/04/04 – Council Work Session on Red Light Cameras.

12/07/04 – Council adoption of Red Light Camera Ordinance.

**FISCAL IMPACT**

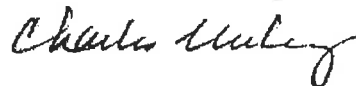
Should Council approve the recommendation of Redflex as the vendor for the program, there will be a fairly minimal impact on the city budget. Because Redflex offers a guaranteed contract, there should be no additional cost to the city from the contract with Redflex. Should the program produce any revenue above the monthly cost of the contract, the existing ordinance provides for the revenue to be deposited in a "Public Safety" account. This account is dedicated to expenditures for the operation of the camera program and can only be used for this purpose or to fund specific public safety programs and improvements, such as signal/intersection improvements, law enforcement traffic enforcement programs, and other related activities.

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**ATTACHMENT**

- I. Composite Grading Sheet

Respectfully submitted,



Charles Wiley  
Chief of Police

Prepared by:



Lt. Scott Fletcher  
Operations Bureau

**Automated Traffic Signal Enforcement Program  
RFSP #3364  
Composite Grading Sheet**

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Project Termination Plan (possible 10 points)	9	10	10	10	10	10	8	10	9.63
Overall Cost of Program (possible 20 points)	20	20	20	18	20	18	17	19	19.00
Project Approach (possible 5 points)	5	5	5	5	5	4	4	5	4.75
<b>Total Score</b> (possible 100 points)	<b>97</b>	<b>95</b>	<b>95</b>	<b>93</b>	<b>98</b>	<b>90</b>	<b>82</b>	<b>95</b>	<b>93.13</b>

ATS	1	2	3	4	5	6	7	8	Aver
Back Office Performance (possible 35 points)	30	25	25	20	30	24	24	28	25.75
Technology and Hardware Performance (possible 20 points)	17	12	20	17	15	16	11	13	15.13
Experience and Qualifications (possible 10 points)	5	6	3	5	5	7	5	7	5.38
Project Termination Plan (possible 10 points)	7	8	3	9	9	7	6	7	7.00
Overall Cost of Program (possible 20 points)	17	17	10	20	15	17	7	16	14.88
Project Approach (possible 5 points)	4	3	1	4	4	3	4	4	3.38
<b>Total Score</b> (possible 100 points)	<b>80</b>	<b>71</b>	<b>62</b>	<b>75</b>	<b>78</b>	<b>74</b>	<b>57</b>	<b>75</b>	<b>71.50</b>

ORDINANCE. \_\_\_\_\_

AN ORDINANCE ACCEPTING COMPETITIVE PROPOSALS AND AWARDING A BEST VALUE ANNUAL CONTRACT FOR OPERATION OF AN AUTOMATED TRAFFIC SIGNAL ENFORCEMENT PROGRAM; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 3364-AUTOMATED TRAFFIC SIGNAL ENFORCEMENT SYSTEM AWARDED TO REDFLEX TRAFFIC SYSTEMS USA).

WHEREAS, the City has heretofore solicited, received, and tabulated competitive best value bids, for the purchase of necessary materials, equipment, supplies or services in accordance with the procedures of State law and the City of Denton, Texas ordinances; and

WHEREAS, the City Manager or a designated employee of the City with authority, have reviewed and recommended that the herein described bids are the best value bids for the materials, equipment, supplies or services as shown in the "Bid Proposals" submitted therefore based on the selection criteria set forth in the requests for bids; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and conclusions set forth in the preamble of this ordinance are incorporated within the body of the ordinance.

SECTION 2. The options in the following numbered bids for materials, equipment, supplies, or services, shown in the "Bid Proposals" on file in the office of the City Purchasing Agent, is hereby accepted and approved as being the best value bid for such items:

<u>RFP</u> <u>NUMBER</u>	<u>DESCRIPTION</u>	<u>VENDOR</u>	<u>AMOUNT</u>
3364	Automated Traffic Signal Enforcement Program	Redflex Traffic Systems USA	Fee Structure Inc. in Contract

SECTION 3. By the acceptance and approval of the above items of the submitted bids, the City accepts the offer of the persons submitting the bids for such items and agrees to purchase the materials, equipment, supplies or services in accordance with the terms, specifications, standards, quantities and for the specified sums contained in the Bid Invitations, Bid Proposals, and related documents.

SECTION 4. The City Manager is hereby authorized to execute any and all necessary written contracts for the performance of the services in accordance with the bids accepted and approved herein, provided that such contracts are made in accordance with and relating to the items specified in Section 1, which written contract(s) shall be attached hereto; provided that the written contract is in accordance with the above Request to Submit Bids, Bid Proposals, and documents relating thereto specifying the terms, conditions, plans and specifications, standards, quantities and specified sums contained therein.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. That this ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
EULINE BROCK, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
EDWIN M. SNYDER, CITY ATTORNEY

BY: \_\_\_\_\_  
4-ORD-RFP 3364

 \_\_\_\_\_

AGREEMENT BETWEEN THE CITY OF DENTON  
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR  
PHOTO RED LIGHT ENFORCEMENT PROGRAM

This Agreement (this "Agreement") is made as of this \_\_ day of (insert month), 2005 by and between Redflex Traffic Systems, Inc. with offices at 6047 Bristol Parkway 1<sup>st</sup> Floor, Culver City, California 90230 ("Redflex"), and The City of Denton, a municipal corporation, with offices at 215 E. McKinney, Denton, Texas 76201, (the "Customer").

**RECITALS**

WHEREAS, Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and citation processes related to digital photo red light enforcement systems; and

WHEREAS, the Customer desires to engage the services of Redflex to provide certain equipment, processes and back office services so that sworn police officers of the Customer are able to monitor, identify and enforce red light running violations as prescribed under Ordinance No.2004-389 (Insert ordinance #); and

WHEREAS, it is a mutual objective of both Redflex and the Customer to reduce the incidence of vehicle collisions at the traffic intersections and city streets that will be monitored pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**AGREEMENT**

1. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
  - 1.1. "Authorized Officer" means the Police Project Manager or such other individual(s) as the Customer shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto, and in any event, a sworn police officer.
  - 1.2. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Officer by using the Redflex System.
  - 1.3. "Citation" means the notice of a Violation, which is mailed or otherwise delivered by Redflex to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.
  - 1.4. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, customers or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized

disclosure of which could be detrimental to such Person, including but not limited to:

- 1.4.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and
- 1.4.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets.
- 1.4.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by an opinion of the Texas Attorney General or by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.
- 1.5. "Designated Intersection Approaches" means the Intersection Approaches set forth on Exhibit A attached hereto, and such additional Intersection Approaches as Redflex and the Customer shall mutually agree from time to time.
- 1.6. "Electronic Signature" means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.
- 1.7. "Enforcement Documentation" means the necessary and appropriate documentation related to the Photo Red Light Enforcement Program, including but not limited to warning letters, citation notices (using City specifications), a numbering sequence for use on all citation, instructions to accompany each issued Citation (including in such instructions a description of basic adjudication procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for adjudication personnel .
- 1.8. "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Photo Red Light System(s), including but not limited to all camera systems, housings, radar units, severs and poles.

- 1.9. “Fine” means a monetary sum assessed for Citation, but excluding suspended fines.
- 1.10. “Governmental Authority” means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.11. “Installation Date of the Photo Red Light Program” means the date on which Redflex completes the construction and installation of at least one (1) Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational for the purposes of functioning with the Redlight Photo Enforcement Program.
- 1.12. “Intellectual Property” means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person.
- 1.13. “Intersection Approach” means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the Customer.
- 1.14. “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated City Streets and Intersection Approaches by a sworn police officer of the Customer and the issuance of Citations for such approved Violations using the Redflex System.
- 1.15. “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.16. “Police Project Manager” means the project manager appointed by the Customer in accordance with this Agreement, which shall be a sworn police officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight Photo Enforcement Program, and which manager shall have the power and authority to make management decisions relating to the Customer’s obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the Customer’s charter, city code or other organizational documents of the Customer or by the city council or other governing body of the Customer.
- 1.17. “Potential Violation” means, with respect to any motor vehicle passing through a Designated City Street and/or Intersection Approach, the data collected



by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Officer to review such data and determine whether a Red Light Violation has occurred.

- 1.18. “Proprietary Property” means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person’s business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
- 1.19. “Redflex Marks” means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Photo Red Light Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
- 1.20. “Redflex Project Manager” means the project manager appointed by Redflex in accordance with this Agreement, which project manager shall initially be (insert name), or such person as Redflex shall designate by providing written notice thereof to the Customer from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Photo Red Light Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex’s obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.21. “Redflex Photo Red Light System” means, collectively, the SmartCam™ System, the SmartOps™ System, the Redlight Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.22. “Photo Red Light Enforcement Program” means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.
- 1.23. “Photo Redlight Violation Criteria” means the standards and criteria by which Potential Violations will be evaluated by sworn police officers of the Customer, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor

vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.

- 1.24. "SmartCam™ System" means the proprietary digital redlight photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
  - 1.25. "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program.
  - 1.26. "SmartScene™ System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
  - 1.27. "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
  - 1.28. "Violation" means any traffic violation contrary to the terms of the Vehicle Code or any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.
  - 1.29. "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated City Streets and/or Intersection Approaches.
  - 1.30. "Warning Period" means the period that only warning notices and not citations for violations shall be sent during the 30 day period commencing with the installation of a traffic-control signal monitoring device.
  - 1.31.
2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of three (3) years after the Installation Date (the "Initial Term"). The Customer shall have the right, but not the obligation, to extend the term of this Agreement for up to three (3) additional consecutive and automatic one (1) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The Customer may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
  3. **SERVICES.** Redflex shall provide the Photo Red Light Enforcement Program to the Customer, in each case in accordance with the terms and provisions set forth in this Agreement.
    - 3.1. **INSTALLATION.** With respect to the construction and installation of (1) the Designated Intersection Approaches and the installation of the Redflex System at such Designated Intersection Approaches, the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit B attached hereto.
    - 3.2. **MAINTENANCE.** With respect to the maintenance of the Redflex System at the Designated Intersection Approaches the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit C attached hereto.

- 3.3. VIOLATION PROCESSING. During the Operational Period, Violations shall be processed as follows:
- 3.3.1. All Violations Data shall be stored on the Redflex System;
  - 3.3.2. The Redflex System shall process Violations Data gathered from the Designated City Streets and/or Intersection Approaches into a format capable of review by the Authorized Officer via the Redflex System;
  - 3.3.3. The Redflex System shall be accessible by the Authorized Officer through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser;
  - 3.3.4. Redflex shall provide the Authorized Officer with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within four (4) days of the gathering of the Violation Data from the applicable Designated City Streets and/or Intersection Approaches
  - 3.3.5. The Customer shall cause the Authorized Officer to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose, and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED OFFICER AND SHALL BE MADE IN SUCH AUTHORIZED OFFICER'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;
  - 3.3.6. With respect to each Authorized Violation, Redflex shall print and mail a Citation within two (2) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;
  - 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries.
  - 3.3.8. Redflex shall permit the Authorized Officer to generate monthly reports using the Redflex Standard Report System.
  - 3.3.9. Upon Redflex's receipt of a written request from the Customer and in addition to the Standard Reports, Redflex shall provide, without cost to the Customer, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the Customer in such format and for such periods as the Customer may reasonably request; provided, however, Redflex shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to the Customer;
  - 3.3.10. Upon the Customer's receipt of a written request from Redflex, the Customer shall provide, without cost to Redflex, reports regarding the

prosecution of Citations and the collection of fines, fees and other monies in respect thereof in such format and for such periods as Redflex may reasonably request; provided, however, the Customer shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to Redflex;

- 3.3.11. During the six (6) month period following the Installation Date and/or upon Redflex's receipt of a written request from the Customer at least fourteen (14) calendar days in advance of the adjudication proceeding, Redflex shall provide expert witnesses for use by the Customer in prosecuting Violations; provided, however, the Customer shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; and
- 3.3.12. During the three (3) month period following the Installation Date, Redflex shall provide such training to police personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the Customer with respect to the Redlight Enforcement Program.
- 3.4. PROSECUTION AND COLLECTION; COMPENSATION. The Customer shall diligently prosecute Citations and the collection of all Fines in respect thereof, and Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit D attached hereto.
- 3.5. OTHER RIGHTS AND OBLIGATIONS. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Redflex and the Customer shall have the respective rights and obligations set forth on Exhibit E attached hereto.
- 3.6. CHANGE ORDERS. The Customer may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to Redflex, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Redflex's receipt of a Change Order Notice, Redflex shall deliver a written statement describing the effect, if any, the proposed changes would have on the pricing terms set forth in Exhibit D (the "Change Order Proposal"), which Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the Customer. Following the Customer's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing Designated Intersection Approaches, Designated City Vehicles, or the addition of Intersection Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern. Any failure of the parties to reach agreement with

respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 10.

**4. LICENSE; RESERVATION OF RIGHTS**

- 4.1. **License**. Subject to the terms and conditions of this Agreement, Redflex hereby grants the Customer, and the Customer hereby accepts from Redflex upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City of (insert name), access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City of (insert name) that Redflex is providing services to the Customer in connection with Photo Red Light Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. **RESERVATION OF RIGHTS**. The Customer hereby acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the Customer neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of Customer pursuant to this Agreement, the Customer shall gain no additional right, title or interest therein.
- 4.3. **RESTRICTED USE**. The Customer hereby covenants and agrees that it shall not (a) make any modifications to the Redflex System, including but not limited to any Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) use any of the Redflex Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Redflex therein, (d) use any trademarks or other marks other than the Redflex Marks in connection with the Customer's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.
- 4.4. **PROTECTION OF RIGHTS**. Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The Customer shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any

registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.

- 4.5. INFRINGEMENT. The Customer shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this Section 4.5, then the Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex, and Redflex shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that Redflex shall reimburse the Customer for any reasonable costs incurred in providing such cooperation and assistance.
- 4.6. INFRINGING USE. The Customer shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending, against the Customer alleging that the Redflex Marks, or any other Intellectual Property of Redflex, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex in the defense thereof; provided, that Redflex shall reimburse the Customer for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Redflex determines, in the exercise of its sole discretion, that an infringement may exist, Redflex shall have the right, but not the obligation, to procure for the Customer the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

5. REPRESENTATIONS AND WARRANTIES.

5.1. Redflex Representations and Warranties.

- 5.1.1. Authority. Redflex hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.
- 5.1.2. Professional Services. Redflex hereby warrants and represents that any and all services provided by Redflex pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Redflex System, subject to applicable law, in compliance with all specifications provided to Redflex by the Customer.

5.2. Customer Representations and Warranties.

- 5.2.1. Authority. The Customer hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.
- 5.2.2. Professional Services. The Customer hereby warrants and represents that any and all services provided by the Customer pursuant to this Agreement shall be performed in a professional and workmanlike manner.

5.3. LIMITED WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE CUSTOMER'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, REDFLEX DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION APPROACHES OR THE REDFLEX SYSTEM WILL OPERATE IN THE WAY THE CUSTOMER SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CUSTOMER HEREBY ACKNOWLEDGES THAT THE REDFLEX SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, REDFLEX SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

6. TERMINATION.

6.1. TERMINATION FOR CAUSE: Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of photo red light enforcement systems; (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the Redflex System of photo red light enforcement are inadmissible in evidence; or (iii) the other party commits any material breach of any of the provisions of this Agreement. Either party shall have the right to remedy the cause for termination (Sec 6.1) within forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

6.2. The rights to terminate this Agreement given in this Section 6.1 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

6.3. PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

6.3.1. Redflex shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Photo Red Light Enforcement Program, (ii) promptly deliver to the Customer any and all Proprietary Property of the Customer provided to Redflex pursuant to this Agreement, (iii) promptly deliver to the Customer a final report to the Customer regarding the collection of data and the issuance of Citations in such format and for such

periods as the Customer may reasonably request, and which final report Redflex shall update or supplement from time to time when and if additional data or information becomes available, (iv) promptly deliver to Customer a final invoice stating all fees and charges properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination, and (v) provide such assistance as the Customer may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement.

6.3.2. The Customer shall (i) immediately cease using the Photo Red Light Enforcement Program, accessing the Redflex System and using any other Intellectual Property of Redflex, (ii) promptly deliver to Redflex any and all Proprietary Property of Redflex provided to the Customer pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination.

6.3.3. Unless the Customer and Redflex have agreed to enter into a new agreement relating to the Photo Red Light Enforcement Program or have agreed to extend the Term of this Agreement, Redflex shall remove any and all Equipment or other materials of Redflex installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated City Vehicles and Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement.

6.4. SURVIVAL. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: (x) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (Customer Representations and Warranties), 5.3 (Limited Warranty), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Applicable Law), 11.16 (Injunctive Relief; Specific Performance) and 11.18 (Jurisdiction and Venue), and (y) those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.

7. CONFIDENTIALITY. During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are



otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

**8. INDEMNIFICATION AND LIABILITY.**

8.1. Indemnification by Redflex. Subject to Section 8.3 and 8.4, Redflex hereby agrees to defend and indemnify the Customer and its managers, officers, directors, employees, agents, representatives and successors, permitted assignees, or any of them (individually a "Customer Party" and collectively, the "Customer Parties") against, and to protect, save and keep harmless the Customer Parties from, and to pay on behalf of or reimburse the Customer Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any Customer Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Redflex contained in this Agreement, or (b) negligence and/or omissions or the willful misconduct of Redflex, its employees or agents, subcontractors or contract laborers performing services under the agreement which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the subcontractors or contract laborers performing services under this Agreement willful misconduct of any Customer Party.

8.2. Indemnification by Customer. Subject to Section 8.3 and 8.4, and to the extent allowed by law and without waiving any rights, defenses or immunities provided to it by the Texas Tort Claims Act or other applicable law including, without limitation, the defense of governmental or immunity, the Customer hereby agrees to defend and indemnify Redflex and its managers, officers, directors, employees, agents, representatives and successors, permitted assignees or any of them (individually a "Redflex Party" and collectively, the "Redflex Parties") against, and to protect, save and keep harmless the Redflex Parties from, and to pay on behalf of or reimburse the Redflex Parties as and when incurred for, any and all Losses which may be imposed on or incurred by any Redflex Party arising out of or in any way related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of the Customer contained in this Agreement, (b) the negligence and/or omissions of the Customer, its employees, officers or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Redflex Party, (c) any claim, action or demand not caused by Redflex's failure to perform its obligations under this Agreement, or (d) any claim, action or demand challenging the Customer's use of the Redflex System or any portion thereof, the validity of the results of the Customer's use of the Redflex System or any portion thereof, or

the validity of the Citations issued, prosecuted and collected as a result of the Customer's use of the Redflex System or any portion thereof.

- 8.3. Indemnification Procedures. In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure so to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no party shall have the right enter into any settlement agreement that materially affects the other party's material rights or material interests without such party's prior written consent, which consent will not be unreasonably withheld or delayed.
- 8.4. Limited Liability. Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability arising out of or relating to this Agreement. It is further agreed that if a claim or liability should arise from the joint or concurring negligence of both parties hereto, it should be borne by them comparatively in accordance with the laws of the State of Texas. Neither this Section nor any other portion of this agreement shall be construed as, or shall create any, rights for any persons or entities who are not a party to this agreement.
9. NOTICES. Any notices to be given hereunder shall be in writing, and shall be deemed to have been given (a) upon delivery, if delivered by hand, (b) three (3) days after being mailed first class, certified mail, return receipt requested, postage and registry fees prepaid, or (c) one Business Day after being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery, if the courier service obtains a signature acknowledging receipt, in each case addressed or sent to such party as follows:
- 9.1. Notices to Redflex:  
Redflex Traffic Systems, Inc.  
15020 North 74<sup>th</sup> Street  
Scottsdale, AZ 85260

Attention: Ms. Karen Finley  
Facsimile: (480) 607-5552

9.2. Notices to the Customer:  
City of Denton  
Attention: City Manager  
215 E, McKinney  
Denton, Texas 76201  
Facsimile: (940) 349-8596

10. **DISPUTE RESOLUTION**. Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 10, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

**11. MISCELLANEOUS**

11.1. **ASSIGNMENT**. Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, The Customer hereby acknowledges and agrees that the execution (as outlined in Exhibit F), delivery and performance of Redflex's rights pursuant to this Agreement shall require a significant investment by Redflex, and that in order to finance such investment, Redflex may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). The Customer hereby agrees that Redflex shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Redflex and any such Financial Institution, subject to the Customer's prior written approval, which approval shall not be unreasonably withheld or delayed. The Customer further acknowledges and agrees that in the event that Redflex provides written notice to the Customer that it intends to Transfer all or any of Redflex's rights pursuant to this Agreement, and in the event that the Customer fails to provide such approval or fails to object to such Transfer within forty-five (45) business days after its receipt of such notice from Redflex, for the purposes of this Agreement, the Customer shall be deemed to have consented to and approved such Transfer by Redflex. Notwithstanding the above, this Agreement shall inure

to the benefit of, and be binding upon, the parties hereto, and their respective successors or assigns.

- 11.2. “SPEED ENFORCEMENT” The Customer and Redflex agree that should legislation or local ordinance be enacted to enable the photo enforcement of speed within the city, and the city requires this capability for public safety then the city will have the option to extend this contract to include additional terms for photo enforcement of speed within the city.
- 11.3. RELATIONSHIP BETWEEN REDFLEX AND THE CUSTOMER. Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).
- 11.4. AUDIT RIGHTS. Each of parties hereto shall have the right to audit to audit the books and records of the other party hereto (the “Audited Party”) solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours’ prior notice to the Audited Party, at mutually convenient times and during the Audited Party’s normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.
- 11.5. FORCE MAJEURE. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Redflex, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 11.6. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both parties.

- 11.7. SEVERABILITY. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 11.8. WAIVER. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 11.9. CONSTRUCTION Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.
- 11.10. HEADINGS. The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the parties hereto, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any term, condition or provision hereof.
- 11.11. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.
- 11.12. COVENANT OF FURTHER ASSURANCES. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.
- 11.13. REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.
- 11.14. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.
- 11.15. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.

- 11.16. NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.
- 11.17. INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The parties hereby agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other party, which injury could not be adequately compensated by an award of money damages, and the parties therefore agree and acknowledge that they shall be entitled to injunctive relief in the event of any breach of any material term, condition or provision of this Agreement, or to enjoin or prevent such a breach, including without limitation an action for specific performance hereof.
- 11.18. APPLICABLE LAW. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of Texas United States.
- 11.19. JURISDICTION AND VENUE. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the courts located in the County of Denton and both parties specifically agree to be bound by the jurisdiction and venue thereof.
12. MOST FAVORED NATION CLAUSE. If during the term of this contract Redflex should enter into any agreement with another municipality within the greater Dallas metropolitan area for photo red light enforcement upon terms and conditions more favorable than those granted to Customer, Reflex agrees to modify this contract to include such favorable terms if so requested by Customer.

(The remainder of this page is left intentionally blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
MICHAEL A. CONDUFF, CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
EDWIN M. SNYDER, CITY ATTORNEY

BY:  \_\_\_\_\_

REDFLEX TRAFFIC SYSTEMS, INC.

BY: \_\_\_\_\_

**EXHIBIT "A"**  
**Designated Intersection Approaches**

The contract is for the implementation of up to 10 intersections. Identification of enforced intersection will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.



EXHIBIT "B"  
Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light System

Redflex will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Redflex Traffic Systems and the Municipality.

Redflex will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Redflex will use reasonable commercial efforts to install and activate the first specified intersection within the first forty-five (45) days subsequent to formal project kick-off. The Municipality agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Redflex and are not guaranteed.

In order to provide the client with timely completion of the photo enforcement project Redflex Traffic Systems requires that the City assist with providing timely approval of City permit requests. The City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the customer is to provide city engineers review of Redflex permit requests and all documentation within a two business days. Redflex will also review and correct if necessary any redlines within two business days. Permits need to be received within five business days of first submittal in order to implement the program in a timely manner.

1. Redflex Obligations. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
  - 1.1. Appoint the Redflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project Manager;
  - 1.2. Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the city traffic engineer;
  - 1.3. Develop and submit to the Customer for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required; and
  - 1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications.
  - 1.5. Finalize the acquisition of the Approvals;
  - 1.6. Submit to the Customer a public awareness strategy for the Customer's consideration and approval, which strategy shall include media and educational materials for the Customer's approval or amendment (the "Awareness Strategy");
  - 1.7. Develop the Redlight Violation Criteria in consultation with the Customer;

- 1.8. Develop the Enforcement Documentation for approval by the Customer, which approval shall not be unreasonably withheld;
- 1.9. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches (under the supervision of the Customer);
- 1.10. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersection Approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
- 1.11. Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
- 1.12. Implement the use of the Redflex System at each of the Designated Intersection Approaches;
- 1.13. Deliver the Materials to the Customer; and
- 1.14. Issue citation notices for Authorized Violations;
- 1.15. Redflex shall provide training (i) for up to fifteen (15) personnel of the Customer, including but not limited to the persons who Customer shall appoint as Authorized Officers and other persons involved in the administration of the Redlight Photo Enforcement Program, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Redlight Photo Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in administrative adjudication hearing proceedings and a review of the Enforcement Documentation;
- 1.16. Interact with administrative adjudication hearing personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in adjudication proceedings, and coordination between Redflex, the Customer and adjudication personnel; and
- 1.17. Provide reasonable public relations resources and media materials to the Customer in the event that the Customer elects to conduct a public launch of the Redlight Photo Enforcement Program.
- 1.18. Setup processes to collect payments from citizens on Notice of Violation using a local mailing address in the Dallas metropolitan area and establish a relationship with a collection agency to pursue any unpaid citations
- 1.19. Citation processing and citation re-issuance
2. **CUSTOMER OBLIGATIONS.** The Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):
  - 2.1.1. Appoint the Police Project Manager; Provide an Administrative Hearing Officer to preside over Appeals Hearing for the City.
  - 2.1.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;

- 2.1.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Redlight Photo Enforcement Program;
- 2.1.4. Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the Customer; and
- 2.1.5. Assist Redflex in seeking the Approvals
- 2.1.6. Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Redlight Photo Enforcement Program;
- 2.1.7. Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
- 2.1.8. Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the Customer will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date;
- 2.1.9. Assist Redflex in developing the Redlight Violation Criteria; and
- 2.1.10. Seek approval of the Enforcement Documentation.

## EXHIBIT "C"

### Maintenance

1. All repair and maintenance of Photo Red Light Enforcement systems and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of city Traffic Engineering present.
3. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of the Redflex
4. The provision of all necessary electrical services to the Designated Intersection Approaches will be the sole responsibility of the Customer
5. In the event that images of a quality suitable for the Authorized Officer to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
6. The Redflex Project Manager (or a reasonable alternate) shall be available to the Police Project Manager each day, on a reasonable best efforts basis.

**EXHIBIT "D"**  
**COMPENSATION & PRICING**

Commencing on the expiration of the Warning Period for each Designated Intersection Approach, Customer shall be obligated to pay Redflex a fixed fee of \$4,870 per month for each Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

**Cost Neutrality**

Cost neutrality is assured to Customer. The maximum compensation that Customer shall be obligated to pay to Redflex each month is the Fixed Fee. Each month, Customer and Redflex shall compare the aggregate revenue received from all Citations ("Revenue") to the total amount invoiced by Redflex for the Fixed Fee ("Amount Invoiced") during the previous month ("Cost Neutrality Review"). If the Amount Invoiced exceeds the Revenue, then City shall only be obligated to pay the Revenue to Redflex and the difference between the Revenue and the Amount Invoiced for that month will carry over to the next month as a deficit ("Deficit Amount"). If, in the next following month, the Revenue exceeds the Amount Invoiced, Customer shall pay the Amount Invoiced plus all or any portion of the accumulated Deficit Amount to the extent that there is sufficient Revenue to pay all or any portion of the Deficit Amount.

**BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:**

1. Redflex construction will be able to utilize existing conduit for installation where space is available.
2. The Customer agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.
3. Each year the pricing will increase by the CPI. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for U.S. City average.

Exhibit "E"  
Additional Rights and Obligations

Redflex and the Customer shall respectively have the additional rights and obligations set forth below:

1. Redflex shall assist the Customer in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Redlight Photo Enforcement Program (actual print and production costs are the sole responsibility of the Customer).
2. Redflex shall be solely responsible for installing such Signage. The Customer shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the Vehicle Code, and shall assist in determining the placement of such Signage.
3. The Redflex Project Manager and the Police Project Manager shall meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the Installation Date, and on a monthly basis for the remainder of the Term, at such times and places as the Redflex Manager and the Customer Manager shall mutually agree.
4. The Customer shall not access the Redflex System or use the Redlight Photo Enforcement Program in any manner other than prescribe by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo Enforcement Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Photo Enforcement Program, and the Customer shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the Customer by means of hacking, password mining or any other method whatsoever, nor shall the Customer cause any other Person to do any of the foregoing.
5. The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Redlight Photo Enforcement Program.
6. Each of Redflex and the Customer shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, each of Redflex and the Customer shall obey any and all such rules and regulations.
7. The Customer shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the Customer, or any of its employees, contractors or agents.

### Insurance

1. During the Term, Redflex shall procure and maintain and Redflex's sole cost and expense the following insurance coverage with respect to claims for injuries to persons or damages to property which may arise from or in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
2. Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage;
3. Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury or property damage, including but not limited to coverage for all automobiles owned by Redflex, hired by Redflex, and owned by third parties;
4. Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate.
5. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than the limits required by the Labor Code of the State of (insert name), Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
6. With respect to the insurance described in the foregoing Section of this Exhibit E, any deductibles or self-insured retentions must be declared to and approved by the Customer, and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the Customer.
7. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
8. The Customer Parties shall be covered as additional insureds with respect to any liability arising from any act or omission of any Redflex Parties on the premises upon which any such Redflex Parties may perform services pursuant to this Agreement, and such coverage shall contain no special limitations on the scope of protection afforded to such additional insureds.
9. The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the Customer Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the (insert name) shall be in excess, and not in contribution to, such insurance.
10. Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the (insert names), and such insurance policies shall state the such insurance coverage shall apply separately with respect to each additional insured against whom any claim is made or suit is brought, except with respect to the limits set forth in such insurance policies.
11. With respect to the insurance described in the foregoing Section of this Exhibit E, each such insurance policy shall be endorsed to state that the coverage provided thereby shall not be cancelled except after thirty (30) calendar days' prior written

notice to the Customer. If any of the Redflex Parties are notified by any insurer that any insurance coverage will be cancelled, Redflex shall immediately provide written notice thereof to the Customer and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the Customer of the date and nature of such correction. If Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the Customer shall have the right, but not the obligation and exercisable in its sole discretion, to either (i) terminate this Agreement and seek damages from Redflex for such breach, or (ii) purchase such required insurance, and without further notice to Redflex, deduct from any amounts due to Redflex pursuant to this Agreement, any premium costs advanced by the Customer for such insurance. If the premium costs advanced by the Customer for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the Customer upon receipt of written notice thereof.

12. Redflex shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the Customer prior to Redflex commencing any work pursuant to the terms of this Agreement.



Exhibit F

FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of \_\_\_\_\_, 2005, is entered into by and between the City of \_\_\_\_\_ (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the [Agreement for Automated Red Light Photo Enforcement Cameras], dated as of \_\_\_\_\_, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Credit Agreement, dated as of August 3, 2004 (the "Harris-Redflex Credit Agreement"), with Harris Trust and Savings Bank (the "Bank"), pursuant to which the Bank has provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.

2. Pursuant to the Harris-Redflex Credit Agreement, Redflex has granted Harris a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement. Such security interest applies to and covers all of Redflex's contract rights, including, without limitation, all of Redflex's rights and interests under the Agreement.

3. Redflex will not, by virtue of the Harris-Redflex Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Bank has not assumed any liability or obligation of Redflex under the Agreement.

4. The City hereby acknowledges notice of, and consents to, Redflex's grant of such security interest in favor of the Bank in all of Redflex's rights and interests under the Agreement pursuant to the Harris-Redflex Credit Agreement.

5. The City further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the City and shall inure to the benefit of the successors and assigns of the Bank and to any replacement lender which refinances Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement.

IN WITNESS WHEREOF, the City and Redflex have caused this Acknowledgement and Consent to be executed by their respective duly authorized and elected officers as of the date first above written.

The City:  [Name of City]	Redflex:  REFLEX TRAFFIC SYSTEMS, INC.
By: _____ Name: _____ Title: _____	By: _____ Name: _____ Title: _____

Professional Conduct of the State Bar of Texas or would jeopardize the City's legal position in any administrative proceedings or potential litigation.

- B. Deliberations regarding Real Property—Under Texas Government Code Section 551.072 and Consultation with Attorney—Under Texas Government Code Section 551.071.
  - 1. Deliberated the purchase and value of real property interests for the proposed Downtown Multimodal Station and Catalyst Project and the proposed South Transit Station in the Mayhill/Brinker Road area, which acquisitions are for public purposes. Received legal advice from the City Attorney or his staff concerning legal issues regarding the acquisition and/or condemnation of such real property interests.

Following the completion of the Closed Meeting, the City Council met with Leadership Denton.

Regular Meeting of the City Council on Tuesday, November 15, 2005 at 6:30 p.m. in the Council Chambers at City Hall.

**1. PLEDGE OF ALLEGIANCE**

The Council and members of the audience recited the Pledge of Allegiance to the U. S. and Texas flags.

**2. PROCLAMATIONS/PRESENTATIONS**

- A. Proclamations/Awards

Mayor Brock presented a proclamation for Vistacare Day and Leadership Denton Week.

- B. November Yard-of-the-Month Awards

Mayor Brock read the November Yard-of-the Month Awards.

- C. Recognition of staff accomplishments

City Manager Conduff presented staff accomplishments.

**3. CONSENT AGENDA**

Kamp motioned, Thomson seconded to approve the Consent Agenda and accompanying ordinances and resolutions. On roll vote, Heggins“aye”, Kamp“aye”, McNeill“aye”, Montgomery“aye”, Mulroy“aye”, Thomson“aye” and Mayor Brock“aye”. Motion carried unanimously.

- A. 2005-342 - An ordinance of the City of Denton, Texas amending the provisions of Chapter 6, Section 18 regarding the adoption of dogs, cats, and ferrets; providing for a severability clause; providing a repealer clause; providing for a savings clause; providing for a penalty not to exceed \$500 for violations of this ordinance; and providing for an effective date.
- B. 2005-343 - An ordinance amending Ordinance No. 2001-338 to establish an adoption fee for dogs at one hundred twenty dollars (\$120), an adoption fee for cats at one hundred and ten dollars (\$110), and an adoption fee for ferrets at ten dollars (\$10) pursuant to Chapter 6 of the code of ordinances of the City of Denton, Texas; providing that a schedule of fees shall be maintained on file in the office of the City Secretary; providing a savings clause; providing a severability clause; and providing an effective date.
- C. 2005-344 - An ordinance authorizing the City Manager to execute a Professional Services Agreement with the firm of Southridge Animal Hospital to provide sterilization and rabies vaccination services for the City of Denton Animal Services Center; authorizing the collection of funds therefor as reflected in the fee ordinance; and providing an effective date.
- D. 2005-345 - An ordinance accepting competitive proposals and awarding a best value annual contract for operation of an automated traffic signal enforcement program; providing for the expenditure of funds therefor; and providing an effective date (RFP 3364-Automated Traffic Signal Enforcement System awarded to Redflex Traffic Systems USA).
- E. 2005-346 - An ordinance accepting competitive proposals and awarding a contract for the purchase of fencing materials for the Lake Forest Dog Park; providing for the expenditure of funds therefor; and providing an effective date (RFP 3402-Lake Forest Dog Park Fencing awarded to Hurricane Fence in the amount of \$25,144.48).
- F. 2005-347 - An ordinance authorizing the Mayor to execute an amended agreement between the City of Denton and the Denton County Historical Commission, Inc. for the payment and use of hotel tax revenue; and providing an effective date.
- G. 2005-348 - An ordinance of the City of Denton, Texas terminating that certain airport lease dated November 2, 2004, by and between the City of Denton, Texas and Terrence Jarog, authorizing the City Attorney or his designee to take appropriate legal action if necessary, to effectuate the termination, and providing an effective date. The Airport Advisory Board recommended approval (5-0).
- H. Confirmed the appointment by the City Manager of a new member to the Civil Service Commission.
- I. 2005-349 - An ordinance authorizing the City Manager to execute an Interlocal Agreement with the DENCO Area 9-1-1 District for the purpose of establishing the Denton Police Department as the primary public safety answering point

ORDINANCE. 2005-345

AN ORDINANCE ACCEPTING COMPETITIVE PROPOSALS AND AWARDING A BEST VALUE ANNUAL CONTRACT FOR OPERATION OF AN AUTOMATED TRAFFIC SIGNAL ENFORCEMENT PROGRAM; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 3364-AUTOMATED TRAFFIC SIGNAL ENFORCEMENT SYSTEM AWARDED TO REDFLEX TRAFFIC SYSTEMS USA).

WHEREAS, the City has heretofore solicited, received, and tabulated competitive best value bids, for the purchase of necessary materials, equipment, supplies or services in accordance with the procedures of State law and the City of Denton, Texas ordinances; and

WHEREAS, the City Manager or a designated employee of the City with authority, have reviewed and recommended that the herein described bids are the best value bids for the materials, equipment, supplies or services as shown in the "Bid Proposals" submitted therefore based on the selection criteria set forth in the requests for bids; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and conclusions set forth in the preamble of this ordinance are incorporated within the body of the ordinance.

SECTION 2. The options in the following numbered bids for materials, equipment, supplies, or services, shown in the "Bid Proposals" on file in the office of the City Purchasing Agent, is hereby accepted and approved as being the best value bid for such items:

<u>RFP</u> <u>NUMBER</u>	<u>DESCRIPTION</u>	<u>VENDOR</u>	<u>AMOUNT</u>
3364	Automated Traffic Signal Enforcement Program	Redflex Traffic Systems USA	Fee Structure Inc. in Contract

SECTION 3. By the acceptance and approval of the above items of the submitted bids, the City accepts the offer of the persons submitting the bids for such items and agrees to purchase the materials, equipment, supplies or services in accordance with the terms, specifications, standards, quantities and for the specified sums contained in the Bid Invitations, Bid Proposals, and related documents.

SECTION 4. The City Manager is hereby authorized to execute any and all necessary written contracts for the performance of the services in accordance with the bids accepted and approved herein, provided that such contracts are made in accordance with and relating to the items specified in Section 1, which written contract(s) shall be attached hereto; provided that the written contract is in accordance with the above Request to Submit Bids, Bid Proposals, and documents relating thereto specifying the terms, conditions, plans and specifications, standards, quantities and specified sums contained therein.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. That this ordinance shall become effective immediately upon its passage and approval.

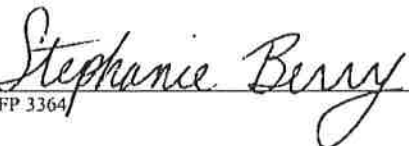
PASSED AND APPROVED this 15th day of November, 2005.

  
\_\_\_\_\_  
EULINE BROCK, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
EDWIN M. SNYDER, CITY ATTORNEY

BY:   
\_\_\_\_\_  
4-ORD-RFP 3364

AGREEMENT BETWEEN THE CITY OF DENTON  
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR  
PHOTO RED LIGHT ENFORCEMENT PROGRAM

This Agreement (this "Agreement") is made as of this 15<sup>th</sup> day of November, 2005 by and between Redflex Traffic Systems, Inc. with offices at 6047 Bristol Parkway 1<sup>st</sup> Floor, Culver City, California 90230 ("Redflex"), and The City of Denton, a municipal corporation, with offices at 215 E. McKinney, Denton, Texas 76201, (the "Customer").

**RECITALS**

WHEREAS, Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and citation processes related to digital photo red light enforcement systems; and

WHEREAS, the Customer desires to engage the services of Redflex to provide certain equipment, processes and back office services so that sworn police officers of the Customer are able to monitor, identify and enforce red light running violations as prescribed under Ordinance No.2004-389; and

WHEREAS, it is a mutual objective of both Redflex and the Customer to reduce the incidence of vehicle collisions at the traffic intersections and city streets that will be monitored pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**AGREEMENT**

1. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
  - 1.1. "Authorized Officer" means the Police Project Manager or such other individual(s) as the Customer shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto, and in any event, a sworn police officer.
  - 1.2. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Officer by using the Redflex System.
  - 1.3. "Citation" means the notice of a Violation, which is mailed or otherwise delivered by Redflex to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.
  - 1.4. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, customers or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized

disclosure of which could be detrimental to such Person, including but not limited to:

- 1.4.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and
- 1.4.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets.
- 1.4.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by an opinion of the Texas Attorney General or by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.
- 1.5. "Designated Intersection Approaches" means the Intersection Approaches set forth on Exhibit A attached hereto, and such additional Intersection Approaches as Redflex and the Customer shall mutually agree from time to time.
- 1.6. "Electronic Signature" means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.
- 1.7. "Enforcement Documentation" means the necessary and appropriate documentation related to the Photo Red Light Enforcement Program, including but not limited to warning letters, citation notices (using City specifications), a numbering sequence for use on all citation, instructions to accompany each issued Citation (including in such instructions a description of basic adjudication procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for adjudication personnel.
- 1.8. "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Photo Red Light System(s), including but not limited to all camera systems, housings, radar units, severs and poles.

- 1.9. “Fine” means a monetary sum in the form of a civil penalty assessed for each Notice of Violation.
- 1.10. “Governmental Authority” means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.11. “Installation Date of the Photo Red Light Program” means the date on which Redflex completes the construction and installation of at least one (1) Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational for the purposes of functioning with the Redlight Photo Enforcement Program.
- 1.12. “Intellectual Property” means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person.
- 1.13. “Intersection Approach” means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the Customer.
- 1.14. “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated City Streets and Intersection Approaches by a sworn police officer of the Customer and the issuance of Citations for such approved Violations using the Redflex System.
- 1.15. “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.16. “Police Project Manager” means the project manager appointed by the Customer in accordance with this Agreement, which shall be a sworn police officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight Photo Enforcement Program, and which manager shall have the power and authority to make management decisions relating to the Customer’s obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the Customer’s charter, city code or other organizational documents of the Customer or by the city council or other governing body of the Customer.
- 1.17. “Potential Violation” means, with respect to any motor vehicle passing through a Designated City Street and/or Intersection Approach, the data collected



by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Officer to review such data and determine whether a Red Light Violation has occurred.

- 1.18. "Proprietary Property" means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
- 1.19. "Redflex Marks" means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Photo Red Light Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
- 1.20. "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, which project manager shall initially be (insert name), or such person as Redflex shall designate by providing written notice thereof to the Customer from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Photo Red Light Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex's obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.21. "Redflex Photo Red Light System" means, collectively, the SmartCam™ System, the SmartOps™ System, the Redlight Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.22. "Photo Red Light Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.
- 1.23. "Photo Redlight Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by sworn police officers of the Customer, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor

vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.

- 1.24. "SmartCam™ System" means the proprietary digital redlight photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
  - 1.25. "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program.
  - 1.26. "SmartScene™ System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
  - 1.27. "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
  - 1.28. "Violation" means any traffic violation contrary to the terms of the Vehicle Code or any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.
  - 1.29. "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated City Streets and/or Intersection Approaches.
  - 1.30. "Warning Period" means the period that only warning notices and not citations for violations shall be sent during the 30 day period commencing with the installation of a traffic-control signal monitoring device.
  - 1.31.
2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of three (3) years after the Installation Date (the "Initial Term"). The Customer shall have the right, but not the obligation, to extend the term of this Agreement for up to three (3) additional consecutive and automatic one (1) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The Customer may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
  3. **SERVICES.** Redflex shall provide the Photo Red Light Enforcement Program to the Customer, in each case in accordance with the terms and provisions set forth in this Agreement.
    - 3.1. **INSTALLATION.** With respect to the construction and installation of (1) the Designated Intersection Approaches and the installation of the Redflex System at such Designated Intersection Approaches, the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit B attached hereto.
    - 3.2. **MAINTENANCE.** With respect to the maintenance of the Redflex System at the Designated Intersection Approaches the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit C attached hereto.

- 3.3. VIOLATION PROCESSING. During the Operational Period, Violations shall be processed as follows:
- 3.3.1. All Violations Data shall be stored on the Redflex System;
  - 3.3.2. The Redflex System shall process Violations Data gathered from the Designated City Streets and/or Intersection Approaches into a format capable of review by the Authorized Officer via the Redflex System;
  - 3.3.3. The Redflex System shall be accessible by the Authorized Officer through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser;
  - 3.3.4. Redflex shall provide the Authorized Officer with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within four (4) days of the gathering of the Violation Data from the applicable Designated City Streets and/or Intersection Approaches
  - 3.3.5. The Customer shall cause the Authorized Officer to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose, and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED OFFICER AND SHALL BE MADE IN SUCH AUTHORIZED OFFICER'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;
  - 3.3.6. With respect to each Authorized Violation, Redflex shall print and mail a Citation within two (2) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;
  - 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries.
  - 3.3.8. Redflex shall permit the Authorized Officer to generate monthly reports using the Redflex Standard Report System.
  - 3.3.9. Upon Redflex's receipt of a written request from the Customer and in addition to the Standard Reports, Redflex shall provide, without cost to the Customer, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the Customer in such format and for such periods as the Customer may reasonably request; provided, however, Redflex shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to the Customer;
  - 3.3.10. Upon the Customer's receipt of a written request from Redflex, the Customer shall provide, without cost to Redflex, reports regarding the

prosecution of Citations and the collection of fines, fees and other monies in respect thereof in such format and for such periods as Redflex may reasonably request; provided, however, the Customer shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to Redflex;

3.3.11. During the six (6) month period following the Installation Date and/or upon Redflex's receipt of a written request from the Customer at least fourteen (14) calendar days in advance of the adjudication proceeding, Redflex shall provide expert witnesses for use by the Customer in prosecuting Violations; provided, however, the Customer shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; and

3.3.12. During the three (3) month period following the Installation Date, Redflex shall provide such training to police personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the Customer with respect to the Redlight Enforcement Program.

3.4. PROSECUTION AND COLLECTION; COMPENSATION. The Customer shall diligently prosecute Citations and the collection of all Fines in respect thereof, and Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit D attached hereto.

3.5. OTHER RIGHTS AND OBLIGATIONS. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Redflex and the Customer shall have the respective rights and obligations set forth on Exhibit E attached hereto.

3.6. CHANGE ORDERS. The Customer may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to Redflex, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Redflex's receipt of a Change Order Notice, Redflex shall deliver a written statement describing the effect, if any, the proposed changes would have on the pricing terms set forth in Exhibit D (the "Change Order Proposal"), which Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the Customer. Following the Customer's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing Designated Intersection Approaches, Designated City Vehicles, or the addition of Intersection Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern. Any failure of the parties to reach agreement with

respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 10.

**4. LICENSE; RESERVATION OF RIGHTS**

- 4.1. License. Subject to the terms and conditions of this Agreement, Redflex hereby grants the Customer, and the Customer hereby accepts from Redflex upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City of Denton, access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City of Denton) that Redflex is providing services to the Customer in connection with Photo Red Light Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. RESERVATION OF RIGHTS. The Customer hereby acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the Customer neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of Customer pursuant to this Agreement, the Customer shall gain no additional right, title or interest therein.
- 4.3. RESTRICTED USE. The Customer hereby covenants and agrees that it shall not (a) make any modifications to the Redflex System, including but not limited to any Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) use any of the Redflex Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Redflex therein, (d) use any trademarks or other marks other than the Redflex Marks in connection with the Customer's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.
- 4.4. PROTECTION OF RIGHTS. Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The Customer shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any

registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.

4.5. INFRINGEMENTMENT. The Customer shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this Section 4.5, then the Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex, and Redflex shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that Redflex shall reimburse the Customer for any reasonable costs incurred in providing such cooperation and assistance.

4.6. INFRINGING USE. The Customer shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending, against the Customer alleging that the Redflex Marks, or any other Intellectual Property of Redflex, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex in the defense thereof; provided, that Redflex shall reimburse the Customer for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Redflex determines, in the exercise of its sole discretion, that an infringement may exist, Redflex shall have the right, but not the obligation, to procure for the Customer the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

5. REPRESENTATIONS AND WARRANTIES.

5.1. Redflex Representations and Warranties.

5.1.1. Authority. Redflex hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.

5.1.2. Professional Services. Redflex hereby warrants and represents that any and all services provided by Redflex pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Redflex System, subject to applicable law, in compliance with all specifications provided to Redflex by the Customer.

5.2. Customer Representations and Warranties.

5.2.1. Authority. The Customer hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.

5.2.2. Professional Services. The Customer hereby warrants and represents that any and all services provided by the Customer pursuant to this Agreement shall be performed in a professional and workmanlike manner.

5.3. LIMITED WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE CUSTOMER'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, REDFLEX DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION APPROACHES OR THE REDFLEX SYSTEM WILL OPERATE IN THE WAY THE CUSTOMER SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CUSTOMER HEREBY ACKNOWLEDGES THAT THE REDFLEX SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, REDFLEX SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

6. TERMINATION.

6.1. TERMINATION FOR CAUSE: Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of photo red light enforcement systems; (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the Redflex System of photo red light enforcement are inadmissible in evidence; or (iii) the other party commits any material breach of any of the provisions of this Agreement. Either party shall have the right to remedy the cause for termination (Sec 6.1) within forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

6.2. The rights to terminate this Agreement given in this Section 6.1 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

6.3. PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relive either party of any liability that accrued prior to such termination. Except as set forth in Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

6.3.1. Redflex shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Photo Red Light Enforcement Program, (ii) promptly deliver to the Customer any and all Proprietary Property of the Customer provided to Redflex pursuant to this Agreement, (iii) promptly deliver to the Customer a final report to the Customer regarding the collection of data and the issuance of Citations in such format and for such

periods as the Customer may reasonably request, and which final report Redflex shall update or supplement from time to time when and if additional data or information becomes available, (iv) promptly deliver to Customer a final invoice stating all fees and charges properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination, and (v) provide such assistance as the Customer may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement.

6.3.2. The Customer shall (i) immediately cease using the Photo Red Light Enforcement Program, accessing the Redflex System and using any other Intellectual Property of Redflex, (ii) promptly deliver to Redflex any and all Proprietary Property of Redflex provided to the Customer pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination.

6.3.3. Unless the Customer and Redflex have agreed to enter into a new agreement relating to the Photo Red Light Enforcement Program or have agreed to extend the Term of this Agreement, Redflex shall remove any and all Equipment or other materials of Redflex installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated City Vehicles and Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement.

6.4. SURVIVAL. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: (x) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (Customer Representations and Warranties), 5.3 (Limited Warranty), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Applicable Law), 11.16 (Injunctive Relief; Specific Performance) and 11.18 (Jurisdiction and Venue), and (y) those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.

7. CONFIDENTIALITY. During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are



otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

8. **INDEMNIFICATION AND LIABILITY.**

8.1. **Indemnification by Redflex.** Subject to Section 8.3 and 8.4, Redflex hereby agrees to defend and indemnify the Customer and its managers, officers, directors, employees, agents, representatives and successors, permitted assignees, or any of them (individually a "Customer Party" and collectively, the "Customer Parties") against, and to protect, save and keep harmless the Customer Parties from, and to pay on behalf of or reimburse the Customer Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any Customer Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Redflex contained in this Agreement, or (b) negligence and/or omissions or the willful misconduct of Redflex, its employees or agents, subcontractors or contract laborers performing services under the agreement which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the subcontractors or contract laborers performing services under this Agreement willful misconduct of any Customer Party.

8.2. **Indemnification by Customer.** Subject to Section 8.3 and 8.4, and to the extent allowed by law and without waiving any rights, defenses or immunities provided to it by the Texas Tort Claims Act or other applicable law including, without limitation, the defense of governmental or immunity, the Customer hereby agrees to defend and indemnify Redflex and its managers, officers, directors, employees, agents, representatives and successors, permitted assignees or any of them (individually a "Redflex Party" and collectively, the "Redflex Parties") against, and to protect, save and keep harmless the Redflex Parties from, and to pay on behalf of or reimburse the Redflex Parties as and when incurred for, any and all Losses which may be imposed on or incurred by any Redflex Party arising out of or in any way related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of the Customer contained in this Agreement, (b) the negligence and/or omissions of the Customer, its employees, officers or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Redflex Party, (c) any claim, action or demand not caused by Redflex's failure to perform its obligations under this Agreement, or (d) any claim, action or demand challenging the Customer's use of the Redflex System or any portion thereof, the validity of the results of the Customer's use of the Redflex System or any portion thereof, or

the validity of the Citations issued, prosecuted and collected as a result of the Customer's use of the Redflex System or any portion thereof.

- 8.3. Indemnification Procedures. In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure so to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no party shall have the right enter into any settlement agreement that materially affects the other party's material rights or material interests without such party's prior written consent, which consent will not be unreasonably withheld or delayed.
- 8.4. Limited Liability. Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability arising out of or relating to this Agreement. It is further agreed that if a claim or liability should arise from the joint or concurring negligence of both parties hereto, it should be borne by them comparatively in accordance with the laws of the State of Texas. Neither this Section nor any other portion of this agreement shall be construed as, or shall create any, rights for any persons or entities who are not a party to this agreement.
9. NOTICES. Any notices to be given hereunder shall be in writing, and shall be deemed to have been given (a) upon delivery, if delivered by hand, (b) three (3) days after being mailed first class, certified mail, return receipt requested, postage and registry fees prepaid, or (c) one Business Day after being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery, if the courier service obtains a signature acknowledging receipt, in each case addressed or sent to such party as follows:
- 9.1. Notices to Redflex:  
Redflex Traffic Systems, Inc.  
15020 North 74<sup>th</sup> Street  
Scottsdale, AZ 85260

Attention: Ms. Karen Finley  
Facsimile: (480) 607-5552

9.2. Notices to the Customer:

City of Denton  
Attention: City Manager  
215 E, McKinney  
Denton, Texas 76201  
Facsimile: (940) 349-8596

10. **DISPUTE RESOLUTION.** Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 10, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

11. **MISCELLANEOUS.**

11.1. **ASSIGNMENT.** Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, The Customer hereby acknowledges and agrees that the execution (as outlined in Exhibit F), delivery and performance of Redflex's rights pursuant to this Agreement shall require a significant investment by Redflex, and that in order to finance such investment, Redflex may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). The Customer hereby agrees that Redflex shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Redflex and any such Financial Institution, subject to the Customer's prior written approval, which approval shall not be unreasonably withheld or delayed. The Customer further acknowledges and agrees that in the event that Redflex provides written notice to the Customer that it intends to Transfer all or any of Redflex's rights pursuant to this Agreement, and in the event that the Customer fails to provide such approval or fails to object to such Transfer within forty-five (45) business days after its receipt of such notice from Redflex, for the purposes of this Agreement, the Customer shall be deemed to have consented to and approved such Transfer by Redflex. Notwithstanding the above, this Agreement shall inure

to the benefit of, and be binding upon, the parties hereto, and their respective successors or assigns.

- 11.2. "SPEED ENFORCEMENT" The Customer and Redflex agree that should legislation or local ordinance be enacted to enable the photo enforcement of speed within the city, and the city requires this capability for public safety then the city will have the option to extend this contract to include additional terms for photo enforcement of speed within the city.
- 11.3. RELATIONSHIP BETWEEN REDFLEX AND THE CUSTOMER. Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).
- 11.4. AUDIT RIGHTS. Each of parties hereto shall have the right to audit to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.
- 11.5. FORCE MAJEURE. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Redflex, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 11.6. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both parties.

- 11.7. SEVERABILITY. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 11.8. WAIVER. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 11.9. CONSTRUCTION Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.
- 11.10. HEADINGS. The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the parties hereto, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any term, condition or provision hereof.
- 11.11. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.
- 11.12. COVENANT OF FURTHER ASSURANCES. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.
- 11.13. REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.
- 11.14. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.
- 11.15. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.

- 11.16. NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.
- 11.17. INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The parties hereby agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other party, which injury could not be adequately compensated by an award of money damages, and the parties therefore agree and acknowledge that they shall be entitled to injunctive relief in the event of any breach of any material term, condition or provision of this Agreement, or to enjoin or prevent such a breach, including without limitation an action for specific performance hereof.
- 11.18. APPLICABLE LAW. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of Texas United States.
- 11.19. JURISDICTION AND VENUE. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the courts located in the County of Denton and both parties specifically agree to be bound by the jurisdiction and venue thereof.
12. MOST FAVORED NATION CLAUSE. If during the term of this contract Redflex should enter into any agreement with another municipality within the greater Dallas metropolitan area for photo red light enforcement upon terms and conditions more favorable than those granted to Customer, Reflex agrees to modify this contract to include such favorable terms if so requested by Customer.

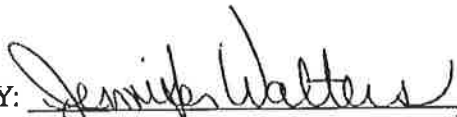
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

CITY OF DENTON, TEXAS

BY:   
MICHAEL A. CONDUFF, CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY:   
\_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
EDWIN M. SNYDER, CITY ATTORNEY

BY:   
\_\_\_\_\_

REDFLEX TRAFFIC SYSTEMS, INC.

BY:   
\_\_\_\_\_

**EXHIBIT "A"**  
**Designated Intersection Approaches**

The contract is for the implementation of up to 10 intersections. Identification of enforced intersection will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.



EXHIBIT "B"  
Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light System

Redflex will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Redflex Traffic Systems and the Municipality.

Redflex will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Redflex will use reasonable commercial efforts to install and activate the first specified intersection within the first forty-five (45) days subsequent to formal project kick-off. The Municipality agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Redflex and are not guaranteed.

In order to provide the client with timely completion of the photo enforcement project Redflex Traffic Systems requires that the City assist with providing timely approval of City permit requests. The City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the customer is to provide city engineers review of Redflex permit requests and all documentation within a two business days. Redflex will also review and correct if necessary any redlines within two business days. Permits need to be received within five business days of first submittal in order to implement the program in a timely manner.

1. Redflex Obligations. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
  - 1.1. Appoint the Redflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project Manager;
  - 1.2. Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the city traffic engineer;
  - 1.3. Develop and submit to the Customer for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required; and
  - 1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications.
  - 1.5. Finalize the acquisition of the Approvals;
  - 1.6. Submit to the Customer a public awareness strategy for the Customer's consideration and approval, which strategy shall include media and educational materials for the Customer's approval or amendment (the "Awareness Strategy");
  - 1.7. Develop the Redlight Violation Criteria in consultation with the Customer;

- 1.8. Develop the Enforcement Documentation for approval by the Customer, which approval shall not be unreasonably withheld;
  - 1.9. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches (under the supervision of the Customer);
  - 1.10. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersection Approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
  - 1.11. Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
  - 1.12. Implement the use of the Redflex System at each of the Designated Intersection Approaches;
  - 1.13. Deliver the Materials to the Customer; and
  - 1.14. Issue citation notices for Authorized Violations;
  - 1.15. Redflex shall provide training (i) for up to fifteen (15) personnel of the Customer, including but not limited to the persons who Customer shall appoint as Authorized Officers and other persons involved in the administration of the Redlight Photo Enforcement Program, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Redlight Photo Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in administrative adjudication hearing proceedings and a review of the Enforcement Documentation;
  - 1.16. Interact with administrative adjudication hearing personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in adjudication proceedings, and coordination between Redflex, the Customer and adjudication personnel; and
  - 1.17. Provide reasonable public relations resources and media materials to the Customer in the event that the Customer elects to conduct a public launch of the Redlight Photo Enforcement Program.
  - 1.18. Setup processes to collect payments from citizens on Notice of Violation using a local mailing address in the Dallas metropolitan area and establish a relationship with a collection agency to pursue any unpaid citations. Costs incurred by a collection agency in the collection of delinquent accounts will be no more than 25% of the sum collected and will be borne by customer as defined in section 3.4.
  - 1.19. Citation processing and citation re-issuance
2. CUSTOMER OBLIGATIONS. The Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):

- 2.1.1. Appoint the Police Project Manager; Provide an Administrative Hearing Officer to preside over Appeals Hearing for the City.
- 2.1.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;
- 2.1.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Redlight Photo Enforcement Program;
- 2.1.4. Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the Customer; and
- 2.1.5. Assist Redflex in seeking the Approvals
- 2.1.6. Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Redlight Photo Enforcement Program;
- 2.1.7. Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
- 2.1.8. Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the Customer will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date;
- 2.1.9. Assist Redflex in developing the Redlight Violation Criteria; and
- 2.1.10. Seek approval of the Enforcement Documentation.

## EXHIBIT "C"

### Maintenance

1. All repair and maintenance of Photo Red Light Enforcement systems and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of city Traffic Engineering present.
3. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of the Redflex
4. The provision of all necessary electrical services to the Designated Intersection Approaches will be the sole responsibility of the Customer
5. In the event that images of a quality suitable for the Authorized Officer to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
6. The Redflex Project Manager (or a reasonable alternate) shall be available to the Police Project Manager each day, on a reasonable best efforts basis.

**EXHIBIT "D"**  
**COMPENSATION & PRICING**

Commencing on the expiration of the Warning Period for each Designated Intersection Approach, Customer shall be obligated to pay Redflex a fixed fee of \$4,870 per month for each Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

**Cost Neutrality**

Cost neutrality is assured to Customer. The maximum compensation that Customer shall be obligated to pay to Redflex each month is the Fixed Fee. Each month, Customer and Redflex shall compare the aggregate revenue received from all Citations ("Revenue") to the total amount invoiced by Redflex for the Fixed Fee ("Amount Invoiced") during the previous month ("Cost Neutrality Review"). If the Amount Invoiced exceeds the Revenue, then City shall only be obligated to pay the Revenue to Redflex and the difference between the Revenue and the Amount Invoiced for that month will carry over to the next month as a deficit ("Deficit Amount"). If, in the next following month, the Revenue exceeds the Amount Invoiced, Customer shall pay the Amount Invoiced plus all or any portion of the accumulated Deficit Amount to the extent that there is sufficient Revenue to pay all or any portion of the Deficit Amount.

**BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:**

1. Redflex construction will be able to utilize existing conduit for installation where space is available.
2. The Customer agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.
3. Each year the pricing will increase by the CPI. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for U.S. City average.

Exhibit "E"

Additional Rights and Obligations

Redflex and the Customer shall respectively have the additional rights and obligations set forth below:

1. Redflex shall assist the Customer in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Redlight Photo Enforcement Program (actual print and production costs are the sole responsibility of the Customer).
2. Redflex shall be solely responsible for installing such Signage. The Customer shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the Vehicle Code, and shall assist in determining the placement of such Signage.
3. The Redflex Project Manager and the Police Project Manager shall meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the Installation Date, and on a monthly basis for the remainder of the Term, at such times and places as the Redflex Manager and the Customer Manager shall mutually agree.
4. The Customer shall not access the Redflex System or use the Redlight Photo Enforcement Program in any manner other than prescribe by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo Enforcement Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Photo Enforcement Program, and the Customer shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the Customer by means of hacking, password mining or any other method whatsoever, nor shall the Customer cause any other Person to do any of the foregoing.
5. The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Redlight Photo Enforcement Program.
6. Each of Redflex and the Customer shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, each of Redflex and the Customer shall obey any and all such rules and regulations.
7. The Customer shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the Customer, or any of its employees, contractors or agents.

### Insurance

1. During the Term, Redflex shall procure and maintain and Redflex's sole cost and expense the following insurance coverage with respect to claims for injuries to persons or damages to property which may arise from or in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
2. Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage;
3. Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury or property damage, including but not limited to coverage for all automobiles owned by Redflex, hired by Redflex, and owned by third parties;
4. Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate.
5. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than the limits required by the Labor Code of the State of (insert name), Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
6. With respect to the insurance described in the foregoing Section of this Exhibit E, any deductibles or self-insured retentions must be declared to and approved by the Customer, and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the Customer.
7. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
8. The Customer Parties shall be covered as additional insureds with respect to any liability arising from any act or omission of any Redflex Parties on the premises upon which any such Redflex Parties may perform services pursuant to this Agreement, and such coverage shall contain no special limitations on the scope of protection afforded to such additional insureds.
9. The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the Customer Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the (insert name) shall be in excess, and not in contribution to, such insurance.
10. Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the (insert names), and such insurance policies shall state the such insurance coverage shall apply separately with respect to each additional insured against whom any claim is made or suit is brought, except with respect to the limits set forth in such insurance policies.
11. With respect to the insurance described in the foregoing Section of this Exhibit E, each such insurance policy shall be endorsed to state that the coverage provided thereby shall not be cancelled except after thirty (30) calendar days' prior written

notice to the Customer. If any of the Redflex Parties are notified by any insurer that any insurance coverage will be cancelled, Redflex shall immediately provide written notice thereof to the Customer and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the Customer of the date and nature of such correction. If Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the Customer shall have the right, but not the obligation and exercisable in its sole discretion, to either (i) terminate this Agreement and seek damages from Redflex for such breach, or (ii) purchase such required insurance, and without further notice to Redflex, deduct from any amounts due to Redflex pursuant to this Agreement, any premium costs advanced by the Customer for such insurance. If the premium costs advanced by the Customer for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the Customer upon receipt of written notice thereof.

12. Redflex shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the Customer prior to Redflex commencing any work pursuant to the terms of this Agreement.



Exhibit F

FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of \_\_\_\_\_, 2005, is entered into by and between the City of Denton (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the [Agreement for Automated Red Light Photo Enforcement Cameras], dated as of \_\_\_\_\_, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Credit Agreement, dated as of August 3, 2004 (the "Harris-Redflex Credit Agreement"), with Harris Trust and Savings Bank (the "Bank"), pursuant to which the Bank has provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.

2. Pursuant to the Harris-Redflex Credit Agreement, Redflex has granted Harris a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement. Such security interest applies to and covers all of Redflex's contract rights, including, without limitation, all of Redflex's rights and interests under the Agreement.

3. Redflex will not, by virtue of the Harris-Redflex Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Bank has not assumed any liability or obligation of Redflex under the Agreement.

4. The City hereby acknowledges notice of, and consents to, Redflex's grant of such security interest in favor of the Bank in all of Redflex's rights and interests under the Agreement pursuant to the Harris-Redflex Credit Agreement.

5. The City further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the City and shall inure to the benefit of the successors and assigns of the Bank and to any replacement lender which refinances Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement.

IN WITNESS WHEREOF, the City and Redflex have caused this Acknowledgement and Consent to be executed by their respective duly authorized and elected officers as of the date first above written.

<p>The City:</p> <p>CITY OF DENTON</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Redflex:</p> <p>REFLEX TRAFFIC SYSTEMS, INC.</p> <p>By: <i>Karen Finley</i></p> <p>Name: <i>Karen Finley</i></p> <p>Title: <i>Vice President / Secretary</i></p>
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