

AGENDA INFORMATION SHEET

AGENDA DATE: August 21, 2007

DEPARTMENT: Police

ACM: Jon Fortune

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 Article IX, Automated Traffic Signal Enforcement; providing a severability clause; providing for the imposition of a civil penalty of \$75.00; and providing an effective date.

BACKGROUND

On December 7, 2004, City Council adopted Chapter 18 Article IX establishing the automated traffic signal enforcement program. This article provided for the use of red light cameras at intersections in the city. The City contracted with Redflex Traffic Systems to install and operate the camera system. Six cameras were installed and went into operation in April 2006.

On June 15, 2007, Governor Perry signed new legislation (Transportation Code Chapter 707) that authorizes the use of photographic traffic signal enforcement. This new legislation will have an impact on the operation of our photo enforcement program and will require an amendment to the existing photo enforcement ordinance. The following is a synopsis of the impact of the new legislation.

New Intersections

Prior to the new legislation, Redflex conducted video analysis of selected intersections at the request of City staff to determine the number of red light violations that occur in a twelve hour period. This information, along with a review of traffic accidents and enforcement activity, was used to help determine suitable sites for photo enforcement cameras.

Under the new legislation, the City is required to conduct a traffic engineering study to determine if changes in signalization and/or design, alone or in conjunction with the use of a camera system, would help to reduce the number of red light violations. Further, the City must consider the traffic volume, history of accidents, and the frequency of red light violations as the basis for the selection of specific intersections for red light cameras.

Advisory Committee

The initial red light camera intersections were presented to City Council for approval. Under the new legislation, the City Council must appoint a citizens advisory committee to advise the City on the installation and operation of the photo enforcement program. The committee must be made up of a single appointee from each elected Council member. The existing Traffic Safety

Commission meets the legislative mandate. Unless Council directs otherwise, staff recommends that Council designate the Traffic Safety Commission as the advisory committee for the photo enforcement program.

Reporting Procedures

The City is required to produce annual reports on the number and types of accidents at red light camera intersections to determine if the camera systems result in a reduction of accidents or a reduction in the severity of accidents at these locations. This information will be compiled by TXDOT to determine if the camera systems are effective in reducing red light-related accidents.

Hearing Officer

Violations recorded through the automated traffic signal enforcement program are handled as civil matters. The registered owner of a vehicle in violation is notified of the violation and is afforded the right to request a hearing to determine their liability for the violation. The process is similar to the right to trial under the criminal process. The Municipal Judge appointed Ann Poston, one of our part-time Municipal Judges, as the hearing officer for automated traffic enforcement violations. Under the revised ordinance, the responsibility for this appointment shifts to the City Council. A companion agenda item is provided for the appointment of Ann Poston to continue serving as the hearing officer.

Revenue

The City is allowed to use proceeds from the automated traffic enforcement program to pay for the operational and equipment costs of the system, including payment of the vendor, personnel costs to review and approve violations, and the administration of the program. Out of the remaining proceeds from the camera system, the City is required to remit one-half of the net revenue to the State. The remaining one-half of the net revenue must be deposited in a special account to fund traffic safety programs (pedestrian safety, public safety, intersection improvements, and traffic enforcement). We currently deposit all funds from the automated traffic enforcement program into a Traffic Safety Fund with the same spending limitations.

OPTIONS

1. Council can approve the ordinance as revised.
2. Council can disapprove the ordinance as revised.

RECOMMENDATION

Staff recommends Council approve the ordinance as revised.

PRIOR ACTION/REVIEW

City Council Work Session October 4, 2004.

City Council Meeting December 7, 2004.

FISCAL IMPACT

The new legislation and ordinance revisions will have the biggest fiscal impact from the revenue sharing provisions. However, since the legislation provides for the revenue to be shared only after covering the operational and equipment costs, the automated traffic enforcement program will continue to operate without requiring the use of general funds. The reporting and traffic study requirements of the legislation will not have a significant fiscal impact, and these costs should be covered by the program revenue.

Respectfully submitted,



Roy W. Minter, Jr.
Chief of Police

Prepared by:



Lt. Scott Fletcher
Special Enforcement Division

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DENTON, BY AMENDING CHAPTER 18 ARTICLE IX, AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE IMPOSITION OF A CIVIL PENALTY OF \$75.00; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Chapter 18 Article IX of the Code of Ordinances of the City of Denton, Texas, is hereby amended to read as follows:

Sec. 18-230. Definitions.

Department shall mean the Police Department of the City of Denton, Texas.

Intersection shall mean the place or area where two or more streets intersect.

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.

Photographic traffic signal enforcement system means a system that:

- (1) consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic control signal; and
- (2) is capable of producing at least two recorded images that depict the license plate attached to the front or the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

Recorded image shall mean a photographic or digital image that depicts the front or the rear of a motor vehicle.

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.

System location shall mean the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.

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) The owner of a motor vehicle is liable for a civil penalty of seventy-five dollars (\$75.00) 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) An owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of twenty-five dollars (\$25.00).

(d) The imposition of a civil penalty under this chapter is not a conviction and may not be considered a conviction for any purpose.

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 30th 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 location of the intersection where the violation occurred;
- (3) the date and time of the violation;
- (4) the name and address of the owner of the vehicle involved in the violation;
- (5) the registration number displayed on the license plate of the vehicle involved in the violation;
- (6) a copy of a recorded image of the violation limited solely to a depiction of the area of the registration number displayed on the license plate of the vehicle involved in the violation;

- (7) the amount of the civil penalty for which the owner is liable;
 - (8) the number of days the owner has in which to pay or contest the imposition of the civil penalty and a statement that the owner incurs a late payment penalty if the civil penalty is not paid or imposition of the penalty is not contested within that period;
 - (9) a statement that the owner of the vehicle in the notice of violation may elect to pay the civil penalty by mail sent to a specified address instead of appearing at the time and place of the administrative adjudication hearing; and
 - (10) information that informs the owner of the vehicle named in the notice of violation:
 - a. of the owner's right to contest the imposition of the civil penalty against the owner in an administrative adjudication hearing;
 - b. that imposition of the civil penalty may be contested by submitting a written request for an administrative adjudication hearing before the expiration of the period specified under Subsection (c) (8); and
 - c. that failure to pay the civil penalty or to contest liability for the penalty in a timely manner is an admission of liability and a waiver of the owner's right to appeal the imposition of the civil penalty.
 - d. If the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner:
 - 1. an arrest warrant may not be issued for the owner; and
 - 2. the imposition of the civil penalty may not be recorded on the owner's driving record.
- (d) A notice of violation is presumed to have been received on the fifth day after the date the notice is mailed.

Sec. 18-233. Installation and Operation of Photographic Traffic Signal Enforcement System.

(a) Before installing a photographic traffic signal enforcement system at an intersection approach, the Department shall conduct a traffic engineering study of the approach to determine whether, in addition to or as an alternative to the system, a design change to the approach or a change in the signalization of the intersection is likely to reduce the number of red light violations at the intersection.

(b) An intersection approach must be selected for the installation of a photographic traffic signal enforcement system based on traffic volume, the history of accidents at the approach, the number or frequency of red light violations at the intersection, and similar traffic engineering and safety criteria, without regard to the ethnic or socioeconomic characteristics of the area in which the approach is located.

(c) The Department shall report results of the traffic engineering study required by Subsection (b) to the citizen advisory committee. The committee shall advise the local department on the installation and operation of a photographic traffic signal enforcement system established under this Article.

(d) The Department shall install signs along each roadway that leads to an intersection at which a photographic traffic signal enforcement system is in active use. The signs must be at least 100 feet from the intersection or located according to standards established in the manual adopted by the Texas Transportation Commission under Texas Transportation Code Section 544.001, be easily readable to any operator approaching the intersection, and clearly indicate the presence of a photographic monitoring system that records violations that may result in the issuance of a notice of violation and the imposition of a monetary penalty.

(e) The City or the entity with which the City contracts for the administration and enforcement of a photographic traffic signal enforcement system may not provide information about a civil penalty imposed under this Article to a credit bureau, as defined by Texas Finance Code Section 392.001.

Sec. 18-234. Report of Accidents.

(a) Before installing a photographic traffic signal enforcement system at an intersection approach, the Department shall compile a written report of the number and type of traffic accidents that have occurred at the intersection for a period of at least 18 months before the date of the report.

(b) Not later than six months after the date of the installation of the photographic traffic signal enforcement system at the intersection, the Department shall provide the Texas Department of Transportation a copy of the report required by Subsection (a).

(c) After installing a photographic traffic signal enforcement system at an intersection approach, the Department shall monitor and annually report to the Texas Department of Transportation the number and type of traffic accidents at the intersection to determine whether the system results in a reduction in accidents or a reduction in the severity of accidents.

(d) The report must be in writing in the form prescribed by the Texas Department of Transportation.

Sec. 18-235. Minimum Change Interval.

At an intersection at which a photographic traffic monitoring system is in use, the minimum change interval for a steady yellow signal must be established in accordance with the Texas Manual

on Uniform Traffic Control Devices.

Sec. 18-236. Deposit of Revenue from Certain Traffic Penalties.

(a) Not later than the 60th day after the end of the City's fiscal year, after deducting amounts the City is authorized by Subsection (b) to retain, the City shall:

- (1) send 50 percent of the revenue derived from civil or administrative penalties collected by the City under this section to the Comptroller; and
- (2) deposit the remainder of the revenue in a special account in the City's treasury that may be used only to fund traffic safety programs, including pedestrian safety programs, public safety programs, intersection improvements, and traffic enforcement.

(b) The City shall retain an amount necessary to cover the costs of:

- (1) purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the city;
- (2) installing the photographic traffic signal enforcement system at sites in the city, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;
- (3) operating the photographic traffic signal enforcement system in the city, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by employees of the City, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and
- (4) maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

Sec. 18-237. Effect on Other Enforcement.

(a) The implementation of a photographic traffic signal enforcement system under this Article does not:

- (1) preclude the application or enforcement in the city of Texas Transportation Code Section 544.007(d) in the manner prescribed by Texas Transportation Code Chapter 543; or
- (2) prohibit a peace officer from arresting a violator of Texas Transportation Code Section 544.007(d) as provided by Texas Transportation Code Chapter 543, if the peace officer personally witnesses the violation, or from issuing

the violator a citation and notice to appear as provided by that Chapter.

(b) No civil penalty shall be imposed on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a peace officer for the same violation of Texas Transportation Code Section 544.007(d) recorded by the photographic traffic signal enforcement system.

Sec. 18-238. Admission of Liability.

A person who fails to pay the civil penalty or to contest liability for the penalty in a timely manner or who requests an administrative adjudication hearing to contest the imposition of the civil penalty against the person and fails to appear at that hearing is considered to:

- (1) admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person; and
- (2) waive the person's right to appeal the imposition of the civil penalty.

Sec. 18-239. Presumption.

(a) It is presumed that the owner of the motor vehicle committed the violation alleged in the notice of violation mailed to the person if the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system belongs to the owner of the motor vehicle.

(b) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not the person named in the notice of violation, the presumption under Subsection (a) is rebutted on the presentation of evidence establishing that the vehicle was at that time:

- (1) being test driven by another person;
- (2) being rented or leased by the vehicle's owner to another person; or
- (3) owned by a person who was not the person named in the notice of violation.

(c) Notwithstanding Section 18-240, the presentation of evidence under Subsection (b) by a person who is in the business of selling, renting, or leasing motor vehicles or did not own the vehicle at the time of the violation must be made by affidavit, through testimony at the administrative adjudication hearing under Section 18-240, or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the City or the entity with which the City contracts.

(d) If the presumption established by Subsection (a) is rebutted under Subsection (b), a civil penalty may not be imposed on the owner of the vehicle or the person named in the notice of

violation, as applicable.

(e) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in the photograph or digital image taken by the photographic traffic signal enforcement system was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, the owner of the motor vehicle shall provide to the City or the entity with which the City contracts the name and address of the individual who was renting or leasing the motor vehicle depicted in the photograph or digital image and a statement of the period during which that individual was renting or leasing the vehicle. The owner shall provide the information required by this subsection not later than the 30th day after the date the notice of violation is received. If the owner provides the required information, it is presumed that the individual renting or leasing the motor vehicle committed the violation alleged in the notice of violation and the City or contractor may send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

Sec. 18-240. Administrative Adjudication Hearing.

(a) A person who receives a notice of violation under this Article may contest the imposition of the civil penalty specified in the notice of violation by filing a written request for an administrative adjudication hearing. The request for a hearing must be filed on or before the date specified in the notice of violation, which may not be earlier than the 30th day after the date the notice of violation was mailed.

(b) On receipt of a timely request for an administrative adjudication hearing, the Department shall notify the person of the date and time of the hearing.

(c) A hearing officer designated by the City Council shall conduct the administrative adjudication hearing.

(d) In an administrative adjudication hearing, the issues must be proven by a preponderance of the evidence.

(e) The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the motor vehicle involved in the violation may be attested to by affidavit of an officer or employee of the City or of the entity with which the City contracts who is responsible for inspecting and maintaining the system.

(f) An affidavit of an officer or employee of the City or entity that alleges a violation based on an inspection of the applicable recorded image is:

- (1) admissible in the administrative adjudication hearing and in an appeal under Section 18-242; and
- (2) evidence of the facts contained in the affidavit.

(g) At the conclusion of the administrative adjudication hearing, the hearing officer shall

enter a finding of liability for the civil penalty or a finding of no liability for the civil penalty. A finding under this subsection must be in writing and be signed and dated by the hearing officer.

(h) A finding of liability for a civil penalty must specify the amount of the civil penalty for which the person is liable. If the hearing officer enters a finding of no liability, a civil penalty for the violation may not be imposed against the person.

(i) A finding of liability or a finding of no liability entered under this section may:

- (1) be filed with the clerk or secretary of the City or with a person designated by the governing body of the City; and
- (2) be recorded on microfilm or microfiche or using data processing techniques.

Sec. 18-241. Untimely Request for Administrative Adjudication Hearing.

Notwithstanding any other provision of this Article, a person who receives a notice of violation under this Article and who fails to timely pay the amount of the civil penalty or fails to timely request an administrative adjudication hearing is entitled to an administrative adjudication hearing if:

- (1) the person submits a written request for the hearing to the designated hearing officer, accompanied by an affidavit that attests to the date on which the person received the notice of violation; and
- (2) the written request and affidavit are submitted to the hearing officer within the same number of days after the date the person received the notice of violation.

Sec. 18-242. Appeal.

(a) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to the judge of the Municipal Court by filing an appeal petition with the clerk of the Court.

(b) The petition must be:

- (1) filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty; and
- (2) accompanied by payment of the costs required by law for the Court.

(c) The Court clerk shall schedule a hearing and notify the owner of the motor vehicle and the Department of the date, time, and place of the hearing.

(d) An appeal stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner shall file a notarized statement of personal financial obligation to perfect the owner's appeal.

(e) An appeal under this section shall be determined by the Court by trial de novo.

SECTION 2. If any section, subsection, paragraph, sentence, phrase or word in this ordinance, or application thereof to any person or circumstance, is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and City Council of the City of Denton, Texas hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 3. This ordinance shall become effective September 1, 2007.

PASSED AND APPROVED this the _____ day of _____, 2007.

PERRY R. McNEILL, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

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

BY:  _____

Mayor McNeill presented August Yard of the Month Awards for:
Michael & Jaylyn Curry – 2131 Westview Trail
Ted & Cindy Sherrill – 709 Ticonderoga
Mr. & Mrs. Carroll Goen – 2900 Pennsylvania
Windy & Joan Fowler – 3116 Deerfield Drive

3. CONSENT AGENDA

Mayor McNeill highlighted the items for consideration on the Consent Agenda.

Deputy Mayor Pro Tem Mulroy requested that Item 3E be pulled for individual consideration.

Mulroy motioned, Heggins seconded to approve the Consent Agenda with the exception of Item 3E. On roll vote, Heggins “aye”, Kamp “aye”, Montgomery “aye”, Mulroy “aye”, Thomson “aye”, Watts “aye”, and Mayor McNeill “aye”. Motion carried unanimously.

- A. 2007-169 – An ordinance of the City of Denton, Texas, amending the Code of Ordinances of the City of Denton, by amending Chapter 18 Article IX, Automated Traffic Signal Enforcement; providing a severability clause; providing for the imposition of a civil penalty of \$75.00; and providing an effective date.
- B. Approved the appointment of an assistant judge to serve as a hearing officer in compliance with the adoption of an ordinance amending Chapter 18 Article IX, relating to automated traffic signal enforcement.
- C. 2007-170 – An ordinance approving a mutual aid agreement between the City of Denton and Denton Independent School District for mass evacuation during times of catastrophic events, emergencies or disasters; and providing for an effective date.
- D. Approved a request for an exception to the Noise Ordinance for amplified sound on Sunday, September 23, 2007, for the Texas Bicycle Racing Association event hosted by the Greater Denton Sports Commission. The event will be held from 12:00 noon until 7:00 p.m. and will cover several of the downtown streets. Public address system will be used to make announcements and conduct the races.
- F. 2007-171 – An ordinance of the City of Denton, Texas approving an agreement between the City of Denton and the Denton Record Chronicle; approving the expenditure of funds for the purchase of legal advertising services available from only one source, in accordance with the provisions of the state law exempting such purchases from requirements of competitive bids; and providing an effective date (File 3858-Agreement with the Denton Record Chronicle in the amount of \$8.40 per column inch for an estimated award of \$35,000).
- G. 2007-172 – An ordinance of the City of Denton, Texas authorizing the City Manager to execute an agreement for Deposit of Costs for Perimeter Paving with AHY, LC; and providing an effective date.

ORDINANCE NO. 2007-169

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DENTON, BY AMENDING CHAPTER 18 ARTICLE IX, AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE IMPOSITION OF A CIVIL PENALTY OF \$75.00; AND PROVIDING AN EFFECTIVE DATE.

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- (1) consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic control signal; and
- (2) is capable of producing at least two recorded images that depict the license plate attached to the front or the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

Recorded image shall mean a photographic or digital image that depicts the front or the rear of a motor vehicle.

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.

System location shall mean the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.

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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) The owner of a motor vehicle is liable for a civil penalty of seventy-five dollars (\$75.00) 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.

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- (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 location of the intersection where the violation occurred;
- (3) the date and time of the violation;
- (4) the name and address of the owner of the vehicle involved in the violation;
- (5) the registration number displayed on the license plate of the vehicle involved in the violation;
- (6) a copy of a recorded image of the violation limited solely to a depiction of the area of the registration number displayed on the license plate of the vehicle involved in the violation;

- (7) the amount of the civil penalty for which the owner is liable;
 - (8) the number of days the owner has in which to pay or contest the imposition of the civil penalty and a statement that the owner incurs a late payment penalty if the civil penalty is not paid or imposition of the penalty is not contested within that period;
 - (9) a statement that the owner of the vehicle in the notice of violation may elect to pay the civil penalty by mail sent to a specified address instead of appearing at the time and place of the administrative adjudication hearing; and
 - (10) information that informs the owner of the vehicle named in the notice of violation:
 - a. of the owner's right to contest the imposition of the civil penalty against the owner in an administrative adjudication hearing;
 - b. that imposition of the civil penalty may be contested by submitting a written request for an administrative adjudication hearing before the expiration of the period specified under Subsection (c) (8); and
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(b) An intersection approach must be selected for the installation of a photographic traffic signal enforcement system based on traffic volume, the history of accidents at the approach, the number or frequency of red light violations at the intersection, and similar traffic engineering and safety criteria, without regard to the ethnic or socioeconomic characteristics of the area in which the approach is located.

(c) The Department shall report results of the traffic engineering study required by Subsection (b) to the citizen advisory committee. The committee shall advise the local department on the installation and operation of a photographic traffic signal enforcement system established under this Article.

(d) The Department shall install signs along each roadway that leads to an intersection at which a photographic traffic signal enforcement system is in active use. The signs must be at least 100 feet from the intersection or located according to standards established in the manual adopted by the Texas Transportation Commission under Texas Transportation Code Section 544.001, be easily readable to any operator approaching the intersection, and clearly indicate the presence of a photographic monitoring system that records violations that may result in the issuance of a notice of violation and the imposition of a monetary penalty.

(e) The City or the entity with which the City contracts for the administration and enforcement of a photographic traffic signal enforcement system may not provide information about a civil penalty imposed under this Article to a credit bureau, as defined by Texas Finance Code Section 392.001.

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(b) Not later than six months after the date of the installation of the photographic traffic signal enforcement system at the intersection, the Department shall provide the Texas Department of Transportation a copy of the report required by Subsection (a).

(c) After installing a photographic traffic signal enforcement system at an intersection approach, the Department shall monitor and annually report to the Texas Department of Transportation the number and type of traffic accidents at the intersection to determine whether the system results in a reduction in accidents or a reduction in the severity of accidents.

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on Uniform Traffic Control Devices.

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(a) Not later than the 60th day after the end of the City's fiscal year, after deducting amounts the City is authorized by Subsection (b) to retain, the City shall:

- (1) send 50 percent of the revenue derived from civil or administrative penalties collected by the City under this section to the Comptroller; and
- (2) deposit the remainder of the revenue in a special account in the City's treasury that may be used only to fund traffic safety programs, including pedestrian safety programs, public safety programs, intersection improvements, and traffic enforcement.

(b) The City shall retain an amount necessary to cover the costs of:

- (1) purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the city;
- (2) installing the photographic traffic signal enforcement system at sites in the city, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;
- (3) operating the photographic traffic signal enforcement system in the city, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by employees of the City, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and
- (4) maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

Sec. 18-237. Effect on Other Enforcement.

(a) The implementation of a photographic traffic signal enforcement system under this Article does not:

- (1) preclude the application or enforcement in the city of Texas Transportation Code Section 544.007(d) in the manner prescribed by Texas Transportation Code Chapter 543; or
- (2) prohibit a peace officer from arresting a violator of Texas Transportation Code Section 544.007(d) as provided by Texas Transportation Code Chapter 543, if the peace officer personally witnesses the violation, or from issuing

the violator a citation and notice to appear as provided by that Chapter.

(b) No civil penalty shall be imposed on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a peace officer for the same violation of Texas Transportation Code Section 544.007(d) recorded by the photographic traffic signal enforcement system.

Sec. 18-238. Admission of Liability.

A person who fails to pay the civil penalty or to contest liability for the penalty in a timely manner or who requests an administrative adjudication hearing to contest the imposition of the civil penalty against the person and fails to appear at that hearing is considered to:

- (1) admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person; and
- (2) waive the person's right to appeal the imposition of the civil penalty.

Sec. 18-239. Presumption.

(a) It is presumed that the owner of the motor vehicle committed the violation alleged in the notice of violation mailed to the person if the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system belongs to the owner of the motor vehicle.

(b) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not the person named in the notice of violation, the presumption under Subsection (a) is rebutted on the presentation of evidence establishing that the vehicle was at that time:

- (1) being test driven by another person;
- (2) being rented or leased by the vehicle's owner to another person; or
- (3) owned by a person who was not the person named in the notice of violation.

(c) Notwithstanding Section 18-240, the presentation of evidence under Subsection (b) by a person who is in the business of selling, renting, or leasing motor vehicles or did not own the vehicle at the time of the violation must be made by affidavit, through testimony at the administrative adjudication hearing under Section 18-240, or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the City or the entity with which the City contracts.

(d) If the presumption established by Subsection (a) is rebutted under Subsection (b), a civil penalty may not be imposed on the owner of the vehicle or the person named in the notice of

violation, as applicable.

(e) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in the photograph or digital image taken by the photographic traffic signal enforcement system was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, the owner of the motor vehicle shall provide to the City or the entity with which the City contracts the name and address of the individual who was renting or leasing the motor vehicle depicted in the photograph or digital image and a statement of the period during which that individual was renting or leasing the vehicle. The owner shall provide the information required by this subsection not later than the 30th day after the date the notice of violation is received. If the owner provides the required information, it is presumed that the individual renting or leasing the motor vehicle committed the violation alleged in the notice of violation and the City or contractor may send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

Sec. 18-240. Administrative Adjudication Hearing.

(a) A person who receives a notice of violation under this Article may contest the imposition of the civil penalty specified in the notice of violation by filing a written request for an administrative adjudication hearing. The request for a hearing must be filed on or before the date specified in the notice of violation, which may not be earlier than the 30th day after the date the notice of violation was mailed.

(b) On receipt of a timely request for an administrative adjudication hearing, the Department shall notify the person of the date and time of the hearing.

(c) A hearing officer designated by the City Council shall conduct the administrative adjudication hearing.

(d) In an administrative adjudication hearing, the issues must be proven by a preponderance of the evidence.

(e) The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the motor vehicle involved in the violation may be attested to by affidavit of an officer or employee of the City or of the entity with which the City contracts who is responsible for inspecting and maintaining the system.

(f) An affidavit of an officer or employee of the City or entity that alleges a violation based on an inspection of the applicable recorded image is:

- (1) admissible in the administrative adjudication hearing and in an appeal under Section 18-242; and
- (2) evidence of the facts contained in the affidavit.

(g) At the conclusion of the administrative adjudication hearing, the hearing officer shall

enter a finding of liability for the civil penalty or a finding of no liability for the civil penalty. A finding under this subsection must be in writing and be signed and dated by the hearing officer.

(h) A finding of liability for a civil penalty must specify the amount of the civil penalty for which the person is liable. If the hearing officer enters a finding of no liability, a civil penalty for the violation may not be imposed against the person.

(i) A finding of liability or a finding of no liability entered under this section may:

- (1) be filed with the clerk or secretary of the City or with a person designated by the governing body of the City; and
- (2) be recorded on microfilm or microfiche or using data processing techniques.

Sec. 18-241. Untimely Request for Administrative Adjudication Hearing.

Notwithstanding any other provision of this Article, a person who receives a notice of violation under this Article and who fails to timely pay the amount of the civil penalty or fails to timely request an administrative adjudication hearing is entitled to an administrative adjudication hearing if:

- (1) the person submits a written request for the hearing to the designated hearing officer, accompanied by an affidavit that attests to the date on which the person received the notice of violation; and
- (2) the written request and affidavit are submitted to the hearing officer within the same number of days after the date the person received the notice of violation.

Sec. 18-242. Appeal.

(a) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to the judge of the Municipal Court by filing an appeal petition with the clerk of the Court.

(b) The petition must be:

- (1) filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty; and
- (2) accompanied by payment of the costs required by law for the Court.

(c) The Court clerk shall schedule a hearing and notify the owner of the motor vehicle and the Department of the date, time, and place of the hearing.

(d) An appeal stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner shall file a notarized statement of personal financial obligation to perfect the owner's appeal.

(e) An appeal under this section shall be determined by the Court by trial de novo.

SECTION 2. If any section, subsection, paragraph, sentence, phrase or word in this ordinance, or application thereof to any person or circumstance, is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and City Council of the City of Denton, Texas hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 3. This ordinance shall become effective September 1, 2007.

PASSED AND APPROVED this the 21st day of August, 2007.


PERRY R. McNEILL, MAYOR


ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

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

BY: 

AGENDA INFORMATION SHEET

AGENDA DATE: July 21, 2009
DEPARTMENT: Materials Management
ACM: Jon Fortune 

Questions concerning this acquisition may be directed to Roy W. Minter, Jr. 349-7923

SUBJECT

Consider adoption of an ordinance authorizing the City Manager to execute an amendment to the contract between the City of Denton and Redflex Traffic Systems USA for operation of an automated traffic signal enforcement program; providing for the expenditure of funds therefor; and providing an effective date (File 3364-Amendment for Contract Extension/Price Adjustment).

FILE INFORMATION

The City of Denton Automated Traffic Signal Enforcement Program has been in operation since May 8, 2006. The current program consists of six (6) cameras that monitor approaches at four (4) different intersections. These intersections were originally selected based on a combination of red light violations and red light related accidents. At the time the system was installed, the City was not allowed to place cameras at intersections involving Texas Department of Transportation (TXDOT) roadways.

The current program is operated under contract with Redflex Traffic Systems, Inc. out of Phoenix, Arizona. Redflex was selected through the Request for Sealed Proposal (RFSP) process by a diverse committee of City employees representing the Police, Legal, Traffic Engineering, and Purchasing Departments. The contract with Redflex provides for the City of Denton to pay Redflex a flat rate per camera per month that covers the prorated installation costs and the expenses for maintenance of the system and back office processing for the violations. The contract also includes a guarantee clause that provides that the City does not have to fund revenue losses in the event the system does not produce sufficient funds to pay the monthly contract costs. In essence, this clause ensures that the Red Light Camera (RLC) program is self-sufficient and does not draw off of the General Fund. The only caveat to this is the small amount of time invested by City personnel in the operation of the program, such as police officers reviewing and approving violations. When there is sufficient revenue to cover these costs, they are paid by the RLC funds. When there is not sufficient revenue, these costs are absorbed by the individual department budgets. The bulk of this time is in the Police Department and Municipal Court, and typically comprises approximately 20 – 25 hours a month.

CHANGE ORDER INFORMATION (CONTINUED)

The original contract covered a three-year period from May 8, 2006 – May 8, 2009. The contract allows both parties to agree to an extension/renewal for up to three consecutive one-year terms. A one year extension was approved by the City Manager in compliance with the original contract terms extending the contract through April 7, 2010, with no other changes. Redflex has proposed an extension of five years with two, five year renewals, as well as several changes to the terms which were discussed during a March 3, 2009, Council Work Session presentation.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

Council approved a three year contract with Redflex Traffic Systems, Inc. on November 15, 2005 (Ordinance 2005-345) effective May 8, 2006. The contract extension was presented to Council as a work session item on March 3, 2009, and a one year extension approved by the City Manager on April 7, 2009.

RECOMMENDATION

Approve an amendment to the City of Denton's contract with Redflex Traffic Systems, Inc. extending the contract for an additional five years with changes to the terms and conditions as included in the amendment document attached to the ordinance.

PRINCIPAL PLACE OF BUSINESS

Redflex Traffic Systems, Inc.
Phoenix, AZ

ESTIMATED SCHEDULE OF PROJECT

Redflex has proposed a new contract term of five years with two additional five year extensions. The initial term of the contract would end May 8, 2014, but could be extended, if agreed by both parties, up to May 8, 2024.

FISCAL INFORMATION

The current RLC contract with Redflex Traffic Systems, Inc. contains a “cost neutrality” clause. The City of Denton has a guarantee that the RLC program will be self sufficient outside of the cost for City personnel to operate the program. As stated above, this cost is typically limited to approximately 20–25 hours per month. Where there is sufficient monthly revenue from the RLC program, these personnel costs are covered from RLC funds. In the event the cost neutrality clause is in effect, the personnel costs are absorbed by the appropriate City department. For the past several months, the RLC contract has been operating under the neutrality clause. Based on this clause in the contract, there is no anticipated negative impact to the City from renewing the RLC contract.

Respectfully submitted:



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

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF DENTON AND REDFLEX TRAFFIC SYSTEMS USA FOR OPERATION OF AN AUTOMATED TRAFFIC SIGNAL ENFORCEMENT PROGRAM; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 3364-AMENDMENT FOR CONTRACT EXTENSION/PRICE ADJUSTMENT).

WHEREAS, on November 15, 2005 by Ordinance No. 2005-345, the City awarded a contract to Redflex Traffic Systems, Inc. for the implementation and operation of an Automated Traffic Signal Enforcement Program; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that an amendment be authorized to amend such contract agreement with respect to an extension to the coverage period and changes to the pricing structure, and said fees under the proposed contract are fair and reasonable and are consistent with and not higher than the recommended practices and fees published by the professional associations applicable to the Provider's profession and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Amendment, extending the terms of the professional services agreement between the City and Redflex Traffic Systems, Inc. for an additional five years, which is on file in the office of the Purchasing Agent, is hereby approved and the expenditure of funds therefor is hereby authorized in accordance with said Amendment.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2009.

MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

A handwritten signature in dark ink, appearing to read "ANITA BURGESS", is written over a horizontal line.

BY: _____
2-ORD-RFP 3364

AMENDMENT

This Amendment is made as of this 21st day of July 2009, by and between the City of Denton, Texas (the "Customer" and/or the "City"), and Redflex Traffic Systems, Inc. ("Redflex") with its principal place of business at 23751 N.23rd Ave., Suite 150, Phoenix AZ 85085-1854 (individually referred to as a "Party" and together referred to as the "Parties").

WHEREAS, the Customer and Redflex originally entered into a contract for services and related equipment on November 15th, 2005 (the "Agreement").

WHEREAS, the Parties agree that certain modifications to the Agreement are required in order to extend the term of the Agreement.

NOW, THEREFORE, in consideration of the mutual obligations set forth herein and for other valuable consideration received, the Customer and Redflex agree to amend the Agreement as follows:

1. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years. The term of the Agreement shall commence on the 21st day of July, 2009 and shall expire on 20th day of July, 2014. The Customer shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive five (5) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the amended 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.
2. The Customer's current base compensation as set forth in the Agreement will continue as stated, unless otherwise adjusted below, subject to annual Consumer Price Index ("CPI") adjustment. The CPI adjustment (if any) shall be calculated as follows: Each year, on the anniversary of the date of execution of this Amendment, the relevant pricing for goods and services shall be adjusted in accordance with the definitions and calculations published by U.S. Department of Labor Consumer Price Index for the U.S. City average.

The current agreement lists \$5,153.75 as full remuneration per approach for all services contemplated under this Agreement.

The parties agree that the new compensation shall be:

\$4,870.00 as full remuneration per approach for all services contemplated under this Agreement.

This Amendment is intended to modify, supercede and replace certain terms and conditions stated in the Agreement. Unless expressly stated in this Amendment, all other terms and conditions of the Agreement between Customer and Redflex will remain enforceable. If any terms and conditions contained in this Amendment are inconsistent with the Agreement, the terms and conditions contained in this Amendment will be controlling.

Signed this 21st day of July, 2009.

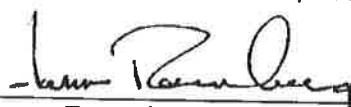
THE CITY OF DENTON, TEXAS

TITLE
NAME

APPROVED AS TO FORM:
CITY ATTORNEY
CITY OF DENTON, TEXAS

BY: 

REDFLEX TRAFFIC SYSTEMS, INC.

By: 
Name: Aaron Rosenberg
Title: Executive Vice President

APPROVED AS TO FORM: _____
<INSERT NAME>

Regular Meeting of the City of Denton City Council on Tuesday, July 21, 2009 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

There were no proclamations/awards for this meeting.

3. **CONSENT AGENDA**

Kamp motioned, Mulroy seconded to approve the Consent Agenda and accompanying ordinances and resolutions. On roll vote, Engelbrecht "aye", Gregory "aye", Heggins "aye", Kamp "aye", Mulroy "aye", Watts "aye", and Mayor Burroughs "aye". Motion carried unanimously.

- A. 2009-150 - An ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Hearts for Homes; providing for the expenditure of funds therefor; and providing for an effective date. (\$543)
- B. 2009-151 - An ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Fred Moore Day Nursery School; providing for the expenditure of funds therefor; and providing for an effective date. (\$694)
- C. 2009-152 - An ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Denton County to help with the cost of protecting the Historical Buildings Quilt for the Denton County Museums; providing for the expenditure of funds therefor; and providing for an effective date. (\$700)
- D. 2009-153 - An ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and the Historical Park Foundation for the purpose of installing an arbor leading into the Victorian Rose Garden; providing for the expenditure of funds therefor; and providing for an effective date. (\$300)
- E. 2009-154 - An ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Court Appointed Special Advocates to assist with funding of phone cost, local travel for child visits and office supplies; providing for the expenditure of funds therefor; and providing for an effective date. (\$500)
- F. 2009-155 - An ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Southridge Recreation Club which serves a public purpose in facilitating recreational activities; providing for the expenditure of funds therefor; and providing for an effective date. (\$450)

- G. 2009-156 - An ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Cumberland Presbyterian Children's Home to assist with their Fall Festival Fund Raiser; providing for the expenditure of funds therefor; and providing for an effective date. (\$350)
- H. 2009-157 - An ordinance of the City of Denton, Texas amending the Fiscal Year 2008-2009 Budget and Annual Program of Services of the City of Denton to allow for an adjustment to the Materials Management Fund of two million dollars (\$2,000,000) to provide for additional expenditure authority associated with the cost of goods sold; declaring a municipal purpose; providing a severability clause; an open meetings clause; and an effective date.
- I. 2009-158 - An ordinance of the City of Denton, Texas to declare the intent to reimburse expenditures from the Solid Waste Reserve Fund with certificates of obligation with an aggregate maximum principal amount equal to \$2,902,000 to allow the Solid Waste Department to continue funding ongoing capital expenditures for Solid Waste facilities; and providing an effective date. The Public Utilities Board recommended approval (5-0).
- J. 2009-159 - An ordinance of the City of Denton, Texas accepting competitive bids and awarding a best value three year contract for utility bill printing and mailing services for the City of Denton; authorizing the expenditure of funds therefor; and providing an effective date (Bid 4246-Best Value Bid for Utility Bill Printing and Mailing awarded to Ancor Information Management, LLC, dba Utilitec in an annual amount not to exceed \$350,000 for a three year contract amount not to exceed \$1,050,000). The Public Utilities Board recommended approval (5-0).
- K. 2009-160 - An ordinance authorizing the City Manager to execute an amendment to the contract between the City of Denton and Redflex Traffic Systems USA for operation of an automated traffic signal enforcement program; providing for the expenditure of funds therefor; and providing an effective date (File 3364-Amendment for Contract Extension/Price Adjustment).
- L. 2009-161 - An ordinance awarding a contract to Panasonic Financial Solutions for the lease purchase of thirty (30) Panasonic Toughbook PCs and accessories for Denton Municipal Electric (DME) as awarded by the State of Texas General Services Commission, Department of Information Resources (DIR Contract DIR-SDD-531); providing for the expenditure of funds therefor; and providing an effective date (File 4352-Panasonic Finance Solutions/Municipal Lease Agreement #42209 in the amount of \$27,726.00, the first of six semi-annual payments, for a total three-year lease in the amount of \$166,356.00). The Public Utilities Board recommended approval (5-0).
- M. 2009-162 - An ordinance of the City of Denton, Texas authorizing the expenditure of funds for payments by the City of Denton for electrical energy transmission fees to those cities and utilities providing energy transmission services to the City of Denton; and providing an effective date (File 4198-Electrical Energy Transmission Fees for American Electric Power in the

ORDINANCE NO. 2009-160

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF DENTON AND REDFLEX TRAFFIC SYSTEMS USA FOR OPERATION OF AN AUTOMATED TRAFFIC SIGNAL ENFORCEMENT PROGRAM; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 3364-AMENDMENT FOR CONTRACT EXTENSION/PRICE ADJUSTMENT).

WHEREAS, on November 15, 2005 by Ordinance No. 2005-345, the City awarded a contract to Redflex Traffic Systems, Inc. for the implementation and operation of an Automated Traffic Signal Enforcement Program; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that an amendment be authorized to amend such contract agreement with respect to an extension to the coverage period and changes to the pricing structure, and said fees under the proposed contract are fair and reasonable and are consistent with and not higher than the recommended practices and fees published by the professional associations applicable to the Provider's profession and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Amendment, extending the terms of the professional services agreement between the City and Redflex Traffic Systems, Inc. for an additional five years, which is on file in the office of the Purchasing Agent, is hereby approved and the expenditure of funds therefor is hereby authorized in accordance with said Amendment.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 21st day of July, 2009.



MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: Jennifer Walters

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 
2-ORD RFP 3364

AMENDMENT

This Amendment is made as of this 21st day of July 2009, by and between the City of Denton, Texas (the "Customer" and/or the "City"), and Redflex Traffic Systems, Inc. ("Redflex") with its principal place of business at 23751 N.23rd Ave., Suite 150, Phoenix AZ 85085-1854 (individually referred to as a "Party" and together referred to as the "Parties").

WHEREAS, the Customer and Redflex originally entered into a contract for services and related equipment on November 15th, 2005 (the "Agreement").

WHEREAS, the Parties agree that certain modifications to the Agreement are required in order to extend the term of the Agreement.

NOW, THEREFORE, in consideration of the mutual obligations set forth herein and for other valuable consideration received, the Customer and Redflex agree to amend the Agreement as follows:

1. **TERM**. The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years. The term of the Agreement shall commence on the 21st day of July, 2009 and shall expire on 20th day of July, 2014. The Customer shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive five (5) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the amended 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.
2. The Customer's current base compensation as set forth in the Agreement will continue as stated, unless otherwise adjusted below, subject to annual Consumer Price Index ("CPI") adjustment. The CPI adjustment (if any) shall be calculated as follows: Each year, on the anniversary of the date of execution of this Amendment, the relevant pricing for goods and services shall be adjusted in accordance with the definitions and calculations published by U.S. Department of Labor Consumer Price Index for the U.S. City average.

The current agreement lists \$5,153.75 as full remuneration per approach for all services contemplated under this Agreement.

The parties agree that the new compensation shall be:

\$4,870.00 as full remuneration per approach for all services contemplated under this Agreement.

This Amendment is intended to modify, supercede and replace certain terms and conditions stated in the Agreement. Unless expressly stated in this Amendment, all other terms and conditions of the Agreement between Customer and Redflex will remain enforceable. If any terms and conditions contained in this Amendment are inconsistent with the Agreement, the terms and conditions contained in this Amendment will be controlling.

Signed this 21st day of July, 2009.

THE CITY OF DENTON, TEXAS


TITLE *CITY MANAGER*
NAME *GEORGE C. CAMPBELL*



APPROVED AS TO FORM:
CITY ATTORNEY
CITY OF DENTON, TEXAS

BY: 

REDFLEX TRAFFIC SYSTEMS, INC.

By: 
Name: Aaron Rosenberg
Title: Executive Vice President

APPROVED AS TO FORM: _____
<INSERT NAME>

AGENDA INFORMATION SHEET

AGENDA DATE: September 18, 2012
DEPARTMENT: Materials Management
ACM: Bryan Langley

Questions concerning this acquisition may be directed to Captain Scott Fletcher 349-7939

LBL

SUBJECT

Consider adoption of an ordinance approving the expenditure of funds for Red Light Citation Verification Services for the City of Denton Automated Traffic Signal Enforcement program available from only one source in accordance with Texas Local Government Code 252.022, exempting such purchases from requirements of competitive bids; providing for the expenditure of funds therefor; and providing an effective date (File 4984-Red Light Citation Collection Contract awarded to Redflex Traffic Systems, Inc., in the five year not to exceed amount of \$150,000).

FILE INFORMATION

The City of Denton is currently under contract with Redflex Traffic Systems for the operation of the City's Automated Traffic Signal Enforcement program. This contract was originally awarded in 2005, and renewed again in 2009. This proposed contract is for the collection of outstanding red light violation fees using the provisions outlined in Chapter 707 of the Texas Transportation Code. These provisions allow a municipality to work with the County Tax Assessor's Office to hold the registration of a vehicle that has outstanding red light camera fees. In order to utilize this process, the City is required to process and collate appropriate data on the vehicles with outstanding fees.

Under this contract, Redflex Traffic Systems will verify the data on any vehicle with outstanding red light camera violations that meet the following conditions:

- 1) A violation fee total of \$75 or more;
- 2) Delinquent for a period of more than 91 days; and
- 3) Issued to a vehicle that is currently registered in Texas

Redflex already retrieves the initial data on vehicles in order to issue the original violation notice. It would not be cost effective to perform these same services as an internal operation. Because of the contractual issues involved in the operation of the red light camera program, it is not feasible for a third party to conduct this additional service. The Denton County Tax Assessor's Office has agreed to participate in this program.

PRIOR ACTION/VIEW (COUNCIL, BOARDS, COMMISSIONS)

Informal Staff Report 2012-040 was presented to Council on April 19, 2012.

RECOMMENDATION

Award a contract for Red Light Citation Verification Services for the City of Denton Automated Traffic Signal Enforcement program to Redflex Traffic Systems, Inc. in the five year not to exceed amount of \$150,000.

PRINCIPAL PLACE OF BUSINESS

Redflex Traffic Systems, Inc.
Phoenix, AZ

ESTIMATED SCHEDULE OF PROJECT

This is a one (1) year contract effective from the date of award or notice to proceed by the City of Denton Police Department. The contract may be renewed for four (4) additional one-year periods with all prices, terms, and conditions remaining the same.

FISCAL INFORMATION

As of July 1, 2012, there were 12,140 red light violations issued by the City of Denton that were more than 90 days outstanding. The value of these outstanding violations totaled \$1,152,000.50. Of these violations, 9,995 (totaling \$983,185) would be eligible for collection under the terms of this contract. Performance of other municipalities using this provision indicates a 70% - 75% collection rate. If this performance indicator holds, it is estimated that the City would collect \$680,000 - \$730,000 of the outstanding fees.

Under the terms of the contract, the City would pay five dollars (\$5.00) per violation for processing, verification, and submittal to the Tax Assessor's Office. With 9,995 eligible violations, the financial cost for the initial filing would total \$49,975. Subsequent filings would be at a rate of \$10 per violation.

The net return on the initial filing under this contract is estimated to be \$630,000 - \$680,000. Under the revenue provisions for Automated Red Light Camera Enforcement in the Texas Transportation Code, the City would split the net return with the State of Texas, yielding an approximate \$315,000 - \$340,000 in revenue for the Traffic Safety Fund.

EXHIBITS

Exhibit 1: Redflex Contract Agreement

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'APJ', written in a cursive style.

Antonio Puente, Jr., 349-7283
Assistant Director of Finance

**STANDARD FORM CITATION VERIFICATION SERVICES
PROGRAM AGREEMENT
BETWEEN
THE CITY OF DENTON, TX
AND
REDFLEX TRAFFIC SYSTEMS, INC.**

This Agreement (this "Agreement") is made as of this ___ day of _____ 2012 by and between Redflex Traffic Systems, Inc., a Delaware Corporation, with offices located at 23751 N. 23rd Avenue, Phoenix, Arizona 85085 ("Redflex") and The City of Denton, a municipal corporation, with offices at 215 E. McKinney, Denton, TX 76201 (the "Customer"). Redflex and the Customer are sometimes individually referred to herein as a "Party" and/or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, technologies, computer programs and citation processes related to the verification of delinquent civil penalties related to and/or associated with automatic photo red light citations, hereinafter the "Violation Verification Program" and/or the "Program"; and

WHEREAS, the Customer desires to engage the services of Redflex to provide certain Citation Verification Program services so that the Customer may identify and/or confirm automatic photo red light citation recipients who have unpaid, outstanding and/or delinquent civil penalties citations related thereto; 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 by providing the services pursuant to the terms and conditions 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 follow meanings as follows:

1.1. "Monthly Submitted Batch Files" means the computer batch files submitted to either the Customer and/or the Texas Department of Motor Vehicles each month consisting of any and all combinations of 1) "PROBE files" and/or 2) "FLAG files"; and/or 3) "CLEAR files".

1.2. "Verification System" and/or "Redflex System" means the Redflex proprietary methods, applications, technologies, systems, programs, equipment, machinery, and processes employed by Redflex in connection with the Violation Verification Program that indicate compliance with

the Verification Criteria and that confirms, compares and verifies, pursuant to the Customer's "Verification Criteria", whether the driver named in an outstanding and/or unpaid civil penalty related to and/or associated with automatic photo red light violation is the current owner of record of the automotive vehicle relevant thereto.

1.3 "Verification Criteria" means the standards and criteria determined solely by the Customer that are utilized and applied by Redflex in connection with the Verification System and include the following four (4) conditions:

Redflex shall only perform the services expressly stated in the below described Violation Verification Program to the extent and degree that:

- a) the unpaid civil penalty related to and/or associated an automatic photo red light violation is for a monetary amount of \$75.00 or more; and
- b) the unpaid civil penalty related to and/or associated an automatic photo red light violation is delinquent for a period of time of 91 days or more; and
- c) the driver named in a delinquent civil penalty related to and/or associated with automatic photo red light violation is currently domiciled in the State of Texas; and
- d) the driver named in an outstanding and/or unpaid civil penalty related to and/or associated an automatic photo red light violation matches the current owner of record of the automotive vehicle relevant thereto.

1.4. "PROBE files" means the computer files that are submitted to the Texas Department of Motor Vehicles in a format that is fully compliant with the "TxDMV file format" specifications of the Texas Department of Motor Vehicles.

1.5. "Registration Data" means the automotive vehicle registration data received from the Texas Department of Motor Vehicles relevant to the license plate data identified in the "PROBE files" that Redflex utilizes in order to confirm and verify that the driver/owner named in an outstanding and/or unpaid civil penalty related to and/or associated an automatic photo red light violation matches the current owner of record of the automotive vehicle relevant thereto.

1.6. "FLAG files" means computer files that have been submitted to the Texas Department of Motor Vehicles that comply with and satisfy the Verification Criteria and indicates that a driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation does match the current owner of record of the automotive vehicle relevant thereto.

1.7. "CLEAR files" means the computer files containing the list of citation recipients identified in FLAG files who have paid in full the delinquent civil penalty related to and/or associated with an automatic photo red light violation(s).

1.8 "Violation Verification Program" and/or the "Program" means any and all systems, methods, processes equipment, applications and back office processes of Redflex related to and/or associated the products and services contained in this Agreement including, but not

limited to the Monthly Submitted Batch Files, the Verification System, the Verification Criteria, the PROBE files, the FLAG files; and/or the CLEAR files.

1.9. "Confidential or Private Information" means, with respect to Redflex, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Redflex's business or methods of operation or concerning any of such Redflex's suppliers, licensors, licensees, customers or others with whom Redflex has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to Reflex, including but not limited to:

- i. 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 Redflex obtains or has obtained from its clients or customers, or at which Redflex sells or has sold its services; and
- ii. 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.
- iii. 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 a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.

1.10. "Intellectual Property" means, with respect to any Redflex, 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 Redflex.

1.11. "Proprietary Property" means, with respect to any Redflex, any written or tangible property owned or used by Redflex in connection with Redflex'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 Redflex, financial statements, budgets, projections and invoices.

1.12. "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 the Program 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.

1.13. "Registration Hold", "Flag" and/or "REGISTRATION DECISION" are interchangeable and synonymous and mean the determination and/or decision by the Texas Department of Motor Vehicles to refuse to register a motor vehicle in connection with the outstanding, unpaid and/or delinquent civil penalty related to and/or associated with an automatic photo red light violation in compliance with the herein described Verification Criteria and issued in accordance with the terms and conditions expressly set forth in the Agreement Between the Customer and Redflex Traffic Systems, Inc. for a Photo Red Light Enforcement Program (the Photo Red Light Enforcement Agreement") made on or about November 15th, 2005.

1.14. "Escrow Account" means the escrow account into which Redflex deposits monetary amounts payable to the Texas Department of Motor Vehicles. The monetary amounts payable to the Texas Department of Motor Vehicles by Redflex are as follows: 1) Twelve Cents (\$00.12) per individual computer file submitted by Redflex to the Texas Department of Motor Vehicles; and 2) Twenty Three Dollars and Six Cents (\$23.06) per each batch file submitted by Redflex to the Texas Department of Motor Vehicles.

2. **TERM.** Unless this Agreement is terminated earlier in accordance with the terms set forth in this Section, the term of a Service (the "*Initial Term*") shall commence on the Effective Date and continue for twelve (12) months thereafter. Following the Initial Term, this contract shall renew for automatic successive one year terms (each, a "*Renewal Term*"), not to exceed four (4) additional renewal terms until such time as Customer provides Service Provider with written notice of termination; provided, however, that: (1) such notice be given as stipulated in Section 9.1 or 9.2. "*Term*" shall collectively mean and include the Agreement terms represented by the Initial Term and the Renewal Term.

1st Renewal – 09/01/13 – 09/31/14

2nd Renewal – 09/01/14 – 09/31/15

3rd Renewal – 09/01/15 – 09/31/16

4th Renewal – 09/01/16 – 09/31/17

3. SERVICES. Redflex shall provide the Program to the Customer, in each case in accordance with the terms and provisions set forth in this Agreement and which include the following products and services:

3.1. Using data and information generated in accordance with the terms and conditions expressly set forth in the Agreement between the Customer and Redflex Traffic Systems, Inc. for a Photo Red Light Enforcement Program executed on or about August 21, 2007 (the Photo Red Light Enforcement Program Agreement”), Redflex shall implement the Program using the Verification System and applying the Verification Criteria so as to generate Monthly Submitted Batch Files containing PROBE files, FLAG files and/or CLEAR files as appropriate under the circumstances.

3.2. PROBE files shall be generated by Redflex in electronic and computerized form after applying and adhering to Verification Criteria 1.3 a), 1.3 b) and 1.3 c) and thereafter Redflex shall submit one or more electronic requests for certain Registration Data relevant thereto from the Texas Department of Motor Vehicle such that Redflex may apply and adhere to Verification Criteria 1.3. d). Customer agrees and acknowledges that Redflex shall be unable to comply with Verification Criteria 1.3. d). unless and until certain Registration Data is received from the Texas Department of Motor Vehicles.

3.3. After Redflex receives relevant Registration Data from the Texas Department of Motor Vehicles, Redflex shall generate FLAG files, as appropriate under the circumstances. Customer agrees and acknowledges that the files generated by Redflex in connection therewith are based upon the Verification Criteria set forth solely by the Customer.

3.4. FLAG files shall be generated and submitted by Redflex in an electronic and computerized format to the Texas Department of Motor Vehicles and in a format satisfactory to the Department of Motor Vehicles to the extent and degree that, after application of the Verification Criteria by Redflex, driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation does match the current owner of record of the automotive vehicle relevant thereto.

3.5. CLEAR files shall be generated and submitted in an electronic and computerized format by Redflex to the Customer and/or the Texas Department of Motor Vehicle to the extent and degree that driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation that pays in full the civil penalty relevant thereto.

3.6. Compensation. Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit B attached hereto.

3.7. Customer acknowledges, understands and agrees that the refusal to register a motor vehicle is a decision and determination made in the sole, absolute and unilateral discretion of the Texas Department of Motor Vehicles and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO REFUSE TO REGISTER A MOTOR VEHICLE SHALL BE THE

SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES AND SHALL BE MADE TEXAS DEPARTMENT OF MOTOR VEHICLE'S SOLE DISCRETION (A "REGISTRATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE, DETERMINE AND/OR ENFORCE A REGISTRATION DECISION.

4. 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 cost, if any (the "Change Order Proposal"). The 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. All Change Orders shall be in compliance with the provisions of Texas Local Government Code 252.048.

5. LICENSE; RESERVATION OF RIGHTS.

5.1. 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.

5.2. 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.

5.3 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.

5.4 INFRINGEMENT. The Customer shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any person, party, entity, company, business, corporation, partnership, association and the like 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, 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.

5.5 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.

6. UNAUTHORIZED REFERENCES TO REDFLEX. Unless required by applicable law, Customer shall not utilize, make use of and/or make any reference to Redflex, its name or likeness, its affiliated, parent or subsidiary companies or corporations, its logos, insignias, trademarks, trade names, brand, websites, property, assets, products or services, including, but not limited to, the Program, the Verification System, the Redflex System, the Verification Criteria, "SMARTcam™ System", "Salus™ System", "REDFLEXred™ System", "REDFLEXspeed™ System", "REDFLEXrail™ System", "REDFLEXstop™ System", "REDFLEXslimline™ System", "SMARTops™ System", "SMARTscene™ System"; "PLATESCAN™ System" and/or and any and all combinations, variants and derivatives thereof, in, on or about, Customer marketing, publicity, media, public relations, advertising, education or training materials, information, data, papers and/or documents, for any reason or purpose, whatsoever, without the prior written approval of Redflex which may be withheld, denied,

delayed, rejected and/or refused, by Redflex in its sole, absolute and unilateral discretion. A violation of this section shall not be deemed a material breach of this Agreement unless Customer receives a written notice of violation by Redflex, specifying the violation, and the Customer fails to prevent a violation of this section from occurring after the receipt of the notice.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Redflex Representations and Warranties.

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.

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.

7.2. Customer Representations and Warranties.

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.

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.

8. 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.

9. TERMINATION.

9.1 TERMINATION FOR CAUSE: Either party shall have the right to terminate this Agreement by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of the Program; (ii) the Supreme Court for the State of Texas rules that the Citations from the Program 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 or cure the cause for termination or breach within ten (10) 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 appropriate party setting forth in reasonable detail the events of the cause for termination or breach. Termination of this Agreement shall not be enforceable or effective unless the terminating party mails written notice of termination to the non-terminating party not less than forty-five (45) calendar days prior to the Agreement termination date and provides to the non-terminating party the opportunity to remedy or cure the cause of the termination or breach within the forty-five (45) calendar day time period provided herein.

9.2 **TERMINATION WITHOUT CAUSE:** Either party shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

10. **RIGHTS AND REMEDIES.** In connection with any breach and/or termination of this Agreement, Redflex shall have and hereby reserves, in full, all rights and remedies available in law and/or in equity. The rights to terminate this Agreement given in this Section 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.

11. **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:

- i. 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 Program, (ii) shall deliver within 30 days, 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. Immediately upon termination Redflex is no longer bound to the Data Retention Requirements for any data and if the customer wishes to obtain the data it must be conveyed at the time of termination. Redflex will transfer the data and relevant information to the city by a mutually agreed upon method. The

customer will assume the burden for all costs associated with this task including but not limited to administrative, storage media, storage media authoring devices, and internet bandwidth used for transferring data. Redflex will provide no tools for accessing this data or other guarantees.

- ii. The Customer shall (i) immediately cease using the 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.
- iii. Unless the Customer and Redflex have agreed to enter into a new agreement relating to the 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 Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement.

11.1 In addition to any and all other rights and remedies available and/or reserved herein, the Customer shall pay to Redflex a pro rata share of all monies or revenue generated, collected and/or received by Customer after the Agreement termination date that are, in any way, a result of, associated with and/or attributable to, in whole or in part, the products or services rendered to Customer by Redflex.

12. SURVIVAL. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: Reservation of Rights, Redflex Representations and Warranties, Customer Representations and Warranties, Limited Warranty, Confidentiality, Indemnification and Liability, Notices, Dispute Resolution, Assignment, Injunctive Relief, Specific Performance, Applicable Law, and Jurisdiction and Venue, and (ii) 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.

13. 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.

In all instances, both parties agree that the City of Denton is a local government entity subject to compliance with Texas Government Code 552, commonly known as the "Open Records Act". Both parties agree that records generated by a government entity, including those records held by the government entity's contractors may not be confidential, and subjected to open records requests for information. *Redflex* agrees to ensure that all records requested by the City of Denton shall be delivered to the City, to effectively comply with Texas statutory requirements.

14. General Indemnification by Redflex. Subject to Section entitled "Indemnification Procedures", Redflex hereby agrees to defend and indemnify, and hold the Customer and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "Customer Party" or "Indemnitee" and collectively, the "Customer Parties" or "Indemnitees") 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, fines, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees, costs, and incidental thereto) of whatever kind and nature (collectively, "Losses"), which may be suffered by or 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, obligation, or representation of Redflex contained in this Agreement, including, without limitation, Claims arising out of our relating to (b) the willful misconduct of Redflex, its employees 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), or violation of any law or regulation, except to the extent caused by the willful misconduct of any Customer Party.

14.1. Proprietary Rights Indemnification. Redflex agrees to indemnify, defend, and hold Indemnitees harmless from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by any Indemnitee, arising out of a claim that the Services infringes or misappropriates any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Service Provider is enjoined from delivering either preliminary or permanently, or continuing to license to Customer, the Services and such injunction is not dissolved within thirty (30) days, or in the event that Customer is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the use of the Services, then Service Provider shall, at its expense use commercially reasonable efforts to: (a) obtain for Customer the right to continue using such Services; or (b) replace or modify such Services so that it does not infringe upon or misappropriate such proprietary right and is free to be delivered to and used by Customer.

15. Indemnification by Customer. Subject to Section entitled "Indemnification Procedures", and to the extent allowed by law and without waving 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 affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them, 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.

16. 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.

17. LIMITED LIABILITY. Notwithstanding anything 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 special, incidental, indirect, lost profits, consequential or punitive damages however caused and on any theory of liability

arising out of or relating to this Agreement. In the event of any breach of this Agreement, however, the non-breaching party is entitled to recover expectation damages from the breaching party, which are defined as the amounts that non-breaching party would have received under the Agreement had the breaching party fully performed pursuant to the terms and conditions of 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.

18. **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:

i. Notices to Redflex:

Redflex Traffic Systems, Inc.
23751 North 23rd Avenue
Phoenix, AZ 85085
Attention: PROGRAM MANAGEMENT
Facsimile: (623) 207-2050

ii. Notices to the Customer:

City of Denton, TX
215 E. McKinney
Denton, TX 76201
Attention: George C. Campbell, City Manager
940-349-8200

19. **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.

20. 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.

20.1 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).

20.2 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.

20.3 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.

20.4 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.

20.5 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.

20.6 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.

20.7 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.

20.8 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.

20.9 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.

20.10 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.

20.11 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.

20.12 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.

20.13 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.

20.14 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.

20.15 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.

20.16 APPLICABLE LAW. This Agreement shall be governed only by and construed, in all respects, solely in accordance with the laws of the State of Texas and the United States.

20.17 JURISDICTION AND VENUE. Any or 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, Texas and both parties specifically agree to be bound by the jurisdiction and venue thereof.

20.18 PREVAILING PARTY. Intentionally deleted.

(The remainder of this page is left intentionally blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be executed by its duly authority City Manager, and Contractor has executed this Agreement through its duly authorized undersigned officer on this ____ day of _____, 20__.

CITY OF DENTON, TEXAS

GEORGE C. CAMPBELL, CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 

REFLEX TRAFFIC SYSTEMS, INC.,


Karen Finley
CEO

WITNESS:

BY: 

EXHIBIT "A"

Insurance

1. During the Term, Redflex shall procure and maintain at 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:
 - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, Two Million Dollars (\$2,000,000) Products-Completed Operations Aggregate and Two Million Dollars (\$2,000,000) General Aggregate;
 - Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned, non-owned and hired by Redflex;
 - 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 Two Million Dollars (\$2,000,000) each and every claim and in the Aggregate; and
 - Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of (insert name), and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
2. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
 - The Customer Parties shall be named as additional insured with respect to the Commercial General Liability insurance; and
 - 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 Customer Parties shall be in excess, and not in contribution to, such insurance; and
 - Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the Customer Parties, 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.
3. With respect to the insurance described in the foregoing Section of this Exhibit E, if any of the Redflex Parties are notified by any insurer that any insurance coverage will be cancelled, Redflex shall immediately provide 30 days 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.

4. 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 "B"

Compensation Payable to Redflex.

1. Customer shall pay to Redflex \$5 per each and every "Registration Hold", "FLAG" and/or "REGISTRATION DECISION" issued, determined, approved and/or rendered by the Texas Department of Motor Vehicles and/or agent and/or authorized representative thereof, in the initial batch file submitted.
2. Customer shall pay to Redflex \$10 per each and every "Registration Hold", "FLAG" and/or "REGISTRATION DECISION" issued, determined, approved and/or rendered by the Texas Department of Motor Vehicles and/or agent and/or authorized representative thereof, in each subsequent batch file submitted.
3. Invoicing for the service herein to be held for 90 days following the submission of the first batch file.

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE EXPENDITURE OF FUNDS FOR RED LIGHT CITATION VERIFICATION SERVICES FOR THE CITY OF DENTON AUTOMATED TRAFFIC SIGNAL ENFORCEMENT PROGRAM AVAILABLE FROM ONLY ONE SOURCE IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, EXEMPTING SUCH PURCHASES FROM REQUIREMENTS OF COMPETITIVE BIDS; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 4984-RED LIGHT CITATION COLLECTION CONTRACT AWARDED TO REDFLEX TRAFFIC SYSTEMS, INC., IN THE FIVE YEAR NOT TO EXCEED AMOUNT OF \$150,000).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including; items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the "File" listed hereon, and on file in the office of the Purchasing Agent, are hereby approved:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
4984	Redflex Traffic Systems, Inc.	\$150,000

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including, items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager is hereby authorized to execute any contracts relating to the items specified in Section 1 and the expenditure of funds pursuant to said contracts is hereby authorized.

SECTION 5. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under File 4984 to the City Manager of the City of Denton, Texas, or his designee.

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

PASSED AND APPROVED this the _____ day of _____, 2012.

MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY



BY: _____

3-ORD-File 4984

CITY OF DENTON CITY COUNCIL MINUTES
September 18, 2012

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, September 18, 2012 at 3:00 p.m. in the Council Work Session Room at City Hall.

PRESENT: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Burroughs, and Council Member Roden.

ABSENT: Mayor Pro Tem Kamp.

1. Citizen Comments on Consent Agenda Items

There were no citizen comments on Consent Agenda Items.

2. Requests for clarification of agenda items listed on the agenda for September 18, 2012.

Council Member Engelbrecht asked about Consent Agenda Item J and the terms of the one-year contract with four renewals. He asked if the City would be getting a report from the first year on how the firm was accomplishing its goals.

Scott Fletcher, Captain-Denton Police Department, stated that the company would provide such a report as needed.

Council Member Engelbrecht stated that an annual report would be good.

Mayor Burroughs asked if the number of red light cameras was changing.

Fletcher stated that the numbers were not changing.

Council Member Gregory asked about Item I and if there were going to be any other changes to the facility.

Jon Fortune, Assistant City Manager, stated that when the facility was built, it had a truck wash facility and a separate bay for a vehicle wash which was not built at that time. This was for that facility.

3. Receive a report, hold a discussion, and provide staff with direction regarding a proposed ordinance which imposes liens on non-homestead and non-rental properties for the collection of delinquent municipal utility bills.

Ethan Cox, Customer Service Manager, stated that Ordinance 2010-292 was designed to reduce uncollectible debt and introduced debt prevention measures. Those measures included credit screening, risk assessment, and deposit. Remaining challenges included impact of debts greater than \$1,000, drainage and merchandise debts and debts incurred prior to the implementation of the ordinance.

Collection Tactics - current tactics included the utilization of a collection agency with a 21% recovery rate and 22% of the debt collected was paid to the agency. Proposed additional tactics included filing suit on debts exceeding \$5000 and imposing liens of debts exceeding \$1000.

4. CONSENT AGENDA

Council Member Gregory motioned, Council Member Engelbrecht seconded to approve the Consent Agenda and accompanying ordinances and resolutions with a replacement ordinance for Item A and a substitute resolution for Item N. On roll call vote, Council Member King "aye", Council Member Watts "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", and Mayor Burroughs "aye". Motion carried unanimously.

Ordinance 2012-234

- A. Consider adoption of an ordinance of the City of Denton, Texas authorizing the City Manager or his designee to execute a Contract of Sale (herein so called) between the City of Denton, as Buyer and G. Brad Grant, Becky J. Grant, and Charles A. Grant, Jr., collectively, as Seller, contemplating the sale and purchase of an approximate 26.464 acre tract of land, being located in the M.E.P. & P.R.R. Company Survey, Abstract Number 927, City and County of Denton, Texas, ("Real Property"), for a purchase price of Two Million and No/100 Dollars (\$2,000,000.00); authorizing the City Manager, or his designee, to execute and deliver the Contract of Sale, and all other documents necessary to accomplish closing of the transaction contemplated by the Contract of Sale; authorizing the expenditure of funds therefore; and providing an effective date. The Public Utilities Board recommends approval (5-0).

Ordinance No. 2012-235

- B. Consider adoption of an ordinance authorizing the City Manager, or his designee, to execute on behalf of the City of Denton a fifth Amendment to an Airport Lease Agreement approved by Ordinance 2009-018 dated January 6, 2009 and amended by Ordinance 2009-323 dated December 15, 2009 and amended by Ordinance 2010-193 dated August 7, 2010 and amended by Ordinance 2012-056 dated March 6, 2012 and amended by Ordinance 2012-057 dated March 6, 2012 between the City of Denton, Texas and Sykes-Vaughn Investments, LLC, which includes among other provisions the right to sell aviation fuel to the public for a fuel flowage fee and to provide commercial hanger and tie-down service at the Denton Municipal Airport for real property located at 4600 Taxilane "H"; and, providing an effective date. The Council Airport Committee recommends approval (3-0).

Ordinance No. 2012-236

- C. Consider adoption of an ordinance authorizing the City Manager, or his designee, to execute on behalf of the City of Denton a Commercial Operator Lease Agreement between the City of Denton, Texas and HTA Aviation for approximately 26,055 square feet of land located at 4910 Lockheed Lane at the Denton Airport; and, providing an effective date. The Council Airport Committee recommends approval (3-0).

Ordinance No. 2012-237

- D. Consider the adoption of an ordinance of the City of Denton, Texas, approving a Fourth Amendment to an Economic Development Program Grant Agreement dated

Ordinance No. 2012-242

- I. Consider adoption of an ordinance accepting sealed proposals and awarding a Public Works Contract for the Installation of a Belanger Condor Vehicle Wash System at the City of Denton's Vehicle Wash Facility; providing for the expenditure of funds therefor; and providing an effective date (RFP 4837-awarded to Pro Tech Service Company, L.L.C. in the amount of \$86,590.04). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2012-243

- J. Consider adoption of an ordinance approving the expenditure of funds for Red Light Citation Verification Services for the City of Denton Automated Traffic Signal Enforcement program available from only one source in accordance with Texas Local Government Code 252.022, exempting such purchases from requirements of competitive bids; providing for the expenditure of funds therefor; and providing an effective date (File 4984-Red Light Citation Collection Contract awarded to Redflex Traffic Systems, Inc., in the five year not to exceed amount of \$150,000).

Ordinance No. 2012-244

- K. Consider adoption of an ordinance accepting competitive proposals and awarding a Two Year Contract for Administrative Services Only (ASO) for Medical and Pharmacy Benefits and Employee Assistance Program (EAP) for the City of Denton; providing for the expenditure of funds therefor; and providing an effective date (RFP 4956-Administrative Services Only (ASO) for Medical and Pharmacy Benefits and Employee Assistance Program (EAP) awarded to United Healthcare Services, Inc. in the annual estimated amount of \$601,779.36 for ASO and \$27,074.40 for the EAP for a total annual estimated amount of \$628,853.76 and for a two year estimated expenditure of \$1,257,707.52).

Ordinance No. 2012-245

- L. Consider adoption of an ordinance of the City Council of the City of Denton, Texas authorizing the City Manager to execute a License Agreement by and between the City of Denton, Texas, as Licensee and Electric Transportation Engineering Corporation d/b/a/ ECOTality North America, a Corporation, as Licensor, for Electric Vehicle Supply Equipment and Software for the ECOTality Project for Electric Vehicle Refueling Stations; approving the expenditure of funds therefore; and providing an effective date. (DME)

Ordinance No. 2012-246

- M. Consider adoption of an ordinance approving the "National Highway System (NHS) program project agreement for state-contracted traffic signal construction (with municipality providing limited materials or labor)" regarding the City's participation in the procurement and installation of traffic signals on roadways within the city limits of the City of Denton, Texas by and between the City of Denton, Texas and the State of Texas, acting by and through its agency, the Texas Department of Transportation; providing the City Manager with authority to carry out the rights and duties of the city regarding said agreement; and providing an effective date.

ORDINANCE NO. 2012-243

AN ORDINANCE APPROVING THE EXPENDITURE OF FUNDS FOR RED LIGHT CITATION VERIFICATION SERVICES FOR THE CITY OF DENTON AUTOMATED TRAFFIC SIGNAL ENFORCEMENT PROGRAM AVAILABLE FROM ONLY ONE SOURCE IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, EXEMPTING SUCH PURCHASES FROM REQUIREMENTS OF COMPETITIVE BIDS; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 4984-RED LIGHT CITATION COLLECTION CONTRACT AWARDED TO REDFLEX TRAFFIC SYSTEMS, INC., IN THE FIVE YEAR NOT TO EXCEED AMOUNT OF \$150,000).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including; items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the "File" listed hereon, and on file in the office of the Purchasing Agent, are hereby approved:

<u>FILE</u> <u>NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
4984	Redflex Traffic Systems, Inc.	\$150,000

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including, items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids.


SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager is hereby authorized to execute any contracts relating to the items specified in Section 1 and the expenditure of funds pursuant to said contracts is hereby authorized.

SECTION 5. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under File 4984 to the City Manager of the City of Denton, Texas, or his designee.

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


PASSED AND APPROVED this the 10th day of September, 2012.


MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 
3-ORD-File 4984

**STANDARD FORM CITATION VERIFICATION SERVICES
PROGRAM AGREEMENT
BETWEEN
THE CITY OF DENTON, TX
AND
REDFLEX TRAFFIC SYSTEMS, INC.**

This Agreement (this "Agreement") is made as of this 19th day of Sept. 2012 by and between Redflex Traffic Systems, Inc., a Delaware Corporation, with offices located at 23751 N. 23rd Avenue, Phoenix, Arizona 85085 ("Redflex") and The City of Denton, a municipal corporation, with offices at 215 E. McKinney, Denton, TX 76201 (the "Customer"). Redflex and the Customer are sometimes individually referred to herein as a "Party" and/or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, technologies, computer programs and citation processes related to the verification of delinquent civil penalties related to and/or associated with automatic photo red light citations, hereinafter the "Violation Verification Program" and/or the "Program"; and

WHEREAS, the Customer desires to engage the services of Redflex to provide certain Citation Verification Program services so that the Customer may identify and/or confirm automatic photo red light citation recipients who have unpaid, outstanding and/or delinquent civil penalties citations related thereto; 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 by providing the services pursuant to the terms and conditions 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 follow meanings as follows:

1.1. "Monthly Submitted Batch Files" means the computer batch files submitted to either the Customer and/or the Texas Department of Motor Vehicles each month consisting of any and all combinations of 1) "PROBE files" and/or 2) "FLAG files"; and/or 3) "CLEAR files".

1.2. "Verification System" and/or "Redflex System" means the Redflex proprietary methods, applications, technologies, systems, programs, equipment, machinery, and processes employed by Redflex in connection with the Violation Verification Program that indicate compliance with

the Verification Criteria and that confirms, compares and verifies, pursuant to the Customer's "Verification Criteria", whether the driver named in an outstanding and/or unpaid civil penalty related to and/or associated with automatic photo red light violation is the current owner of record of the automotive vehicle relevant thereto.

1.3 "Verification Criteria" means the standards and criteria determined solely by the Customer that are utilized and applied by Redflex in connection with the Verification System and include the following four (4) conditions:

Redflex shall only perform the services expressly stated in the below described Violation Verification Program to the extent and degree that:

- a) the unpaid civil penalty related to and/or associated an automatic photo red light violation is for a monetary amount of \$75.00 or more; and
- b) the unpaid civil penalty related to and/or associated an automatic photo red light violation is delinquent for a period of time of 91 days or more; and
- c) the driver named in a delinquent civil penalty related to and/or associated with automatic photo red light violation is currently domiciled in the State of Texas; and
- d) the driver named in an outstanding and/or unpaid civil penalty related to and/or associated an automatic photo red light violation matches the current owner of record of the automotive vehicle relevant thereto.

1.4. "PROBE files" means the computer files that are submitted to the Texas Department of Motor Vehicles in a format that is fully compliant with the "TxDMV file format" specifications of the Texas Department of Motor Vehicles.

1.5. "Registration Data" means the automotive vehicle registration data received from the Texas Department of Motor Vehicles relevant to the license plate data identified in the "PROBE files" that Redflex utilizes in order to confirm and verify that the driver/owner named in an outstanding and/or unpaid civil penalty related to and/or associated an automatic photo red light violation matches the current owner of record of the automotive vehicle relevant thereto.

1.6. "FLAG files" means computer files that have been submitted to the Texas Department of Motor Vehicles that comply with and satisfy the Verification Criteria and indicates that a driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation does match the current owner of record of the automotive vehicle relevant thereto.

1.7. "CLEAR files" means the computer files containing the list of citation recipients identified in FLAG files who have paid in full the delinquent civil penalty related to and/or associated with an automatic photo red light violation(s).

1.8 "Violation Verification Program" and/or the "Program" means any and all systems, methods, processes equipment, applications and back office processes of Redflex related to and/or associated the products and services contained in this Agreement including, but not

limited to the Monthly Submitted Batch Files, the Verification System, the Verification Criteria, the PROBE files, the FLAG files; and/or the CLEAR files.

1.9. "Confidential or Private Information" means, with respect to Redflex, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Redflex's business or methods of operation or concerning any of such Redflex's suppliers, licensors, licensees, customers or others with whom Redflex has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to Reflex, including but not limited to:

- i. 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 Redflex obtains or has obtained from its clients or customers, or at which Redflex sells or has sold its services; and
- ii. 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.
- iii. 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 a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.

1.10. "Intellectual Property" means, with respect to any Redflex, 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 Redflex.

1.11. "Proprietary Property" means, with respect to any Redflex, any written or tangible property owned or used by Redflex in connection with Redflex'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 Redflex, financial statements, budgets, projections and invoices.

1.12. "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 the Program 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.

1.13. "Registration Hold", "Flag" and/or "REGISTRATION DECISION" are interchangeable and synonymous and mean the determination and/or decision by the Texas Department of Motor Vehicles to refuse to register a motor vehicle in connection with the outstanding, unpaid and/or delinquent civil penalty related to and/or associated with an automatic photo red light violation in compliance with the herein described Verification Criteria and issued in accordance with the terms and conditions expressly set forth in the Agreement Between the Customer and Redflex Traffic Systems, Inc. for a Photo Red Light Enforcement Program (the Photo Red Light Enforcement Agreement") made on or about November 15th, 2005.

1.14. "Escrow Account" means the escrow account into which Redflex deposits monetary amounts payable to the Texas Department of Motor Vehicles. The monetary amounts payable to the Texas Department of Motor Vehicles by Redflex are as follows: 1) Twelve Cents (\$00.12) per individual computer file submitted by Redflex to the Texas Department of Motor Vehicles; and 2) Twenty Three Dollars and Six Cents (\$23.06) per each batch file submitted by Redflex to the Texas Department of Motor Vehicles.

2. **TERM.** Unless this Agreement is terminated earlier in accordance with the terms set forth in this Section, the term of a Service (the "***Initial Term***") shall commence on the Effective Date and continue for twelve (12) months thereafter. Following the Initial Term, this contract shall renew for automatic successive one year terms (each, a "***Renewal Term***"), not to exceed four (4) additional renewal terms until such time as Customer provides Service Provider with written notice of termination; provided, however, that: (1) such notice be given as stipulated in Section 9.1 or 9.2. "***Term***" shall collectively mean and include the Agreement terms represented by the Initial Term and the Renewal Term.

1st Renewal – 09/01/13 – 09/31/14

2nd Renewal – 09/01/14 – 09/31/15

3rd Renewal – 09/01/15 – 09/31/16

4th Renewal – 09/01/16 – 09/31/17

3. SERVICES. Redflex shall provide the Program to the Customer, in each case in accordance with the terms and provisions set forth in this Agreement and which include the following products and services:

3.1. Using data and information generated in accordance with the terms and conditions expressly set forth in the Agreement between the Customer and Redflex Traffic Systems, Inc. for a Photo Red Light Enforcement Program executed on or about August 21, 2007 (the Photo Red Light Enforcement Program Agreement"), Redflex shall implement the Program using the Verification System and applying the Verification Criteria so as to generate Monthly Submitted Batch Files containing PROBE files, FLAG files and/or CLEAR files as appropriate under the circumstances.

3.2. PROBE files shall be generated by Redflex in electronic and computerized form after applying and adhering to Verification Criteria 1.3 a), 1.3 b) and 1.3 c) and thereafter Redflex shall submit one or more electronic requests for certain Registration Data relevant thereto from the Texas Department of Motor Vehicle such that Redflex may apply and adhere to Verification Criteria 1.3. d). Customer agrees and acknowledges that Redflex shall be unable to comply with Verification Criteria 1.3. d). unless and until certain Registration Data is received from the Texas Department of Motor Vehicles.

3.3. After Redflex receives relevant Registration Data from the Texas Department of Motor Vehicles, Redflex shall generate FLAG files, as appropriate under the circumstances. Customer agrees and acknowledges that the files generated by Redflex in connection therewith are based upon the Verification Criteria set forth solely by the Customer.

3.4. FLAG files shall be generated and submitted by Redflex in an electronic and computerized format to the Texas Department of Motor Vehicles and in a format satisfactory to the Department of Motor Vehicles to the extent and degree that, after application of the Verification Criteria by Redflex, driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation does match the current owner of record of the automotive vehicle relevant thereto.

3.5. CLEAR files shall be generated and submitted in an electronic and computerized format by Redflex to the Customer and/or the Texas Department of Motor Vehicle to the extent and degree that driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation that pays in full the civil penalty relevant thereto.

3.6. Compensation. Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit B attached hereto.

3.7. Customer acknowledges, understands and agrees that the refusal to register a motor vehicle is a decision and determination made in the sole, absolute and unilateral discretion of the Texas Department of Motor Vehicles and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO REFUSE TO REGISTER A MOTOR VEHICLE SHALL BE THE

SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES AND SHALL BE MADE TEXAS DEPARTMENT OF MOTOR VEHICLE'S SOLE DISCRETION (A "REGISTRATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE, DETERMINE AND/OR ENFORCE A REGISTRATION DECISION.

4. 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 cost, if any (the "Change Order Proposal"). The 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. All Change Orders shall be in compliance with the provisions of Texas Local Government Code 252.048.

5. LICENSE; RESERVATION OF RIGHTS.

5.1. 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.

5.2. 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.

5.3 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.

5.4 INFRINGEMENT. The Customer shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any person, party, entity, company, business, corporation, partnership, association and the like 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, 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.

5.5 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.

6. UNAUTHORIZED REFERENCES TO REDFLEX. Unless required by applicable law, Customer shall not utilize, make use of and/or make any reference to Redflex, its name or likeness, its affiliated, parent or subsidiary companies or corporations, its logos, insignias, trademarks, trade names, brand, websites, property, assets, products or services, including, but not limited to, the Program, the Verification System, the Redflex System, the Verification Criteria, "SMARTcam™ System", "Salus™ System", "REDFLEXred™ System", "REDFLEXspeed™ System", "REDFLEXrail™ System", "REDFLEXstop™ System", "REDFLEXslimline™ System", "SMARTops™ System", "SMARTscene™ System"; "PLATESCAN™ System" and/or and any and all combinations, variants and derivatives thereof, in, on or about, Customer marketing, publicity, media, public relations, advertising, education or training materials, information, data, papers and/or documents, for any reason or purpose, whatsoever, without the prior written approval of Redflex which may be withheld, denied,

delayed, rejected and/or refused, by Redflex in its sole, absolute and unilateral discretion. A violation of this section shall not be deemed a material breach of this Agreement unless Customer receives a written notice of violation by Redflex, specifying the violation, and the Customer fails to prevent a violation of this section from occurring after the receipt of the notice.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Redflex Representations and Warranties.

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.

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.

7.2. Customer Representations and Warranties.

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.

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.

8. 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.

9. TERMINATION.

9.1 TERMINATION FOR CAUSE: Either party shall have the right to terminate this Agreement by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of the Program; (ii) the Supreme Court for the State of Texas rules that the Citations from the Program 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 or cure the cause for termination or breach within ten (10) 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 appropriate party setting forth in reasonable detail the events of the cause for termination or breach. Termination of this Agreement shall not be enforceable or effective unless the terminating party mails written notice of termination to the non-terminating party not less than forty-five (45) calendar days prior to the Agreement termination date and provides to the non-terminating party the opportunity to remedy or cure the cause of the termination or breach within the forty-five (45) calendar day time period provided herein.

9.2 **TERMINATION WITHOUT CAUSE:** Either party shall have the right to terminate the Contract, in whole or in part, without cause any time upon **thirty (30) calendar days' prior written notice**. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

10. **RIGHTS AND REMEDIES.** In connection with any breach and/or termination of this Agreement, Redflex shall have and hereby reserves, in full, all rights and remedies available in law and/or in equity. The rights to terminate this Agreement given in this Section 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.

11. **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:

- i. 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 Program, (ii) shall deliver within 30 days, 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. Immediately upon termination Redflex is no longer bound to the Data Retention Requirements for any data and if the customer wishes to obtain the data it must be conveyed at the time of termination. Redflex will transfer the data and relevant information to the city by a mutually agreed upon method. The

customer will assume the burden for all costs associated with this task including but not limited to administrative, storage media, storage media authoring devices, and internet bandwidth used for transferring data. Redflex will provide no tools for accessing this data or other guarantees.

- ii. The Customer shall (i) immediately cease using the 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.
- iii. Unless the Customer and Redflex have agreed to enter into a new agreement relating to the 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 Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement.

11.1 In addition to any and all other rights and remedies available and/or reserved herein, the Customer shall pay to Redflex a pro rata share of all monies or revenue generated, collected and/or received by Customer after the Agreement termination date that are, in any way, a result of, associated with and/or attributable to, in whole or in part, the products or services rendered to Customer by Redflex.

12. SURVIVAL. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: Reservation of Rights, Redflex Representations and Warranties, Customer Representations and Warranties, Limited Warranty, Confidentiality, Indemnification and Liability, Notices, Dispute Resolution, Assignment, Injunctive Relief, Specific Performance, Applicable Law, and Jurisdiction and Venue, and (ii) 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.

13. 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.

In all instances, both parties agree that the City of Denton is a local government entity subject to compliance with Texas Government Code 552, commonly known as the "Open Records Act". Both parties agree that records generated by a government entity, including those records held by the government entity's contractors may not be confidential, and subjected to open records requests for information. *Redflex* agrees to ensure that all records requested by the City of Denton shall be delivered to the City, to effectively comply with Texas statutory requirements.

14. General Indemnification by Redflex. Subject to Section entitled "Indemnification Procedures", Redflex hereby agrees to defend and indemnify, and hold the Customer and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "Customer Party" or "Indemnitee" and collectively, the "Customer Parties" or "Indemnitees") 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, fines, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees, costs, and incidental thereto) of whatever kind and nature (collectively, "Losses"), which may be suffered by or 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, obligation, or representation of Redflex contained in this Agreement, including, without limitation, Claims arising out of our relating to (b) the willful misconduct of Redflex, its employees 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), or violation of any law or regulation, except to the extent caused by the willful misconduct of any Customer Party.

14.1. Proprietary Rights Indemnification. Redflex agrees to indemnify, defend, and hold Indemnitees harmless from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by any Indemnitee, arising out of a claim that the Services infringes or misappropriates any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Service Provider is enjoined from delivering either preliminary or permanently, or continuing to license to Customer, the Services and such injunction is not dissolved within thirty (30) days, or in the event that Customer is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the use of the Services, then Service Provider shall, at its expense use commercially reasonable efforts to: (a) obtain for Customer the right to continue using such Services; or (b) replace or modify such Services so that it does not infringe upon or misappropriate such proprietary right and is free to be delivered to and used by Customer.

15. Indemnification by Customer. Subject to Section entitled "Indemnification Procedures", 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 affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them, 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.

16. 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.

17. LIMITED LIABILITY. Notwithstanding anything 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 special, incidental, indirect, lost profits, consequential or punitive damages however caused and on any theory of liability

arising out of or relating to this Agreement. In the event of any breach of this Agreement, however, the non-breaching party is entitled to recover expectation damages from the breaching party, which are defined as the amounts that non-breaching party would have received under the Agreement had the breaching party fully performed pursuant to the terms and conditions of 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.

18. **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:

i. Notices to Redflex:

Redflex Traffic Systems, Inc.
23751 North 23rd Avenue
Phoenix, AZ 85085
Attention: PROGRAM MANAGEMENT
Facsimile: (623) 207-2050

ii. Notices to the Customer:

City of Denton, TX
215 E. McKinney
Denton, TX 76201

Attention: George C. Campbell, City Manager
940-349-8200

19. **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.

20. 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.

20.1 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).

20.2 AUDIT RIGHTS. Each of parties hereto shall have the right 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.

20.3 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.

20.4 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.

20.5 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.

20.6 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.

20.7 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.

20.8 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.

20.9 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.

20.10 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.

20.11 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.

20.12 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.

20.13 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.

20.14 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.

20.15 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.

20.16 APPLICABLE LAW. This Agreement shall be governed only by and construed, in all respects, solely in accordance with the laws of the State of Texas and the United States.


20.17 JURISDICTION AND VENUE. Any or 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, Texas and both parties specifically agree to be bound by the jurisdiction and venue thereof.

20.18 PREVAILING PARTY. Intentionally deleted.

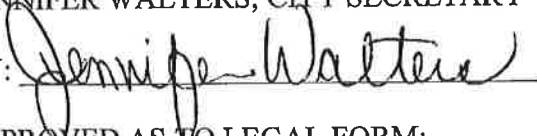
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be executed by its duly authority City Manager, and Contractor has executed this Agreement through its duly authorized undersigned officer on this 10th day of September, 2012.

CITY OF DENTON, TEXAS


GEORGE C. CAMPBELL, CITY MANAGER

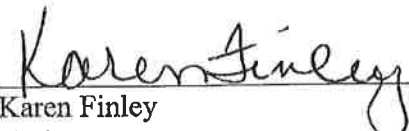
ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 

REFLEX TRAFFIC SYSTEMS, INC.,


Karen Finley
CEO

WITNESS:

BY: 

EXHIBIT "A"

Insurance

1. During the Term, Redflex shall procure and maintain at 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:
 - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, Two Million Dollars (\$2,000,000) Products-Completed Operations Aggregate and Two Million Dollars (\$2,000,000) General Aggregate;
 - Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned, non-owned and hired by Redflex;
 - 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 Two Million Dollars (\$2,000,000) each and every claim and in the Aggregate; and
 - Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of (insert name), and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
2. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
 - The Customer Parties shall be named as additional insured with respect to the Commercial General Liability insurance; and
 - 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 Customer Parties shall be in excess, and not in contribution to, such insurance; and
 - Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the Customer Parties, 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.
3. With respect to the insurance described in the foregoing Section of this Exhibit E, if any of the Redflex Parties are notified by any insurer that any insurance coverage will be cancelled, Redflex shall immediately provide 30 days 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 advance 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.

4. 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 "B"

Compensation Payable to Redflex.

1. Customer shall pay to Redflex \$5 per each and every "Registration Hold", "FLAG" and/or "REGISTRATION DECISION" issued, determined, approved and/or rendered by the Texas Department of Motor Vehicles and/or agent and/or authorized representative thereof, in the initial batch file submitted.
2. Customer shall pay to Redflex \$10 per each and every "Registration Hold", "FLAG" and/or "REGISTRATION DECISION" issued, determined, approved and/or rendered by the Texas Department of Motor Vehicles and/or agent and/or authorized representative thereof, in each subsequent batch file submitted.
3. Invoicing for the service herein to be held for 90 days following the submission of the first batch file.