

expires 4-30-05

CITY OF MESA
MESA, ARIZONA

CAMERA/RADAR ENFORCEMENT AGREEMENT

This Agreement is made and entered into by and between LOCKHEED MARTIN IMS, hereinafter designated "Contractor", and the CITY OF MESA, ARIZONA, hereafter designated "City".

WHEREAS, the City requested proposals for camera/radar enforcement program services and as more fully set forth in the City's Request for Proposal No. 98111, General Terms and Conditions, and Specifications, including all modifications and addenda thereto authorized by the City (the "Request for Proposal"); and

WHEREAS, Contractor submitted on May 19, 1999 a completed Proposal Form and Questionnaire (the "Proposal") in response to the Request for Proposal; and

WHEREAS, the City accepted the Contractor's Proposal, subject to this Agreement; and

WHEREAS, the parties now desire to enter into this Agreement whereby the City will receive camera/radar enforcement program services as specified from the Contractor, and the Contractor will provide such service in a timely and acceptable manner to the City;

NOW, THEREFORE, in consideration of the mutual covenants between the parties, it is agreed as follows:

1. SCOPE OF SERVICES

- a) The Contractor shall furnish any and all material(s), labor, transportation, equipment installation, system service and support, maintenance, complete citation processing, documentation and expert witness testimony for contested citations, and all other services required to faithfully perform and provide, complete camera/radar enforcement services as required at designated work sites for and to the satisfaction of the City, under the direction and supervision of the Contract Administrators, and pursuant to and in conformity with the Request for Proposal, including any modifications or addenda thereto authorized by the City, the Proposal, and this Agreement.
- b) Contractor shall provide reasonable and necessary training in the operation of the mobile speed cameras/radar units and the red light camera system to the City's personnel. Training shall be conducted within the City of Mesa at a site that is convenient for City personnel. Contractor will train fifteen (15) operators during the initial training phase and train one (1) officer per year throughout the contract term at the Contractor's expense. If City requests training of additional personnel, said training will be at City's expense.

Mesa Police Department
 Public Records Request
 Released To: _____
 Date: 7/30/04 By: 95382

2. INCORPORATION OF OTHER DOCUMENTS

- a) In case of any conflict or inconsistency among the Contract Documents, those documents will control and govern in this order: first, this Agreement; second, the Proposal; and, third, the Request for Proposal. The Request for Proposal, the Proposal, and Certificate(s) of Insurance are incorporated herein by reference as if each of the terms therein were set forth fully in this Agreement.

3. INDEMNIFICATION BY THE CITY

- a) City agrees to indemnify, hold harmless and defend Contractor, its officers, employees and agents against all losses, claims, actions, judgments and all liability for injury to person, including wrongful death, damage to property or both, occurring during or in consequence of the performance of this Agreement where such injury or damage is caused by the negligence of the City, its employees, or agents while operating the Contractor's equipment.

4. INDEMNIFICATION BY CONTRACTOR

- a) The Contractor agrees to indemnify, defend and hold harmless the City and its officers, employees and agents against any and all threatened or pending claims, actions, losses and damages of any kind resulting from its performance of this Agreement, including all costs and expenses, and reasonable attorneys fees arising out of or in connection with:
 - (i) Contractor's failure to maintain any of the equipment necessary for the photo red light/radar enforcement program; or,
 - (ii) As a result of the negligent or willful misconduct of the Contractor, its employees, servants and agents.

5. RED LIGHT CAMERA SYSTEMS INSTALLATION AND RELOCATION

- a) Contractor will perform studies on 65 intersection approaches for camera feasibility at no cost to the City. For each intersection approach over the 65, the City will pay \$2,500 per study to Contractor. The minimum threshold to determine appropriateness of enforcement at any proposed enforcement site shall be at least 18 original qualified violations per day.
- b) Contractor agrees that the intersection approaches to be enforced shall be equipped with camera systems capable of front and rear photographs of violators. Each site proposed by the City shall be subject to violation data collection by Contractor, the results of which will be provided to the City for its review. Such review shall be conducted prior to any final decision regarding construction.

- c) Should any proposed site drop below the original 18 qualified violations per day for 90 consecutive days, the City has the option of:
 - (i) Directing that camera remain at the intersection for the purpose of capturing statistical data of violations (dummy camera); or,
 - (ii) Directing the Contractor to proceed with enforcement at such location or have enforcement relocated to another intersection.
- d) If the City determines that a camera will remain at an intersection where the average violations have fallen below the original 18 violations per day, starting on the 91st day, the City will pay the Contractor \$2,500 per month for each such intersection until the average minimum of 18 violations per day is met.
- e) If the City directs the Contractor to proceed with enforcement at another location, the costs of installation and relocation will be determined as follows:
 - (i) If enforcement is relocated to a qualified intersection with an existing camera housing, the City shall bear no costs and all costs of relocation and installation to such intersection will be borne by Contractor.
 - (ii) If enforcement is relocated to a qualified intersection without an existing camera housing within eighteen months of the effective date of the contract, the Contractor shall pay the costs associated with relocation and installation
 - (iii) If enforcement is relocated to an intersection where no studies have been completed and no housing for the red light camera exists, the City shall pay the cost of the study, not to exceed \$2,500 per intersection. If the intersection meets the criteria of 18 original average violations per day and such relocation takes place within eighteen months of the effective date of the contract, then Contractor shall pay for the costs of relocating and installing the cameras.
 - (iv) If the City directs the Contractor to relocate enforcement to a non-qualified intersection, City will pay Contractor its direct costs of installation plus eighteen percent overhead.

6. VEHICLES TO BE PROVIDED

- a) Contractor agrees to provide five new Astro Van vehicles or their equivalent and an equal number of photo radar systems at the annual lease cost of one dollar (\$1.00) per year per vehicle. The City shall apply

official markings and equip said vehicles and operate each for a minimum of 120 hours per calendar month averaged over a three (3) month period. If the City is not operating the vehicles for a minimum 120 hours per calendar month, the parties agree to meet and confer and if necessary renegotiate this provision.

7. COMPENSATION FORMULA

Contractor and City agree that for each year, the contract processing fee will be as follows:

- | <u>Citations Paid Within Annual Tier:</u> | | <u>Fee per Citation Paid:</u> |
|---|-----------------------|-------------------------------|
| Tier I | 1 through 20,000 | \$48.50 |
| Tier II | 20,001 through 40,000 | \$39.00 |
| Tier III | More than 40,000 | \$21.00 |
- b) The City of Mesa shall only be billed for those violations collected by the Mesa City Court which result in payments equal to or greater than \$50.00 per citation being collected and stemming from complaints filed from the photo enforcement program.
- c) The effective date of the contract shall be at the completion of phase 1. Contractor shall exercise due diligence to meet the mutually agreed schedule as set forth in Exhibit A, attached hereto and incorporated by reference.

8. EFFECTIVE DATE OF COMPENSATION

- a) Citations with a date of violation on or after the effective date of this contract will be compensated as set forth in paragraph 7(a).

9. SERVICE OF PROCESS

- a) Contractor agrees that the summons and complaints sent to violators shall be sent in accordance with Arizona Rules of Civil Procedure, Rule 4, specifically Rule 4.1(c)(1) and (2).
- b) Contractor shall bear all costs of first class mailing of summons and complaints, printing, mailing and other associated costs and expenses required to manage a professional processing center.
- c) All complaints must be electronically filed with the Mesa City Court within seven (7) calendar days after the event having been photographed.

10. **SUBMISSION OF INVOICE AND PAYMENT TO CONTRACTOR**

- a) City shall pay the Contractor within 30 days of satisfactory receipt of a properly documented invoice. Invoices shall be submitted on a monthly basis and only when sanctions have been paid in full by a violator.

11. **REDUCTION OF GOVERNMENTAL ASSESSMENTS**

- a) In the event Contractor identifies a method by which to lawfully reduce the assessment of any State of Arizona MVD access fees, the City will, in its discretion, cooperate in obtaining such fee waiver on behalf of the Contractor.

12. **LENGTH OF AGREEMENT**

- a) This Contract is valid for a period of three (3) years from the date specified in Paragraph 8, and may be renewed for two (2) years by approval of the Mesa City Council and Contractor.

13. **INDEPENDENT CONTRACTOR**

- a) Nothing contained in this Agreement shall create any partnership, joint venture, association, or other arrangement between or among the parties. Each party shall at all times be an independent operator and shall not at any time purport to act as an agent of any other party, or any of its officers or agents.

14. **ARIZONA LAW GOVERNS**

- a) This Agreement shall be governed by the laws of Arizona and venue for any legal action brought under this Agreement shall be in Maricopa County, Arizona.

15. **WAIVER**

- a) The parties agree that no waiver of any default or breach of any of the terms or conditions of this Agreement shall be construed to be a waiver of any succeeding breach or default.

16. **ASSIGNMENT**

- a) This Agreement shall not be assigned, in whole or part, without the prior written consent of the other party, made in its sole discretion. Provided that, such consent shall not be unreasonably withheld if assignment is for the purpose of corporate restructuring.

17. **CANCELLATION**

- a) This Agreement may be canceled pursuant to A.R.S. § 38-511, or if any provision of this Agreement is for any reason rendered unenforceable or inapplicable by virtue of a change in the law existing upon date of execution and such change in law renders the provisions materially unenforceable, this entire Agreement shall be deemed null and void and unenforceable against the parties hereto.

18. **AUTHORITY TO EXECUTE AGREEMENT**

- a) The individuals executing this Agreement on behalf of or as representative for a corporation or other person, firm, partnership or entity represent and warrant that he/she is duly authorized to execute and deliver this Agreement on behalf of said corporation, person, firm, partnership or other entity and that this Agreement is binding upon said entity in accordance with its terms.

19. **CONTRACT DOCUMENTS**

- a) This Agreement, Proposal, And Request For Proposal, including attached documents, constitutes the entire agreement between the parties pertaining to camera/radar program services, and this Agreement shall not be changed or added to except in writing signed by both parties. All prior and contemporaneous agreements, representations, and understandings of the parties, oral or written, pertaining to the subject matter hereof, are hereby superseded and merged herein.

20. **LEGAL REMEDIES**

- a) In the event of any violation or threatened violation by any party to this Agreement of any of the terms or conditions of this Agreement, the other party or parties shall be entitled to full and adequate relief by injunction and all other legal and equitable remedies.

21. **DEMANDS FOR NOTICE**

- a) All notices or demands upon any part to this Agreement shall be in writing and shall be delivered in person or sent by mail as follows:

CITY: C.K. Luster, City Manager
20 East Main Street, Suite 750
P.O. Box 1466
Mesa, Arizona 85211-1466

**FIRST AMENDMENT TO
CAMERA/RADAR ENFORCEMENT AGREEMENT
BETWEEN THE CITY OF MESA, ARIZONA
AND
LOCKHEED MARTIN IMS CORPORATION**

This AMENDMENT (referred to herein as the "Amendment") is entered into this 30th day of JULY, 2001 by and between the CITY OF MESA, ARIZONA (hereinafter referred to as the "City") and LOCKHEED MARTIN IMS CORPORATION, a New York Corporation (hereinafter referred to as the "Contractor") with reference to the following:

WHEREAS, the City and Contractor have previously entered into a Camera/Radar Enforcement Agreement dated November 2, 1999 (hereinafter referred to as "Agreement"); and

WHEREAS, the City and Contractor having completed various discussions concerning the extension period of the contract as well as amendments to the provisions regarding compensation and other matters, the parties mutually desire to modify the Agreement of November 2, 1999 to reflect the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Contractor mutually agree to the following amendments of the Agreement:

1. § 2 INCORPORATION OF OTHER DOCUMENTS shall be amended to delete the current language in its entirety and replace it with the following new language:
 2. ***INCORPORATION OF OTHER DOCUMENTS***
 - a) ***In case of any conflict or inconsistency among the Contract Documents, those documents will control and govern in this order: first, this Agreement and any amendments or modifications thereto; second, the Proposal; and, third, the Request for Proposal. The Request for Proposal, the Proposal, and Certificate(s) of Insurance are incorporated herein by reference as if each of the terms therein were set forth fully in this Agreement.***
2. § 5 RED LIGHT CAMERA SYSTEMS INSTALLATION AND RELOCATION shall be amended to delete current § 5(d) in its entirety and replace it with the following new language:
 - d) ***Reserved***

3. § 6 VEHICLES TO BE PROVIDED shall be amended to delete the current language in its entirety and replace it with the following new language:

6. **VEHICLES TO BE PROVIDED**

- a) *Contractor has already provided five new Astro Van vehicles or their equivalent and an equal number of photo radar systems at the annual lease cost of one dollar (\$1.00) per year per vehicle. The City shall apply official markings and equip said vehicles and operate all vehicles for a combined minimum of 600 hours per calendar month. If the City is not operating the vehicles for a combined minimum of 600 hours per calendar month, the parties agree to re-negotiate this provision.*

4. § 7 COMPENSATION FORMULA shall be amended to delete the current language in its entirety and replace it with the following new language:

7. **COMPENSATION FORMULA**

- a) *Red Light Camera Violations: The Contractor and City agree that the contract processing fee for red light camera enforcement violations will be as follows: (Effective June 1, 2001)*

<u>Citations Paid per Month Tier:</u>		<u>Fee per Citation Paid:</u>
Tier I	1 - 900	\$ 73.00
Tier II	901 - 1200	\$ 65.00
Tier III	1201 and above	\$ 48.50

- b) *Photo Radar Violations: The Contractor and City agree that the contract processing fee for photo radar enforcement violations will be \$ 51.00 per citation paid. (Effective June 1, 2001). The parties agree that this amount is based upon the assumptions set forth in § 6 that the City will operate all vehicles for a combined minimum of 600 hours per calendar month. If the City is not operating the vehicles for a combined minimum of 600 hours per calendar month, the parties agree to re-negotiate this provision.*

- c) *The Contract processing fee due Contractor under this Section which is based upon a paid citation schedule. Paid Citation shall mean a citation issued under the Program and fully collected by the City, including both standard violator payments to the City and Defensive Driving Program payments. The term "fully collected," as used herein, shall mean that the City has collected all or part of the applicable fine, and seeks no further payment from the registered owner or otherwise identified driver who received the citation.*
- d) *The City of Mesa shall only be billed for those violations collected by the Mesa City Court which result in payments equal to or greater than \$ 50.00 per citation being collected and stemming from complaints filed from the photo enforcement program.*

5. § 11 REDUCTION OF GOVERNMENTAL ASSESSMENTS shall be amended to delete the current language in its entirety and replace it with the following new language:

11. REDUCTION OF GOVERNMENTAL ASSESSMENTS

Contractor agrees to support City in its efforts by providing its expertise and experience in interfacing with various law enforcement databases. Contractor will support the City's efforts to automate the name/address retrieval by diskette. If after reasonable efforts are made to implement said process, it is determined that implementation of the diskette process system is not possible, and therefore, Contractor must assume the costs of name/address retrieval, City and Contractor agree that they will re-negotiate the compensation formula in § 7(a) of this Agreement to allow for these increases in cost.

6. § 12 LENGTH OF AGREEMENT shall be amended to delete the current language in its entirety and replace it with the following new language:

12. LENGTH OF AGREEMENT

- a) *This Contract is valid and effective from the date specified in §23 of this Agreement until April 30, 2005.*

7. § 19 CONTRACT DOCUMENTS shall be amended to delete the current language in its entirety and replace it with the following new language:

19. **CONTRACT DOCUMENTS**

a) *This Agreement, including any and all amendments and modifications thereto, Proposal and Request for Proposal, including attached documents, constitutes the entire agreement between the parties pertaining to camera/radar program services, and this Agreement shall not be changed or added to except in writing signed by both parties. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, pertaining to the subject matter hereof, are hereby superceded and merged herein.*

8. EXHIBIT A-SCOPE OF SERVICES, § 1.1 (a) shall be amended to reflect that the parties have agreed that the total number of installed locations under this contract shall be seventeen (17) and that Contractor shall provide a total of twelve (12) red light camera systems (dual-camera system) to the City. The parties further acknowledge that there are currently 17 dual-camera systems in operation within the City and the City has given Contractor the approval and authority to remove five (5) dual-camera systems from the City program for its own use. The selection of the five (5) systems to be removed shall be mutually agreed upon. The Contractor shall rotate the remaining twelve (12) camera systems between the seventeen (17) locations in accordance with a mutually agreed upon schedule. All other terms and conditions set forth in Exhibit A of the Contract dated November 2, 1999 shall remain in full force and effect.

9. **RELEASE OF ALL CLAIMS:**

Contractor releases the City from all claims of whatever nature incurred before the date of this Amendment and further agrees not to initiate or join in any action, lawsuit or proceeding against the City in any Court or local governmental agency, in any way related to the City's alleged breach of the Agreement.

10. All other terms and conditions set forth in the Contract dated November 2, 1999 shall remain in full force and effect.

IN WITNESS WHEREOF, CITY and CONTRACTOR have caused this First Amendment to Camera/Radar Enforcement Agreement to be signed by their duly authorized officers or representatives on the day and year set forth above.

CITY:

City of Mesa, Arizona

By: [Signature]
Print Name: MICHAEL T. HUTCHINSON
Title: CITY MANAGER

ATTEST: [Signature]
(City Clerk) Deputy



Approved as to form:

[Signature] 7/27/01
City Attorney

CONTRACTOR:

Lockheed Martin IMS Corporation

By: [Signature]
Print Name: THOMAS R. WRIGLEY
Title: SENIOR VICE PRESIDENT AND MANAGING DIRECTOR

ATTEST: [Signature]
(Name and Title)
MANAGER, CONTRACTS

[SIGNATURE PAGE TO
FIRST AMENDMENT TO CAMERA/RADAR ENFORCEMENT AGREEMENT
BETWEEN THE CITY OF MESA, ARIZONA AND LOCKHEED MARTIN IMS]

CONTRACTOR: Cornell Jacques, Regional Vice President
Lockheed Martin IMS – Municipal Services
1999 Broadway, Suite 2700
Denver, Colorado 80202

22. INSPECTION OF RECORDS

- a) Each party agrees to retain all records relating to this Agreement for three (3) years, and to make those records available, upon reasonable notice and at reasonable times, for inspection and audit by and at the expense of the other party.

23. EFFECTIVE DATE

- a) This agreement shall become effective on the date of execution by all parties hereto.

IN WITNESS WHEREOF, The City and the Contractor have executed this Agreement.

CITY OF MESA

DATE: Nov. 2, 1999

By: C. K. Luster
C.K. Luster
Its: City Manager

CONTRACTOR

DATE: October 29, 1999

By: Cornell Jacques
Cornell Jacques
Its: Regional Vice President