



CITY of LAGUNA WOODS

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April 18, 2008

City Council Agendas > City Council Agendas 2005

Minutes - June 15, 2005

(By: | Composed: 08/12/05 | Modified: 08/12/05)

Current Issue
WOODWORKS
Newsletter



CITY OF LAGUNA WOODS CALIFORNIA
CITY COUNCIL MINUTES
REGULAR MEETING
June 15, 2005
2:00 P.M.

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I. CALL TO ORDER

Mayor Ross called the Regular Meeting of the City Council of the City of Laguna Woods to order at 2:00 p.m.

II. FLAG SALUTE

Councilmember Ring led the flag salute.

III. ROLL CALL

COUNCILMEMBERS PRESENT: Hack, Ring, Bouer, Ross

ABSENT: Robbins

STAFF PRESENT: City Manager Keane; Assistant City Attorney McEwen; City Clerk Condon; Assistant City Manager Reilly

IV. PRESENTATIONS

None

V. CITY PROCLAMATIONS

Moved by Councilmember Ring, seconded by Councilmember Hack, and carried unanimously to approve Proclamation 5.1.

5.1 Proclamation - Relay for Life Day - June 11-12, 2005

VI. CONSENT CALENDAR

Moved by Mayor Pro Tem Bouer, seconded by Councilmember Ring, and carried unanimously to approve Consent Calendar items 6.1 through 6.8.

6.1 Approved City Council minutes from the regular meeting of May 18, 2005 and the adjourned regular meeting of June 1, 2005.

6.2 Approved the reading by title of all

"South Orange County Integrated Regional Water Management Plan", entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ACCEPTING AND SUPPORTING THE ADOPTION OF THE SOUTH ORANGE COUNTY INTEGRATED REGIONAL WATER MANAGEMENT PLAN

VII. PUBLIC HEARINGS

7.1 Automated Red Light Photo Enforcement

Assistant City Manager Reilly introduced Lt. Bob Hogbin, the City's Police Services Chief, Tom Frank, an engineering consultant hired by the City, and Seth Fogel from Redflex Traffic Systems. He advised a Request for Proposal for installation of red light photo enforcement systems for the intersections of Moulton Parkway/El Toro Road and Moulton Parkway/Gate 12 was issued and proposals were received from Nestor Traffic Systems and Redflex Traffic Systems. Assistant City Manager Reilly advised a panel comprised of Lt. Hogbin, Bob Miller, Chair, Transportation Advisory Committee, Tom Frank and he interviewed and evaluated each firm. The panel and the Transportation Advisory Committee both unanimously agreed Redflex Traffic Systems would provide the more effective red light photo enforcement system. Assistant City Manager Reilly discussed the procedure to be followed and the 30-day warning period.

Assistant Manager Reilly discussed the monthly lease/service cost per approach, which would be paid from red light photo citation revenues. If the revenue is more than the equipment/service lease, it could fund the cost of a half-time deputy which is required to approve the citations and appear in court. The monthly fee would be reduced to match revenues if necessary.

Councilmember Ring questioned and discussion was held on the cost of red light tickets.

The Public Hearing was opened.

There were no requests to speak.

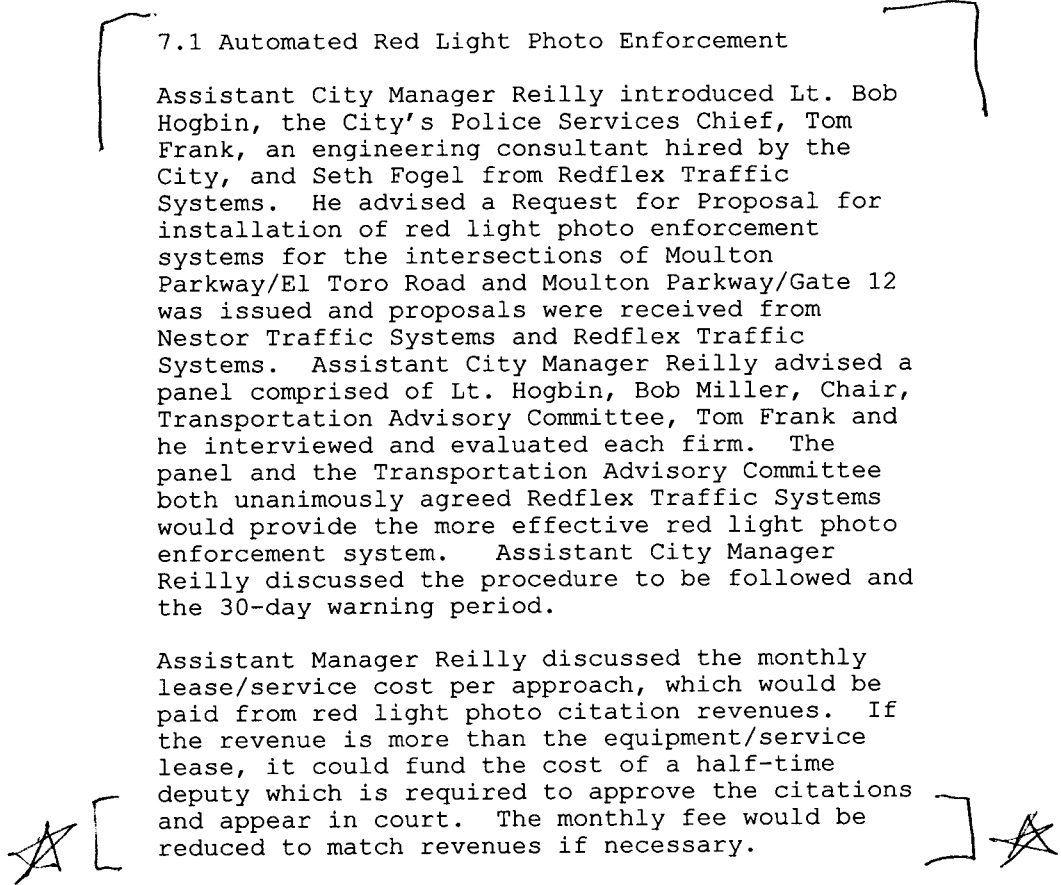
City Manager Keane advised there were no written communications, but staff had discussed the issue at various meetings and had verbal conversations with residents. One resident had expressed opposition.

Mary Wall, resident, expressed concern about traffic at the El Toro and Avenida Seville light. Assistant Manager Reilly and Lt. Hogbin discussed the directed enforcement over the last two years.

The Public Hearing was closed.

Moved by Councilmember Hack, seconded by Councilmember Ring, and carried unanimously:

- A. Approved the implementation of automated



red light photo enforcement systems at the intersections of Moulton Parkway and El Toro Road and Moulton Parkway and Gate 12.

B. Approved an agreement with Redflex Traffic Systems to install and operate automated red light photo enforcement systems at designated intersections, and authorized the City Manager to execute the agreement, subject to approval as to form by the City Attorney.

7.2 Acquisition of Laguna Woods City Hall Property

City Manager Keane advised that Council previously directed staff to pursue acquisition of the City Hall property. A formal offer was presented to the property owner and a letter was received declining the offer. City Manager Keane discussed the procedural steps required to acquire interest in property by eminent domain. The City is required to hold a Public Hearing and afford the property owner the right to speak. The Public Hearing was scheduled for June 15 and the owner notified the City they would be out of the country and requested a continuance. Staff recommended Council continue the Public Hearing until July 20, 2005.

The Public Hearing was opened.

There were no requests to speak.

Moved by Councilmember Hack, seconded by Councilmember Ring and carried 3-0-1-1 to continue the public hearing until July 20, 2005.

Roll Call

Ayes:	Councilmember:	Hack, Ring, Ross
Noes:	Councilmember:	None
Absent:	Councilmember:	Robbins
Abstain:	Councilmember:	Bouer

Mayor Pro Tem Bouer advised he abstained as he felt there would not be any benefit waiting a month for the property owner to advise he did not intend to cooperate.

City Manager Keane briefly discussed the procedural steps to acquire the property.

Mayor Pro Tem Bouer advised he would like to change his vote.

Moved by Councilmember Hack, seconded by Councilmember Ring, and carried 4-0 to continue the public hearing to July 20, 2005.

Roll Call

Ayes:	Councilmember:	Hack, Ring, Bouer, Ross
Noes:	Councilmember:	None
Absent:	Councilmember:	Robbins

VIII. CITY COUNCIL

None



CITY of LAGUNA WOODS

Brenda B. Ross
Mayor

October 20, 2005

Robert Bouer
Mayor Pro Tem

Bert Hack
Councilmember

Milt Robbins
Councilmember

Bob Ring
Councilmember

Leslie A. Keane
City Manager

RE: Public Records Request

*see 1.27 cost rec'd Exh D
30 day warnings
on 1st 2 sep
only*

Enclosed is a copy of the Redflex Traffic Systems, Inc. contract per your request and a receipt for your payment.

Sincerely,

Susan M. Condon
City Clerk

No Dumping in Stormdrains!

City of Laguna Woods
24264 El Toro Road
Laguna Woods CA 92653

Date: 10/20/2005 Time: 4:47pm
Receipt Number: 100 / 12204
Clerk: SC

ITEM	REFERENCE	AMOUNT
COPY	31 PAGES & POSTAGE	9.26
Total:		9.26
Check	4641	9.26
Change:		0.00

Thank You!

**AGREEMENT BETWEEN THE CITY OF LAGUNA WOODS
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR
AUTOMATED RED LIGHT PHOTO ENFORCEMENT SYSTEMS**

This Agreement ("Agreement") is made this 11 day of July, 2005 by and between the City of Laguna Woods, a municipal corporation ("City"), and Redflex Traffic Systems, Inc. ("Contractor").

RECITALS

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

WHEREAS, the City desires to engage the services of Contractor to provide certain equipment, processes and back office services so that sworn Sheriff's officers and/or employees of the Sheriff's Department under contract to the City are able to monitor, identify and enforce red light running violations;

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

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

AGREEMENT

1. **Definitions.** In this Agreement, the words and phrases below shall have the following meanings:
 - 1.1. "Authorized Officer" means the Orange County Sheriff Department's Project Manager or such other individual(s) as the City shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto, and in any event, a sworn officer or employee of the Sheriff's Department under contract to the City.
 - 1.2. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Officer by using the Contractor System.
 - 1.3. "Citation" means the notice of a Violation, which is mailed or otherwise delivered by Contractor to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.
 - 1.4. "Confidential Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is considered confidential under local, state, or federal laws, or

which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, City's or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:

- 1.4.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or City's, or at which such Person sells or has sold its services; and
- 1.4.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets as defined by §3426.1(d) of the California Civil Code (the "Uniform Trade Secrets Act") and cases interpreting the scope of the Uniform Trade Secrets Act.
- 1.4.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.
- 1.5. "Designated Intersection Approaches" means the Intersection Approaches set forth on Exhibit A attached hereto, and any such additional Intersection Approaches as the City may designate from time to time.
- 1.6. "Electronic Signature" means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Contractor System.
- 1.7. "Enforcement Documentation" means the necessary and appropriate documentation related to the Redlight Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Judicial Council and the Orange County Sheriffs Department), a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Contractor System), chain of custody records, criteria regarding operational policies for

processing Citations (including with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.

- 1.8. "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Contractor System, including but not limited to all camera systems, housings and poles.
- 1.9. "Fine" means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.10. "Governmental Authority" means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.11. "Installation Date" means the date on which Contractor completes the construction and installation of at least two (2) Intersection Approaches in accordance with the terms of this Agreement so that such Intersection Approach is operational for the purposes of functioning with the Redlight Photo Enforcement Program.
- 1.12. "Intellectual Property" means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person.
- 1.13. "Intersection Approach" means a conduit of travel with up to six (6) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) digital, rear shot multiple image color camera and at least one (1) digital face camera, together with all other components of the Contractor System, including the System have been installed by Contractor and are operating for the purposes of facilitating Redlight Photo Enforcement by the City.
- 1.14. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Redlight Photo Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by the Authorized Officer and the issuance of Citations for such approved Violations using the Contractor System.
- 1.15. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.16. "Project Manager" means the official appointed by the City in accordance with this Agreement, which shall initially be the Assistant City Manager, or such person as the City Manager shall designate by providing written notice thereof to Contractor from time to time. The Project Manager shall be responsible for overseeing the installation of the Intersection Approaches and the implementation

of the Redlight Photo Enforcement Program, and which manager shall have the power and authority to make management decisions relating to the City's obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the City's charter or other organizational documents of the City or by the City Council or other governing body of the City.

- 1.17. "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Contractor System with respect to such motor vehicle, which data shall be processed by the Contractor System for the purposes of allowing the Authorized Officer to review such data and determine whether a Violation has occurred.
- 1.18. "Proprietary Property" means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
- 1.19. "Contractor Marks" means all trademarks registered in the name of Contractor or any of its affiliates, such other trademarks as are used by Contractor or any of its affiliates on or in relation to Redlight Photo Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Contractor, and all modifications or adaptations of any of the foregoing.
- 1.20. "Contractor Project Manager" means the project manager appointed by Contractor in accordance with this Agreement by designating such person through written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Redlight Photo Enforcement Program, and who shall have the power and authority to make management decisions relating to Contractor's obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.21. "Contractor System" means, collectively, the Redlight Photo Enforcement Program, and all of the other equipment, flash units, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.22. "Redlight Photo Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Contractor, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar, video sensor or other)

that, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles and/or their drivers.

- 1.23. "Redlight Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by the Authorized Officer, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.
 - 1.24. "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
 - 1.25. "Violation" means any traffic violation contrary to the terms of the Vehicle Code or any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.
 - 1.26. "Violations Data" means the images and other Violations data gathered by the Contractor System at the Designated Intersection Approaches and confidential information obtained from the Department of Motor Vehicles in connection with any violation recorded by the Contractor System.
 - 1.27. "Warning Period" means the period of thirty (30) days after the Installation Date.
2. **Term.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years ("Initial Term"). The City shall have the right, but not the obligation, to extend the term of this Agreement for up to one (1) additional five (5) year period or up to two (2) additional consecutive one (1) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City may exercise the right to extend this Agreement for a Renewal Term by providing written notice to Contractor not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
 3. **Services.** Contractor shall provide the Redlight Photo Enforcement Program to the City with respect to the Designated Intersection Approaches, in each case in accordance with the terms and provisions set forth in this Agreement.
 - 3.1. **Installation.** With respect to the construction of the Designated Intersection Approaches and the installation of the Contractor System at such Designated Intersection Approaches, the City and Contractor shall have the respective rights and obligations set forth on Exhibit B attached hereto.
 - 3.2. **Maintenance.** With respect to the maintenance of the Contractor System at the Designated Intersection Approaches, the City and Contractor shall have the respective rights and obligations set forth on Exhibit C attached hereto.
 - 3.3. **Violation Processing.** During the Operational Period, Violations shall be processed as follows:
 - 3.3.1. All Violations Data shall be stored on the Contractor System;

- 3.3.2. The Contractor System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Officer via the Contractor System;
- 3.3.3. The Contractor System shall be accessible by the Authorized Officer and Project Manager through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser;
- 3.3.4. Contractor shall provide the Authorized Officer and Project Manager with access to the Contractor System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violation Data from the applicable Designated Intersection Approach;
- 3.3.5. The City shall cause the Authorized Officer to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Contractor using the software or other applications or procedures provided by Contractor on the Contractor System for such purpose, and Contractor HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED OFFICER AND SHALL BE MADE IN SUCH AUTHORIZED OFFICER'S SOLE DISCRETION ("CITATION DECISION"), AND IN NO EVENT SHALL Contractor HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;
- 3.3.6. With respect to each Authorized Violation, Contractor shall print and mail a Citation within five (5) days after Contractor's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;
- 3.3.7. The City shall track the collection of Fines assessed on each Citation and complete and accurate records shall be maintained by the City with respect to each such Citation;
- 3.3.8. Contractor shall provide a toll-free telephone number for the purposes of answering citizen inquiries, responding to complaints and scheduling appointments during which recipients of Citations may view the applicable Violations Data, and Contractor shall provide necessary personnel for such purpose;
- 3.3.9. Contractor shall permit the Authorized Officer and Project Manager to generate monthly reports using the Contractor Standard Report System.
- 3.3.10. Upon Contractor's receipt of a written request from the City and in addition to the Standard Reports, Contractor shall provide, without cost to the City, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Contractor System with respect thereto to the City in such format and for such periods as the City may

reasonably request; provided, however, Contractor shall not be obligated to provide in excess of twelve (12) such reports in any given twelve (12) month period without cost to the City;

3.3.11. Upon the City's receipt of a written request from Contractor, the City shall provide, without cost to Contractor, reports regarding the prosecution of Citations and the collection of fines, fees and other monies in respect thereof in such format and for such periods as Contractor may reasonably request; provided, however, the City shall not be obligated to provide in excess of twelve (12) such reports in any given twelve (12) month period without cost to Contractor;

3.3.12. During the four (4) month period following the Installation Date and upon Contractor's receipt of a written request from the City at least fourteen (14) calendar days in advance of court proceeding, Contractor shall provide expert witnesses for use by the City in prosecuting Violations; provided, however, the City shall use reasonable best efforts to seek judicial notice in lieu of requiring Contractor to provide such expert witnesses; and

3.3.13. During the four (4) month period following the Installation Date, and throughout the term of this Agreement, Contractor shall provide such training to police personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Redlight Enforcement Program.

3.4. Prosecution and Collection; Compensation. The City shall diligently prosecute Citations and the collection of all Fines in respect thereof, and Contractor shall have the right to receive, and the City shall be obligated to pay, the compensation set forth on Exhibit D attached hereto.

3.5. Other Rights and Obligations. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Contractor and the City shall have the respective rights and obligations set forth on Exhibit E attached hereto.

3.6. Change Orders. The City 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 Contractor, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Contractor's receipt of a Change Order Notice, Contractor shall deliver a written statement describing the effect, if any, the proposed changes would have on the pricing terms set forth in Exhibit D ("Change Order Proposal"), which Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the City. Following the City's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or

services to the existing Designated Intersection Approaches, or the addition of Intersection Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 10.

4. License; Reservation of Rights.

- 4.1. License. Subject to the terms and conditions of this Agreement, Contractor hereby grants the City, and the City hereby accepts from Contractor upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City of Laguna Woods, access and use the Contractor System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any content posted on the Contractor System in connection therewith, (b) disclose to the public (including outside of the City of Laguna Woods) that Contractor is providing services to the City in connection with Redlight Photo Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Contractor Marks on or in marketing, public awareness or education, or other publications or materials relating to the Redlight Photo Enforcement Program, so long as any and all such publications or materials are approved in advance by Contractor.
- 4.2. Reservation of Rights. The City hereby acknowledges and agrees that: (a) Contractor is the sole and exclusive owner of the Contractor System, the Contractor Marks, all Intellectual Property arising from or relating to the Contractor System, and any and all related Equipment, (b) the City 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 City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.
- 4.3. Restricted Use. The City hereby covenants and agrees that it shall not (a) make any modifications to the Contractor System, including but not limited to any Equipment, (b) alter, remove or tamper with any Contractor Marks, (c) use any of the Contractor Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Contractor therein, (d) use any trademarks or other marks other than the Contractor Marks in connection with the City's use of the Contractor System pursuant to the terms of this Agreement without first obtaining the prior consent of Contractor, or (e) disassemble, decompile or otherwise perform any type of reverse engineering to the Contractor System, the Contractor System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Contractor, or cause any other Person to do any of the foregoing.

- 4.4. Protection of Rights. Contractor shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Contractor, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Contractor Marks, the filing of patent application for any of the Intellectual Property of Contractor, and making any other applications or filings with appropriate Governmental Authorities. The City 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 Contractor Marks or the Intellectual Property of Contractor without the prior written consent of Contractor.
- 4.5. Infringement. The City shall use its reasonable best efforts to give Contractor prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Contractor Marks or any of Contractor'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 Contractor Marks or any other Intellectual Property of Contractor. Contractor 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 Contractor commences any enforcement action under this Section 4.5, then the City shall render to Contractor such reasonable cooperation and assistance as is reasonably requested by Contractor, and Contractor shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that Contractor shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance.
- 4.6. Infringing Use. The City shall give Contractor prompt written notice of any action or claim action or claim, whether threatened or pending, against the City alleging that the Contractor Marks, or any other Intellectual Property of Contractor, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the City shall render to Contractor such reasonable cooperation and assistance as is reasonably requested by Contractor in the defense thereof; provided, that Contractor shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Contractor determines, in the exercise of its sole discretion, that an infringement may exist, Contractor shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

5. Representations and Warranties.

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

- 5.1.2. Professional Services. Contractor hereby warrants and represents that any and all services provided by Contractor pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Contractor System, subject to applicable law, in compliance with all specifications provided to Contractor by the City.
- 5.2. City Representations and Warranties.
 - 5.2.1. Authority. The City hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.
 - 5.2.2. Professional Services. The City hereby warrants and represents that any and all services provided by the City pursuant to this Agreement shall be performed in a professional and workmanlike manner.
- 5.3. LIMITED WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, Contractor 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 Contractor System or any RELATED EQUIPMENT or with respect to the results of the City's use of any of the foregoing. Notwithstanding anything to the contrary set forth herein, Contractor does not warrant that any of the Designated Intersection Approaches or the Contractor System WILL operate in the way the City selects for use, or that the operation or use thereof will be uninterrupted. THE CITY HEREBY ACKNOWLEDGES THAT THE Contractor SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, Contractor SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

6. Termination.

- 6.1. Termination. Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) the other party commits any breach of any of the provisions of this Agreement which breach is not remedied within forty-five (45) calendar days (or within such other time period as the City and Contractor shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-breaching party setting forth in reasonable detail the events which caused the breach, or (ii) State or federal law prohibits or substantially changes the operation of red light photo enforcement systems, (including legislation rendering Contractor systems evidence inadmissible in a court of competent jurisdiction) and (iii) following an audit, utilizing standard accounting procedures, of revenues generated during any six (6) consecutive month period after the installation date, the results thereof establish that City's net recovery after deducting all of system lease payments paid to Contractor and other costs incurred as determined by the City during the six month period is less than 100% of the amount of revenue collected during the period, then both parties shall meet and confer in good faith within thirty (30) days to make reasonable efforts to agree upon a new compensation formula. The

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

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

6.2.1. Contractor shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation of Intersection Approaches and services in connection with the Redlight Photo Enforcement Program, (ii) promptly deliver to the City any and all Proprietary Property of the City provided to Contractor pursuant to this Agreement, (iii) promptly deliver to the City a final report to the City regarding the collection of data and the issuance of Citations in such format and for such periods as the City may reasonably request, and which final report Contractor shall update or supplement from time to time when and if additional data or information becomes available, (iv) promptly deliver to City a final invoice stating all fees and charges properly owed by City to Contractor for work performed and Citations issued by Contractor prior to the termination, and (v) provide such assistance as the City may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement.

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

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

6.3 Survival. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: Sections 4.2 (Reservation of Rights), 5.1 (Contractor Representations and Warranties), 5.2 (City Representations and Warranties), 5.3 (Limited Warranty), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute

Resolution), 11.1 (Assignment), 11.17 (Applicable Law), 11.16 (Injunctive Relief; Specific Performance) and 11.18 (Jurisdiction and Venue), and those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.

7. Confidentiality.

- 7.1. All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.
- 7.2. Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.
- 7.3. If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.
- 7.4. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.
- 7.5. 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 unless otherwise required by law. Upon termination of this

