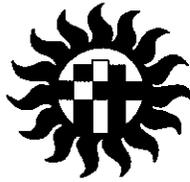


Red Light and Speed Concerns Annual Review



City of Las Cruces®

PEOPLE HELPING PEOPLE

TO: Terrence R. Moore, City Manager

FROM: Michael Johnson, Director of Public Works

DATE: February 4, 2010 **FILE:** 10-64

SUBJECT: **City Council Work Session – Annual Review Safe Traffic Operations Program**

On September 15, 2008, the City Council approved the following two legislative actions:

1. **Ordinance No. 2474 , Council Bill No. 09-011** - Enacting LCMC 1997 Section 27-7 ET SEQ, the Safe Traffic Operations Program, Regarding Violations of the Traffic Code Detected by a Camera or Speed Device.
2. **Resolution 08-09-410** – Initiating the Red Light Photo and Speed Enforcement Program for the City of Las Cruces and Awarding the Contract for Equipment Installation and Maintenance to Redflex Traffic Systems, Inc. of Phoenix, Arizona and to Amend the Fiscal Year 2008-09 Budget.

These actions were results of numerous concerns being raised to the City Council, as well as to staff members regarding the problem of motorists running red lights and speeding on city streets. The Safe Traffic Operations Program (STOP) utilizing photo enforcement technology was then implemented to reduce the incidence of these traffic violations by modifying driver behavior and to decrease the number of crashes and the associated injuries occurring as a result of these violations.

Photo enforcement technology was then installed at these four signalized intersections in Las Cruces:

1. Solano Drive and North Main Street
2. Valley Drive and Avenida de Mesilla
3. Lohman Avenue and Telshor Boulevard
4. Lohman Avenue and Walnut Street

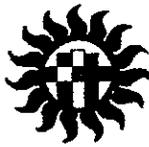
These intersections were identified as the best candidates to meet the goals of the STOP program due to the large number of vehicular crashes and the high volume of traffic. Photo enforcement was then installed by Redflex Systems at each of these intersections with the photo enforcement implemented at the end of February, 2009. A 30-day grace period was provided whereby motorists were issued warnings in lieu of actual violations. The program then officially began issuing red light and speed violations at the end of March, 2009.

The STOP program has now been in operation for approximately 1 year and staff is prepared to provide the City Council with an annual review to include the following presentations:

1. **How the program works and other background information** – Michael Johnson, Public Works Director
2. **Video of actual violations** – Pete Bradley, Acting Police Chief
3. **Review of program data (number of violations, crash data, etc.)** – Dan Soriano, Traffic Engineering Administrator
4. **Financial Data Report** – Dr. Mark Sutter, Finance Director
5. **STOP Capital Improvement Plan** – Dan Soriano, Traffic Engineering Administrator and Kerry Clements, LCPD
6. **Next Steps** – Michael Johnson, Public Works Director

I have attached copies of the aforementioned Ordinance and Resolution for your review. Please let me know if you have any questions or need further information. Thank you.

kfs



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PEOPLE HELPING PEOPLE

Council Action and Executive Summary

For Meeting of September 15, 2008 Council Districts:
(Adoption Date)

A RESOLUTION INITIATING THE RED LIGHT PHOTO AND SPEED ENFORCEMENT PROGRAM FOR THE CITY OF LAS CRUCES AND AWARDING THE CONTRACT FOR EQUIPMENT INSTALLATION AND MAINTENANCE TO REDFLEX TRAFFIC SYSTEMS, INC. OF PHOENIX, ARIZONA AND TO AMEND THE FISCAL YEAR 2008/2009 BUDGET.

Purpose(s) of Action: Implementation of a Red Light Camera and Speed Enforcement Program in the City of Las Cruces.

Name of Drafter: Dan Soriano		Department: Public Works/Traffic Eng.		Phone: 541-2505	
Department	Signature	Phone	Department	Signature	Phone
Public Works		528-3333	Budget		2300
			Assistant City Manager		2271
Legal			City Manager		2076

Key Issues/Contributing Factors: During the City Council Work Session held in May 2007, the implementation of red light photo technology in Las Cruces was discussed. This dialogue was a result of concerns being raised to the City Council as well as to staff members regarding the problem of motorists running red lights. Residents have expressed frustration with the City's ability to reduce incidence of these traffic violations and in turn reduce the accidents and associated injuries that occur as a result of the running of red lights. Consequently, staff in the Public Works and Police Departments was given unanimous direction to begin the process of the installation of cameras that would detect motorists running red lights.

Since that time, the Redflex Traffic Systems, Inc. of Phoenix, Arizona, who are the manufacturers of red light cameras, has performed field investigations of several high volume, high vehicular crash locations in Las Cruces and as a result has identified four locations that are being recommended for initial installation and operation of the program.

These locations are Solano Drive and North Main Street, Valley Drive and Avenida de Mesilla, Lohman Avenue and Walnut Street, and Lohman Avenue and Telshor Boulevard. This same company has camera operations in both Albuquerque and El Paso. The Redflex Traffic System, Inc. will be procured through use of an existing contract with Houston-Galveston Area Council (H-GAC), Contract No.: PE05-07.

The Las Cruces Police Department will administer the program. An officer assigned to the Traffic Section will be assigned the collateral duty of reviewing and approving the red light violations captured by the cameras. This officer will also be responsible for presenting evidence at hearings requested by the violator. Any and all revenue obtained through the

(Continue on additional sheets as required)

Las Cruces Safe Traffic Operations Program shall be used by the Las Cruces Police Department and the City's Traffic Engineering Department for service enhancement and public safety.

Passage of this resolution will enact the Red Light Photo Enforcement Program and award the contract to Redflex Traffic Systems, Inc. It should also be noted that this resolution will also be implementing a Speed Enforcement Program at the same intersections identified for red light cameras. This will, in essence, collect traffic speeds for purposes of both citation and data compilation.

As a separate item, staff is also bringing forward an Ordinance adding new sections of the Las Cruces Municipal Code to provide for the implementation of automated traffic control systems for the enforcement of traffic code provisions relating to red traffic-control signals and speed limits. This legislation would establish a civil penalty if the vehicle is recorded by an automated traffic enforcement program and would create the necessary appeal process.

The Red Light Photo and Speed Enforcement Program is 100% Violator funded. Redflex Traffic Systems, Inc. will be paid a flat fee for each citation (red light or speed enforcement) paid for each system at each intersection as follows:

Per paid citation monthly:

1 to 90 @ \$48
91 to 180 @ \$38
181 and up @ \$28

It is estimated that the program will have gross revenue of \$306,000 for the six month period from January 1, 2009 to June 30, 2009. From this amount Redflex Traffic Systems, Inc. would be reimbursed \$118,000 based on the per paid citation amounts outlined above. In order to operate the program, additional personnel expenditures are anticipated in the Police Department (Officer Reviewer and Hearing Officer) and Public Works Department. Additional expenditures are also anticipated for an intensive public relations campaign to notify residents as well as modifications to the City of Las Cruces Web Page and installation of the required signage at each of the intersections. After completion of these expenditures it is estimated that there will be a fund balance of \$62,920. Once the program has been in place for a period of time actual results would be used to develop future revenue forecasts.

SUPPORT INFORMATION:

1. Exhibit "A" – Purchasing Manager's Request to Contract
2. Exhibit "B" – Exclusive Agreement between the City of Las Cruces and Redflex Traffic Systems, Inc. for a Red Light and Speed Enforcement Program
3. Exhibit "C" – Budget Adjustment
4. Exhibit "D" – Safe Traffic Operation Program (STOP) Revenue Estimate

(Continue on additional sheets as required)

5. Attachment "A" – Insurance Institute for Highway Safety Highway Loss Data Institute, Frequently Asked Questions

Fund Name / Account Number	Amount of Expenditure	Budget Amount
S.T.O.P. Fund		
Police Department	\$80,000.00	\$80,000.00 (pending adjustment)
Public Works Department	\$45,000.00	\$45,000.00 (pending adjustment)

OPTIONS / ALTERNATIVES:

1. Vote "yes" and approve the Resolution – this action authorizes the City of Las Cruces to enter into a contractual agreement with Redflex Traffic Systems, Inc. to implement a Red Light and Speed Enforcement Traffic Program. This will also approve the recommended budget adjustment.
2. Vote "no" and deny the Resolution. This action will not authorize the City of Las Cruces to contract with Redflex Traffic Systems, Inc.
3. Modify the Resolution – Council may make other adjustments as the members see fit, i.e. opt to only implement the Red Light System and postpone the implementation of the Speed Enforcement Program.

(Continue on additional sheets as required)

RESOLUTION NO. 08-09-410

A RESOLUTION INITIATING THE RED LIGHT PHOTO AND SPEED ENFORCEMENT PROGRAM FOR THE CITY OF LAS CRUCES AND AWARDING THE CONTRACT FOR EQUIPMENT INSTALLATION AND MAINTENANCE TO REDFLEX TRAFFIC SYSTEMS, INC. OF PHOENIX, ARIZONA AND TO AMEND THE FISCAL YEAR 2008/2009 BUDGET.

The City Council is informed that:

WHEREAS, the implementation of red light photo technology in Las Cruces was discussed at a City Council Work Session in May, 2007; and

WHEREAS, staff in the Public Works and Police Departments were given unanimous direction by City Council at that time to begin the process of the installation of cameras that would detect motorists running red lights and driving at excessive speeds; and

WHEREAS, four major intersections; Solano Drive and North Main Street, Valley Drive and Avenida De Mesilla, Lohman Avenue and Walnut Street, and Lohman Avenue and Telshor Boulevard were identified as candidates for the camera placement; and

WHEREAS, the resolution enacts both a red light surveillance and a speed enforcement program within the City of Las Cruces, and

WHEREAS, the Las Cruces Police Department will administer the program which will entail reviewing and approving the red light violations captured by the cameras.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the contract for Red Light Surveillance and Speed Enforcement be awarded to Red Flex Traffic Systems of Phoenix, Arizona.

(II)

THAT the Purchasing Manager is authorized to contract with Redflex Traffic Systems, Inc. as outlined in the signed Exhibit "A", Purchasing Manager's Request to Contract Form.

(III)

THAT the Fiscal Year 2008/2009 Budget is hereby amended as outlined on the attached Exhibit "C".

(IV)

THAT City staff is hereby authorized to do any and all deeds necessary in the accomplishment of the herein above.

Mayor

ATTEST:

City Clerk

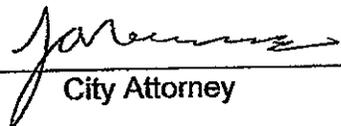
{SEAL}

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:



City Attorney

EXCLUSIVE AGREEMENT BETWEEN THE CITY OF LAS CRUCES, NM
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR
A PHOTO RED LIGHT AND SPEED ENFORCEMENT PROGRAM

This Agreement (this "Agreement") is made as of this ____ day of _____, 2008, by and between Redflex Traffic Systems, Inc. with offices at 15020 N. 74th Street, Scottsdale, Arizona, 85260 ("Redflex"), and The City of Las Cruces, NM a municipal corporation, with offices at 200 North Church Street. Las Cruces, NM 88001 (the "Customer").

RECITALS

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

WHEREAS, the Customer desires to engage the services of Redflex to provide certain equipment, processes and back office services so that Authorized Employees of the Customer are able to monitor, identify and enforce automotive traffic intersection red light and speed violations; and

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

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

AGREEMENT

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

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

- 1.4.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and
- 1.4.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets.
- 1.4.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.
- 1.5. "Intersection Approach" means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by Redflex for the purposes of facilitating Photo Red Light and Speed Enforcement by the Customer.
- 1.6. "Designated Intersection Approaches" means the Intersection Approaches as Redflex and the Customer shall mutually agree from time to time. See Exhibit A for the number of approaches.
- 1.7. "Electronic Signature" means the method through which the Authorized Employee indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.
- 1.8. "Enforcement Documentation" means the necessary and appropriate documentation related to the Photo Red Light and Speed Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Judicial Council and the City, 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 Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the applicable vehicle registry), and technical support documentation for applicable court and judicial officers .

- 1.9. **“Equipment”** means any and all approach cameras, sensors, equipment, components, products, software, and other tangible and intangible property relating to the Redflex Photo Red Light and Speed Enforcement System(s).
- 1.10. **“Fine”** means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.11. **“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.
- 1.12. **“Installation Date of the Photo Red Light and Speed Enforcement Program”** means the date on which Redflex completes the construction and installation of at least one (1) Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational for the purposes of functioning with the Photo Red Light and Speed Enforcement Program.
- 1.13. **“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.
- 1.14. **“Equipped Motor Vehicles”** means motor vehicles that have been obtained by Redflex from automobile manufacturers and are modified and equipped by Redflex as part of the Redflex Photo Enforcement System.
- 1.15. **“Operational Period”** means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light and Speed Enforcement Program is functional in order to permit the issuance of Citations using the Redflex System.
- 1.16. **“Person”** means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity, or other business association.
- 1.17. **“Project Manager”** means the project manager appointed by the Customer in accordance with this Agreement, which shall be an Authorized Employee and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Photo Red Light and Speed Enforcement Program, and which manager shall have the power and authority to make management decisions relating to the Customer’s obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the Customer’s charter or other organizational documents of the Customer or by the city counsel or other governing body of the Customer.
- 1.18. **“Potential Violation”** means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex

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

- 1.19. **“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.
- 1.20. **“Redflex Marks”** means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Photo Red Light and Speed Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
- 1.21. **“Redflex Project Manager”** means the project manager appointed by Redflex in accordance with this Agreement, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Photo Red Light and Speed Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex’s obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.22. **“Redflex System”** means, collectively, the Salus™ and/or SMARTcam™ System, the SMARTscene™ System, and all of the other equipment, applications, cameras, sensors, components, motor vehicles and other tangible and intangible property relating thereto, to enable Redflex to enforce a minimum of one lane of travel at a designated location. The SMARTops™ System, the Photo Enforcement Program, and all of the other equipment, applications, back office processes, servers, off-site backup systems, software and other tangible and intangible property relating thereto.
- 1.23. **“Photo Red Light and Speed Enforcement Program”** means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.
- 1.24. **“Photo Red Light and Speed Violation Criteria”** means the standards and criteria by which Potential Violations will be evaluated by Authorized Employees of the Customer, which standards and criteria shall include, but are

a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.

- 1.37. "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.
- 1.38. "Warning Period" means a period after the Installation Date of the first intersection approach, wherein only warning notices shall be issued, commencing within 3 days after the system has been installed.
2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years after the issuance of the first citation by the system. The Customer shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive and automatic two (2) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The Customer may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
3. **SERVICES.** Redflex shall provide the Photo Red Light and Speed Enforcement Program to the Customer, in each case in accordance with the terms and provisions set forth in this Agreement.
- 3.1. **INSTALLATION.** With respect to the construction and installation of Designated Intersection Approaches and the installation of the Redflex System at such Designated Intersection Approaches, the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit B attached hereto.
- 3.2. **MAINTENANCE.** With respect to the maintenance of the Redflex System at the Designated Intersection Approaches the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit C attached hereto.
- 3.3. **VIOLATION PROCESSING.** During the Operational Period, Violations shall be processed as follows:
- 3.3.1. All Violations Data shall be stored on the Redflex System;
- 3.3.2. The Redflex System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Employee via the Redflex System;
- 3.3.3. The Redflex Photo Enforcement System will be accessible by Authorized Staff through a secure and encrypted connection by use of a confidential user account on a computer equipped with a high-speed Internet connection and an approved web browser.
- 3.3.4. Redflex shall provide the Authorized Employee with access to the Redflex 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 Approaches.
- 3.3.5. The Customer shall cause the Authorized Employee to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to

Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose, and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION.

- 3.3.6. With respect to each Authorized Violation, Redflex shall print and mail a Citation within five (5) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;
- 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen and violation recipient inquiries
- 3.3.8. Redflex shall permit the Authorized Employee to generate reports using the Redflex Standard Report System.
- 3.3.9. Upon Redflex's receipt of a written request from the Customer and in addition to the Standard Reports, Redflex shall provide, without cost to the Customer, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the Customer in such format and for such periods as mutually agreed upon.
- 3.3.10. During the six (6) month period following the Installation Date and/or upon Redflex's receipt of a written request from the Customer at least fourteen (14) calendar days in advance of court proceeding, Redflex shall provide expert witnesses for use by the Customer in prosecuting Violations; provided, however, the Customer shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; After the initial 6 month period, expert testimony may be provided on a cost reimbursement basis.
- 3.3.11. During the three (3) month period following the Installation Date, Redflex shall provide such training to Customer personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the Customer with respect to the Photo Red Light and Speed Enforcement Program.
- 3.4. Records Retention: Redflex will retain confidential information to include photographic evidence and data associated with the photo enforcement program for a period of up to twenty four (24) months.
- 3.5. PROSECUTION AND COLLECTION; COMPENSATION. The Customer shall diligently prosecute Citations and the collection of all Fines in respect thereof, and Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit D attached hereto.

- 3.6. **OTHER RIGHTS AND OBLIGATIONS.** During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Redflex and the Customer shall have the respective rights and obligations set forth on Exhibit E attached hereto.
- 3.7. **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; 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, Redflex hereby grants the Customer, and the Customer hereby accepts from Redflex upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City of Las Cruces, access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City of Las Cruces that Redflex is providing services to the Customer in connection with Photo Red Light and Speed Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light and Speed Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. **RESERVATION OF RIGHTS.** The Customer hereby acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the Customer neither has nor

makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of Customer pursuant to this Agreement, the Customer shall gain no additional right, title or interest therein.

- 4.3. **RESTRICTED USE.** The Customer hereby covenants and agrees that it shall not (a) make any modifications to the Redflex System, including but not limited to any Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) use any of the Redflex Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Redflex therein, (d) use any trademarks or other marks other than the Redflex Marks in connection with the Customer's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.
- 4.4. **PROTECTION OF RIGHTS.** Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The Customer shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.
- 4.5. **INFRINGEMENT.** The Customer shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this Section 4.5, then the Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex, and Redflex shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that Redflex shall reimburse the Customer for any reasonable costs incurred in providing such cooperation and assistance.
- 4.6. **INFRINGEMENT USE.** The Customer shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending, against the Customer alleging that the Redflex Marks, or any other Intellectual Property of Redflex, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by

Redflex in the defense thereof; provided, that Redflex shall reimburse the Customer for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Redflex determines, in the exercise of its sole discretion, that an infringement may exist, Redflex shall have the right, but not the obligation, to procure for the Customer the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

5. Representations and Warranties.

5.1. Redflex Representations and Warranties.

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

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

5.2. Customer Representations and Warranties.

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

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

5.2.3. Equipped Motor Vehicles. The Customer hereby warrants and represents that (a) the Customer, including without limitations its employees and agents, will comply with all warnings and instructions that accompany the Equipped Motor Vehicles, (b) that the Customer will not allow untrained and/or unauthorized individuals to operate or occupy the Equipped Motor Vehicles, (c) that the Customer will not allow the Equipped Motor Vehicles to be used for purposes other than those related directly to the Redflex Photo Enforcement System, (d) that the Customer will not allow passengers within the Equipped Motor Vehicles to sit where airbags, seatbelts, and other restraints have been removed, modified, or disabled, and (e) that the Customer will deploy and use the Equipped Motor Vehicles in a manner that minimizes the possibility of being struck by other motor vehicles.

6. Termination.

6.1. **TERMINATION FOR CAUSE:** Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of photo red light or speed enforcement systems; (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the Redflex System of photo red light and speed enforcement are inadmissible in evidence; (iii) if a court having jurisdiction determines that the program is unconstitutional or illegal the contract is voided; (iv) the other party commits any material breach of any of the provisions of this Agreement. In the event of a termination due to Section 6.1(i),

6.1(ii), or 6.1(iii) above, Customer shall be relieved of any further obligations for payment to Redflex other than as specified in Exhibit "D". Either party shall have the right to remedy the cause for termination (Sec 6.1) within forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination; or (v) if challenges to the hearing procedure become so numerous or onerous, both shall meet and confer and have 45 days to develop and implement a mutually agreeable remedy, if remedy is not effective at reducing city overhead associated with the hearing procedures and the program becomes unworkable the contract may be voided.

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

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

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

6.3.2. The Customer shall (i) immediately cease using the Photo Red Light and Speed Enforcement Program, accessing the Redflex System and using any other Intellectual Property of Redflex, (ii) promptly deliver to Redflex any

and all Proprietary Property of Redflex provided to the Customer pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination.

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

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

7. **CONFIDENTIALITY.** During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement, except as provided by New Mexico Law. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

8. **Indemnification and Liability.**

8.1. **Indemnification by Redflex.** Subject to Section 8.3, Redflex hereby agrees to defend and indemnify 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" and collectively, the "Customer Parties") against, and to

protect, save and keep harmless the Customer Parties from, and to pay on behalf of or reimburse the Customer Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any Customer Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Redflex contained in this Agreement, (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), except to the extent caused by the willful misconduct of any Customer Party, (c) the negligent conduct on the part of Redflex, its employees or agents.

8.2 **Mutual Non-Liability.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

9. **NOTICES.** Any notices to be given hereunder shall be in writing, and shall be deemed to have been given (a) upon delivery, if delivered by hand, (b) three (3) business days after being mailed first class, certified mail, return receipt requested, postage and registry fees prepaid, or (c) one (1) business day after being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery, if the courier service obtains a signature acknowledging receipt, in each case addressed or sent to such party as follows:

9.1. Notices to Redflex:

Redflex Traffic Systems, Inc.
15020 North 74th Street
Scottsdale, AZ 85260
Attention: Karen Finley
Facsimile: (480) 607-2287

9.2. Notices to the Customer:

City of Las Cruces Police Department
217 E. Picacho Street
Las Cruces, NM 88001

Attention: Sgt. Chris Miller
Facsimile: 505-528-5538

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

11. **Miscellaneous.**

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

11.2. **RELATIONSHIP BETWEEN REDFLEX AND THE CUSTOMER.** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any

debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).

- 11.3. **AUDIT RIGHTS.** Each of parties hereto shall have the right to audit to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.
- 11.4. **FORCE MAJEURE.** Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Redflex, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 11.5. **ENTIRE AGREEMENT.** This Agreement represents the entire Agreement between the parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both parties.
- 11.6. **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. Notwithstanding the foregoing court decision declaring the program illegal or unconstitutional shall void this contract.
- 11.7. **WAIVER.** Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 11.8. **CONSTRUCTION** Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.
- 11.9. **HEADINGS.** The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the

- parties hereto, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any term, condition or provision hereof.
- 11.10. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.
- 11.11. COVENANT OF FURTHER ASSURANCES. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.
- 11.12. REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.
- 11.13. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.
- 11.14. COST NEUTRALITY. This provision shall not apply if (1) the City elect not to enforce illegal right turn on red violations; (2) the City elects not to pursue collections on unpaid violations; (3) the City directs REDFLEX to install a camera at a site that is not mutually agreed upon; or (4) the City or Police waives more than 10 percent of valid violations forwarded to the Police for acceptance according to mutually agreed upon business rules.
- 11.15. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.
- 11.16. NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.
- 11.17. INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The parties hereby agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other party, which injury could not be adequately compensated by an award of money damages, and the parties therefore agree and

acknowledge that they shall be entitled to injunctive relief in the event of any breach of any material term, condition or provision of this Agreement, or to enjoin or prevent such a breach, including without limitation an action for specific performance hereof.

- 11.18. APPLICABLE LAW. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of New Mexico, United States.
- 11.19. JURISDICTION AND VENUE. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the Federal and State courts located in the County of Dona Ana, New Mexico and both parties specifically agree to be bound by the jurisdiction and venue thereof.

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

“Customer”

“Redflex”

Las Cruces, New Mexico

REDFLEX TRAFFIC SYSTEMS, INC.,

By: _____

By: _____

Name:

Name: Karen Finley

Title:

Title: President and CEO

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

“Customer”

“Redflex”

Las Cruces, New Mexico

REDFLEX TRAFFIC SYSTEMS, INC.,

By: _____

By: _____

Name:

Name: Karen Finley

Title:

Title: President and CEO

EXHIBIT "A"
Designated Intersection Approaches

The contract is for the implementation of up to fifteen (15) intersection approaches. Identification of enforced intersection approaches will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.

The City will make all reasonable efforts to provide the list of proposed intersections under consideration prior to formal project kick-off to the designated Redflex project manager.

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EXHIBIT "B"
Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light and Speed System

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

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

Redflex will use reasonable commercial efforts to install and activate the first specified intersection within sixty (60) days subsequent to formal project kick-off and receipt of the required customer approved program business rules. The Customer agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Redflex and are not guaranteed.

In order to provide the Customer with timely completion of the photo enforcement project, Redflex Traffic Systems requires that the Customer assist with obtaining timely approval of permit requests. The Customer acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the Customer will provide engineering review(s) of Redflex permit requests and all documentation in a timely manner.

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

- 1.10. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches.
 - 1.11. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersection Approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
 - 1.12. Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
 - 1.13. Implement the use of the Redflex System at each of the Designated Intersection Approaches;
 - 1.14. Deliver the Materials to the Customer; and
 - 1.15. Citation processing and citation issuance/re-issuance for Authorized Violations;
 - 1.16. Redflex shall provide training (i) for up to fifteen (15) personnel of the Customer, including but not limited to the persons who Customer shall appoint as Authorized Employees and other persons involved in the administration of the Red Light and Speed Photo Enforcement Program, (ii) for up to sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Photo Red Light and Speed Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation;
 - 1.17. Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, and coordination between Redflex, the Customer and (WHERE APPLICABLE juvenile court personnel)
2. CUSTOMER OBLIGATIONS. The Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):
- 2.1.1. Appoint the Project Manager;
 - 2.1.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;
 - 2.1.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Photo Red Light and Speed Enforcement Program;
 - 2.1.4. Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the Customer; and
 - 2.1.5. Assist Redflex in seeking the Approvals
 - 2.1.6. Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated

Intersection Approaches and the Photo Red Light and Speed Enforcement Program;

- 2.1.7. Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
- 2.1.8. Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the Customer will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date;
- 2.1.9. Assist Redflex in developing the Red Light Violation Criteria;
- 2.1.10. Assist Redflex in developing the Speed Violation Criteria;
- 2.1.11. Seek approval of the Enforcement Documentation.
- 2.1.12. The Customer shall provide on an agreed upon frequency, without cost to Redflex, reports regarding the prosecution of Citations, the collection of fines, fees and other monies and available collision data, in such format and for such periods as Redflex may reasonably request.
- 2.1.13. Yellow Light Timing Review: The Customer is responsible to ensure that the yellow or amber light phase timing at all photo enforced intersections meets minimum standards according to Federal, State, and local laws, guidelines, and/or rules.
- 2.1.14. Provide on-going adequate electrical power in order to operate the systems. The Customer will allow Redflex to use existing conduit space as available.
- 2.1.15. The Customer shall be responsible to provide and install LED traffic signal lights (yellow and red) at all enforced locations,
- 2.1.16. Customer is responsible for all computer hardware, web browsers and high speed Internet access necessary to operate the systems
- 2.1.17. Customer will provide and install any required enforcement signage;

EXHIBIT "C"

Maintenance

1. All repair and maintenance of Photo Red Light and Speed Enforcement systems and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of city Traffic Engineering present.
3. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
4. Redflex may assign specific personnel to provide follow up assistance to the Customer in the form of the HELPDESK, a designated Customer Service Representative and a Director of Accounts.
5. Redflex shall respond within 24 hours to maintenance requests.

EXHIBIT "D"
COMPENSATION & PRICING

Commencing on the Install Date of this Agreement, the Customer shall be obligated to pay to Redflex a variable "Per Paid Citation" fee of:

- 1 to 90 Citations at a rate of \$48.00 per paid red light or speed citation per system
- 91 to 180 Citations at a rate of \$38.00 per paid red light or speed citation per system
- 181 citation and above at a rate of \$28.00 per paid red light or speed citation per system

Fees to be paid monthly during the Term of the Agreement, and any renewal thereof, for services to be provided by Redflex. Fees calculated as set forth in the H-GAC Contract Category D- "Automated DIGITAL – Camera Red Light Enforcement System"(Exhibit "G") of this Agreement.

Payment

1. The Parties hereto specifically agree that the amounts collected as compensation pursuant to Exhibit "G" of this Agreement are full remuneration for Redflex performing all of the services contemplated by this Agreement and there is no additional compensation not to otherwise set out in this Agreement.
2. Redflex shall invoice the Customer monthly for compensation due for previous month, and shall include supporting documentation for amounts calculated in conjunction with the Customer.
3. The Customer agrees to pay Redflex within thirty (30) days after the invoice is received. Customer shall be obligated to pay the cumulative balance invoiced by Redflex, in accordance with terms set forth above.

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Redflex construction will be able to utilize existing conduit for installation where space is available.
2. Each year, on the anniversary date of the contract, the pricing will increase by the CPI. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for U.S. City average.
3. Except where a balance remains unpaid due to a deficit in the gross cash received as described herein, Customer agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.
4. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of Redflex
5. The on-going provision of any and all necessary electrical power to the Designated Intersection Approaches will be the sole responsibility of the Customer
6. The Customer shall require any and all employees who may operate or occupy the Equipped Motor Vehicles to complete a mandatory training program to insure that (a) the Equipped Motor Vehicles are operated in a safe manner and (b) all warnings and instructions that accompany the Equipped Motor Vehicles are understood and heeded.
7. Redflex shall be solely responsible for installing required signage. Redflex shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the Vehicle Code, and Customer shall assist in determining the placement of such Signage. Redflex shall submit signage design drawings to the appropriate local authority for approval. Any changes or modifications to signage requirements will be the responsibility of the Customer.
8. Required Credit Card fees will not be considered to be revenue received and are the responsibility of the violator.
9. Roadway/Intersection improvement projects: Customer shall reimburse Redflex the costs of replacing and or modification of operational system approaches.
10. In the event a System is required to be taken out of service or is unable to enforce the red light or speed infractions for the intersection due to construction initiated by the Customer a flat fee of \$4,870.00 per month will be paid to Reflex by the Customer. Redflex will allow for proration of this fee based on number of days the photo enforcement system has been taken out of service.

Exhibit "E"
Additional Rights and Obligations

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

1. Redflex shall assist the Customer in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Photo Red Light and Speed Enforcement Program (actual print and production costs are the sole responsibility of the Customer).
2. The Customer shall not access the Redflex System or use the Photo Red Light and Speed Enforcement Program in any manner other than prescribe by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo Enforcement Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Photo Enforcement Program, and the Customer shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the Customer by means of hacking, password mining or any other method whatsoever, nor shall the Customer cause any other Person to do any of the foregoing.
3. The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Photo Red Light and Speed Enforcement Program.
4. Redflex and the Customer shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, Redflex and the Customer shall obey any and all such rules and regulations.
5. The Customer shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the Customer, or any of its employees, contractors or agents.

Insurance

1. During the Term, Redflex shall procure and maintain 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:
 - a) Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage;
 - b) 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 by Redflex and hired by Redflex;
 - c) Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$2,000,000) per claim and in the aggregate.
 - d) 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 New Mexico, and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
2. With respect to the insurance described in the foregoing Section of this Exhibit E, any deductibles or self-insured retentions must be declared to and approved by the Customer, and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the Customer.
3. With respect to the Commercial General Liability and Automobile Insurance the following additional provisions shall apply:
 - a) The Customer Parties shall be named as additional insureds with respect to the Commercial General Liability and Automobile Insurance, and such coverage shall contain no special limitations on the scope of protection afforded to such additional insureds.
 - b) 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.
 - c) 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.

4. 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 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.
5. Redflex shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the Customer prior to Redflex commencing any work pursuant to the terms of this Agreement.

Exhibit F

FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of _____, _____, 2008, is entered into by and between the City of Las Cruces, NM (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the city of Las Cruces, NM and Redflex Traffic Systems, inc. for Photo Red Light and Speed enforcement program, dated as of _____, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Credit Agreement, dated as of August 3, 2003 (the "Harris-Redflex Credit Agreement"), with Harris Trust and Savings Bank (the "Bank"), pursuant to which the Bank has provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.

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

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

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

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

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

<p>The City:</p> <p>Las Cruces, New Mexico</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Redflex:</p> <p>REFLEX TRAFFIC SYSTEMS, INC., a Delaware Corporation</p> <p>By: _____</p> <p>Name: Karen Finley</p> <p>Title: President and CEO</p>
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**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2008/2009**

FUND	DIVISION		FUND TYPE	
Safe Traffic Operations Program (S.T.O.P) Fund 2XXX	Public Works		Special Revenue	
	FY 2007/08 Projected	FY 2008/09 Adopted	Adjustments	FY 2008/09 Adjusted*
RESOURCES				
Beginning Balance	\$ 0	0		0
REVENUES				
5XXXXX Gross Violation Fines	\$ 0	0	306,000	306,000
Total Revenues	\$ 0	0	306,000	306,000
Total Resources	0	0	306,000	306,000
EXPENDITURES				
Red Flex Payment	\$ 0	0	118,080	118,080
Police Division				
Personnel	\$ 0	0	30,000	30,000
Operating (announcements, ads)	\$ 0	0	30,000	30,000
Purchased Services (contracted Hearing Officer)	0	0	5,000	5,000
Purchased Services (contracted Web developer)	0	0	15,000	15,000
Total Police	\$ 0	0	80,000	80,000
Public Works Division				
Personnel	\$ 0	0	30,000	30,000
Operating (signage)	0	0	15,000	15,000
Total Public Works	\$ 0	0	45,000	45,000
Total Expenditures	\$ 0	0	243,080	243,080
ENDING BALANCE	\$ 0	0	62,920	62,920

*Adjusted budget for 6 months (January to June).

SAFE TRAFFIC OPERATION PROGRAM (STOP) REVENUE ESTIMATE

Assumptions:
 * Program goes into effect January 1, 2009 (6 mos of activity in FY09)
 * Four locations
 -Main St. N/S & Solano Dr. E/W
 -Telshor Blvd. N/S & Lohman Ave. N/S
 -Walnut St. N/S & Lohman Ave. E/W
 -Valley Dr. N/S & Avenida De Mesilla N/S
 * Speeding citations are 1.5 times red light citations
 * Average of 204 paid red light citations per month @ first time fine level of \$100
 * Average of 306 speeding citations per month at an average of \$100 each.
 * Vendor/City splits for citations
 Citations 1 thru 90 Vendor = \$48 & City = \$52
 Citations 91 thru 180 Vendor = \$38 & City = \$62
 Citations 181+ Vendor = \$28 & City = \$72

Red Light Citations Monthly Totals	Citation Splits	Monthly Revenues		FY09 6 Months
		Vendor	Las Cruces Total	
204	90 @ \$48 & \$52 90 @ \$38 & \$62 24 @ \$28 & \$72 Monthly Totals	\$4,320 \$3,420 \$672 \$8,412	\$4,680 \$5,580 \$1,728 \$20,400	\$122,400
306	Citation Splits 90 @ \$48 & \$52 90 @ \$38 & \$62 126 @ \$28 & \$72 Monthly Totals	\$4,320 \$3,420 \$3,528 \$11,268	\$4,680 \$5,580 \$9,072 \$30,600	\$183,600
Revenue Totals		\$19,680	\$51,000	\$306,000
			Vendor Payment	\$118,080
			Las Cruces Net Revenues	\$187,920



City of Las Cruces®

PEOPLE HELPING PEOPLE

Executive Summary for September 15, 2008

ITEM NUMBER: 24 Resolution/Ordinance Number: 2474 Council District

TITLE:

AN ORDINANCE ENACTING LCMC 1997 SECTION 27-7 ET SEQ, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

STAFF CONTACT: Mike Johnson, Public Works Director, Public Works, 528-3333 and Chris Miller, Lieutenant, Police Department, 528-4289.

BACKGROUND:

Purpose(s) of Action: Enact Safe Traffic Operations Program (STOP) Ordinance.

Key Issues/Contributing Factors: The approval of this Ordinance will allow the use of cameras to enforce red light and speeding violations and allow the implementation of civil remedial measures to address red light and speeding violations.

COUNCIL OPTIONS:

1. Approve the Ordinance as drafted.
2. Modify the Ordinance as Council deems appropriate.
3. Deny the Ordinance and provide direction to staff as Council deems appropriate.



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action Form
 For Meeting of September 15, 2008
 (Adoption Date)

TITLE:

AN ORDINANCE ENACTING LCMC 1997 SECTION 27-7 ET SEQ, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

BACKGROUND:

NMSA 1978, 3-17-1A, allows for the City of Las Cruces ("the City") to provide for the safety, and to preserve the health, and improve the comfort and convenience of the municipality and its citizens; NMSA 1978, 3-18-1F, allows the municipality to preserve peace and order within the municipality; and NMSA 1978 3-49-1A, allows a municipality to regulate the use of its streets. It also allows the City to establish ordinances consistent with this power. The City for the protection of its residents has also enacted the New Mexico Uniform Traffic Ordinance as amended LCMC 1997, Sect 27-1 et seq. The State has not preempted the City from enacting a Safe Traffic Operations Program (STOP) Ordinance.

Statistics within the United States, New Mexico and the City reflect that there is a significant risk to the health and safety of the community from drivers who run red lights and exceed the posted speed limits. The City of Las Cruces has a serious injury rate resulting from red light violations within the municipality. It is vitally

(Continue on additional sheets as required)

Name of Drafter: Mike Johnson Chris Miller		Department: Public Works Police Department		Phone: 528-3135 528-4289	
Account Number N/A		Amount of Expenditure N/A		Budget Amount N/A	
Strategic Plan Goal / Objective / Strategy Addressed: N/A					
Performance Budget Goal / Objective Addressed: N/A					
Department	Signature	Phone	Department	Signature	Phone
Public Works		528-3333	Budget		2300
			Assistant City Manager		2271
Legal		541-2128	City Manager		207

important that drivers within the City progress away from the attitude that a red light is merely a suggestion to stop toward an appreciation that red light violations injure and even kill too many of our citizens. Red light violations are a great matter of local concern due to high traffic volumes and crowded intersections.

Many municipalities across the state and the western United States including Albuquerque and El Paso have experienced substantial decreases in red light violations by using red light cameras. Red light cameras have been demonstrated to produce reliable evidence of red light violations and as a result it is reasonable for police officers to rely on red light camera evidence even if the officer did not personally observe the violation.

Red light violations are a nuisance that shall be abated by the assessment of fines to compensate the city and tax payers who do not commit these violations. The current penalty under state law for running a red light is inadequate to meaningfully address the nuisance and as a result the City must implement meaningful civil remedial measures that will stop red light violations making the City's streets safer and in turn save lives. Red light violations are causally connected to death or serious injury to a degree not evident with regard to other traffic infractions.

Some drivers in the City repeatedly violate posted speed limits. Current state law against speeding does not prevent the City from having provisions in its ordinance to provide for public safety on its streets. The implementation of enforcement of speed limits by means of photographic and electronic equipment will abate the nuisance of speeding.

The approval of this Ordinance by the City Council is necessary to initiate the enactment of the STOP which will allow the use of cameras to enforce red light and speeding violations and allow the implementation of civil remedial measures to address red light and speeding violations.

SUPPORT INFORMATION:

1. Ordinance.

COUNCIL OPTIONS:

1. Approve the Ordinance as drafted.
2. Modify the Ordinance as Council deems appropriate.
3. Deny the Ordinance and provide direction to staff as Council deems appropriate.

COUNCIL BILL NO. 09-011
ORDINANCE NO. 2474

AN ORDINANCE ENACTING LCMC 1997 SECTION 27-7 ET SEQ, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

The City Council is informed that:

WHEREAS, NMSA 1978, 3-17-1A, allows for the City of Las Cruces ("the City") to provide for the safety, and to preserve the health, and improve the comfort and convenience of the municipality and its citizens; and

WHEREAS, NMSA 1978, 3-18-1F, allows the municipality to preserve peace and order within the municipality; and

WHEREAS, NMSA 1978 3-49-1A, allows a municipality to regulate the use of its streets. It also allows the City to establish ordinances consistent with this power; and

WHEREAS, the City for the protection of its residents has also enacted the New Mexico Uniform Traffic Ordinance as amended LCMC 1997, Sect 27-1 et seq; and

WHEREAS, the State has not preempted the City from enacting a Safe Traffic Operations Program (STOP) Ordinance; and

WHEREAS, the enactment of STOP will allow the use of cameras to enforce red light and speeding violations and allow the implementation of civil remedial measures to address red light and speeding violations.

NOW, THEREFORE, Be it resolved by the governing body of the City of

Las Cruces:

(I)

THAT the Safe Traffic Operations Program (STOP) is hereby enacted.

(II)

THAT Article 27-7 and subsections 27-7.1 through 27-7.7 are hereby added to the LCMC 1997.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____ 2008.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

VOTE:

Mayor Miyagishima _____
Councillor Silva _____
Councillor Connor _____
Councillor Archuleta _____
Councillor Small _____
Councillor Jones _____
Councillor Thomas _____

Moved by : _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

COUNCIL BILL NO. 496
ORDINANCE NO. _____

AN ORDINANCE ENACTING LCMC 1997 SECTION 27-7, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

Section 1. A new Article 27-7 and subsequent subsections LCMC 1997 is enacted to read as follows:

27-7 [NEW MATERIAL.] SAFE TRAFFIC OPERATIONS PROGRAM

Section 2. A new Section 27-7.1 LCMC 1997 is enacted to read:

27-7.1 [NEW MATERIAL.] Short Title. Article 27-7.1 and its subsection LCMC 1997 shall be referred to as the Safe Traffic Operations Program ("STOP") and may sometimes be referred to as "this Article."

Section 3. A new Section 27-7.2 LCMC 1997 is ordained to read:

27-7.2 [NEW MATERIAL.] Findings and Intent

A. The governing body finds that there is a significant risk to the health and safety of the community from drivers who run red lights and exceed the posted speed limits. The governing body finds that the City of Las Cruces has a serious injury rate resulting from red light violations within the City. Drivers in the City shall progress away from the attitude that a red light is merely a suggestion to stop toward an appreciation that red light violations injure and even kill too many of our citizens. The governing body finds that red light violations are a nuisance. Within the City of Las Cruces, red light violations are a great matter of local concern due to high traffic volume and crowded intersections. The governing body finds that the State legislature does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the exclusion of local traffic laws.

B. The governing body finds that many municipalities across the state have experienced substantial decreases in red light violations by using red light cameras. The governing body finds that red light cameras produce reliable evidence of red light violations. The governing body finds that it is reasonable for Police Officers to rely on red light camera evidence even if the officer did not personally observe the violation. The governing body finds that red light cameras save lives and make our streets safer.

C. Red light violations are a nuisance⁴⁹⁷ that shall be abated by the assessment of fines to compensate the City and tax payers who do not commit these violations. Drivers who fail or refuse to pay the fines and repeatedly run red lights create a severe nuisance that will not be abated unless the City temporarily seizes the cars of drivers and thus removes the instrumentality used to create this nuisance. The governing body finds that the current penalty under state law for running a red light is inadequate to meaningfully address the nuisance and that the City must implement meaningful civil remedial measures that will stop red light violations making the City's streets safer and saving lives. Red light violations are causally connected to death or serious injury to a degree not evident with regard to other traffic infractions.

D. The governing body finds that some drivers in the City repeatedly violate posted speed limits. The governing body finds that State law against speeding does not prevent the City from having provisions in its ordinance to provide for public safety on its streets. The governing body finds that implementation of enforcement of speed limits by means of photographic and electronic equipment will abate the nuisance of speeding.

E. The governing body declares that a vehicle used to violate this Article is the instrumentality of a nuisance and shall be abated in the City.

F. The governing body declares that this Article is a nuisance abatement Article enacted pursuant to the City's inherent authority under State law and that the remedies are purely civil and not criminal in nature.

Section 4. A new Section 27-7.3 LCMC 1997 is ordained to read:

27-7.3 [NEW MATERIAL.] Definitions. For the purposes of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Authorized Emergency Vehicle means the same as defined under NMSA 1978 66-1-4.1(E)(2001) as amended from time to time and, without limitation on the foregoing, shall mean any fire department vehicle, police vehicle, ambulance and any emergency vehicles of municipal departments or public utilities that are designated or authorized as emergency vehicles by the Director of the New Mexico State Police Division of the Department of Public Safety or the Chief of Police of the Las Cruces Police Department.

Camera, Speed Device or "CSD" means the instrument that detects a violation of this Article. The definition includes but is not limited to photo red light cameras and electronic speed detection equipment reasonably relied upon by Police Officers.

Owner's Affidavit means a written statement⁴⁹⁸ signed under oath and submitted to the City or the City's Contractor under penalty of perjury by the registered owner of a vehicle who asserts therein that the registered owner was not driving a vehicle at the time of a violation.

City means the City of Las Cruces.

City Clerk means the City Clerk of the City.

City Manager means the City Manager of the City of Las Cruces.

Contractor means a person or entity that enters a contract with the City to provide the City with photographic or electronic evidence of a violation through a CSD.

Default means the failure to pay a STOP fine or to timely pay a fine pursuant to a decision of a Hearing Officer under this Article.

Delivery or Delivered means the mailing of a STOP fine notification to a registered owner or nominee or personal service of a STOP fine notification or Hearing Officer decision on a registered owner or nominee.

Department means the City's Police Department which is the agency of the City that employs the Police Officer who issues a STOP fine notification or causes a STOP fine notification to be issued.

Department of Motor Vehicles or DMV means the Motor Vehicle Division of the Taxation and Revenue Department of the State of New Mexico or its successor agencies.

Driver means the person operating a motor vehicle at the time of a violation.

Effective Date means the date a STOP fine notification is mailed to the recipient by the Contractor as indicated on the face of the STOP fine notification.

Finance Department means the City's Financial Services Department.

Hearing Officer means a City Hearing Officer, as appointed by the City Manager.

Identify means to submit all information on a driver sufficient to allow the City to locate and notify the driver in lieu of the registered owner including but not limited to the name and address of the driver.

Immobilization or Immobilized means seizure of a vehicle by placement of a device on the vehicle so that the vehicle cannot be moved.

Nomination means identification of the actual driver of a car by the registered owner as the responsible party for a violation.

Nominee means the person or entity identified by the registered owner as the driver or responsible party.

Notice of Default means a document delivered to the registered owner and stating that the registered owner is in default.

Nuisance means the act of operating a vehicle in violation of this Article.

Police Officer means a sworn member of the Las Cruces Police Department, Dona Ana County Sheriff's Office, the New Mexico State Police, or any other public official with authority to stop a vehicle for a traffic violation in the City of Las Cruces.

Public Safety Aide means a Public Safety Aide of the Las Cruces Police Department.

Registered Owner means the owner or owners of a vehicle according to the license plate number or information obtained from the Department of Motor Vehicles, from similar motor vehicle agencies outside New Mexico, from information obtained from the Las Cruces Municipal Court, from the Dona Ana County Magistrate Court, from Department records, from a CSD or from any other documentation or methods reasonably relied upon by Police Officers. The singular includes the plural.

Respondent means an accused violator who has received a STOP fine notification and requested a hearing.

School Zone means a posted "safety zone" as that term is defined under NMSA 1978 66-1-4.16 (2001) as amended from time to time.

Seize means to take a vehicle from the registered owner for a failure to cure a default.

Stop Fine Notification means a written document mailed to the address of the registered owner or nominee stating that a violation has occurred and payment is due.

Violation or Offense means a violation of this Article.

Section 5. A new Section 27-7.4 LCMC 1997 is ordained to read:

27-7.4 [NEW MATERIAL.] Violation. Any violation of Section 27-12-5-6 or Section 27-12-6-1.2 of the City's Municipal Code is a violation of this Article. This Article does not apply to authorized emergency vehicles responding to an emergency. This Article does not apply to vehicles in an intersection during a red light while involved in a Police Officer or Public Safety Aide controlled funeral procession or a City permitted parade or when responding to a Police Officer directing traffic.

Section 6. A new Section 27-7.5 LCMC 1997 is ordained to read:

27-7.5 [NEW MATERIAL.] Enforcement.

A. *Criminal Violation Observed by Police Officer.* This Article does not abrogate or impair enforcement authority of existing traffic laws by a Police Officer for a violation committed in their presence. Specifically, if a Police Officer personally and contemporaneously observes a traffic

violation, the Police Officer may stop the vehicle and issue a citation under State law or the City of Las Cruces Traffic Code in the usual manner. ^{500.}

B. *Violation Recorded by CSD.* The Contractor shall provide all evidence of a CSD recorded violation to a Police Officer. A Police Officer shall review all CSD evidence provided by the Contractor. If the Police Officer determines that a violation has occurred, the Police Officer shall cause a STOP fine notification to be delivered to the registered owner. The registered owner is strictly and vicariously liable for the violation unless one of the exceptions herein applies. If there is more than one registered owner, all registered owners shall be jointly and severally liable.

C. *STOP Fine Notification.*

(1) Form and contents. The STOP fine notification shall state and contain the name of the registered owner or owners or nominee, the effective date of the STOP fine notification, the type of violation, the date, time, and location of the violation, a picture of the violation, the license number of the vehicle, the name and identification of the issuing Police Officer, the amount of the fine, whether the fine is a first or subsequent offense, the response due date and the address of the Department. The STOP fine notification shall conspicuously and in bold face type state; "Failure to pay this fine on time will lead to serious legal consequences including the loss of your vehicle and the assessment of additional fines and monies due. A second or subsequent STOP violation within two years from the date of this STOP fine notification will lead to increasing fines and penalties including the loss of the subject vehicle. After you have received this STOP fine notification, it is unlawful to sell, transfer, or otherwise convey title to the subject motor vehicle to another person unless all applicable STOP fines are paid." The STOP fine notification shall include an owner's affidavit form. The STOP fine notification shall contain a return envelope addressed to the Contractor or the Department. The STOP fine notification shall inform the registered owner or the nominee of the right to request a hearing by so indicating in a space provided on the form and returning same to the Department.

(2) Delivery. The STOP fine notification shall be delivered to the address of the registered owner according to the address registered with the Department of Motor Vehicles or to the address of the nominee according to the owner's affidavit. The registered owner has a duty to timely notify DMV of a change of address and the failure to do so does not entitle the registered owner to assert the defense of inadequate notice. The mailing of a STOP fine notification to the address of the registered owner of a vehicle according to the records of DMV

or to the address of the nominee according⁵⁰¹ to the owner's affidavit is constructive notice of a STOP fine notification.

D. *Response to a STOP Fine Notification.* Within 35 days from the effective date, the registered owner shall pay the fine, file an owner's affidavit making a nomination, or request a hearing. To pay the fine, the recipient shall deliver the STOP fine notification with payment to the City or to the Contractor according to the instructions on the STOP fine notification. To make a nomination, the recipient shall return the STOP fine notification with a completed owner's affidavit to the Contractor. To request a hearing, the recipient shall return the STOP fine notification with the request for hearing to the Hearing Officer. There is no fee to request a hearing. Three days for mailing is not allowed and the response shall be actually received no later than 35 consecutive days (including holidays) from the effective date. The Department and Hearing Officer shall forthwith notify the Contractor concerning the receipt of a request for hearing. If the fine has not been paid, there has been no nomination or a request for a hearing within 35 days from the effective date, the Contractor shall send written notice of default to the Department and the registered owner or nominee or both.

(1) **Payment of STOP fine.** Upon receipt of the STOP fine notification, the recipient may elect to admit the violation and pay the fine. To proceed under this section, the recipient shall admit the violation by signing and dating the STOP fine notification on a space provided and returning the STOP fine notification with payment to the Contractor or to the City within 35 days. The City may, but is not required to, adopt procedures for alternative methods of payment of fines using the internet or other on-line services. There shall be a \$50 penalty for any payment tendered that is not honored or is returned for any reason.

(2) **Appeal.** The recipient of the STOP fine notification may request a hearing by so indicating and returning the STOP fine notification to the Hearing Officer within 35 days of the effective date. There is no fee for a hearing. The Hearing Officer shall schedule a hearing.

(3) **Nomination.** Any registered owner who was not driving the vehicle at the time of the violation may either accept the responsibility or identify the driver so the Contractor can send a notice of violation to the driver. The nomination procedure described in this paragraph is available to any registered owner and is not limited to corporations and governmental entities. If the registered owner claims that another person was driving the vehicle at the time of the violation, the registered owner shall so indicate on the owner's affidavit and identify the person who was driving the vehicle. The Contractor shall forthwith deliver the STOP fine notification and owner's affidavit to the Department to the attention of the issuing Police

Officer. The Police Officer may send a new ⁵⁰² STOP fine notification to the nominee or cause the Contractor to deliver a new STOP fine notification to the nominee. The effective date of the STOP fine notification sent to the nominee is the day the STOP fine notification is issued to the nominee as indicated on the face of the new STOP fine notification. If the nominee successfully appeals the allegation that he or she was the driver or defaults the City may proceed against the registered owner by issuing a subsequent STOP fine notification to the registered owner with the effective date being the date so indicated on the face of the subsequent STOP fine notification. If the City cannot assert jurisdiction over the nominee, the registered owner is responsible, subject to the remaining defenses available in this Article. Any registered owner who submits an owner's affidavit does so under penalty of perjury. If the registered owner operates a business that uses a fleet of one or more vehicles and nominated the driver on a previous violation and the driver paid the fine or otherwise cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be considered a second, third or subsequent offense regarding that vehicle unless driven by the same driver. Without limitation on the foregoing, nomination may be used when:

(a) The registered owner is the United States of America, State of New Mexico, County of Dona Ana or any other governmental entity that owns a vehicle that was being driven by a natural person who was the employee, contractor or agent of the business, corporation or other non-natural entity at the time of the alleged violation. Said entities shall nominate and identify the driver.

(b) The registered owner is a place of business, corporation or other non-natural entity that owns a vehicle that was being driven by a natural person who was the employee, contractor or agent of the business, corporation or other non-natural entity at the time of the alleged violation. Said entities shall nominate and identify the driver.

(c) The registered owner is an automobile rental business, automobile dealership or other business entity that, in the ordinary course of business, leases vehicles to others and the lessee was driving the vehicle at the time of the alleged violation. Said entities shall nominate and identify the driver.

(d) The registered owner was not driving the vehicle at the time of the violation. To assert the defense mentioned in this paragraph, the registered owner shall identify the actual driver and comply with the nomination provision above.

E. *Default.* If the City does not receive payment of the fine, a nomination or a request for a hearing within 35 days from the effective date, the registered owner is in default. Default automatically results in liability to the registered owner for the violation and the registered owner is barred from requesting or obtaining any hearing on the merits of the STOP fine after the date of the default. A default results in an additional penalty of \$25. The Department shall cause the Contractor to mail the notice of default to the defaulting party. The notice of default shall inform the recipient that they have 20 days from the date of mailing of the notice of default to pay the fine or request a hearing from the Hearing Officer. If the default is not cured, the City may pursue all remedies for collection of a debt and is entitled to an award of reasonable attorney's fees incurred. An uncured notice of default shall be entered into the records of the Department and any Police Officer who discovers a vehicle in the City in the course of a traffic stop or otherwise may seize the vehicle for unpaid fines. The registered owner is liable for a default by a nominee.

F. *Hearing.* In the event of a demand for a hearing, the Hearing Officer shall hold a hearing within 90 days from the date of the request for hearing unless a continuance is granted pursuant to the consent of the parties. The hearing does not need to be held within 90 days if a continuance is granted. The Hearing Officer is in charge of the proceedings and may exclude any person for inappropriate conduct. The rules of evidence are relaxed. The Department has the burden to prove by a preponderance of the evidence that the violation occurred. The respondent has the burden to prove any defenses by a preponderance of the evidence. A photograph, videotape or other electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence by the Hearing Officer. The respondent may challenge the weight or accuracy of the evidence. If the Department prevails, the respondent shall pay the fine. The Hearing Officer shall render a decision in writing in ten days and provide the decision to the Department and the Finance Department. Failure to pay a fine as ordered by the Hearing Officer within ten consecutive days from the date of the decision is a default and will apply against the vehicle without service of a notice of default. Following a hearing, the respondent may appeal the decision of the Hearing Officer to Las Cruces Municipal Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

G. *Defenses.* The respondent may present the following defenses in addition to any other defenses available under law and has the burden of proof concerning the defenses:

- (1) The vehicle was stolen or otherwise being driven without the registered owner's knowledge or permission at the time of the alleged violation. The registered owner shall have a police report pertaining to the theft to avail the owner of this defense.

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(2) The ownership of the vehicle had lawfully been transferred and conveyed from the registered owner to another person before the time of the alleged violation. To assert this defense, the registered owner shall identify the transferee and provide proof of conveyance.

(3) The evidence does not show that a violation was committed involving the subject vehicle.

(4) The registered owner was not driving the vehicle at the time of the violation. To assert the defense mentioned in this paragraph, the registered owner shall identify the actual driver and comply with the nomination provisions above.

(5) The vehicle should not be assessed an increased fine for a subsequent offense because the registered owner owns or operates a fleet of vehicles in a business and nominated the actual driver who satisfied payment of the fine on the previous violation.

(6) The registered owner did not receive notice because the STOP fine notification was not mailed to the address of record with the DMV.

H. *Fine.*

(1) The fine for the first violation for running a red light is \$100. The fine for a second violation is \$125. The fine for a third or subsequent violation for running a red light within two years from the date of the first violation is \$175.

(2) The fines for speeding are as follows:

- (a) Up to and including ten miles per hour over the speed limit:
\$80;
- (b) From 11 up to and including 15 miles per hour over the speed limit:
\$100;
- (c) From 16 up to and including 20 miles per hour over the speed limit:
\$125;
- (d) From 21 up to and including 25 miles per hour over the speed limit:
\$150;
- (e) From 26 up to and including 30 miles per hour over the speed limit:
\$175;
- (f) From 31 up to and including 35 miles per hour over the speed limit:
\$200;
- (g) More than 35 miles per hour over the speed limit:
\$250.

(3) The City Manager may allow ⁵⁰⁵ services to the City as an alternative to payment of fines. A violator who elects to avail themselves of the option of service to the City in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits conferred upon City employees, including, without limitation, workers compensation. The City is not responsible for damages incurred except as otherwise provided by law. The person seeking relief hereunder shall timely request the option of service to the City in lieu of payment of a fine by requesting a hearing before a Hearing Officer at which to demonstrate that the person eligible for the option and shall not be in default on payment of other fines levied by the City of Las Cruces. If the Hearing Officer approves the person for relief under this paragraph, the City Manager shall enter a settlement agreement whereby the person shall provide services to the City in lieu of payment of a fine. No person who cannot pass the background check to qualify as a volunteer may obtain relief under this paragraph. The services include, without limitation, cleaning up weeds and litter, cleaning kennels at the Las Cruces Animal Shelter, and assisting with the maintenance of City property. Services shall be rendered in not less than full hour increments and shall be credited against the fine payable at \$10.00 per hour.

I. *Seizure.* A Police Officer may seize or immobilize a vehicle for 90 days pursuant to the provisions of Article 27-6 LCMC 1997 upon discovery of a vehicle in the City with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees, the vehicle is subject to forfeiture under Article 27-6 LCMC 1997. If a non-Las Cruces resident defaults, the Department shall immobilize the vehicle of a delinquent or defaulting party for 90 days if said vehicle is found in the City limits any time within ten years of any violation of this Article.

Section 7. A new Section 27-7.6 LCMC 1997 is ordained to read:

27-7.6 [NEW MATERIAL.] Administration.

A. The Department shall be responsible for administration of this Article. Reasonable rules and regulations may be promulgated by the City Manager or his designee to carry out the intent and purpose of this Article.

B. The City Manager may establish a STOP ombudsman to address and resolve citizen grievances with STOP procedures and technical issues regarding automated enforcement technology.

C. Any and all revenue obtained through the Las Cruces Safe Traffic Operations Program shall be used by the Las Cruces Police Department and the City's Traffic Engineering Department for service enhancement and public safety.

Section 8. A new Section 27-7.7 LCMC 1997 is ordained to read:

27-7.7 [NEW MATERIAL.] Severability.⁵⁰⁶ If any section, paragraph, sentence or clause of this section is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this section. The City Council hereby declares that it would have passed this section irrespective of any provision being declared unconstitutional or otherwise invalid. Additionally, should any provision of this section conflict with a provision of another applicable civil law or regulation relating to STOP, the stricter provision shall apply, unless more specifically preempted, in which case, the severability provision above will govern.

DONE AND APPROVED THIS _____ DAY OF _____, 2008.

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____

Councillor Connor: _____

Councillor Silva: _____

Councillor Archuleta: _____

Councillor Small: _____

Councillor Jones: _____

Councillor Thomas: _____

Moved by: _____

Seconded by: _____

Approved as to Form:

City Attorney