

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050

**RECEIVED**

AUG 13 2010

OFFICE OF CITY ATTORNEY

August 12, 2010

Bryan Berthiaume
Executive Director
Foundation For Fair Contracting
3807 Pasadena Avenue, Suite 150
Sacramento, CA 95821

Re: Public Works Case No. 2010-010
Photo Red Light Enforcement Program
City of Hayward

Dear Mr. Berthiaume:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to section 16001(a) of title 8 of the California Code of Regulations. Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the construction and installation work performed in connection with the Photo Red Light Enforcement Program at designated intersection approaches in the City of Hayward ("City") is public work subject to prevailing wage requirements.

Facts

On February 14, 2007, City issued a request for proposals for the provision of "a comprehensive and fully integrated red light photo enforcement program" (the "RFP"). The successful bidder would be required "to deploy red light camera equipment at designated intersections." The scope of mandated services includes "all hardware, software, installation, maintenance, operation, training, and all back-office processing of violations . . ." Specifically, the RFP provides that the successful bidder would be responsible to "provide and install all equipment including, but not limited to, poles, cabinet and related operational equipment at the selected intersections" and for "all permit acquisition, site design, construction, installation and maintenance of the equipment."

The successful bidder, Redflex Traffic System, Inc. ("Redflex"), submitted its proposal to City on March 29, 2007. In its proposal, Redflex agrees to provide and install all equipment for the Photo Red Light Enforcement Program. Redflex identifies J.D. Baker Construction Company ("J.D. Baker") as the subcontractor who will "complete the construction aspects of the installation of the red light enforcement system equipment," noting that J.D. Baker's employees are affiliated with the Operating Engineers, Local Union No. 3.

In the RFP, City requested a cost proposal that would include "all equipment, services, training and maintenance." In its proposal, Redflex suggests a fee of \$5,000 to \$6,000 per month for each intersection approach depending on the intersection's complexity. The monthly fee is "all inclusive of all services, equipment and training."

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On or about November 9, 2007, City and Redflex entered into an exclusive agreement (the "Agreement"). The Agreement provides that City is engaging the services of Redflex "to provide certain equipment, processes and back office services" so that City is able "to monitor, identify and enforce red light running violations." "Equipment" is defined in the Agreement to mean "any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Photo Red Light System(s), including but not limited to all camera systems, housings, radar units, sensors and poles."

The construction and installation work Redflex is required to perform for each designated intersection approach is set forth in paragraph 3.1 of the Agreement and in Exhibit B, "Construction and Installation Obligations." Under these provisions, Redflex is required to submit for City approval construction and installation specifications for each designated intersection; to install under City supervision all necessary equipment at each designated intersection; and to cause an electrical contractor to perform the necessary electrical work, including installation of all related equipment, detection sensors, poles, telecommunications equipment and wiring (the "Fixed Photo Red Light System").

The Agreement provides that City shall designate a "Police Project Manager" (the "Authorized Officer") to oversee the construction and installation, to implement the Photo Red Light Enforcement Program, to review the data collected by the Redflex System to determine whether a violation has occurred, and to authorize the issuance of citations. If the Authorized Officer determines that a citation shall be issued, he/she transmits such determination to Redflex whereupon Redflex prints and mails a citation to the vehicle's registered owner together with data and photo images documenting the alleged violation and any other documentation deemed necessary by the Authorized Officer for successful prosecution of the violation.

The initial term of the Agreement commences November 9, 2007, and continues for each intersection for a period of five years after the date Redflex completes the construction and installation of the Fixed Photo Red Light System at that intersection. City may extend the term for up to two additional two-year periods. Upon termination of the Agreement, Redflex is obligated to remove all equipment and materials, including poles, housings and cameras installed under the Agreement and to return the intersections to substantially the same condition they were in prior to the Agreement.

Under the Agreement, City is obligated to pay Redflex the sum of \$5,679 per month for each intersection with up to two contiguous lanes, and \$5,879 per month for each intersection with three or more contiguous lanes "as full remuneration for performing all of the services contemplated" in the Agreement. In the event City terminates the Agreement without cause, City is required to pay Redflex, as a cancellation fee, a pro rata share of the direct labor and material costs (not including equipment costs) incurred in installing the Fixed Photo Red Light System for each intersection approach installed prior to the effective date of termination (the "Reimbursable Costs"). The fee is calculated based on the percentage of months remaining in the Agreement multiplied by the value of the Reimbursable Costs, which are estimated in the Agreement to be approximately \$50,000 to \$80,000 per intersection approach.

Since execution of the Agreement, Redflex has entered into subcontracts with St. Francis Electric Inc. ("St. Francis"), Rader Excavating Inc. ("Rader"), and Pacific West Space Communications Inc. ("Pacific West") for the construction and installation work required in connection with the

Photo Red Light Enforcement Program. Redflex entered into three subcontracts in 2008 with St. Francis for the construction and installation of the Fixed Photo Red Light System at three intersections: Industrial Parkway and Huntwood Avenue at a cost of \$42,350; 2nd Street and B Street at a cost of \$39,088.85; and Winston Avenue and Hesperian Blvd. at a cost of \$43,647.25. Redflex entered into one subcontract in 2009 with Rader for the construction and installation of the Fixed Photo Red Light System at Hesperian Blvd. and A Street at a cost of \$20,873.59. Redflex entered into four subcontracts in 2009 with Pacific West for the construction and installation of the Fixed Photo Red Light System at four intersections: A Street and Highway 880 at a cost of \$55,552; Santa Clara Street and Jackson Street at a cost of \$32,365; Mission Blvd. and Industrial Parkway at a cost of \$27,931; and Industrial Parkway and Whipple Road at a cost of \$28,570.

While the construction and installation work may vary somewhat from intersection to intersection, the scope of work generally involves installing a foundation for the poles by removing existing concrete panels, placing prefabricated threaded bolts into the ground, pouring back the concrete panels, mounting the poles on the threaded anchor bolts, and restoring concrete damaged during the construction process. The camera unit housing is mounted directly on top of the installed pole. Flash units are attached to the pole with stainless straps. Conduit is buried in the roadway or sidewalk at depths required by City. A power pedestal is installed by mounting the power meter on a small foundation. Wire is pulled through the conduit to connect the power source with the equipment. Sensors are installed in holes cored into the asphalt in each lane of traffic and held in place with epoxy.

Discussion

Section 1771 generally requires the payment of prevailing wages to workers employed on public works. Labor Code section 1720 (a)(1)¹ generally defines "public works" to mean: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds ..."

The parties do not dispute that the work involved in installing the Fixed Photo Red Light System at the designated intersections entails "installation" performed under contract within the meaning of section 1720 (a)(1). "Installation" has consistently been defined in prior public works coverage determinations as work involving the bolting, securing or mounting of fixtures to realty. (See, e.g., PW 2008-034, *Installation of Smart Classroom Technology, Fresno Unified School District* (July 27, 2009) and cases referenced therein.) Here, the work falls within the definition of installation in that the poles are secured to the ground, the camera unit housing and flash units are mounted or otherwise attached to the pole, the conduit is buried under the roadway or sidewalk, the power meter is mounted on a foundation, and the sensors are embedded in the street or highway. Also, the work of removing, re-pouring and restoring the concrete entails "construction."

There is also no dispute that City's payments to Redflex under the Agreement are out of public funds. The question raised is whether they are payments for the construction and installation work. Both City and Redflex take the position that the Agreement is a contract for services, that the installation work is incidental to the main purpose of the Agreement, and, therefore, that the Agreement is not a contract for "public works" under *McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576 ("*McIntosh*") and *International Brotherhood of Electrical Workers v. Board of Harbor*

¹ All statutory references are to the California Labor Code unless otherwise indicated.

Commissioners (1977) 69 Cal.App.3d 566 ("IBEW"). The facts of this case are distinguishable, however, and render *McIntosh* and *IBEW* inapplicable.

In *McIntosh*, the County of Riverside entered into a 30-year ground lease with Helicon, Inc., a non-profit corporation, for 5.65 acres of undeveloped land in which the County held a ground lease. Helicon was required to use the land for the construction and operation of a residential care facility for emotionally disturbed minors. In a memorandum of understanding incorporated into the sublease, the County agreed to place minors in the facility using AFDC-FC funds, which the court described as "undoubtedly public funds." The AFDC-FC funds were to be used to pay for the minors' care and treatment. (*McIntosh*, 14 Cal.App.4th at p. 1586.) The court found that the AFDC-FC payments were "payments for later services" and not for construction. The court explained:

By a memorandum of understanding incorporated in the sublease, the County "commits" to placing minors in the finished facility and using what are undisputedly public funds to pay for their care and treatment there However, that is payment for later services, not preliminary construction. We hold that paying for public services does not make incidental construction work done by a private provider of those services "public works" under section 1720, subdivision (a). The statute requires payment for "construction"; to take that as meaning "services" would violate plain, unambiguous language, which we cannot do.

(*Ibid.*)

In *IBEW*, the parties entered into an oil and gas lease requiring the production of oil by the Long Beach Oil Company and the payment of royalties to the City of Long Beach. The court found that the City's only interest was in the payment of royalties. *McIntosh* correctly characterized the contract in *IBEW* as one for services, not for construction. The *McIntosh* court considered the construction to be merely incidental to the provision of those services. (*McIntosh*, 14 Cal.App.4th at p. 1586.)

The facts of this case show that the work involved in installing the poles, camera, flash units and other equipment comprising the Fixed Photo Red Light System is specifically required by the Agreement and is an essential component of the Photo Red Light Enforcement Program. Pursuant to paragraph 3.1 of the Agreement and Exhibit B to the Agreement, City is actively involved in the construction and installation of the Fixed Photo Red Light System at each of the designated intersection approaches. City is responsible for designating the intersections, approving the construction and installation specifications for each intersection, and overseeing the work. Once the Fixed Photo Red Light System at a designated intersection is operational, the images and evidence of violations are collected and provided electronically to City for review. If the Fixed Photo Red Light System were not installed at intersections designated by City, the Photo Red Light Enforcement Program would not exist nor could it function. Thus, the construction and installation work cannot be considered to be merely incidental to City's interest in reducing red light violations.

Moreover, it is clear that the public funds paid to compensate Redflex are for *all* services required of Redflex or its subcontractors under the Agreement without distinction, including construction and installation of the Fixed Photo Red Light System. The conclusion that the monthly payments

to Redflex pay for the construction and installation is reinforced by the fact that the Agreement requires City, if it terminates the Agreement without cause, to pay a cancellation fee measured by the Reimbursable Costs, including direct labor costs, to install the Fixed Photo Red Light System at each intersection prorated based on the percentage of months remaining in the term of the Agreement. The clear implication is that a portion of each monthly payment made by City for the months that have transpired prior to termination is paying a pro rata share of the cost of the construction and installation. That the monthly payments may also pay for administrative services provided by Redflex under the Agreement is not relevant. The relevant consideration is that the public funds pay for the cost of the construction and installation work.

This determination is consistent with other recent cases in which the application of *McIntosh* was at issue.

PW 2008-025, *Construction of Animal Community Center, Humane Society Silicon Valley* (August 5, 2009), entailed the construction of an Animal Community Center by the Humane Society Silicon Valley ("HSSV"). The only public funds involved were paid by the City of Sunnyvale to HSSV pursuant to an Animal Services Agreement, which took effect after HSSV moved into and began operation of the new facility. The Agreement provides that the city will pay an initial \$1 million Capital Payment, and an annual "Host Fee" and "Live Animal Cost." The Agreement specifically states that the "Host Fee" and "Live Animal Cost" payments are for the provision of services for animals. The Director found that they therefore fell within the holding of *McIntosh* cited above as payment for on-going services rather than for construction. Consistent with prior public works determinations, the Capital Payment was determined to be "de minimis" in the context of the overall cost of the Project, and, thus, even if considered to be a public subsidy for construction, it did not render the Project paid for, in part, out of public funds.

In PW 2008-026, *King/Chavez Preparatory Academy, City of San Diego* (October 1, 2009), the City of San Diego constructed a new charter school with conduit bond financing. The bonds were repaid with rental income derived from public funds appropriated by the California Legislature under the Charter Schools Act of 1992 (Stats. 1992, ch. 781). None of these funds were paid to the developer or used to pay for construction of the school. Moreover, the legislative intent in providing such aid for charter schools was to assist them in providing learning opportunities to their pupils and not to pay for construction of the facilities. Thus, these payments likewise were found to be within the holding in *McIntosh* that payments for services, in this instance for the education of pupils, do not come within the provisions of section 1720, subdivision (a).

In PW 2010-008, *Southwest Community Health Center, Construction of Tenant Improvements at 3569 Round Hill Circle, County of Sonoma* (April 8, 2010), County grant funds were paid to purchase property for use as a primary care facility. The funds were paid under the same statutory provision at issue in *McIntosh*, Government Code section 26227 ("Section 26227"), which authorizes the payment of public funds to establish or to fund programs deemed by a county board of supervisors "to meet the social needs of the population of the county" The Director found that the public funds were paid for the provision of public services under Section 26227, and, under *McIntosh*, were not payment for construction. Of particular relevance to the determination was the *McIntosh* court's discussion of Section 26227, in which the court noted that it is "arguably inconsistent" for counties to encourage private development of projects to provide public services of a type specified in that section and then to "subject such development to the disincentive of public works status." (*McIntosh*, supra, 14 Cal.App.4th at p. 1587.)

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Finally, in PW 2009-005, *Solar Photovoltaic Distributed Generation Facility, West County Wastewater District* (April 21, 2010), and PW 2008-038, *Solar Photovoltaic Distributed Generation Facility, Santa Cruz School District* (April 21, 2010), public entities entered into Power Purchase Agreements with developers to purchase electricity generated by solar facilities to be built by the developers on the public entities' properties. Because the payments were specifically limited to the purchase of electrical power generated by each facility, and calculated based on the kilowatt-hours of electricity generated, it was determined that under *McIntosh* they were payments for the provision of the electric power and not for construction of the solar facility that generated the power.

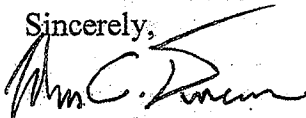
Thus, in each of these cases, the public funds paid only for public services. In contrast, here, City is paying a monthly fee for work and services that includes the cost of constructing and installing the Fixed Photo Red Light System at each intersection designated by City. That this cost is amortized over the term of the Agreement is shown by the manner in which the cancellation fee is calculated. Accordingly, the holding in *McIntosh* regarding payment for services does not apply.

Finally, City and Redflex argue that the construction and installation work is not public work because the equipment is owned by Redflex. There is nothing in the statutory scheme, however, that limits public work to the installation of equipment, materials, facilities or other works of improvement owned by the public entity. If the work meets the elements of "public works" under section 1720(a)(1), prevailing wage requirements apply.²

For the foregoing reasons, under the specific facts of this case, the construction and installation work performed in connection with the Photo Red Light Enforcement Program is public work subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,




John C. Duncan
Director

² See, e.g., PW 2005-018, *Installation and Removal of Temporary Fencing and Power Communications Facilities/Eastside High School, Antelope Valley Union High School District* (February 28, 2006), wherein the Director found that the installation and removal of temporary fencing and temporary power and communications facilities at a school construction site was covered work.

11-30-10

7

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement 2031 Howe Avenue Suite 100 Sacramento, CA 95825 916-263-6702 FAX: 916-263-2906	
DATE: November 30, 2010	In Reply Refer to Case No: 40-27515/552

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body City of Hayward	Work Performed in County of Alameda
PROJECT NAME Photo Red Light Enforcement Program	Project No. 0
Prime Contractor Reflex Traffic Systems (California) Inc., a California Corporation	
Subcontractor Pacific West Space Communications Inc., a California Corporation	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:
Failure to comply with a request for Certified Payroll Records within 10 days of being requested in violation of Labor Code 1776(g). Records were requested on September 28, 2010 and received on September 30, 2010.
Penalties are calculated as follows: \$25 per calendar day per worker for the period October 15 – November 30, 2010 for a total of forty-seven (47) violations at \$25 per day. Penalties will continue to accrue until the records are provided to the Division of Labor Standards Enforcement.

The attached Audit Summary further itemizes the calculation of wages due and penalties under Labor Code sections 1775 and 1813.

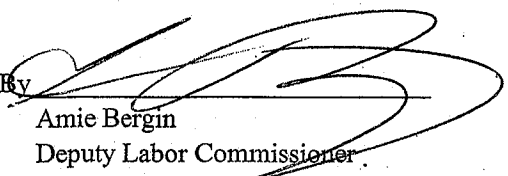
The Division has determined that the total amount of wages due is: \$0.00

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$0.00

The Division has determined that the amount of penalties assessed against Pacific West Space Communications, Inc. under Labor Code section 1776 is: \$1,175.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By 
 Amie Bergin
 Deputy Labor Commissioner

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	<u>\$0.00</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$0.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$1,175.00</u>
Total Withholding Amount:	<u>\$1,175.00</u>

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.


If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	<u>\$0.00</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$0.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$1,175.00</u>
Total Withholding Amount:	<u>\$1,175.00</u>

Distribution:

- Awarding Body
- Surety(s) on Bond
- Prime Contractor
- Subcontractor

2-9-11 9

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement 2031 Howe Avenue Suite 100 Sacramento, CA 95825 916-263-6702 FAX: 916-263-2906	
DATE: February 09, 2011	In Reply Refer to Case No: 40-27517/552

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body City of Hayward	Work Performed in County of Alameda
PROJECT NAME Photo Red Light Enforcement Program #3	Project No. 0
Prime Contractor Reflex Traffic Systems, Inc., a Delaware Corporation	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:
Violation of Labor Code sections 1771 and 1774 for paying less than the applicable prevailing wage rates determined by the Director to the workers who worked on the project. Violation for not paying the prevailing wage overtime rates as required under Labor Code section 1815 for work performed in excess of 8 hours per day or 40 hours per week. Violation of Labor Code section 1777.5 for failure to make training fund contributions for the crafts of Inside Wireman.

The attached Audit Summary further itemizes the calculation of wages due and penalties under Labor Code sections 1775 and 1813.

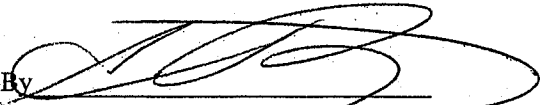
The Division has determined that the total amount of wages due is: \$18,711.99

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$1,925.00

The Division has determined that the amount of penalties assessed against Reflex Traffic Systems, Inc. under Labor Code section 1776 is: \$0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By 
 Amie Bergin
 Deputy Labor Commissioner

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	<u>\$18,711.99</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$1,925.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$20,636.99</u>

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	<u>\$18,711.99</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$1,925.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$20,636.99</u>

Distribution:

- Awarding Body
- Surety(s) on Bond
- Prime Contractor
- Subcontractor

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WAGE DETERMINATION INFORMATION

CODE NO.	CLASSIFICATION	WAGE DETERMINATION NO.
1	Inside Wireman	ALA-2007-1
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PREVAILING WAGE DETERMINATION SUMMARY

CODE NO.	CLASSIFICATION	Effective Date	HOURLY RATE	Contributions	TRAINING TIME	1/2 SUNDAY	HOLIDAY TRAVEL & SUBSISTENCE	Other hourly Requirements
1	Inside Wireman	8/22/2006	41.000	20.200	0.500	61.500	82.000	
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4-1-11 13

Labor Commissioner, State of California
Department of Industrial Relations
Division of Labor Standards Enforcement
2031 Howe Avenue Suite 100
Sacramento, CA 95825
916-263-6702
FAX: 916-263-2906



RECEIVED

DATE:
April 01, 2011

In Reply Refer to Case No:
40-27515/552

APR 05 2011

CIVIL WAGE AND PENALTY ASSESSMENT

OFFICE OF CITY ATTORNEY

Awarding Body City of Hayward	Work Performed in County of Alameda
PROJECT NAME Photo Red Light Enforcement Program	Project No. 0
Primé Contractor Redflex Traffic Systems (California) Inc., a California Corporation	
Subcontractor Pacific West Space Communications Inc., a California Corporation	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Violation of Labor Code sections 1771 and 1774 for paying less than the applicable prevailing wage rates determined by the Director to the workers who worked on the project. Violation for not paying the prevailing wage overtime rates as required under Labor Code section 1815 for work performed in excess of 8 hours per day or 40 hours per week. Violation of Labor Code section 1777.5 for failure to make training fund contributions.

The attached Audit Summary further itemizes the calculation of wages due and penalties under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: \$32,559.69

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$4,250.00

The Division has determined that the amount of penalties assessed against Pacific West Space Communications, Inc. under Labor Code section 1776 is: \$1,175.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By 
Amie Bergin
Deputy Labor Commissioner

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	<u>\$32,559.69</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$4,250.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$1,175.00</u>
Total Withholding Amount:	<u>\$37,984.69</u>

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	<u>\$32,559.69</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$4,250.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$1,175.00</u>
Total Withholding Amount:	<u>\$37,984.69</u>

Distribution:

- Awarding Body
- Surety(s) on Bond
- Prime Contractor
- Subcontractor

PREVAILING WAGE DETERMINATION SUMMARY

CODE NO.	CLASSIFICATION	HOURLY			TRAINING TIME 1/2	HOLIDAY TRAVEL & SUNDAY SUBSISTENCE	Other hourly Requirements
		Effective Date	Rate	Contributions			
1	Operating Engineer Group 5	6/29/2009	32,110	21,400	0.620	48,165	64,220
2	Laborer Group 2	6/29/2009	26,990	14,590	0.470	40,485	53,980
3	Laborer Group 3	6/29/2009	26,880	14,590	0.470	40,485	53,980
4	Inside Wireman	6/1/2009	43,000	23,750	1.280	64,500	86,000
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WAGE DETERMINATION INFORMATION

CODE NO.	CLASSIFICATION	WAGE DETERMINATION NO.
1	Operating Engineer Group 5	NC-23-63-1-2007-2
2	Laborer Group 2	NC-23-102-1-2007-2
3	Laborer Group 3	NC-23-102-1-2007-2
4	Inside Wireman	ALA-207-2
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Labor Commissioner, State of California
Department of Industrial Relations
Division of Labor Standards Enforcement
Civil Wage and Penalty Assessment Review Office
2031 Howe Avenue, Suite 100
Sacramento, CA 95825-0196
Phone: (916) 263-2892
Fax: (916) 263-2906



Date: May 11, 2011

In Reply Refer to: **DLSE Case No.: 40-27515/552**

Notice of Transmittal

To: Department of Industrial Relations
Office of the Director-Legal Unit
Attention: Lead Hearing Officer
P. O. Box 420603
San Francisco, CA 94142-0603

RECEIVED
MAY 13 2011
OFFICE OF CITY ATTORNEY

Enclosed herewith please find a Request for Review, dated **May 4, 2011**, postmarked **May 4, 2011**, and received by this office on **May 5, 2011**.

Also enclosed please find the following:

- Copy of Civil Wage and Penalty Assessment
- Copy of Audit Summary

STATE LABOR COMMISSIONER


By: Pauline Edwards
Pauline Edwards
Office Technician

enc.

cc (without enclosures): See Proof of Service

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

110114

<p>Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Civil Wage and Penalty Assessment Review Office 2031 Howe Avenue, Suite 100 Sacramento, CA 95825-0196 Phone: (916) 263-2892 Fax: (916) 263-2906</p>	
<p>Date: May 11, 2011</p>	<p>In Reply Refer to: DLSE Case No.: 40-27515/552</p>

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: **Mr. Rich Patton**
Pacific West Communications Inc
900 W. Gladstone Street
San Dimas, CA 91773

Please be advised that this office has received your **Request for Review of May 4, 2011**, and pertaining to the Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement in **DLSE Case No.: 40-27515/552**.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the DLSE at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

“(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart

(a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.”

In accordance with the above Rule, please be advised that the DLSE's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

**State of California
Division of Labor Standards Enforcement
Amie Bergin
2031 Howe Avenue, Suite 100
Sacramento, CA 95825**

cc:
Mr. Ramon Yuen-Garcia
Division of Labor Standards Enforcement
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102



20
900 W. Gladstone St.
San Dimas, CA 91773
Telephone: 909 592-4321
Facsimile: 909 599-7889
CA License 597074

May 4, 2011

110114

VIA FEDERAL EXPRESS

Labor Commissioner, State of California
Civil Wage and Penalty Assessment Review Office
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

Re: Civil Wage and Penalty Assessment
Request for Review
Case Number: 40-27515/552
April 01, 2011


To Whom It May Concern:

Please consider this correspondence as our written request in accordance with Labor Code Section 1742 to obtain a review of the Civil Wage and Penalty Assessment Case number 40-27515/552. It is our request that the review correspond with that of Redflex Traffic Systems, Inc. prime contractor of the work that was performed. We have requested that Redflex Traffic Systems, Inc. post the bond for the assessed liquidated damages on behalf of Pacific West Communications, Inc. and anticipate funds to be forwarded by them.

Respectfully,

Rich Patton
President

Pacific West Communications, Inc.

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement 2031 Howe Avenue Suite 100 Sacramento, CA 95825 916-263-6702 FAX: 916-263-2906	
City of Hayward 777 B St. Hayward, CA 94541 Maureen Conneely	
DATE: January 18, 2012	In Reply Refer to Case No: 40-27516/552

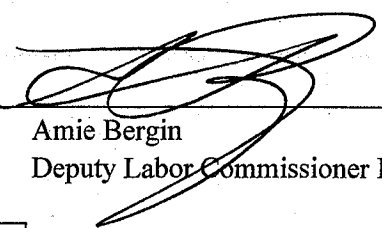
NOTICE OF COMPLAINT CLOSED

PROJECT NAME Photo Red Light Enforcement Program #2	Project No. 0
Prime Contractor Redflex Traffic Systems, Inc.	
Subcontractor Radar Excavating, Inc.	

The complaint against the above-named contractor(s) is being closed for the following reason(s):

- Subject firm has satisfactorily paid all prevailing wages and/or penalties found due.
- The statute of limitations for the Labor Commissioner to prosecute California Public Work Law (Labor Code sections 1720 through 1861) has expired. Information for claimant please note: There are other legal claims which you may still pursue even though the statute of limitations has expired for the Labor Commissioner to enforce the public work provisions of the Labor Code. You may want to review the California Court of Appeals decision in the case of Tippet v Terich (1995), 37 Cal.App.4th 1517, 44Cal.Rptr.2d 862 and/or consult with an attorney to determine if you may pursue any of the legal actions discussed in the Tippet v Terich decision.
- There is insufficient evidence to confirm California Public Work Law was violated.
- Subject firm was not within the jurisdiction of California Public Work Law on this project.
- Other: _____


STATE LABOR COMMISSIONER

By 

Amie Bergin
 Deputy Labor Commissioner I

3-25-11

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Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Civil Wage and Penalty Assessment Review Office 2031 Howe Avenue, Suite 100 Sacramento, CA 95825-0196 Phone: (916) 263-2892 Fax: (916) 263-2906	
Date: March 25, 2011	In Reply Refer to: DLSE Case No.: 40-27517552

Notice of Transmittal

RECEIVED

MAR 28 2011

OFFICE OF CITY ATTORNEY

To: Department of Industrial Relations
 Office of the Director-Legal Unit
 Attention: Lead Hearing Officer
 P. O. Box 420603
 San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated **March 21, 2011**, postmarked, and received by this office on **March 21, 2011**.

Also enclosed please find the following:

- Copy of Civil Wage and Penalty Assessment
- Copy of Audit Summary

STATE LABOR COMMISSIONER

By: Pauline Edwards
 Pauline Edwards
 Office Technician


enc.

cc (without enclosures): See Proof of Service

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

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<p>Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Civil Wage and Penalty Assessment Review Office 2031 Howe Avenue, Suite 100 Sacramento, CA 95825-0196 Phone: (916) 263-2892 Fax: (916) 263-2906</p>	
<p>Date: March 25, 2011</p>	<p>In Reply Refer to: DLSE Case No.: 40-27517552</p>

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: **Mr. Scott Osborne**
Jackson Lewis Attorneys at Law
Jackson Tower
806 SW Broadway, Ste. 400
Portland, Oregon 97205

Please be advised that this office has received your **Request for Review of March 21, 2011**, and pertaining to the Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement in **DLSE Case No.: 40-27517552**.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the DLSE at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

“(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

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(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.”

In accordance with the above Rule, please be advised that the DLSE's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

**State of California
Division of Labor Standards Enforcement
Amie Bergin
2031 Howe Avenue
Suite 100
Sacramento, CA 95825**

cc:
Mr. Ramon Yuen-Garcia
Division of Labor Standards Enforcement
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

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Representing Management Exclusively in Workplace Law and Related Litigation



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SEATTLE, WA
STAMFORD, CT
WASHINGTON, DC REGION
WHITE PLAINS, NY

March 21, 2011

110063

Via Facsimile and
FedEx Overnight Delivery

Labor Commissioner, State of California
Civil Wage and Penalty Assessment Review Office
2031 Howe Avenue, Ste. 100
Sacramento, CA 95825

Re: Redflex Traffic Systems, Inc / City of Hayward Photo Red
Light Enforcement Program # 3
Case No.: 40-27517/552

To Whom It May Concern:

Please be advised that Jackson Lewis LLP represents Redflex Traffic Systems, Inc. ("Redflex") regarding this matter. Pursuant to Labor Code section 1742, this constitutes Redflex's request for review of the Civil Wage and Penalty Assessment regarding the City of Hayward Photo Red Light Enforcement Program # 3. (Copy Attached).

This request for review is premised on the following asserted errors contained in the Assessment:

- 1. The work at issue does not constitute construction, alteration, demolition, installation or repair, as contemplated under California Labor Code section 1720. More specifically, the contract at issue is a service contract and any construction activity was both de minimus and paid for with private funds.
2. The workers at issue did not perform covered work in the execution of the contract, as contemplated by California Labor Code section 1720. Rather, the work at issue was technical in nature.
3. The City of Hayward, California is a charter city and as such, prevailing wages were not required to be paid for the work in question.

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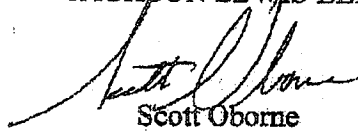
jackson lewis
Attorneys at Law

Labor Commissioner, State of California
Civil Wage and Penalty Assessment Review Office
March 21 2011
Page 2

It is my understanding that a hearing will be scheduled within 90 days of this request for review. Please contact me to arrange a mutually convenient date and time for the hearing.

Sincerely,

JACKSON LEWIS LLP



Scott Osborne

Direct Dial: 503-345-4151
obornes@jacksonlewis.com

SO/jbm
encl

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2010-010

**PHOTO RED LIGHT ENFORCEMENT PROGRAM
CITY OF HAYWARD**

I. INTRODUCTION

On August 12, 2010, the Director of the Department of Industrial Relations (Department) issued a public works coverage determination (Determination) in the above-referenced matter finding that the construction and installation work performed in connection with the Photo Red Light Enforcement Program at designated intersection approaches in the City of Hayward (City) is public work subject to prevailing wage requirements.

On September 9, 2010, Redflex Traffic Systems, Inc. (Redflex) timely filed a notice of appeal of the Determination pursuant to section 16002.5(b) of title 8 of the California Code of Regulations (Appeal). The Appeal is based solely on whether the City's status as a charter city exempts it from the requirement to pay prevailing wages (the "charter city exemption").

In June 2011, the Director suspended further proceedings on the Appeal pending the decision of the California Supreme Court in *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547 (*City of Vista*).

The argument on Appeal and the materials submitted have been carefully considered. For the reasons set forth in the Determination, which is incorporated by this reference, and for the additional reasons set forth below, the Appeal is denied and the Determination is affirmed.

II. DISCUSSION

The issue presented by the Appeal was framed by the Court in *City of Vista* as follows: "Under the state Constitution, the ordinances of charter cities supersede state law with respect to 'municipal affairs' (Cal. Const., art. XI, § 5), but state law is supreme with respect to matters of 'statewide concern.'" (*City of Vista, supra*, 54 Cal.4th at p. 532.) The Court confirmed that determination of what constitutes a municipal affair and what constitutes a matter of statewide concern is for the courts to decide. (*Id.* at p. 541; *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 81 (*Bishop*).)

To decide this issue, the Court in *City of Vista* adopted the analytic framework it set forth in *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1 (*California Fed. Savings*) to resolve "whether or not a matter falls within the home rule authority of charter cities." (*City of Vista, supra*, at p. 535.) Under this analysis, the factors to be considered are: first, whether the city ordinance at issue "regulates an activity that can be characterized as a 'municipal affair,'" second, whether the case presents an actual conflict between local and state law; third, whether the state law addresses a matter of "statewide concern," and finally, whether the state law is "reasonably related to ... resolution of that concern ... and narrowly tailored to avoid unnecessary interference in local governance." (*Id.* at pp. 535-536; internal quotes and case cites omitted.)

Applying this four part test to the public works of improvement at issue in *City of Vista*, the Court found that "the construction of a *city-operated facility* for the benefit of a *city's inhabitants* is quintessentially a municipal affair," as is "the control over *the expenditure of a city's own funds*." (*City of Vista, supra*, at p. 538; italics in original.) Next, the Court found there was an actual conflict between the local law, the city's ordinance which forbade compliance with the state's prevailing wage laws, and the state's prevailing wage law, which does not exempt charter cities. Finally, the Court concluded that the state's interest did not justify "the state's interference in what would otherwise be a merely local affair." (*Id.* at p. 539.) Based on these findings, the Court reaffirmed its holding in *City of Pasadena v. Charleville* (1932) 215 Cal. 384

(Charleville)¹ that “the wage levels of contract workers constructing locally funded public works are a municipal affair (that is, exempt from state regulation), and that these wage levels are not a statewide concern (that is, subject to state legislative control).” (*City of Vista, supra*, at p. 556.)

A literal interpretation of the Court’s broad statement, however, (i.e., that all locally funded public works are exempt from state regulation) would not properly reflect the Court’s carefully constructed analytical approach to the issues. Put into proper context, the central issue before the Court in the *City of Vista* was whether California’s prevailing wage law was a matter of statewide concern. It was virtually undisputed that the public works were “municipal affairs” (i.e., two locally funded and operated fire stations that benefitted the city’s inhabitants.). Not all public works projects of charter cities, however, are undisputedly “municipal affairs.” The Court’s opinion acknowledged this practical reality when it discussed the first *California Fed. Savings* factor.²

The public works at issue in *City of Vista* were the renovation and construction of public buildings. The City of Vista, a charter city, had passed an ordinance that forbade the payment of state prevailing wages in city contracts. The Court held that the ordinance regulated a municipal affair – the wages of the workers constructing the public works – and that there was no statewide concern sufficient to justify state regulation. As shown above, the Court relied upon and addressed each *California Fed. Savings* factor. Under the first *California Fed. Savings* factor, the Court determined whether the public work at issue was a “municipal affair.” This is consistent with the Court’s earlier holding in *Southern California Roads Company v. McGuire* (1934) 2 Cal.2d 115 at 120:

¹ In *Charleville*, the City Manager for the City of Pasadena refused to sign a contract for the construction of a wire fence around a reservoir that did not contain the specification of a general prevailing rate of per diem wages under the Public Works Wage Rate Act of 1931 (PWWRA). The central issue before the Court was whether the City was subject to or controlled by any enactment of the legislature as to the city’s municipal affairs. The Court concluded that the construction of a wire fence around a reservoir that was a part of city’s municipal water system was a municipal affair and that under the City’s charter, the City could not be compelled to require prevailing wages for the work because the PWWRA was not effective, binding or controlling on the City.

² In discussing the first factor, the court analyzes, albeit briefly, the construction of fire stations by the City of Vista. The Court analogizes the fire stations to the municipal water system that are municipal affairs. The Court referenced several factors for consideration including ownership, operational control and funding for the construction of the fire stations.

If ... the contemplated improvement ... is a municipal affair as this term is used in the Constitution, the Public Works Wage Rate Act, being a general law, would not be applicable to the contract providing for its improvement. (*Charleville*) On the other hand, if the improvement ... is of more than local concern, or if it is an affair in which the people generally of the state are concerned, the city in the construction of said improvement is subject to and controlled by the general laws, including the Public Works Wage Rate Act of 1931.³

The Court in *City of Vista* concluded that the public work at issue - renovating an existing fire station, construction of two new fire stations, a new civic center, a new sports park, and a new stage house for City's Moonlight Amphitheater - was "quintessentially" a "municipal affair." The Court also noted that the work of improvement in *Charleville*, the construction of a wire fence around a city-owned reservoir, was a "municipal affair" as a matter of law. (*City of Vista, supra*, at p. 559.) The Court then addressed the second and third *California Fed. Savings* factors respectively and found that there was an actual conflict between local and state law because the City of Vista's ordinance prohibits compliance with the state's prevailing wage law; and, that state law regulating payment of prevailing wages did not address a matter of "statewide concern." The Court further held that it was unnecessary to address the fourth factor because the work was exempt based on an analysis of the first three factors.

Because the Court in *City of Vista* held that the California Prevailing Wage Law (CPWL) is not a matter of statewide concern (under the third *California Fed. Savings* factor), the only relevant *California Fed. Savings* factors for purposes of this decision are the first and second. With respect to the first factor, whether the public work of improvement at issue in this case is a municipal affair or a matter of statewide concern, the public work here involves the construction and installation of automated photo red light enforcement systems by Redflex that are used to regulate traffic on public streets. Courts have consistently held that as a matter of law, the regulation of motor vehicle

³ The Public Wage Rate Act of 1931 was the state's first prevailing wage law. (*City of Vista, supra*, at p. 534.)

traffic on city streets is not a municipal affair but a matter of general state concern. An early case so holding is *Ex parte Daniels* (1920) 183 Cal. 636 (*Daniels*).⁴ In *Daniels*, the California Supreme Court had to decide whether an individual could be charged with the offense of driving an automobile within the limits of the city of Pasadena, in violation of a municipal ordinance of the city of Pasadena prohibiting a greater rate of speed than fifteen miles an hour while the Motor Vehicle Act of 1917 permitted the driving of a motor vehicle at a speed not exceeding twenty miles an hour and the individual had not exceeded that limit. The Motor Vehicle Act of 1917 not only fixed the maximum rate of speed at twenty miles an hour, but expressly prohibited municipalities from fixing as a maximum a lesser rate of speed.

In *Daniels*, the Court held that the regulation of motor vehicle traffic upon the streets of a city is subject to the general laws of the state and is not a municipal affair over which chartered cities are given power superior to that of the state legislature.

Daniels found that:

The streets of a city belong to the people of the state, and every citizen of the state has a right to the use thereof, subject to legislative control. ... The right of control over street traffic is an exercise of a part of the sovereign power of the state. (*Daniels, supra*, 183 Cal. at p. 639; citations omitted.)

It is beyond dispute that controlling traffic signal operations and regulating the conduct of drivers is as essential to traffic control as setting speed limits and other rules of vehicle operation.

The continuing validity of *Daniels* was acknowledged by the Supreme Court in *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545 at 549 (*Rumford*). *Rumford* also cites *County of Los Angeles v. City of Alhambra* (1980) 27 Cal.3d 184, 192-193, and *Pipoly v. Benson* (1942) 20 Cal.2d 366, 369 in holding that:

The regulation of traffic on streets is not one of those "municipal affairs" over which local authorities are given power superior to that of the Legislature. (*Rumford, supra*, 31 Cal.3d at p. 550, fn3.)

⁴ *Daniels* is distinguished by the Court in *Charleville* as among the class of cases holding "that the particular city transactions involved were not municipal affairs as contemplated by the Constitution." (*Charleville, supra*, 215 Cal. at p. 393.)

The holdings in *Daniel* and *Rumford*, the cases cited therein, and the cases following those decisions, are controlling on the question whether the work of improvement in this case is a "municipal affair" or a matter of statewide concern. As summarized by the court of appeal in one such case, *Mervynne v. Acker* (1961) 189 Cal.App.2d 558 at 561-562:

The right of the state to exclusive control of vehicular traffic on public streets has been recognized for more than 40 years. While local citizens quite naturally are especially interested in the traffic on the streets in their particular locality, the control of such traffic is now a matter of statewide concern. Public highways belong to all the people of the state. Every citizen has the right to use them, subject to legislative regulation. Traffic control on public highways is not a "municipal affair" in the sense of giving a municipality (whether holding a constitutional charter or not) control thereof in derogation of the power of the state. [Case cites omitted]

Thus, the public work of improvement at issue in this case is of statewide concern as a matter of law. As such, it is subject to and controlled by the general laws of the state, including the state prevailing wage law. (*McGuire, supra*, 2 Cal.2d at p. 120; *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 906 ("In matters of statewide concern ... applicable general state laws govern charter cities regardless of their charter provisions"); *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346 (public works projects of statewide concern are subject to the California prevailing wage law).

The Supreme Court's holding in *Bishop* further supports the determination that the public works project here is not a municipal affair falling within the home rule authority of a chartered city.

As to matters which are of statewide concern ... home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, *if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine)*. (italics added; case cites omitted.) (*Bishop, supra*, 1 Cal.3d at p. 61.)

It is well settled that the state has preempted the field of traffic control. In *Rumford, supra*, 31 Cal.3d at p. 550, the Court held as follows:

The state's plenary power and its preemption of the entire field of traffic control are stated in Vehicle Code section 21: 'Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the state and all counties and municipalities therein, and *no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized therein...*' (Italics in original.)

Similarly,

The state has preempted the field of traffic control. ... 'The streets of a city belong to the people of the state, and every citizen of the state has a right to use thereof, subject to legislative control The right of control over street traffic is an exercise of a part of the sovereign power of the state. ... Thus, unless 'expressly provided' by the Legislature, a city has no authority over vehicular traffic control.' (*City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal.App.4th 1100 at 1106-1107 (case cites omitted).)

City's authority to install and to operate the automated photo red light traffic enforcement system is derived from state law. (Vehicle Code § 21455.5.) City may operate the system only if it complies with the requirements of that section.⁵ Thus, the activity does not constitute a municipal affair under the first factor in *California Fed. Savings*. To apply the state prevailing wage law to the construction and installation of the system does not constitute interference by the state with either local governance or a matter that would otherwise be a merely local affair. Accordingly, the state prevailing wage law applies to this public work of improvement.

In addition, even if the public work of improvement here was not a matter of statewide concern, it would not be exempt from the state prevailing wage law for the reason that the second factor in *California Fed. Savings* is not met. There is no actual conflict between the local law and the state law. City has adopted the state prevailing wage law as the standard for local public works projects of City. In Resolution No. 08-070, approved by unanimous vote of the City Council on May 20, 2008, City adopted by

⁵ This section was last amended in 2012 (Stats.2012, c. 735 (S.B.1303), § 3.).

reference and made applicable to public works projects of City, the May 2006 Standard Specifications of the Department of Transportation (DOT) (2006 Standard Specifications), including the state prevailing wage law.

Section 7-1.01 of the 2006 Standard Specifications concerns "LAWS TO BE OBSERVED." Section 7-1.01 A (2) Prevailing Wage provides in relevant part that:

The Contractor and any Subcontractor under the Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit, as a penalty to the State or political subdivision on whose behalf the contract is made or awarded a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by the Contractor or by any subcontractor under the Contractor in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive.

City's decision to apply the state prevailing wage law to local public works projects is confirmed in City Council resolutions adopted in 1996 and 2003 which reaffirm City's commitment to upholding prevailing wage laws. On February 27, 1996, the City council adopted Resolution No. 96-47, a "RESOLUTION REAFFIRMING THE CITY OF HAYWARD'S COMMITMENT TO UPHOLDING PREVAILING WAGE LAW REQUIREMENTS." The Resolution provides in relevant part:

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Council recognizes the importance of the current California prevailing wage requirements, reaffirms the Council's unwavering commitment to uphold prevailing wage requirements on City public works projects, and declares its desire that the existing prevailing wage requirements be continued without change.⁶

On October 14, 2003, the City Council adopted Resolution No. 03-137, again

⁶ In Resolution No. 93-120 (1993), City adopted by reference the 1992 DOT Standard Specifications, including its prevailing wage provisions.

captioned a "RESOLUTION REAFFIRMING THE CITY OF HAYWARD'S COMMITMENT TO UPHOLDING PREVAILING WAGE LAW REQUIREMENTS" in which the City Council endorsed "the California Legislature's conclusion that the prevailing wage law addresses statewide concerns ..."

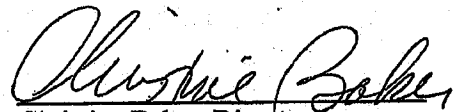
Based on the facts presented, there is no actual conflict between the local and state law. For this additional reason, under the second factor in *California Fed. Savings*, the work at issue is subject to state prevailing wage requirements.

City has not asserted the "charter city exemption" as a basis for denying the prevailing wage obligation for the installation and construction work at issue. When DIR asked Redflex and City to respond to the question whether in light of the City's Resolutions there is a conflict between the local prevailing wage requirements and the state law, City did not respond.⁷

III. CONCLUSION

In summary, for the reasons set forth in the Determination and in this Decision on Administrative Appeal, the Appeal is denied and the Determination affirmed. This Decision constitutes the final administrative action in this matter.

Dated: 3/12/2013


Christine Baker, Director

⁷ Redflex replied only that this is a matter between the contracting parties and that DIR and the Division of Labor Standards Enforcement (DLSE) "do not have jurisdiction" to address this issue. To the contrary, the Supreme Court has held that "issues of coverage of the prevailing law are determined by the Director or the DLSE as the Director's designee." (*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 989.)

5-1-13

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JACKSON LEWIS LLP
Attn: Osborne, Scott W.
1001 SW 5th Ave.
#1205
Portland, OR 97204

Superior Court of California, County of Alameda

Redflex Traffic Systems, Inc.
Plaintiff/Petitioner(s)
VS.
California State Labor Comm
Defendant/Respondent(s)
(Abbreviated Title)

No. RG13677358
NOTICE OF CASE MANAGEMENT
CONFERENCE AND ORDER
Unlimited Jurisdiction

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD.
Notice is given that a Case Management Conference has been scheduled as follows:

Date: 07/10/2013 Time: 01:30 PM	Department: 31 Location: U.S. Post Office Building Second Floor 201 13th Street, Oakland CA 94612 Internet: http://www.alameda.courts.ca.gov	Judge: Evelio Grillo Clerk: M. Scott Sanchez Clerk telephone: (510) 268-5105 E-mail: Dept.31@alameda.courts.ca.gov Fax: (510) 268-4835
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ORDERS

1. You must:
 - a. **Serve** all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110(b));
 - b. **Give notice** of this conference to any party not included in this notice and file proof of service;
 - c. **Meet and confer**, in person or by telephone, to consider each of the issues identified in CRC 3.724 no later than 30 calendar days before the date set for the Case Management Conference;
 - d. **File and serve** a completed Case Management Statement (use of Judicial Council Form CM-110 is mandatory) at least 15 days before the Case Management Conference (CRC 3.725)*

2. If you do not follow the orders above, you are hereby ordered to show cause why you should not be sanctioned under CRC 2.30. The hearing on the Order to Show Cause re: Sanctions will be at the same time as the Case Management Conference. Sanctions may include monetary sanctions and any other sanction permitted by law, including striking pleadings or dismissing the action.

3. You are further ordered to appear in person † (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
4. The Direct Calendar Judge will issue orders at the conclusion of the conference that should include:
 - a. Referring to ADR and setting an ADR completion date
 - b. Dismissing or severing claims or parties
 - c. Setting a trial date.

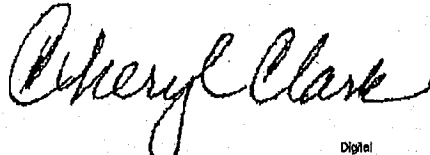
* Case Management Statements may be filed by E-delivery, by emailing them to the following address: EDelivery@alameda.courts.ca.gov. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at <http://apps.alameda.courts.ca.gov/domainweb>.

† Telephonic appearances at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties may make arrangements by calling 1-888-882-6878, or faxing a service request to 1-888-882-2946. This service is subject to charges by the vendor.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 05/01/2013.

By 

Digital
Deputy Clerk

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Superior Court of California, County of Alameda



Notice of Assignment of Judge for All Purposes

Case Number: RG13677358
Case Title: Redflex Traffic Systems, Inc. VS California State Labor Comm
Date of Filing: 04/26/2013

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

Judge: Evelio Grillo
Department: 31
Address: U.S. Post Office Building
201 13th Street
Oakland CA 94612
Phone Number: (510) 268-5105
Fax Number: (510) 268-4835
Email Address: Dept.31@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedure section 170.6 must be exercised within the time period provided by law. (See Code Civ. Proc. §§ 170.6, subd. (a)(2) and 1013.)

NOTICE OF NONAVAILABILITY OF COURT REPORTERS: Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording.

Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULES.

COPY

1 Scott Osborne (State Bar No. 191257)
2 JACKSON LEWIS LLP
3 1001 SW 5th Avenue, Ste. 1205
4 Portland, Oregon 97204
5 Telephone: (503) 229-0404
6 Facsimile: (503) 229-0405
7 obornes@jacksonlewis.com

8 Attorneys for Petitioner
9 REDFLEX TRAFFIC SYSTEMS, INC.

ENDORSED
FILED
ALAMEDA COUNTY

APR 26 2013

CLERK OF THE SUPERIOR COURT
By: *[Signature]*
Deputy

10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 REDFLEX TRAFFIC SYSTEMS,
14 INC.,

15 Petitioner,

16 v.

17 CALIFORNIA STATE LABOR
18 COMMISSIONER JULIE SU;
19 CALIFORNIA DIRECTOR OF THE
20 DEPARTMENT OF INDUSTRIAL
21 RELATIONS CHRISTINE BAKER;
22 CALIFORNIA DEPARTMENT OF
23 INDUSTRIAL RELATIONS;
24 CALIFORNIA LABOR &
25 WORKFORCE DEVELOPMENT
26 AGENCY; and
27 DOES 1 through 25, inclusive,

28 Respondents.

Case No. *13* 13 677 358

VERIFIED PETITION FOR
WRIT OF MANDATE

[Code Civ. Proc. § 1085]

RECEIVED

JUL 01 2013

OFFICE OF CITY ATTORNEY

FAXED

22 REDFLEX TRAFFIC SYSTEMS, INC. ("Redflex") hereby petitions this Court for a writ
23 of mandate under Code of Civil Procedure section 1085, and for all other appropriate relief, and
24 alleges as follows:
25

26 THE PARTIES

27 1. Redflex is an Arizona corporation which provides services to cities throughout the
28 country on programs designed to reduce dangerous driving behaviors like red light running and

1 speeding.

2 2. Respondent JULIE SU ("Commissioner Su") is the duly appointed CALIFORNIA
3 STATE LABOR COMMISSIONER. Respondent CHRISTINE BAKER ("Director Baker") is
4 the Director of the CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS ("DIR").
5 The DIR, in turn, is part of the CALIFORNIA LABOR & WORKFORCE DEVELOPMENT
6 AGENCY ("LWDA").

7 3. The true names and capacities of Respondents sued herein as DOES 1 through 25,
8 respectively, are unknown to Petitioner at this time. Petitioner will seek leave to amend this
9 Petition to allege such names and capacities when they have been ascertained. Petitioner is
10 informed and believes and thereon alleges that each of DOES 1 through 25 is responsible in some
11 manner for the occurrences alleged herein.

12 STATEMENT OF FACTS

13 4. The City of Hayward, California ("Hayward") is a charter city organized under
14 Article XI, Section 5 of the California Constitution.

15 5. In February 2007, Hayward issued a request for proposals pertaining to a proposed
16 red light photo enforcement program. The enforcement program was intended to improve
17 community safety by reducing the incidence of vehicles failing to stop for red traffic signals.

18 6. On July 17, 2007, the Hayward City Council passed Resolution Number 07-110,
19 authorizing the Acting City Manager to negotiate and execute an agreement with Redflex Traffic
20 Systems, Inc. ("Redflex") to install, support and maintain a red light photo enforcement system.

21 7. On November 9, 2007, Redflex and Hayward entered into an Exclusive Agreement
22 Between The City of Hayward and Redflex Traffic Systems, Inc. for Photo Red Light
23 Enforcement Program ("Agreement").

24 8. The Redflex system uses digital media that produces still images and full motion
25 digital video. Each monitored intersection approach requires the installation of two camera
26 systems and high-speed synchronized flash units to capture the required photographic evidence
27 used to prosecute red light violations. The digital evidence is transported to Redflex offices over
28 secure high-speed data links, after which Redflex employees collect vehicle registration

1 information and assemble photographic evidence. The combined information and evidence are
 2 returned electronically to the police department, where a designated representative not affiliated
 3 with Redflex reviews the evidence and makes the determination of whether or not the violation
 4 should be forwarded for prosecution. If a prosecution decision is positive, Redflex generates and
 5 mails a citation to the violator and forwards all pertinent information to the courts.

6 9. When a violator receives the citation in the mail, they are provided still images of
 7 the violation and the photograph of the driver. They are also provided with a web site address
 8 and unique PIN to access both the still photograph and the video clip for their review. Redflex
 9 produces the still images, uploads the still images and video clip onto the web site, and maintains
 10 the web site.

11 10. As defined in the Agreement, the "SmartCam System" is Redflex's proprietary
 12 digital red-light photo enforcement system. Redflex employs a "SmartScene System," which is
 13 comprised of a proprietary digital video camera unit, associated hardware and software required
 14 for providing supplemental violation data. Redflex's "SmartOps System" is a proprietary back-
 15 office process for processing suspected infractions. Any and all evidence of a suspected
 16 infraction remotely transmitted and captured at Redflex's corporate headquarters in Arizona.

17 11. Also as defined in the Agreement, "Photo Red Light Enforcement Program"
 18 means the process by which the monitoring, identification and enforcement of violations is
 19 facilitated by the use of certain equipment, applications and back office processes of Redflex,
 20 including but not limited to cameras, flashes, central processing units, signal controller interfaces
 21 and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring
 22 violations and recording such violation data in the form of photographic images of motor
 23 vehicles.

24 12. As defined in the Agreement, the "Redflex Photo Red Light System" means,
 25 collectively, the SmartCam System, the SmartOps System, the Red-light Photo Enforcement
 26 Program, and all other equipment, applications, back office processes and digital red light traffic
 27 enforcement cameras, sensors, components, products, software and other tangible and intangible
 28 property relating thereto.

- 1 13. "Intersection Approaches" are defined under the Agreement as a conduit of travel
- 2 with up to four (4) contiguous lanes from the curb on which at least one (1) system has been
- 3 installed by Redflex for the purposes of facilitating Red-Light Photo Enforcement by Hayward.
- 4 14. All Designated Intersections Approaches at issue are within the Hayward city
- 5 limits and all construction and installation activity pertaining to the Designated Intersection
- 6 Approaches took place within the Hayward city limits.
- 7 15. The "Operational Period" under the Agreement commences on the Installation
- 8 Date and is defined as that period of time in which the Photo Red Light Enforcement Program is
- 9 functional in order to permit the identification and prosecution of violations at Designated
- 10 Intersection Approaches. The first thirty (30) days after an Installation Date are deemed to be a
- 11 "Warning Period," during which warning notices, and not traffic citations, are issued through the
- 12 Redflex System.
- 13 16. Under the Agreement, commencing on the expiration of the Warning Period,
- 14 Hayward was responsible for paying a monthly service fee for each Designated Intersection
- 15 Approach. The City has made no separate payment for installation or construction work related
- 16 to installation or maintenance of the Redflex Photo Red Light System. All such costs are
- 17 absorbed by Redflex. All payments made by Hayward pursuant to the Agreement come
- 18 exclusively from the City. No other public agency or entity provides Hayward monies to fund
- 19 payments to Redflex.
- 20 17. Following commencement of the Operational Period, Redflex has administered the
- 21 violation processing. All Violation Data (defined as images and other data gathered by the
- 22 Redflex System at the Designated Intersection Approaches) is stored on the Redflex System.
- 23 Redflex personnel convert Violation Data into a format capable of review by the City's
- 24 authorized representative. The City's authorized representative reviews the Violation Data and
- 25 determines whether a citation will be issued. Thereafter, the City's authorized representative
- 26 transmits such determination in the form of an electronic signature to Redflex using Redflex's
- 27 proprietary software and other applications. For each designated violation, Redflex is responsible
- 28 for printing and mailing a citation and other appropriate enforcement documentation to the

1 vehicles' registered owner. Redflex also provides and staffs a toll-free telephone number for the
2 purpose of answering citizen inquires.

3 18. Under the Agreement, all repair and maintenance of Redflex's Photo Red Light
4 Enforcement System and related hardware and equipment is Redflex's sole responsibility. Unless
5 damage is caused by the City's own negligence, the cost of all maintenance and repair required by
6 the Agreement is borne exclusively by Redflex without reimbursement from Hayward.

7 19. Redflex routinely conducts automated and live checks of each Designated
8 Intersection Approach to ensure system functionality. Redflex bears the cost of all such
9 inspection without reimbursement from Hayward. Additionally, should any of the installed
10 hardware and related equipment malfunction, or need replacement, Redflex bears all
11 responsibility. Redflex incurs all costs and liability for the provision of, operation, maintenance
12 and support of each Hayward Designated Intersection Approach.

13 20. Redflex is responsible under the Agreement to provide, at its own expense, all
14 broadband and telephone services to the Designated Intersection Approaches.

15 21. On April 16, 2010, the Hayward City Attorney's office sent the DIR a letter which
16 stated in part: "It is the City's position that its engagement of Redflex does not constitute a
17 'public work' within the meaning of Labor Code §§ 1720 or 1771." Hayward has consistently
18 taken the position that none the work performed by Redflex as described above is subject to
19 prevailing wage obligations.

20 22. On August 12, 2010, the Director of the DIR issued a public works coverage
21 determination ("Determination"). In that Determination, the Director concluded that the
22 construction and installation work performed in connection with the Photo Red Light
23 Enforcement Program in Hayward was a public work subject to prevailing wage requirements.

24 23. On September 9, 2010, Redflex timely filed a notice of appeal of the
25 Determination pursuant to section 16002.5(b) of Title 8 of the California Code of Regulations. In
26 that appeal, Redflex contended that Hayward's status as a charter city gave it the power to exempt
27 itself from prevailing wage obligations concerning its municipal affairs.

28 24. In June 2011, Director Baker suspended further proceedings on the appeal pending

43

1 a decision from the California Supreme Court in *State Building and Construction Trades Council*
2 *of California v. City of Vista* (2012) 54 Cal.4th 547 (*City of Vista*). In that decision, the California
3 Supreme Court gave charter cities sweeping authority to except municipal affairs from California
4 prevailing wage obligations.

5 25. On or about March 12, 2013, Director Baker issued a Decision on Administrative
6 Appeal, a true and correct copy of which is attached hereto as Exhibit 1. In that decision,
7 Director Baker determined that the broad interpretation given to the charter city exception by the
8 California Supreme Court in *City of Vista* did not apply to Redflex's installation work on the
9 Hayward Photo Red Light Enforcement Program.

10 **FIRST CAUSE OF ACTION**

11 **WRIT OF MANDATE AGAINST ALL RESPONDENTS**

12 **(Code of Civil Procedure section 1085)**

13 26. Redflex realleges and incorporates by reference paragraphs 1 through 25 of this
14 Petition as though fully set forth herein.

15 27. Pursuant to section 16002.5 of Title 8 of the California Code of Regulations,
16 Respondents had a clear duty to issue a Decision on Administrative Appeal. Pursuant to section
17 16002.5(c), the Decision on Administrative Appeal is subject to appeal under California Code of
18 Civil Procedure section 1085.

19 28. Director Baker's Decision on Administrative Appeal was the final administrative
20 action in this matter. Inasmuch as there is no statutory or regulatory mechanism by which
21 Petitioner can seek to modify or quash the Decision on Administrative Appeal, Petitioner does not
22 have a plain, speedy and adequate remedy at law. Petitioner is informed and believes that there
23 are no available legal procedures to redress the harm that Petitioner will suffer if its requested
24 relief is denied.

25 29. Redflex has a clear, present and beneficial right to performance. As recognized by
26 the California Supreme Court in *City of Vista*, charter cities like Hayward have wide latitude to
27 except municipal affairs from state prevailing wage obligations. As the work in question
28 constitutes a municipal affair which Hayward has sought to except from state prevailing wage

1 obligations, Director Baker's Decision on Administrative Appeal was erroneous and should be
2 reversed.

3 30. If the Court does not require that the Decision on Administrative Appeal be
4 withdrawn or quashed, Petitioner will be irreparably harmed because it will be forced to pay
5 prevailing wages when not required by statute or by the charter city awarding body.


6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner Redflex respectfully prays that the Court enter judgment
8 against Respondents as follows:

- 9 1. That the Court issue an immediate stay, requiring that Respondents take no action
10 to enforce the Decision on Administrative Appeal issued on March 12, 2013 prior
11 to the Court's judgment on this Petition; and
- 12 2. That upon appropriate application, motion and/or hearing, this Court issue its writ
13 of mandate, pursuant to Code of Civil Procedure section 1085, compelling
14 Respondents to do the following:
 - 15 a. Withdraw and/or quash Director Baker's Decision on Administrative
16 Appeal issued on March 12, 2013; and
 - 17 b. Pay Petitioner's costs of suit herein.

18 Dated: April 26, 2013

JACKSON LEWIS LLP

19
20 By: 
21 SCOTT OSBORNE

22 Attorneys for Defendant
23 REDFLEX TRAFFIC SYSTEMS, INC.
24
25
26
27
28