



STAFF REPORT TO THE CITY COUNCIL

DATE: March 11, 2008

FROM: Joseph A. Hughes, City Manager

PREPARED BY: Chuck Dantuono, Director of Administrative Services/City Treasurer *CD*
Craig D. Fox, Richards Watson & Gershon

SUBJECT: Redflex contract for High Resolution Digital Red Light Photo Enforcement Camera Systems.

RECOMMENDATION: The Public Safety Subcommittee recommends that the City Council discuss the Redflex contract and choose from the following options:


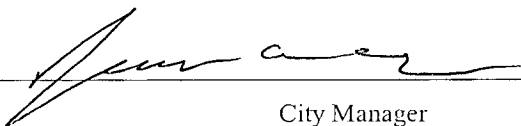
- A). Do not enter into an agreement with Redflex.
- B). Enter into an agreement with the "cost neutrality" language.
- C). Enter into an agreement without the "cost neutrality" language.

FISCAL IMPACT: The fiscal impact for each option are as follows:

- A). None
- B). Costs will be offset against any revenues-Costs guaranteed not to exceed revenues.
- C). Flat fee of \$5,970 per approach per month or \$17,910 (\$5,970 x 3) per month. Revenues not guaranteed to reach \$17,910 per month.

PUBLIC NOTICE: The agenda for this item was posted at the three required locations.

BACKGROUND: The purpose of implementing a red light photo enforcement camera system is to reduce the number of accidents at signalized intersections. A survey has been conducted and the first intersection to receive this red light photo enforcement camera system will be Victoria/Highland. At this intersection, Highland owns 3 of the approaches. The contract calls for 7 more intersections, upon City approval.

Approved _____	Motion _____	Second _____	Agenda Item No. <u>14</u>
Denied _____	Ayes _____		
Continued _____	Noes _____		File No. _____
Tabled _____	Abstain _____		
	Absent _____		
 City Clerk		 City Manager	

It is anticipated that the Redflex red light photo enforcement camera system will not be a significant revenue generator for the City. The intent is to gain compliance and reduce the amount of red light violations and accidents. The Public Works Subcommittee has discussed this item at length on several occasions and recommended that it be presented to the City Council. There are three options.

A). Do not enter agreement with Redflex.

B). Enter into the agreement with Redflex and accept the cost neutrality provision.

Redflex includes language in its standard agreement designed to keep a city's ongoing costs to operate the Redflex system at or below the revenues generated by the system. However, because of the way this cost neutrality provision is written, there is an arguable, albeit slight connection between the number of citations issued through use of the system, and compensation to Redflex when the agreement expires or is terminated. This compensation formula is intended to provide a means for Redflex to ultimately recoup its investment. While not entirely clear, this language *could* be found to violate state law which says that compensation to a redlight enforcement vendor cannot be based upon the number of citations issued. At this time, there have been no binding court decisions addressing this issue. Although in the past some cities have been successful in compelling Redflex to accept an obligation to indemnify in the event the cost neutrality formula is found to violate state law, Redflex is apparently refusing to do so in this case.

In the event the City agrees to the cost neutrality provision and it is subsequently found to violate state law, a court could order the City to refund fines and penalties generated by the Redflex system over some period of time, which we feel could be a year or more. Whether or not a court would also award damages is unknown.

It is difficult to assess precisely how much risk would be presented should the City go forward utilizing the cost neutrality language. We know that many cities have accepted it. Nevertheless, other cities have opted to utilize an alternate means of compensating Redflex. It is possible that a court will eventually validate the cost neutrality language. In that case, the City would be free to proceed without fear of liability.

C). Enter into the agreement with Redflex without the cost neutrality provision.

Because a number of cities have had concerns about the cost neutrality language, Redflex has agreed to an alternate form of agreement where it is compensated on a flat fee basis. Although this means if compensation appears to be free from the legal risk presented by the cost neutrality language, it is clearly a more costly means of obtaining redlight photo enforcement. Based upon feedback from cities utilizing redlight photo enforcement, there is typically an initial high rate of monetary return from the operation of the system. However, that rate quickly drops as drivers become increasingly aware of the system's presence. Therefore, it is probably unreasonable to expect that the system will "pay for itself", given the compensation demanded by Redflex.

Redflex has indicated that they will work with the City to move the equipment if costs are exceeding revenues at any intersection.

The City Attorney's office has reviewed the contract extensively, and has approved as to form.

A representative from Redflex will be present to answer any questions.

Attachments:

-Proposed contract

-Background information on Redflex.