

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and ACS State and Local  
Solutions for the Existing Enforcement System Portion of the San Francisco Red Light  
Camera Program**

**Contract No. SFMTA-2008/09-52**

This Agreement is made this 1<sup>st</sup> day of May, 2011, in the City and County of San Francisco, State of California, by and between: ACS State and Local Solutions, Inc. 255 California Street, Suite 500, San Francisco, CA 94111 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

**Recitals**

- A. WHEREAS, The SFMTA wishes to enforce red light and other moving violations as authorized by State law at certain intersections with an automated traffic enforcement system (herein referred to as the "System"); and,
- B. WHEREAS, A Request for Proposal ("RFP") was issued on August 5, 2009, for administering the existing enforcement system portion of the Red Light Camera Photo Enforcement Program at existing intersections; and
- C. WHEREAS, The City evaluated, scored and selected the Contractor as the highest ranked proposer for administering the existing enforcement system; and,
- D. WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as described in this Contract; and,
- E. WHEREAS, Approval for this Agreement was obtained when the Civil Service Commission approved contract number PSC #406810/11 on March 7, 2011.

Now, THEREFORE, the parties agree as follows:

**AGREEMENT**

**DEFINITIONS**

The following words and phrases shall have the meanings set forth below when used in this Agreement:

1.1 Administer: The performance of the functions specified in Appendix A under the direction and overall control of the City.

1.2 Camera Unit: The camera, computer, and flash unit manufactured by Gatsometer.

1.3 Citation or Notice to Appear: The document detailing the red light or other moving violation captured by the System, including, but not limited to, the California Judicial Council approved Citation form and no less than four (4) Images of the violation: one full view of the vehicle entering the intersection illegally, one full view of the vehicle in the center of the intersection in violation, one enlargement of the license plate, and one enlargement of the driver's face.

1.4 Contractor Project Manager – Designated Contractor Project Manager, on-site in San Francisco, serving as SFMTA's main point of contact for all day to day operational matters relating to the System.

1.5 Contractor's Proposal - Contractor response to Request for Proposals, dated September 18, 2009 and incorporated by reference into this Agreement as though fully set forth herein.

1.6 Court Evidence Package: Series of documents related to a particular alleged violation prepared by the Contractor and sent to the Court upon request and includes, but is not limited to:

- a. Copies of maintenance logs from the intersection of the particular alleged violation;
- b. A statement describing the technology used including information necessary to interpret all data shown on image;
- c. An instruction sheet detailing how violators may address the Citation;
- d. A completed affidavit of custodian of records for commercial vehicle owners when applicable;
- e. A completed form identifying a driver other than the registered owner when applicable;
- f. The United States Postal Service ("USPS") Certificate of Mailing;
- g. Photographs: one full view of the vehicle entering the intersection illegally, one full view of the vehicle in the center of the intersection in violation, one enlargement of the license plate, and one enlargement of the driver's face and;
- h. Any other document(s) requested by the Court.

1.7 Digital Camera System: The digital camera, housings, and infrastructure necessary to utilize digital technology.

1.8 Existing Intersection: Intersection chosen by the City for installation of the System.

1.9 Film Collection/Harvesting: The manual retrieval of exposed film containing the images of potential red light violators from the wet-film camera housings or the electronic downloading/transfer of digital images from a digital camera's memory media to Contractor custody.

1.10 Image Analysis: The human review of images to determine if a violation occurred.

1.11 Image or Photograph: Terms used interchangeably to refer to a picture in digital or wet-film format captured by the System Equipment.

1.12 Image Processing Unit: The computer, hub, or other unit which controls the camera, flash, digital loop detector or other detection device, key pad, and associated electronics. This unit may control one camera or several cameras.

1.13 Maintenance: The work required to maintain the quality, reliability, and accuracy of the System Equipment, including periodic service and any adjustments or repairs made to System Equipment.

1.14 Request for Proposals or "RFP"– Refers to the Request for Proposal issued by the City on August 5, 2009, and incorporated by reference into this Agreement as though fully set forth herein.

1.15 Rotation: The rotating of cameras among a larger pool of equipped locations. If Contractor "rotates" the cameras, not all equipped locations will be in enforcement at any given time.

1.16 SFMTA Project Manager – SFMTA Project Manager responsible for direction and coordination of City's Red Light Photo Enforcement Program.

1.17 System: A complete automated red light enforcement system including, but not limited to, camera units and system equipment, complete design and installation, maintenance and servicing, film collection, camera rotation, image retrieval, image analysis, Notice to Appear (citation) processing, system management software (CiteWeb), citation processing by Contractor, and establishing and maintaining working relationships with all participating City agencies and departments relating to the Red Light Photo Enforcement Program.

1.19 System Equipment: Includes, but is not limited to, proprietary cameras, computers, flash units, housing, poles, auxiliary flashes, detector loops, conduits, image analysis units, pull boxes, wiring, and vehicle detection equipment.

1.20 Third Party Damage: Damage caused by a party other than the City, its agents, employees, officers, contractors or Contractor.

1.21 Traffic Signal Controller: The signal controller, controller interface, control boxes, loops and detectors which are separate from the Red Light Enforcement System Equipment whose primary function is the safe and orderly movement of traffic through an intersection by alternating right-of-way between intersecting streets.

1.22 Vehicle Detection Loop: The inductive wire loop, the virtual loop defined for video detection, or any other type of detection used to detect vehicles.

1.23 Warning Period/Grace Period: The 30 period immediately following the date of installation of a fully operational enforcement System.

## GENERAL PROVISIONS

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from May 1, 2011 to April 30, 2014.

In addition, the City shall have the option to extend the term for up to an additional two (2) years, which the City may exercise in its sole, absolute discretion.

**3. Effective Date of Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

**4. Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Services To Be Provided By Contractor," attached hereto and incorporated by reference as though fully set forth herein.

**5. Compensation.** Compensation shall be made in monthly payments on or before the 10<sup>th</sup> day of each month for work, as set forth in Section 4 of this Agreement, that the SFMTA's Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed seven million five hundred thousand dollars (\$7,500,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments. In the event that City is more than 60 days in arrears on payments due to Contractor, Contractor may suspend Services provided under Appendix A hereunder until such time as City is current on its payment obligations.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

**6. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**7. Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

**8. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**9. Disallowance.** Left blank by agreement of the parties.

**10. Taxes.** Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

**11. Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**12. Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

**13. Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

**14. Independent Contractor; Payment of Taxes and Other Expenses**

**a. Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs

shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## 15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 General Aggregate, for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence or accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Contract related Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any applicable endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor and its employees. Contractor shall require all its contract related agents and subcontractors to obtain similar Workers' Compensation policies and endorsements to meet the California statutory requirements. Furthermore, all contract related agents and subcontractors shall be required to include a waiver of subrogation in favor of City and Contractor to such agents' and subcontractors' workers' compensation policies. Contractor shall ensure that its agents and subcontractors comply with the requirements of this paragraph.

d. The Contractor shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and copies of the applicable blanket additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

## **16. Indemnification.**

a. With respect to any services not provided in subsection (b), the following indemnification clause shall apply. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor,



its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

b. With respect to any services provided by Contractor as a design professional as defined under California Civil Code section 2782.8, the following indemnification clause shall apply.

(1) To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

(2) Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) Copyright infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

**17. Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages under this Agreement resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

## **18. Liability of the Parties**

a. **Contractor's Limitation of Liability.** Notwithstanding any other provision of this Agreement, and except as provided in this Section, Contractor's liability for any special, consequential, indirect or

incidental damages or for damages caused by Contractor's negligence arising out of or in connection with this Agreement or the services performed in connection with this Agreement shall not exceed \$5,000,000. Contractor's liability limit set forth herein shall not apply to (1) Contractor's indemnification obligations under Section 16 of this Agreement, including but not limited to, Contractor's obligation to indemnify and defend City pursuant to the infringement indemnification obligations expressed therein, (2) damages caused by Contractor's gross negligence or intentional or willful misconduct, (3) limit claims or general damages that fall within the insurance coverage of this Agreement, (4) statutory damages specified in this Agreement, and (5) wrongful death caused by Contractor. In no event shall Contractor be liable to the City for any claims, penalties or damages caused by Contractor's negligence in an aggregate amount exceeding Fifteen Million Dollars (\$15,000,000) except for any intellectual property related claims, penalties, or damages as provided in Section 16 of this Agreement.

**b. Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**19. Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to one thousand dollars (\$1,000) per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

City agrees that liquidated damages will not be assessed against Contractor if Contractor's failure to perform is due to a Force Majeure event as described in Section 61 (Force Majeure) of the Agreement

**19.1. Data Security Breaches.** City may assess liquidated damages for any and all breaches of the data security provisions of this Agreement.

**19.2. Warning Signs.** City may assess liquidated damages of up to \$1,000 per warning sign if Contractor fails to report to the City the accurate physical status of any warning sign.

**20. Default; Remedies.** Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- |                            |   |
|----------------------------|---|
| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 10. Taxes                  | 30. Assignment                                      |
| 15. Insurance              | 37. Drug-free workplace policy,                     |

- 53. Compliance with laws
- 57. Protection of private information

- 58. Graffiti removal

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience**

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice;

(2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

**22. Rights and Duties upon Termination or Expiration.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting false claims
9. Disallowance
10. Taxes
13. Responsibility for equipment
14. Independent Contractor; Payment of Taxes and Other Expenses
15. Insurance
16. Indemnification
17. Incidental and Consequential Damages  
duty shall extend for a period of five years  
after the expiration or termination of this  
Agreement
18. Liability of City
24. Proprietary or confidential information of  
City
26. Ownership of Results
27. Works for Hire
28. Audit and Inspection of Records
48. Modification of Agreement.
49. Administrative Remedy for Agreement  
Interpretation.
50. Agreement Made in California; Venue
51. Construction
52. Entire Agreement
56. Severability
57. Protection of private information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

**23. Conflict of Interest.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**24. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**25. Notices to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by e-mail, and shall be addressed as follows:

To City:                   Attn: Red Light Camera Program, Project Manager  
Sustainable Streets Division  
San Francisco Municipal Transportation Agency  
1 S. Van Ness Ave, 7<sup>th</sup> FL  
San Francisco, CA 94103-5417  
Fax: 415-701-4735

To Contractor:       ACS State & Local Solutions, Inc.  
Attn: Contracts  
12410 Milestone Center Dr.  
Germantown, MD 20876  
Michael.wood@acs-inc.com  
Fax: 301-820-4250

Any notice of default must be sent by registered mail.

**26. Ownership of Results.** Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**27. Works for Hire.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities. Nothing in this Agreement shall convey any title, license, intellectual property rights, or any other right of ownership to any software or to any enhancements to such software provided by the Contractor under this Agreement.

**28. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**29. Subcontracting.** Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

**30. Assignment.** The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

**31. Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**32. Earned Income Credit (EIC) Forms .** Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City

may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

### **33. Local Business Enterprise Utilization; Liquidated Damages**

**a. The LBE Ordinance.** Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### **b. Compliance and Enforcement**

**(1) Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

**(2) Subcontracting Goals.** The LBE subcontracting participation goal for this contract is 15%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the



amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

**(3) Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

**(4) Payment of Subcontractors.** Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

#### **34. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property

owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract.** As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**37. Drug-Free Workplace Policy.** Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

**38. Resource Conservation.** Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**39. Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA

and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**40. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**41. Public Access to Meetings and Records.** If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

**42. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

**43. Requiring Minimum Compensation for Covered Employees**

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a

part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year

#### **45. First Source Hiring Program**

a. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. **First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent

or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**c. Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.



**46. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

**47. Preservative-treated Wood Containing Arsenic.** Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**48. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

**49. Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

**50. Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**51. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**52. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

**53. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**54. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**55. Supervision of Minors.** Left blank by agreement of parties.

**56. Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**57. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**58. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**59. Food Service Waste Reduction Requirements.** Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

**60. Slavery Era Disclosure.** Left blank by agreement of the parties.

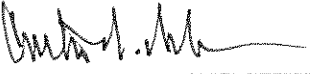
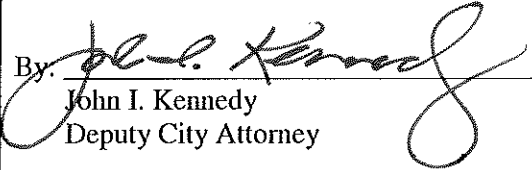

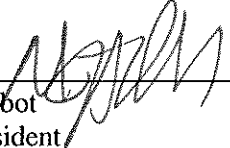
**61. Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**62. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**63. Performance Bond.** No later than ten days after the effective date of this Agreement, Contractor shall post with the City a corporate surety bond, in the amount of one million dollars (\$1,000,000), conditioned for the faithful performance of the Agreement. The issuing Corporate surety shall be legally authorized to engage in the business of furnishing surety bonds in the State of California, have a current A.M. Best rating not less than "A-VIII," and be approved by the City Controller.

If Contractor initially provides a bond for a period less than the full term of this Agreement, the Contractor shall renew or provide the City with an equally satisfactory replacement bond(s) as necessary so that Contractor's performance is bonded in an uninterrupted manner for the entire duration of the Agreement. Contractor shall provide advance written notice to the City at least ninety (90) days prior to the expiration of any bond if the corporate surety decides to cancel the bond, not to extend the term of the bond, or not to issue a Continuation Certificate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

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| <p><b>CITY</b></p> <p><b>San Francisco<br/>Municipal Transportation Agency</b></p> <p><br/>_____<br/>Nathaniel P. Ford Sr.<br/>Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera<br/>City Attorney</p> <p>By: <br/>_____<br/>John I. Kennedy<br/>Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY<br/>BOARD OF DIRECTORS</p> <p>Resolution No: <u>11-051</u></p> <p>Adopted: _____</p> <p>Attest: <br/>_____<br/>Roberta Boomer, Secretary to the<br/>SFMTA Board of Directors</p> | <p><b>CONTRACTOR</b></p> <p><b>ACS State &amp; Local Solutions, Inc.</b></p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p><br/>_____<br/>Mark Talbot<br/>Vice President<br/>12410 Milestone Center Dr.<br/>Germantown, MD 20876</p> <p>City vendor number: 68769</p> |
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**Appendices**

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Court Evidence Package
- D: Affidavit of Custodian of Records
- E: Monthly Viewing Report
- F: System Requirements For Supplied Equipment and Technical Specifications
- G: Equipment Lease Agreement

## Appendix A

### Services To Be Provided By Contractor

#### 1. Description of Services

The primary objective of this System is the reduction of collisions at signalized intersections resulting from red light violations and other moving violations as authorized by state law (hereinafter together referred to as "red light violations").

The services detailed herein describe a System involving Camera Units and System Equipment, maintenance and servicing, film collection/processing or digital image capture/processing, image retrieval, image analysis, Notice to Appear processing, and interface with the San Francisco Municipal Court ("Court") and San Francisco Police Department ("SFPD"). The System is intended to provide for the photographing and citing of vehicles entering an intersection after the beginning of the red light signal phase. SFMTA shall oversee this System at all enforced intersections as specified herein. Contractor shall provide administrative support services and work with SFMTA, SFPD, the Court, and all interested City departments and other agencies in the administration, operation, design and construction of this System.

Contractor's proposal, dated September 18, 2009 is incorporated by reference as though fully set forth. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) this Agreement and its appendices, 2) the Request for Proposals dated August 5, 2009, and 3) Contractor's Proposal, dated September 18, 2009.

Contractor agrees to perform the following services:

#### A. Program Administration

This Agreement is for the administration and maintenance of the City's Red Light Photo Enforcement System and System Equipment at the following 25 enforced intersections (47 approaches).

- (1) 1<sup>ST</sup> St. & Folsom St. (SB)
- (2) 3<sup>RD</sup> St. & Harrison St. (NB, WB)
- (3) 4<sup>TH</sup> & Howard (WB)
- (4) 5<sup>TH</sup> St. & Howard St. (WB)
- (5) 5<sup>TH</sup> St. & Harrison St. (WB, SB)
- (6) 5<sup>TH</sup> St. & Mission St. (WB, NB, SB)
- (7) 6<sup>TH</sup> St. & Bryant St. (NB, SB, EB)
- (8) 7<sup>TH</sup> St. & Mission St. (NB, WB)
- (9) 8<sup>TH</sup> St. & Harrison St. (WB, SB)
- (10) 9<sup>TH</sup> St. & Howard St. (NB, WB)
- (11) 14<sup>TH</sup> St. & South Van Ness (EB, NB)
- (12) 15<sup>TH</sup> St. & Mission St. (NB, SB)
- (13) 19<sup>TH</sup> Ave. & Sloat Blvd. (NB, SB)
- (14) Bush St. & Van Ness Ave. (NB)
- (15) Ellis & Larkin (WB, NB)
- (16) Fell & Masonic (EB)
- (17) Francisco & Richardson Blvd. (EB, WB)
- (18) Franklin & Geary Blvd. (NB, WB)
- (19) Fulton & Park Presidio (NB, SB)

- (20) Geary & Park Presidio (EB, WB, NB, SB)
- (21) Hayes & Polk (WB, SB)
- (22) Lake & Park Presidio (NB, SB)
- (23) Lyon & Marina (EB)
- (24) Oak & Octavia (EB, NB)
- (25) Pine & Polk (WB)

Under SFMTA direction, Contractor shall assume administration and maintenance of the existing Red Light Photo Enforcement System in conformance with Appendix F - System Requirements for Supplied Equipment and Technical Specifications at each of the above intersections immediately upon the first day of the Agreement and diligently perform the tasks outlined in this Agreement until such time as specified by this Agreement, except that the unfinished intersections shall be finished, tested and accepted as provided in Appendix A, Section 2. Existing System – Incomplete Intersections, before those intersections are subject to the administration, support and maintenance obligations. Upon execution of this Agreement, Contractor understands and agrees to immediately assume administration support responsibilities of the existing System so as to ensure a seamless transition with no gaps in existing levels of Red Light Photo Enforcement.

Costs for program administration shall be in accordance with the itemized monthly cost breakdown contained in Appendix B, Exhibit 1 – Program Administration for All Existing Locations.

**B. Change Orders**

SFMTA may request changes to the work required to be performed, including additional products or services and additional enforcement of other moving violations as authorized by law, by providing written notice thereof to Contractor setting forth in reasonable detail the proposed changes. Upon Contractor's receipt of a Change Order, Contractor shall deliver a written statement describing the effect, if any, the proposed changes would have on the pricing terms as set forth in this Agreement and shall include a detailed breakdown of the charge and schedule effects, a description of any resulting changes to the specifications and obligations of the parties, a schedule for the delivery and other performance obligations, and any other information relating to the proposed changes reasonably requested by the City.

Following the City's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing System, including any incomplete intersections, the pricing terms set forth in this Agreement shall govern. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement.

**C. No Modifications Allowed**

Contractor shall not have the authority to modify, remove, or relocate any part of the existing or approved System in place without prior permission from SFMTA, including but not limited to vehicle detection equipment, cameras, flashes, software, poles, or any part of the System that could affect the accuracy and reliability of the enforcement of red light violations under this Agreement.

**D. Existing Third Party Damage Repairs**

As part of its included services and in accordance with the Contractor's Proposal, Contractor shall repair all existing Third Party Damages to bring the existing System at each of the existing 25

intersections to fully operating condition. These repairs shall result in providing City with a fully operational “turn-key” System, refurbished in all respects and in like-new condition at all 25 intersections, satisfying all requirements of the RFP which specify the successful vendor shall provide a “turn-key” system for all intersections. These repairs include but may not be limited to, System Equipment, and adjustment/calibration, testing and tuning of equipment and any other repairs as may be necessary to complete installation of a fully functioning System at all existing intersections.

All agreed upon repairs are to begin on the date that Contractor is notified by City that this Agreement has been certified, and are to be completed within 90 days (exclusive of required City or State approvals) in order to coincide with camera refurbishment. Contractor shall not be liable for liquidated damages for delays where SFMTA determines, in its sole discretion, that the Contractor has made a good faith effort to complete such repairs in a timely fashion or the delay is caused by circumstances beyond Contractor's reasonable control.

Any Third Party Damages that occur after the first day of the Agreement, shall be repaired at City's discretion and at City's cost in accordance with the itemized cost breakdown contained in Appendix B, Exhibit 2—Third Party Damage Repairs.

#### **E. Warranty**

As a part of its included services and in accordance with the Contractor's Proposal, Contractor agrees to warranty all cameras maintained and provided under this Agreement until termination or expiration of this Agreement. In furtherance of such warranty, Contractor agrees to diagnose, repair and/or rebuild all cameras to good working condition in accordance with the terms and conditions of the Agreement. Should any camera under this Agreement or any other system device provided by Contractor critical to maintaining enforcement levels at any location malfunction at any time prior to the termination or expiration of this Agreement, Contractor shall diagnose, repair, and/or rebuild each unit to remedy and correct said problem in accordance with the terms and conditions of the Agreement and within a reasonable time (generally within 10 business days). Schedule for repairs and/or refurbishing of cameras that do not cause a lapse or decrease in existing enforcement levels shall be mutually agreed upon. The Contractor shall notify the City of any proposed repair work via a Weekly Maintenance Log.

Schedule for repairs and/or refurbishing of cameras shall be mutually agreed upon but may not result in a lapse or decrease in existing enforcement levels.

#### **F. Maintenance, Servicing and Rotation**

The Contractor is responsible for general day to day maintenance of System Equipment, including any leased equipment throughout the term of the contract which includes but is not limited to the following tasks.

1. Contractor shall rotate all Camera Units among the available housings at all existing intersections as identified in Section A.

2. Contractor shall rotate Camera Units from one location to another on a schedule agreed to by the parties. Three business days before the first day of every month, the Contractor shall submit a schedule outlining the current status of all System Equipment, and list approaches currently in enforcement within the System and proposed rotations to be approved by SFMTA. If SFMTA does not notify Contractor of revisions within five (5) business days, the rotation schedule shall be deemed approved. Notwithstanding the above provisions, SFMTA can request Contractor to revise the rotation schedule at any time, and Contractor shall effectuate such revisions within two (2) business days.

3. When Contractor services the Camera Units, Contractor shall inspect and test Camera Units and System Equipment as necessary, to manufacturers' specifications, and shall complete a Field Technician Service and Inspection Log, created by Contractor.

4. Contractor shall keep in its files the original Field Technician Service and Inspection Logs for use as evidence as required by the Court.

5. Contractor shall respond to any material malfunction of the System within twenty four (24) hours after SFMTA provides written notice regarding a System malfunction to Contractor (Malfunction Notice). Contractor shall inspect the equipment and functionality of the System as a whole and individually at each of the System intersections when collecting film, but not less than weekly for digitally enforced locations. In the event that Contractor discovers any malfunction or defect, or in the event that Contractor receives a Malfunction Notice, Contractor shall notify SFMTA Project Manager within 24 hours and use its best efforts to cause such malfunction or defect to be repaired within 48 hours, and in the event that such malfunction or defect has not been substantially repaired within 48 hours, the Contractor shall notify the SFMTA Project Manager with a written report identifying the problem, available options on how to correct it, and the Contractor's recommendation on how to proceed. SFMTA reserves the right to determine the final course of action in all such cases. Should a defect or malfunction attributable to Contractor negligence or error result in a material loss of citation evidence, Contractor shall compensate SFMTA for such loss based on the estimated number of citations lost (based on historical citation rates of the enforced approaches where the loss occurs) due to the malfunction or defect, or pay liquidated damages to the SFMTA as specified in Section 19, whichever is less.

6. Contractor shall collect exposed film on a routine basis. When collecting the film, Contractor shall inspect and test the Camera Unit to verify that it is in working order. Contractor shall record and remedy any problems at Contractor's expense.

7. The City shall be responsible for relocating any System Equipment for purposes other than Red Light Violation Enforcement. In this circumstance, the City shall relocate the System Equipment at its sole expense.

8. All repair and maintenance of the Red Light Photo Enforcement System and related equipment will be the sole responsibility of Contractor, including but not limited to maintaining the casings of the cameras included in the System and all other related System Equipment in reasonably clean and graffiti-free condition.

9. Contractor shall not open the Traffic Signal Controller Boxes without prior authorization from SFMTA and a SFMTA representative present.

10. The provision of all necessary electrical, telephone services, DSL, cable, or other broadband services to the Designated Intersection approaches will be the sole responsibility of Contractor.

11. In the event that images of a quality sufficient for the San Francisco Police Department (SFPD) personnel to identify violations cannot be reasonably obtained without the use of flash units, Contractor shall provide and install such flash units.

12. The Contractor shall make reasonable best efforts to have the Project Manager (or a reasonable alternate) available to the SFMTA Project Manager each day.

13. All electrical connections with SFMTA equipment and systems are limited to intersection signal outputs and must be optically or otherwise isolated.



14. The Image Processing Unit may be connected to the traffic signal controller to obtain the following:
  - a. Contact closure of signal when traffic light enters the amber phase.
  - b. Contact closure of signal when traffic light enters the red phase.
  - c. Power source (110V AC).
15. Backup power should be provided so that the system clock and other data elements displayed in images are maintained for a minimum of seven (7) days in the event of a main power supply failure.
16. The Contractor shall make all necessary repairs and maintenance of the System and related equipment, including, but not limited to, maintaining the casings of the cameras included in the System and all other equipment in reasonably clean and graffiti-free condition.
17. Contractor shall make available a technician during any construction projects at designated intersections that may have a direct impact on the overall functioning of the System.

#### **G. As-Built Plans**

If the Contractor has not already done so, As-Built plans shall be prepared and approved by a civil or electrical engineering firm licensed by the State of California for all System intersections as a part of this Agreement. It shall be the Contractor's responsibility to ensure that each As-Built plan for each System intersection is properly prepared and maintained to accurately reflect any and all subsequent modifications, upgrades or adjustments. Any subsequent modification, upgrade, or adjustment to any System intersection must be reflected in the corresponding As-Built plan and indicated as such, with the revised plan dated and stamped by the engineer in charge of such modification.

Up to date As-Built plans shall be maintained at both the Contractor's offices and SFMTA Engineering offices.

At those intersections where two sets of loops (i.e., one set for traffic control and one set for photo enforcement) are in place making it difficult to determine with certainty which set of loops are currently operational for the photo enforcement system, all As-Built drawings shall be maintained or updated as needed so that the System's operational loops can be readily identified. Abandoned loops must be intentionally cut on two sides so that it is clear that the loops have been abandoned as well as to eliminate any possibility of loop to loop crosstalk.

All Construction Design Plans prepared under this Agreement must be prepared by a California Registered Civil or Electrical Engineer and shall be subject to the City's plan check, permitting, and inspection procedures.

#### **H. Decoy Camera Units**

Contractor shall provide up to ten "decoy" cameras that flash and record violation data for statistical purposes at no additional cost to the City. The Contractor shall install the decoy cameras according to the City's specifications. Delivery of the ten (10) decoy cameras shall be made upon mutual agreement between both parties but not later than sixty (60) days after Contractor is notified of the certification of this Agreement.

At SFMTA's sole discretion, the decoy cameras may be required to be rotated among existing intersections based on preference of enforcement objectives.

**I. Data Security**

All System data subject to electronic transmission via broadband communication shall be transmitted via a secure, tamperproof system. The data must also be encrypted prior to transmission. At a minimum the data must be pre-encrypted using the triple-DES encryption algorithm. The techniques used to encrypt and secure System data shall at all times be subject to City approval. Substitution of encryption algorithms must be approved by the CEO/Executive Director of SFMTA prior to deployment.

Any loss of citation data resulting from a failure to properly secure System data communications in accordance with the terms of this Agreement shall be Contractor's sole responsibility and subject to applicable damages as provided by in Section 19.

**J. Public Awareness Campaign**

Contractor shall provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct or participate in a public awareness event or campaign of the Red Light Photo Enforcement Program of up to \$3,500.00 at no cost to the City. Upon the City's request, Contractor shall submit a proposal to participate in an event or to conduct a Public Awareness Campaign for the City's consideration and approval. This proposal shall include providing media and educational materials that the City may require in order to participate in the event or implement the campaign. Contractor proposal shall address Contractor assisting the City with public information and education efforts, including but not limited to graphic design work, purchasing promotional material and drafting press releases and campaign schedules.

**K. Supply of Computer Workstations**

At the request of the City, Contractor shall supply computer workstations, as described.

1. Workstations

- a. Three (3) Adjudication Laptops (computer, software, and printer): One laptop for viewing of photographic images and videos in the courtroom, and two laptops for the SFPD for a total of three laptops. Note: These laptops may be substituted with workstations of equivalent technical specifications. The minimum requirements for the three (3) laptops are as follows:

(1) Hardware Minimum Requirements:

- (a) Lenovo T400 Standard Laptop
- (b) Intel Core 2 Duo 2.53 GHz P8700
- (c) 4 GB PC3 -8500 Memory
- (d) 160 GB 7200 RPM hard drive
- (e) DVD Rom
- (f) 3 USB port
- (g) 1 GVA video port
- (h) 14.1 Led display
- (i) Stereo Speakers
- (j) Wireless LAN Antenna
- (k) 6 Cell Battery
- (l) Intel Wifi Link 5300

(2) Software Requirements:

- (a) Modern operating system – Windows 7 OS (or current equivalent).
- (b) Adjudication software - this software shall provide at least the following minimum capabilities:

- (i) Access on-line database of citations providing up to date information to the Court,
  - (ii) Store and access no less than two years worth of citations data and digitized images,
  - (iii) Allow the Court to retrieve violations by citation number and display all data contained on the Citation as well as digitized images or video of the actual violation including close-ups of the violator's face and license plate, and
  - (iv) Allow duplication via a laser printer of the original Citation.
- (c) Anti-Virus Protection.
- (3) High resolution printer - capable of reprinting Notices to Appear in color for court personnel and defendants.
  - (4) Miscellaneous - mouse, keyboard, anti-theft cable and lock.

**L. Business Rules for Issuing Citations**

The Contractor shall process violations in accordance with California Vehicle Code ("CVC") mailing requirements. The Contractor shall perform an initial screening of all violations captured to ensure that each meets the following criteria. The Contractor shall process all violations meeting these criteria as Citations and send the Citations to SFPD for final review prior to issuance.

The following business rules are subject to modification only as a result of changes to local or state law, the California Vehicle Code, or as determined by SFMTA. Depending on the modifications required, the changes may be subject to Section B -Change Orders.

1. All modifications to the business rules shall be confirmed by letter between the parties. The letter shall be accepted and signed by both parties and constitute an amendment to this Agreement.

2. The Contractor shall view images to ensure that violation photographs comply with California Vehicle Code ("CVC") §210 which requires "a clear photograph of a vehicle's license plate and the driver of the vehicle." A "clear photograph of the vehicle's license plate" shall mean that the license plate number is legible and a "clear photograph of the driver of the vehicle" shall mean that the driver's face is identifiable.

3. The Contractor shall utilize the photograph of the license plate of the vehicles in the violation to identify the registered owners ("RO") of said vehicles by direct computer access to the California Department of Motor Vehicles ("DMV"), acting as an agent for the City. The contractor shall have a second employee verify violation photographs to ensure contractor is capturing the correct DMV registration and driver's license information.

4. The Contractor shall obtain the "current address of the registered owner on file" with the DMV for purposes of mailing the citation, except when the City has reissued the citation to the driver. In that circumstance, contractor shall obtain the address of the driver on file with the DMV or as provided by the court.

5. The Contractor must include the California driver's license number of the alleged violator on the citation, except when a commercial or governmental entity owns the vehicle.

6. The Contractor shall process citations for all violations occurring 0.3 or more seconds into the red phase. Contractor may limit citations to those with a speed greater than the speed specified by SFMTA.

7. The Contractor shall provide separate and unique data for each violation photograph.
8. The Contractor shall process citations for all vehicles registered to governmental agencies, except emergency vehicles or vehicles used by the SFPD, or other law enforcement agency escorts.
9. For violations which do not result in the issuance of a Notice to Appear, Contractor shall destroy driver information data, digital images, and film records within 15 days of determination of non-issuance. For violations which do result in the issuance of a Notice to Appear, Contractor shall destroy all related information, including but not limited to all data, digital images, film and paper records within fifteen (15) working days of final disposition.
10. The Contractor shall maintain and observe a confidentiality agreement with the DMV.

**M. Citation Processing**

The Contractor shall process all Citations meeting the criteria set forth in Section L – Business Rules for Issuing Citations. The Contractor shall prepare Citations on the form approved by the Court and the California Judicial Council. The Contractor shall provide on the Citation that information, and only that information, required by CVC §40518, the Court, and the California Judicial Council.

To the extent possible without blocking the image of the driver, Contractor shall block the image of all passengers in the photographs used for the Citations.

The Contractor and the Court shall mutually agree upon the numbering system for Citation numbers.

The Contractor shall send with each Citation a statement describing the technology used including information necessary to interpret all data shown on the photograph, the form of which must be approved in advance by the City. The Contractor shall amend this information if requested by City, at no additional cost to the City. The Contractor is responsible for printing each envelope, Citation, and all other materials sent to each alleged violator.

For Commercial Vehicle Owners, the Contractor shall include the Affidavit of Custodian of Records along with the Notice to Appear to each Citation (see Appendix D.)

The Contractor shall process photographs on a schedule that allows for the preparation and mailing of signed Citations within eleven (11) days as required by CVC §§22 and 40518. Upon mailing the signed Citation, Contractor shall obtain a Certificate of Mailing declaration issued by the USPS, attesting to the form of service of the signed Citation, for each signed Citation that Contractor sends to an alleged violator. The Contractor shall provide a copy of the Certificate of Mailing declaration to SFPD, Traffic Company within three (3) business days of mailing the signed Citation.

The Contractor shall submit the data from the signed Citation to the Court electronically by a means and in a form mutually agreed upon by the Court and Contractor within five (5) business days after mailing each signed Citation.

Mailing costs (postage and handling) for Citations are considered a part of Contractor's day to day business functions and no additional payment is made for postage and handling outside of Contractor's payment for Administrative Support Services as listed in the Contractor's cost proposal and contained in Appendix B, Exhibit 1 – Program Administration Existing Locations.

**N. Signing Citations**

The Contractor shall provide each Citation to SFPD for review, signature and approval before Contractor mails the signed Citation to the alleged violator. All data included on the Citation shall be clearly legible, with all written information accurate as supplied from the DMV records. SFPD will reject any Citations that are not clearly legible. Unless specifically authorized by SFPD or ordered by a court of law, Contractor shall mail all signed Citations within eleven (11) days after SFPD approval. The Contractor shall provide the original citation to the Court and maintain the ability to produce true and exact copies without signature within 48 hours notice.

SFPD officers will be available each Monday through Friday to review Citations, except legal holidays. The officer's signing of the Citation shall be considered the act of issuing the Citation as required by the CVC.

The decision to issue a citation shall be the sole decision of the authorized SFPD Police Officer and shall be made at the authorized officer's sole discretion. In no event shall Contractor have the ability or authorization to issue a citation or violation notice of any kind related in any way to this System without explicit SFMTA and SFPD written authorization. Citations approved and signed by the authorized officer may not be cancelled or voided without written consent from both SFMTA Project Manager and the Captain of the SFPD Traffic Unit.

**O. Court Evidence Packages**

When the alleged violator is a juvenile, Contractor shall send the Court Evidence Package to the Juvenile Traffic Court, 375 Woodside Avenue, San Francisco. When the alleged violator is an adult, Contractor shall provide the Court a Court Evidence Package (see Appendix C.)

The Contractor shall make available computerized or on-line access to violation data and photographs for court proceedings and also provide at least two photographs of the violation in the Court Evidence Package: 1) the full view of the first photograph taken by the System, and 2) the full view of the second photograph taken by the System. In either case, the Contractor shall provide access to violation photographs for review by alleged violators at the court.

If the Court requests a Court Evidence Package ten (10) or more business days preceding the court date, Contractor shall provide the Court Evidence Package to the Court no later than five (5) business days preceding the court date. If the Court does not provide a request to Contractor a minimum of ten (10) business days preceding the court date, Contractor shall make its best effort to provide the Court Evidence Package to the Court prior to the date of the proceeding.

Contractor shall assist with obtaining all necessary documents, including business records, for prosecution of violations as directed by the City Attorney's Office.

**P. Court Testimony**

The Contractor shall provide an expert witness(es) to testify in court at each trial as to the System technology, processing of the Citations, field maintenance and operation of the System, and processing of images. The Court holds Red Light Photo Enforcement trials typically on Tuesday, Wednesday, and Thursday at 1:30 pm.

The Contractor shall provide an original declaration of a qualified employee or subcontractor who can testify that the System was properly operating at the time of the alleged violation. The Contractor shall work with the City Attorney's Office to prepare the declaration.

**Q. Citation Dismissals and Reissues**

The Contractor shall inform alleged violators through an approved form that they may identify the actual driver, if other than the RO, by written declaration without the necessity of making a personal appearance. The Court will process correspondence received related to this declaration.

When the RO provides complete information identifying a new driver, the Court shall process a dismissal and forward the new driver information to the Contractor for processing of a new Citation.

In the case of a commercially registered vehicle, Contractor shall prepare the Citation for issuance to the RO and include an Affidavit of Custodian of Records. When the RO of a commercial vehicle submits a complete and executed Affidavit of Custodian of Records which identifies the actual driver, the Court shall process a dismissal and forward the actual driver information to the Contractor for processing of a new Citation. The Contractor shall assist with obtaining all necessary documents for a commercially registered vehicle, including business records, for prosecution of violations as directed by the Court and the City Attorney's Office.

If it becomes necessary to dismiss an issued Citation for reasons other than those noted above, SFPD or the Court shall notify the Contractor.

**R. Quality Assurance Audits**

Internal quality control is essential and shall be achieved by a double blind internal review of each violation by Contractor staff, quality assurance review of all issued citations by the Police Department, and periodic external System audits by SFMTA Project Manager. Quality assurance audits will be conducted by SFMTA for randomly selected samples of recorded violations on a periodic basis.

All program data maintained by Contractor regarding triggered events, detected violations, and issued citations at each enforced intersection by the System shall be directly and remotely accessible by SFMTA Project Manager for quality assurance audits at any time and independent of Contractor staff.

Selected samples may be chosen from any data related to triggered events, detected violations, and issued citations inclusive of those events that triggered the System but did not result in an issued citation to determine Contractor's adherence to established guidelines including but not limited to clarity of images, chain of custody and handling of evidence, review/approval process of issued citations, non-issued citations, reconciliation of total number of approved citations for any given time period and number of citations mailed (confirmation of mailing) within the same time period, and compliance with all confidentiality laws and agreements.

At no time may the quality assurance audit specified in this section compromise, contradict, or violate any statute or regulation regarding operation of the program.

**S. Monthly Viewing Report and Management Meeting**

As part of its included services, the Contractor shall provide a monthly report to the SFMTA Project Manager no later than twenty-one (21) business days after the end of each month for each location monitored (see Appendix E.). This report shall show the number of violations detected and number of violations for which the City issued Citations. Of the violations detected but not issued, Contractor shall

report the reason for non-issuance on an approved form. The Contractor shall also report any malfunctions, days not in service due to malfunction, and days not in service due to other reasons.

As a part of this report, the Contractor shall perform ongoing problem identification and analysis of the operation of the System. Contractor shall identify any operational problems at each of the System intersections for the preceding month. Problems shall be identified and then addressed in order beginning with those operational problems resulting in the highest number of unenforceable violations.

Contractor shall analyze the photographic data and issuance statistics to determine the nature of the problems and document the results in the monthly report. The SFMTA Project Manager shall then use the results of this analysis to jointly develop and implement improvement strategies or measures to correct any identified deficiencies in the System which will then be subject to final assessment and approval by the SFMTA Project Manager.

The SFMTA Project Manager may also schedule a team meeting on a regular or as-needed basis with Contractor, SFPD, the Court, and any other interested City department or agency, to exchange information on the administration of the System.

#### **T. Standards of Performance**

The primary objective of the System is the reduction of collisions at signalized intersections resulting from red light violations.

To meet the primary objective, this System is designed to monitor and enforce red light violations at each enforced intersection approach by automatically capturing enough information about each violation to issue, enforce, and adjudicate a lawful citation.

Both parties acknowledge that enforceable citations may not be issued for all violations that may occur at each enforced intersection approach due to a variety of controllable and uncontrollable factors. Controllable factors include but are not limited to the accuracy, reliability, and efficiency of the maintained System, System downtime, and constraints including Business Rules and interdepartmental coordination. Uncontrollable factors include but are not limited to the number of contested citations by the Courts and resulting adjudication, image clarity, and availability of license plate and driver information, and Force Majeure events as described in Section 61 of the Agreement.

Each month as part of the Monthly Viewing Report and Management Meeting requirements, the SFMTA Program Manager shall meet with the Contractor Project Manager to review the System's performance. Measures of effectiveness (MOE) will be established to monitor the System's effectiveness on a quarterly basis and may include total number of events captured, citations issued, citations contested, number of enforceable citations lost due to controllable and uncontrollable factors, results from the film viewing report, quality assurance auditing, contractual obligations or any other factors related to the execution of this contract as mutually agreed upon. The MOE may change depending on seasonal factors, construction issues, citation issuance, intersections which are being enforced, enforcement objectives and any other factors as determined by SFMTA.

The Contractor shall explain variances on the System's performance status with respect to the established MOEs for the quarter. If the quarterly MOEs are not consistent with the expected System performance, the Contractor Project Manager and SFMTA Project Manager shall determine the causes and establish action plan to either improve System performance for the coming quarter to meet the expected MOEs and/or adjust the expected performance criteria subject to SFMTA approval.

**U. Technical Upgrades**

As Contractor develops and offers new products or upgrades of existing products, the Contractor will give the City the opportunity to purchase the upgrade to the newest product offerings. On or about July 1<sup>st</sup> of every year, Contractor will provide a written report to the City's Program Manager detailing upgrades in technology and their possible applicability to the City's System. The Contractor shall not implement technology upgrades without the specific written approval of the City. Back office software upgrades and firmware upgrades shall be provided to the City at no cost during the term of the Agreement. Technical upgrades will be requested or approved as outlined in Appendix A, Section B.

**V. Legal Changes and Challenges**

The Contractor shall make any modifications to the System as required by changes in local, state, or federal law or any legal decision that applies to the System or the System's operation at no cost to the SFMTA up to a cost not to exceed \$5,000 per required modification per year or a total cost not exceed \$25,000 for the term of this Agreement. The parties will negotiate in good faith whenever any legal change necessitates a major overhaul of the System.

**W. Warning Signs**

Contractor agrees to visually inspect for the presence of or damage to all warning signs notifying the public of the System's presence in the City. The Contractor shall provide a quarterly report to the City documenting Contractor's visual inspections and promptly notify the City of any warning signs which are damaged, missing, or otherwise in bad repair. If Contractor fails to report to the City the accurate physical status of a warning sign, Contractor shall be liable to the SFMTA for Liquidated Damages pursuant to Section 19 of this Agreement.

**X. Training**

The Contractor shall provide a training course for up to fifteen (15) City employees, including, but not limited to, SFPD officers and other persons involved in the administration of the Program. The training course is necessary so that SFPD officers may competently testify as to the operation of the System in any court proceeding. All SFPD officers completing the course will receive a Certificate of Training. The Contractor shall work with SFMTA and the City Attorney's Office to prepare the training course. The Contractor shall provide the training course within one month of the request by the City, unless the City requests that the training course be held at a later date.

**Y. Internet Customer Service**

The Contractor shall create and maintain an internet site that provides the ability for alleged violators to review citations and color photographs while ensuring confidentiality, a link to online court payment processing, general information to the alleged violators regarding the System, and information regarding the status of a specific Citation. Contractor's internet site shall be available twenty-four (24) hours a day, 365 days per year. The City shall approve all information contained and provided by the internet site prior to the Contractor's implementation.

**Z. Self-Administration**

City reserves the right to self-administer the System upon termination of the Contract. Upon termination of the Contract, City has the right, but not the obligation, to obtain a non-exclusive perpetual license to the Contractor's image and citation processing software with associated training and consultation services as listed in Appendix B, Exhibit 3 – Option to Self Administer.



**AA. Supply of System Equipment**

Costs for the supply of any leased System Equipment is specified in Appendix B, Exhibit 5 – Supply of System Equipment Lease Fees. All System Equipment leased from Contractor shall become the property of the City at the end of the lease term set forth in Appendix G of this Agreement if the City's exercises all its options to extend the term of this Agreement to five years.

**2. Existing System – Incomplete Intersections**

**A. Design and Construction of Incomplete Intersections**

Contractor shall complete, unless otherwise directed by the SFMTA, all design and construction work on the existing system for which a Notice to Proceed was issued to the Contractor by the SFMTA under the 2005 Agreement with Contractor. To the extent not already completed, Contractor shall perform the following scope of work with respect to System coverage at any unfinished intersections. Contractor shall be compensated as provided by in Appendix B. Supply of System Equipment Lease Fees – Exhibit 5 and Appendix G.

Contractor shall prepare construction ready plans, specifications, and engineer's estimates (PS&E) for the installation of all needed equipment for each unfinished intersection. Construction design and consultation costs shall be charged in accordance with Appendix B. Calculation of Charges – Exhibit 4.

- a. Installation plans shall be complete, including detailed engineering drawings approved by a civil or electrical engineering firm licensed by the State of California. Upon completion and acceptance of installation, the Contractor shall provide as-built drawings of the actual installation within ten (10) business days, as specified in Section 1.G - As-Built Plans.
- b. Contractor shall produce engineering drawings (1 inch = 20 feet) for all intersections completed under this Section. These drawings must show the exact locations of all System Equipment to be installed. The engineering drawings must accurately show the scope of work and clearly distinguish the new conduit and wiring from the existing conduit and wiring.
- c. The SFMTA, in conjunction with the San Francisco Department of Public Works ("DPW") shall have a maximum of five (5) business days per location to review the engineering drawings, make comments, and "red line" corrections. If SFMTA does not approve submitted engineering drawings within five (5) business days, deadlines shall be extended accordingly. Following approval by the SFMTA, the selected Contractor may begin construction.

**B. Construction Contractor**

Construction shall be completed under a separate construction contract issued by the City. Contractor shall assist the selected Construction Contractor who will perform the construction-related services.

Contractor shall fully test System Equipment at each location completed under this Section in accordance with existing protocol to ensure operation to the SFMTA's satisfaction. Contractor shall also

provide sample violation photographs from each intersection tested for the SFMTA's review and approval of image quality.

**C. Supply of System Equipment**

Contractor shall coordinate with the selected Construction Contractor to provide and deliver all necessary System Equipment. All System Equipment shall be provided by Contractor and delivered to the City in accordance with construction contract (date and delivery location to be determined as agreed upon by all parties). All System Equipment identified in Appendix F – System Requirements for supplied Equipment and Technical Specifications shall be delivered by Contractor and shall meet or exceed each of the requirements listed.

Costs for the supply of any System Equipment leased by City is specified in Appendix B, Exhibit 5 – Supply of System Equipment Lease Fees. All System Equipment leased by Contractor shall conform to the requirements set forth in Section AA above once installed.

**D. Program Administration**

At City's direction, Contractor shall assume administration and maintenance of the completed intersections in conformance with Appendix F – System Requirements for Supplied Equipment and Technical Specifications and diligently perform all tasks outlined in this Agreement to the satisfaction of the SFMTA.

**3. Reports**

Contractor shall submit written reports as requested by the SFMTA. Reports shall include, but are not limited to, a) Monthly Viewing Report, b) Weekly Maintenance Log, c) Quarterly Warning Signs By Location, d) Monthly Camera Status Report, and e) Monthly Proposed Camera Rotation Report. Weekly reports are due within ten (10) business days after the end of a weekly period, monthly reports are due within fifteen (15) business days after the end of a monthly period, quarterly reports are due within twenty (20) business days after the end of the quarterly period. Format for the content of such reports shall be determined by the SFMTA. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible. The timely submission of all reports is a necessary and material term and condition of this Agreement. If Contractor fails to provide any required reports to the City within two weeks of the aforementioned due dates, Contractor shall be liable to the SFMTA for Liquidated Damages pursuant to Section 19 of this Agreement.

**4. SFMTA Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be Leanne Nhan, Red Light Camera Program Manager.

**Appendix B  
CALCULATION OF CHARGES**

**Exhibit 1**

**Program Administration for All Existing Locations**

**Program Administration Costs**

**Existing Wet Film System**

| <u>Monthly Costs</u>                               | <u>Per Active Approach</u> |
|--|----------------------------|
| Transportation                                     | \$388                      |
| Rent   | \$265                      |
| Administrative Overhead                            | \$290                      |
| Systems Support                                    | \$845                      |
| Camera Rotation                                    | \$0                        |
| Monthly Report Preparation                         | \$0                        |
| Fixed Maintenance Costs                            | \$485                      |
| Film, Development and Mailing                      | \$145                      |
| <b>Monthly Total</b>                               | <b>\$2,418</b>             |
| <b>5 Year Total</b><br>(Monthly Total x 60 Months) | <b>\$145,080</b>           |

**Existing Digital System**

| <u>No. of Digital Intersections</u> | <u>Additional Monthly Cost</u> |
|-------------------------------------|--------------------------------|
| 1                                   | \$8,632                        |
| 2                                   | \$1,587                        |
| 3                                   | \$1,586                        |
| 4                                   | \$1,587                        |

**Appendix B  
CALCULATION OF CHARGES**

**Exhibit 2**

**Estimated Third Party Damage Repairs**

| <u>Repair Item</u>                    | <u>Cost</u> |
|---------------------------------------|-------------|
| Existing Loop Repair per Lane         | \$3,945     |
| New Loop Installation per Lane        | \$2,485     |
| Camera Housing and Pole               | \$9,800     |
| Auxiliary Flash Unit                  | \$3,490     |
| Conduit Installation (per linear ft.) | \$115       |
| RLCS-1 Digital System (Rear)          | \$22,060    |
| RLCS-1 Digital System (Front)         | \$20,050    |
| Digital Pole, Base and Brackets       | \$1,050     |
| Sensys Detection per lane             | \$4,786     |
| Sensys Receiver                       | \$5,500     |
| Warning Sign Replacement              | \$500       |

**Appendix B**  
**CALCULATION OF CHARGES**

**Exhibit 3**

**Option to Self Administer**

| <u>Item</u>              | <u>Cost</u>                 |
|--------------------------|-----------------------------|
| Software License         |                             |
| a. Lease \$/Month system | \$447/month per enforcement |
| b. Purchase              | N/A                         |

Monthly fee is a software licensing fee for the use of ACS' Citeware system. This fee is calculated on a per enforcement system basis (an enforcement system may be comprised of one or more cameras monitoring a single approach). Licensing fee includes telephone support. Any requested enhancements will be performed on a time and material basis.

|                      |       |
|----------------------|-------|
| Training (\$/hr)     | \$120 |
| Consultation (\$/hr) | \$120 |
| Software Development | \$145 |

**Appendix B**  
**CALCULATION OF CHARGES**

**Exhibit 4**

**Construction Design and Consultation**

| <u>Item</u>               | <u>Cost Per Intersection</u> |
|---------------------------|------------------------------|
| Engineering Drawings      | \$5,000                      |
| Construction Consultation | \$2,300                      |
| <br>TOTAL                 | <br>\$7,310                  |

**Appendix B**  
**CALCULATION OF CHARGES**

**Exhibit 5**

**System Equipment Lease Fees**

|   |         |
|---|---------|
| Photo Enforcement System Per Approach<br>(cost includes camera system, poles, housing, detection<br>system, flash units and all electrical subcomponents) | \$2,069 |
|---|---------|

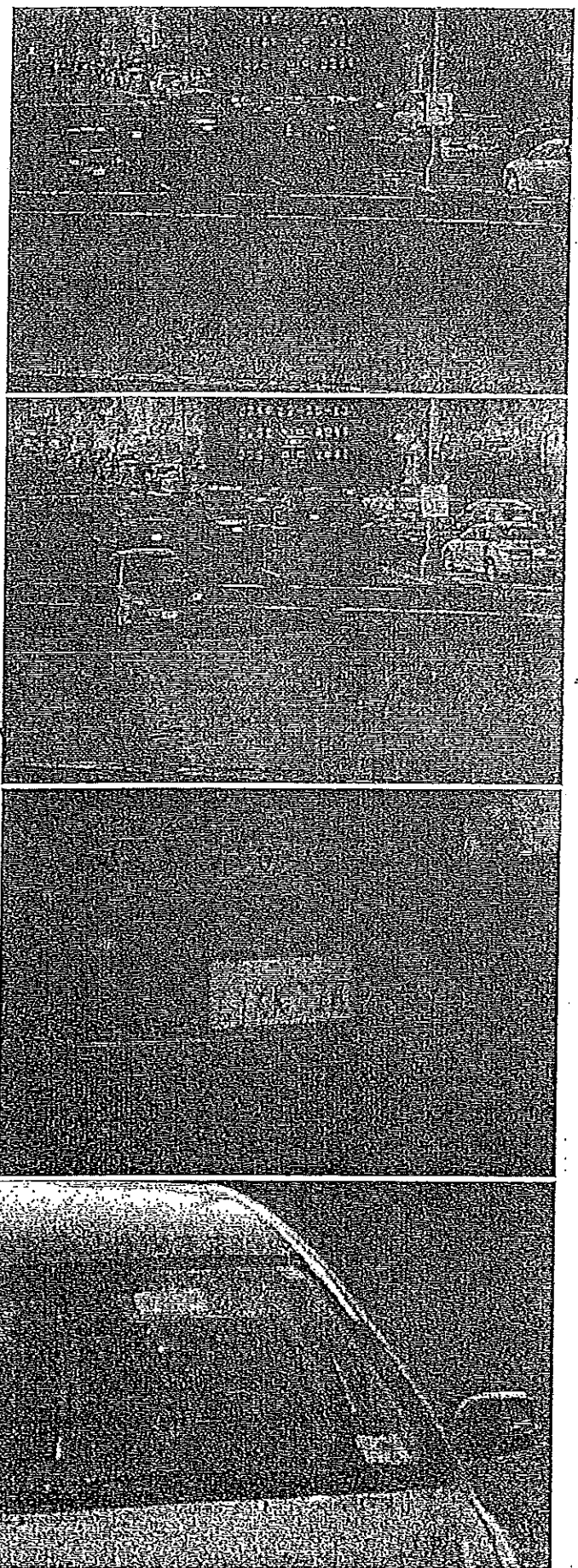
City and County of San Francisco  
 Automated Enforcement  
 Traffic Violation

|   |                         |
|---|-------------------------|
| You can view the images below online at:<br><a href="http://www.public.cite-web.com">http://www.public.cite-web.com</a> |                         |
| Citation Number<br>ZA0267899  | Pin Number<br>245571870 |

[REDACTED]  
 [REDACTED]  
 SAN DIEGO, CA 92130  
 ZA0267899

Citation No. ZA0267899

|   |               |   |  |                       |   |
|---|---------------|---|--|-----------------------|---|
| <b>SAN FRANCISCO POLICE DEPARTMENT</b>  |               |   |  |                       |   |
| NOTICE TO APPEAR Automated Traffic Enforcement  |               |   |  |                       |   |
| Date of Violation<br>05/19/2010   | Time<br>7:45  | [X]AM<br>[ ]PM                            | Day of Week<br>WEDNESDAY   | Red Sec<br>0.5        |   |
| Name (First, Middle, Last)<br>[REDACTED]  |               |   |  |                       |   |
| Address<br>[REDACTED]   |               |   |  |                       |   |
| City<br>SAN DIEGO   |               | State<br>CA                               | Zip Code<br>92130  |                       |   |
| Driver Lic. No.<br>[REDACTED]   | State<br>CA   | Class<br>Commercial                       | [ ]Yes [X]No   | Age                   | Birth Date<br>03/26/1982  |
| Sex<br>F  | Hair<br>Brown | Eyes<br>Hazel                             | Height<br>5-04   | Weight<br>095         | Race  |
| Veh. Lic. No. or VIN<br>[REDACTED]  |               | State<br>CA                               | <input type="checkbox"/> COMMERCIAL VEHICLE<br>(Veh. Code, § 15210(b)) |                       |   |
| Yr. of Veh.<br>2003   | Make<br>TOYT  | Model                                     | Body Style<br>4D   | Color<br>MED          | <input type="checkbox"/> HAZARDOUS MATERIAL<br>(Veh. Code, § 353) |
| Registered Owner or Lessee<br>[REDACTED]  |               |   |  |                       |   |
| Address<br>[REDACTED]   |               |   |  |                       |   |
| City  |               | State                                     | Zip Code   |                       |   |
| Code and Section<br>VC21453A  |               | Description<br>Fail to Stop at Red Signal |  |                       |   |
| Location of Violation at<br>NWB Richardson Ave. (US-101) @ Francisco St   |               |   | City/County of Occurrence<br>SAN FRANCISCO                             |                       |   |
| * Violation was not committed in my presence. The above is declared on information and belief and is based on photographic evidence.                        |               |   |  |                       |   |
| I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.   |               |   |  |                       |   |
| Date Issued<br>05/25/2010   |               | Declarant<br>[Signature]                  |  | ID No.<br>1106        |   |
| YOU MUST RESPOND TO THE COURT ON OR BEFORE:   |               |   |  |                       |   |
| WHEN: June 15, 2010   |               |   |  |                       |   |
| WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE  |               |   |  |                       |   |
| WHERE: Superior Court of California, County of San Francisco<br>Traffic Division<br>850 Bryant Street, Room 145<br>San Francisco, CA 94103<br>(415)551-8550 |               |   |  |                       |   |
| Judicial Council of California Form<br>Rev. 12-12-07 (Veh. Code, § 40518).  |               |   |  | SEE REVERSE<br>TR-115 |   |





**APPENDIX C – COURT EVIDENCE PACKAGE**

**IF YOU WERE NOT THE DRIVER:** If you were not the driver of the vehicle at the time of the violation, complete the "Affidavit of Non-Liability" below and submit it with a photocopy of your California Driver's License or other picture ID and a recent and original photograph. **Do not submit bail at this time.** The San Francisco Police Department will review the documentation and make a determination regarding the identity of the actual driver. The person named on the form may be cited and notified by mail. Providing this information will NOT result in the automatic dismissal of the above citation. Mail the completed "Affidavit of Non-Liability" by your appearance date to: Superior Court of California, County of San Francisco, Traffic Division, 850 Bryant Street, Room 145, San Francisco, CA 94103. If you need to view the violation images in person to determine the identity of the driver, call (415) 551-8550 to schedule an appointment.

**IF YOU WERE NOT THE DRIVER OF THE VEHICLE AT THE TIME OF THE VIOLATION, DO NOT SUBMIT PAYMENT. OTHERWISE, YOUR DRIVING RECORD COULD BE NEGATIVELY AFFECTED. COMPLETE AND SUBMIT THE AFFIDAVIT OF NON-LIABILITY BY THE APPEARANCE DATE ON THE FRONT OF THE CITATION.**

|   |  |   |  |
|---|--|---|--|
| <b>AFFIDAVIT OF NON-LIABILITY</b>   |  | <b>CITATION NO.: ZA0267899</b>  |  |
| IF YOU DID NOT OWN OR WERE NOT DRIVING THE VEHICLE AT THE TIME OF THE VIOLATION, PLEASE COMPLETE THIS FORM WITH THE INFORMATION OF THE ACTUAL DRIVER.   |  |   |  |
| <input checked="" type="checkbox"/> CHECK ONE OF THE FOLLOWING  |  | <input type="checkbox"/> New Owner (if vehicle was sold PRIOR TO violation date)  |  |
|   |  | <input type="checkbox"/> Identified Driver (Driver – other than Registered Owner) |  |
| Print Individual's Name   |  | Date of Birth   |  |
| Driver License/ID No.   |  | Issued in the State of  |  |
| Address   |  |   |  |
| City, State, Zip  |  |   |  |
| <b>DECLARATION</b>  |  |   |  |
| I CERTIFY THAT UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.   |  |   |  |
| Date  |  | Signature   |  |
| Your Phone Number   |  | Print Name  |  |
| Please mail the completed affidavit of non-liability to: Superior Court of California, County of San Francisco, Traffic Division, Attn: Red Light Photo Enforcement Clerk, 850 Bryant Street, Room 145, San Francisco, CA 94103. DO NOT SEND PAYMENT IF COMPLETING THIS FORM. |  |   |  |

|   |  |   |  |
|---|--|---|--|
| <b>DECLARACIÓN DE NO CULPABILIDAD</b>   |  | <b>NO. DE INFRACCIÓN: ZA0267899</b>   |  |
| SI USTED NO ES EL DUEÑO O NO ESTABA CONDUCIENDO EL VEHÍCULO A LA HORA DE LA INFRACCIÓN, POR FAVOR SIRVASE PROPORCIONAR LA INFORMACIÓN CORRESPONDIENTE EN ESTA SECCIÓN, CON LA INFORMACIÓN DE LA PERSONA QUE   |  |   |  |
| <input checked="" type="checkbox"/> Marqué Uno de los siguientes  |  | <input type="checkbox"/> Nuevo Dueño (Si el vehículo fue vendido antes de la infracción)  |  |
|   |  | <input type="checkbox"/> Conductor Identificado (Persona que iba conduciendo el vehículo) |  |
| *Escriba en letras de molde el nombre   |  | Fecha de nacimiento   |  |
| No. de la licencia del conductor/I.D.   |  | Emitido en el estado de   |  |
| Domicilio   |  |   |  |
| Ciudad, Estado, Código Postal   |  |   |  |
| <b>DECLARACIÓN</b>  |  |   |  |
| CERTIFICO BAJO PENA DE PERJURIO QUE LO QUE ANTECEDE ES LA VERDAD Y ESTA CORRECTO.   |  |   |  |
| Fecha   |  | Firma   |  |
| Su numero de teléfono   |  | Escriba su nombre en letras de molde  |  |
| Por favor despegue la sección de declaración de no culpabilidad a la siguiente dirección: Superior Court of California, County of San Francisco, Traffic Division, Attn: Red Light Photo Enforcement Clerk, 850 Bryant Street, Room 145, San Francisco, CA 94103. No envíe el pago si ha completado esta sección. |  |   |  |

|   |  |
|---|--|
| <b>IMPORTANT—READ CAREFULLY</b>   |  |
| <b>This Citation Is Based on Photographic Evidence</b>  |  |
| The vehicle identified on the front was photographed in violation of a traffic signal or sign. You may see the photographs of your vehicle. Contact (415) 551-8550 to schedule an appointment. Picture identification is required.  |  |
| If you were not driving the vehicle at the time of the violation, complete the affidavit of non-liability to the left and mail to: Superior Court of California, County of San Francisco, Traffic Division, Attn: Red Light Photo Enforcement Clerk, 850 Bryant Street, Room 145, San Francisco, CA 94103.  |  |
| <b>WHAT TO DO</b>   |  |
| You have been issued a citation that charges you with a traffic infraction. You must respond by following one of the procedures below by the date on the front (see "WHEN"). If you do not, you may lose your license to drive, and your money penalties may increase.  |  |
| <b>1. If you do NOT contest the violation</b>   |  |
| a. <i>(Pay the bail amount)</i> (See "BAIL INFORMATION" below) Your bail will be forfeited to the court. You will not have to appear in court. You will be convicted of the violation, and it will appear on your record at the Department of Motor Vehicles (DMV). A point count will be charged to your DMV record for this offense and your insurance may be adversely affected.   |  |
| b. <i>(Traffic school)</i> You may be able to avoid the point count and adverse effect on your insurance by attending traffic school. Contact the court to request traffic school. You must pay the bail amount, and you may have to pay other fees.  |  |
| <b>2. If you contest the violation (select one)</b>   |  |
| a. <i>(Court trial)</i> Send a certified or registered letter postmarked not later than five days prior to the appearance date, or come to the court by the appearance date to request a court trial on a future date. When in court, you and witnesses will be present. You will be required to submit the bail amount. You will be given a day for your trial.  |  |
| —OR—  |  |
| b. <i>(Trial by written declaration)</i> Send a certified or registered letter postmarked not later than five days prior to the appearance date, or come to the court on or before the date on the front and request a trial by written declaration. Submit the bail amount. You will be given forms to allow you to write a statement and submit other evidence without appearing in court. An officer will also submit a statement. The judicial officer will consider all of the evidence at the same time and decide the case.  |  |
| <b>WRITING TO THE COURT</b>   |  |
| If you write to the court, always write the citation number and your driver license number on your letter. Use of certified or registered mail is required. Do not send your copy of the citation. Keep it for your own records.  |  |
| <b>BAIL INFORMATION</b>   |  |
| The "bail" is the amount you must pay or deposit for the charged violation.   |  |
| Bail amount: <b>\$446.00</b>  |  |
| Make the check or money order payable to "San Francisco Superior Court." Do not mail cash. Write the citation number and your driver license number on your check or money order. You may deposit the bail in person or by mail to: Superior Court of California, County of San Francisco, Traffic Division, Attn: Red Light Photo Enforcement Clerk, 850 Bryant Street, Room 145, San Francisco, CA 94103. You may also pay by phone: (415) 551-8550 (a convenience fee will be charged). If you have a court appearance and are found to be Not Guilty, the bail amount will be refunded. If you are found Guilty, the bail amount will be kept by the court and applied as payment on your fine. |  |
| <b>NIGHT COURT TRIALS are NOT available for this citation.</b>  |  |
| <b>JUVENILES</b>  |  |
| If you are under 18, you must be accompanied by your parent or guardian when you appear in court. Bring this citation and your driver license. You will be notified by the Juvenile Court of your court date.   |  |
| <b>ADDITIONAL INFORMATION</b>   |  |
| You may obtain additional information from the City and County of San Francisco at: <a href="http://www.sfgov.org">www.sfgov.org</a> or calling (415) 551-8550, Monday - Friday 8:00 am to 4:30 pm.   |  |

# Certificate of Mailing for 05/25/2010



Affix stamp here (if issued as a certificate of mailing, or for additional copies of this bill.)  
 Postmark and Date of Receipt  
 Handling Act V:

Check type of mail or service:  
 Certified  
 COD  
 Delivery Confirmation  
 Express Mail  
 Insured

Recorded Delivery (International)  
 Registered  
 Return Receipt for Merchandise  
 Signature Confirmation

Name & Address of Sender: ACS, 255 California St, Suite 560, San Francisco, CA 94111

Postmaster, Per (Name of Receiving Employee):

| Line | Article Number | Issue Date | Addressee Name, Street, and PO Address | Postage | Fee  | Charge (If Regis) | Value | If COD | Fee | Fee | Fee | Fee |
|------|----------------|------------|--|---------|------|-------------------|-------|--------|-----|-----|-----|-----|
| 21   | ZA0267899      | 05/19/2010 | [REDACTED]                             | 0.44    | 0.42 |                   |       |        |     |     |     |     |

Total Number of Pieces Listed by Sender: 15

Total Number of Pieces Received at Post Office: [Blank]

PS Form 3877, February 2002

Complete by typewriter, ink, or Ball Point Pen

I, Christine Wood, am employed at 255 California Street, Suite 550, San Francisco, CA 94111. I hereby declare that I am over the age of eighteen and not a party to the action, and that on 05-25-10, I placed in the United States Mail at San Francisco, California, County of San Francisco, a citation addressed to each person as listed above; each envelope was sealed and deposited with postage fully prepaid.

APPENDIX C - COURT EVIDENCE PACKAGE

APPENDIX C – COURT EVIDENCE PACKAGE  
**Sample Digital Log**

| Field Technician Service and Inspection Log   |   |
|---|---|
| Approach Information  |   |
| Location Description: _____   |   |
| Date: <u>Auto fill</u>  | Location Code: <u>Auto fill</u>                 |
| Begin Service Time: <u>Manu fill</u>  | Rear Camera # <u>Manu fill</u>                  |
| End Service Time: <u>Manu fill</u>  | Front Camera # <u>Manu fill</u>                 |
| Traffic Volume  |   |
| Vehicle Count Lane 1: <u>Manu fill</u>  | Vehicle Count Lane 4: <u>Manu fill</u>          |
| Vehicle Count Lane 2: <u>Manu fill</u>  | Vehicle Count Lane 5: <u>Manu fill</u>          |
| Vehicle Count Lane 3: <u>Manu fill</u>  | Vehicle Count Lane 6: <u>Manu fill</u>          |
| Approach Service and Configuration Verification Procedures  |   |
| Service Procedure   | Maintenance                                     |
| Connect to System: <u>Yes/No</u><br><small>(System operating per manufacturer specifications)</small> | Cameras: <u>Pass</u>                            |
| Take Test Shot: <u>Yes/No</u>   | Detection Lane 1: <u>Pass</u>                   |
| System Date/Time: <u>Manu fill</u>  | Detection Lane 2: <u>Pass</u>                   |
| Captured Complete Event: <u>Yes/No</u>  | Detection Lane 3: <u>Pass</u>                   |
| Generated Clear Images: <u>Yes/No</u>   | Detection Lane 4: <u>Pass</u>                   |
| Generated Clear Video: <u>Yes/No</u>  | Detection Lane 5: <u>Pass</u>                   |
| Correct Time: <u>Yes/No</u>   | Detection Lane 6: <u>Pass</u>                   |
| Correct Location Description: <u>Yes/No</u>   | Aux. Flash(es): <u>Pass</u>                     |
| Correct Location Code: <u>Yes/No</u>  | Poles & Housings: <u>Pass</u>                   |
|   | NB Sign: <u>Yes/No</u>                          |
|   | SB Sign: <u>Yes/No</u>                          |
|   | WB Sign: <u>Yes/No</u>                          |
|   | EB Sign: <u>Yes/No</u>                          |
|   | Approach Signal: <u>Yes/No</u>                  |
| System Configuration  |   |
| Minimum Speed: <u>Auto fill</u>   | Front Camera Flash Setting: <u>Auto fill</u>    |
| Interval: <u>Auto fill</u>  | Aux. Flash(es) Setting: <u>Auto fill</u>        |
| Delay: <u>Auto fill</u>   | Front Camera Lens Type: <u>Auto fill</u>        |
| Rear Camera Flash Setting: <u>Auto fill</u>   | Rear Camera Lens Type: <u>Auto fill</u>         |
| Camera Rotation   |   |
| Removed (rotated to): <u>Manu fill</u>  | Installed (rotated from): <u>Manu fill</u>      |
|   |   |
| _____<br>ACS Field Service Technician   | _____<br>ACS Field Service Technician Signature |

# Sample Film Log

| Field Technician Service and Inspection Log   |   |
|---|---|
| Approach Information  |   |
| Location Description: _____   |   |
| Date: <u>Auto fill</u>  | Location Code: <u>Auto fill</u>                 |
| Begin Service Time: <u>Manu fill</u>  | Camera #: <u>Manu fill</u>                      |
| End Service Time: <u>Manu fill</u>  |   |
| Operation   | Traffic Volume                                  |
| Exposures Recorded: <u>Yes/No</u>   | Vehicle Count Lane 1: <u>Manu fill</u>          |
| # of Exposures: <u>Manu fill</u>  | Vehicle Count Lane 2: <u>Manu fill</u>          |
| # of Events: <u>Manu fill</u>   | Vehicle Count Lane 3: <u>Manu fill</u>          |
| Approach Service and Configuration Verification Procedures  |   |
| Service Procedure   | Maintenance                                     |
| Initial Test Cycle Complete (1): <u>Yes/No</u><br><small>(System operating per manufacturer specifications)</small> | Camera: <u>Pass</u>                             |
| Date/Time: <u>Manu fill</u>   | Loop 1: <u>Pass</u>                             |
| 4 Film Advances: <u>Yes/No</u>  | Loop 2: <u>Pass</u>                             |
| Film Removed: <u>Yes/No</u>   | Loop 3: <u>Pass</u>                             |
| Unexposed Film Inserted: <u>Yes/No</u>  | Loop 4: <u>Pass</u>                             |
| 1 Film Advance: <u>Yes/No</u>   | Loop 5: <u>Pass</u>                             |
| Memory Card Removed: <u>Manu fill</u>   | Loop 6: <u>Pass</u>                             |
| New Memory Card Inserted: <u>Manu fill</u>  | Aux. Flash(es): <u>Pass</u>                     |
| Configuration Verified: <u>Yes/No</u>   | Pole & Housing: <u>Pass</u>                     |
| Event Count Reset: <u>Yes/No</u>  | NB Sign: <u>Yes/No</u>                          |
| Vehicle Count Reset: <u>Yes/No</u>  | SB Sign: <u>Yes/No</u>                          |
| Final Test Cycle Complete (2): <u>Yes/No</u><br><small>(System operating per manufacturer specifications)</small>   | WB Sign: <u>Yes/No</u>                          |
| Equipment Secured: <u>Yes/No</u>  | EB Sign: <u>Yes/No</u>                          |
| Equipment Raised: <u>Yes/No</u>   | Approach Signal: <u>Yes/No</u>                  |
| System Configuration  |   |
| Minimum Speed: <u>Auto fill</u>   | Flash Setting: <u>Auto fill</u>                 |
| Interval: <u>Auto fill</u>  | Camera Lens Type: <u>Auto fill</u>              |
| Delay: <u>Auto fill</u>   | Focal Point: <u>Auto fill</u>                   |
| Pitch: <u>Auto fill</u>   | Auto Iris ASA: <u>Auto fill</u>                 |
| Camera Rotation   |   |
| Removed (rotated to): <u>Manu fill</u>  | Installed (rotated from): <u>Manu fill</u>      |
|   |   |
| _____<br>ACS Field Service Technician   | _____<br>ACS Field Service Technician Signature |

APPENDIX C – COURT EVIDENCE PACKAGE

ACS Government Solutions

Citation Number: ZA0267899  
Defendant: ██████████  
Date/Time of Violation: 5/19/10 7:45  
Place of Violation: WB Richardson Ave. (Rt 101) @ Francisco St. (2264)  
CVC Section(s) Charged: VC21453A

Pursuant to California Vehicle Code ("CVC") § 21455.5, the City and County of San Francisco (the "City"), in co-operation with the San Francisco Police Department operates an automated enforcement system. ACS Government Solutions has a contract with the City to maintain the automated enforcement system.

I, <ACS FST>, am a Field Service Technician for ACS Government Solutions, and a qualified witness that has authority to certify these records. I have received extensive on the job training. My duties for ACS Government Solutions include preparing Preventative Maintenance Reports each time a system is serviced and inspected both during daily remote checks and weekly physical site visits. I review images from the camera and test the various components of the camera and vehicle detection sub-system. I also ensure warning signs are in place. I inspect the camera system and detection subsystems for problems and perform regular maintenance. I complete a log of the facts and events as I observe them during the inspection and document the fact that the system for each location has been thoroughly checked and is operating properly. While in the field, I have immediate telephone access to construction, engineering, maintenance, and image quality experts. Contained in this packet are my Preventative Maintenance Reports. My entry in the Preventative Maintenance Reports is routine and a habit I developed in gathering and reporting this data.

I declare under penalty of perjury that the foregoing is true and correct.

---

Sample

# APPENDIX C – COURT EVIDENCE PACKAGE



**Hours of Operation:**  
**Monday - Friday**  
(except holidays)  
**8:00 AM to 4:30 PM**  
**(415) 551-8550**

## **CITY AND COUNTY OF SAN FRANCISCO** **RED LIGHT CAMERA ENFORCEMENT PROGRAM**

### **INSTRUCTION SHEET**

Read the *entire* sheet for complete instructions.

In a major effort to reduce the number of accidents and associated injuries and deaths due to red light violations, the City and County of San Francisco has implemented a red light traffic enforcement program. The system, combining a high-speed camera and sensor devices, records on film actual photographs of the violator, vehicle and surroundings when a red light violation occurs. Superimposed on each photograph is the date, time, location, and how far into the red signal the violation has occurred.

A vehicle registered in your name was photographed in violation of the California Vehicle Code Section 21453 (a). The details of the violation are on the enclosed Notice to Appear.

**Warning!** You must respond by following one of the procedures below on or before the "WHEN" date noted on the front of the citation. The "WHEN" date is not a court date. If you do not respond, you may lose your license to drive, your money penalties will increase, and the Department of Motor Vehicles (DMV) may refuse to renew your vehicle registration. (CVC §12807, CVC §4760.1)

#### **If you were driving and do NOT contest the violation:**

- PAY THE BAIL AMOUNT** - Pay the bail amount of \$446.00 and forfeit it (the court will keep it). You will not have to appear in court. The person named on the Notice to Appear, however, will be convicted of the violation, and it will appear on their record at the DMV. (CVC §13103). You may pay the bail amount in person, by mail or by phone. To pay by phone call (415) 551-8550. A convenience fee will be charged.
- TRAFFIC SCHOOL** - A point will be charged to your DMV record for this offense, and your insurance may be affected. You will be able to avoid the point by attending traffic school. After traffic school, the violation will be dismissed and the point will not be added. You may be eligible to attend traffic school if: 1) you have not already attended in the past 18 months, 2) you do not hold a commercial drivers license, and 3) you were not driving a commercial vehicle (CVC §42005). If you qualify for traffic school, the bail amount is \$446.00 plus a \$52 non-refundable administrative fee, for a total of \$498.00. You must let the court know of your intention to attend traffic school either by mail or selecting the "Traffic School" option by phone. Information regarding types of schools (including on-line schools) and locations throughout the State of California will be mailed to you. You may pay the bail amount in person, by mail or by phone. To pay by phone call (415) 551-8550. A convenience fee will be charged.

#### **If you were driving and contest the violation: (select one)**

- COURT TRIAL** - If you wish to contest the violation and plead Not Guilty, you may come to the court in person and request a court appearance date by either Posting Bail or by signing a Promise to Appear on your Own Recognizance. Or, you may request a court appearance date by mail by submitting the bail amount of \$446.00, along with a written request for a court date. You must also provide the court with some possible dates that you are able to appear in court. If you write a letter, this waives statutory limits on time for trial. Failure to appear at the time and place scheduled for trial will result in a civil assessment of \$300.00.  
-OR-
- TRIAL BY WRITTEN DECLARATION** - Write a letter to the court requesting a Trial by Written Declaration. You must submit the bail amount of \$446.00 with your request. Your Written Declaration should include a photocopy of your Driver License, a recent and original photograph and any information supporting your defense of this incident. The judge will then make a judgment based upon your Written Declaration and the photographic evidence which will be subpoenaed by this court.  
-OR-

**If you were NOT driving the vehicle at the time of the violation:** please fill out the IDENTIFICATION OF DRIVER BY REGISTERED OWNER form on the back of the Notice COMPLETELY and mail it to the Court at the address in the WRITING TO THE COURT section below. Include a photocopy of your Driver License, a recent and original photograph and any information regarding the identified driver. Do not submit bail at this time. Providing this information will **NOT** result in the *automatic* dismissal of the citation. If the information on the identified driver is complete, accurate, and matches the images enclosed, your citation will be dismissed and another reissued to the identified driver. If the information is not accurate, the citation will remain in your name until the Court receives the correct information.

**JUVENILES: IF YOU ARE UNDER 18**, your parent or guardian must accompany you when you appear in court. You will be notified by the Juvenile Court of your court date.

#### **WRITING TO THE COURT**

When writing to the court, always include your citation number and driver license number on all payments and correspondence. **DO NOT SEND CASH BY MAIL** - send check or money order. Send correspondence via registered or certified mail, postmarked no later than fifteen (15) business days after the "date mailed" shown on the front of the citation to:

Superior Court of California  
County of San Francisco Traffic Division  
Attn: Red Light Camera Clerk  
850 Bryant Street, Room 145  
San Francisco, CA 94103

#### **BAIL INFORMATION**

The "bail" is the amount you must pay or deposit for the charged violation. Make the check or money order payable to the SAN FRANCISCO SUPERIOR COURT. Write the citation number and your driver's license number on your check or money order. You may deposit the bail in person, by mail or by phone (415) 551-8550. If you have a court appearance and are found to be Not Guilty, the bail amount will be refunded. If you are found Guilty, the bail amount will be kept by the court and applied as payment on your fine.

#### **VIOLATION IMAGE VIEWING**

You may view the photographs of your vehicle at the San Francisco Superior Court, 850 Bryant Street, Room 145, San Francisco, California, Monday through Friday from 8:00 a.m. to 4:30 p.m. (except legal holidays). Picture identification is required.

### Red Light Camera Data Block

|   |  |  |
|---|--|--|
| <p>Time (24 hour clock) ↔</p> <p>Channel Number &amp; Yellow Time Preceding Violation ↔</p> <p>Violation Number ↔</p> |  | <p>← Date (DD-MM-YY)</p> <p>← Red Time Elapsed at Beginning of Violation (Red time = 7.2 secs)</p> <p>← Location Code (indicates Intersection and direction)</p> |
| <p>Data Box for 1st Photo (showing vehicle behind limit line &amp; red time elapsed)</p>                              |  |  |
| <p>Time ↔</p> <p>Interval Time Between Photographs ↔</p> <p>Violation Number ↔</p>                                    |  | <p>← Date</p> <p>← Red Time Elapsed at 2nd Violation Photo</p> <p>← Speed</p>  |
| <p>Data Box for 2nd Photo (showing vehicle proceeding through intersection while light is still red)</p>              |  |  |

*Data Box from the first and second photographs of a violation sequence*

## STATEMENT OF TECHNOLOGY

### RED LIGHT CAMERA AUTOMATED ENFORCEMENT SYSTEM

The City and County of San Francisco has installed Red Light Camera units at intersections that have a chronic red light running problem, endangering both pedestrian and vehicular traffic. These Red Light Camera systems are designed to help enforce traffic laws by photographing the license plates and drivers of those vehicles that run red lights and sending citations of the violation by mail to alleged violators.

The Red Light Camera system uses a Schneider lens, a high-speed industrial camera, and a high-speed flash that are connected to and controlled by a computer. The computer is connected to the traffic signal and sensors embedded in the road. A locked and bullet-resistant housing protects the system from people tampering with it.

The Red Light Camera system is activated, and enforcement begins, when the signal light turns red. Once the signal light turns green, the system automatically turns off and enforcement ends. The system is designed so that it can only take a photograph during a red light and cannot take a photograph during a yellow or green light. In other words, the Red Light Camera system cannot take a picture unless and until the light facing the driver is red. The Red Light Camera continuously monitors the traffic signal and allows for 24-hour enforcement.

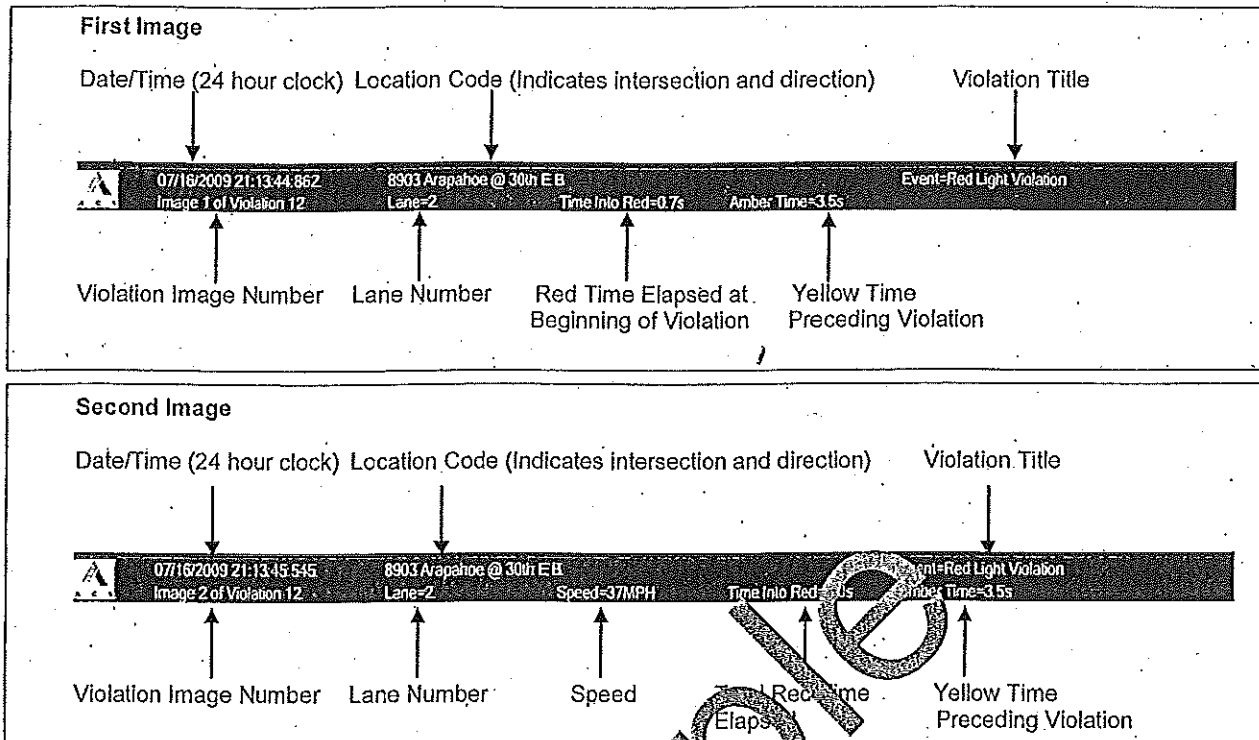
The Red Light Camera system is programmed so that drivers who enter the intersection on a green light and find themselves in the intersection as the light turns yellow or red are not photographed. This system is designed to catch only those violators who enter the intersection after the traffic signal has turned red.

Once a vehicle passes over the sensors embedded in the road, the camera takes two photographs. The first photo shows the vehicle and the amount of time the signal has been red. The second photo shows the vehicle proceeding through the intersection and the total red time elapsed. Trained technicians view each photograph to ensure a violation has occurred and that someone did not simply stop late. Two different technicians view each photograph to ensure accuracy. Special scanners are used to zoom in on the license plate and read the plate clearly.

If a violation has occurred, an authorized individual obtains the name, address, and identifying information of the registered owner from the California Department of Motor Vehicles, based upon the license plate of the vehicle which has been photographed. A San Francisco Police Officer reviews and signs the citation which contains four (4) digital images of the violation photographs. Then the signed citation is sent to the alleged violator. The four digitized images show: a full view of the first photograph; a full view of the second photograph; a close-up of the license plate; a close-up of the driver.

Red Light Camera Data Box

*Data Box from the first and second photographs of a violation sequence*



**STATEMENT OF TECHNOLOGY**

**RED LIGHT CAMERA AUTOMATED ENFORCEMENT SYSTEM**

The City and County of San Francisco has installed Red Light Camera units at intersections that have a chronic red light running problem, endangering both pedestrian and vehicular traffic. These systems are designed to help enforce traffic laws by photographing the license plates and drivers of those vehicles that run red lights, and sending citations of the violation by mail to alleged violators.

The camera control unit runs each component of the Red Light Camera system. The system utilizes two high-speed digital cameras, an HD video camera, and high-speed flashes. These are used to illuminate the violator to provide clear images in all weather conditions. The camera control unit monitors the embedded sensors in the roadway that track each vehicle's position and is attached to the traffic controller to monitor the color of each light phase as they change. The camera system is locked and secured in a metal housing to protect the system from people tampering with it.

The system is programmed to only go into enforcement mode if the light cycles in sequence from yellow to red. So drivers who enter the intersection on a green light and find themselves in the intersection as the light turns yellow or red are not photographed. This system is designed to catch only those violators who enter the intersection after the traffic signal has turned red.

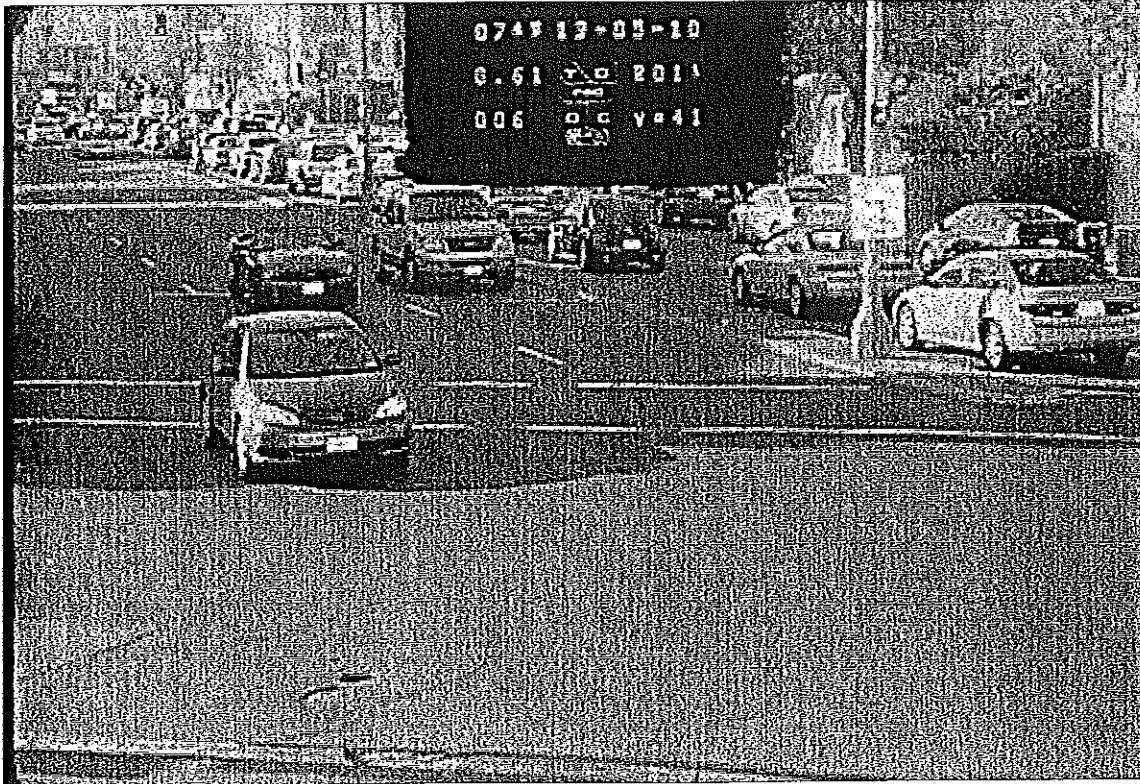
Once a vehicle passes over the sensors embedded in the road, the camera takes four digital photographs and a short video clip of the violation. The system takes two simultaneous photos of the front and rear of the violator with two separate cameras. One camera is placed behind the violation point to clearly show the position of the vehicle relative to the violation point and the color of the traffic signal. The second camera is placed across the intersection to photograph the front of the vehicle and capture a clear image of the driver. The first two (2) photos show the vehicle and the amount of time the signal has been red. The second two (2) photos show the vehicle proceeding through the intersection and the total red time elapsed. Each digital image that is captured is embedded with the violation data pertaining to that image. This data is displayed at the bottom of each image in the black data bar (Example shown at top of page). The video clip is captured from the camera enclosure placed behind the violation point to show the entire event starting before the vehicle enters the intersection until it has passed through the intersection. The video also captures the traffic signal to show what color is illuminated during the violation. Trained technicians view each event to ensure a violation has occurred. Two different technicians view each photograph to ensure accuracy. Software is used to clearly capture the driver image and license plate from the four (4) environmental images captured.

If a violation has occurred, an authorized individual obtains the name, address, and identifying information of the registered owner from the California Department of Motor Vehicles, based upon the license plate of the vehicle which has been photographed. A San Francisco Police Officer reviews and signs the citation which contains four (4) digital images of the violation photographs. Then the signed citation is sent to the alleged violator. The four (4) digitized images show: a full rear view of the violating vehicle, a full front view of the violating vehicle; a close-up of the license plate; a close-up of the driver.

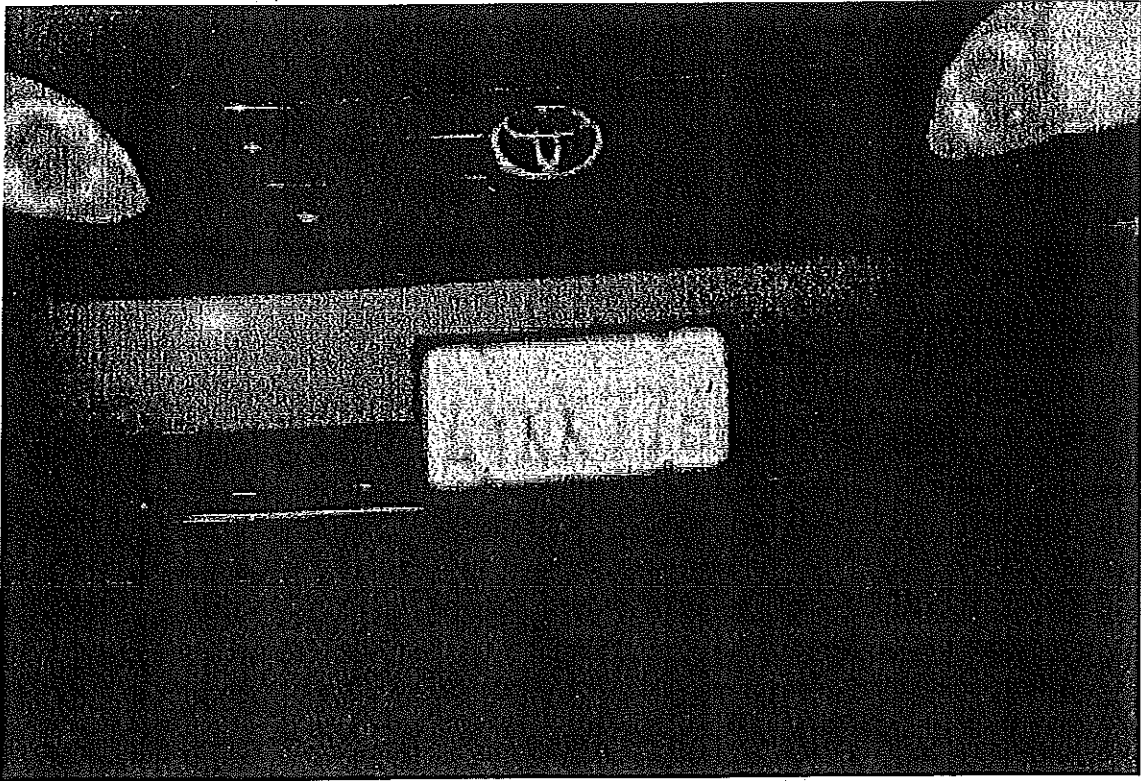
If you would like to view larger images of this violation and the video clip, you may do so online with the PIN number listed on your citation, at <http://www.public.cite-web.com> or in person at 850 Bryant St., Room 145, San Francisco CA. 94103 Monday – Friday 8:00 AM to 4:30 PM



APPENDIX C – COURT EVIDENCE PACKAGE



APPENDIX C – COURT EVIDENCE PACKAGE



# APPENDIX D – AFFIDAVIT OF CUSTODIAN OF RECORDS

ACS Government Solutions

Citation Number: ZA0267899  
Defendant: [REDACTED]  
Date & Time of Violation: 5/19/10 7:45  
Location of Violation: WB Richardson Ave. (Rt. 101) @ Francisco St. (2264)  
CVC Section Charged: CV21453A

Pursuant to California Vehicle Code ("CVC") § 21455.5, the City and County of San Francisco (the "City"), in co-operation with the San Francisco Police Department, operates an automated enforcement system. ACS Government Solutions has a contract with the city to maintain the automated enforcement system.

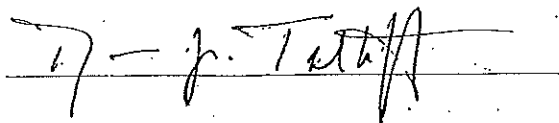
I, Dan Talbott, am the duly authorized Custodian of Records for ACS Government Solutions, and have the authority to certify these records. I certify that the copies contained in this packet are true copies of business records of ACS Government Solutions. These records were prepared by the personnel of ACS Government Solutions in the ordinary course of business. In the case of citations with the prefix ZB, ZC, or ZD, the citations were issued to the defendant pursuant to the execution of an affidavit of non-liability by the company or individual that is the registered owner of the vehicle:

Contained in this packet are the Field Service Technician Logs of ACS Government Solutions. The field technicians collect the film and memory cards from the red light cameras three times a week, and deliver it to an independent film-processing lab. While picking up the film, they also inspect the system for problems and perform regular maintenance. The field technicians have received extensive training in the field, in addition to two days of classroom training, consisting of theory and hands-on practice. The field technicians inspect the computer cabinet and certain read-outs and displays that are designed to indicate if the system is performing correctly. The log reflects the facts and events as they were observed during the inspection. The technician documents that the camera system, including the loops, has been thoroughly checked and is operating properly. The entries in the Field Service Technician Logs is routine and technicians have developed habits in gathering and reporting this data.

In addition to the Field Service Technician logs, a set of images captured by the photo enforcement system has been submitted. These images were printed from the actual images saved from the developed film. These images were reviewed by ACS Government Solutions personnel in the normal course of business at or near the time the registered owner's Notice to Appear was created. The ACS Government Solutions personnel who inspect these photos have had extensive on the job training. Personnel assigned to this process use a desktop computer to view the film through internally developed software that works in conjunction with a film-scanning machine. This process allows the employee to enlarge and enhance the electronic image without altering the negative or film. Personnel review the documents to determine if they meet criteria set by the Department of Parking and Traffic in the Contract Business Rules to determine whether a violation occurred. The sole purpose of these photographs is to provide the court with violation images. Two photographs are taken of the intersection: one of the vehicle, prior to its entering the intersection, and one while the vehicle is in the intersection. The close-up images of the driver and the license plate of the vehicle are enlarged from these two photographs.

Pursuant to CVC § 40518 a Certificate of Mailing is enclosed showing that a Notice to Appear was mailed to the registered owner within 15 days of the alleged violation. Through a computerized interface, ACS Government Solutions accesses DMV records and matches the license plate of the photographed vehicle with a DMV record for vehicle registration. ACS Government Solutions then accesses DMV records to match driver's license information with the vehicle registration information. The DMV data and the photographs taken are then reviewed by the ACS Government Solutions personnel who determine whether additional criteria set forth in the Business Rules are met, such as matching the age and gender of the driver in the photographs with the registered vehicle owner. If so, then based on the current address of the registered owner of the vehicle on file with the DMV, ACS Government Solutions prepares the Notice to Appear. The Notice to Appear contains the name and address of the person, the license number of the vehicle, the violation charged including a description of the offense, and the time and place, when and where the person may appear in court. The citation is then presented to the San Francisco Police Department where an officer reviews the information and decides whether to issue the citation. If the information is approved, the officer signs a pre-printed citation, and returns all the information back to ACS Government Solutions for processing and service of the citation to the registered owner.

I declare under penalty of perjury that the foregoing is true and correct.



Executed on 10/14/10 at San Francisco, California.

ACS Custodian Affidavit Jan 06



City of San Francisco

Photo Enforcement Services

# San Francisco Monthly Report



January 2011

Sample Report



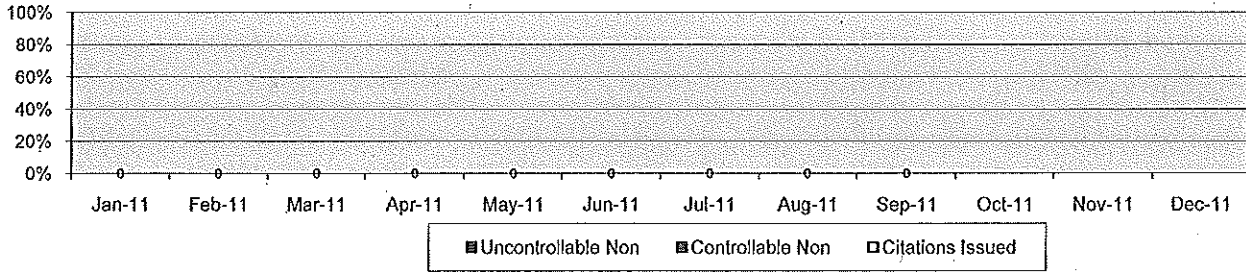
A XEROX Company

Prepared by: ACS Transportation Solutions

APPENDIX E – SAN FRANCISCO MONTHLY REPORT (January 2011)



City of San Francisco  
Approach Summary Report  
All Locations



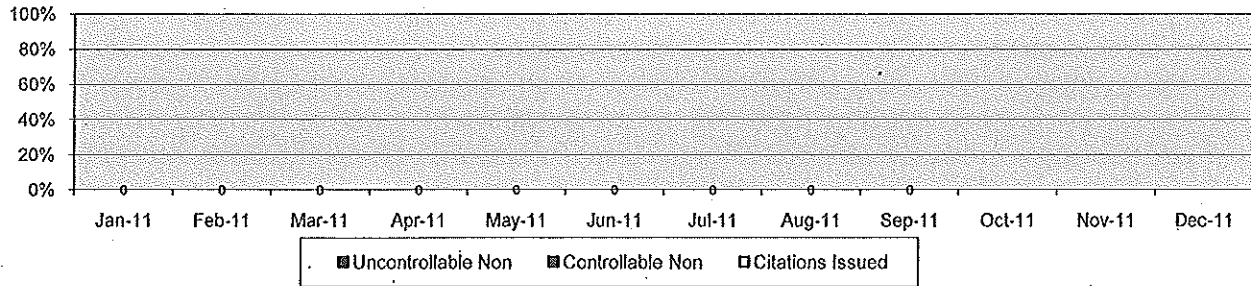
| Events                    | Jan-11   |             | 3 Month Average |             | Year to Date Total |             | Year to Date Average |             | 2010 Average |             |
|---------------------------|----------|-------------|-----------------|-------------|--------------------|-------------|----------------------|-------------|--------------|-------------|
|                           | Quantity | % of Events | Quantity        | % of Events | Quantity           | % of Events | Quantity             | % of Events | Quantity     | % of Events |
| Non Violations            |          |             |                 |             |                    |             |                      |             |              |             |
| Violations                |          |             |                 |             |                    |             |                      |             |              |             |
| Total Events              |          |             |                 |             |                    |             |                      |             |              |             |
| Violations                | Quantity | % of Viol   | Quantity        | % of Viol   | Quantity           | % of Viol   | Quantity             | % of Viol   | Quantity     | % of Viol   |
| Uncont. Non-Issued Viol   |          |             |                 |             |                    |             |                      |             |              |             |
| Cont. Non-Issued Viol     |          |             |                 |             |                    |             |                      |             |              |             |
| Citations                 |          |             |                 |             |                    |             |                      |             |              |             |
| Daily Avg. Vehicle Counts |          |             |                 |             |                    |             |                      |             |              |             |
| Avg. Violation Speed      |          |             |                 |             |                    |             |                      |             |              |             |
| Avg. Issued Speed         |          |             |                 |             |                    |             |                      |             |              |             |
| Avg. Violation Seconds    |          |             |                 |             |                    |             |                      |             |              |             |
| Avg. Issued Seconds       |          |             |                 |             |                    |             |                      |             |              |             |
| Cal. Days/Enforc. Days    |          |             |                 |             |                    |             |                      |             |              |             |
| Daily Citation Yield      |          |             |                 |             |                    |             |                      |             |              |             |
| Issuance Rate             |          |             |                 |             |                    |             |                      |             |              |             |
| Controllable Iss. Rate    |          |             |                 |             |                    |             |                      |             |              |             |
| Non - Violations          | Quantity | % Non-Viol  | Quantity        | % Non-Viol  | Quantity           | % Non-Viol  | Quantity             | % Non-Viol  | Quantity     | % Non-Viol  |
| Emergency Vehicle         |          |             |                 |             |                    |             |                      |             |              |             |
| No Violation Occurred     |          |             |                 |             |                    |             |                      |             |              |             |
| Other (Non-Violation)     |          |             |                 |             |                    |             |                      |             |              |             |
| Rear Axle Activation - No |          |             |                 |             |                    |             |                      |             |              |             |
| Right Turn - No Violation |          |             |                 |             |                    |             |                      |             |              |             |
| Total Non Violations      |          |             |                 |             |                    |             |                      |             |              |             |
| Uncontrollable Non-Iss    | Quantity | % of Un.Non | Quantity        | % of Un.Non | Quantity           | % of Un.Non | Quantity             | % of Un.Non | Quantity     | % of Un.Non |
| Address Match Failure     |          |             |                 |             |                    |             |                      |             |              |             |
| Car Obstructed            |          |             |                 |             |                    |             |                      |             |              |             |
| Driver Obstructed         |          |             |                 |             |                    |             |                      |             |              |             |
| Gender Match Failure      |          |             |                 |             |                    |             |                      |             |              |             |
| Glare on Plate            |          |             |                 |             |                    |             |                      |             |              |             |
| Glare on Windshield       |          |             |                 |             |                    |             |                      |             |              |             |
| Illegible Plate           |          |             |                 |             |                    |             |                      |             |              |             |
| Multiple Vehicles         |          |             |                 |             |                    |             |                      |             |              |             |
| No Front Plate            |          |             |                 |             |                    |             |                      |             |              |             |
| Other (Violation)         |          |             |                 |             |                    |             |                      |             |              |             |
| Out of State Plate        |          |             |                 |             |                    |             |                      |             |              |             |
| Plate Obstructed          |          |             |                 |             |                    |             |                      |             |              |             |
| Police Return             |          |             |                 |             |                    |             |                      |             |              |             |
| Vehicle Match Failure     |          |             |                 |             |                    |             |                      |             |              |             |
| Total                     |          |             |                 |             |                    |             |                      |             |              |             |
| Controllable Non-Iss      | Quantity | % Cont. Non | Quantity        | % Cont. Non | Quantity           | % Cont. Non | Quantity             | % Cont. Non | Quantity     | % Cont. Non |
| Clarity of Driver         |          |             |                 |             |                    |             |                      |             |              |             |
| Clarity of Plate          |          |             |                 |             |                    |             |                      |             |              |             |
| Dark Interior             |          |             |                 |             |                    |             |                      |             |              |             |
| Data Error                |          |             |                 |             |                    |             |                      |             |              |             |
| Expired PRWT              |          |             |                 |             |                    |             |                      |             |              |             |
| Exposed                   |          |             |                 |             |                    |             |                      |             |              |             |
| Framing of Car            |          |             |                 |             |                    |             |                      |             |              |             |
| Framing of Driver         |          |             |                 |             |                    |             |                      |             |              |             |
| Framing of Plate          |          |             |                 |             |                    |             |                      |             |              |             |
| Total                     |          |             |                 |             |                    |             |                      |             |              |             |

SAMPLE REPORT

APPENDIX E – SAN FRANCISCO MONTHLY REPORT (January 2011)



City of San Francisco  
 Approach Summary Report  
 Location 2004: WB Howard St @ 5th St



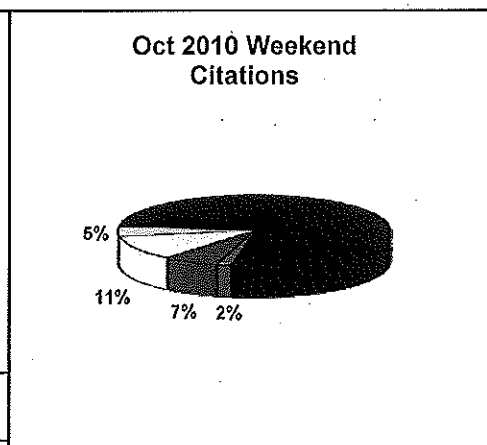
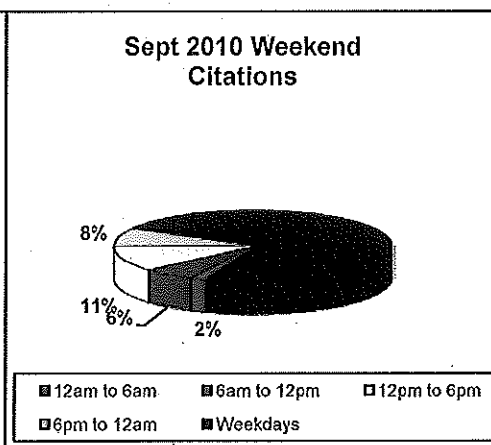
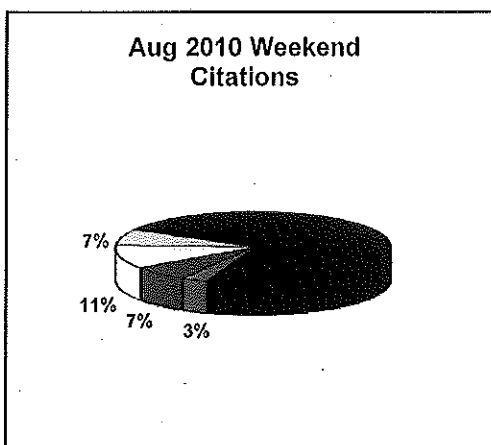
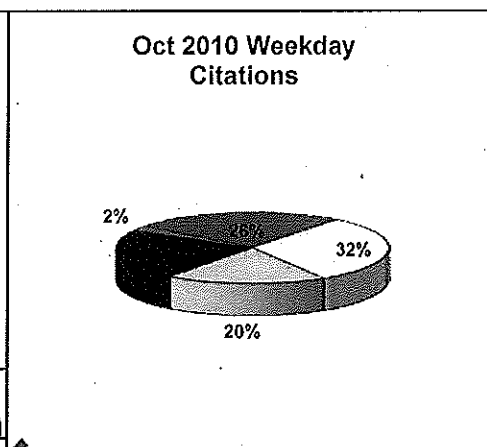
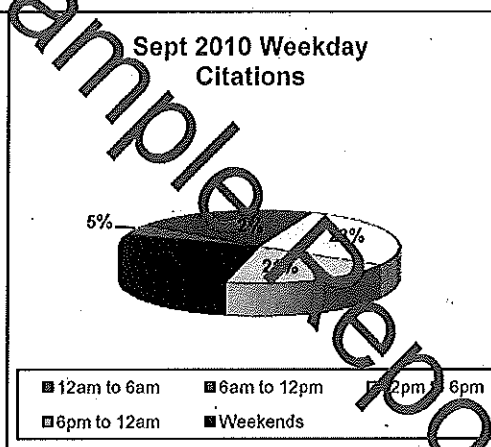
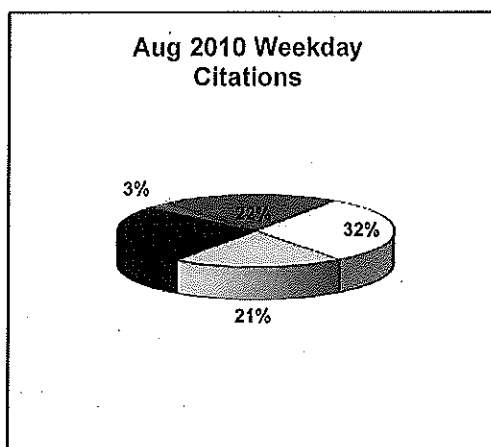
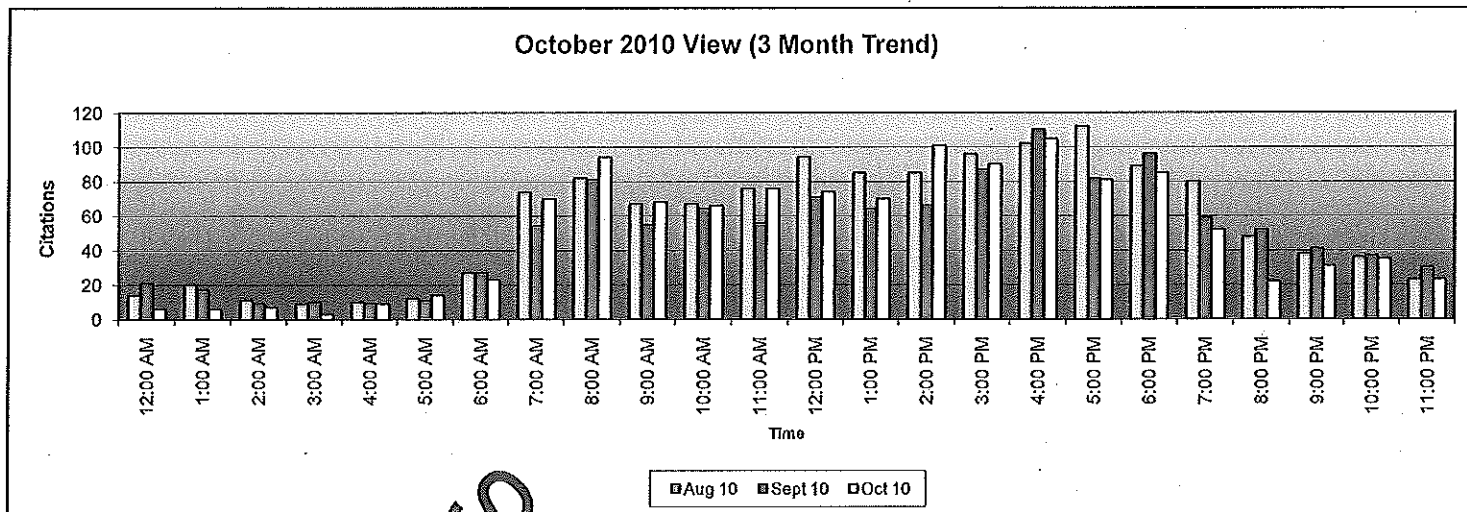
| Events                    | Jan-11          |                  | 3 Month Average |                  | Year to Date Total |                  | Year to Date Average |                  | 2010 Average    |                  |
|---------------------------|-----------------|------------------|-----------------|------------------|--------------------|------------------|----------------------|------------------|-----------------|------------------|
|                           | Quantity        | % of Events      | Quantity        | % of Events      | Quantity           | % of Events      | Quantity             | % of Events      | Quantity        | % of Events      |
| Non Violations            |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Violations                |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Total Events              |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| <b>Violations</b>         | <b>Quantity</b> | <b>% of Viol</b> | <b>Quantity</b> | <b>% of Viol</b> | <b>Quantity</b>    | <b>% of Viol</b> | <b>Quantity</b>      | <b>% of Viol</b> | <b>Quantity</b> | <b>% of Viol</b> |
| Uncont. Non-Issued Viol   |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Cont. Non-Issued Viol     |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Citations                 |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Daily Avg. Vehicle Counts |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Avg. Violation Speed      |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Avg. Issued Speed         |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Avg. Violation Seconds    |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Avg. Issued Seconds       |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Cal. Days/Enforc. Days    |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Daily Citation Yield      |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Issuance Rate             |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Controllable Iss. Rate    |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Non - Violations          | Jan-11          |                  | 3 Month Average |                  | Year to Date Total |                  | Year to Date Average |                  | 2010 Average    |                  |
|                           | Quantity        | % Non-Viol       | Quantity        | % Non-Viol       | Quantity           | % Non-Viol       | Quantity             | % Non-Viol       | Quantity        | % Non-Viol       |
| Emergency Vehicle         |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| No Violation Occurred     |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Other (Non-Violation)     |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Rear Axle Activation - No |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Right Turn - No Violation |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Total Non Violations      |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Uncontrollable Non-Iss    | Quantity        | % of Un.Non      | Quantity        | % of Un.Non      | Quantity           | % of Un.Non      | Quantity             | % of Un.Non      | Quantity        | % of Un.Non      |
| Address Match Failure     |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Car Obstructed            |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Driver Obstructed         |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Gender Match Failure      |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Glare on Plate            |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Glare on Windshield       |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Illegible Plate           |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Multiple Vehicles         |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| No Front Plate            |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Other (Violation)         |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Out of State Plate        |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Plate Obstructed          |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Police Return             |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Vehicle Match Failure     |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Total                     |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Controllable Non-Iss      | Quantity        | % Cont. Non      | Quantity        | % Cont. Non      | Quantity           | % Cont. Non      | Quantity             | % Cont. Non      | Quantity        | % Cont. Non      |
| Clarity of Driver         |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Clarity of Plate          |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Dark Interior             |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Data Error                |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Expired PRWT              |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Exposed                   |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Framing of Car            |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Framing of Driver         |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Framing of Plate          |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |
| Total                     |                 |                  |                 |                  |                    |                  |                      |                  |                 |                  |

SAMPLE REPORT





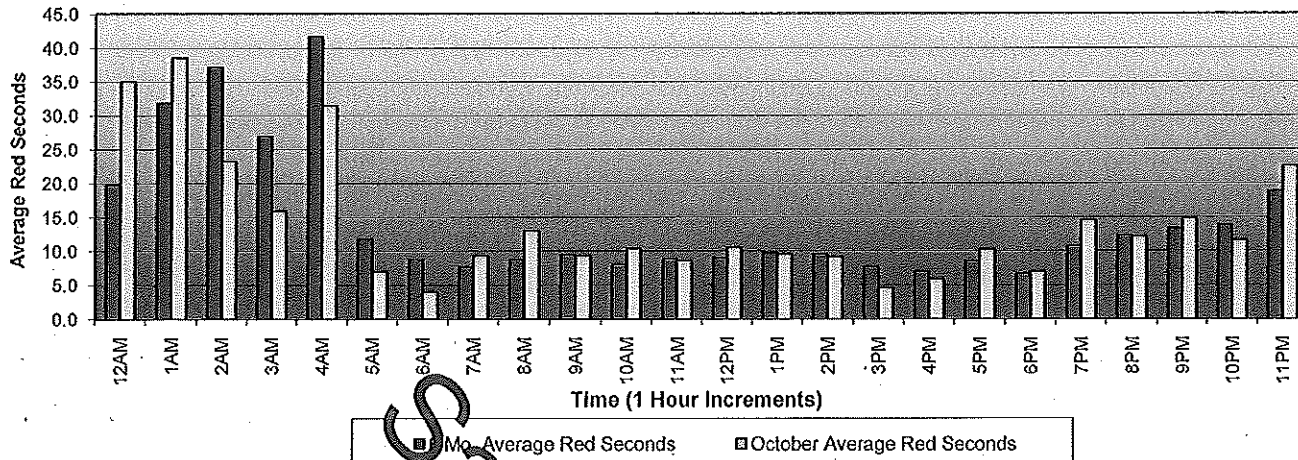
A Xerox Company



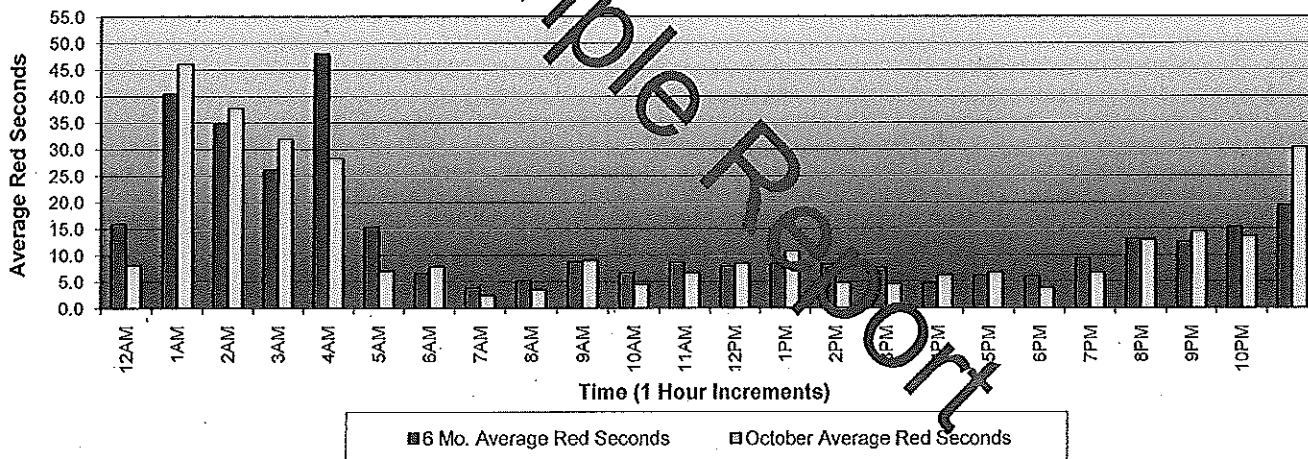




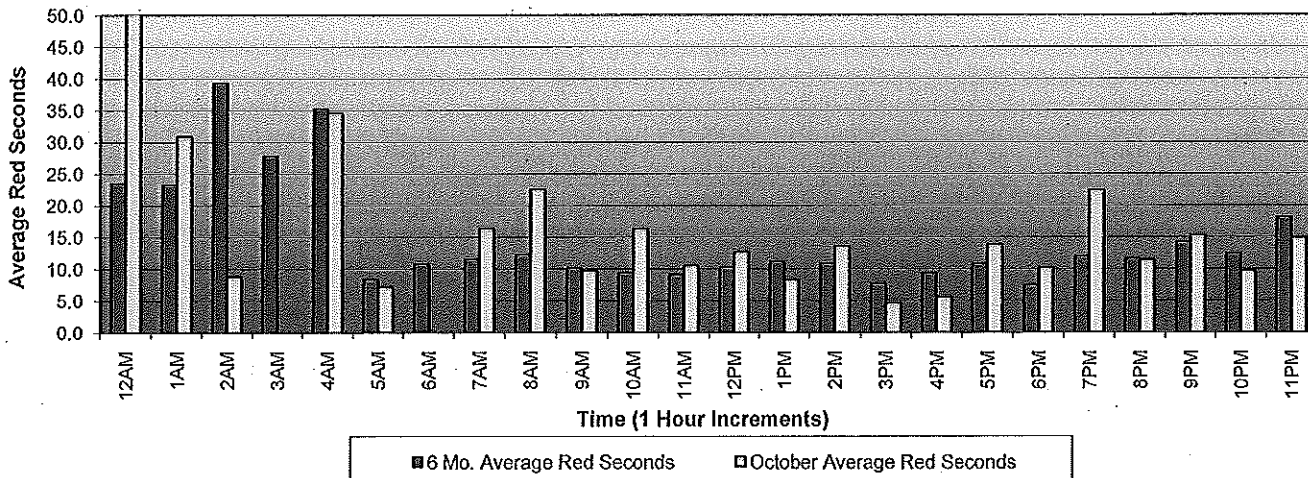
Average Red Seconds (Combined 6 Month Trend, May - October)



Average Red Seconds (Weekdays 6 Mo. Trend, May - October)

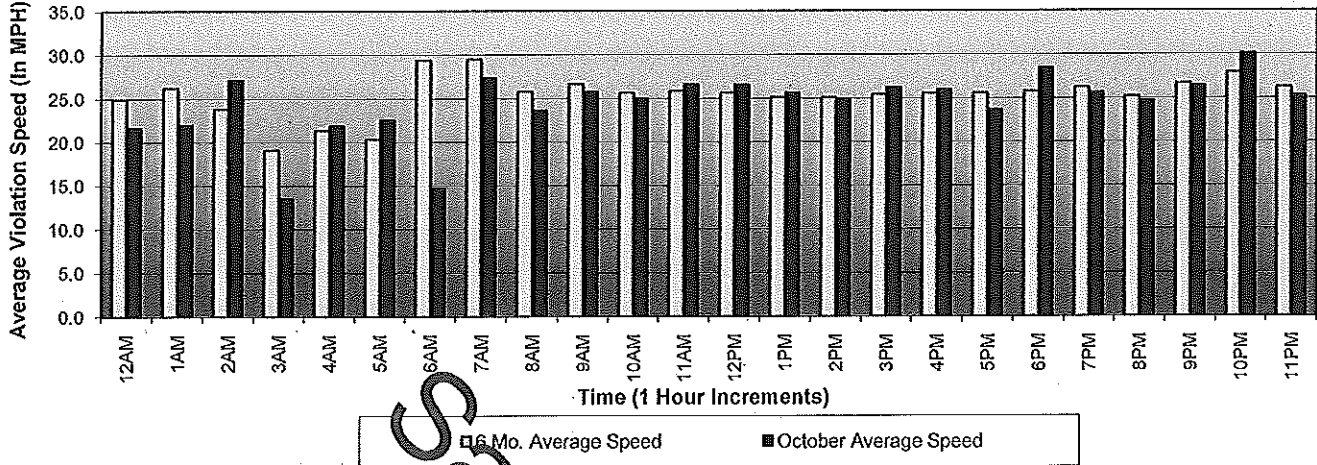


Average Red Seconds (Weekends, 6 Mo. Trend, May - October)

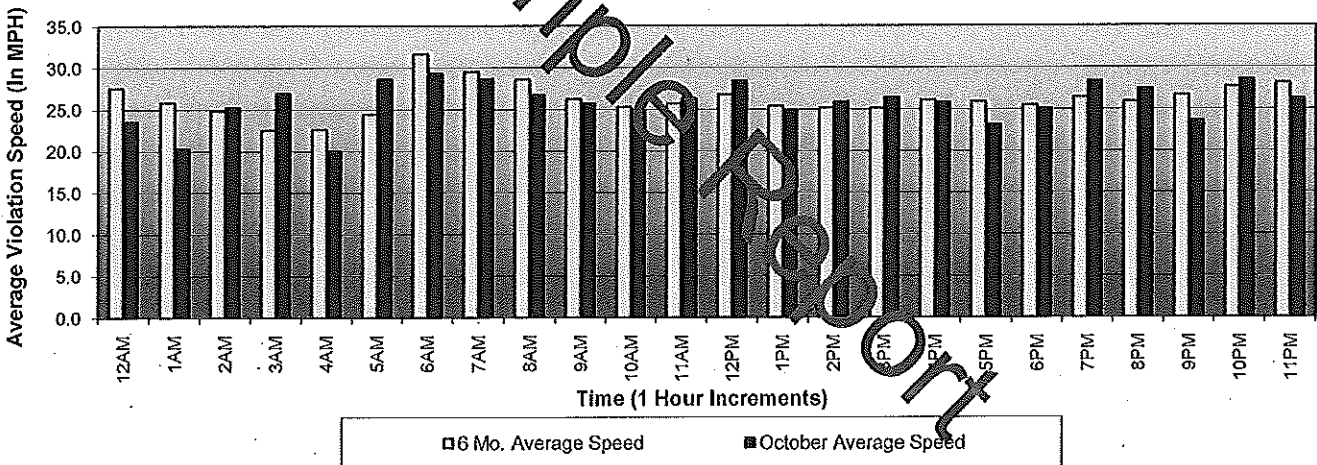




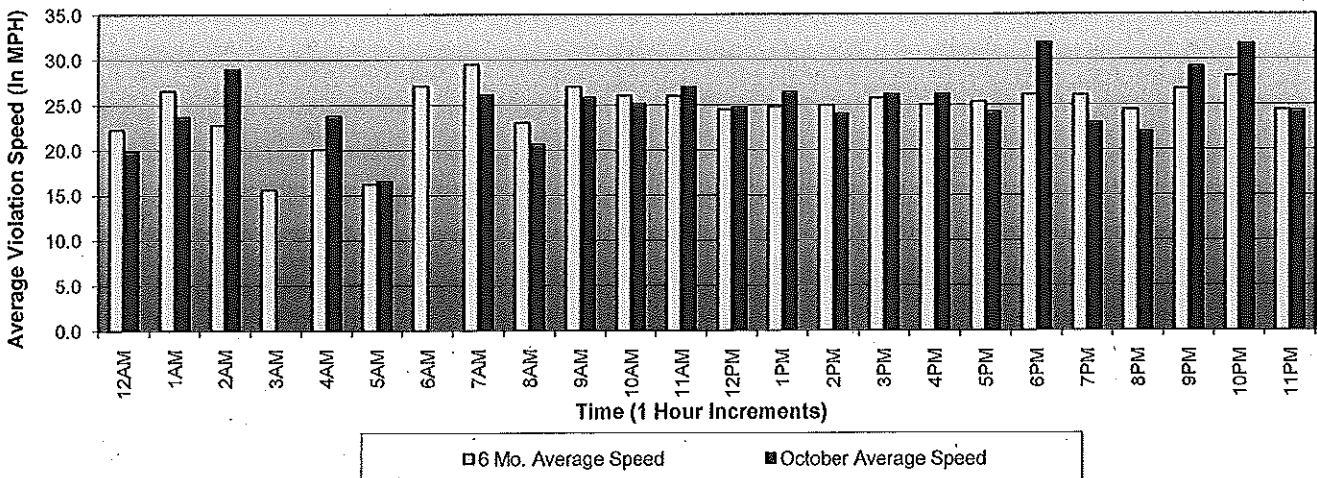
Average Violation Speed (Combined 6 Month Trend, May - October)



Average Violation Speed (Weekdays 6 Mo. Trend, May - October)



Average Violation Speed (Weekends, 6 Mo. Trend, May - October)



APPENDIX E – SAN FRANCISCO MONTHLY REPORT (January 2011)



City of San Francisco  
 Monthly Citation Yield - By Location  
 January 2011

| Location and Direction                       | Code | Days of Enforcement | Events   | Violations | Citations | Yield*      |
|--|------|---------------------|----------|------------|-----------|-------------|
| WB Howard St & Fifth St                      | 2004 | 31                  | 0        | 0          | 0         | 0.00        |
| NB 19th Ave & Sloat Blvd                     | 2011 | 31                  | 0        | 0          | 0         | 0.00        |
| SB 19th Ave & Sloat Blvd                     | 2012 | 31                  | 0        | 0          | 0         | 0.00        |
| NB 7th St & Mission St                       | 2021 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Mission St & 7th St                       | 2024 | 31                  | 0        | 0          | 0         | 0.00        |
| NB 9th St & Howard St                        | 2031 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Howard St & 9th St                        | 2034 | 31                  | 0        | 0          | 0         | 0.00        |
| NB 6th St & Bryant St                        | 2051 | 31                  | 0        | 0          | 0         | 0.00        |
| SB 6th St & Bryant St                        | 2052 | 31                  | 0        | 0          | 0         | 0.00        |
| EB Bryant St & 6th St                        | 2053 | 31                  | 0        | 0          | 0         | 0.00        |
| SB 1st St & Folsom St                        | 2062 | 31                  | 0        | 0          | 0         | 0.00        |
| NB 3rd St & Harrison St                      | 2071 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Harrison St & 3rd St                      | 2074 | 31                  | 0        | 0          | 0         | 0.00        |
| NB South Van Ness Ave & 14th St              | 2081 | 31                  | 0        | 0          | 0         | 0.00        |
| EB 14th St & South Van Ness Ave              | 2083 | 31                  | 0        | 0          | 0         | 0.00        |
| NB Franklin St & Geary St                    | 2091 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Geary St & Franklin St                    | 2094 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Pine St & Polk St                         | 2104 | 31                  | 0        | 0          | 0         | 0.00        |
| NB Mission St & 15th St                      | 2111 | 31                  | 0        | 0          | 0         | 0.00        |
| SB Mission St & 15th St                      | 2112 | 31                  | 0        | 0          | 0         | 0.00        |
| SB Polk St & Hayes St                        | 2122 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Hayes St & Polk St                        | 2124 | 31                  | 0        | 0          | 0         | 0.00        |
| NB 5th St & Mission St                       | 2131 | 31                  | 0        | 0          | 0         | 0.00        |
| SB 5th St & Mission St                       | 2132 | 31                  | 0        | 0          | 0         | 0.00        |
| WB 5th St & Mission St                       | 2134 | 31                  | 0        | 0          | 0         | 0.00        |
| SB 8th St & Harrison St                      | 2142 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Harrison St & 8th St                      | 2144 | 31                  | 0        | 0          | 0         | 0.00        |
| SB 5th St & Harrison St                      | 2152 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Harrison St & 5th St                      | 2154 | 31                  | 0        | 0          | 0         | 0.00        |
| NB Van Ness St & Bush St                     | 2161 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Howard St @ 4th St                        | 2184 | 31                  | 0        | 0          | 0         | 0.00        |
| NB Park Presidio Ave. (Rt. 1) @ Fulton St.   | 2211 | 31                  | 0        | 0          | 0         | 0.00        |
| SB Park Presidio Ave. (Rt. 1) @ Fulton St.   | 2212 | 31                  | 0        | 0          | 0         | 0.00        |
| NB Park Presidio Ave. (Rt. 1) @ Geary Blvd.  | 2221 | 31                  | 0        | 0          | 0         | 0.00        |
| SB Park Presidio Ave. (Rt. 1) @ Geary Blvd.  | 2222 | 31                  | 0        | 0          | 0         | 0.00        |
| EB Geary Blvd. @ Park Presidio Ave. (Rt. 1)  | 2233 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Geary Blvd. @ Park Presidio Ave. (Rt. 1)  | 2234 | 31                  | 0        | 0          | 0         | 0.00        |
| NB Park Presidio Ave. (Rt. 1) @ Lake St.     | 2241 | 31                  | 0        | 0          | 0         | 0.00        |
| SB Park Presidio Ave. (Rt. 1) @ Lake St.     | 2242 | 31                  | 0        | 0          | 0         | 0.00        |
| EB Marina Blvd. @ Lyon St.                   | 2253 | 31                  | 0        | 0          | 0         | 0.00        |
| EB Richardson Ave. (Rt. 101) @ Francisco St. | 2263 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Richardson Ave. (Rt. 101) @ Francisco St. | 2264 | 31                  | 0        | 0          | 0         | 0.00        |
| NB Octavia St. @ Oak St                      | 3001 | 31                  | 0        | 0          | 0         | 0.00        |
| EB Oak St. @ Octavia St.                     | 3003 | 31                  | 0        | 0          | 0         | 0.00        |
| NB Larkin St. @ Ellis St.                    | 3011 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Ellis St. @ Larkin St.                    | 3014 | 31                  | 0        | 0          | 0         | 0.00        |
| WB Howard St. @ 9th St.                      | 4004 | 31                  | 0        | 0          | 0         | 0.00        |
| <b>Total</b>                                 |      | <b>31</b>           | <b>0</b> | <b>0</b>   | <b>0</b>  | <b>0.00</b> |

\*Yield is the number of citations issued per day of enforcement.

## Appendix F

### SYSTEM REQUIREMENTS FOR SUPPLIED EQUIPMENT AND TECHNICAL SPECIFICATIONS

Under SFMTA direction, Contractor shall assume administration and maintenance of the existing Red Light Photo Enforcement System currently in place in conformance with the following requirements and technical specifications at each of the enforced intersections immediately following notification to Contractor of the certification of this Agreement, and diligently perform the tasks outlined in this Agreement until such time as specified by this Contract.

#### A. System Requirements

##### 1. The Photo Enforcement System

- a. The Photo Enforcement System shall incorporate a red light camera enforcement system proven in continuous on-street service for capturing red light running violations for a minimum of six (6) months.
- b. The System shall be capable of identifying vehicles traveling through a signalized intersection or left turn traffic signal; and taking no less than two photographs of the front view of each vehicle violating the traffic signal.
- c. The System shall be installed so that each violation can be recorded by the camera at all times of the day, during different seasons of the year, and under varying conditions of sunlight and shadowing, and at night. The photograph shall incorporate the following views:
  - (1) Front views of vehicle
  - (2) Characters and numbers of reflective and non-reflective license plates
  - (3) Superimposed Data Information (date, time, seconds light is red, locations)
- d. The system shall be fully suitable and functional for unattended use, under all weather conditions.

##### 2. Power and other connections

- a. Any interface between the Image Processing Unit and the traffic signal equipment shall be coupled so that there is no interference with the operation of the traffic signal equipment. Power and signal phase current shall be fused at a rating no higher than 10A.

##### 3. Housing and Poles

- a. If attaching enforcement equipment to existing City equipment, then all attachments shall comply with City standards.

##### 4. Cameras

- a. The camera shall provide high resolution images of the driver, front license plate, and vehicle making the violation so that the San Francisco Police Department can clearly identify the driver and plate number.
- b. At least two images clearly depicting the driver of the vehicle and vehicle license plate shall be taken for each violation. These images shall depict the violation at the following moments:
  - (1) The vehicle behind the stop line when the light was already red.
  - (2) The vehicle in the intersection violating the red light.
- c. Should the cameras be rotated amongst housings, Contractor shall rotate cameras from one location to another on a schedule agreed to by the parties. Cameras shall

not be rotated from digital locations to wet-film locations. Five business days before the first day of every month, Contractor shall submit the rotation schedule to SFMTA. If SFMTA does not notify Contractor of revisions within five (5) business days, the rotation schedule shall be deemed approved. Notwithstanding the above provisions, SFMTA can request Contractor to revise the rotation schedule at any time, and Contractor shall effectuate such revisions within two (2) business days.

5. Image Processing Unit

- a. The Image Processing Unit shall be capable of counting the number of violations and traffic volumes.
- b. If digital imaging is used, the Image Processing Unit shall be able to provide a live motion video, or retrieve a snap shot image or equivalent, of the intersection to allow for remote intersection surveillance of the intersection from a centralized traffic management center.
- c. The Image Processing Unit shall provide the capability to calculate and monitor vehicle speed, so that violations may be recorded only when vehicles have entered the detection zone during the red light and are exceeding a user specified minimum speed. The minimum speed shall be adjustable to the nearest mile per hour.
- d. The Image Processing Unit shall record data information pertinent to each violation.

6. Flash

- a. The flash unit shall be capable of providing adequate illumination for capturing violations under all light and weather conditions:
  - (1) For an area of up to three traffic lanes or approximately 40 feet wide at a distance of up to 150 feet.
  - (2) At varying levels of ambient light conditions.
  - (3) For both the first and second violation photographs.

7. Vehicle Detection

- a. The detector system shall be speed and direction sensitive.
- b. The System shall be capable of detecting each lane separately, and identifying which lane triggers any violation photographed.
- c. Inductive loops, if used, shall conform to the SFMTA SPECIFICATION 01570 §3.17 RED LIGHT CAMERA LOOPS INSTALLATION.
  1. Contractor shall notify the Traffic Engineer at least 2 days in advance prior to excavating in the area of the loops.
  2. Loop Detectors shall be Coleman Product #513496, or approved equal. Detector Lead-In Cables shall be Coleman Product #95253, or approved equal.
  3. The Contractor shall lay out the loop installation with paint and notify the Traffic Engineer thru the Engineer at least 2 working days in advance before the scheduled date of slot cutting. The slots for the loops shall be cut only after the approval of the Traffic Engineer.
  4. The depth of the cut shall be 3.0 to 4.0 inches except when noted otherwise on the contract plans and drawings. The width of the saw cut shall be minimum 1/4-inch. Each corner shall be core drilled. The Contractor shall core drill the point where the curb line and road surface meet.
  5. Residue material resulting from slot cutting operations shall not be allowed to flow across sidewalk or traffic lanes and shall be removed from the pavement surface.
- d. Contractor shall deactivate or remove loops or sensors within 5 days notice from the City that construction work will commence at an existing location. Reactivation or reinstallation of loops or sensors shall be governed by Subsection 1D. Existing Third

## Party Damage Repairs.

### 8. Cabinet

- a. Should a new Cabinet be required, Cabinet shall be the smallest cabinet available that can house the necessary equipment and provides a reasonable amount of working space.
- b. Should the Contractor need to access the existing traffic signal cabinet, they shall comply with plans and requirements within SPECIFICATION 02890 for performing work.

### 9. Maintenance

- a. The Image Processing Unit shall be designed so that malfunctions can be easily identified and debugged. It should provide, at a minimum, these features:
  - (1) Perform self test on the photographic unit and flash.
  - (2) Simulate a violation being recorded for testing purposes.
  - (3) Provide warning lights and error messages for selected malfunctions.
  - (4) Record date and time of camera shutdown in the event of a malfunction or when image storage device is at capacity.
- b. The Contractor shall inspect and test System Equipment on a routine basis to verify that they are in working order.
- c. Contractor shall keep in its files the original Field Technician Service and Inspection Logs for use as evidence as required by the Court.
- d. Maintenance logs regarding the camera shall be provided for each hearing, or, in the alternative, available upon request.

### 10. Vehicle Detection Equipment

All vehicle detection equipment used as a part of this System shall be installed and operated to the satisfaction of the CEO/Executive Director of SFMTA or his or her designee. SFMTA shall have the right to inspect, confirm, specify, and approve all installation, removal, relocation, and modification to any and all System Equipment including vehicle detection equipment used in this Agreement. The following policy shall govern the use, installation, removal, relocation and any modification to any vehicle loop detector used in this System.

There are two critical measurements, referred to as pitch measurements. First, is the center-to-center distance between the loops, that is the pitch measurement. Second, is the measurement distance from the stop line to the leading edge of the second detection loop. In all cases where vehicle detection loops are used as a part of this System, these specifications shall be used.

The shortest pitch dimension, where more than one pitch measurement may be applicable, shall be used for the camera unit setting (that is, in order that the measurement be in the favor of the motorist). This policy shall govern all vehicle detector loop installations under this Agreement. If any unusual vehicle detector loop configurations occur due to intersection geometries, or if loop removals, relocations, or modifications of any kind are encountered by Contractor or found to be necessary under this Agreement that fall outside of this specification, Contractor shall notify SFMTA the next business day and provide a recommended installation specification for approval by SFMTA.

In all cases, Contractor shall seek and obtain SFMTA permission for all vehicle loop detector installation specifications or modifications that may fall outside of these criteria before beginning, continuing, or restarting enforcement mode.

Contractor shall make every effort to ensure that installation of all vehicle detection equipment is in accordance with the accepted design plans. Any variance between the designed location of vehicle detection loops and the actual installation of such loops shall be noted on the As-Built plans. Camera unit and measured detection loop pitch values shall both correspond to design values but in no event shall exceed 1% between the measured values and those input to the Camera unit.

At those intersections where two sets of loops (i.e., one set for traffic control and one set for photo enforcement) are in place making it difficult to determine with certainty which set of loops are currently operational for the photo enforcement system, all As-Built drawings shall be maintained so that the operational loops can be readily identified. Abandoned loops must be intentionally cut on two sides so that it is clear that the loops have been abandoned as well as to eliminate any possibility of loop to loop crosstalk.

## Appendix G

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 7<sup>th</sup> floor  
San Francisco, California 94103**

### Equipment Lease Attachment

This form is an attachment to the Agreement between the City and County of San Francisco ("City"), acting by and through its Municipal Transportation Agency (the "Agency"), and ACS State & Local Solutions, Inc. ("Lessor"), dated May 1, 2011. The Terms and conditions of this attachment are referenced in and incorporated into the Agreement between the City and Lessor.

### Recitals

WHEREAS, a Request for Proposal ("RFP") was issued on August 5, 2009, and City selected Contractor as the highest qualified scorer pursuant to the RFP;

NOW, THEREFORE, City and Lessor agree as follows:

- 1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated, and Lessor's sole remedy shall be repossession of the lease System Equipment. This Section shall control against any and all other provisions of this Agreement.
- 2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from May 1, 2011 to April 30, 2014. In addition, the City shall have the option to extend the term for up to an additional two (2) years, which the City may exercise in its sole, absolute discretion.
- 3. No Automatic Renewal.** Notwithstanding anything to the contrary contained in this Lease (including, without limitation, any terms and conditions of Lessor attached hereto): (a) in no event shall the term of this Lease be longer than the initial term expressly stated in this Lease; (b) any automatic renewal or extension (whether or not conditioned upon any notice or absence thereof from either party) or any similar "evergreen" provision shall be deemed null and void ab initio; and (c) the term of this Lease shall not be extended or renewed except by written agreement duly authorized, executed and delivered by City. In the event of any inconsistency within this Lease relating to the duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in this Lease, then the term shall be one year from the date on which the term commences.
- 4. City's Payment Obligation.** In no event will the City make an advance payment. In the event any payment of any amount of monies is required by any Vendor or Manufacturer prior to acceptance of the leased System Equipment, as described in Appendix B, Exhibit 5, by the City, Lessor is to advance such amounts. The City will make a good faith effort to pay all invoices within thirty days



of billing. In no event will the City pay any late fees or charges for payments made after the 30 day period. Lessor and the City understand and intend that the obligations of the City to pay Rental Payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay Rental Payments, exclusively from legally available funds, to Lessor or, in the event of an authorized assignment by Lessor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Lessor in a form acceptable to the Controller. Each invoice must have a unique identifying number. Payments will be made in United States Dollars by warrant drawn on the Treasurer of City and County of San Francisco. Rental Payments shall be in consideration for the City's use of the leased System Equipment during the applicable fiscal year in which such payments are due. In no event shall the amount of this Agreement exceed eight hundred fifty thousand dollars (\$850,000). The breakdown of costs associated with this Attachment appears in the Agreement, Appendix B, Calculation of Charges, Exhibit 6, Supply of System Equipment Lease Fees.

**5. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**6. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**7. Maintenance.** The Contractor is responsible for general day to day maintenance of leased System Equipment throughout the term of the Agreement.

**8. Use, Licenses.** The City will not use or operate the leased System Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease.

**9. Delivery of Equipment; Transportation.** It is the responsibility of the Lessor to arrange with the manufacturer and/or vendor for the delivery and installation/construction management of the leased System Equipment. Charges for delivery installation/construction management are the responsibility of the Lessor. The leased System Equipment shall be delivered to a location designated by

the City and installed and made ready for operation. The City shall provide a minimum of two weeks advanced notice to Lessor to deliver and furnish leased System Equipment ready and available for installation by Construction Contractor. All leased System Equipment shall be delivered to the SFMTA's Traffic Signal Shop located at 901 Rankin Street, San Francisco, California unless the City has agreed upon another location.

**10. Installation** The Lessor will arrange with the manufacturer and/or vendor to provide construction consultation services to the City's Construction Contractor during the installation of the leased System Equipment at each incomplete intersection including preparation of job site, obtaining all permits and licenses, if any, necessary for the installation and operation of the leased System Equipment, furnish, assemble, install, and make any adjustments, fine tuning, and troubleshooting necessary to obtain optimal performance of the leased System Equipment as necessary at the locations as designated by the City. Manufacturer and/or vendor must comply with all State and local laws in installing the leased System Equipment.

**11. Relocation of Equipment.** Lessor agrees that the City may upon reasonable notice to Lessor, relocate the leased System Equipment or any item or items thereof to any location or locations within the geographical boundaries of the City where the City has offices at the City's sole discretion and cost. Prior to any such relocation the City agrees to execute or obtain and to deliver to Lessor such documents which Lessor reasonably requests to protect Lessor's right, title and interest in the leased System Equipment.

**12. City Ownership At End of Lease.** At the end of the lease term, all leased System Equipment shall become the property of the City. If the City does not exercise all its options to renew the lease term for up to five years, the City may require the Contractor to remove all leased System Equipment at Lessor's sole expense and Lessor shall hold the City free and harmless from any expense or damages of any kind occasioned thereby and arising therefrom.

**13. Default.** In the event of a default by Lessor under this Lease, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Lease. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Lessor any default by Lessor. Lessor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Lessor under this Lease all damages, losses, costs or expenses incurred by City as a result of such default by Lessor.

**14. Force Majeure.** Lessor shall not be liable for failure to furnish leased System Equipment ready for use on the date specified or to remove in accordance with the terms of this Lease nor shall City be liable for delay in installation or removal when such failures are due to causes beyond the reasonable control of either such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event the party under obligations to perform shall perform as soon as such cause is removed.

**15. The City's Right to Use Other Equipment Simultaneously with the Leased System Equipment.** The City does not grant Lessor an exclusive right during the term of this Lease to supply the City with any other equipment. The City reserves the right to lease or purchase similar or different equipment from any other supplier or lessors which may be used contemporaneously with any item of System Equipment leased hereunder.

**16. Disclaimer of Warranties.** Lessor hereby assigns to the City for and during the Lease Term, to the extent permitted by law, all Manufacturer's or Vendor's warranties or guaranties, express or implied, issued on or applicable to the leased System Equipment, and Lessor authorizes the City to obtain

the customary services furnished in connection with such warranties or guaranties at the City's expense. Lessor authorizes the City, to the extent permitted by law, to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer or vendor. The City acknowledges that the lease System Equipment has been purchased by Lessor on behalf of the City in accordance with the City's specifications. The City shall look directly to the Manufacturer or Vendor for any warranties or any service for the leased System Equipment.

**17. Indemnification..** In addition to Lessor's obligation to indemnify City, Lessor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Lessor by City and continues at all times thereafter. Lessor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement (Notify ACS this is revised from previous contract)

**18. Enjoyment of the Leased System Equipment.** Provided that and so long as the City is not in default under this Lease, Lessor hereby covenants to provide the City during the Lease Term with quiet use and enjoyment of the leased System Equipment, and the City shall during the Lease Term peaceably and quietly have and hold and enjoy the leased System Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. Any assignee of Lessor shall not interfere with the City's quiet use and enjoyment during the Lease Term so long as the City is not in default pursuant to this Lease.

**19. Title to the Equipment.** Title to the leased System Equipment and any and all additions, repairs, replacements or modifications thereto shall be held in the name of Lessor, and the City shall have no right, title or interest in the leased System Equipment or any additions, repairs, replacements or modifications thereto except as expressly set forth in the Lease, specifically Section 11.

**20. Liability for Damage to Equipment.** It is understood and agreed that the City is responsible for loss of or damage to any Lessor owned equipment involved, only as caused by the negligent or wrongful actions of City's officers, agents and employees.

**21. Incidental and Consequential Damages.** Lessor shall be responsible for incidental and consequential damages resulting in whole or in part from Lessor's acts or omissions. Nothing in this agreement shall constitute a waiver or limitation of any rights which City may have under applicable law.

**22. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 General Aggregate, for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence or accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Contract related Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any applicable endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor and its employees. Contractor shall require all its contract related agents and subcontractors to obtain similar Workers' Compensation policies and endorsements to meet the California statutory requirements. Furthermore, all contract related agents and subcontractors shall be required to include a waiver of subrogation in favor of City and Contractor to such agents' and subcontractors' workers' compensation policies. Contractor shall ensure that its agents and subcontractors comply with the requirements of this paragraph.

d. The Contractor shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and copies of the applicable blanket additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

**23. Provisions Controlling.** Lessor further agrees that in the event of conflicting language between this "Equipment Lease Attachment" and Lessor's printed form, this "Equipment Lease Attachment" shall take precedence.

**24. Lessor's Default.** Failure or refusal of Lessor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to the City, this Contract may be terminated by the City upon ten days' written notice. Such termination does not waive any other legal remedies available to the City.

**25. Taxes.** The City will only pay California sales and use taxes. The Lessor is to add California sales and use taxes to the monthly payment and the tax must be properly identified on each monthly invoice. Any other taxes presently in effect which may be levied upon this Agreement, the transaction, or the Leased System Equipment or services delivered pursuant hereto shall be borne by the Lessor. The Lessor will be responsible for all property taxes. In the event any taxes or charges are enacted after the date of execution of this Lease Agreement, those taxes or charges shall be borne as mutually agreed. The Lessor will indemnify and hold City harmless from any fines, penalties or interest thereon imposed during the Lease term or in connection with termination of the lease by any federal, State or local government or taxing authority. The taxes covered by this Section shall only include those attributable to the leased System Equipment. Under no circumstances will the City pay any taxes imposed on, based on, or measured by the net income of the Lessor.

**26. Assignment.** Notwithstanding any other provision in this lease, in no event shall all or any portion of this lease be assigned without the prior written approval of Purchasing and the City Attorney. Furthermore, in no event shall Lessor effect a public offering of certificates of participation, municipal securities or other debt instruments presenting fractionalized interests in this lease. For purposes of this Section, a public offering shall occur when the certificates of participation, municipal securities or other debt instruments are either: (a) offered or sold to more than twenty investors; or, (b) offered or sold in denominations of less than \$10,000.

**27. Reserved**

**28. Notices to Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City:                   Attn: Red Light Camera Program, Project Manager  
Sustainable Streets Division  
San Francisco Municipal Transportation Agency

1 S. Van Ness Ave, 7<sup>th</sup> FL  
San Francisco, CA 94103-5417  
Fax: 415-701-4735

To Contractor: ACS State & Local Solutions, Inc.  
Attn: Contracts  
12410 Milestone Center Dr.  
Germantown, MD 20876  
Michael.wood@acs-inc.com  
Fax: 301-820-4250

Any notice of default must be sent by registered mail.

**29. Section Headings.** All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Lease.

**30. Waiver.** The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

**31. Governing Law.** This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California.

**32. Entire Agreement; Modifications.** The Lease, together with the Appendices hereto, constitutes the entire Agreement between the parties and this Lease shall not be modified, amended, altered or changed except in writing as herein provided. All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Lease. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. Subject to the specific provisions of this Lease, this Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**33. Nondiscrimination; Penalties**

**a. Lessor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts.** Lessor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Lessor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits.** Lessor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where work is being performed for the City or elsewhere within the United States, discriminate in the provision of

bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract.** As a condition to this Agreement, Lessor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Lessor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Lessor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Lessor and/or deducted from any payments due Lessor.

**34. EIC Forms.** Lessor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Lessor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Lessor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Lessor of the terms of this Agreement. If, within thirty days after Lessor receives written notice of such a breach, Lessor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Lessor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Lessor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

**35. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwoods and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**37. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for

the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**38. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this contract. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

**39. Sunshine Ordinance.** In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**40. Conflict of Interest.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**41. Compliance with Laws.** Lessor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

**42. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which



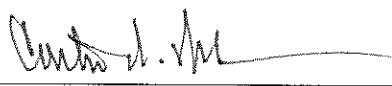

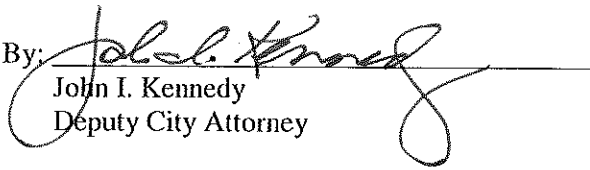

are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**43. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Contractor to comply with this section of this Agreement shall constitute a material breach of this Agreement.

**44. Food Service Waste Reduction Requirements.** Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

**45. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

| CITY  | CONTRACTOR   |
|---|--|
| <b>San Francisco<br/>Municipal Transportation Agency</b>  | <b>ACS State &amp; Local Solutions, Inc.</b>   |
|    | I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles. |
| for <u>Nathaniel P. Ford Sr.</u><br>Executive Director/CEO  |    |
| Approved as to Form:<br><br>Dennis J. Herrera<br>City Attorney  | Mark Talbot<br>Vice President<br>12410 Milestone Center Dr.<br>Germantown, MD 20876  |
| By: <br>John I. Kennedy<br>Deputy City Attorney                           | City vendor number: 68769  |
| AUTHORIZED BY:<br><br>MUNICIPAL TRANSPORTATION AGENCY<br>BOARD OF DIRECTORS   |  |
| Resolution No: <u>11-051</u>  |  |
| Adopted: _____  |  |
| Attest: <br>Roberta Boomer, Secretary to the<br>SFMTA Board of Directors |  |