AGENDA REPORT

Meeting Date: August 4, 2015

Item Number: D-8

To: Honorable Mayor & City Council

From: Tony Lee, Acting Chief of Police

Subject: AUTHORIZING THE CITY MANAGER, CITY ATTORNEY, AND ACTING CHIEF OF POLICE TO EXECUTE AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND XEROX STATE & LOCAL SOLUTIONS, INC. FOR PHOTO RED LIGHT ENFORCEMENT PROGRAM SERVICES

Attachments:
1. Agreement 531-14

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager, City Attorney and Acting Chief of Police to execute an Amendment to the Agreement between the City of Beverly Hills and Xerox State and Local Solutions, Inc. for additional Photo Red Light Enforcement Program services (Agreement 531-14), and authorizing an annual increase in an amount not to exceed $111,120, for a total annual not to exceed amount of $750,000.

INTRODUCTION

At the June 30th City Council Study Session, the Council approved the staff recommendation to add the intersection of Olympic Boulevard and Beverly Drive to the current Photo Red Light Enforcement Program. This addition requires an amendment to include the new approaches into the scope of services in the current Agreement with Xerox which was entered into on October 7, 2014.

A review of almost six years of collision records revealed an average collision rate of 0.43 collisions per million entering vehicles at the intersection of Olympic Boulevard and Beverly Drive, which is identical to the state-wide average for comparable intersections (multilane in an urban setting). Between 2009 and 2015 a total of 83 collisions were documented. The location that experienced the majority of collisions during the study

period was the connection of Olympic Boulevard to Beverly Drive at 66% of the total collisions.

DISCUSSION

The amendment to the existing agreement will allow for the installation of a PRL system at the intersection of Olympic Boulevard and Beverly Drive for eastbound and westbound approaches. Staff believes the system will increase traffic safety. The City has experienced an average 39% decrease in violations captured at intersections within two years of Photo Red Light system installation.

The PRL program authorized by the current agreement consists of 15 covered approaches at nine intersections. These intersections are:

- Wilshire Boulevard and Whittier Drive (Eastbound and Westbound)
- Beverly Drive and Wilshire Boulevard (Northbound)
- Olympic Boulevard and Doheny Drive (Eastbound and Westbound)
- Olympic Boulevard and Roxbury Drive (Westbound)
- Olympic Boulevard and Spalding Drive (Eastbound)
- Sunset Boulevard and Hillcrest Drive (Eastbound and Westbound)
- South Santa Monica Boulevard and Crescent Drive (Eastbound and Westbound)
- Benedict Canyon and Sunset Boulevard (Northbound and Southbound)
- Crescent Drive and Sunset Boulevard (Northbound and Southbound)

The Traffic Engineer is currently considering improvement options for the intersections of Beverly Drive and Beverwil Drive at Olympic Boulevard. The addition of a PRL system at Olympic Boulevard and Beverly Drive would not interfere with any of the proposed improvements currently being considered.

FISCAL IMPACT

Pricing estimates are being researched; however, Xerox believes they can provide the services at or close to the current contract rate for approaches of $3,694.00 per month. Adding two approaches would cost an estimated $88,656.00 annually. The current contract cost for 15 approaches is $638,880 annually. Total cost for 17 approaches would be estimated at $739,536 annually, and staff suggests approval of an additional contingency of $10,464 to cover any unanticipated costs associated with the additions for a total annual not to exceed amount of $750,000. Final contract pricing will be included in the final agreement to be executed by the City Manager.

The PRL program has historically operated with positive revenue offsets which are expected to continue and consequently increase at a rate commensurate with the increase in approach coverage.

Don Rhoads
Finance Approval

Tony Lee
Approved By

Attachment 1

AGREEMENT NO.
531-14

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND XEROX STATE & LOCAL SOLUTIONS, INC. FOR PHOTO RED LIGHT ENFORCEMENT PROGRAM SERVICES

This Agreement ("Agreement") is made and entered into on October 7, 2014, by and between Xerox State & Local Solutions, Inc., a New York Corporation ("Vendor"), and City of Beverly Hills, a municipal corporation, with offices at 455 N. Rexford Drive, Beverly Hills, CA 90210 ("City").

RECITALS

A. Vendor has special knowledge, possession and ownership of certain equipment, licenses, and applications related to digital photo red light enforcement systems; and

B. City desires to engage the services of Vendor to provide certain equipment, processes and services so that sworn peace officers of the City are able to monitor, identify and enforce traffic laws utilizing automated enforcement systems in accordance with, inter alia, California Vehicle Code Section 21455.5 in order to reduce the incidence of vehicle collisions and injuries at City traffic intersections and streets; and

C. City further desires to retain Vendor to provide an automated red light intersection enforcement system in support of City's Photo Safety Program at City selected approaches within City.

D. Vendor represents that it has the qualifications and means to provide such services and City desires to retain Vendor to perform such services.

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

AGREEMENT

1. Definitions In this Agreement, the words and phrases below shall have the following meanings:

1.1 "Authorized Officer" means a sworn peace officer or a qualified employee of the Police Department which Police Chief of the City shall designate to review Potential Violations.

1.2 "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a Citation in the form of an Electronic Signature is given by the Authorized Officer by using the Vendor Photo Red Light System.

1.3 "Citation" or "Complaint" or "Notice to Appear" means the initial pleading in a criminal or civil traffic action relating to a Violation documented or evidenced by the Photo Safety Program.

1.4 "Designated Intersection Approaches" means the Intersection Approaches set forth on Exhibit A attached hereto and incorporated herein, and such additional Intersection Approaches as City shall determine from time to time.

1.5 "Electronic Signature" means the method through which the Authorized Officer indicates his or her approval for and the issuance of a Citation with respect to a Potential Violation using the Vendor Photo Red Light System.

1.6 "Enforcement Documentation" means the necessary and appropriate documentation related to the Photo Safety Program, including but not limited to, warning letters, Citation notices (using the specifications of the Judicial Council and City, a numbering sequence for use on all Citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Vendor Photo Red Light System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.

1.7 "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Vendor Photo Red Light System(s), including but not limited to, all camera systems, housings, radar units, servers and poles provided by Vendor.

1.8 "Fine" means a monetary sum assessed for a Citation, including, but not limited to, bail forfeitures, but excluding suspended fines.

1.9 "Governmental Authority" means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.

1.10 "Installation Date of the Photo Safety Program" means the date on which Vendor completes the construction and installation of at least one (1) Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational and actively being monitored to identify Violations by operators of motor vehicles and recording such Violations for the Photo Safety Program.

1.11 "Intersection Approach" means a conduit of travel on which at least one (1) system has been installed by Vendor for the purposes of facilitating the Photo Safety Program. The system shall be capable of monitoring all contiguous lanes of traffic at an intersection approach, including left-hand, straight through and right-hand turning movements.

1.12 "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Photo Safety Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by a sworn peace officer of the City and the issuance of Citations for such approved Violations using the Vendor Photo Red Light System.

1.13 "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.

1.14 "Police Project Manager" means the Chief of Police or his designee in accordance with this Agreement, which shall be a sworn peace officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Photo Safety Program.

1.15 "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Vendor Photo Red Light System with respect to such motor vehicle, which data shall be processed by the Vendor Photo Red Light System for the purposes of allowing the Authorized Officer to review such data and determine whether a Violation has occurred.

1.16 "Vendor Project Manager" means the project manager appointed by Vendor in accordance with this Agreement, which project manager shall initially be David Leary or such person as Vendor shall designate by providing written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches, and the implementation the Photo Safety Program, and who shall have the power and authority to make management decisions relating to Vendor obligations pursuant to this Agreement, including but not limited to, change-order authorizations agreed upon in writing by the City Manager or his designee.

1.17 "Photo Red Light System" means, collectively, the DriveSafe™ red light camera system, the CiteWeb™ violation processing database for the Photo Safety Program, and all other Equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.

1.18 "Photo Safety Program" means automated photo safety enforcement program as authorized by California Vehicle Code Section 21455.5 and operated by City through its Police Department. It shall also include the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain Equipment, applications and back office processes of Vendor, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violations Data in the form of photographic images of motor vehicles.

1.19 "Photo Red Light Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by sworn peace officers of the City, which standards and criteria shall be in compliance with all applicable laws, rules and regulations of California State law.

1.20 "Traffic Signal Controller Boxes" means the signal controller interface and detector, including, but not limited to, the inductive loop, Lidar, radar or video loop, as the case may be.

1.21 "Violation" means any act or omission in operating a motor vehicle contrary to the Vehicle Code, the City Municipal Code or any other local statute, law or ordinance which the Photo Safety Program equipment is monitoring in accordance with the terms and conditions of this Agreement.

1.22 "Violations Data" means the images and other Violations data gathered by the Vendor Photo Red Light System at the Designated Intersection Approaches.

1.23 "Warning Period" means the period of thirty (30) days after the Installation Date of an intersection approach.

2. Services. Vendor shall provide services required under the City's Photo Safety Program and other services to the City as set forth in this Agreement. The City remains in control of the Photo Safety Program and Vendor shall abide by all operational rules and regulations of the City's Photo Safety Program. As to any issue regarding interpretation of applicable state law relative to what is required, the decision of the City is final. Vendor's obligations shall include the following:

2.1 Installation and Maintenance. Construct, install and maintain the Vendor Photo Red Light System at the Designated Intersection Approaches as set forth in Exhibit B, attached hereto and incorporated herein.

2.2 Violation Processing. During the Operational Period, Vendor shall process Violations as follows:

2.2.1 All Violations Data shall be stored on the Vendor Photo Red Light System under the control of the City pursuant to the City's guidelines for screening violations and the processing and storage of confidential information.

2.2.2 The Vendor Photo Red Light System shall process Violations Data into a format capable of review by the Authorized Officer via the Vendor Photo Red Light System.

2.2.3 The Vendor Photo Red Light System shall be accessible by the City Authorized Officer through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser.

2.2.4 Vendor shall provide the City with access to the Vendor Photo Red Light System at any and all times.

2.2.5 Vendor shall provide the City for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violation Data.

2.2.6 The City shall cause the Authorized Officer to review the Violations Data and to determine whether a Citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Vendor using the software or other applications or procedures provided by Vendor on the Vendor Photo Red Light System for such purpose. Vendor hereby acknowledges and agrees that the decision to issue a Citation shall be the sole, unilateral and

exclusive decision of the Authorized Officer. In no event shall Vendor be authorized to make such a Citation decision.

2.2.7 With respect to each Authorized Violation, Vendor shall print the Citation, obtain a postal certificate of mailing and mail within two business days after Vendor's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued with respect to all Authorized Violations.

2.2.8 Vendor shall provide a toll-free telephone number with bilingual interface capability for the purposes of answering citizen inquiries.

2.2.9 Vendor's Photo Enforcement System shall permit the Authorized Officer to generate monthly reports using the Vendor Standard Report System.

2.2.10 Upon Vendor receipt of a written request from the City and in addition to the Standard Reports, Vendor shall provide, without cost to the City, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Vendor Photo Red Light System in such format and for such periods as the City may reasonably request.

2.2.11 Vendor shall provide expert witnesses for use by the City in prosecuting Violations.

2.2.12 Vendor shall provide such training to law enforcement personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of City with respect to the Photo Safety Program.

2.2.13 All Violations shall be processed from Vendor operations center located in 606 South Olive Street, Los Angeles, CA 90014.

2.2.14 If the Agreement is terminated, Vendor shall continue to process Violations for a period of 90 days after the date of termination.

2.3 Compensation. In consideration of the satisfactory performance of the services required by this Agreement, City shall pay the compensation set forth on Exhibit C, attached hereto and incorporated herein.

2.4 Other Rights And Obligations. During the Term, whether the Initial or Extended Term, in addition to all of the other rights and obligations set forth in this Agreement, Vendor and the City shall have the respective rights and obligations set forth on Exhibit D, attached hereto and incorporated herein.

2.5 Confidentiality. All confidential records and information as defined in California Vehicle Code Section 21455.5 maintained in connection with the Photo Safety Program that have obtained final disposition and where appeal dates have passed shall be destroyed in accordance with proper procedures described in Vehicle Code section 21455.5. Written proof of destruction shall be submitted to the City's Police Department Traffic Bureau within five (5) business days from destruction.

2.6 Changes. In the event that the City desires to make changes to the Photo Safety Program, there are new developments in photo enforcement technology which become accepted enforcement systems in California courts, or if the courts render decisions which require the City to modify the Photo Safety Program, the price for installation and implementation of such additional Intersection Approaches shall not exceed the price per Designated Intersection Approach set forth in Exhibit C of this Agreement.

3. License; Reservation of Rights.

3.1 License. Subject to the terms and conditions of this Agreement, Vendor hereby grants the City, and the City hereby accepts from Vendor, a non-exclusive, non-transferable license of the necessary Vendor Photo Red Light System equipment for the Photo Safety Program solely for use in documenting Violations at City selected Designated Intersection Approaches in the City.

3.2 Reservation Of Rights. The City hereby acknowledges and agrees that: (a) Vendor is the sole and exclusive owner of the Vendor Photo Red Light System, and any and all related Equipment, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.

3.3 Restricted Use. The City hereby covenants and agrees that it shall not (a) make any modifications to the Vendor Photo Red Light System, including but not limited to any of Vendor Equipment, (b) alter, remove or tamper with any, (c) disassemble, de-compile or otherwise perform any type of reverse engineering to the Vendor Photo Red Light System, the Vendor Photo Red Light System, including but not limited to any Equipment, or cause any other Person to do any of the foregoing to the extent authorized by law.

3.4 Protection Of Rights. Vendor shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any intellectual property of Vendor, including without limitation, the filing of applications to register as trademarks in any jurisdiction any of the Vendor Marks, the filing of patent application for any of the intellectual property of Vendor, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Vendor Marks or the intellectual property of Vendor without the prior written consent of Vendor.

3.5 Infringing Use. The City shall give Vendor prompt written notice of any action or claim action or claim, whether threatened or pending against the City of which the City has actual constructive knowledge alleging that the Vendor Marks, infringes or violates any patent, trademark, copyright, trade secret or other intellectual property of any third party. City shall render to Vendor such reasonable cooperation and assistance as is reasonably requested by Vendor in the defense thereof; provided, that Vendor shall reimburse the City for all costs incurred in providing such cooperation and assistance. If such a claim is made and Vendor determines, in the exercise of its sole discretion, that an infringement may exist, Vendor shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly

infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items. In such case, the City has the option to terminate the Agreement without cancellation fee, if any, to Vendor.

4. Representations and Warranties.

4.1 Vendor Representations And Warranties.

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

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

4.2 City Representations And Warranties.

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

5. Term. This Agreement shall be effective for a Five (5) year term measured from the Installation Date of the Photo Safety Program ("Initial Term") The City Manager, on behalf of City, may extend the term of the Agreement in writing for two additional one year periods ("Extended Term") pursuant to the same terms and conditions of the Agreement.

6. Termination.

6.1 Termination during Initial Term. During the Initial Term of this Agreement, City may terminate this Agreement with or without cause and in its sole discretion at any time by giving Vendor at least sixty (60) days' written notice of such termination. In the event of termination during the Initial Term due to no fault or failure of performance by Vendor, Vendor shall be paid the monthly fees earned prior to the effective date of termination, as calculated in Exhibit C of this Agreement.

6.2 Termination during Extended Term. If this Agreement is extended past the Initial Term (the "Extended Term"), City may terminate this Agreement during the Extended Term with or without cause and in its sole discretion at any time by giving Vendor at least sixty (60) days' written notice of such termination. In the event of termination during the Extended Term due to no fault or failure of performance by Vendor, Vendor shall be paid the monthly fees earned prior to the effective date of termination, as calculated in Exhibit C of this Agreement.

6.3 Termination for Convenience. In the event the City exercises its right to terminate this Agreement during the Initial Term, Vendor shall be entitled to a cancellation fee for each installed approach which reflects reimbursement of the direct labor costs and direct

material costs (not including Equipment costs and salvageable material costs) solely associated with the installation of the Vendor Photo Red Light System at all Intersection Approaches where such system(s) have been installed prior to the effective date of Termination (the "Reimbursable Costs"). Vendor shall provide an itemization of the Reimbursable Costs, with supporting invoices and labor expense documentation, to the City within sixty (60) days of the completion of installation of the Vendor Photo Red Light System at each designated Intersection Approach. Said Reimbursable Costs are currently estimated to equal approximately $44,600 to $49,100 per Intersection Approach but, in no event, shall said amount exceed $49,100 per Intersection Approach. For the purpose of this section, the cancellation fee shall be derived in accordance with the following formula:

X = the number of months remaining in the Agreement

Y = the number of months of the Agreement

X/Y = the percentage of remaining Agreement

Z = the Reimbursable Costs per Installed Approach (not to exceed $49,100) $49,100

(X/Y)*Z = amount to be paid as cancellation fee

For example, if the Agreement ends on the last day of the 24th month and the Installed Approach was installed in month 12, the cancellation fee would be:

X = 36 (60 months – 24 months transpired under the Agreement).

Y = 60 (number of months of the Agreement).

Z = $49,100 (value of reimbursable costs)

X/Y *Z = (36/60 * $49,100)

Calculation of Fee = $29,460

6.4 Termination for Cause. City or Vendor may, with cause, terminate this Agreement effective immediately upon written notice to the other party in the event such other party materially fails to perform any material provision of this Agreement or fails to perform any of its material obligations under the Agreement and such failure continues unremedied for a period of thirty (30) days after written notice of such failure from the party alleging such failure. City may, with cause, terminate this Agreement effective immediately upon written notice in the event Contractor fails to abide by their reasonable directive of City or City's Police Department. In the event City terminates this Agreement for cause, Contractor shall not be entitled to a cancellation fee.

6.5 City may also terminate this Agreement effectively immediately with cause in the event of Contractor's gross misconduct, or acts or omissions of Contractor contrary to law. In the event City terminates this Agreement for cause, Contractor shall not be entitled to a cancellation fee.

6.6 In the event that, in City's judgment, this Agreement and/or the type of Photo Safety Program provided pursuant to this Agreement shall be deemed to be invalid or unconstitutional by any act of any branch of government, or a decision of any branch of government makes the implementation of City's Photo Safety Program unconstitutional or impossible to continue to implement, such decision shall be treated as a mutual termination and Vendor shall not be entitled to a cancellation fee.

6.7 Upon termination of this Agreement as herein provided, Vendor shall cease all work on or before the date of such termination. Vendor shall deliver to City in an orderly and expedient manner, all records prepared for or belonging to City pursuant to this Agreement. Vendor shall be responsible for the removal and return to Vendor of the Vendor Photo Red Light System in good working order. Vendor shall be responsible for repair of any damage to public property caused by the Vendor Photo Red Light System or removal of the Vendor Photo Red Light System within forty-five (45) days of the date of termination.

7. Insurance and Indemnification.

7.1 Insurance. Vendor shall procure and maintain the insurance coverage set forth in Exhibit E.

7.2 Indemnification. Vendor agrees to indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Vendor or any person employed by Vendor in the performance of this Agreement except with respect to causes of action raising a constitutional facial challenge to the use of red light enforcement technology or alleging violations of the California Vehicle Code and except to the extent any such claim, liability or financial loss is attributable to any reckless, negligent or otherwise wrongful acts, errors or omissions of City or any person employed by City.

7.3 Vendor shall indemnify, defend and hold harmless City, City Council, and each member thereof, and every officer, employee and agent of City, from any liability or financial loss (including attorneys fees) arising out of or related to any claim that the software, any other goods, services or deliverables provided to City under this Agreement, or license granted hereunder to City, infringes or violates the copyright, trade secret or other proprietary right of any third party. Vendor shall, at its sole expense, defend and settle all suits or proceedings arising out of the foregoing, provided City gives Vendor prompt notice of such claim of which it learns. Notwithstanding the indemnification set forth in this Section 7.3, Vendor assumes no liability, and shall have no liability, with respect to claims of infringement or violation of copyright, trade secret or the proprietary right of any third party based on: (1) City's use of any product after written notice that City should cease use of such product due to an infringement claim; (ii) any unauthorized modification or use of a product by City or City's agent; (iii) City's unauthorized combination of a product with non-Vendor programs, data, hardware, or other materials, provided that any usage or combination of a product with non-Vendor materials as described in this Agreement will be deemed to be an authorized use; (iv) City's unauthorized use of Vendor's products in a way other than as directed by Vendor; or (v) any trademark infringement involving any marking or branding applied by City, at City's request or direction.

7.4 All Equipment provided by Vendor and used in the performance of this Agreement belongs to, or is leased by Vendor.

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

8.1 Notices to Xerox State & Local Solutions, Inc.:

606 South Olive Street
Los Angeles, CA 90014
Attention: David Leary, Project Manager
Phone: (213) 439-6233
david.leary@xerox.com
Facsimile: (213) 688-0807

8.2 Notices to the City:

City of Beverly Hills
Police Department
464 North Rexford Drive
Beverly Hills, CA 90210
Attention: Lt. Michael Foxen
Facsimile: (310) 246-9854

With a copy to:

City of Beverly Hills
City Attorney
455 North Rexford Drive
Beverly Hills, CA 90210
Facsimile: (310) 285-1056

9. **Dispute Resolution**. Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 9, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not

reasonably likely, then the parties may mutually agree to submit to nonbinding arbitration or mediation.

10. Miscellaneous.

10.1 Relationship Between Vendor And The City. Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).

10.2 Assignment. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of Vendor' duties be delegated, without the written consent of the City. Any attempt to assign or delegate this agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

10.3 Audit Rights. City shall have the right to audit and obtain copies of the business books and records of Vendor related to this Agreement which are necessary to determine whether Vendor is in compliance with the terms of the Agreement, and to inspect Vendor's premises at all times with or without notice. Notwithstanding the above, Access to such material shall include applicable financial records but shall not include the Contractor's costing rates, actual costs and profit unless the City is seeking reimbursement for actual costs incurred.

10.4 Force Majeure. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Vendor, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

10.5 Entire Agreement. This Agreement represents the entire integrated Agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Vendor.

10.6 Severability. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

10.7 Conflict Of Interest Prohibited. Vendor agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Vendor "financially interested" (as provided in California Government Code Sections 1090 and 87100), in any decision made by City, on any matter in connection with which Vendor has been retained pursuant to this Agreement.

10.8 Waiver. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

10.9 Construction. Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.

10.10 Headings. The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the parties hereto, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any term, condition or provision hereof.

10.11 Execution And Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.

10.12 Covenant Of Further Assurances. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.

10.13 Remedies Cumulative. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.

10.14 Binding Effect. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns as set forth herein

10.15 Compliance With Laws. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.

10.16 No Third Party Benefit. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.

10.17 Applicable Law. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of California, United States.

10.18 Jurisdiction And Venue. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the courts located in the County of Los Angeles and both parties specifically agree to be bound by the jurisdiction and venue thereof.

10.19 Attorney Fees. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

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

Vendor: XEROX STATE & LOCAL SOLUTIONS, INC.

ALLEN SHUTT
Senior Vice President

"City"

CITY OF BEVERLY HILLS:

LILI BOSSE
Mayor of the City of Beverly Hills

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

[Signatures continued]

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager

DAVID SNOWDEN
Chief of Police

DON RHOADS
Director of Administrative Services/Chief Financial Officer

KARL KIRKMAN
Risk Manager

EXHIBIT A
Designated Intersection Approaches

This Agreement is for the implementation of up to 15 Intersection Approaches. Identification of Designated Intersection Approaches will be at the sole discretion of City.

EXHIBIT B

Operation and Maintenance of Photo Safety Program

1) **General Description:** The services detailed herein describe the Photo Safety Program which will be managed, supervised and operated by City. In accordance with the terms and conditions set forth herein, Vendor shall consult with and perform certain support services (such as maintenance of Equipment, Enforcement Documentation creation, collection, storage, processing and other services) for City, the Los Angeles County Superior Court system, and other interested City departments and agencies in the continuing operation of the Photo Safety Program. The City Manager on behalf of City may make changes to this Exhibit upon written amendment to the Agreement if those modifications do not result in an increase in compensation to Vendor which exceeds Fifty Thousand Dollars ($50,000).
2) **Intersection Approach Selection:** City will work closely in developing a comprehensive methodology for the deployment of the Photo Safety Program in City. Validation methodology, (including but not limited to video validation), and final determination of Intersection Approach selection shall be within the sole and exclusive province and control of City.

   Based on this methodology, 15 Intersection Approaches at the following list of intersections have been identified and approved by City for the operation and maintenance of the Intersection Approaches:

   - Whittier Drive and Wilshire Boulevard
   - Olympic Boulevard and Doheny Drive
   - Sunset Boulevard and Hillcrest Drive
   - Olympic Boulevard and Roxbury Drive
   - Beverly Drive and Wilshire Boulevard
   - Olympic Boulevard and Spalding Drive
   - South Santa Monica Blvd. at Crescent Drive
   - Sunset Blvd. at Crescent Drive (north and south)
   - Sunset Blvd. at Benedict Canon (north and south)

3) **Vendor shall provide City with the following services:**
   a) A computerized Photo Safety Program for City, including printed Notice to Appear (Citation) forms, mailing of forms, mailing and postage costs, and such other miscellaneous costs and expenses as may be reasonably necessary to issue a Citation and deliver it by post mail with the statutorily required United States Postal Service ("USPS") "Proof of Service".

b) Vendor shall provide consultation to City on its Photo Safety Program, the selected Intersection Approaches and shall provide any other advice that City or may request or require which is consistent with the terms and conditions of this Agreement and the California Vehicle Code.

c) Vendor shall provide maintenance for the entire Photo Safety Program during the term of the Agreement, including, but not limited to, Equipment (i.e. cameras, poles, camera housing, flash units, conduits as needed, radar detection systems, wiring). Vendor personnel shall service and clean the Equipment during normal business hours at least once per month, and conduct remote checks of each Designated Intersection Approach daily. Vendor shall notify City when the onsite work will be done so that a City representative can be present. Maintenance logs shall be created by Vendor at the time of each service or remote check and made available to City for court packets and audit purposes. Log sheets will also be created each time City performs an inspection of the Photo Red Light System (signed by the inspecting Authorized Officer and the Vendor representative present for the inspection). These logs shall be stored by Vendor for and on behalf of City.

d) Upon discovery of any malfunction or irregular functioning of the Equipment, the City shall be notified immediately for further direction of City. Any such problems will be recorded and remedied by Vendor within seventy-two (72) hours of such notification.

e) At no cost to City, Vendor shall make available once yearly its standard two-day training program with respect to operation of the Photo Red Light System for up to ten (10) persons who are designated as operators of the Photo Safety Program by City. If City request additional courses, Vendor shall provide these on a fully cost reimbursable basis (as determined by Vendor according to generally accepted accounting principles).

f) At no cost to City, Vendor shall make available expert witnesses as reasonably necessary to testify at trial or hearing. In addition, Vendor shall supply the court with a statement of technology for use at informal hearings if requested by the court. Upon request of City, Vendor shall also prepare court packets for the City Police Department to present as evidence at trials, or when completing Trial By Declaration requests.

g) Vendor is licensed by the California Department of Motor Vehicles to access its records. Vendor shall access directly the driver license information and the registered owner residence address from the California Department of Motor Vehicles (DMV). Vendor shall also have the ability to access out of state registered owner information for applicable Citations (NLETS). Vendor shall maintain the confidentiality of such records, except as required to perform the obligations under this Agreement.

h) At all times, Vendor shall provide City will real time access to streaming video for each Designated Intersection Approach.

i) Vendor shall process all Violations which shall include without limitation: capture of Violations on digital media, providing City Police Department with violations for review (per City business rules), mailing all City issued Citations with USPS proof of service, provide mailing dates and Citation information to the Los Angeles County Superior Court electronically, and process Affidavit of Non-Liability requests (including mailing re-issued Citations).

j) Vendor shall mail Notices to Appear (Citations) to a registered owner of a vehicle. The Notices to Appear must be postmarked no later than the timeline set forth in the California Vehicle Code or sooner (depending on business rules provided by City). The Notices to Appear (Citations) must be on forms approved by the Judicial Council. Vendor shall mail the written Notices to Appear (Citations) with certificates of mailing as required by the California Vehicle Code Section 40518a. The certificates of mailing must be a certification issued by the USPS. Copies of the certificates of mailing must be kept on file by Vendor with the Enforcement Documentation and be provided in court packets generated for City.

k) Vendor shall work closely with the City Police Department and LA County Superior Court in processing the Violations. Vendor shall submit all necessary information, including but not limited to, electronic images saved in accordance with the Photo Red Light Violation Criteria and the registered owner information retrieved from the DMV based on the vehicle's license plate number to the City Police Department. All images must be approved and signed by the Police Department.

l) Vendor shall maintain records on a database of all Violations recorded by the Photo Safety Program and such records shall be made available to City upon request for auditing and reporting purposes.

m) Vendor shall submit to City a monthly report on Photo Safety Program results prior to the last day of the third week of the following calendar month. Vendor must maintain monthly reports for a period of no less than five (5) years. The monthly reports shall include, but are not limited to, tracking the following relevant information for each Violation recorded by the Photo Red Light System. The monthly report shall include the following mandatory items:

    i. Number of Violations recorded
    ii. Number of Violations recorded
    iii. Number of non-issued Violations
    iv. Breakdown of reasons for non-issuance
    v. Number of Citations issued
    vi. Status of Citations issued
    vii. Number of lost hours of service (if any)
    viii. Location and description of equipment malfunctions
    ix. Number of days to repair malfunctioning equipment
    x. Number of photograph viewing appointments scheduled

xi. Number of calls for information received
xii. Breakdown and analysis of calls for information by reason
xiii. Court reported metrics
xiv. Total Fines received
xv. Number of adjudicated Citations and disposition detail
xvi. Number of open Citations

n) Other reports and ad hoc reports shall be provided to City upon request. Vendor shall also provide an annual report to the Judicial Council pursuant to California Vehicle Code requirements.

o) Vendor shall maintain a database and make it available to City with the following information per Violation recorded by the Photo Red Light System:
   i. Location, date and time
   ii. Number of seconds of red traffic signal
   iii. Type of Violation (such as right turn, left turn, or straight through)
   iv. Vehicle Speed
   v. Vehicle description including license plate state and number.
   vi. California Vehicle Code Section Violated
   vii. Images processed or reason for not processing images.
   viii. Registered vehicle owner's name and address, driver's license number and related information required to process images where Violation is made by Driver other than registered owner
   ix. Status of approved/mailed Citation (outstanding, canceled, reissued, paid, bail forfeited, etc).

p) Vendor's bi-lingual customer service agents shall be available to the public via telephone Monday through Friday, except major holidays, from 9 am to 5 pm PST to answer questions about Citations. An automated IVR, with both English and Spanish options, shall also be available 24/7 for basic answers to general requests. Vendor shall also schedule image-viewing appointments for the City Police Department via a toll-free telephone number.

q) Vendor Project Manager shall meet with City Police Department staff and other representatives of City on a monthly basis. Authorized representatives of City shall have the right of access to all activities and facilities operated by the Vendor under this Agreement.

4. **Commencement of Photo Safety Program**

The Photo Safety Program shall commence upon installation and activation of the first specified Designated Intersection Approach within Sixty (60) days of execution of the Agreement.

EXHIBIT C
Compensation and Pricing

1. Commencing on the expiration of the Warning Period for each new Designated Intersection Approach and upon written notice from Vendor that the Warning Period has expired for each Designated Intersection, City shall be obligated to pay Vendor a fixed fee of **Three Thousand Four Hundred Ninety-Nine Dollars ($3,499.00)** per month for each Designated Intersection Approach to be installed under this Agreement. If the Warning Period expires during any given month, City shall pay Vendor a pro-rata portion of the monthly fee for the period of time the Warning Period has expired.

2. For the existing nine Designated Intersection Approaches that Vendor will retrofit, City shall be obligated to pay Vendor a fixed fee of **Three Thousand Six Hundred Ninety-Four Dollars ($3,694.00)** per month for each Designated Intersection Approach.

3. City shall not be obligated to pay, and will not be billed for each calendar day that a particular Designated Intersection Approach is not functioning for a period of 48 hours due to equipment related malfunction, including if the Intersection Approach is knocked down and has not been replaced. The invoice for the relevant period will show a credit for a fraction of the Fixed Fee based on the number of calendar days in that month.

4. Vendor shall provide City with a monthly statement of the fee for the previous month. Such statement shall be provided on a form approved by City.

5. Upon receipt of such monthly statement, City shall pay Vendor for services satisfactorily performed by Vendor, within thirty (30) business days after the invoice is received by City.

6. Each year (based on the execution date of the Agreement)Vendor may increase the pricing by a Two Percent (2%) Cost of Living Adjustment ("COLA") upon thirty (30) days written notice to City.

EXHIBIT D

Additional Rights and Obligations

Vendor and the City shall respectively have the additional rights and obligations set forth below:

1. Vendor shall assist the City in public information and education efforts, including, but not limited to, the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Photo Safety Program. Actual print and production costs are the sole responsibility of the City. Such work shall be under the direction and control of City.

2. Vendor shall be solely responsible for the fabrication and installation of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority including the California Traffic Manual ("Signage") in connection with the Photo Safety Program, including, but not limited to the Vehicle Code, and shall assist in determining the placement of such Signage. Such work shall be under the direction and control of City.

3. The Vendor Project Manager and the City Project Manager shall meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the Installation Date, and on a monthly basis for the remainder of the Term, at such times and places as the Vendor Manager and the City Project Manager shall mutually agree.

4. City shall be allowed to access the Vendor Photo Red Light System in any manner needed for City to oversee the Photo Safety Program.

5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Vendor Photo Red Light System or using the Photo Safety Program.

6. The City shall promptly reimburse Vendor for the cost of repairing or replacing any portion of the Vendor Photo Red Light System, or any property or Equipment related thereto, damaged directly or indirectly by the City's negligence or willful misconduct, or any of its employees, contractors or agents.

7. Vendor shall provide discovery support to City as required by City in connection with enforcement of and challenges to the Photo Safety Program.

EXHIBIT E

Insurance

1. Vendor shall at all times during the term of the Agreement carry, maintain, and keep in full force and effect, a policy or policies of Commercial General Liability Insurance, with minimum limits of Two Million Dollars ($2,000,000) for each occurrence and general aggregate, combined single limit, against any bodily injury, death, loss or damage resulting from the wrongful or negligent acts by Vendor.

2. Vendor shall at all times during the term of the Agreement carry, maintain, and keep in full force and effect, a policy or policies of Business Automobile Liability Insurance covering bodily injury and property damage, with minimum limits of One Million Dollars ($1,000,000) per accident basis or occurrence combined single limit, covering any vehicle utilized by Contractor in performing the services required by the Agreement.

3. Vendor shall at all times during the term of the Agreement carry, maintain, and keep in full force and effect, a policy or policies of Employer's Liability Insurance with minimum limits of One Million Dollars ($1,000,000) per accident or disease policy limit.

4. Vendor agrees to maintain in force at all times during the performance of work under the Agreement workers' compensation insurance as required by law.

5. Vendor shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of the Agreement.

6. The policy or policies required by the Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

7. Vendor agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately find Vendor in breach of the Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Vendor's expense, the premium thereon.

8. At all times during the term of the Agreement, Vendor shall maintain on file with the City Clerk a standard ACORD form type certificate or certificates of insurance satisfactory to the City Attorney and Risk Manager, showing that the aforesaid policies are in effect in the required amounts. Vendor shall, prior to commencement of work under the Agreement, file with the City Clerk such standard ACORD form type certificate or certificates.

9. The commercial general liability and business automobile liability policies of insurance required by the Agreement shall include the City and City's elected officials, officers, employees, representatives, volunteers and Agreement-related agents as additional insureds for claims arising from the Scope of Work by Vendor. Such additional insured requirement may be met through a blanket additional insured basis. Vendor shall provide at least thirty (30) days' prior written notice to City in the event of insurance cancellation or nonrenewal.

10. The commercial general liability and business automobile liability insurance provided by Vendor shall be primary to any coverage available to City, and any insurance or self-insurance maintained by City, its officers, officials, employees, Agreement-related agents or volunteers shall be excess of Vendor's insurance and shall not contribute with it. The commercial general liability and business automobile liability policies of insurance required by the Agreement shall include provisions for waiver of subrogation. Vendor hereby waives all rights of subrogation against City.

11. Any deductibles or self-insured retentions being carried on such policies shall be the responsibility of Vendor. Any self-insured retention must be declared to City and shown on the certificate of insurance.