

City of Providence
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 359

EFFECTIVE July 28, 2014

RESOLVED, That the Members of the Providence City Council
hereby Authorize Approval of the following Contract Award by the Board of
Contract and Supply, in accordance with Section 21-26 of the Code of Ordinances.

Xerox State & Local Solutions, Inc.
(Public Property)


Unit Price

IN CITY COUNCIL

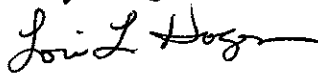
JUL 17 2014

READ AND PASSED


PRES.


CLERK
ACTING

Effective without the
Mayor's Signature



Lori L. Hagen
City Clerk

ACTING

RECEIVED
CITY CLERK
JUL 22 2014



CITY OF PROVIDENCE

Angel Taveras, Mayor

October 30, 2013

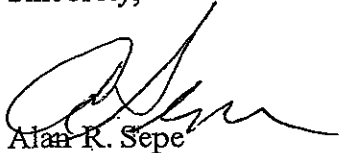
The Honorable Angel Taveras
Chairman
Board of Contract & Supply
C/o City Clerk's Office
Providence, Rhode Island 02903

Dear Mayor Taveras:

On July 5, 20 the Board of Contract and Supply awarded a 5 year contract to Gatso USA, 900 Cummings Center 321-U Beverly, MA 01915, a five year contract for Red light Camera Enforcement. Gatso has since rescinded their bid due to the city exercising an option in bid for ticket processing by others. We request to have the award to Gatso USA rescinded at this time.

The Department of Public Property respectfully requests to award to the contract to the second bidder, Xerox State and Local Solutions, 12410 Milestone Center Drive, Germantown, MD 20876 for a term of five years at a cost of \$3,690 per month for 25 camera. The award will be for :

Sincerely,



Alan R. Sepe
Director of Operations

DEPARTMENT OF PUBLIC PROPERTY

Providence City Hall | 25 Dorrance Street, Room 407, Providence, Rhode Island 02903
401 421 7740 ph | 401 273 2114 fax
www.providenceri.com

RED LIGHT CAMERA LICENSE AND SERVICE AGREEMENT

BY AND BETWEEN

XEROX STATE & LOCAL SOLUTIONS, INC.

AND

THE CITY OF PROVIDENCE, RHODE ISLAND

THIS SERVICES AGREEMENT is made and entered into this 26th day of June, 2014 by and between Xerox State & Local Solutions, Inc., a New York corporation, located at 8260 Willow Oaks Corporate Drive, Fairfax, VA 22031 (hereinafter referred to as "XSLS") and the CITY of Providence, Rhode Island a Municipal Corporation (hereinafter referred to as "CITY") each individually a "party" and collectively, the "parties".

WHEREAS, the CITY desires to engage XSLS to perform certain professional services and work in support of the CITY's Automated Red Light Enforcement Program; and

WHEREAS, XSLS has the ability and expertise to perform such services and work in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, the CITY and XSLS agree as follows:

1.0 DEFINITIONS

Certain words and phrases used in this Agreement shall have the specific meaning shown in this section. Unless otherwise specifically defined herein, all other words shall have their usual and customary meaning.

- 1.1 "Installed Approach" means that point in time where XSLS gives CITY written notice that construction of the photo enforcement site has been completed and is ready to commence automated traffic enforcement in a dual camera configuration in accordance with the terms and conditions herein.
- 1.2 "Person" means an individual, partnership, joint venture, corporation, trust, unincorporated association, any governmental authority, political subdivision thereof or any other form or entity.
- 1.3 "Automated Red Light Enforcement Program" ("Vendor System" or "Program") means an automated red light enforcement program as authorized and operated by the CITY. It shall also include the support services furnished by XSLS and the equipment and software licensed to the CITY pursuant to this Agreement.
- 1.4 **RESERVED**
- 1.5 "Unit" means a photographic/digital red light violation-monitoring device consisting of a camera, flash, central processing unit, signal controller interface and digital tracking radar detector capable of measuring Violations by motor vehicles and such "Unit" records the violation information on a photograph of the vehicle.
- 1.6 "Violation" means any violation of the State of Rhode Island Motor Vehicle Code, the CITY Code of Ordinances, or any other statute, law or ordinance which the Program equipment is monitoring in accordance with the terms and conditions of this Agreement.

- 1.7 "Potential Violation" means any event captured by a Unit (regardless of whether such event results in an issued citation) other than events that upon review of the captured evidence are determined to be non-violation (i.e., the vehicle reflected in the event did not commit a Violation).

2.0 WORK - SCOPE OF SERVICES

2.1 General Description

The Program will consist of a minimum of twenty (20) operating Units including the continued operation of existing Units for a period of time (the "Existing Approaches"), the retrofit of existing Units to new Units at certain Existing Approaches (the "Retrofit Approaches"), and the installation of new Units at new approaches meeting the Minimum Criteria (the "New Approaches"), all as set forth on Exhibit 2. The Program will be managed, supervised and operated by the CITY in cooperation with the support and oversight of the Providence Police Department. In accordance with the terms and conditions set forth herein, XSLS will consult with and perform certain support services (such as maintenance and servicing of equipment, image transfer and processing, notice of infraction ("Notice") processing, customer service, hearing scheduling, and interface services) for the CITY, court system and other interested CITY departments and agencies in the construction and continuing operation of this Program.

Pursuant to the provisions of this Agreement, XSLS shall fully provide, complete and deliver all the tasks, deliverables, goods, services, and other work as set forth and defined herein as XSLS responsibilities, and as may be further specified on Exhibit 2 – Additional Scope, which is hereby incorporated by reference,

2.2 Site Selection Guidelines

The CITY, based on its own criteria relevant to the traffic safety program, will develop a list of potential photo enforcement sites. They will be developed and approved by the Providence Police Department ("Police Department") and the Department of Traffic Engineering ("Traffic Engineering"). The CITY shall complete its list of potential photo enforcement sites and submit it to XSLS upon execution of this Agreement.

The approved list, ordered by priority level, will be provided to XSLS so that a site evaluation may be performed to determine the ability to install a photo enforcement system.

XSLS will conduct, at its cost, thirty (30) site construction evaluations, including twenty (20) video validations, of potential red light enforcement sites identified by the CITY and submit its findings and recommendations to the CITY for review

2.3 Construction Guidelines

- 2.3.1 XSLS shall provide for the construction and installation of all

necessary equipment at CITY selected enforcement sites. All enforcement equipment provided will remain the property of XSLs. XSLs will obtain from the CITY "as-built" engineering drawings of proposed intersection photo enforcement sites. XSLs shall prepare all construction drawings for proposed installation sites, which shall be completed under the supervision of a registered engineer approved by the State of Rhode Island. The drawings prepared by XSLs shall be submitted and subject to review and approval by the CITY. CITY will issue any necessary permits at no cost to XSLs and review traffic control plans filed by XSLs or any subcontractor used to complete the installation. Once XSLs has submitted drawings, all reviews and/or approvals from CITY will be completed within thirty (30) business days from the date of request or receipt, excluding holidays.

2.3.2 Prior to the beginning of construction, all applicable intersection engineering studies must be performed by the Rhode Island Department of Transportation. Upon approval from RIDOT, the CITY will identify a representative from CITY and XSLs shall inform this person of all construction activity. While construction is being performed, the CITY will provide a representative to oversee the construction process. CITY representatives shall approve any changes to drawings. All electrical power required for Program equipment shall be provided by CITY. XSLs shall be responsible for connecting Program equipment to electrical power source from the traffic controller at all enforced approaches.

2.3.3 Within thirty (30) days after construction is completed at CITY selected enforcement sites, XSLs shall take all measurements and have these dimensions documented on as-built engineering drawings. After completion of construction, copies of these measurements will be retained at the offices of the CITY and XSLs. To ensure the integrity of the program, a CITY representative will determine settings for each camera prior to enforcement. These settings, which the CITY will determine, refer to the minimum speed thresholds and red light delays. These settings will be documented on the camera-setting sheet initiated by both the CITY and XSLs.

2.3.4 CITY shall have five (5) business days from completion of site construction and input of system settings under 2.3.3 above, to notify XSLs that the system and settings have not been properly installed or the Program equipment is not functioning properly. If such written notification has not been received within five (5) business days, final acceptance of completion of site construction and properly functioning Program equipment shall be deemed to have been provided to XSLs by CITY.

2.4 Camera Maintenance and Service Guidelines

2.4.1 XSLs personnel shall service the camera units. All servicing and

maintenance will be performed according to a mutually agreeable schedule. XSLS shall also provide maintenance and repair of the camera Units and Housings, including the obligation to replace the Units and housings within thirty (30) days, or earlier if reasonably possible, if the Units or Housings cannot be repaired. In the event of a loss of functionality and repairs are not effected within thirty (30) days, CITY may assess a fine of two hundred fifty dollars (\$250) per day until functionality is restored. The parties agree that no fine shall be applicable in instances where damage or loss of functionality derives from any event outside the control of XSLS. XSLS shall not be responsible for replacement of any pole, Housing or camera Unit damaged as a result of any event outside the control of XSLS. XSLS, if instructed by CITY to do so, will replace any such damaged equipment and invoice CITY for pre-approved repair cost.

2.4.2 The Police Department and the Traffic Engineering Department will periodically visit the camera sites to observe XSLS technicians as they perform their servicing responsibilities. The Police Department and the Traffic Engineering Department will also make random checks of the camera systems to ensure that measurement and servicing have been completed accurately.

2.4.3 XSLS shall provide and maintain a routine maintenance/repair/service plan for all Program Units. XSLS shall retain documentation sufficient to establish compliance with the plan. Such documentation shall be made available to the CITY upon request.

2.4.4 With respect to new red light camera systems only, XSLS must deliver an average monthly controllable issuance rate of 80%. CITY reserves the right to view all images corresponding to the monthly controllable issuance rate. The monthly controllable issuance rate shall be calculated as follows: citations issued / (potential violations and uncontrollable rejects). Potential violations do not include non-violation triggers of the system. If XSLS fails to meet the monthly controllable issuance rate for any month, the CITY reserves the right to withhold payment to XSLS of an amount equal to the difference between the actual monthly controllable issuance rate achieved and the 80% target multiplied by the XSLS' fee for the applicable systems for that month. For purposes of example only, if the Contractor obtains a 78% Monthly Controllable Issuance Rate in a given month, then the monthly fee for that month would be reduced 2% (80% - 78%).

2.5 Notice to Appear Guidelines

2.5.1 CITY shall establish all Notice of Infraction criteria (also known as business rules) necessary for the determination of Violations, and

provide them to XSLS. All criteria, including any subsequent changes thereto, shall be reviewed and approved by the Office of the CITY Solicitor (CITY Solicitor) prior to their use by XSLS.

- 2.5.2 XSLS shall conduct a review of all images and video from all camera Units to make a preliminary assessment of the images to verify that they meet the established criteria provided by the CITY. If after preliminary review by XSLS, an image does not meet the CITY established criteria, XSLS will save a single image to document the reason for preliminary rejection. The Police Department shall have access to all images and video, including rejections, for final review and determination of a Violation. Rejected images and video will be kept for a period not to exceed one hundred twenty (120) days from the date of recording for auditing purposes, at which time the image(s) and video (s) will be destroyed.
- 2.5.3 XSLS shall obtain all required registered owner information for all in-state and out of state (USA) registered vehicle violation images, , which after preliminary review satisfy established guidelines for image processing.
- 2.5.4 Upon receipt of the required motor vehicle information, XSLS shall prepare an electronic record detailing the Violation. The record will include images, video and the registered owner information of the vehicle depicted in the image. This record will be electronically sent, via a secure web site, to the Police Department within ten (10) days.. The Police Department will subsequently review the information to determine whether a Notice should be mailed to the registered owner of the vehicle. Once the Police Department has determined whether a Violation has occurred and whether a Notice should be mailed, an officer will electronically approve or disapprove the record. The record must be returned to XSLS for processing within forty eight (48) hours of receipt from XSLS excluding holidays.
- 2.5.5 Upon final approval of the record, the reviewing officer's name shall be electronically affixed to the record, authorizing XSLS to mail the Notice on a form approved by the CITY. XSLS shall be responsible for ensuring that Notices are mailed to the address of alleged violators within fourteen (14) days of the Violation date. XSLS shall only mail a Notice with the final approval and signature of an authorized police officer. Notwithstanding this subsection, XSLS shall have no liability under this section if the delay or failure to perform is as a result of any matter or reason beyond XSLS' control.
- 2.5.6 Unless otherwise directed by the CITY in writing, all images and video of records that have been authorized by the Police Department to be mailed by the Police Department will be kept for the duration of the contract. All images and video of records that have not been authorized to mail or determined not to be a violation will be purged

90 days from the record capture date.

2.5.7 XSLS will be responsible for the printing and mailing of all approved forms, including postage costs, as well as other miscellaneous costs and expenses as may be reasonably necessary to issue a Notice and deliver it by first class U.S. Mail.

2.5.8 In the event the Police Department (i) fails to review electronic record detailing a potential violation for determination of Notice issuance within six (6) days of receipt of the report thereof, resulting in XSLS' inability to mail an otherwise valid Notice within statutory timelines or (ii) the Police Department declines to issue a Notice of meeting the statutory criteria for a Notice (provided that no event that would fall under Article 14 of the Agreement has occurred that would prevent the issuance of such Notice), for each such failure XSLS shall receive a credit of the value of the citation (currently \$85) towards CITY Program Revenues for purposes of Section 4.0. of the Agreement. (For example, if the City Program Revenues for a given month are \$1,000, and during such month 10 otherwise valid violations are not reviewed or approved by the Police Department within the six days, such that XSLS cannot timely mail Notices for such citations within the statutory deadline, then \$850 (10 x \$85) would be credited to CITY Program Revenues, resulting in an actual and imputed total of \$1850 in City Program Revenues.)

2.6 Red Light Camera Training

XSLS agrees to provide training sessions for Vendor System software including Citeweb, e-TIMS and Units to designated CITY representatives

2.7 Customer Service

XSLS shall provide a toll free telephone number, which may be called by the public between the hours of 8:00a.m. EST and 5:00p.m. EST Monday through Friday, excluding CITY holidays. XSLS will handle phone calls from the public regarding questions about their specific Notice, the general system, or any other miscellaneous questions that may be asked. XSLS will also provide an Integrated Voice Response System, Pay-by-Web System, and offer twenty four (24) hour access to violation images, video and account data to citizens over the web through a secured web site.

2.8 Court Process

In the event that an individual elects to challenge the issuance of a Notice, XSLS shall provide the ability for the CITY through Citeweb/e-TIMS to schedule hearing dates, record an evidence package for court hearings and record hearing dispositions.

2.9 Warning Signs

CITY shall select, approve, provide and install warning signs. The design shall be selected and approved by the Department of Traffic Engineering and will be placed at CITY-approved locations. The CITY shall maintain all warning signs after installation, including the replacement of signs, if damaged. The warning signs will meet all state and local standard sign requirements.

2.10 License

In consideration of the fees and payments set forth in Exhibit 1 herein, XSLS hereby licenses Vendor System, including all necessary equipment, software and related services for the monitoring of intersection Approaches to the CITY solely for use in documenting Violations and collecting fines in accordance with and in support of the CITY's Program and the terms hereof. Except as otherwise noted herein, all of the Vendor System including services, software and enforcement equipment utilized and/or provided by XSLS in support of this Program is and shall remain the sole and exclusive property of XSLS and shall as applicable be returned to or removed by XSLS upon termination of the underlying contract.

2.11 Commencement of Performance

XSLS performance obligations shall commence as of the date this Agreement is signed by both the CITY and XSLS.

2.12 Schedule

Upon identification and selection by CITY of new locations for photo enforcement, XSLS shall proceed with construction and implementation of intersection Approaches in accordance with a mutually agreeable construction schedule. XSLS shall not be held responsible for delays in construction associated with weather, permitting or other causes beyond its control. CITY will assist in expediting the permit and approval process so as not to needlessly delay the schedule agreed upon.

2.13 Contract Administration

The CITY and XSLS shall each designate a representative as point of contact as set forth in Section 24.0. All activities performed by XSLS shall be coordinated with these representatives.

2.14 CITY Responsibilities

Notwithstanding any other responsibility or requirement of the CITY set forth in this Agreement, the CITY shall:

- 2.14.1 Provide all relevant documentation in its possession to XSLS upon request in order to minimize duplication of efforts. The CITY shall work with XSLS to facilitate performance of services herein.
- 2.14.2 Provide all electrical power from the Traffic Controller required by the Units, CITY shall not be liable for interruptions in power that are beyond the CITY's control.
- 2.14.3 If available, CITY will provide XSLS with "as-built" drawings for the preparation of drawings for the installation of the Units.
- 2.14.4 Assist XSLS in expediting the permit approval process so as not to delay the installation and implementation of equipment in accordance with the construction schedule agreed to by the parties.
- 2.14.5 Inspect and give final written acceptance of all intersection/Approach construction and installation prior to that intersection/Approach becoming fully operational.

3.0 PERSONNEL

- 3.1 It is understood and agreed that XSLS is an independent CONTRACTOR and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. XSLS shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of CITY. XSLS shall have no power to incur any debt, obligation or liability on behalf of the CITY, or otherwise act on behalf of the CITY as an agent.
- 3.2 XSLS shall be solely responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. CITY shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, and local taxes, or other compensation, benefits, or taxes, for any personnel provided by or on behalf of XSLS.
- 3.3 XSLS understands and agrees that all persons directly hired by XSLS and performing work under this Agreement are, for purposes of workers' compensation liability, the sole employees of XSLS or its subcontractors or suppliers and not employees of the CITY. XSLS shall be solely liable and responsible or require its subcontractors to be responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of XSLS pursuant to this Agreement.

4.0 COMPENSATION

- 4.1 The CITY in accordance with the terms and conditions set forth in Exhibit 1,

Compensation Provisions, shall pay all compensation to XSLs under this Agreement. Unless otherwise agreed to, all payments shall be made to XSLs within thirty (30) days of invoicing.

- 4.2 No cost to the CITY – Cost Neutral: “City Program Revenues” shall be equal to all amounts collected for the Program or imputed as collected in accordance with Section 2.5.8 above, less any actual amounts that the CITY paid to the State of Rhode Island per applicable law where actual amounts paid to the State of Rhode Island are not to exceed \$35 per citation. In the event that the total City Program Revenues received in any given month do not exceed the total XSLs Fixed Fee for such month (“Shortfall”), the Shortfall amount shall be deferred and carried forward to the following month’s invoice submitted by XSLs to the CITY. Any Shortfall amount shall continue to accrue each month for the life of the Agreement until paid in full. When total City Program Revenues in any given month exceed, or have exceeded in previous months, the total XSLs Fixed Fee for any month (“Surplus”), then such Surplus shall be applied to any cumulative Shortfall due to XSLs until all Shortfall amounts are paid in full. If a Shortfall exists at the end of the Agreement Term, including all option years, XSLs agrees to waive any and all rights to collect such Shortfall due from the CITY.
- 4.3 The focus of this Program, as well as any outreach and community education campaigns conducted by the CITY, will be to encourage drivers to reduce Violations. Accordingly the parties agree that the compensation paid to XSLs is in consideration of the Vendor System, i.e. the equipment provided which includes all related services rendered and provided in support of the equipment and Program and not based on the number of traffic citations issued.

5.0 TERM

The term (“Term”) of this Agreement shall be five (5) years, unless sooner terminated, in whole or in part, as provided in this Agreement. This period shall commence upon the signing of this Agreement by both the CITY and XSLs. The CITY shall have the exclusive right to extend the Term for one (1) additional three (3) year option term (“Option Term”) by providing written notice to XSLs to that effect at least thirty (30) days prior to the expiration of the Term.

6.0 TERMINATION

- 6.1. Termination for Cause: Either XSLs or the CITY shall have the right to terminate this Agreement for a material breach provided that the non-defaulting party shall first have notified the other party in writing of the proposed default, and the specific grounds therefore, and given the other party a thirty (30) day period to cure or to demonstrate that such cure cannot be effected within thirty (30) days and be diligently working towards such cure.
- 6.2 Force Majeure: Except for the obligation to pay amounts due and owing by CITY, neither party shall be liable for any delay or failure of performance due

to any reason or unforeseen circumstance beyond the affected party's reasonable control, including acts of God, war and war measures (whether or not a formal declaration of war is in effect), civil unrest, epidemics, delay in Traffic Engineering, delivery or supply, or labor disputes. The obligations and/or rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of excusable delay. However, in the event that a Force Majeure event shall last for more than thirty (30) days, either party may terminate this Agreement upon written notice to the other party. The requesting party shall treat such termination as a termination for convenience.

- 6.3 Program Contrary to Law:** The CITY has the right to terminate this Agreement upon thirty (30) days written notice to XSLS in the event state or federal statutes are amended or regulations or ordinances adopted by agencies within the jurisdiction prohibit or materially change the operation of photo enforcement systems so as to make it reasonably impractical to operate the program contemplated by the parties under this Agreement, including, without limitation, changes that would prohibit such program.,
- 6.4 Termination for Convenience:** CITY may terminate this Agreement without cause and in its sole discretion at any time by giving XSLS thirty (30) days written notice of such termination.
- 6.5** In the event the CITY terminates the Agreement pursuant to subsections 6.2, 6.3 or 6.4 above, CITY shall be liable to XSLS for: any fees due XSLS under Exhibit 1 for services rendered up to the time of termination; all Unit de-installation costs; any prepaid amounts under equipment or software maintenance agreements that XSLS has executed in order to properly maintain the applicable equipment and software; and any unamortized Unit costs. For purposes of this Section 6.5, "unamortized Unit costs" shall mean any unamortized costs or remaining lease balances for installed Units (including design, labor, equipment and construction costs)..

Unamortized costs would be calculated as follows: W = Number of Installed Units

X = the number of months remaining in the contract Term

Y = Length of the contract Term

X/Y = the pro rata percentage of remaining contract

Z =average Unit cost of each installed Unit (including design, labor, equipment and construction costs)

$(X/Y) \times Z \times W$ = amount to be paid as cancellation fee

For example, if ten (10) Units are installed by the fifteenth (15th) day of the fifty-first (51st) month of the Agreement, when the termination for

convenience is exercised by the CITY, the cancellation fee would be calculated as follows:

W = 10 Units installed

Y = 60 months (length of the contract Term)

X= 8.5 months remaining in the contract Term (60 months- 51.5 months elapsed)

Z = \$125,000 per Unit

X/Y = 14.2% (8.5 months/60 months)

(X/Y) x Z x W 14.2% x \$125,000 x 10 Units

Cancellation Fee \$177,500.00

6.6 Termination for Convenience by XSLS: XSLS may terminate this Agreement without cause and in its sole discretion at any time by giving the CITY ninety (90) days written notice of such termination.

6.7 XSLS agrees that upon receipt of a written notice of termination, it shall obtain the CITY's prior written approval to commit to any further expenditure under this Agreement.

6.8 In the event of termination of this Agreement by either party, both parties agree that any and all materials, data and other information of any kind obtained from the other party shall be returned to the other party or destroyed, at the other party's option. Exercise of said option shall be in writing between the parties. Return or destruction of said information shall not relieve the Parties of the obligations of Article 10.0, Proprietary Considerations and Data Security.

7.0 AMENDMENTS

Any change or modification, which affects the scope of work, period of performance, payments, or any other term and condition included in this Agreement, shall be in writing and executed by the authorized officials of both parties.

8.0 INDEMNIFICATION AND INSURANCE

8.1 XSLS shall indemnify and hold harmless the CITY, its elected and appointed officials, officers, employees, and agents from and against actual damages including reasonable attorneys' fees, resulting from XSLS' sole negligent acts,

errors, or omissions, except to the extent such losses arise from the negligence or misconduct of the CITY, its employees or agents, or third parties outside of XSLS' control.

- 8.2 CITY agrees to indemnify, defend and hold harmless XSLS and its officers, directors, shareholders, affiliates, employees and agents against any and all threatened or pending claims, actions, losses and damages of any kind (including all costs and expenses and reasonable Solicitor fees) arising out of or in connection with: (i) death or injury or damages of any nature to person or property arising out of the CITY's use or operation of Program equipment, or (ii) as a result of the negligent or willful misconduct or intentional wrong of the CITY, its employees or agents.
- 8.3 Except for the fees and amounts expressly due and payable to XSLS hereunder, in no event shall either party to this agreement be liable to the other party hereunder for any claims, penalties or damages, whether in contract, tort, or by way of indemnification, in an amount exceeding the fees or other charges paid by CITY to XSLS during the twelve (12) months preceding the claim. Under no circumstances will either party to this agreement be liable for any incidental, consequential, indirect, punitive or special damages arising out of or in connection with this agreement, however caused and based on any theory of liability.
- 8.4 All Units, Unattended Housings and other equipment provided by XSLS and used in the performance of this Agreement are the sole and exclusive property of the XSLS. The CITY shall pay or reimburse XSLS for any and all damage to the Units, Unattended Housings or other equipment provided by XSLS and used in the performance of this Agreement as a result of the negligence of the CITY, or any of its employees or agents. XSLS will notify CITY of the damage within thirty (30) days from the discovery of the damage by XSLS.

8.4 Insurance Policy Requirements

- 8.4.1 XSLS shall purchase and maintain the insurance required in this paragraph. XSLS shall maintain, at its own expense, Commercial General Liability Insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. All insurance shall be maintained continuously during the life of the Agreement. All insurance required by the Agreement to be purchased and maintained by XSLS shall be obtained from insurance companies that are duly licensed or authorized in the State of Rhode Island. XSLS shall require each subcontractor similarly to provide commercial general liability at subcontractors' expense.
- 8.4.2 XSLS shall furnish the CITY a standard certificate of liability insurance in which the CITY is an additional insured for claims caused by the negligent acts or omissions of XSLS on the commercial

general liability. Such additional insured requirement may be met on a blanket type basis.

- 8.4.3** XSLS will maintain a program of workers' compensation insurance in an amount and form to meet all applicable requirements, including employer's liability. This insurance shall protect XSLS against all claims under Rhode Island worker's compensation laws. XSLS shall require each subcontractor similarly to provide worker's compensation insurance for all of the latter's employees to be engaged in such work at subcontractor's expense.

9.0 RECORDS AND AUDITS

XSLS shall maintain financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. XSLS shall also maintain employment records arising from its performance of this Agreement. XSLS agrees that the CITY, or its authorized representatives, upon reasonable notice, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to XSLS submitted invoices in accordance with this Agreement during normal business hours. Such material shall include applicable financial records (except that it shall not include XSLS' costing rates, actual costs and profit), time cards, and other necessary employment records (subject to applicable confidentiality restrictions) to validate the invoices. Records shall be kept and maintained by XSLS and shall be made available to the CITY during the Term of this Agreement and for a period of one (1) year thereafter, unless a longer period is required by Federal or State regulation. All such material shall be maintained by XSLS. The CITY agrees to maintain the confidentiality of such materials, at a minimum, in accordance with the provisions of Article 10. Proprietary Considerations and Data Security.

10.0 PROPRIETARY CONSIDERATIONS/SECURITY/CONFIDENTIALITY

- 10.1** Proprietary Rights - All materials, data and other information of any kind obtained from either party shall only be used in the performance of this Agreement. All materials, data, reports, programs, vendor software and other information of any kind whether developed or supplied by XSLS in the performance of this Agreement are confidential to and remain solely the property of XSLS. The provisions of this Paragraph shall survive the expiration or other termination of this Agreement. The confidentiality provision in this Agreement pertains to any information that does not transfer to the City and is returned to XSLS upon contract termination. Therefore the information subject to confidentiality including Vendor System as defined do not become public records and therefore not subject to release under the Rhode Island Access to Public Records Act ("APRA"). However, prior to any release of information under APRA, the CITY shall notify XSLS of any request to release purported confidential/proprietary information so that XSLS to support claims of confidentiality or institute legal proceedings to prevent the requested disclosure.

- 10.2** In addition, XSLS and the City agree that all records of a confidential nature including, but not limited to, images captured by the Red Light Camera System and information obtained through the DMV will be maintained according to the standards set forth by the DMV and the requirements of the CITY.

11.0 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION

- 11.1** Reservation of Rights. The CITY hereby acknowledges and agrees that: (a) XSLS is the sole and exclusive owner of the Vendor System, XSLS trademarks, all Intellectual Property arising from or relating to the Vendor System, and any and all related equipment provided under this Agreement; (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.
- 11.2** Restricted Use. The CITY hereby acknowledges and agrees that it shall not (a) make any modifications to the Vendor System, including but not limited to any Equipment; (b) alter, remove or tamper with any XSLS trademarks; (c) use any of XSLS trademarks in any way which might prejudice their distinctiveness, validity or the goodwill of XSLS therein; (d) use any trademarks or other marks other than XSLS trademarks or CITY Marks, in connection with the CITY's use of the Vendor System pursuant to the terms of this Agreement without first obtaining the prior consent of XSLS; or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Vendor System including, but not limited to, any Equipment, or to any Intellectual Property or Proprietary Information of XSLS
- 11.3** Protection of Rights. XSLS shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of XSLS including, without limitation, the filing of applications to register as trademarks in any jurisdiction any of XSLS trademarks, the filing of patent application for any of the Intellectual Property of XSLS, and making any other applications or filings with appropriate Governmental Authorities. The CITY shall not, in its own name, make any registrations or filings with respect to any of XSLS trademarks or the Intellectual Property of XSLS without the prior written consent of XSLS.
- 11.4** Infringements. XSLS certifies that XSLS is unaware that the products and services to be furnished to the CITY pursuant to this Agreement infringe on any valid patent, trademark, copyright, trade secret or other proprietary right. Notwithstanding the preceding sentence, XSLS shall indemnify and hold harmless the CITY, its elected and appointed officials, officers, employees, agents, and servants, from and against actual claims, of whatsoever kind or nature, and the resulting losses, sustained by the CITY by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to the authorized use of products or services furnished pursuant to this Agreement. XSLS will defend, at its sole

cost and expense, with legal counsel reasonably acceptable to the CITY, any claim brought against the CITY, to the extent that it is based on a claim that all or any products or services furnished to CITY by XSLs pursuant to this Agreement, to be unusable as a result of any such infringement or claim. Subject to the terms of section 6, any infringement or claim that renders all or any products or services furnished pursuant to this Agreement to be unusable, or materially affects XSLs System, shall be grounds for termination of this Agreement if XSLs does not or cannot modify existing or provide substitute products and services that are functionally equivalent to existing products and services provided in performance of this Agreement.

12.0 CONFLICT OF INTEREST

XSLs is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices.

- 12.1** XSLs shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.
- 12.2** XSLs' personnel shall not accept gratuities or any other favors from any sub-consultants or potential sub-consultants. XSLs shall not recommend or specify any product, supplier, or XSLs with whom XSLs has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

If XSLs violates any conflict of interest laws or any of these provisions, the violation shall be grounds for termination of this Agreement.

13.0 WARRANTIES

XSLs warrants that:

- 13.1** XSLs shall perform work in accordance with the specifications, requirements, standards, and representations set forth in this Agreement.
- 13.2** All tasks, deliverables, goods, services, and other work shall be provided in a timely and professional manner.
- 13.3** Any software (other than proprietary routines developed for internal use) or data analysis used by XSLs shall be available to the CITY during the Term of this Agreement, provided that this warranty shall only apply to software or data analysis owned by, licensed or under control of XSLs.
- 13.4** Except for the obligations to perform certain services in accordance with the terms and conditions of this Agreement and those warranties set forth specifically above, XSLs makes no other express warranties to CITY with

respect to Program equipment and/or related matters, and all warranties, whether express, implied or statutory, and all obligations and representations as to performance, including (without limitation) all warranties which might arise from the course of dealing or custom or usage of trade and including all implied warranties of marketability or fitness for a particular purpose, are hereby expressly excluded and disclaimed by XSLS. no agent, officer, employee or representative of XSLS has any authority to make any affirmation, representation or warranty for XSLS with respect to the units or related matters other than that as expressly set forth here.

14.0 COMPLIANCE WITH APPLICABLE LAW

14.1 Both parties shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

14.2 All XSLS personnel providing services under this contract, which require specific Federal, State or local governmental licenses or credentials, shall maintain such licenses or credentials current and valid throughout the period of contract performance. XSLS shall maintain a file of required licenses and credentials for the business entity and for all subject employees, which is current at all times and accessible to the CITY for inspection.

15.0 FAIR LABOR STANDARDS

XSLS shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless the CITY, their officers, employees and agents from any and all liability, including, but not limited to, wages, overtime pay, and penalties, arising under any wage and hour law, including but not limited to, the Federal Fair Labor Standards Act, for work performed by XSLS' employees.

16.0 NON-DISCRIMINATION REQUIREMENTS

XSLS shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of sub-consultants, vendors or suppliers. XSLS understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between XSLS and any sub-consultants, vendors and suppliers.

17.0 CAPTIONS AND PARAGRAPH HEADINGS

Captions and paragraph headings used in this Agreement are for convenience only and are not part of this Agreement and shall not be used in construing this Agreement.

18.0 WAIVER

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision. Failure of any party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The specific rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

19.0 GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Rhode Island.

20.0 SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

21.0 AUTHORIZATION

Both parties represent and warrant that the person executing this Agreement for that party is an authorized agent who has actual authority to bind that party to each and every term, condition, and obligation of this Agreement and that all requirements of both parties have been fulfilled to provide such actual authority.

22.0 NOTICES

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties at the following addresses. Addresses may be changed by either party giving ten (10) days prior written notice thereof to the other party.

If to XSLS:
Xerox State & Local Solutions, Inc.
12410 Milestone Center Drive
Germantown, MD 20005
Attention Sr. Contract Manager

If to the CITY:

CITY Providence
Attn: Director of Public Property
25 Dorrance Street
Providence, RI 02903

23.0 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto; provided, however, this provision shall not be deemed to authorize XSLS to assign or otherwise transfer its rights and obligations under this Agreement without prior approval of the CITY, which such approval shall not be unreasonably withheld. Any assignment or transfer without prior approval of the CITY shall be void.

24.0 ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or written, between the parties, and contains all of the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any parties, which are not embodied herein.

25.0 EXECUTION

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

28.0 INFORMAL DISPUTE RESOLUTION

At the request of either party, the parties will attempt to resolve any dispute arising under or relating to the Agreement, through an informal resolution process mutually agreed to by the parties.

**** EXECUTION PAGE FOLLOWS ****

IN WITNESS WHEREOF, CITY and XSLS have caused this Agreement to be signed by their duly authorized officers or representatives on the day and year as written.

CITY OF PROVIDENCE, RHODE ISLAND

By:
Print Name:
Title:
Date:

XEROX STATE & LOCAL SOLUTIONS, INC.

By *Allen Shutt*
Title: *Allen Shutt*
SVP
Date: *6/26/17*

I HEREBY APPROVE the form and legality of the foregoing Agreement.
CITY Solicitor

Print Name:
Title:
Date:

EXHIBIT 1

COMPENSATION PROVISIONS

- a. XSLS shall invoice the City as follows:
 - 1. Existing Approaches: \$1,600 fixed equipment fee per month.
 - 2. Retrofit and New Approaches:
 - i. \$1,800 fixed equipment fee per month
 - ii. \$15.55 per Potential Violation processed
 - iii. Total monthly compensation to XSLS for Retrofit and New Approaches shall not exceed \$3,950 multiplied by the total number of Retrofit and New Approaches. This cap shall increase annually by three percent (3.0%) beginning in month thirteen (13) of the term.
- b. End users shall be charged a three dollar fifty cent (\$3.50) credit card convenience fee to be retained by XSLS; XSLS shall be responsible for payment of credit card processing and inter-change fees.
- c. XSLS shall provide the CITY a total forty thousand dollar (\$40,000) invoice credit on services performed in May 2014 and June 2014 applied equally over the two (2) month period.
- d. A three percent (3.0%) price increase will be applied annually to the Potential Violation processed fee set forth in subsection (a)(2)(ii) above beginning in month thirteen (13) of the Term.
- e. XSLS fees are based on providing technology capable of capturing evidence including the traffic light signal violation monitoring system and equipment, and all related support services under current Rhode Island and CITY laws.

EXHIBIT 2

ADDITIONAL PROVISIONS

- a. XSLS shall mail up to two (2) Notices per issued violation (the original Notice plus one late notice as applicable).
- b. Upon execution of the Agreement, the Existing Approaches will remain in operation until retrofitted or shut down on a one for one basis as New Approaches go live. XSLS reserves the right to keep the infrastructure for Existing Approaches in place as decoy systems.
- c. Unless otherwise agreed by the parties, new Units will only be installed at New Approaches with video validations demonstrating a minimum of twenty (20) violations within a sixteen (16) hour period excluding right turns (the "Minimum Criteria").
- d. The Retrofit Approaches are as follows:
 - 1. **Service Road 7 SB @ Broadway**
 - 2. **Eaton EB @ Huxley**
 - 3. **Waterman EB @ Gano**
 - 4. **Angell WB @ Gano**
 - 5. **Broad SB @ Baker**
- e. The City shall enforce left turn, straight through, and right turn violations. Right turn violations shall include both turns expressly prohibited by signage and rolling right turns reflecting continuous movement of the vehicle.
- f. XSLS will provide the CITY with five (5) desktop computers to be installed at the Police Department.
- g. In the event that enabling legislation is passed allowing the issuance and enforcement of speed violations utilizing photo enforcement equipment, XSLS will process the speed violations and charge the CITY fifteen dollars (\$15.00) per issued violation or an equivalent potential violation processed or fixed fee as required by law.