



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
October 6, 2010**

TO: Mayor and City Council
FROM: Tom Simonetti, Chief of Police
PREPARED BY: Commander Eric Ghisletta
SUBJECT: City of Martinez License Agreement with Safeway Inc.
DATE: September 29, 2010

RECOMMENDATION:

It is recommended that the City Council approve the license agreement with Safeway Inc. in order to proceed with the Public Safety Camera System installation.

BACKGROUND:

On July 21, 2010, Council approved the Public Safety Camera contract with Odin Systems (Resolution 086-10). One of the locations for a possible camera installation is the Safeway Building located at 3334 Alhambra Ave. In order to move forward with this project, a license agreement with Safeway Inc. is needed to begin the installation of equipment. The attached license agreement has been reviewed by City staff.

FISCAL IMPACT:

None.

ACTION:

Motion to approve license agreement with Safeway Inc.

A handwritten signature in black ink, appearing to read "Phil Vance".

APPROVED BY: City Manager

1 **LICENSE AGREEMENT**

2
3 THIS LICENSE AGREEMENT ("Agreement") is entered into this 6th day of October,
4 2010, by and between **SAFEWAY INC.**, a Delaware corporation ("Licensor") and **THE CITY**
5 **OF MARTINEZ** ("Licensee").

6 **RECITALS**

7 A. Licensor leases that certain real property, including the building thereon identified
8 as "Safeway BLDG" on Exhibit A attached hereto and made a part hereof (such building being
9 hereinafter referred to as the "Safeway Building") located at 3334 Alhambra Avenue, Martinez,
10 California (the "Licensor's Property"). Licensor has fully right and authority to enter into this
11 Agreement.

12 B. Licensee desires to, at its sole expense, install, operate and maintain a rooftop video
13 camera on the northwest corner of the roof of the Safeway Building (the "Permitted Uses") in
14 the approximate location shown on Exhibit A hereof (the "Licensed Area"), which Permitted
15 Uses will include reasonable access to the Safeway Building and the rooftop Licensed Area
16 thereof, to install, operate and maintain such rooftop video camera and to connect such rooftop
17 video camera to Licensor's electric service for the Safeway Building as reasonably necessary to
18 power the operation of such rooftop video camera.

19 C. Licensor desires to grant a license to Licensee for the sole purpose of engaging in
20 the Permitted Uses on and within the Safeway Building on the terms and conditions stated
21 herein, and Licensee desires to accept such license on such terms and conditions.

22 **AGREEMENT**

23 **NOW, THEREFORE**, in consideration of the mutual covenants and conditions
24 contained herein, Licensor and Licensee hereby agree as follows:

25 **1. Incorporation of Recitals.**

26 The parties hereto hereby agree that each of the foregoing recitals is true and correct and
27 are hereby incorporated herein by this reference.

28 **2. Grant of License**

29 Licensor hereby grants to Licensee a revocable, non-transferable, non-exclusive license
30 to use the Licensed Area for the sole purpose of the Permitted Uses; provided Licensee first
31 obtains all necessary governmental permits and approvals for the installation, operation and
32 maintenance of such rooftop video camera. Such rooftop video camera is initially to be a Sony
33 SNC-RZ25N PTZ Network Camera w/18x Optical Zoom, 0.7lux Color, 0.6lux B/W, High
34 bandwidth 5ghz Wireless Camera Station, as shown on Exhibit B attached hereto and made a
35 part hereof. However, it is understood that Licensee may, from time to time, find it necessary
36 to substitute a different rooftop video camera model. The exact location of the rooftop video
37 camera/Licensed Area, as well as Licensee's substitution of a different rooftop video camera

1 model, are each subject to Licensor's prior written approval, such approval not to be
2 unreasonably withheld, conditioned or delayed, recognizing that Licensor is concerned about
3 the size and weight of such rooftop video camera on its building and assurance that the
4 operation of such rooftop video camera, in particular the wireless feature thereof and the
5 electrical connection thereof to Licensor's electrical service, do not cause problems for
6 Licensor's use and operation of the Safeway Building and Licensor's (and any of its subtenants
7 or licensees) business operations therein. Unless Licensor agrees to the contrary, the rooftop
8 video camera, including any substitute therefore, shall only operate off of a standard 110
9 electrical hookup. Licensee, at its sole expense, shall be responsible for the connection of such
10 electrical hook up to Licensor's electrical service at a location and in a manner to be approved
11 by Licensor, such approval not to be unreasonably withheld, conditioned or delayed. However,
12 Licensor shall have no liability to Licensee, nor to any other party, either expressed or implied:
13 (i) for any interruption in the electrical service, from any cause, to either the Safeway Building
14 or to the rooftop video camera equipment, nor (ii) for the operation, or non operation, of the
15 rooftop video camera, nor (iii) for anything which may be revealed, or not revealed, to
16 Licensee, or anyone else, by such rooftop video camera. Licensor's approval is needed for the
17 electrical contractor whom Licensee will use to connect the rooftop video camera to Licensor's
18 electrical service.

19 **3. License Fee**

20 There is no cash fee for the license granted to Licensee herein. Consideration shall be
21 Licensee's full, faithful and timely performance of its obligations set forth in the Agreement.

22 **4. Term**

23 The term of this Agreement shall commence at midnight. on October 7, 2010, and shall
24 terminate at midnight on December 31, 2019 (the "Term"); except, however, that either party
25 may terminate this Agreement at any time upon at least thirty (30) days prior written notice to
26 the other party.

27 **5. Insurance and Indemnity**

28 Licensee shall at all times during the Term, at Licensee's sole expense, maintain in effect
29 workers' compensation insurance and personal injury liability and property damage liability
30 insurance in an amount not less than 1 Million Dollars (\$1,000,000) combined single limit
31 coverage against liability for personal injury to or death of any person or damage to the
32 Licensed Area and/or the balance of the Safeway Building, and/or the balance of Licensor's
33 Property (collectively the "Property") arising out of or in connection with the use, operation or
34 maintenance by Licensee of the Licensed Area and the rooftop video camera and related
35 equipment, and shall cause Licensor to be named as an additional insured in such insurance
36 contract. Licensee shall deliver a certificate of insurance or a copy of said insurance policy to
37 Licensor as soon as is reasonably possible following execution of this Agreement.

38 Licensee shall indemnify and hold Licensor harmless against and from any and all claims
39 arising from Licensee's use, operation and/or maintenance of the Licensed Area and/or the
40 Property, including the removal of the rooftop video camera and any related equipment upon
41 termination of this Agreement, and shall further indemnify and hold Licensor harmless against
42 and from any and all claims arising from any breach or default in the performance of an

1 obligation on Licensee's part to be performed under the terms of this Agreement, or arising
2 from any act or failure to act or negligence of Licensee or any officer, agent, employee, guest,
3 or invitee of Licensee, and from all costs, attorney's fees, and liability incurred in or about the
4 defense of any such claim or any action or proceeding brought hereon, and in case any action or
5 proceeding be brought against Licensor by reason of such claim, Licensee shall upon notice
6 from Licensor defend the same at Licensee's expense by counsel reasonably satisfactory to
7 Licensor.

8 **6. Termination of License**

9 Upon termination/expiration of this license, Licensee, at no expense to Licensor, shall
10 (i) remove any and all of its equipment and other personal property from the Licensed Area, (ii)
11 repair any damage to the Safeway Building caused by the installation, operation, maintenance
12 or removal of the rooftop camera and other equipment, and (iii) place the Licensed Area into
13 the condition as existed prior to the commencement of this Agreement.

14 **7. Maintenance and use of Licensed Area**

15 Licensee has inspected the Licensed Area and has found it to be in acceptable condition.
16 Licensor makes no representation or warranty concerning (i) the condition of the Licensed
17 Area, (ii) the suitability of the Licensed Area for Licensee's intended use, and/or (iii) the
18 suitability of the rooftop camera and its related equipment (including any permitted substitute
19 rooftop camera and/or related equipment) for Licensee's intended use thereof. It is agreed that
20 Licensor shall not be liable for any injury to person or property which may be caused by: (a)
21 the condition of the Licensed Area, (b) Licensee's entrance onto the Licensed Area, (c)
22 Licensee's undertaking of the Permitted Uses, (d) the operation, or non operation, of the
23 rooftop video camera, and/or (e) anything which may be revealed, or not revealed, to Licensee,
24 and/or anyone else by such rooftop video camera. It is understood that, as part of the
25 Permitted Uses, Licensee, at no expense to Licensor, will be maintaining the rooftop video
26 camera, any related equipment, and the Licensed Area in good condition and repair. Licensor
27 shall have no liability for any injury to person or property of Licensee as a result of such
28 actions.

29 **8. Restriction on Use**

30 Licensee shall comply promptly with all applicable statutes, ordinances, rules,
31 regulations, orders and requirements, governmental or otherwise, relating to Permitted Uses
32 and the use of the Licensed Area. Licensee shall not use or permit the use of the Licensed Area
33 for any purpose other than the Permitted Uses or in any manner that will tend to create a
34 nuisance or tend to disturb or endanger any other party. Licensor reserves the right to further
35 regulate the activities of Licensee at the Licensed Area, and Licensee agrees to abide by such
36 further regulations of Licensor.

37 **9. Hazardous Materials**

38 Licensee is strictly forbidden to use, store or transport hazardous materials in, on or
39 about the Licensed Area or the Property. The term "hazardous materials" is used in its very
40 broadest sense, and refers to materials which because of their quantity, concentration, or
41 physical, chemical, or infectious characteristics may cause or pose a present or potential hazard

1 to human health or the environment when improperly handled, treated, stored, transported,
2 disposed of, or otherwise managed. The term shall include, but not be limited to, all hazardous
3 substances, hazardous materials and hazardous wastes listed by any applicable federal, state or
4 local law, ordinance, statute, rule or regulation.

5 **10. Compliance With Environmental Laws**

6 Neither Licensee nor its agents, employees or contractors, shall cause or permit
7 Hazardous Materials to be brought upon, kept or used in, on or about the Licensed Area or the
8 Property. Licensee shall immediately notify Licensor of any inquiry, test, investigation or
9 enforcement proceeding by or against Licensee involving the Licensed Area or the Property
10 and a Hazardous Material.

11 If at any time during or after the Term hereof, any Hazardous Materials are found to
12 exist in or on the Licensed Area or the Property (including the soils and underground water) or
13 to have contaminated the soils, air or underground water of the Licensed Area or the Property,
14 as the result of any act or omission of Licensee, its agents, contractors, employees or invitees,
15 then Licensor, at the sole cost and expense of Licensee, shall arrange for the necessary removal
16 and/or remediation, provided that neither Licensor nor its agents, employees or contractors
17 caused the contamination requiring removal and/or remediation. Each party shall indemnify,
18 defend, protect and hold harmless the other party (and its successors and assigns, directors,
19 officers, employees and agents) from and against any and all liability, claims, demands, losses,
20 causes of action, costs and expenses (including reasonable attorneys' fees) arising out of the
21 indemnifying party's failure to comply with any of its obligations hereunder. Licensee's
22 obligations pursuant to the foregoing indemnity shall survive the expiration or sooner
23 termination of this Agreement.

24 **11. Prohibition on Assignment**

25 Licensee shall not assign, transfer or otherwise convey the license granted hereunder or
26 any other rights hereunder or any portion thereof.

27 **12. Notices**

28 Any notice or demand required or permitted to be given hereunder shall be in writing
29 and may be served personally or by mail; if served by mail it shall be addressed to:

30 Licensor: Safeway Inc.
31 Attn: Manager, Real Estate Law
32 Re: Facility No. 939
33 5918 Stoneridge Mall Road
34 Pleasanton, CA 94588-3229

35 With copy to: Safeway Inc.
36 Nor Cal Division Real Estate Department
37 Attention: Nanci Stanley, Property Manager
38 5918 Stoneridge Mall Road
39 Pleasanton, CA 94588-3229
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Licensee: City of Martinez
Mayor Rob Schroder
525 Henrietta St.
Martinez, CA 94553

Any notice so given by mail shall be deemed effectively given when deposited in the United States mail, registered or certified, postage prepaid and addressed as specified above. Either party may, by written notice to the other, specify a different address for notice purposes.

13. Incorporation of Prior Agreements

This Agreement constitutes the entire agreement between Licensor and Licensee with respect to any matter covered or mentioned in this Agreement, and supersedes any and all prior representations, understandings and agreements, whether written or oral. No provision of the Agreement may be amended or modified except by an agreement in writing signed by the parties hereto or their respective successors in interest, and this Agreement may not be modified by an oral agreement whether or not such oral agreement is supported by new consideration.

14. Headings

All headings and captions used herein and the placement of particular provisions under certain articles or sections contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provisions hereof.

15. Waivers

No waiver by Licensor of any provision of this Agreement shall be effective unless in writing or shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Licensee of the same or any other provision.

16. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

17. Successors in Interest

This Agreement shall apply to and bind the heirs, successors, executors, administrators, representatives and assigns of the parties hereto.

18. Attorneys' Fees

In the event that either party hereto brings an action at law or in equity to enforce or seek redress for the breach of this Agreement, the prevailing party in such action shall be entitled to recover from the other the prevailing party's reasonable attorneys' fees and all costs thereby incurred.

1 **19. Relationship of the Parties**

2 Nothing contained in this Agreement shall be deemed to create the relationship of
3 principal and agent, or partnership or joint ventures or any other than the relationship of
4 Licensor and Licensee.

5
6 **IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement
7 on the respective dates set opposite their signatures below, but this License Agreement on
8 behalf of such party shall be deemed to have been dated as of the date first above written.

9 **LICENSOR:**

10 SAFEWAY INC.,
11 a Delaware corporation
12

13 By _____
14 Its Assistant Vice President

15
16 By: _____
17 Its Assistant Secretary

18
19 Form Approved _____
20

21 **LICENSEE:**

22 The City of Martinez

23 By _____
24 Its Mayor

25
26 By: _____
27 Its City Clerk

28
29 Form Approved _____
30 Its City Attorney