

AGREEMENT FOR RED LIGHT PHOTO ENFORCEMENT SERVICES

This AGREEMENT, made and entered into this 11TH day of SEPTEMBER, 2009, by and between CITY OF EL CAJON, a California municipal corporation (hereinafter referred to as "City") and REDFLEX TRAFFIC SYSTEMS, INC., a California corporation, (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, City desires to obtain the services of a Contractor to perform installation and support of camera units (each, a "Camera Unit," collectively in any combination, the "Camera Units") for a Red Light Photo Enforcement program for the enforcement of red light traffic violations at intersections within City of El Cajon; and

WHEREAS, Contractor has represented that Contractor possesses the necessary qualifications and experience to provide such services, and has been performing the same services with the City, and possesses the equipment, knowledge, and experience to continue to provide the services; and

WHEREAS, City desires to extend the existing contract with Contractor, utilizing the Camera Units already installed, in place, and operating in the city of El Cajon; and

WHEREAS, City has authorized the preparation of an agreement to retain the services of Contractor as hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Scope of Services.

Contractor shall provide services as described in Exhibit "A" entitled "Special Provisions," (the "Services") attached hereto and made a part hereof.

2. Compensation.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Contractor at the sum of Four Thousand Three Hundred Dollars and No Cents (\$4,300.00) each month, for each approach where Camera Units are installed and operational, at the following locations:

Main and Mollison
Fletcher Parkway and Magnolia, Westbound
Fletcher Parkway and Magnolia, Eastbound
Jamacha/Second and Main
Washington and Mollison
Magnolia and Madison, Northbound
Magnolia and Madison, Southbound

Commencing on the execution of this Agreement, the following location approaches will be provided to the City at no charge during the term of this Agreement:

Broadway and Mollison
Washington and El Cajon Blvd.

(b) City shall have the right to add new approaches under this Agreement. Notwithstanding subsection (a), above, upon the expiration of the warning period for each new approach as agreed upon by the City and the Contractor, the City shall pay the Contractor the Sum of Six Thousand Two Hundred Dollars and no Cents (\$6,200.00) each month.

(c) City shall have no financial liability to Contractor for red light camera system installation, service and maintenance except for the monthly fee set forth herein.

(d) Each month Contractor shall furnish to City an **original** invoice, which includes the total number of Camera Units that were installed and operational for the previous month. Except as to any charges submitted by Contractor, which are disputed by City, City will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor's invoice.

(e) Notwithstanding the above, should City elect, after initial installation, to modify the physical installation of Camera Unit(s), such modification will be billed by Contractor to City on a time and materials basis.

(f) Contractor's fee shall include and Contractor shall be responsible for the payment of all Federal, State, and local taxes of any kind that are attributable to the compensation received.

3. Term of Agreement and Extension.

Subject to the provisions of Section 4 below, "Termination of Agreement," the term of this Agreement shall be from the date of execution of this Agreement, as first shown above, and shall continue for a period of five (5) years. The parties may mutually agree to extend this Agreement for not more than four (4) one-year extensions.

Upon expiration or termination of this Agreement, Contractor shall provide all reasonable assistance and use its reasonable efforts to deliver to City, in an orderly and expedient manner, all records and photo files prepared for or belonging to City. Notwithstanding expiration or termination of the Agreement, City shall pay Contractor all amounts due and payable under this Agreement, and Contractor shall continue to provide the Services, for Violations occurring prior to the date of expiration or termination.

4. Termination of Agreement.

(a) City may terminate this Agreement, with or without cause, at any

time by giving thirty (30) days written notice of termination to Contractor. In the event such notice is given, Contractor shall cease immediately all work in progress.

(b) This Agreement may be terminated under the following circumstances:

(1) Upon expiration of the original term or any extension of this Agreement, unless extended in accordance with Section 3 "Term of Agreement and Extension."

(2) Upon thirty (30) days written notice to City if City fails to support the system pursuant to the terms of the Agreement, and City has not corrected such failure within said thirty-day period.

(3) Upon fifteen (15) days notice to Contractor if any court of last resort shall rule (other than dicta) that red light camera results are inadmissible or otherwise contrary to law.

(4) Upon fifteen (15) days notice to Contractor if any provision of California State Law, which authorizes operation of red light photo enforcement systems, is repealed or otherwise amended to prohibit the operation of such systems.

(5) Upon sixty (60) days notice to Contractor if payment provisions of this Agreement result in the dismissal or the exclusion from evidence of the photos and data provided by Contractor.

(6) Upon thirty (30) days written notice to City if City fails to pay amounts due to Contractor as specified in Exhibit "A."

(7) Upon thirty (30) days written notice to Contractor if Contractor fails to provide equipment or perform services required under this Agreement, and Contractor has not corrected such failure within said thirty (30) day period.

(8) Upon thirty (30) days notice to Contractor if City's legislative body fails to appropriate funds for the Services for any fiscal year.

(c) Upon termination of this Agreement as herein provided, Contractor shall provide all reasonable assistance and use its reasonable efforts to deliver to City, in an orderly and expedient manner, all records and photo files prepared for or belonging to City. Notwithstanding expiration of the Agreement, City shall pay Contractor all amounts due and payable under this Agreement, and Contractor shall continue to provide the Services, for Violations occurring prior to the date of expiration or termination.

(d) Within sixty (60) days of termination or expiration of this Agreement, all equipment belonging to Contractor shall be removed from public rights of way. Damaged infrastructure shall be repaired and left in a manner acceptable to City,

except that Contractor shall not be responsible for removal of any detection wiring, conduits or foundation bases below 24 inches from existing grade.

5. Confidential Relationship.

City may from time to time communicate to Contractor certain information to enable Contractor to effectively perform the Services. Contractor shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of City. Contractor shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the Services. The foregoing obligation of this Section 5, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of Contractor, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of Contractor without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to Contractor by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

Contractor shall not disclose any reports, recommendations, conclusions or other results of the Services or the existence of the subject matter of this Agreement without the prior written consent of City, which shall not be unreasonably withheld. In its performance hereunder, Contractor shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Subject to City's obligations under the Public Records Act, proprietary and technical information, including information about the use, design, specifications, and other matters related to the Red Light Camera System learned from and about Contractor during the term of this Agreement shall be held in confidence and shall not be used or disclosed by City without the express written consent of Contractor. City agrees that it will take all reasonable measures necessary to protect the secrecy and confidentiality of, and avoid disclosure or use of, the confidential information of and about Contractor.

The obligations of confidentiality shall not apply to information which: (i) has entered the public domain other than as a result of an act or omission of City, or (ii) which subsequent to disclosure hereunder is obtained by the recipient party on a non-confidential basis from a third party who has the right to disclose such information to the recipient party.

6. Office Space and Clerical Support.

Contractor shall provide its own office space and clerical support at its sole cost and expense.

7. Covenant Against Contingent Fees.

Contractor declares that it has not employed or retained any company or

person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, City shall have the right to annul this Agreement without liability, or, at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

8. Ownership of Documents.

All memoranda, reports, plans, specifications, maps and other documents prepared or obtained under the terms of this Agreement shall be the property of City and shall be delivered to City by Contractor upon demand.

9. Conflict of Interest and Political Reform Act Obligations.

During the term of this Agreement, Contractor shall not act as Contractor or perform services of any kind for any person or entity whose interests conflict in any way with those of City of El Cajon. Contractor shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. Contractor shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before City in which Contractor has a financial interest as defined in Government Code Section 87103. Contractor represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for City.

Contractor shall comply with all of the reporting requirements of the Political Reform Act and local ordinance. Specifically, Contractor shall file Statements of Economic Interest with City Clerk of City of El Cajon in a timely manner on forms, which Contractor shall obtain from the City Clerk.

10. No Assignments.

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which City, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void. If City consents to such subcontract, Contractor shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

11. Maintenance of Records.

Contractor shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall

make such materials available at its office at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement, for inspection by City and copies thereof shall be furnished, if requested.

Contractor agrees to prepare and submit financial, program progress, monitoring, evaluation, and other reports as required by City or by State law authorizing the use of automated enforcement systems. Contractor shall maintain and permit on-site inspections of such property, personnel, financial, and other records and accounts as are considered necessary by City to assure proper accounting for all Agreement funds. Subject to City's obligations under the Public Records Act, proprietary and technical information shall be deemed confidential as described in this Agreement.

To ensure proper performance of this Agreement and that the automated enforcement program service is operated by City, City will monitor, evaluate, and provide guidance to Contractor in the performance of this Agreement. Authorized representatives of City shall have the right of access to all activities and facilities operated by Contractor under this Agreement. Facilities include all files, records, and other documents related to the performance of this Agreement. Such activities will include attendance at meetings directly related to Contractor's performance of its duties to City. Contractor will ensure the cooperation of its staff in such efforts. City Traffic Engineer or her/his designee will conduct periodic program progress reviews.

12. Independent Contractor.

At all times during the term of this Agreement and any extension thereof, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's Services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Contractor accomplishes the Services as required under this Agreement. City is the operator of the automated enforcement system. At no time shall Contractor hold itself out as the operator of the system or conduct itself other than in accordance with the supervision and direction of City.

13. Licences, Permits, Etc.

Contractor represents and declares to City that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for Contractor to practice its profession.

14. Contractor's Insurance.

(a) With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors to maintain insurance as described below:

(1) Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000 per accident.

(2) Commercial general liability insurance with a combined single limit of not less than \$2,000,000 per occurrence. Such insurance shall include products/completed operations liability, owner's and Contractor's protective, blanket contractual liability, personal injury liability, and broad form property damage coverage. Such insurance shall (1) name City, its appointed and elected officials, officers, employees, and agents as additionally insureds, and (2) be primary with respect to any insurance or self-insurance programs maintained by City, and (3) contain standard cross liability provisions.

(3) Professional liability insurance coverage of not less than \$1,000,000.

(b) Contractor shall furnish properly executed certificates of insurance to City prior to commencement of work under this agreement. Such certificates shall:

(1) Clearly evidence all coverages required above, including specific evidence of a separate endorsement naming City as an additionally insured;

(2) Indicate whether coverage provided is on claims-made or occurrence basis; and

(3) Provide that such insurance shall not be materially changed, terminated, or allowed to expire except on thirty (30) days prior written notice to City.

(c) Commercial general liability insurance shall be maintained from the time work first commences until completion of the work under this Agreement if an occurrence policy form is used. If a claims-made policy is used, coverage shall be maintained during the contract term and for a period extending five (5) years beyond the contract date. Contractor shall replace such certificates for policies expiring prior to completion of work under this Agreement and shall continue to furnish certificates five (5) years beyond the contract terms, when Contractor has a claims-made form. Should the five (5) year "tail" of a claims-made policy prove impossible to secure, at City's option, an agreement or bond may be substituted to provide the necessary coverage.

(d) If the Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to the Contractor, City may deduct from sums due Contractor any premium costs advanced by City for such insurance.

15. Indemnification.

(a) City and its respective elected and appointed boards, officials,

officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Contractor or any other person for, and Contractor shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by Contractor's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Contractor, its agents, officers, directors, subcontractors or employees, committed in performing any of the Services under this Agreement.

(b) If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Contractor has agreed to indemnify Indemnitees as provided above, Contractor, upon notice from City, shall defend Indemnitees at Contractor's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Contractor, as described in Section 15, shall ensure Contractor's obligations under this section, but the limits of such insurance shall not limit the liability of Contractor hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

(c) The provisions of this section do not apply to Claims occurring as a result of this City's sole negligence or willful acts or omissions.

(d) All units and equipment provided by Contractor and used in performing this Agreement belong to, or are leased by the Contractor. City shall pay for or reimburse Contractor for any and all damage to said units and equipment provided by Contractor pursuant to this Agreement, which occurs as a result of the negligence of City, or any of its agents or employees. Contractor will notify City of the damage within thirty (30) days of the discovery of the damage. In the event of damage to Contractor provided equipment by third parties, City will use its best efforts to assist Contractor to identify and obtain compensation from any third party responsible for damage to Contractor equipment.

(e) City shall not be responsible for any damage to persons or property due to the use, misuse, or failure of any equipment used by the Contractor, or by any of its employees, and third parties even though such equipment may be provided to City by Contractor.

16. Modification of Agreement.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and by City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

17. Exclusivity

Through the term of this Agreement, Contractor shall be the sole provider of Red Light Photo Enforcement technology to City unless it is demonstrated that another vendor can provide City with technology that Contractor cannot emulate.

18. Contractor Not an Agent.

Except as City may specify in writing, Contractor shall have no authority, expressed or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, expressed or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

19. Personnel.

Contractor shall assign qualified and certified personnel to perform requested services. City shall have the right to review and disapprove personnel for assignment to El Cajon projects.

City shall have the unrestricted right to order the removal of any person(s) assigned by Contractor by giving oral or written notice to Contractor to such effect.

Contractor must notify City in writing of all changes in management and project supervisory personnel related to the project.

Contractor's personnel shall at all times comply with City's drug and alcohol policies then in effect.

20. Notices.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: Traffic Engineer
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

To Contractor: Aaron Rosenberg
Redflex Traffic Systems, Inc.
6076 Bristol Parkway, Suite 106
Culver City, CA 90230

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, five (5) days after deposit of the same in the custody of the United States Postal Service.

21. Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

22. Law to Govern; Venue.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Diego. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Southern District of California, in San Diego. Contractor hereby waives its right to remove any action from San Diego County as is otherwise permitted under California Code of Civil Procedure section 394.

23. Attorneys Fees, Costs and Expenses.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

24. Gender.

Whether referred to in the masculine, feminine, or as "it," "Contractor" shall mean the individual or corporate Contractor and any and all employees of Contractor providing services hereunder.


25. Entire Agreement.

This Agreement, including Exhibit "A," is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding.

Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party that are not embodied herein. Any agreement, statement, or promise not contained in the Agreement, and any modification to the Agreement, will be effective only if signed by both parties.

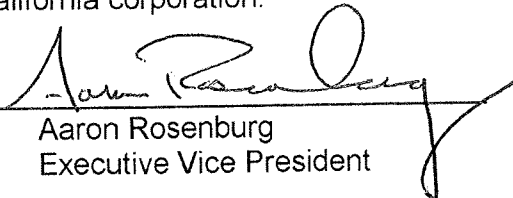
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first above written.

City of El Cajon,
a California municipal corporation.



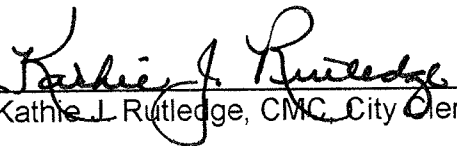
Kathi J. Henry, City Manager

Redflex Traffic Systems, Inc.,
a California corporation.

By: 

Aaron Rosenberg
Executive Vice President


Attest:



Kathie L. Ruffledge, CMC, City Clerk

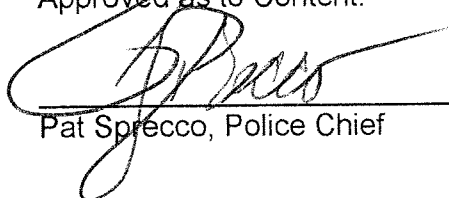
By: _____
Name: _____
Title: _____

Approved as to Content:



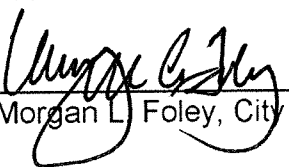
Rob Turner, Deputy City Manager/
Director of Public Works

Approved as to Content:



Pat Sprecco, Police Chief

Approved as to Form:



Morgan L. Foley, City Attorney