

**AGREEMENT WITH REDFLEX TRAFFIC SYSTEMS, INC.
FOR THE PROVISION OF TRAFFIC CONTROL
EQUIPMENT AND SUPPORT SERVICES
RFP: #2003-04**

This Agreement is made and entered into as of the date of execution by the City of Del Mar ("City"), a municipal corporation, and Redflex Traffic Systems, Inc. ("Provider") to provide professional services to the City for the equipment, installation and maintenance ("Professional Services") for red light photo enforcement ("Project").

RECITALS

The City requires outside assistance to provide red light enforcement cameras and data management system.

Provider warrants that Provider is capable of providing such equipment.

The purpose of this Agreement is to enable the City to enforce red light violations through a cost-effective camera enforcement program.

At the City's sole discretion, the City seeks to use Provider's technology and equipment to assist the City's law enforcement agency in the determination whether a red light violation exists at designated intersections.

The City believes that the Project will improve the safety of the intersections, reduce red light violations, increase compliance with state laws, and ultimately result in decreased accident rates in the City.

In consideration of the natural beauty and the village atmosphere of the City, intersections with low violation rates are not recommended for installation of these systems.

Provider warrants it has the expertise, experience, patents, qualifications and personnel necessary to provide the Professional Services for the Project.

Now therefore, in consideration of these recitals and the mutual covenants contained herein, the City and Provider agree as follows:

1.0 TERM OF AGREEMENT

The above-listed recitals are true and correct and are hereby incorporated by reference. All provisions, requirements and specifications enumerated in Provider's response to this Project's Request for Proposals ("RFP"), filed with the City Clerk as RFP No. 2003-04, are hereby incorporated by reference.

1.1 This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective for a period of five (5) years from

the program's installation date. ("Initial Term"). Upon expiration of the Initial Term, the City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive one (1) year periods (each a "Renewal Term" and collectively with the Initial Term, the "Term").

1.2 The City may extend the term of this Agreement, as provided in Section 1.1, by providing written notice to Provider not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.

1.3 Renewal Terms shall be governed by this Agreement.

1.4 Performance of this Agreement shall comply with the selection, installation and scheduling requirements described in Attachment A, attached hereto and incorporated herein.

2.0 PAYMENT FOR EQUIPMENT AND SERVICES (ATTACHMENT B)

The City shall pay the Provider for performance of all Professional Services rendered in accordance with this Agreement as set forth in the "Compensation and Fee Schedule," Attachment B, attached hereto and incorporated herein.

3.0 PROVIDER'S OBLIGATIONS

3.1 At the direction of the City, Provider shall provide the City with the specific equipment and shall perform the Professional Services, at Provider's sole expense, unless expressly stated below, to wit, Provider shall:

3.1.1 Appoint the Provider's project manager and a project implementation team of a minimum of one (1) and up to four (4) people, as necessary, to assist the Provider's project manager;

3.1.2 Request current "as-built" electronic engineering drawings ("Drawings") for the Designated Intersection Approaches from the City traffic engineer. A "Designated Intersection Approach" ("Approach") shall be defined as a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which cameras have been installed by Provider for this Project;

3.1.3 Develop and submit for the City's approval, the construction and installation specifications for the Approaches in reasonable detail, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required;

3.1.4 Obtain approval from the relevant governmental authorities having authority or jurisdiction over the construction and installation specifications for the

Approaches (collectively, the "Approvals"), which will include compliance with City permit applications;

3.1.5 Submit to the City a public awareness strategy ("Awareness Strategy") for the City's consideration, approval and amendment, to include media and educational materials;

3.1.6 Develop the violation criteria in consultation with the City;

3.1.7 Develop the documentation necessary for enforcement ("Enforcement Documentation"), subject to the City's approval. The City shall not unreasonably withhold approval;

3.1.8 Complete the installation and testing of all necessary equipment, including hardware and software, at the Approaches, under the supervision of the City;

3.1.9 Cause an electrical subcontractor to complete all necessary electrical connection work at the Approaches, including but not limited to the installation of all related equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring (Provider will furnish required DSL internet service and City will furnish electrical power through existing meters and system). All work shall be performed in compliance with all applicable local, state and federal laws and regulations;

3.1.10 Install and test the functionality of the Approaches with the Provider system and establish fully operational violation processing capability with the Provider system;

3.1.11 Implement the use of the Provider system at each of the Approaches;

3.1.12 Deliver the materials necessary for Project implementation to the City;

3.1.13 Issue warning violation notices for authorized violations which occurred at each Approach during the 30 day Warning Period, as described in Section III of Attachment A;

3.1.14 During the Warning Period, Provider shall provide training (i) for up to fifteen (15) personnel of the City, including City's Officers authorized to review violations under this Project ("Authorized Officers") and other persons involved in the administration of red light photo enforcement, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Provider system and red light photo enforcement. Training shall include training with respect to the Provider system and its operations, strategies for presenting violation data in court and judicial proceedings and a review of related Enforcement Documentation;

3.1.15 Interact with court and judicial personnel to address issues regarding the implementation of the Provider system, the development of a subpoena processing timeline that will permit the offering of violation data in court and judicial proceedings, the establishment of a court hearing schedule for adjudicating upon citations, and coordination between Provider, the City and juvenile court personnel;

3.1.16 Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch of the Project;

3.1.17 Maintain sole responsibility for the care and maintenance of all materials and equipment used in the performance of this Agreement. All repair and maintenance of camera systems and related equipment will be the sole responsibility of Provider, including but not limited to maintaining the casings of the cameras included in the Provider system and all other equipment in a reasonably clean and graffiti-free condition;

3.1.18 Provider shall not open the traffic signal controller boxes without a representative of City's Signal Contractor or Traffic Engineering present;

3.1.19 Provide and install flash units, in the event that images of a quality suitable for the Authorized Officer to identify violations cannot be reasonably obtained without the use of flash units; and

3.1.20 Provider's project manager (or a reasonable alternate) shall be available to the City's Authorized Officer or project manager each day, on a reasonable best efforts basis.

3.2 Provider shall commence delivery of the equipment as described herein. Provider shall be responsible for ensuring that all required permits and agreements are in place, including those required by adjacent municipalities, prior to the delivery and installation of the equipment. The equipment shall be fully delivered and installed by Provider, and instruction and support services shall be provided in accordance with this Agreement generally and, more specifically, with sections I and II of Attachment A; or, upon termination of the Agreement, under the terms specified in Section 7.0 of this Agreement.

3.3 Provider's performance under this Agreement shall comply with all applicable federal, state, and local laws.

3.4 Provider shall maintain professional certifications as required by City, state, and federal law.

3.5 Provider shall take all reasonable steps necessary to satisfy the purpose of this Agreement, as described in the Recitals and in the RFP. Provider's inability to fulfill

the purpose of this Agreement or any obligation under this section 3.0, shall constitute a material breach.

4.0 SUBCONTRACTING (ATTACHMENT C)

4.1 If Provider subcontracts for any of the equipment or support services that are to be provided under this Agreement, Provider shall be as fully responsible to the City for the acts and omissions of Provider's subcontractors and for the persons either directly or indirectly employed by the subcontractors as Provider is for the acts and omissions of persons directly employed by Provider. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor of Provider and the City. Provider shall bind every subcontractor to the terms of the Agreement applicable to Provider's work unless specifically noted to the contrary in the subcontract and approved in writing by the City.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or provide equipment to the Provider in performing this Agreement are contained in Attachment C, attached hereto and incorporated herein.

5.0 CITY'S OBLIGATIONS

The City shall do or cause to be done each of the following at City's sole expense, unless otherwise stated below:

5.1 Designate Authorized Officer(s) to review the violation information from the Provider.

5.2 Appoint a project manager to coordinate the issuance of citations with the Authorized Officer.

5.3 Assist Provider in obtaining necessary drawings from the relevant governmental authorities.

5.4 Notify Provider of any specific requirements for the construction and installation of any of the Approaches or for the implementation of the Project.

5.5 Assist Provider, in its capacity as an independent contractor, in accessing records data of the Department of Motor Vehicles, to the extent allowed by law.

5.6 Assist Provider in the permit and approval process required for the Project by governmental agencies.

5.7 Provide reasonable access to the City's properties and facilities so that Provider may install and test the functionality of the Approaches and Project performance overall.

5.8 Provide reasonable access to City personnel and relay their respective City duties so that Provider may better tailor the training required under this Agreement.

5.9 Provide the services of necessary personnel during the 30-day Warning Period.

5.10 Seek approval or amendment of Provider's proposed Awareness Strategy and provide written notice to Provider of the quantity of media and program materials that the City requires. The Awareness Strategy shall begin on the date of the first camera installation at an Approach and end one (1) month thereafter.

5.11 Assist Provider in developing the violation criteria.

5.12 Approve the Enforcement Documentation.

5.13 Provide electrical power to Provider's installations at each installation location through existing traffic signal system's electrical power meters and electrical pull boxes.

5.14 Provide conversion of existing signal heads to LED signal heads as needed for photo enforcement.

5.15 Coordinate access to the traffic signal system with the City's signal contractor and/or the City's Traffic Engineer. Provider shall not at any time modify the City's timing patterns for traffic signals as programmed by the City within the traffic signal controllers.

5.16 Post all signage as required by law.

6.0 EXTRA WORK

Provider shall not provide equipment or perform support services in excess of the Professional Services described herein without the City's prior written approval. All requests for extra work ("Extra Work") shall be by a written change order submitted to and approved by the City prior to the delivery of such equipment or the commencement of such work.

7.0 TERMINATION OF AGREEMENT

7.1 Termination shall be for cause. In the event of Provider's failure to prosecute, deliver, or perform the Professional Services, the City, at its sole discretion, may terminate this Agreement immediately by notifying Provider via certified mail of said termination ("Notice of Termination"). The City Manager of the City shall determine any final payment due to Provider.

7.2 Failure to comply with any provision of this Agreement shall constitute a material breach of the Agreement.

7.3 Cure: Each breach shall be remedied within forty-five (45) calendar days, or within such time as the City and Provider mutually agree to, which Agreement shall not be unreasonably withheld or delayed, after written notice from the non-breaching party. The notice shall set forth in detail the events that caused the breach. Failure of the breaching party to adequately cure the breach is grounds for termination of the Agreement.

7.4 Terms of this Agreement, including grounds for termination, are subject to renegotiation only upon the written approval of both parties.

7.5 Non-Preclusion: The rights to terminate the Agreement under this section are not exclusive of and shall not preclude the parties' rights to exercise other rights or remedies.

7.6 Procedures Upon Termination: The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Upon receipt of the Notice of Termination, or, for termination pursuant to sections 7.3 and 7.4, after the 45-day cure period, the following procedures apply.

7.6.1 Provider shall:

- (i) immediately cease to provide any work or services in furtherance of the Project;
- (ii) promptly deliver to the City any and all proprietary property of the City provided to Provider pursuant to this Agreement;
- (iii) promptly deliver to the City a final report detailing Provider's collection of data and the issuance of citations. The report shall be in such format and for such periods as the City may reasonably request and Provider shall update or supplement a final report when and if additional data or information becomes available;
- (iv) promptly deliver to City a final invoice itemizing all fees and charges properly owed by City to Provider for work performed and citations issued prior to the termination; and
- (v) provide such assistance as the City requests related to the prosecution and enforcement of citations issued prior to the termination of this Agreement.

7.6.2 The City shall:

- (i) immediately cease using Provider's system, accessing Provider's system and using any other intellectual property of Provider;

- (ii) promptly deliver to Provider any and all proprietary property of Provider provided to the City pursuant to this Agreement; and
- (iii) promptly pay any and all fees, charges and amounts properly owed by City to Provider for work performed and citations issued prior to the termination.

7.6.3 Unless the City and Provider have agreed to enter into a new agreement for this Project or have agreed to extend the term of this Agreement, Provider shall remove any and all Equipment or other materials of Provider installed in connection with Provider's performance under this Agreement, including but not limited to, housings, poles and camera systems. Provider shall, at Provider's sole expense, restore the Approaches to substantially the same condition such Approaches were in immediately prior to this Agreement.

8.0 INSURANCE

8.1 Provider shall obtain, and during the term of this Agreement shall maintain, policies of liability including public liability, general liability and property damage insurance from an insurance company authorized to be in business in the State of California with a rating by AM Best of A-VIII or better, in an insurable amount of not less than one million dollars (\$1,000,000) for each occurrence or aggregate. The insurance policies shall provide that the policies shall remain in full force during the life of this Agreement and shall not be cancelled, terminated, or allowed to expire without thirty (30) days prior written notice to the City from the insurance company.

8.2 The City shall be named as an additional insured on these policies, by CG 20 10 11 85 or both CG 20 10 03 97 and CG 20 37 1001.

8.3 Before Provider shall employ any person or persons in the performance of the Agreement, Provider shall procure a policy of Workers' Compensation Insurance as required by the Labor Code of the State of California. The Provider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

8.4 Provider shall furnish certificates of said insurance to the City prior to commencement of work under this Agreement.

9.0 VIOLATION PROCESSING

Violations shall be processed in accordance with the provisions of this section.

9.1 Authorized Officer: The City's Authorized Officer shall review the violation data from Provider. Within seven (7) days of gathering the violation data, Provider shall grant the Authorized Officer access to the Provider's system for purposes of reviewing

this data. The Authorized Officer shall independently determine whether to issue a citation in each case.

PROVIDER HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED OFFICER AND SHALL BE MADE IN SUCH AUTHORIZED OFFICER'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL PROVIDER HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION.

9.2 Violation Data: All violation data shall be stored on the Provider's system. Any photos, documents, film or evidence of any kind related to a potential violation, shall be deemed violation data. The Provider's system shall process violation data gathered from the Approaches into a format capable of review by the City's Authorized Officer via the Provider's System.

9.3 Accessibility: The Provider's system shall be accessible by the City's Authorized Officer through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser.

9.4 Issuance Of Citation: The Authorized Officer shall notify the Provider of a determination to issue a citation via an electronic format. Provider shall provide the necessary software, applications or procedures on Provider's System for the transmission and receipt of this information.

9.5 Upon notification by the Authorized Officer of the determination to issue a citation, Provider shall print and mail a citation within five (5) days; provided, however, during the Warning Period, warning violation notices shall be issued in lieu of all citations.

9.6 Records Maintenance:

(i) The City or its Authorized Officer shall track the collection of fines assessed on each citation. The City shall maintain complete and accurate records for all citations.

(ii) Provider shall permit the Authorized Officer to generate monthly reports using the Provider's standard report system.

(iii) Upon Provider's receipt of a written request from the City and in addition to the standard reports required in the RFP, Provider shall provide, without cost to the City, reports detailing the processing and issuance of citations, the maintenance and downtime records of the Approaches and the functionality of the Provider's system in such format and for such periods as the City may reasonably request; provided, however, Provider shall not be obligated to provide in excess of six (6)

such reports in any given twelve (12) month period without cost to the City;

(iv) Upon the City's receipt of a written request from Provider, the City shall provide, to the extent permitted by law, without cost to Provider, reports regarding the prosecution of citations and the collection of fines, fees and other monies in such format and for such periods as Provider may reasonably request; provided, however, the City shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to Provider.

9.7 During the three (3) month period following the Installation Date, Contractor shall provide such training to law enforcement personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the redlight enforcement program.

9.8 Upon Provider's receipt of a written request from the City at least fourteen (14) calendar days in advance of a court proceeding, Provider shall provide expert witnesses for use by the City in prosecuting violations; provided, however, the City shall use reasonable best efforts to seek judicial notice in lieu of requiring Provider to provide such expert witnesses.

10.0 INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Provider, or the Provider's employees, agents, and officers, arising out of any services performed involving this Project, except liability for the professional services covered under Section 10.1, the Provider agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. The Provider's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. This section in no way alters, affects or modifies the Provider's obligations and duties under Section 8.0 herein.

10.1 Indemnification for Professional Services: As to the Provider's professional obligations, work or services involving this Project, the Provider agrees to indemnify and hold harmless the City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the Provider or the Provider's employees, agents or officers.

10.2 Enforcement Costs: The Provider agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Sections 10.0 and Section 10.1.

10.3 Limited Liability: Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability arising out of or relating to this Agreement.

11.0 DISPUTES

11.1 If a dispute should arise regarding the performance of this Agreement, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute under this Agreement, shall be reduced to writing by the complainant. A copy of such documented dispute shall be forwarded to the other party involved, along with a recommended method of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

11.2 If the dispute is not resolved, the aggrieved party shall send to the City Manager a letter outlining the dispute for Manager's resolution.

11.3 Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. Upon receipt of written notice of either party, each of the parties shall appoint a designated officer for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this section, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

11.4 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may seek remedies available to them at law.

12.0 MANDATORY ASSISTANCE

12.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Provider, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Provider's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance: The City will compensate the Provider for fees incurred for providing Mandatory Assistance as Extra Work under

Section 6.0. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Provider, its agents, officers, and employees, the Provider shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Provider, its agents, officers, and employees for Mandatory Assistance.

12.3 **Attorney Fees Related to Mandatory Assistance:** In providing the City with dispute or litigation assistance, the Provider or its agents, officers, and employees may incur expenses and/or costs. The Provider agrees that any attorney fees it may incur as a result of assistance provided under Section 12.1 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Section 12.0 of this Agreement.

13.0 COVENANTS AGAINST CONTINGENT FEES

Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working for Provider, to solicit or secure this Agreement, and that Provider 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 this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability, or, at the City's 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.

14.0 ASSIGNMENT OF CONTRACT

Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, the City hereby acknowledges and agrees that the execution (as outlined in Attachment D), delivery and performance of Provider's rights pursuant to this Agreement shall require a significant investment by Provider, and that in order to finance such investment, Provider may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). The City hereby agrees that Provider shall have the right to assign, pledge, hypothecate or otherwise transfer its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Provider and any such Financial Institution, subject to the City's prior written approval, which approval shall not be unreasonably withheld or delayed.

15.0 INTEGRATION

This Agreement, the Attachments and references incorporated herein fully express all understandings of the parties regarding this Agreement. No change,

alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both parties or an amendment to this Agreement agreed to by both parties. All prior negotiations and agreements are merged into this Agreement.

16.0 INDEPENDENT CONTRACTOR STATUS OF PROVIDER

The Provider and any subconsultants employed by the Provider shall be independent contractors and not agents of the City.

17.0 CITY BUSINESS LICENSE

Provider shall obtain and hold a current City business license.

18.0 TRAINING

Following the Installation Date, Provider shall provide such training to City's Authorized Officers and personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the redlight enforcement program.

19.0 CITIZEN ASSISTANCE

Provider shall provide a toll-free telephone number for citizen inquiries, provide assistance and respond to those inquiries.

20.0 CONFLICTS BETWEEN AGREEMENT AND RFP

Should a conflict arise between the terms of this Agreement and the terms of the RFP, this Agreement shall supersede the RFP.

21.0 NOTICES

21.1 Any notices to be given under this Agreement, or otherwise, shall be served by certified mail.

21.2 For the purposes hereof, unless otherwise provided in writing by the parties, the address of the City and the proper person to receive any notice on the City's behalf is:

City of Del Mar
Attn: David Scherer, Public Works Director

With a copy to: City Manager Lauraine Brekke-Esparza
City Clerk, Mercedes Martin
1050 Camino Del Mar
Del Mar, CA 92014

21.3 Unless otherwise provided in writing by the parties, the address of Provider and the proper person to receive any notice on the Provider's behalf is:

Redflex Traffic Systems, Inc.
15020 North 74th Street
Scottsdale, AZ 85260
Attn: Ms. Karen Finley
Facsimile: (480) 607-0752

With a copy to: Alschuler Grossman Stein & Kahn LLP
2049 Century Park East, 39th Floor
Los Angeles, CA 90067
Attn: Steve Penden, Esq.
Facsimile: (310) 552-6077

22.0 PROVIDER'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

Provider certifies that Provider is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

Provider

City

REDFLEX TRAFFIC SYSTEMS
by Aaron Rosenberg 12-30-03
(Signature) Date
AARON ROSENBERG
VICE PRESIDENT
(Title)

City of Del Mar

by Lauraine Brekke-Esparza
LAURAINÉ BREKKE-ESPARZA Date 12/30/03
City Manager

approved as to form
Tan O'Sullivan
City Attorney

Attachment "A"

DESCRIBED EQUIPMENT/SUPPORT SERVICES

I. Site Selection and Monitoring Requirements

The following are the locations to be considered for installations:

- (1) Camino Del Mar (CDM) at Via de la Valle (VDLV);
- (2) CDM at 4th Street/Del Mar Heights Road;
- (3) CDM at Carmel Valley Road;
- (4) Jimmy Durante at VDLV; and
- (5) CDM and 9th Street (after installation of the LED conversion for the signal heads which is planned to occur after July 1, 2004).

The City has five (5) locations under consideration for installation of the red light photo enforcement program. All five locations will not necessarily be employed. Rather, within three (3) months of the date of execution of this Agreement, the City and Provider shall determine which Approaches shall be installed as part of the initial program ("Initial Program").

II. Installation Procedure

The City and Provider shall come to a mutual decision based on the following criteria to determine which systems will be installed within the intersection:

- (i) The intersections described above will have the Approaches monitored by both the City and Provider.
- (ii) After monitoring, Provider and the City shall agree on which Approaches appear to have a minimum of 15 observed violations per day. (The City will independently monitor violations to ensure the violations coincide with Provider's data.) That observed violation rate, fifteen (15) per day per Approach, is considered a "Warranting" for system installation. Under no circumstances shall Provider install a system in an Approach with less than fifteen (15) average daily observed violations. Should Provider install systems in an Approach that does not satisfy the minimum threshold of fifteen observed violations or without approval by the City, City shall not be liable for any costs or damages resulting from non-approved work.
- (iii) Upon City approval, Provider will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Provider and the City.

Installation of systems shall comply with the schedule provided in the RFP, subject to agreements with adjacent governmental agencies for camera and signage installations.

III. Warning Period

A thirty (30)-day Warning Period will be in effect at all approaches immediately prior to any issuance of violations. During the Warning Period, no red light camera enforcement citations will be issued; rather warning violation notices shall be issued for that period.

IV. Scheduling Requirements

Provider will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan to be formalized by the parties within a reasonable time, upon Project commencement. The Project's schedule shall reasonably conform to the "Program Schedule" proposed by Provider in the RFP.

Provider will use reasonable commercial efforts to install and activate the first specified intersection within the first sixty (60) days subsequent to formal project kick-off. The City agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Provider and are not guaranteed. Notwithstanding, the parties recognize that time is of the essence in all aspects of the performance of this Agreement.

V. City Assistance

In order to provide the City with timely completion of the photo enforcement program, Provider requires that the City assist with providing timely approval of City permit requests. The City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the City is to provide City engineers review of Provider permit requests and all documentation within two business days. Provider will also review and correct if necessary any redlines within two business days. Permits shall be received within five business days of first submittal in order to implement the program in a timely manner. City will need approvals from other cities for installation of components of system within their jurisdictional boundaries. These other city agreements may alter timing as mentioned above.

Attachment "B"
PAYMENT FOR EQUIPMENT AND SERVICES

Provider will be paid on the following basis for providing described Professional Services to the City:

(1) Per Citation Plan

After the thirty (30) day Warning Period, pursuant to Attachment A and Section 9 of this Agreement, Provider will receive a payment of \$89 for each citation issued by the City's Authorized Officer for violations occurring at Approaches having an average of less than six (6) issued citations per day (based upon a one month average). Provider will receive a payment of \$80 per each additional citation at those Approaches where the Officer issues on average more than or equal to 6 citations per day (based upon a one month average).

(2) Option to Alter Payment Plan

Nine (9) months from the date of the last installation under the Initial Program, as described in Attachment A (the nine-month period begins to run upon installation of the last of the authorized intersections in the Initial Program), the City shall have the option to choose a Flat Fee Payment Plan, as described below. The City may choose not to exercise this option and to continue with the Per Citation Plan.

(3) Flat Fee Plan

A "Flat Fee" payment for each Approach system installed will be instituted if the City exercises this option under Paragraph 2 above. Under the Flat Fee plan, City shall render payment to Provider in the amount of \$5,370 per month per Approach. This monthly rate shall be prorated for any system malfunction (down time) that exceeds one day (considered in increments of one day) within the month. For instance, Provider's DSL service is not operational for two days. Based on a thirty (30)-day month, the rate would then be calculated as follows: $28/30 \times \$5,370 = \$5,012$ (rounded to nearest dollar amount). An 8% annual downtime will be permitted for regularly scheduled routine maintenance by Provider, so long as such maintenance is performed on non-peak, midweek days (Tuesday through Thursday). The pro-rata rate above will not apply to the 8% downtime for regular maintenance.

The Payment Plans outlined above are not subject to renegotiation. Once the City exercises its right to the Flat Fee Payment Plan, City may not revert back to the Per Citation Plan.

ADDITIONAL BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Provider's construction will be able to utilize existing conduit for installation where space is available. Where it is determined by both parties that an additional

conduit is necessary, cost and access for use of such additional conduit shall be equally shared by Provider and the City. Any additional conduit shall become the exclusive property of the City upon termination of this Agreement.

2. The City agrees to pay Provider within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for payments past due 60 days.
3. Prices do not include supply of power and supply of DSL, cable or other broadband services. The City shall be solely responsible for power and Provider will be responsible for the communication infrastructure.
4. Each year the pricing will increase by the Consumer Price Index ("CPI"), as published by the Bureau of Labor Statistics for the United States Department of Labor, All Items, Los Angeles-Long Beach Area, 1967 = 100. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Any increase in compensation, other than as provided in the Agreement, shall be limited to the aforementioned CPI increase.

Attachment C

General Contractor

Network Electric, Inc.
6047 Bristol Parkway
Culver City, CA 90230
Harold Prescott
Cell: (708) 259-2379

Subcontractors: Electrical Work

CT&F, Inc.
7228 Scout Ave.
Bell Gardens, CA 90201

Subcontractors: Construction

PWC, Inc.
457 W. Allen Ave. Suite 113
San Dimas, CA 91773

*For any questions pertaining to subcontractor work please refer to the Redflex Traffic Systems, Inc. General Contractor Harold Prescott who works out of our Redflex operations in Culver City, CA.

Attachment D
FORM OF ACKNOWLEDGMENT AND CONSENT

THIS ACKNOWLEDGMENT AND CONSENT is entered into by and between the City of Del Mar (the "City") and Redflex Traffic Systems, Inc. ("Redflex"), dated December 30, 2003 related to that certain Agreement dated _____, _____, by and between the City and Redflex ("Agreement") which hereby acknowledges, consents and agrees to the following ("Consent"):

1. Redflex has financed certain operations and equipment related to its business, including but not limited to camera systems, housing and poles ("Equipment") through certain lenders ("Lenders"). Redflex has granted to Lenders a security interest in the Equipment, related property including software and proceeds thereto, as collateral for the performance, when due, of its obligations to Lenders. Redflex desires to assign all of its rights, but none of its liabilities or obligations under the Agreement (the "Assignment") to [Insert Name], as collateral agent for the Lenders (the "Collateral Agent"). Redflex will not, by virtue of the Assignment, be relieved of any liability or obligation under the Agreement or otherwise, and neither Collateral Agent nor Lenders are assuming any liabilities or obligations under the Agreement.— City hereby acknowledges notice of the Assignment and hereby consents thereto and to assignment to any similar subsequent financing party of Redflex, and further acknowledges that Collateral Agent or Lenders, and their respective successors and assigns, and any other subsequent future lender, may assign the rights received from Redflex.
2. Redflex hereby authorizes City upon Collateral Agent's written request to make any payments due to Redflex under the Agreement directly to Collateral Agent, c/o [Insert Address], or to whomever Collateral Agent may from time to time direct in writing.
3. City acknowledges that the attached Agreement is a true, correct and complete copy of the Agreement.
4. City agrees that City shall not assert against Collateral Agent and Lenders any right or claim of set off, recoupment, counterclaim or other defense in respect of amounts or obligations owed by Collateral Agent and Lenders to City against amounts or obligations that City owes to Collateral Agent and Lenders under the Agreement.

IN WITNESS THEREOF, each of the undersigned have caused this Acknowledgment and Consent to be executed by their duly elected officers duly authorized as of the date first above written.

[APPLICABLE MUNICIPALITY] REFLEX TRAFFIC SYSTEMS INC.

By: Lauraine Brekke-Esparza

By: Aaron Rosenberg

Print Name: Lauraine Brekke-Esparza

Print Name: AARON ROSENBERG

Title: City Manager

Title: VICE PRESIDENT

Date: 12-30-2003

Date: 12-30-03

Address: City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

Address: 6047 BRISTOL PKWY
CHLERER CITY CA. 90230