

EXCLUSIVE AGREEMENT BETWEEN THE CITY OF DEL MAR, CALIFORNIA AND REDFLEX TRAFFIC SYSTEMS, INC. FOR AN AUTOMATED PHOTO ENFORCEMENT PROGRAM

This Agreement (this "Agreement") is made as of this 30th day of September, 2019 ("Effective Date") by and between Redflex Traffic Systems, Inc., a Delaware Corporation ("Redflex"), and the City of Del Mar, California, a municipal corporation (the "City"), for an Automated Photo Enforcement Program.

RECITALS

- A. On or about December 30, 2003, the Parties entered into the "Agreement with Redflex Traffic Systems, Inc. for the Provision of Traffic Control Equipment and Support Services RFP: #2003-04" ("2003 Agreement");
- B. The Parties amended the 2003 Agreement in 2009 ("First Amendment") and 2016 ("Second Amendment") to modify the terms and conditions of the 2003 Agreement (the 2003 Agreement together with both amendments, collectively, the "Original Agreement");
- C. By letter dated June 13, 2019, the City exercised its right to extend the Original Agreement through June 21, 2020;
- D. Unless the Original Agreement is renewed, or the Parties enter into a new agreement, the Original Agreement will expire on June 21, 2020;
- E. The City believes the Program will improve the safety of the intersections subject to photo enforcement, reduce red light violations, increase compliance with state laws, and ultimately result in decreased accident rates in the City;
- F. The City has attempted to contact vendors as required by section 7.04.110 of the Del Mar Municipal Code but has not received any proposals;
- G. Redflex already provides Traffic Control Equipment and Automated Photo Enforcement Systems for the Cities of Encinitas and Solana Beach;
- H. The City desires that Redflex continue to furnish and Redflex desires to furnish all equipment, licenses, applications and back office processing related to the Program, including digital traffic enforcement cameras and equipment for the monitoring and enforcement of laws regulating red lights and traffic signals.

The Parties accordingly agree as follows:

AGREEMENT

1. **DEFINITIONS.** In this Agreement, the words and phrases capitalized below shall have the following meanings:
 - 1.1. "Authorized Employee" means the Project Manager or such other individual(s) as the City shall designate to review Potential Violations and to authorize the Issuance of Citations.
 - 1.2. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Employee by using the Redflex System.
 - 1.3. "Automated Photo Enforcement Program" or "the Program" are interchangeable and synonymous and mean the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of detecting Violations and recording Violation Data in the form of photographic images of motor vehicles

- 1.4. "Business Rules" means the set of rules, guidelines, structures and methods of operation that define specific operational components of the Program.
- 1.5. "Citation" means the notice of a Violation, which is mailed or otherwise delivered by Redflex on behalf of the City to the violator on the appropriate Enforcement Documentation for each Authorized Violation.
- 1.6. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, customers or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:
 - 1.6.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and
 - 1.6.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall have the meaning provided under California law.
 - 1.6.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of a Party in breach of this Agreement, (iii) was lawfully disclosed to a Party by a person other than a Party, (iv) was required by a court of competent jurisdiction to be disclosed, or (v) was required by applicable state law to be disclosed.
- 1.7. "Designated Intersection Approaches" means the Intersection Approaches that the Parties mutually agree on from time to time. See Exhibit A for the number of approaches.
- 1.8. "Electronic Signature" means the method through which the Authorized Employee indicates his or her approval of the issuance of a Citation for a Potential Violation using the Redflex System.
- 1.9. "Enforcement Documentation" means the necessary and appropriate documentation related to the Program, including but not limited to warning letters, Citation notices (using the specifications of the applicable court(s) and the City, a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including for coordinating with the applicable vehicle registry), and technical support documentation for applicable court and judicial officers .
- 1.10. "Equipment" means any and all approach cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Program.
- 1.11. "Fine" means a monetary sum assessed for a Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.12. "Governmental Authority" means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.13. "Intellectual Property" means, for any Person, any and all now known or later known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other intellectual or industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or

- otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues in force (including any rights in any of the foregoing), of such Person.
- 1.14. "Intersection Approach" means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed for the purposes of facilitating the Program by the City.
 - 1.15. "Lost Profits" means profits that would have been received by a party had the other party fully performed this Agreement, including, but not limited to (a) revenues that would have been received by City on account of Citations that might have been issued during periods in which the Redflex System was not functioning properly, and (b) amounts that must be refunded or disgorged by City due to Fines collected as a result of an improper or invalidly issued Citation.
 - 1.16. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
 - 1.17. "PLATESCAN® System" means the license plate scanning system of Redflex.
 - 1.18. "Potential Violation" means for any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System concerning such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Employee to review such data and determine whether a traffic violation has occurred.
 - 1.19. "Project Manager" means the project manager appointed by the City in accordance with this Agreement, which shall be an Authorized Employee and shall be responsible for overseeing the the implementation of the Program, and which manager shall have the power and authority to make management decisions relating to the City's obligations pursuant to this Agreement, including but not limited to change order authorizations.
 - 1.20. "Proprietary Property" means for any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
 - 1.21. "Redflex Marks" means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to the Program at any time during the Term, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
 - 1.22. "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, who shall be responsible for overseeing the construction and installation of the Redflex System and related equipment at the Designated Intersection Approaches and the implementation of the Program, and who shall have the power and authority to make day-to-day management decisions relating to Redflex's obligations pursuant to this Agreement; provided, however, the Redflex Project Manager does not have authority to authorize change orders without additional Redflex approvals.
 - 1.23. "Redflex System" means, collectively, the Salus® System, SMARTcam® System, the SMARTscene® System, REDFLEXred® System, REDFLEXradar® System, SMARTops® System, the Program, and all of the other equipment, applications, software, hardware, back office processes, servers, off-site backup systems, cameras, sensors, components, motor vehicles and other related tangible and intangible property, to enable Redflex to enforce a minimum of one lane of travel at a designated location.
 - 1.24. "REDFLEXradar®" means the detection and tracking system of Redflex relating to the Program.
 - 1.25. "REDFLEXred® System" means the proprietary digital redlight photo enforcement system of Redflex relating to the Program.
 - 1.26. "REDFLEXslimline® System" means the proprietary photo enforcement system of Redflex.
 - 1.27. "REDFLEXspeed® System" means the proprietary speed enforcement system of Redflex.
 - 1.28. "REDFLEXstop® System" means the proprietary stop sign enforcement system of Redflex.
 - 1.29. "SMARTcam® System" means the proprietary software system that controls the systems of Redflex relating to the Program.

- 1.30. "SMARTops® System" means the proprietary back-office processes of Redflex relating to the Program.
- 1.31. "SMARTscene® System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data relating to the Program.
- 1.32. "Traffic Signal Controller Boxes" means the signal controller interface and vehicle detection owned and operated by the City, or operated at the direction of the City. This includes the traffic controller, the vehicle detection equipment, the communication equipment, and the controller cabinet.
- 1.33. "Violation" means any traffic violation as provided for in any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.
- 1.34. "Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by Authorized Employees of the City, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities. Should physical criteria change which requires additional modification to the Program or its detection equipment, any costs incurred in connection with such modifications shall be the responsibility of the City.
- 1.35. "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.

2. **TERM.**

- 2.1. The term of this Agreement shall commence on the Effective Date and continue for a period of three (3) years (the "Initial Term"), unless terminated earlier as provided for in this Agreement. The City shall have the option to extend the Initial Term for up to two (2) additional consecutive and automatic one (1) year time periods (each a "Renewal Term"). The Initial Term together with each exercised Renewal Term is collectively the "Term." Each Renewal Term shall automatically and without any required notice or action be deemed to have been exercised unless the City provides written notice to Redflex in accordance with Section 9 of its election not to extend at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term.
- 2.2. Notwithstanding anything to the contrary contained in the Original Agreement, the Original Agreement shall terminate upon the Effective Date of this Agreement without any further notice required from either Party.

3. **SERVICES.** Redflex shall provide the following services in connection with the Program [such services, including those outlined in Exhibits B and C are subject to change based on local and State law]:

- 3.1. **PROGRAM AND MAINTENANCE OBLIGATIONS.** With respect to the program and maintenance obligations of the Parties, the City and Redflex shall have the respective rights and obligations set forth on Exhibit B and C.
- 3.2. **VIOLATION PROCESSING.** During the Term, Violations shall be processed as follows:
 - 3.2.1. All Violations Data shall be stored on the Redflex System;
 - 3.2.2. The Redflex System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Employee via the Redflex System;
 - 3.2.3. The Redflex System will be accessible by Authorized Staff through a secure and encrypted connection by use of a confidential user account on a computer equipped with a high-speed Internet connection and an approved web browser;
 - 3.2.4. Within seven (7) days after gathering the Violations Data from the applicable Designated Intersection Approaches, Redflex shall provide the Authorized Employee with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data;
 - 3.2.5. The City shall cause the Authorized Employee to review the Violations Data and to determine whether a Citation shall be issued with respect to each Potential Violation captured within such Violations Data, and transmit each such determination in the form of an Electronic

Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose. REDFLEX ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;

- 3.2.6. For each Authorized Violation, Redflex shall print and mail a Citation after Redflex's receipt of such authorization; provided, however, during the Warning Period, only warning violation notices shall be issued for all Authorized Violations;
- 3.2.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries;
- 3.2.8. Redflex shall permit the Authorized Employee to generate reports using the Redflex Standard Report System;
- 3.2.9. Upon Redflex's receipt of a written request from the City, Redflex 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 Redflex System in such format and for such periods as the City may reasonably request; provided, however, Redflex 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;
- 3.2.10. Upon the City's receipt of a written request from Redflex, the City shall provide, to the extent permitted by law, without cost to Redflex, reports regarding the prosecution of Citations and the collection of fines, fees and other monies in such format and for such periods as Redflex 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 Redflex;
- 3.2.11. Upon Redflex's receipt of a written request from the City at least fourteen (14) calendar days in advance of a court proceeding, Redflex 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 Redflex to provide such expert witnesses. The City shall be obligated to reimburse Redflex for the cost of expert witnesses provided at the City's request.
- 3.2.12. Redflex shall provide training to City personnel as shall be reasonably necessary to allow City personnel to act as expert witnesses on behalf of the City.
- 3.3. RECORDS RETENTION. Redflex shall retain Violations Data in accordance with all applicable California law as outlined in the Business Rules.
- 3.4. PROSECUTION AND COLLECTION; COMPENSATION. The City shall diligently prosecute Citations and the collection of all Fines related to the Citations. Redflex shall have the right to receive, and the City shall be obligated to pay Redflex, the compensation set forth on Exhibit D.
- 3.5. TAXES. Where obligated by applicable law, Redflex shall timely pay all taxes relating to or arising out of the Program. Unless otherwise indicated, the City agrees to pay any applicable taxes including but not limited to use, property or sales taxes required at the municipal, county, state or any other taxing authority level on all applicable consumer services and materials purchased and/or leased. No charge by the City shall be made for federal excise taxes and City agrees to furnish Redflex with an exemption certificate where appropriate for any applicable sales and/or use taxes. For the avoidance of doubt, it is the Parties intent that this Agreement does not alter the tax liability of either Party under the applicable law.
- 3.6. ROAD REPAIRS AND CONSTRUCTION PROJECTS. If the Redflex System is deactivated at the City's request due to any road repairs, street improvements or stop work order, the Fixed Monthly Fee will continue.
- 3.7. OTHER RIGHTS AND OBLIGATIONS. In addition to all of the other rights and obligations set forth in this Agreement, Redflex and the City shall have the respective rights and obligations set forth on Exhibit E.

4. **LICENSE; RESERVATION OF RIGHTS.**

- 4.1. **LICENSE.** Subject to the terms and conditions of this Agreement, Redflex grants the City, and the City accepts from Redflex, a non-exclusive, non-transferable license during the Term to: (a) solely within the City, access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any related content posted on the Redflex System, (b) disclose that Redflex is providing services to the City in connection with Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. **RESERVATION OF RIGHTS.** The City acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest.
- 4.3. **RESTRICTED USE.** The City covenants and agrees that it shall not (a) make any modifications to the Redflex System, including but not limited to any Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) use any of the Redflex Marks in any way which might prejudice their distinctiveness, validity or Redflex's goodwill, (d) use any trademarks or other marks other than the Redflex Marks in connection with the City's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, decompile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex Program, including but not limited to any Equipment, or to any Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.
- 4.4. **PROTECTION OF RIGHTS.** Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.
- 4.5. **INFRINGEMENT.** The City shall give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates or potentially infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute or potentially constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce its rights to its Marks and Intellectual Property and to make settlements relating to its Marks and Intellectual Property. In the event that Redflex commences any enforcement action relating to its Marks or Intellectual Property, the City shall provide Redflex with any reasonable cooperation and assistance that Redflex requests. Redflex shall be entitled to any damages or other monetary amount that might be awarded provided that after deduction of Redflex's actual costs and attorney's fees; Redflex shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance.
- 4.6. **INFRINGEMENT USE.** The City shall give Redflex prompt written notice of any action or claim, whether threatened or pending, against the City alleging that the Redflex Marks, or any other Intellectual Property of Redflex, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the City shall provide to Redflex reasonable cooperation and assistance as is requested by Redflex; provided, that Redflex shall reimburse the City for its reasonable costs incurred in providing such cooperation and assistance. If Redflex determines, in the exercise of its sole discretion, that an infringement may exist, Redflex shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

4.7. UNAUTHORIZED REFERENCES TO REDFLEX. To the fullest extent permitted by law, the City shall not utilize, make use of and/or make any reference to Redflex, its name or likeness, its affiliated, parent or subsidiary companies or corporations, its logos, insignias, trademarks, trade names, brand, websites, property, assets, products or services, including, but not limited to: "PLATESCAN® System"; "REDFLEXradar® System"; "REDFLEXrail® System"; "REDFLEXred® System"; "REDFLEXslimline® System"; "REDFLEXspeed® System"; "REDFLEXstop® System"; "Redflex Student Guardian® System"; "Salus® System"; "SMARTcam® System"; "SMARTops® System"; "SMARTscene® System"; and/or any and all combinations, variants and derivatives of the foregoing, for any reason or purpose without the prior written approval of Redflex which may be withheld, denied, delayed, rejected and/or refused, by Redflex in its sole discretion.

5. REPRESENTATIONS AND WARRANTIES.

5.1. REDFLEX REPRESENTATIONS AND WARRANTIES.

5.1.1. Authority. Redflex warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations.

5.1.2. Professional Services. Redflex warrants and represents that any and all services that it provides pursuant to this Agreement shall be performed in a professional and workmanlike manner and in compliance with applicable law and by agreed upon specifications.

5.2. CITY'S REPRESENTATIONS AND WARRANTIES.

5.2.1. Authority. The City warrants and represents that it has all legal right, power and authority to execute and deliver this Agreement and perform its obligations. City further warrants and represents that it has complied with all applicable laws and regulations in entering into this Agreement and will comply with all applicable laws and regulations in performing under this Agreement.

5.2.2. Professional Services. The City warrants and represents that any and all services that it provides pursuant to this Agreement shall be performed in a professional and workmanlike manner and in compliance with applicable law and by agreed upon specifications.

5.3. LIMITED WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING ANY MAINTENANCE OBLIGATIONS SET FORTH IN SECTION 3.2, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR SOFTWARE, OR WITH RESPECT TO THE RESULTS OF THE PROGRAM.

6. TERMINATION.

6.1. TERMINATION FOR CAUSE: Either Party may terminate this Agreement by written notice to the other Party if the other Party commits a material breach of this Agreement. In the event of a breach, the breaching Party shall have the right to remedy or cure the material breach within forty-five (45) calendar days (or within such other time period as the Parties shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after receipt of written notice from the terminating Party setting forth in reasonable detail the facts giving rise to the material breach. Termination of this Agreement based upon an alleged material breach shall not be enforceable or effective unless the terminating Party mails written notice to the breaching Party not less than forty-five (45) calendar days before the termination date and provides to the breaching Party the opportunity to remedy or cure the breach within the time period provided above.

6.2. TERMINATION FOR CONVENIENCE. Either Party shall have the right to terminate this Agreement for any reason upon not less than thirty (30) days' written notice to the other Party.

6.3. PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relieve either Party of any liability that accrued before termination. Except as set forth in Section 6.4, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

6.3.1. Redflex shall: (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Program; (ii) promptly deliver to the City any and all Proprietary Property or Confidential Information of the City provided to Redflex pursuant to this Agreement; (iii)

promptly deliver to the City a final report regarding the collection of data and the issuance of Citations in a format and for a period of time as mutually agreed upon by Redflex and the City; (iv) promptly deliver to the City a final invoice for all amounts owed by City to Redflex for work performed and Citations issued by Redflex prior to the termination; and (v) provide City with access to Redflex's back-office system for a period of up to two (2) months to allow the City access to Violations Data for purposes of prosecuting and enforcing Citations issued prior to the termination of this Agreement. Except as required by applicable law or as mutually agreed by Redflex and the City, Redflex shall have no obligation to retain Violations Data for more than two (2) months after termination of this Agreement. At termination and upon the City's prior written request, Redflex will transfer the Violations Data to the City in accordance with a mutually agreed upon method of transfer. The City shall be responsible for all costs associated with the transfer of the Violations Data including but not limited to administrative costs, storage media and storage media authoring device costs, and internet bandwidth costs incurred in transferring the Violations Data. Upon completion of the transfer of the Violations Data to the City, Redflex shall have no obligation or responsibility concerning the Violations Data. Redflex makes no warranty or representation regarding the success of a transfer of the Violations Data and shall have no liability or responsibility for any errors or failures that occur during a transfer of the Violations Data.

- 6.3.2. The City shall (i) immediately cease using the Program, accessing the Redflex System and using any other Intellectual Property of Redflex, (ii) promptly deliver to Redflex any and all Proprietary Property or Confidential Information of Redflex provided to the City pursuant to this Agreement, and (iii) promptly pay Redflex any and all fees, charges and amounts that the City owes Redflex for work performed and Citations issued prior to the termination, as outlined in Exhibit D.
- 6.3.3. Unless the City and Redflex have agreed to enter into a new agreement relating to the Program or have agreed to extend the Term, Redflex shall remove any and all above ground level Equipment or other Redflex materials installed in connection with Redflex's performance of its obligations under this Agreement and return the site to grade.
- 6.4. **SURVIVAL.** Notwithstanding the foregoing, the definitions provided for in Section 1 and each of the following Sections shall survive the termination of this Agreement: (i) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (City Representations and Warranties), 5.3 (Limited Warranties), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Injunctive Relief; Specific Performance), 11.18 (Applicable Law) and 11.19 (Jurisdiction and Venue), and (ii) any Section in this Agreement which states, or evidences the intent of the Parties, that the Section survives the expiration or termination of the Agreement, or must survive to give effect to the Section.
7. **CONFIDENTIALITY.** During the Term and for a period of three (3) years after its expiration or termination, neither Party shall disclose to any third person, or use for itself in any way, any Confidential Information learned from the other Party during the course of the negotiations for this Agreement or during the Term. Upon termination of this Agreement, each Party shall return to the other all tangible Confidential Information of such Party. Each Party shall retain in confidence and not disclose to any third party any Confidential Information without the other Party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such Parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.
8. **INDEMNIFICATION AND LIABILITY.**
- 8.1. **Indemnification by Redflex.** Subject to Section 8.3, Redflex hereby agrees to defend and indemnify the City, and its affiliates, shareholders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "City Party" and collectively, the "City Parties") against, and to protect, save and keep harmless the City Parties from, and to pay on behalf of or reimburse the City Parties as and when incurred for, any and all

liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any City Party arising out of or related to (a) any material misrepresentation, material inaccuracy or material breach of any covenant, warranty or representation of Redflex contained in this Agreement or (b) the willful misconduct of Redflex, its employees or agents which results in death or bodily injury to any person or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct or negligence of any City Party.

- 8.2. Indemnification Procedures. In the event the City seeks indemnification from Redflex, the City shall give Redflex written notice of the Claim promptly after the City first becomes aware of the Claim; provided, however, that failure so to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. Redflex shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the City, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the City shall have the right to participate in the defense at its sole expense; provided, however, the City shall have the right to take over the control of the defense or settlement of such Claim at any time if the City irrevocably waives all rights to indemnification from and by the Redflex. Redflex and the City shall cooperate in the defense or settlement of any Claim, and neither Party shall have the right enter into any settlement agreement that materially affects the other Party's material rights or material interests without such Party's prior written consent, which consent will not be unreasonably withheld or delayed.
- 8.3. LIMITED LIABILITY. Notwithstanding anything contrary in this Agreement, neither Party shall be liable to the other Party for any special, incidental, indirect, consequential, exemplary or punitive damages, including damages resulting from Lost Profits, however caused and on any theory of liability arising out of or relating to this Agreement. REDFLEX'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNTS PAID BY THE CITY/TOWN TO REDLFEX HEREUNDER.

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

9.1. Notices to Redflex:
Redflex Traffic Systems, Inc.
Attn: Legal Department
5651 W. Talavi Blvd., Suite 200
Glendale, Arizona 85306
E-Mail: legaldepartment@redflex.com

9.2. Notices to the City:
City of Del Mar, California
Attn: Scott Huth, City Manager
1050 Camino del Mar
Del Mar, CA 92014

With a Copy to:

City of Del Mar, California
Attn: Ashley Jones, Administrative Services Director
1050 Camino Del Mar
Del Mar, CA 92014

10. **DISPUTE RESOLUTION.** The Parties shall engage in informal, good faith discussions and attempt to resolve any dispute or disagreement between the Parties arising out of or relating to this Agreement before initiating arbitration, mediation or litigation. In connection with those informal discussions, each Party shall appoint a designated officer and the designated officers of the Parties shall meet in person for the purpose of attempting to resolve and dispute. The designated officers shall meet as often as the Parties shall determine to be reasonably necessary. If the Parties are unable to resolve the dispute, and any Party concludes in good faith that amicable resolution through continued negotiation is not reasonably likely to result in resolution of the dispute, the Parties may mutually agree to submit the dispute to binding or nonbinding arbitration or mediation for resolution. If the Parties do not mutually agree to submit the dispute to binding or nonbinding arbitration or mediation, any Party may initiate litigation.
11. **MISCELLANEOUS.**
- 11.1. **ASSIGNMENT.** 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.
- 11.2. **RELATIONSHIP BETWEEN REDFLEX AND THE CITY.** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the Parties. The relationship between the Parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either Party to incur any debts or liabilities or obligations on behalf of the other Party (except as specifically provided in this Agreement).
- 11.3. **AUDIT RIGHTS.** Each of Parties hereto shall have the right to audit the books and records of the other Party (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. If the audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, the non-Audited Party shall promptly refund to the Audited Party the amount of the overpayment.
- 11.4. **FORCE MAJEURE.** No Party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God, war, terrorism, significant fires, floods, earthquakes, epidemics, severe weather, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission of Redflex. The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 11.5. **ADDITIONAL SERVICES.** This Agreement may be amended, in accordance with Section 11.6, to add additional Redflex systems and products, including, but not limited to, school bus stop arm enforcement and school zone speed enforcement.
- 11.6. **ENTIRE AGREEMENT.** This Agreement represents the entire Agreement between the Parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both Parties.
- 11.7. **SEVERABILITY.** If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 11.8. **WAIVER.** Any waiver by either Party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision of this Agreement.

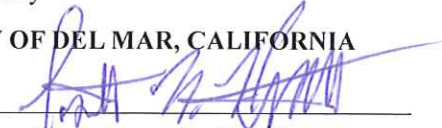
- 11.9. CONSTRUCTION. This Agreement shall be construed as having been fully and completely negotiated by both Parties and neither the Agreement nor any of its provision shall be construed more strictly against either Party.
- 11.10. HEADINGS. The headings of the sections contained in this Agreement are included for reference purposes only, solely for the convenience of the Parties, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any of its terms, conditions or provisions.
- 11.11. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no Party shall be required to produce an original or all of such counterparts in making such proof.
- 11.12. COVENANT OF FURTHER ASSURANCES. All Parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions of this Agreement.
- 11.13. REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.
- 11.14. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the Parties and their respective executors, administrators, successors and permitted assigns.
- 11.15. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be modified or limited only to the extent necessary to bring it within the requirement of the law, provided that such modification or limitation is consistent with the intent of the Parties as expressed in this Agreement.
- 11.16. NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a Party to this Agreement.
- 11.17. INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The Parties agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other Party, which injury could not be adequately compensated by an award of money damages, and the Parties therefore agree and acknowledge that they shall be entitled to injunctive relief in the event of any breach of these Sections, or to enjoin or prevent such a breach.
- 11.18. APPLICABLE LAW. This Agreement shall be governed solely by and construed, in all respects, in accordance with the laws of the State of California.
- 11.19. JURISDICTION AND VENUE. Any conflict, claim or dispute between the Parties affecting, arising out of or relating to the subject matter of this Agreement shall be filed only in and litigated solely in the United States District Court for the Southern District of California and all Parties specifically consent and agree to the exclusive jurisdiction of that court; provided however, if the United States District Court for the Southern District of California does not have subject matter jurisdiction over a dispute, the dispute shall be filed and brought exclusively by the state courts of California located in San Diego County and the Parties consent and agree to the jurisdiction of those courts.
- 11.20. ATTORNEYS' FEES. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing Party is entitled to reasonable attorney's fees, costs, and expenses incurred.

[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

"The City"

CITY OF DEL MAR, CALIFORNIA

By: 

Name: Scott W. Huth
Title: City Manager

Approved as to Form:

By: 

Name: Leslie Devaney
Title: City Attorney

"Redflex"

REFLEX TRAFFIC SYSTEMS, INC.,

By: 

Name: Mark J. Talbot
Title: President

By: 

Name: Matthew Johns
Title: Deputy General Counsel

EXHIBIT "A"

Designated Intersection Approaches

The Agreement is for the operation of the following Intersection Approaches:

<u>Redflex Identifier</u>	<u>Location Description</u>	<u>Direction</u>
DLM-CAHE-01	Camino Del Mar & Del Mar Heights	NB
DLM-CAVV-01	Camino Del Mar & Via de la Valle	SB
DLM-CAVV-03	Camino Del Mar & Via de la Valle	NB

EXHIBIT "B"

Program Obligations

1. REFLEX OBLIGATIONS. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1. Appoint the Redflex Project Manager and a project implementation team;
 - 1.2. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the maintenance of the Designated Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications;
 - 1.3. Finalize the acquisition of the Approvals;
 - 1.4. Apply for and pay the business tax and registration tax for a business license, in accordance with Del Mar, California Municipal Code;
 - 1.5. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches;
 - 1.6. Implement the use of the Redflex System at each of the Designated Intersection Approaches;
 - 1.7. Once a year, upon request of the City, provide training (i) for up to fifteen (15) personnel of the City, including but not limited to the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the Program, (ii) for up to sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation;
 - 1.8. Provide all necessary communication, broadband and telephone services to the Designated Intersection Approaches;
 - 1.9. Establish an interface by utilizing City's ability, as a government entity, to access the records data of the Department of Motor Vehicles. Redflex will assist the City in developing an interface to be provided to the Department of Motor Vehicles;
 - 1.10. Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, and coordination between Redflex, and the City;
 - 1.11. Fabricate the necessary signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the applicable State statute.
 - 1.12. The Redflex Project Manager (or a reasonable alternate) shall be available to the Authorized Officers each day, on a reasonable best efforts basis.

2. CITY OBLIGATIONS. The City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):
 - 2.1. Appoint the Project Manager;
 - 2.2. Assist Redflex in seeking and obtaining the Approvals from the relevant Governmental Authorities;
 - 2.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Program;
 - 2.4. Provide ongoing assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the City;
 - 2.5. Provide reasonable access to the City's properties and facilities in order to permit Redflex to maintain the functionality of the Designated Intersection Approaches and the Program;
 - 2.6. Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
 - 2.7. Develop and provide the Violation Criteria to Redflex.;
 - 2.8. Develop the Enforcement Documentation;
 - 2.9. Post the Signage fabricated by Redflex
 - 2.10. The City shall provide on an agreed upon frequency, without cost to Redflex, reports regarding the prosecution of Citations, the collection of fines, fees and other monies and available collision data, in such format and for such periods as Redflex may reasonably request;

- 2.11. Yellow Light Timing Review: The City is responsible to ensure that the yellow or amber light phase timing at all photo enforced intersections meets minimum standards according to Federal, State, and local laws, guidelines, and/or rules;
- 2.12. Provide on-going adequate electrical power in order to operate the Designated Intersection Approaches;
- 2.13. The City will allow Redflex to use existing conduit space, and existing infrastructure, including but not limited to traffic signal poles and light poles as available;
- 2.14. The City shall be responsible to provide and install LED traffic signal lights (yellow and red) at all enforced locations; and
- 2.15. City is responsible for all computer hardware, web browsers and high speed Internet access necessary for the Authorized Employee to access the Redflex systems and software.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of the Program and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative from the City's Traffic Engineering Department present, or the applicable Governmental Authority that owns and controls the Traffic Signal Controller Boxes, as applicable..
3. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
4. Redflex may assign specific personnel to provide follow up assistance to the City in the form of the HELPDESK, a designated City Service Representative and a Director of Accounts.
5. Redflex will make commercially reasonable efforts to promote City's successful utilization of the System, including but not limited to providing City with user guides, online help, online training and presentations (as available). Redflex will respond to helpdesk requests for support within 8 hours of the request except where circumstances beyond its control preclude a response within that time. Redflex will use commercially-reasonable efforts to respond to all other support requests within 24 hours for requests received during the period of 8 am to 5 pm Central Standard Time, Monday through Friday. Redflex shall be responsible for receiving City reports of errors in the System, and, to the extent practicable over email or telephone, making commercially-reasonable efforts to assist the City in resolving the City's reported problems. If the problem cannot be resolved telephonically, Redflex will use commercially-reasonable efforts to restore functionality in accordance with System specifications within 72 hours of Redflex's receipt of the reported problem.
6. Redflex must promptly notify the City of any and all upgrades and technology modifications, including but not limited to software, hardware, camera systems, violation detection systems upon the produces general availability (and not in alpha, beta and testing phases).). Should the CITY/TOWN decide to implement any such upgrades or modifications it will be at a price and on terms mutually agreed by the Parties.
7. In the event a camera system is knocked down or suffers vandalism rendering the approach inoperative, the City will secure the camera system by removing the system from the scene and storing it in a secure location. Redflex must pay the City for the cost of a City maintenance team to secure their camera system when an after-hours callout is required. Redflex is not required to reimburse the City when a City maintenance team secures a camera system during regular business hours.
8. The City shall notify Redflex as soon as possible if any camera system is knocked down or subject to vandalism.

EXHIBIT "D"

COMPENSATION & PRICING

PRICING PROVISIONS AND OPTIONS:

The City agrees to pay Redflex its Fixed Monthly Fee in the following manner for each Designated Intersection Approach:

<u>Redflex Identifier</u>	<u>Location Description</u>	<u>Payable to Redflex Per Month</u>
DLM-CAHE-01	Camino Del Mar & Del Mar Heights	\$1,577 per month
DLM-CAVV-01	Camino Del Mar & Via de la Valle	\$1,577 per month
DLM-CAVV-03	Camino Del Mar & Via de la Valle	\$1,577 per month

BUSINESS ASSUMPTIONS FOR ALL PRICING PROVISIONS AND OPTIONS:

1. Each year, on the anniversary date of the contract, the pricing will increase by a percentage equal to the U.S. Department of Labor CPI-U, U.S. City Average for the preceding calendar year.
2. City agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.

EXHIBIT "E"

Additional Rights and Obligations

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

1. The City shall not access the Redflex System or use the Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Redflex System or the Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the, and the City shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other Person to do any of the foregoing.
2. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Program.
3. Redflex and the City shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other Party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, Redflex and the City shall obey any and all such rules and regulations.
4. The City shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the City, or any of its employees, contractors or agents.
5. The Parties shall agree on specific Business Rules governing the function and operation of the Redflex System.

EXHIBIT "F"

Insurance

1. Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
 - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, Two Million Dollars (\$2,000,000) Products-Completed Operations Aggregate and Two Million Dollars (\$2,000,000) General Aggregate, such limits of coverage may be met through any combination of primary and excess liability policies;
 - Business Automobile Liability Insurance. Business Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned, non-owned and hired by Redflex, such limits of coverage may be met through any combination of primary and excess liability policies;
 - Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than Two Million Dollars (\$2,000,000) each and every claim and in the Aggregate; and
 - Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of California, and Employer's Liability Insurance with coverage of not less than:
 - \$1,000,000 Bodily Injury by Accident – Each Accident
 - \$1,000,000 Bodily Injury by Disease – Policy Limit
 - \$1,000,000 Bodily Injury by Disease – Each Employee
2. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
 - The City shall be named as additional insureds with respect to the Commercial General Liability insurance; and
 - The Commercial General Liability insurance shall be the primary insurance with respect to the City in connection with this Agreement, and any insurance or self-insurance maintained by the City shall be in excess, and not in contribution to, such insurance; and
 - The Commercial General Liability insurance shall include "Separation of Insureds" wording which states that such insurance coverage shall apply separately with respect to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or any rights or duties specifically assigned to Redflex in such insurance policies.
3. With respect to the insurance described above, Redflex shall not cancel or materially reduce the coverage without providing the City thirty (30) days prior written notice by certified mail.
4. With respect to the insurance described above, if any of the Redflex Parties are notified by any insurer that such coverage will be materially reduced or cancelled, Redflex shall provide written notice within ten (10) business days of receipt of such notice to the City and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the City of the date and nature of such correction. If Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the City shall have the right, but not the obligation and exercisable in its/their sole discretion, to either (i) terminate this Agreement and seek damages from Redflex for such breach, or (ii) purchase such required insurance, and without further notice to Redflex, deduct from any amounts due to Redflex pursuant to this Agreement, any premium costs advanced by the City for such insurance. If the premium costs advanced by the City for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the City upon receipt of written notice thereof.

5. Redflex shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the City prior to Redflex commencing any work pursuant to the terms of this Agreement.