

**AGREEMENT BETWEEN THE CITY OF FREMONT
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR
PHOTO RED LIGHT ENFORCEMENT PROGRAM**

This Agreement (this "Agreement") is made and entered into by and between Redflex Traffic Systems, Inc. with offices at 23751 N. 23rd Avenue, Phoenix, Arizona, 85027 ("Redflex" or "Contractor"), and the City of Fremont, a municipal corporation, with offices at 3300 Capitol Avenue, Fremont, CA 94537 (the "Customer" or "City").

RECITALS

WHEREAS, the City and Redflex have an existing agreement in which Redflex provides equipment and services for automated enforcement camera systems installed at various intersections in the City that will expire by its terms on June 30, 2010; and

WHEREAS, Redflex owns the existing automated enforcement camera system equipment installed in Fremont. Switching vendors most likely would entail removal of Redflex equipment and installation of a new vendor's equipment at a cost to the City of approximately \$1 million, whether paid directly by the City or indirectly through higher monthly rates, and cause significant delay to the program caused by removal and reinstallation of equipment; and

WHEREAS, Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and citation processes related to digital red light photo enforcement cameras; and

WHEREAS, the City desires to continue to engage the services of Redflex and Redflex desires to continue to provide equipment and services for automated enforcement camera systems in the City.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **SERVICES.** Redflex shall perform, the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A."

Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

3. COMPENSATION.

3.1. Payment. Contractor shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth in Exhibit B, attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.

3.2. Contractor's Failure to Perform. In the event that Contractor performs services which do not comply with the requirements of this Agreement, Contractor shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Contractor). If Contractor's failure to perform in accordance with this Agreement causes damages to the City, Contractor shall reimburse the City for the damages incurred (which may be charged as an offset to Contractor's payment)

4. TERM OF THE AGREEMENT. The term of this Agreement shall commence on July 1, 2010, and shall continue through June 30, 2017. The City of Fremont shall have the right, but not the obligation, to extend the term of this Agreement three (1) year periods following the expiration of this Agreement. The City of Fremont may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of this Agreement.

5. OTHER RIGHTS AND OBLIGATIONS. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Redflex and the Customer shall have the respective rights and obligations set forth on Exhibit C attached hereto and incorporated herein by reference.

6. LICENSE; RESERVATION OF RIGHTS.

6.1. License. Subject to the terms and conditions of this Agreement, Redflex hereby grants the Customer, and the Customer hereby accepts from Redflex upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City of Fremont, access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations under the terms of this Agreement, and to print copies of any content posted on the Redflex System in connection therewith; (b) disclose to the public (including outside of the City of Fremont) that Redflex is providing services to the

Customer in connection with Redlight Photo Enforcement Program under 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 Redlight Photo Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.

6.2. Reservation Of Rights. The Customer hereby 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 Customer 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 Customer pursuant to this Agreement, the Customer shall gain no additional right, title or interest therein.

6.3. Restricted Use. The Customer hereby 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 the goodwill of Redflex therein, (d) use any trademarks or other marks other than the Redflex Marks in connection with the Customer'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 System, 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.

6.4. 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 Customer 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.

6.5. Infringement. The Customer shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that 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 such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this section, then the Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex, and Redflex shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that Redflex must reimburse the Customer for any reasonable costs incurred in providing cooperation and assistance.

6.6. Infringing Use. The Customer shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending, against the Customer 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 Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex in the defense thereof; provided, that Redflex shall reimburse the Customer for any reasonable costs incurred in providing cooperation and assistance. If such a claim is made and 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 Customer the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Authority and Services.

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

7.1.2. Professional Services. Redflex hereby warrants and represents that any and all services provided by Redflex under this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Redflex System, subject to applicable law, in compliance with all specifications provided to Redflex by the Customer.

7.2. Limited Warranties. Redflex warrants that the Redflex System will operate in the manner prescribed as Red-light photo enforcement system including the ability to accurately capture violation images and except as otherwise provided in this agreement, 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 with respect to the results of the Customer's use of any of the foregoing. Notwithstanding anything to the

contrary set forth herein, Redflex does not warrant that any of the Designated Intersection Approaches or the Redflex System will operate in the way the Customer selects for use, or that the operation or use thereof will be uninterrupted. The customer hereby acknowledges that the Redflex System may malfunction from time to time, and subject to the terms of this agreement, Redflex shall diligently endeavor to correct any such malfunction in a timely manner.

7.3. Credit For Malfunctioning or Non-operating Designated Intersection Approaches.

7.3.1. Notwithstanding section 7.2, for each malfunctioning Redflex System at a Designated Intersection Approach Redflex's compensation under Exhibit B, section 1 shall be reduced and Redflex shall credit the monthly invoice for each affected malfunctioning Designated Intersection Approach based on the following formula:

7.3.1.1. 50% monthly malfunction rate = 50% base credit

7.3.1.2. An additional 1% credit for each percentage of malfunction rate above 50%, up to and including 80% malfunction rate, shall be added to the base credit.

7.3.1.3. If the malfunction rate exceeds 80%, then Redflex shall not be entitled to the monthly fixed fee and shall fully credit the monthly invoice.

7.3.1.4. The rate of malfunctioning shall be determined from the Redflex on-line customer management report but excluding rejections for driver obstruction, motor cycle helmet, plate obstruction, vehicle obstruction, extended vehicle, out of country and paper plates, wrong/no DMV, citations too old to process, emergency vehicles, officer discretion, and safe right turn on red.

7.3.2. Any Redflex System that is determined to be down or off for a period of two (2) consecutive days in any given month must be responded to and fully operational within 48 hours. In the event that a Redflex System is not fully operational two (2) days after notification by the City's authorized representative or Redflex's discovery of the incident, Redflex shall credit the monthly invoice in the amount of 1/30th of the fixed monthly fee for the downed approach for each day the approach is down, including the initial two (2) consecutive days. In the event that any Redflex System at an approach is determined to be down or off for a period of more than two (2) cumulative days in any given month, Redflex shall credit the monthly invoice in the amount of 1/30th of the approach fee for the downed approach for each day the approach is down, including the initial two (2) cumulative days. A Redflex System shall be deemed to be down or off by mutual consent of the Parties.

This does not include a System that is down or off due to power outage or other uncontrollable factors.

8. **TERMINATION.** This Agreement shall terminate in two stages: Initiation of Termination and Final Termination.

8.1. **Termination by Either Party.** Either party may immediately initiate termination of this Agreement in accordance with Section 8.4 by providing written notice to the other if:

8.1.1 state statutes are amended to prohibit the operation of red light photo enforcement systems;

8.1.2 any court having jurisdiction over City rules, or California or federal statute declares, that results from the Redflex System of red light photo enforcement are inadmissible in evidence.

8.1.3 the other party commits any material breach of any of the provisions of this Agreement which breach is not remedied within forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-breaching party setting forth in reasonable detail the events which caused the breach. The rights to terminate this Agreement given under this subsection shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

8.2. **Termination by the Customer.** The Customer may initiate termination of this Agreement in accordance with Section 8.4 without cause at any time by giving ten (10) days written notice of termination to Redflex. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall be obligated to pay Contractor for all services satisfactorily performed in accordance with this Agreement, through and including the initiation of termination date, but not to exceed the payments according to the rates specified in Exhibit "B" and shall pay Contractor the amount of equitable cost recovery, if any, to which Contractor is entitled as set forth in Exhibit B, section 7.

8.3. **Termination by Redflex.** Redflex may initiate termination of this Agreement in accordance with Section 8.4 without cause by giving ninety (90) days written notice to the City signed by Redflex's Authorized Representative. In the event Redflex terminates this agreement, Redflex shall not be entitled to equitable cost recovery under Exhibit "B" section 7.

8.4. Procedures Upon Expiration or Initiation of Termination.

8.4.1. Upon the expiration of the Term of this Agreement and any extensions agreed upon by the Parties under Section 4 or upon initiation of termination as provided in Sections 8.1, 8.2 or 8.3 (the "Termination Initiation Date"):

8.4.1.1. Redflex shall immediately stop capturing and collecting new Violation Data for the Designated Intersection Approaches and invoice the Customer for the monthly fee, pro rated to the date of Termination Initiation. Redflex shall continue to provide violation processing services at no additional cost to the City until all Citations issued before the Termination Initiation Date are adjudicated (the "Final Termination Date").

8.4.1.2. The Customer shall immediately cease using the Redlight Photo Enforcement Program, accessing the Redflex System and using any other Intellectual Property of Redflex, except as necessary to prosecute Citations issued before the initiation of termination date.

8.4.2. Unless the Customer and Redflex have agreed to enter into a new agreement relating to the Redlight Photo Enforcement Program or have agreed to extend the Term of this Agreement, Redflex shall remove any and all Equipment or other materials of Redflex installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to the installation of the equipment including but not limited to pavement stripes and concrete flatwork including, but not limited to, curb, gutter and sidewalk refurbishment as required by City standards, if damaged or altered by the installation or removal of the Redflex system. Redflex must begin removal and restoration the Designated Intersection Approaches within four months after the Termination Initiation Date, but in no event later than the Final Termination Date.

8.4.3. If Customer initiated termination under Section 8.2, Redflex shall immediately invoice Customer for equitable cost recovery due under the provisions of Exhibit B, section 7, if any. City will be obligated to pay such amount no more than four months after the Termination Initiation Date. No late fee or penalty shall accrue for any equitable cost recovery due and not paid within four months after the Termination Initiation Date.

8.5. Final Termination. After the Final Termination Date:

8.5.1. Redflex shall promptly deliver to the Customer (i) Confidential Information required to be returned under Section 9.3, (ii) a final invoice

stating all outstanding fees and charges properly owed by Customer to Redflex, if any, for work performed under this Agreement, and (iii) a final report regarding the collection of data and the issuance of Citations in such format and for such periods as the Customer may reasonably request, and which final report Redflex shall update or supplement from time to time when and if additional data or information becomes available.

8.5.2. Customer shall deliver to Redflex Confidential Information required to be returned under Section 9.3. Upon receipt of the final invoice from Redflex, Customer shall promptly pay any and all fees, charges and amounts, properly owed by Customer to Redflex for work performed under the Agreement.

8.6. SURVIVAL. The following provisions sections shall survive final termination of this Agreement: the definitions as defined in Exhibit A, section 6.2 (Reservation of Rights), section 7.0 (Redflex Representations and Warranties), section 9 (Confidentiality), section 17 (Indemnification and Liability), section 19 (Notices), section 20 (Dispute Resolution), sections 21 through 31, and those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.

9. CONFIDENTIALITY.

9.1. During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement, except Confidential Information may be disclosed by the Recipient:

9.1.1. As required to be disclosed by court order or applicable law, provided prior notice is given to the Owner;

9.1.2. To employees who are reasonably required to have the Confidential Information;

9.1.3. To 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.

9.2. Contractor acknowledges that the Customer is a governmental agency and may be required to retain records, and to release certain

information under requests made according to provisions of the Public Records Act. In the event Customer receives a request for public records related to Confidential Information, Customer shall immediately notify Contractor so that Contractor may, at its sole expense, take any and all measures necessary to prevent or limit the disclosure of Contractor's Confidential Information. Contractor agrees to indemnify, defend and hold harmless the Customer from any and all losses and attorney's fees that may be incurred by the Customer arising out of any and all efforts to limit or prevent disclosure of Contractor's Confidential Information.

9.3. Upon Final Termination of this Agreement:

9.3.1. Contractor shall return to Customer all tangible Confidential Information of Customer.

9.3.2. Customer shall return to Contractor all tangible Confidential Information of Contractor, except for records that Customer is required to maintain under applicable record retention laws which shall be returned to Contractor or destroyed at the conclusion of the applicable retention period.

10. RELATIONSHIP BETWEEN THE PARTIES. Contractor is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Contractor's authority to act on behalf of the City is only as specified in this Agreement or as authorized in writing by the City's Authorized Representative. Contractor shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

11. CONFLICTS OF INTEREST PROHIBITED. Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Contractor shall comply with all requirements of the Political Reform Act (California Government Code sections 81000, et seq.) and other laws relating to conflicts of interest, including: (a) Contractor shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Contractor's economic interest, and (b) if required by law, Contractor shall file financial disclosure forms with the City Clerk. If Contractor maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Contractor's conflicting interest may be terminated by the City.

12. NONDISCRIMINATION. Contractor shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.

13. COMPLIANCE WITH LAW AND STANDARD OF CARE. Contractor shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Contractor shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Contractor, performing under circumstances similar to those required by this Agreement.

14. BUSINESS LICENSE. The Contractor shall apply for and pay the business tax and registration tax for a business license, in accordance with Fremont Municipal Code title V, chapter 1, section 5-1100, *et seq.*

15. INSURANCE. Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor (including its agents, representatives, subcontractors, and employees) in connection with the performance of services under this Agreement. This Agreement identifies the minimum insurance levels with which Contractor shall comply; however, the minimum insurance levels shall not relieve Contractor of any other performance responsibilities under this Agreement (including the indemnity requirements), and Contractor may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Contractor, and prior to the commencement of any services, the Contractor shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Contractor shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

15.1. Minimum Insurance Levels. Contractor shall maintain insurance at the following minimum levels:

15.1.1 Commercial General Liability. Liability coverage in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

15.1.2 Automobile Liability. Liability coverage in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

15.1.3 Workers' Compensation coverage as required by the State of California.

15.1.4 Professional Liability coverage for damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.

15.2. Endorsements. The insurance policies shall be endorsed as follows:

15.2.1 For the commercial general liability insurance, the City (including its elected officials, employees, and agents) shall be named as additional insured, including loss arising from products and completed operations.

15.2.2. Contractor's Commercial General Liability insurance is primary to any other insurance available to the City with respect to any claim arising out of this Agreement. Any insurance maintained by the City shall be excess of the Contractor's General Liability insurance and shall not contribute with it.

15.2.3 Should any of Contractor's insurance policies be canceled before their expiration date, notice will be delivered in accordance with the policy provisions.

15.3. Qualifications of Insurers. All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VII."

16. INDEMNIFICATION AND LIABILITY.

16.1 Indemnification by Redflex. Subject to Section 16.3, Redflex hereby agrees to defend and indemnify the Customer and its affiliates, shareholders or other interest holders, 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 "Customer Party" and collectively, the "Customer Parties") against, and to protect, save and keep harmless the Customer Parties from, and to pay on behalf of or reimburse the Customer 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 Customer Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Redflex contained in this Agreement, or (b) the negligent or willful misconduct of Redflex, its employees or agents which result in death or bodily injury to any natural person (including third parties) 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 of any Customer Party.

16.2 Indemnification by Customer. Subject to Section 16.3, the Customer hereby agrees to defend and indemnify Redflex and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them, or any of them (individually a "Redflex Party" and collectively, the "Redflex Parties") against, and to protect, save and keep harmless the Redflex Parties from, and to pay on behalf of or reimburse the Redflex Parties as and when incurred for, any and all Losses which may be imposed on or incurred by any Redflex Party to the extent the Losses are proximately caused by (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of the Customer contained in this Agreement, (b) willful misconduct of the Customer, its employees, contractors or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the negligent or willful misconduct of any Redflex Party.

16.3 Indemnification Procedures. In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; 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. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim and no party shall have the right to 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.

17 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, lost profits, or consequential damages, however caused and on any theory of liability arising

out of or relating to this Agreement.

18 NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

Notices to Redflex:

Redflex Traffic Systems, Inc.
23751 North 23rd Avenue
Phoenix, AZ 85027
Attention: Program Management
Facsimile: (623) 207-2050

Notices to the Customer:

Fremont Police Department
City of Fremont
3300 Capitol Avenue
Fremont, CA 94536
Attention: Chief of Police
Facsimile: (510) 790-6801

19. DISPUTE RESOLUTION. 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. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet 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, or either party may unilaterally proceed to litigation.

The rights and obligations of the Parties under this Section shall not limit any right of either party set forth in Section 8 to terminate this Agreement.

- 20. COMPLIANCE WITH LAWS.** Nothing contained in this Agreement shall be construed to require the commission of 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 contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.
- 21. FORCE MAJEURE.** Neither 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 or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Reflex, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 22. CONSTRUCTION** Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.
- 23. GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.
- 24. ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 25. ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Contractor's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

- 26. HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- 27. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties' respective Authorized Representative.
- 28. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 29. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
- 30. SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Contractor and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last set forth below.

"Customer"

"Redflex"

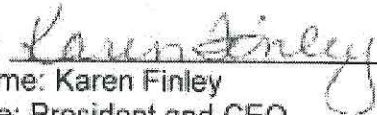
CITY OF FREMONT

REDFLEX TRAFFIC SYSTEMS, INC.,
a Delaware corporation

By:


FRED DIAZ
City Manager

By:


Name: Karen Finley
Title: President and CEO

Date:

6/30/10

Date:

June 30, 2010

APPROVED AS TO FORM:

By:


Senior Deputy City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

This Scope of Services, Exhibit "A," is incorporated by reference into the above referenced Agreement, under Agreement section 1. Redflex hereby agrees to provide the following services to the City.

1 **DEFINITIONS.** In the Agreement, the words and phrases below shall have the following meanings:

- 1.1 **"Authorized Officer"** means the Police Traffic Project Manager or other persons designated in writing by the Customer's Authorized Representative to review Potential Violations and to authorize the issuance of Citations in respect thereto.
- 1.2 **"Authorized Representative"** means for the City of Fremont, the Chief of Police or other persons designated in writing by the Chief of Police, and for Redflex means Karen Finley or person designed in writing by Karen Finley.
- 1.3 **"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 Officer by using the Redflex System.
- 1.4 **"Citation"** means the Notice to Appear prescribed by the California Vehicle Code for violations recorded by an automated enforcement system. Except during the Warning Period "Citation" means the warning notice provided to Redflex by the City to be mailed to the registered owner of the vehicle.
- 1.5 **"Confidential Information"** "Confidential Information" means any and all information which is disclosed by either party ("Owner") to the other ("Recipient") verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information includes, but is not limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Owner's business, as Owner has conducted it or as it may conduct itself in the future, confidential information concerning any of Owner's past, current, or possible future products or manufacturing or operational methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing, and any software (including third party software) provided by Owner.

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 by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.

- 1.6 "Designated Intersection Approaches" means the Intersection Approaches set forth in Section 4 of this Scope of Services.
- 1.7 "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) digital, rear shot multiple image color camera and at least one (1) digital face camera has been installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the Customer.
- 1.8 "Electronic Signature" means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.
- 1.9 "Enforced Approach" means a direction 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) digital, rear shot multiple image color camera and at least one (1) digital face camera and Smartscene video has been installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the Customer.
- 1.10 "Enforcement Documentation" means the necessary and appropriate documentation related to the Redlight Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Judicial Council and the Fremont Police Department), 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 with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.
- 1.11 "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex System, including but not limited to all camera systems, housings and poles.
- 1.12 "Fine" means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.13 "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.

- 1.14 "Installation Date" means the date on which Redflex completes the construction and installation of each Intersection Approach in accordance with the terms and conditions of the agreement for an automated enforcement system between Redflex and the City in effect at the time of the installation and construction, so that the Intersection Approach is fully operational for the purposes of functioning with the Redlight Photo Enforcement Program.
- 1.15 "Intellectual Property" means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other 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 hereof now or hereafter in force (including any rights in any of the foregoing), of such Person.
- 1.16 "Malfunction" means any failure of the Redflex System to capture a clear photographic image of any given incident.
- 1.17 "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Redlight Photo Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by the Customer and the issuance of Citations for such approved Violations using the Redflex System.
- 1.18 "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.19 "Police Traffic Project Manager" means the project manager appointed by the Authorized Representative in accordance with this Agreement and upon written notice to Redflex. The manager shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight Photo Enforcement Program. The manager shall have the power and authority to make management decisions relating to the Customer's obligations under this Agreement.
- 1.20 "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System in accordance with Customer's screening criteria for the purposes of allowing the Authorized Officer to review such data and determine whether a Violation has occurred.
- 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 Redlight Photo Enforcement at any time during the Term this Agreement, 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 designated by Redflex from time to time in accordance with this Agreement and upon written notice to the Customer. The project manager shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation of the Redlight Photo Enforcement Program, and shall have the power and authority to make management decisions relating to Redflex's obligations under this Agreement, including but not limited to change-order authorizations.
- 1.23 "Redflex System" means, collectively, the SmartCam™ System, the SmartOps™ System, SmartScene System, the Redlight Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.24 "Redlight Photo Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of the Redflex System.
- 1.25 "Redlight Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by Authorized Officers of the Customer, 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.
- 1.26 "SmartCam™ System" means the proprietary digital speed and redlight photo enforcement system of Redflex relating to the Redlight Photo Enforcement Program.
- 1.27 "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Redlight Photo Enforcement Program.
- 1.28 "SmartScene™ System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
- 1.29 "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
- 1.30 "Violation" means any traffic violation contrary to the terms of the Vehicle Code or 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.

- 1.31 "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.
- 1.32 "Warning Period" means the period of thirty (30) days after the Installation Date of each of the Designated Intersection Approaches.
- 2 **Redflex System.** Redflex will provide the Redflex System to the City for the Designated Intersection Approaches in accordance with the terms and conditions set forth in the Agreement, including this Scope of Services. For each Intersection Approach, the Redflex System will operate on a 24-hour basis across up to four lanes of width.
- 3 **Video Technology.** Redflex will provide the SmartScene™ video monitoring system at the Designated Intersection Approaches.
- 4 **Designated Intersection Approaches.** "Designated Intersection Approaches" includes:
 - 4.1 The following existing installed Intersection Approaches:
 - 4.1.1 Automall/Fremont
 - 4.1.2 Automall/Grimmer
 - 4.1.3 Blacow/Mowry
 - 4.1.4 Decoto/Fremont
 - 4.1.5 Decoto/Paseo Padre
 - 4.1.6 Mowry/Farwell
 - 4.1.7 Stevenson/Blacow
 - 4.1.8 Fremont/Mowry
 - 4.1.9 Warm Springs/Mohave
 - 4.1.10 Eastbound Warm Springs/Mission
 - 4.2 Up to ten (10) new intersection approaches that the City's Authorized Representative may select from time to time using criteria including, but not limited to, traffic volume, collision data, and red light running violation statistics.
- 5 **Implementing Agreements.** The Parties hereby authorize their respective Authorized Representative to execute Implementing Agreements consistent with the terms of the Agreement. "Implementing Agreement" means a written agreement and any written amendments thereto signed by the Parties' authorized representatives on behalf of the Parties defining the operational details of the Agreement.
- 6 **Installation.** Redflex will install and activate each new Designated Intersection Approach in accordance with the terms and conditions of this Agreement and any Implementing Agreements. For each installation, Redflex must:
 - 6.1 Use reasonable commercial efforts to install new systems in accordance with the schedule set forth in an Implementing Agreement. Construction

- must begin within 30 days and systems must be activated and operational within sixty (60) days of City Engineering final plan approval.
- 6.2 Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the city traffic engineer.
 - 6.3 Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for, pavement loops, electrical connections and traffic controller connections, as required, and on the condition that there are no direct connections within the controller cabinet; and
 - 6.4 Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications.
 - 6.5 Finalize the acquisition of the Approvals;
 - 6.6 Submit to the Customer a public awareness strategy for the Customer's consideration and approval, which strategy shall include media and educational materials for the Customer's approval or amendment (the "Awareness Strategy");
 - 6.7 Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches (under the supervision of the Customer);
 - 6.8 Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersection Approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
 - 6.9 Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
- 7 **Violation Processing.** During the Operational Period, Violations shall be processed as follows:
- 7.1 Redflex must store all Violations Data on the Redflex System.
 - 7.2 Redflex must use the Redflex System in conjunction with the Redlight Violation Criteria provided by the City and registered owner information Redflex obtains from the Department of Motor Vehicles to process Violation Data gathered from the Designated Intersection Approaches into a format capable of review by Authorized Officers via the Redflex System. Redflex shall be responsible for establishing and maintaining procedures, to be approved by the Traffic Project Manager, for quality assurance of Violation Data.

- 7.3 The Redflex System must be accessible by Authorized Officers 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.
- 7.4 Redflex must provide the Authorized Officer with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within six (6) days of the gathering of the Violation Data from the applicable Designated Intersection Approach.
- 7.5 Redflex 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 Redflex have the ability or authorization to make a Citation Decision.
- 7.6 Except during the Warning Period, Redflex must print and mail a Citation and other appropriate Enforcement Documentation, within the earlier of four (4) days or at a maximum of ten (10) days after the violation occurring after Redflex's receipt of each Authorized Violation from an Authorized Officer or ten (10) days after the violation date, to the vehicle's registered owner. The Citation must include or be accompanied by, as appropriate:
 - 7.6.1 The location, date and time of the Violation;
 - 7.6.2 Number of seconds into the red traffic signal;
 - 7.6.3 Vehicle speed;
 - 7.6.4 One (1) close-up view of the vehicle rear license plate;
 - 7.6.5 One (1) close-up frontal view of the vehicle driver;
 - 7.6.6 One (1) view of the intersection and the vehicle taken before the vehicle's front tires cross the limit line showing the traffic signal in the red phase and the rear license plate of the vehicle;
 - 7.6.7 One (1) view of the intersection and the vehicle taken after in the intersection past the limit line;
 - 7.6.8 Any other information deemed necessary by an Authorized Officer for successful prosecution of violations;
 - 7.6.9 Any information or documents that may be required by state law, including but not limited to:
 - 7.6.9.1 A certificate of mailing as required by Vehicle Code section 40518, subdivision (a);
 - 7.6.9.2 An affidavit of non-liability and information as to what constitutes non-liability, information as to the effect of executing the affidavit, and instructions for returning as required by Vehicle Code section 40520.
- 7.7 During the Warning Period for each Designated Intersection Approach, Redflex must print and mail a warning notice provided by the City to the register owner of the vehicle following receipt of an Authorized Violation within the same timeframes as required herein for Redflex to mail a Notice to Appear.

- 7.8 If deemed necessary by the City, Redflex must provide and staff a toll-free telephone number for citizen inquiries so that the City of Fremont and Redflex can respond to citizen inquiries, respond to complaints and Redflex shall provide necessary personnel for such purpose.
- 7.8.1 Quarterly speed and volume reports.
- 7.8.2 Access and support to the Authorized Officer to generate monthly reports using the Redflex Standard Report System.
- 7.8.3 Upon written request from the Authorized Officer, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the City in such format and for such periods as the City may reasonably request.
- 7.10 Redflex must at its expense make available, including but not limited to appearing in court, appropriate Redflex employees, including the custodian of records and expert witnesses, for purpose of prosecuting Violations whenever deemed necessary by the City or required by the court or applicable law.

8 Maintenance

- 8.1 Redflex is solely responsible for all repair and maintenance of the Redflex System, 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.
- 8.2 Redflex must inspect the Equipment and the functionality of the Redflex System at each Intersection Approach no less than once every month with remote inspections weekly and automated camera checks on each business day.
- 8.3 Redflex must respond to any material malfunction of any of the Redflex System within twenty four (24) hours of receiving malfunction notice from the Police Traffic Project Manager ("Malfunction Notice").
- 8.4 In the event that the Redflex System suffers any damage from whatever cause, Redflex discovers material malfunction or defect, or Redflex receives a Malfunction Notice, Redflex shall use its best efforts to cause the damage malfunction or defect to be repaired within forty-eight (48) hours of discovery by Redflex or receipt by Redflex of a Malfunction Notice.
- 8.5 In the event that the damage, malfunction or defect has not been substantially repaired within forty eight (48) hours, Redflex shall notify the Police Traffic Project Manager and Redflex's compensation shall be reduced by the out of service cost offset set forth in Exhibit "B".
- 8.6 Redflex must not open the Traffic Signal Controller Boxes without a representative of City's Traffic Engineering Division present.
- 8.7 The provision of all necessary electrical power services to the equipment Designated Intersection Approaches will be the sole responsibility of the Customer.

- 8.8 In the event that images of a quality suitable to the Police Traffic Project Manager to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install flash units.
- 8.9 Within six months of this agreement Redflex agrees to upgrade existing installed equipment.
- 8.10 The City and Redflex shall meet annually (within 30 day of the anniversary date of the signing of this agreement) and assess the effectiveness of each installed system. Redflex must upgrade with new digital still picture technology each Intersection Approach installed for which the parties mutually agree that the quality of images captured by the Redflex System at the Intersection Approach will substantially benefit from the upgrade.
- 8.11 Redflex must promptly make available to the City any and all upgrades and technology modifications, including but not limited to software, hardware, camera systems, violation detection systems upon the products general availability (GA release readiness and not in alpha, beta and testing phases) as Redflex and the City mutually agree. The upgrades and enhancements must be provided to the City at no cost within sixty (60) days of the City's acceptance of the upgrade or enhancement.
- 8.12 In the event a camera system is knocked down, the City will secure the camera system by removing the system from the scene and storing it in a secure location. Redflex Traffic Systems 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.
- 8.13 The City shall follow the knockdown procedures mutually agreed to in the Business Rules for notifying Redflex Traffic Systems of damage to their equipment.

EXHIBIT "B"

PAYMENT PROVISIONS

These Payment Provisions, Exhibit "B" are hereby incorporated by reference into the Agreement, under Agreement section 4. For all services identified in Exhibit "A" Scope of Services, the City agrees to pay and Reflex agrees to accept as total compensation the following.

1. **Compensation.** Subject to Agreement section 7.3, the City shall pay Reflex according to the fixed monthly fee per intersection identified below.

For each Designated Intersection Approach identified in subsections 1.1 and 1.2, Reflex will earn the monthly fee for those intersections from the date of this Agreement. For each additional Designated Intersection Approach identified in subsection 1.3, Reflex will earn the monthly fee beginning at the end of the first day after the ending of the Warning Period.

Reflex's right to the monthly fee for the Designated Intersection Approaches ends upon the expiration of the Term of this Agreement and any extensions agreed upon by the Parties under Agreement section 4, or upon initiation of termination as provided in Agreement sections 8.1, 8.2 or 8.3.

1.1 For each of the following Designated Intersection Approaches, the fixed fee shall be \$4,800 per month:

- Automall/Fremont
- Automall/Grimmer
- Blacow/Mowry
- Decoto/Fremont
- Decoto/Paseo Padre
- Mowry/Farwell
- Stevenson/Blacow
- Fremont/Mowry
- Mission/Mohave
- Eastbound Mission/Warm Springs

1.2 For each additional Designated Intersection Approach added during the term of the Agreement, the fixed fee shall be \$5,870 per month.

2. **Increases to monthly fee per intersection.** Each year, on the anniversary date of the contract, the pricing will increase by the CPI. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for U.S.

City average.

3. **Invoicing.** Redflex shall invoice the City monthly for the compensation earned under section 1. Unless otherwise specified in an Implementing Agreement, the Customer shall pay Redflex within thirty (30) days after an invoice is received. A monthly late fee of 1.5% is payable for payments past due 60 days from the date of the invoice. The invoice for payments due under this Agreement shall not be combined with the invoice for payments due under the 1999 Agreement.

4. **No other compensation.** Except as provided in section 5, 6, and 7 of this Exhibit B, it is specifically understood by the Parties that the payment specified in section 1 covers any and all costs to Redflex in providing the services identified in Exhibit A, including but not limited to all installation, operation, processing, maintenance, upgrade, licensing, leasing and support costs, and all cost incurred after expiration of the Agreement or initiation of termination of the Agreement and before final termination. It is also specifically understood by the Parties that there shall be no cost, charge or fee whatsoever to the City for the installation of any new system, or for the service, maintenance, operation thereof.

5. **Conduit used in construction.** The Parties anticipate that Redflex will be able to utilize existing conduit for installation of new Intersection Approaches where space is available. If it is determined in writing signed by both Parties respective Authorized Representative that additional conduit is necessary, cost and access for use of such additional conduit shall be equally shared by Redflex and the Customer. Any such additional conduit shall become the exclusive property of the Customer upon termination of this Agreement.

6. **Equipment Removal.** If equipment is removed, moved and/or replaced without mutual consent between the Contractor and the City and absent any of the conditions outlined in the termination section of this agreement, the City shall have the sole responsibility for all associated costs (i.e. construction, post-mortem conditions, equipment remedies, etc).

7. **Equitable Cost Recovery by Redflex Upon Termination Without Cause By the City.** If the City elects to terminate the Agreement under Agreement section 8.2, Redflex shall be entitled to recover burdened costs as follows.

Upon commencement of ticket issuance, the recovery of burdened costs will be calculated as follows: the burdened cost value per intersection approach installed during the term of this agreement equals \$150,000 within one month of ticket issuance. This value shall be decreased by \$8,300 per month thereafter until completion of month 18 but not to exceed \$100,000, whichever comes first, after which there will be no value associated with burdened cost.

EXHIBIT "C"

ADDITIONAL RIGHTS AND OBLIGATIONS

- 1 **Redflex 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 Redflex shall assist the Customer in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of new Redlight Photo Enforcement approaches (actually print and production costs are the sole responsibility of the Customer).
 - 1.2 Appoint the Redflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project Manager; Review all Enforcement Documentation for approval by the Customer, which approval shall not be unreasonably withheld;
 - 1.3 Deliver the Materials to the Customer.
 - 1.4 Once a year Redflex shall provide training for personnel of the Customer, including but not limited to the persons who Customer shall appoint as Authorized Officers and other persons involved in the administration of the Redlight Photo Enforcement Program, for at least sixteen (16) hours in the aggregate, regarding the operation of the Redflex System and the Redlight Photo Enforcement 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.
 - 1.5 Interact with court and judicial personnel to address issues 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, the Customer and juvenile court personnel.
 - 1.6 Upon request, provide reasonable public relations resources and media materials to the Customer in the event that the Customer elects to conduct a public launch of the Redlight Photo Enforcement Program.
 - 1.7 Redflex is solely responsible for providing all necessary communication infrastructures, including but not limited to telephone services, (DSL), cable or other broadband services to the Designated Intersection Approaches.
 - 1.8 The Redflex Project Manager (or a reasonable alternate) shall be available to the Authorized Officers each day, on a reasonable best efforts basis.
 - 1.9 Upon notification of a knockdown or vandalism to a camera system, Redflex shall respond and use commercial best efforts to repair the system to full operational status by the end of the third business day after notification of the event by the City or discovery of the event by

Redflex. In the event that a system cannot be operational within 3 business days, then Agreement section 7.3 shall apply.

1.10 Comply with all applicable laws including laws governing automated enforcement systems.

2 **Customer Obligations.** the Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):

2.1 The Customer shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the Vehicle Code, and shall assist in determining the placement of such Signage, and the Customer hereby acknowledges and agrees that the Customer shall be solely responsible for installing such Signage.

2.2 The Customer shall be solely responsible for the installation of LED lights at enforced intersections.

2.3 The Customer shall not access the Redflex System or use the Redlight Photo Enforcement Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo Enforcement 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 Redflex Photo Enforcement Program, and the Customer 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 Customer by means of hacking, password mining or any other method whatsoever, nor shall the Customer cause any other Person to do any of the foregoing.

2.4 The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Redlight Photo Enforcement Program.

2.5 In the event a camera system is knocked down from a vehicle collision or suffers any vandalism rendering the approach inoperative, Redflex Traffic Systems shall be notified as soon as possible. The customer will secure damaged property until Redflex can respond, and will assist Redflex in obtaining the Drawings from the relevant Governmental Authorities.

2.6 Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the ongoing implementation of the Redlight Photo Enforcement Program;

2.7 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 Customer.

2.8 Assist Redflex in seeking the Approvals.

- 2.9 Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Redlight Photo Enforcement Program.
- 2.10 Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training.
- 2.11 Provide the services of necessary personnel during future Warning Period(s).
- 2.12 Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the Customer will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date.
- 2.13 Develop the Redlight Violation Criteria; and consult with Redflex.
- 2.14 Seek approval of the Enforcement Documentation.
- 2.15 Responsible for providing power to the designated intersection approaches.

3 Other Rights and Obligations.

- 3.1 The Redflex Project Manager and the Police Traffic Project Manager shall meet from time to time during the installation of new approaches at such times and places as the Redflex Manager and the Customer Manager shall mutually agree.
- 3.2 The Customer and Redflex Traffic Systems shall agree on specific business rules governing the function and operation of the system.