

AMENDED AND RESTATED  
PROFESSIONAL SERVICES AGREEMENT

THIS AMENDED and RESTATED AGREEMENT ("Agreement"), effective November 16, 2009 ("Effective Date"), is made by and between the City of Glendale ("CITY"), a municipal corporation, and Redflex Traffic Systems, Inc., a Delaware corporation ("CONSULTANT"), (collectively, "Parties" or individually, "Party").

RECITALS

- A. CITY is a public entity organized and existing under its Charter and the Constitution of the State of California.
- B. CONSULTANT represents that it is, and will continue to be for this Agreement's duration, a Delaware corporation in good standing.
- C. CONSULTANT represents that it has the knowledge, possession and ownership of certain equipment, licenses, applications, and citation processes related to digital photo red light enforcement systems and thereby possesses the competence, experience, expertise, skill, facilities, equipment, personnel, financial wherewithal, and other resources necessary to perform this Agreement's tasks in a professional and competent manner.
- D. In 2007, CITY and CONSULTANT entered into an agreement to conduct a pilot project for the use of the photo red light enforcement services.
- F. The pilot project began with the installation of the first intersection access approach in April 2008 and was subsequently expanded to cover five (5) approaches at four (4) intersections in the City.
- G. CITY has accepted the project and now desires to continue to engage CONSULTANT'S services to provide said photo red light enforcement services.
- H. CONSULTANT desires to furnish and perform such professional services for CITY, on the terms and conditions described in this Agreement and CONSULTANT has the legal authority to provide, engage in, and carry out the professional services set forth in this Agreement.
- I. It is a mutual objective of both CITY and CONSULTANT to reduce the incidence of red-light running related traffic collisions at the intersections and streets that will be monitored pursuant to the terms of this Agreement.

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

## AMENDED AND RESTATED AGREEMENT

### 1.0 INCORPORATION OF RECITALS

1.1 The Recitals constitute the factual basis upon which CITY and CONSULTANT have entered into this Agreement. CITY and CONSULTANT acknowledge the Recitals' accuracy and, therefore, incorporate them into this Agreement.

### 2.0 DEFINITIONS

In this Agreement, the words and phrases below have the following meanings:

2.1 "Authorized Officer" means the Police Project Manager or such other individual(s) as the CITY shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto, and in any event, a sworn peace officer or a qualified employee of CITY's Police Department.

2.2 "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 Officer by using the Redflex System.

2.3 "Citation" means the notice of a Violation, which is mailed or otherwise delivered by CONSULTANT to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.

2.4 "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, CITY's 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:

(A) 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 CITY's, or at which such Person sells or has sold its services; and

(B) 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 mean the broadest and most inclusive interpretation of trade secrets.

(C) 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 disclosed, or (v) was required by applicable state law to be disclosed.

2.5 "Designated Intersection Approaches" means the directional intersection access approaches set forth on Section 4.1 and such additional Intersection Approaches as CONSULTANT and CITY shall mutually agree upon from time to time.

2.6 "Electronic Signature" means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation with respect to a Potential Violation using the Redflex System.

2.7 "Enforcement Documentation" means the necessary and appropriate documentation related to the Photo Red Light Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Judicial Council and 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 with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers .

2.8 "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Photo Red Light System(s), including but not limited to all camera systems, housings, radar units, servers and poles.

2.9 "Fine" means a monetary sum assessed for a Citation, including but not limited to bail forfeitures, but excluding suspended Fines.

2.10 "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.

2.11 “Installation Date” means the date on which CONSULTANT completes the construction and installation of at least one (1) new or additional Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational for the purposes of functioning with the Redlight Photo Enforcement Program.

2.12 “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, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, proprietary 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.

2.13 “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 by CONSULTANT for the purposes of facilitating Redlight Photo Enforcement by CITY.

2.14 “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by a sworn peace officer of CITY and the issuance of Citations for such approved Violations using the Redflex System.

2.15 “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.

2.16 “Photo Red Light Enforcement Program” means 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 measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.

2.17 “Photo Redlight Violation Criteria” means the standards and criteria by which Potential Violations will be evaluated by sworn peace officers of 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.

2.18 “Police Project Manager” means the project manager appointed by CITY in accordance with this Agreement, who shall be a sworn peace officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight Photo Enforcement Program, and which manager shall have the power and authority to make management decisions relating to CITY’s obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in CITY’s Charter or other organizational documents of CITY.

2.19 “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 for the purposes of allowing the Authorized Officer to review such data and determine whether a Red Light Violation has occurred.

2.20 “Proprietary Property” means, with respect to 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.

2.21 “Redflex Marks” means all trademarks registered in the name of CONSULTANT or any of its affiliates, such other trademarks as are used by CONSULTANT or any of its affiliates on or in relation to Photo Red Light Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by CONSULTANT, and all modifications or adaptations of any of the foregoing.

2.22 “Redflex Project Manager” means the project manager appointed by CONSULTANT as designated in accordance with this Agreement, which project manager shall initially be such person as CONSULTANT shall designate by providing prior written notice thereof to CITY from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Photo Red Light Enforcement Program, and who shall have the power and authority to make management decisions relating to CONSULTANT’s obligations pursuant to this Agreement, including but not limited to change-order authorizations.

2.23 “Redflex Photo Red Light System” means, collectively, the SMARTcam™ System, the SMARTops™ System, the SMARTscene™ System for 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.

2.24 “SMARTcam™ System” means the proprietary digital redlight photo enforcement system of CONSULTANT relating to the Photo Red Light Enforcement Program.

2.25 “SMARTops™ System” means the proprietary back-office processes of CONSULTANT relating to the Photo Red Light Enforcement Program.

2.26 “SMARTscene™ System” means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.

2.27 “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.

2.28 “Violation” means any traffic violation contrary to the terms of the California 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.

2.29 “Violations Data” means the images and other Violations data gathered by the Reflex System at the Designated Intersection Approaches.

2.30 “Warning Period” means the period of thirty (30) days after the Installation Date of a new or additional Designated Intersection Approach.

### 3.0 TERM

3.1 The term of this Agreement shall commence as of the date hereof and shall continue for a period of **five (5) years and seven months (“Initial Term”)**. The CITY shall have the right, but not the obligation, to extend the Initial Term of this Agreement for up to five (5) years subject to City Council approval. The CITY may exercise the right not to extend the term of this Agreement by providing written notice to CONSULTANT not less than sixty (60) days prior to the last day of the Initial Term.

### 4.0 SERVICES

4.1. **Scope of Work.** CONSULTANT shall provide the Photo Red Light Enforcement Program and the Reflex Photo Red Light System to CITY for the continued operation of the following five existing (5) Designated Intersection Approaches:

- (1) Mountain Street/Verdugo Road – W/B
- (2) Colorado Street/Pacific Avenue – E/B
- (3) Glendale Avenue/Broadway – S/B
- (4) Los Feliz Road/ San Fernando Road –E/B

(5) Los Feliz Road/San Fernando Road -- N/B

4.2 The continued operation of the above approaches shall be in accordance with the terms and provisions set forth in this Agreement, Exhibit A—CONSULTANT’S Proposal and Exhibit B—CITY’S Request for Proposals, Exhibit C – Parties Obligations and Rights, Exhibit D – Insurance Requirements. Said Exhibits are attached hereto and by this reference incorporated herein.

4.3 The Parties may agree to the implementation and operation of up to ten (10) additional Designated Intersection Approaches. Identification of any additional Designated Intersection Approaches will be based on mutual agreement between CONSULTANT and the CITY as warranted by community safety and traffic needs.

4.4 Prior to any Photo Red Light Enforcement Program expansion or any Photo Red Light Enforcement Program improvements to any intersections, the CITY will make all reasonable efforts to provide a list of proposed intersections under consideration to the designated Redflex Project Manager.

4.5 Any relocation of cameras at existing Designated Intersection Approaches will be discussed by the Parties prior to any such relocation. The CITY will be liable for relocation costs for existing Designated Intersection Approaches when such relocation is requested by the CITY. Monthly fees for those cameras relocated will continue per the pricing set forth in Section 8 prior to the relocation only if the relocation was requested by the CITY.

4.6 Optional Photo Speed System Component

4.6.1 Upon enabling legislation in the State of California that authorizes the CITY to enact Photo Speed Enforcement, CONSULTANT may provide mobile and/or fixed Photo Speed Enforcement services to the CITY.

4.6.2 Photo Speed Enforcement Services are optional for the CITY and will only be provided by CONSULTANT based upon mutually written agreement and the issuance of a “Notice to Proceed.”

4.7 **Installation.** With respect to the construction and installation of any additional Designated Intersection Approaches and the installation of the Redflex Photo Red Light System at such additional Designated Intersection Approaches, CITY and CONSULTANT shall have the respective rights and obligations set forth in Exhibits C.

4.8 **Maintenance.** With respect to the maintenance of the CONSULTANT’S Redflex Photo Red Light System at the existing and/or additional Designated Intersection Approaches, CITY and CONSULTANT shall have the respective rights and obligations set forth on Exhibit C attached hereto and by this reference incorporated herein.

4.9 **Violation Processing.** During the term of this Agreement, the Parties shall process Violations as follows:

4.9.1 All Violations Data shall be stored on the Redflex Photo Red Light System;

4.9.2 CONSULTANT'S Photo Red Light System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Officer via the Redflex System;

4.9.3 The Redflex Photo Red Light System shall be accessible by the Authorized Officer through a SSL secure connection by use of a confidential password on any computer equipped with a high-speed internet connection and an approved web browser;

4.9.4 CONSULTANT shall provide the Authorized Officer with access to the Redflex Photo Red Light System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violation Data from the applicable Designated Intersection Approaches;

4.9.5 CITY shall cause the Authorized Officer to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to CONSULTANT using the software or other applications or procedures provided by CONSULTANT on the Redflex Photo Red Light System for such purpose; ~~and CONSULTANT 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 ("CITATION DECISION"), AND IN NO EVENT SHALL CONSULTANT HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;

4.9.6 With respect to each Authorized Violation, CONSULTANT shall print and mail a Citation within six (6) days after CONSULTANT's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;

4.9.7 CONSULTANT shall provide a toll-free telephone number for the purposes of answering citizen inquiries;

4.9.8 CONSULTANT shall permit the Authorized Officer to generate monthly reports using the Redflex Standard Report System.

4.9.9 Upon CONSULTANT's receipt of a written request from CITY and in addition to the Standard Reports, CONSULTANT shall provide, without cost to CITY, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex



Photo Red Light System with respect thereto to CITY in such format and for such periods as CITY may reasonably request; provided, however, CONSULTANT shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to CITY;

4.9.10 Upon CITY's receipt of a written request from CONSULTANT, CITY shall provide, without cost to CONSULTANT, reports regarding the prosecution of Citations and the collection of Fines, fees and other monies in respect thereof in such format and for such periods as CONSULTANT may reasonably request; provided, however, CITY shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to CONSULTANT;

4.9.11 During the six (6) month period following the Installation Date or upon CONSULTANT's receipt of a written request from CITY at least fourteen (14) calendar days in advance of the court proceeding, CONSULTANT shall provide expert witnesses for use by CITY in prosecuting Violations; provided, however, CITY shall use reasonable best efforts to seek judicial notice in lieu of requiring CONSULTANT to provide such expert witnesses; and during the three (3) month period following the Installation Date, CONSULTANT shall provide such training to law enforcement personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of CITY with respect to the Redlight Enforcement Program.

4.10 **Prosecution And Collection; Compensation.** CITY shall diligently prosecute Citations and the collection of all Fines in respect thereof, and CONSULTANT shall have the right to receive, and CITY shall be obligated to pay, the compensation set forth in Paragraph 8.

4.11 **Other Rights And Obligations.** During the Term, in addition to all of the other rights and obligations set forth in this Agreement, CONSULTANT and CITY shall have the respective rights and obligations set forth in Exhibit C .

4.12 **Change Orders.** CITY may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to CONSULTANT, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon CONSULTANT's receipt of a Change Order Notice, CONSULTANT shall deliver a written statement describing the effect, if any, the proposed changes would have on the pricing terms set forth in Paragraph 8 (the "Change Order Proposal"), which Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by CITY. Following CITY's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to

the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing Designated Intersection Approaches, or the addition of Intersection Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Paragraph 8 shall govern. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 12.

4.13                    **Written Authorization Required.**    CONSULTANT shall not make changes in the Scope of Work, perform any additional work, or provide any additional material, without first obtaining written authorization from CITY. If CONSULTANT provides additional services or materials without written authorization, CONSULTANT proceeds at CONSULTANT's own risk and without payment.

4.14                    **Professional Standard of Care.**    During this Agreement's Term:

4.14.1    CONSULTANT and its Subconsultants, subcontractors, employees, and agents (collectively, "Consultant Parties") shall perform all of the Services in this Agreement in an expeditious and professional manner, using professionals properly licensed and duly qualified in California.

4.14.2    Consultant Parties shall perform the work described in this Agreement in accordance with generally accepted professional practices and principles, and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of Consultant Parties' profession currently practicing in California. By delivering the completed work, Consultant Parties represent and certify that their work conforms to the requirements of this Agreement; all applicable federal, state, county and local laws, rules, regulations, orders, and procedures; and the professional standard of care in California.

4.14.3    Consultant Parties are responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation: site conditions; existing facilities; seismic, geologic, soils, hydrologic, geographic, climatic conditions; applicable (federal, state, county, local, City) laws, rules, regulations, orders, and procedures; and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, and other similar information that CITY provides relating to site, local, or other conditions are not warranted or guaranteed, either expressly or implied, by CITY.

4.14.4    When the Scope of Work requires or permits CITY's review, approval, conditional approval, or disapproval, CONSULTANT acknowledges that CITY's review, approval, conditional approval, or disapproval:

A.        Is solely for the purposes of administering this Agreement and determining whether CONSULTANT is entitled to payment for its work;

B. Is not to be construed as a waiver of any breach or acceptance by CITY of any responsibility, professional or otherwise, for the work;

C. Does not relieve CONSULTANT of the responsibility for complying with the standard of performance or professional care; or laws, regulations, or industry standards; and

D. Does not relieve CONSULTANT from liability for damages arising out of CONSULTANT's: negligent acts, errors, or omissions; recklessness; willful misconduct; or noncompliance with industry standards.

4.14.5 Without additional compensation to CONSULTANT and at no cost to CITY, CONSULTANT shall correct or revise all errors, mistakes, or deficiencies in its work product, studies, reports, designs, drawings, specifications, or other services.

#### 4.15 License; Reservation of Rights.

4.15.1 License. Subject to the terms and conditions of this Agreement, CONSULTANT hereby grants to CITY, and CITY hereby accepts from CONSULTANT 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 Glendale, access and use of 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 content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City of Glendale that CONSULTANT is providing services to CITY in connection with Photo Red Light Enforcement 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 Photo Red Light Enforcement Program, so long as any and all such publications or materials are approved in advance by CONSULTANT.

4.15.2 Reservation Of Rights. CITY hereby acknowledges and agrees that: (a) CONSULTANT 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) 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, CITY shall gain no additional right, title or interest therein.

4.15.3 Restricted Use. CITY 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 CONSULTANT therein, (d) use any trademarks or other marks other than the Redflex

Marks in connection with the CITY's use of the Redflex Photo Red Light System pursuant to the terms of this Agreement without first obtaining the prior consent of CONSULTANT, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex Photo Red Light System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of CONSULTANT, or cause any other Person to do any of the foregoing.

4.15.4 **Protection Of Rights.** CONSULTANT shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of CONSULTANT, 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 CONSULTANT, and making any other applications or filings with appropriate Governmental Authorities. 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 CONSULTANT without the prior written consent of CONSULTANT.

4.15.5 **Infringement.** CITY shall use its reasonable best efforts to give CONSULTANT 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 CONSULTANT'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 CONSULTANT. CONSULTANT 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 CONSULTANT commences any enforcement action under this Section 4.15.5, then CITY shall render to CONSULTANT such reasonable cooperation and assistance as is reasonably requested by CONSULTANT, and CONSULTANT shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that CONSULTANT shall reimburse the CITY for any reasonable costs incurred in providing such cooperation and assistance.

4.15.6 **Infringing Use.** CITY shall give CONSULTANT prompt written notice of any action or claim action or claim, whether threatened or pending, against CITY alleging that the Redflex Marks, or any other Intellectual Property of CONSULTANT, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and CITY shall render to CONSULTANT such reasonable cooperation and assistance as is reasonably requested by CONSULTANT in the defense thereof; provided, that CONSULTANT shall reimburse CITY for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and CONSULTANT determines, in the exercise of its sole discretion, that an infringement may exist, CONSULTANT shall have the right, but not the obligation, to procure for CITY the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

## 5.0 TIME FOR PERFORMANCE

5.1. **Work Plan.** CONSULTANT shall complete all of the Services by project milestones as set forth in Exhibit A. With respect to any additional Designated Intersection Approaches, the CITY and CONSULTANT shall agree in writing to a work plan for each designated intersection.

5.2 **Force Majeure.** If an event or condition constituting a “force majeure”— including, but not limited to, acts of God or the public enemy, terrorism, significant fires, floods, unusually severe weather, earthquakes, epidemics, quarantine restrictions, labor disputes, freight embargoes, or Governmental Authorities’ approval delays--which are not caused by any act or omission by either Party prevents or delays a Party from performing or fulfilling an obligation under this Agreement, the Party is not in default of the obligation. A delay beyond a Party’s control automatically extends the time, in an amount equal to the period of the delay, for the Party to perform the obligation under this Agreement. The Parties shall prepare and sign an appropriate document acknowledging any extension of time under this Paragraph.

## 6.0 PERSONNEL

6.1. **Project Management.** The Parties shall appoint a Project Manager who shall be in contact at least monthly to coordinate, review, and ensure CONSULTANT’s performance under this Agreement. CONSULTANT’s Project Manager and CITY’s Project Manager will oversee the daily administration of the tasks that CONSULTANT will perform under this Agreement.

6.1.1 The Parties shall meet on a semi-annual basis to evaluate the Redflex Photo Red Light System and the Photo Red Light Enforcement Program. The location shall be a mutually agreed upon by the Parties.

6.2. **Key Personnel.** CONSULTANT’s project team as specified in Exhibit A, shall implement as well as provide ongoing support to CITY. CONSULTANT shall minimize changes to its key personnel. CITY may request key personnel changes, and CITY may review and approve key personnel changes proposed by CONSULTANT. CITY will not unreasonably withhold approval of key personnel assignments and changes.

6.3 **Use of Agents or Assistants.** With CITY’s prior written approval, CONSULTANT may employ, engage, or retain the services of persons or entities (“Subconsultants”) that CONSULTANT may deem proper to aid or assist in the proper performance of CONSULTANT’s duties. CITY is an intended beneficiary of all work that the Subconsultants perform for purposes of establishing a duty of care between the Subconsultants and CITY. CONSULTANT is as responsible for the performance of its Subconsultants as it would be if it had rendered the Services itself. All costs of the services of, or expenses incurred by, the Subconsultants are chargeable directly to CONSULTANT. Nothing in this Agreement constitutes or creates a contractual relationship between CITY and anyone other than CONSULTANT.

6.4. **Independent Contractor.**

(A) CONSULTANT understands and acknowledges that CONSULTANT is an independent contractor, not an employee, partner, agent, or principal of CITY. This Agreement does not create a partnership, joint venture, association, or employer-employee relationship between the Parties. At its own expense, CONSULTANT is responsible for providing compensation; employment benefits; disability, unemployment, and other insurance; workers' compensation; training; permits and licenses; and office space for CONSULTANT and for CONSULTANT's employees and Subconsultants. CONSULTANT has, and shall retain, the right to exercise full control over the employment, direction, compensation, and discharge of all persons whom CONSULTANT uses in performing the Services under this Agreement. CONSULTANT shall provide the Services in CONSULTANT's own manner and method, except as this Agreement specifies. CONSULTANT shall treat a provision in this Agreement that may appear either to give CITY the right to direct CONSULTANT as to the details of doing the work, or to exercise a measure of control over the work, as giving CONSULTANT direction only as to the work's end result.

(B) CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY for any obligation; claim; suit; demand for tax or retirement contribution, including any contribution or payment to the Public Employees Retirement System ; social security; salary or wages; overtime, penalty, or interest payment; or workers' compensation payment that CITY may be required to make on behalf of CONSULTANT, an employee of CONSULTANT, or any employee of CONSULTANT construed to be an employee of CITY, for the work done under this Agreement.

6.5. **Non-Discrimination in Employment.** CONSULTANT shall not discriminate against any employee or person who is subject to this Agreement because of race, color, religion, religious belief, national origin, ancestry, citizenship, age, sex, sexual orientation, marital status, pregnancy, parenthood, medical condition, or physical or mental disability.

6.6. **Disability Access Laws.** CONSULTANT represents and certifies that the work product, studies, reports, designs, drawings, and specifications that CONSULTANT prepares under this Agreement fully conform to all applicable disability access and design laws, regulations, and standards— including, but not limited to, the Americans with Disabilities Act (42 U.S.C. Sections 12101 *et seq.*) and Title 24 of the California Code of Regulations— when the Scope of Work requires or calls for compliance with those laws, regulations, or standards.

6.7. **Prevailing Wage Laws.** Services by persons deemed to be employees of CONSULTANT possibly may be subject to prevailing wages under California Labor Code Sections 1770-1781. CONSULTANT's sole responsibility is to comply with those requirements, should they apply. If a dispute based upon the prevailing wage laws occurs, CONSULTANT, at its expense, shall indemnify, defend (including CONSULTANT's

providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, Fines, penalties, wages, costs, or expenses pertaining to the prevailing wage laws.

6.8. **Workers' Compensation.** CONSULTANT understands and acknowledges that all persons furnishing services to CITY under this Agreement are, for the purpose of workers' compensation liability, employees solely of CONSULTANT and not of CITY. In performing the Services or the work under this Agreement, CONSULTANT is liable for providing workers' compensation benefits to CONSULTANT's employees, or anyone whom CONSULTANT directly or indirectly hires, employs, or uses. CITY is not responsible for any claims at law or in equity caused by CONSULTANT's failure to comply with this Paragraph.

## 7.0 FACILITIES

7.1. CONSULTANT shall provide all facilities necessary to complete the work and various tasks that CONSULTANT will perform under this Agreement. If CONSULTANT requires additional facilities from CITY, CONSULTANT shall meet and confer with CITY before CONSULTANT commences the work. If CONSULTANT needs to use CITY facilities, the Parties shall agree, before CONSULTANT commences the work, as to any costs chargeable to CONSULTANT.

7.2. CONSULTANT is responsible for any damage to CITY property, facilities, structures, or streets arising out of CONSULTANT's use, occupation, operation, or activities in, upon, under, or over any portion of them.

## 8.0 PAYMENT

8.1 Commencing on the execution of this Agreement, CITY shall be obligated to pay CONSULTANT a fee of \$5,500.00 per month for each of the five (5) existing Designated Intersection Approaches as full remuneration for performing all of the services contemplated in this Agreement. The five (5) existing Designated Intersection Approaches are set forth in Paragraph 4.1.

8.2 To reflect cost of living changes, said monthly fee shall be reviewed on July 1, 2011, and annually thereafter, during the Term of this Agreement. Subject to the approval of the City Manager for the CITY, the monthly fee may be adjusted upward by a percentage not to exceed the percentage occurring during the previous twelve (12) months in the Consumer Price Index for All Urban Consumers ("CPI-U") for the Los Angeles-Orange County Riverside Metropolitan Area (published by the Bureau of Labor Statistics, U.S. Department of Labor), or applying a similar index if the CPI-U is not published or available.

8.3 In the event CITY desires to designate additional intersection approaches, at the expiration of the Warning Period for each additional Designated Intersection Approach, CITY shall be obligated to pay CONSULTANT a fee of \$6,300.00 per month for each

Designated Intersection Approach as full remuneration for performing all of the services contemplated in this Agreement. Section 8.2 shall apply to each additional Designated Intersection Approach implemented and operational pursuant to this Agreement.

8.4 CITY agrees to pay CONSULTANT within forty-five (45) days after the invoice is received. A monthly late fee of 1.5 percent is payable for amounts remaining unpaid ninety (90) days from the date of invoice unless the delay in payment is caused by CONSULTANT.

8.5 In the event improvements to capture additional lanes are requested to any of the five (5) existing Designated Intersection Approaches set forth in Paragraph 4.1 or to any additional Designated Intersection Approach, the Parties shall mutually agree in writing to any additional fee.

8.6 If CITY requires additional services not included in this Agreement, CONSULTANT and CITY shall negotiate the additional services, mutually agree on the amount of additional compensation, and memorialize the terms in an amendment to this Agreement.

8.7 **Taxes.** CONSULTANT shall pay all applicable (federal, state, county, local, CITY) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon CONSULTANT's services under this Agreement.

8.8 **Invoices.** CONSULTANT shall submit an original, itemized invoice to CITY for approval, before receiving compensation. CONSULTANT shall submit the invoice at no more than monthly intervals. All invoices must include a summary of total costs, description of the Services performed, a brief itemization of costs associated with each task or phase, and the total phase or project costs to date.

8.9 **Business Assumptions for All Pricing Options**

8.9.1 CONSULTANT's construction will be able to utilize existing conduit for installation where space is available. If it is determined that new conduit must be installed the cost of the installation of the same shall be borne by CONSULTANT.

8.9.2 Required credit card fees will not be considered to be revenue received and are the responsibility of the violator.

8.9.3 CITY shall reimburse CONSULTANT the cost of replacing and/or modifying operational system approaches when roadway/intersection improvements are performed by or at the request of the CITY.

8.9.4 If a system is deactivated at the CITY'S request due to roadway construction, the monthly fee will be reduced to \$2,500.00 per approach or prorated per day thereof until the roadwork is completed and the system



becomes operational.

#### 8.9.5 Malfunction Credit

8.9.5.1 For each malfunctioning Redflex Photo Red Light System at a Designated Intersection Approach, CONSULTANT'S compensation under Section 8 shall be reduced and CONSULTANT shall credit the monthly invoice for each affected malfunctioning Designated Intersection Approach based on the following formula:

8.9.5.2 Fifty (50) percent monthly malfunction rate = fifty (50) percent base credit.

8.9.5.3 An additional one (1) percent credit for each percentage of malfunction rate above fifty (50) percent, up to and including eighty (80) percent malfunction rate, shall be added to the base credit.

8.9.5.4 If the malfunction rate exceeds eighty (80) percent, then CONSULTANT shall not be entitled to the monthly fixed fee and shall fully credit the monthly invoice.

8.9.5.5 The malfunction/issuance rate shall be determined from the CONSULTANT'S on-line Customer Management Report but excluding rejections for driver obstruction, motor cycle helmet, plate obstruction, extended vehicle, out of country and paper plates, wrong/no DMV, citations too old to process, emergency vehicles, and safe right turn on red.

8.9.5.6 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 from notice thereof. In the event that a Redflex Photo Red Light System is not fully operational within two (2) days of the reporting incident, CONSULTANT shall credit the monthly invoice in the amount of 1/30<sup>th</sup> of the fixed monthly fee for the downed approach for each day, or portion thereof, that the approach is down, including the initial two (2) consecutive days. In the event that any Redflex Photo Red Light System approach is determined to be down or off for a period of more than two (2) cumulative days in any given month, CONSULTANT shall credit the monthly invoice in the amount of 1/30<sup>th</sup> of the approach fee for the downed approach for each day the approach is down, including the initial two (2) cumulative days. A Redflex Photo Red Light 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.

8.9.6 The provision of all necessary communication, broadband and telephone services to the existing and/or additional Designated Intersection Approaches will be the sole responsibility of CONSULTANT.

8.9.7 The on-going provision of any and all necessary electrical power to the Designated Intersection Approaches will be the sole responsibility of CITY.

8.9.8 CONSULTANT shall be solely responsible for installing required signage. CONSULTANT 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 CITY shall submit signage design drawings to the appropriate local authority for approval. Any changes or modifications to signage requirements will be the responsibility of CITY.

## 9.0 AUDIT BY CITY

9.1. During this Agreement's Term and for a period of four (4) years after the expiration, cancellation, or termination of this Agreement, or any extension of it, CONSULTANT shall:

(A) Keep and maintain, in their original form, all records, books, papers, or documents related to CONSULTANT's performance of this Agreement; and

(B) Permit CITY or its authorized representatives, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to CONSULTANT's performance of this Agreement including, but not limited to: direct and indirect charges, and detailed documentation, for work CONSULTANT has performed or will perform under this Agreement. Any such audit shall be conducted upon reasonable prior notice at mutually convenient times and during CONSULTANT'S normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by CITY. In the event any such audit establishes any underpayment of any payment payable by CONSULTANT to CITY pursuant to this Agreement, CONSULTANT shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that CONSULTANT has underpaid any payment, CITY shall promptly refund to CONSULTANT the amount of the excess.

## 10.0 DATA, RECORDS, PROPRIETARY RIGHTS

10.1. Copies of Data. CONSULTANT shall provide CITY with copies or originals of all data that CONSULTANT collects in relation to all work associated with this

Agreement. Data that CONSULTANT collects, stores, or provides must be in a form acceptable to, and agreed upon by, CITY.

10.2. **Ownership and Use.** Unless CITY states otherwise in writing, each document— including, but not limited to, each report, draft, record, drawing, or specification (collectively, “Work Product”) — that CONSULTANT prepares, reproduces, or causes its preparation or reproduction for this Agreement is CITY’s exclusive property. CONSULTANT acknowledges that its use of the Work Product is limited to the purposes contemplated by the Scope of Work. CONSULTANT makes no representation of the Work Product’s application to, or suitability for use in, circumstances not contemplated by the Scope of Work.

10.3. **Intellectual Property.** If CONSULTANT uses or incorporates patented, trademarked, or copyrighted work, ideas, or products— in whole or in part— into CONSULTANT’s work product, CONSULTANT represents that:

(A) CONSULTANT holds the patent, trademark, or copyright to the work, idea, or product; or

(B) CONSULTANT is licensed to use the patented, trademarked, or copyrighted work, idea, or product.

10.3.1 Unless CITY states otherwise in writing, all proprietary rights or intellectual property rights, including copyrights, that arise from creation of the work under this Agreement vest in CITY. CONSULTANT waives and relinquishes all claims to proprietary rights and intellectual property rights, including copyrights, in favor of CITY. CONSULTANT shall indemnify, defend (including CONSULTANT’s providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, and representatives from and against all liability, claims, suits, demands, damages, royalties, Fines, penalties, costs, or expenses arising out of or alleging any infringement or misappropriation of a patent, copyright, trade secret, trade name, trademark, or other intellectual property right or proprietary right.

10.4. **Confidentiality.** CONSULTANT shall not use any information that it obtains from performing the work set forth in this Agreement for any purpose other than for fulfillment of CONSULTANT’s Scope of Work. Without CITY’s prior written authorization, CONSULTANT shall not disclose or publish— or authorize, permit, or allow others to disclose or publish— design data, drawings, specifications, reports, or other information relating to the Services or the work that CITY assigns to CONSULTANT or to which CONSULTANT has access.

10.5. **Public Records Act.** CONSULTANT acknowledges that this Agreement is a public record. This Agreement, its Exhibits, and all documents produced under this Agreement are subject to the California Public Records Act (Government Code Sections 6250 *et seq.*), including its exemptions. If CITY receives a Public Records Act request,

CONSULTANT shall identify— within the time period CITY specifies— all records, or portions of them, that CONSULTANT believes are exempt from production under the Public Records Act. If CONSULTANT claims a privilege against public disclosure or otherwise objects to the records' disclosure, then CITY may either decline to produce the requested information or redact portions of the documents and produce the redacted records. If CONSULTANT fails to identify one or more protectable documents, or if CONSULTANT fails to respond to CITY within the time period that CITY sets, in its sole discretion CITY may produce the records— in whole, in part, or redacted— or may decline to produce them. CONSULTANT may seek protection from disclosure by timely applying for relief in a court of competent jurisdiction. CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, Fines, penalties, costs, or expenses arising out of or alleging CITY's refusal to publicly disclose one or more records that CONSULTANT identifies as protectable, or asserts is protectable.

## 11.0 DEFAULT, REMEDIES, AND TERMINATION

11.1. **Default.** Default under this Agreement occurs upon any one or more of the following events:

(A) CONSULTANT refuses or fails— whether partially, fully, temporarily, or otherwise— to:

- (1) Provide or maintain enough properly trained and licensed personnel to perform the Services that this Agreement requires;
- (2) Pay for, obtain, maintain, or renew the insurance policies or coverages that this Agreement requires;
- (3) Comply with indemnification, defense, or hold harmless provisions that this Agreement requires; or

(B) CONSULTANT, or its personnel, or both— whether partially, fully, temporarily, or otherwise:

- (1) Disregards or violates a law, ordinance, rule, procedure, regulation, or order;
- (2) Refuses or fails to pay for, obtain, maintain, or renew requisite licenses;
- (3) Refuses or fails to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement;

- (4) Commits an unlawful, false, fraudulent, dishonest, deceptive, or dangerous act while performing the Services under this Agreement;  
or

(C) CONSULTANT:

- (1) Or another party for or on behalf of CONSULTANT: institutes proceedings under any bankruptcy, reorganization, receivership or other insolvency; or assigns or transfers assets to its creditors;
- (2) Delegates— whether in whole, in part, temporarily, or otherwise— its duties or obligations under this Agreement, without notifying CITY, or without CITY's written authorization;
- (3) Assigns, transfers, pledges, hypothecates, grants, or encumbers— whether in whole, in part, temporarily, or otherwise— this Agreement or any interest in it, without notifying CITY, or without CITY's written authorization;
- (4) Or one of its partners, directors, officers, or general managers, or a person who exercises managerial authority on CONSULTANT's behalf, is convicted under state or federal law, during this Agreement's Term, of embezzlement, theft, fraud, forgery, bribery, deceptive or unlawful business practices, perjury, falsifying or destroying records or evidence, receiving stolen property, or other offense indicating a lack of business integrity or business honesty;  
or

(D) Any other justifiable cause or reason, as reasonably determined by the City Manager, or a designee.

11.2. **Notice of Default.** If CITY deems that CONSULTANT is in Default, or that CONSULTANT has failed in any other respect to satisfactorily perform the Services specified in this Agreement, CITY may give written notice to CONSULTANT specifying the Default(s) that CONSULTANT shall remedy within thirty (30) days or within such other time period as the CITY and CONSULTANT shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after receiving the notice. The Notice of Default will set forth one or more bases for any dissatisfaction and may suggest corrective measures.

11.3. **Remedies upon Default.** Within the time limit set forth in Section 11.2 after receiving CITY's Notice of Default, if CONSULTANT refuses or fails to remedy the Default(s), or if CONSULTANT does not commence steps to remedy the Default(s) to CITY's reasonable satisfaction, CITY may exercise any one or more of the following remedies:

- (A) CITY may, in whole or in part and for any length of time, immediately suspend this Agreement until such time as CONSULTANT has corrected the Default;
- (B) CITY may provide for the Services either through its own forces or from another consultant, and may withhold any money due or (that may become owing to) CONSULTANT for a task related to the claimed Default;
- (C) CITY may withhold all moneys, or a sum of money, due CONSULTANT under this Agreement, which in CITY's sole determination, are sufficient to secure CONSULTANT's performance of its duties and obligations under this Agreement;
- (D) CITY may immediately terminate the Agreement;
- (E) CITY may exercise any legal or equitable remedy, or both, including, but not limited to, filing and action in court:
  - (1) Seeking CONSULTANT's specific performance of all or any part of this Agreement; or
  - (2) Recovering damages for CONSULTANT's Default, breach, or violation of this Agreement; or
- (F) CITY may pursue any other available, lawful right, remedy, or action.

11.4. **Termination for Convenience.** Independent of the remedies provided in Section 11.3, CITY may elect to terminate this Agreement at any time upon sixty (60) days prior written notice. Upon termination, CONSULTANT shall receive compensation only for that work which CONSULTANT had satisfactorily completed to the termination date. CITY shall not pay CONSULTANT for de-mobilization, takedown, disengagement, wind-down, or other costs incurred arising out of this Agreement's termination.

11.5 **Termination for Cause.** The Parties agree that either Party shall have the right to terminate this Agreement immediately by five (5) days written notice to the other if any of the following events occur: (i) state statutes are amended to prohibit or substantially change the operation of photo red light enforcement systems; or (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the Redflex Photo Red Light System of photo red light enforcement are inadmissible in evidence. In the event of a termination due to a default under Section 11.1., CITY shall be relieved of any further obligations for payment to CONSULTANT other than as specified in Section 8.0. The rights to terminate this Agreement given in this Section 11.5 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.

11.6 Procedures Upon Termination. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in Section 5.2, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate.

11.6.1 CONSULTANT 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 Photo Red Light Enforcement Program, (ii) promptly deliver to the CITY any and all Proprietary Property of CITY provided to CONSULTANT pursuant to this Agreement, (iii) promptly deliver to CITY a final report to CITY regarding the collection of data and the issuance of Citations in such format and for such periods as CITY may reasonably request, and which final report CONSULTANT shall update or supplement from time to time when and if additional data or information becomes available, (iv) promptly deliver to CITY a final invoice stating all fees and charges properly owed by CITY to CONSULTANT for work performed and Citations issued by CONSULTANT prior to the termination, and (v) provide such assistance as CITY may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement.

11.6.2 CITY shall (i) immediately cease using the Photo Red Light Enforcement Program, accessing the Redflex Photo Red Light System and using any other Intellectual Property of CONSULTANT, (ii) promptly deliver to CONSULTANT any and all Proprietary Property of CONSULTANT provided to CITY pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by CITY to CONSULTANT for work performed and Citations issued by CONSULTANT prior to the termination.

11.6.3 Unless CITY and CONSULTANT have agreed to enter into a new agreement relating to the Photo Red Light Enforcement Program or have agreed to extend the Term of this Agreement, CONSULTANT shall, within 45 days remove any and all Equipment and other materials of CONSULTANT installed in connection with CONSULTANT's performance of its obligations under this Agreement, including but not limited to housings, poles, pole foundations and camera systems, and CONSULTANT shall restore the Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement. As an option, CITY may purchase some or all of the equipment including but not limited to signs, poles and camera housings. Should CITY desire to purchase the existing street hardware, each pole plus pole base shall cost \$350.00 and each camera enclosure (housing only) shall cost \$9,490.00.

## 12.0 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 12**, 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 nonbinding mediation.

### 13.0 INSURANCE

13.1. When CONSULTANT signs and delivers this Agreement to CITY, CONSULTANT also shall deliver insurance forms that fully meet the requirements of, and contain provisions entirely consistent with, all of the "Insurance Requirements," which are attached as "Exhibit D" to this Agreement and are incorporated into it by this reference.

13.2. This Agreement's insurance provisions:

(A) Are separate and independent from the indemnification and defense provisions in Article 14 of the Agreement; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 14 of the Agreement.

### 14.0 INDEMNITY

14.1. To the maximum extent permitted by law— including, but not limited to, California Civil Code Section 2778— CONSULTANT shall indemnify, defend, and hold harmless CITY, its officers, agents, employees, and representatives (individually and collectively, "CITY Indemnitee") from and against all liability, suits, actions, proceedings, judgments, claims, losses, liens, damages, injuries (collectively, "liability") [whether the liability is in contract or in tort, including bodily injury, personal injury, accidental death, or property damage], fees, costs, sums, penalties, Fines, and expenses [including attorney's fees, litigation, arbitration, mediation, appeal expenses] (collectively, "expense") that in whole or in part arise out of, pertain to, or relate to an act, error, or omission of CONSULTANT, or of an employee, agent, Subconsultant of CONSULTANT, or of a person whom CONSULTANT employs or hires (individually and collectively, "CONSULTANT Indemnitor").

14.2. To the extent that it is covered by CONSULTANT Indemnitor's insurance, CONSULTANT Indemnitor's obligation to defend a City Indemnitee under this Article:

(A) Means that CONSULTANT Indemnitor shall provide and pay for legal counsel, acceptable to CITY, for the CITY Indemnitee;

(B) Occurs when a claim, suit, complaint, or action against a City Indemnitee



arises out of, pertains to, relates to, or asserts an act, error, or omission of CONSULTANT Indemnitor; and

(C) Arises regardless of whether a claim, suit, complaint, or action specifically names or identifies CONSULTANT Indemnitor.

14.3. Paragraph 14.2 does not limit or extinguish CONSULTANT Indemnitor's obligation to reimburse CITY for the costs of defending a CITY Indemnitee against any liability within the scope of this Article.

14.4. If CONSULTANT subcontracts all or any portion of the Services under this Agreement, CONSULTANT shall provide CITY with a written agreement from each Subconsultant, who must indemnify, defend, and hold harmless CITY Indemnitee under the terms in this Article.

14.5. CONSULTANT's obligation to indemnify, defend, and hold harmless CITY will remain in effect and will be binding upon CONSULTANT whether the liability or the expense accrues, or is discovered, before or after this Agreement's expiration, cancellation, or termination.

14.6. Except for Paragraph 14.2, this Section's indemnification and defense provisions are separate and independent from the insurance provisions in Section 13. In addition, the indemnification and defense provisions in this Section 14:

(A) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in Article 13; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in Article 13.

## 15.0 CONFLICT OF INTEREST

15.1. CONSULTANT affirms that to the best of CONSULTANT's knowledge, no actual or potential conflict exists between CONSULTANT, CONSULTANT's principals, officers, members, shareholders, family members, business, or financial interests and the Services that CONSULTANT will provide under this Agreement. During this Agreement's Term, CONSULTANT shall inform CITY regarding any possible conflict of interest that may arise as a result of any change in circumstances.

## 16.0 GENERAL PROVISIONS

16.1. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Parties. This Agreement supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written. Neither CONSULTANT nor CITY has made any promises or representations, other than those

contained in this Agreement or those implied by law.

16.2. **Interpretation.** This Agreement is the product of negotiation and compromise by both Parties. Every provision in this Agreement must be interpreted as though the Parties equally participated in its drafting. Therefore, despite the provisions in California Civil Code Section 1654, if this Agreement's language is uncertain, the Agreement must not be construed against the Party causing the uncertainty to exist. In interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachments. If a conflict occurs between a provision in this Agreement and a provision in an attachment, the following order of precedence applies:

- (1) The Agreement
- (2) Exhibit D – Insurance Requirements
- (3) Exhibit C – Parties' Obligations and Rights
- (4) Exhibit A – Redflex Proposal
- (5) Exhibit B – City's Request for Proposals

16.3. **Headings.** All headings or captions in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any term, condition, or provision.

16.4. **Governing Law.** California's laws govern this Agreement's construction and interpretation. Unless this Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendments, modifications, and successor legislation.

16.5 **Jurisdiction And Venue.** Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the courts located in the County of Los Angeles and both parties specifically agree to be bound by the jurisdiction and venue thereof.

16.6 **Severability.** The invalidity, in whole or in part, of any term of this Agreement will not affect this Agreement's remaining terms.

16.7 **Attorney's Fees.** If CITY or CONSULTANT brings an action at law or in equity to enforce or interpret one or more provisions of this Agreement, the "prevailing party" is entitled to "reasonable attorney's fees" in addition to any other relief to which the prevailing party may be entitled. A "prevailing party" has the same meaning as that term is defined in California Code of Civil Procedure Section 1032(a)(4). "Reasonable attorney's fees" of the City Attorney's office means the fees regularly charged by private attorneys who:

- (A) Practice in a law firm located in Los Angeles County; and
- (B) Have an equivalent number of years of professional experience in the subject matter area of the law for which the City Attorney's services were rendered.

16.8 **Waiver of Breach.** If a Party waives the other Party's breach of a term in this Agreement, that waiver is not treated as waiving a later breach of the term and does not prevent the Party from later enforcing that term, or any other term. A waiver of a term is valid only if it is in writing and signed by the Party waiving it. This Agreement's duties and obligations:

(A) Are cumulative (rather than alternative) and are in addition to (rather than a limitation on) any option, right, power, remedy, or privilege; and

(B) Are not exhausted by a Party's exercise of any one of them.

16.9 **Further Assurances.** Upon CITY's request at any time, CONSULTANT shall promptly:

(A) Take further necessary action; and

(B) Sign, acknowledge, and deliver all additional documents as may be reasonable, necessary, or appropriate to carry out this Agreement's intent, purpose, and terms.

16.10 **Assignment.**

(A) This Agreement does not give any rights or benefits to anyone, other than to CITY and CONSULTANT. All duties, obligations, and responsibilities under this Agreement are for the sole and exclusive benefit of CITY and CONSULTANT, and are not for the benefit of another person, entity, or organization. Without CITY's prior written authorization, CONSULTANT shall not do any one or more of the following:

(1) Assign or transfer a right or interest— whether in whole, in part, temporarily, or otherwise— in this Agreement; or

(2) Delegate a duty or obligation owed— whether in whole, in part, temporarily, or otherwise— under this Agreement.

(B) Any actual or attempted assignment of rights or delegation of duties by CONSULTANT is wholly void and totally ineffective for all purposes; and does not postpone, delay, alter, extinguish, or terminate CONSULTANT's duties, obligations, or responsibilities under this Agreement.

(C) Notwithstanding anything in this Section 16.10 to the contrary, CITY hereby acknowledges and agrees that the execution, delivery, and performance of CONSULTANT'S rights pursuant to this Agreement shall require a significant investment by CONSULTANT, and that in order to finance such investment, CONSULTANT may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks,

financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). CITY hereby agrees that CONSULTANT shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between CONSULTANT and any such Financial Institution, subject to CITY'S prior written approval, which approval shall not be unreasonably withheld or delayed. CITY further acknowledges and agrees that in the event that CONSULTANT provides written notice to CITY that it intends to Transfer all or any of CONSULTANT'S rights pursuant to this Agreement, and in the event that CITY fails to provide such approval or fails to object to such Transfer within forty-five (45) business days after its receipt of such notice from CONSULTANT, for the purposes of this Agreement, CITY shall be deemed to have consented to and approved such Transfer by CONSULTANT.

(D) If CITY consents to an assignment of rights, or a delegation of duties, or both, CONSULTANT'S assignee or legal representative shall agree in writing to personally assume, perform, and to be bound unconditionally by the covenants, obligations, terms, and conditions in this Agreement.

16.11. **Successors and Assigns.** Subject to the provisions in Paragraph 16.10, this Agreement is binding on the heirs, executors, administrators, successors, and assigns of the respective Parties.

16.12. **Time is of the Essence.** Except when this Agreement states otherwise, time is of the essence in this Agreement. CONSULTANT acknowledges that this Agreement's time limits and deadlines are reasonable for CONSULTANT'S performing the Services under this Agreement. Unless this Agreement specifies otherwise, any reference to "day" or "days" means calendar and not business days. Any reference to the time of day refers to local time for Glendale, California.

16.13. **Recycled Paper.** CONSULTANT shall endeavor to submit all reports, correspondence, and documents related to this Agreement on recycled paper.

16.14. **Notices.**

(A) The Parties shall submit in writing all notices and correspondence that this Agreement requires or permits, and shall deliver the notices and correspondence to the places set forth below. The Parties may give notice by:

- (1) Personal delivery;
- (2) U.S. mail, first class postage prepaid;
- (3) "Certified" U.S. mail, postage prepaid, return receipt requested; or

(4) Facsimile.

(B) All written notices or correspondence sent in the described manner will be presumed "given" to a Party on whichever date occurs earliest:

- (1) The date of personal delivery;
- (2) The third (3rd) business day following deposit in the U.S. mail, when sent by "first class" mail;
- (3) The date on which the Party or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by "certified" mail; or
- (4) The date of transmission, when sent by facsimile.

(C) At any time, by providing written notice to the other Party, CITY or CONSULTANT may change the place, or facsimile number, for giving notice.

CITY: City of Glendale  
Police Department  
131 North Isabel Street  
Glendale, CA 91206  
Attn: Lt. Gary Montecucollo  
Tel. No. (818) 548-3132  
Fax. No. (818) 550-6577

CONSULTANT:

Redflex Traffic Systems, Inc.  
23751 N. 23<sup>rd</sup> Avenue, Suite 150  
Phoenix, AZ 85085  
Attention: Ms. Karen Finley  
Facsimile: (623) 207-2000  
Tel. No.: (623) 207-2050

16.15. **Counterparts.** This Agreement may be executed in counterparts, each of which is an original, but all of which constitutes one and the same document. The Parties shall sign a sufficient number of counterparts, so that each Party will receive a fully executed original of this Agreement.

16.16. **Representations – Authority.** The Parties make the following representations:

- (A) They have read this Agreement, fully understand its contents, and have received a copy of it;
- (B) Through their duly authorized representative, they are authorized to sign this Agreement, and they are bound by its term; and
- (C) They have executed this Agreement on the date opposite their signature.

16.17 **CONSULTANT's Warranties.**

16.17.1 **Professional Services.** CONSULTANT hereby warrants and represents that any and all services provided by CONSULTANT pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Redflex Photo Red Light System, subject to applicable law, in compliance with all specifications provided to CONSULTANT by CITY.

16.17.2 **LIMITED WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CONSULTANT 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 CONSULTANT SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE CITY'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, CONSULTANT DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION APPROACHES OR THE CONSULTANT SYSTEM WILL OPERATE IN THE WAY THE CITY SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CITY HEREBY ACKNOWLEDGES THAT THE CONSULTANT SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, CONSULTANT SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

16.18 **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 hereof or to carry out the intent of this Agreement.

16.19 **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.

16.20 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.

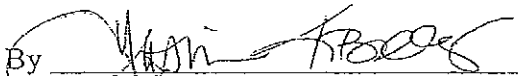
16.21 **Compliance with laws.** Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary 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.

16.22 **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.

16.23 **Survival.** This Paragraph and the obligations set forth in Paragraphs 6.4, 6.6, 6.7, 6.8, 8.7, 9.1, 10.1, 10.2, 10.3, 10.4, 10.5, 11.3, 13.1, 13.2, 14.1, 14.2, 16.7, 16.8, 16.9, 16.10, 16.11, and 6.14 survive this Agreement's expiration, cancellation, or termination.

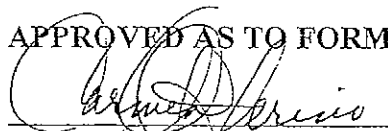
Executed at Glendale, California.

**CITY OF GLENDALE**

By   
(Name) Yasmin Beers  
(Title) Deputy City Manager

Date: 2/18/10

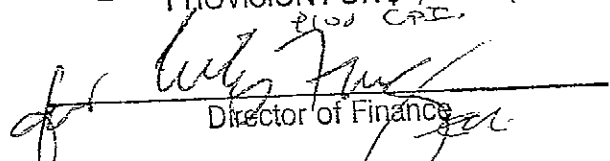
**APPROVED AS TO FORM:**

  
City Attorney


2/18/10  
Date



CITY OF GLENDALE  
DATE 2-19-2010  
APPROVED AS TO FINANCIAL  
PROVISION FOR \$ 4,650,000  
Plus C.P.I.

  
Director of Finance

**CONSULTANT**

By   
(Name) AARON ROSENTHAL  
(Title) E.V.P

Date: 2-12-10