

10-023

CONTRACT No. _____

PROFESSIONAL SERVICES AGREEMENT

BETWEEN THE CITY OF GLENDALE
AND
CONSULTANT TRAFFIC SYSTEMS, INC.

THIS AGREEMENT ("Agreement"), effective _____, 2007 ("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. CITY desires to engage the services of CONSULTANT to provide said photo red light enforcement services.
- E. 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.
- F. 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:

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 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 Intersection Approaches set forth on Section 4.1 and such additional Intersection Approaches as CONSULTANT and CITY shall mutually agree 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 “Gross Cash” means all revenue actually received by the City from the Los Angeles County Superior Court as a result of the Photo Red Light Enforcement Program as authorized by this Agreement.

2.12 “Installation Date” means the date on which CONSULTANT completes the construction and installation of at least one (1) 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.

2.13 “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.

2.14 “Intersection Approach” means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by CONSULTANT for the purposes of facilitating Redlight Photo Enforcement by CITY.

2.15 “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.

2.16 “Pilot Program” means that certain one-year red light photo enforcement program as set forth in Exhibit B, Request for Proposals, attached hereto and by this reference incorporated herein.

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

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 “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 CONSULTANT, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.

2.25 “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.

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

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

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

2.29 “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.

2.30 “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.

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

2.32 “Warning Period” means the period of thirty (30) days after the Installation Date of the first 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 one (1) year from the date of commencement of the “Pilot Program” which shall begin upon the date of issuance of the first citation under the Redflex system.. City Council may, in its sole discretion, exercise the right to extend the term of this Agreement by providing written notice to Redflex.

4.0 SERVICES

4.1. **Scope of Work.** CONSULTANT shall provide the Photo Red Light Enforcement Program to CITY, in each case 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, both Exhibits are attached hereto and by this reference incorporated herein. This Agreement is for the implementation of up to five (5) Designated Intersection Approaches. Identification of enforced intersections will be based on mutual agreement between CONSULTANT and CITY as warranted by community safety and traffic needs.

4.1.1 **Installation.** With respect to the construction and installation of one(1) of the Designated Intersection Approaches and the installation of the Redflex System at such Designated Intersection Approach, CITY and CONSULTANT shall have the respective rights and obligations set forth in Exhibits C.

4.1.2 **Maintenance.** With respect to the maintenance of the CONSULTANT System at the 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.

4.1.3 **Violation Processing.** During the Operational Period, the Parties shall process Violations as follows:

4.1.3.1 All Violations Data shall be stored on the Redflex System;

4.1.3.2 CONSULTANT 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;

4.1.3.3 CONSULTANT 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;

4.1.3.4 CONSULTANT shall provide the Authorized Officer with access to the Redflex 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

4.1.3.5 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 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;

4.1.3.6 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;

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

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

4.1.3.9 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 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;

4.1.3.10 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;

4.1.3.11 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.

4.2 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.

4.3 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**.

4.4 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.

4.5 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.

4.6 Professional Standard of Care. During this Agreement’s Term:

4.6.1 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.

4.6.2 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.

4.6.3 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.

4.6.4 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.

4.6.5 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.

4.7 **License; Reservation of Rights.**

4.7.1 **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.

4.7.2 **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.

4.7.3 **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 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 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.

4.7.4 **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.

4.7.5 **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 4.7.5, 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.

4.7.6 **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.

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 weekly to coordinate, review, and ensure CONSULTANT’s performance under this Agreement. CONSULTANT’s Redflex Project Manager and CITY’s Project Manager will oversee the daily administration of the tasks that CONSULTANT will perform under this Agreement.

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 Subject to the terms for cost neutrality set forth in paragraph 8.2 and commencing on the expiration of the Warning Period for each Designated Intersection Approach, CITY shall be obligated to pay CONSULTANT a fixed fee not to exceed \$6,420.00 per month for each Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement. Except as set forth in paragraph 8.2, CITY agrees to pay CONSULTANT within thirty (30) days after the invoice is received. There shall be no late fee. The fee for intersection approaches with more than four (4) contiguous lanes shall be determined based on additional equipment needed. Said fee shall be mutually agreed in writing between the Parties.

8.2. **Cost Neutrality.** CONSULTANT guarantees there will be cost neutrality to CITY throughout the term of this Agreement. Cost Neutrality will be determined by a monthly reconciliation of the Gross Cash revenue from citations and the Fixed Fees. Should citation revenue fall short of the Fixed Fees, CONSULTANT shall absorb and carryover the difference from month to month until said revenues meet or exceed said Fixed Fees. This Section 8.2 shall survive the term of this Agreement but only to the extent that Gross Cash revenue meets or exceeds said Fixed Fees, and such revenue was generated during the term of this Agreement.