

AMENDMENT NO. 1 TO AGREEMENT NO. 9613

July *due*
This Amendment No. 1 to Agreement No. 9613 (hereinafter "Amendment") is dated this 21st day of ~~June~~, 2011, by and between the City of Napa, a municipal corporation (hereinafter "City"), and Redflex Traffic Systems, Inc., a Delaware corporation (hereinafter "Contractor").

RECITALS

A. On or about June 3, 2008, City and Contractor entered into an Agreement entitled "Agreement Between the City of Napa and Redflex Traffic Systems, Inc. for Automated Photo Enforcement Cameras" (hereinafter "Agreement") by which, generally, Contractor provides City with a set of digital traffic enforcement cameras and related services, in return for the City's payment of a fixed monthly fee in accordance with the payment provisions of the Agreement.

B. The Agreement (Section 5) provides for an initial three year term (ending June 17, 2011), with a right for the City to extend the term for up to three additional consecutive one year periods.

C. The City's obligations to compensate the Contractor are generally set forth in Agreement Exhibit "B." Agreement Exhibit "B," Section 1, generally requires the City to pay the Contractor a fixed fee for each designated intersection approach at which the Contractor has installed red light cameras and the Contractor provides related services. Agreement Exhibit "B," Section 1.2 is entitled "Cost Neutrality," and generally establishes limitations on the City's obligation to pay fees to Redflex, based on the amount of revenue received by the City from red light violations at each designated intersection approach.

D. On or about May 27, 2011, the City received an Opinion from the Superior Court for the State of California, County of Napa Appellate Division, Case No. CR 154602 (People of the State of California v. Daugherty), in which the court concludes that the City's "Cost Neutrality" provisions are in violation of California Vehicle Code Section 21455.5. While it is the view of both the City and the Contractor that the Agreement is not in conflict with the requirements of the California Vehicle Code, and the City intends to file an appropriate legal challenge to the court's opinion; the City desires to amend the Agreement (as set forth herein) to delete the "Cost Neutrality" provisions in order to eliminate this legal controversy from future citations for red light violations at designated intersection approaches, and to delete the "Equitable Cost Recovery" provisions for termination without cause.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.

2. TERM OF AGREEMENT. The City hereby expressly exercises its right to extend the term of the Agreement for one year, ending June 17, 2012. The Contractor hereby expressly acknowledges and agrees to the extension of the term of the Agreement for one year, ending June 17, 2012, subject to further extensions of the term in accordance with the provisions of Section 5 of the Agreement.

3. DELETION OF "COST NEUTRALITY" PROVISIONS. The Agreement is hereby amended by deleting the portion of Exhibit "B" that is set forth in Section 1.2, and is labeled "Cost Neutrality." The "Cost Neutrality" provisions of the Agreement (Exhibit "B," Section 1.2) that are deleted by this Amendment are identified on the document labeled "Exhibit B-1; Deletion of Cost Neutrality" (attached hereto and incorporated herein by reference).

4. DELETION OF "EQUITABLE COST RECOVERY" PROVISIONS. The Agreement is hereby amended by deleting the portion of Exhibit "B" that is set forth in Section 7, and is labeled "Equitable Cost Recovery by Redflex Upon Termination Without Cause By the City." The "Equitable Cost Recovery" provisions of the Agreement (Exhibit "B," Section 7) that are deleted by this Amendment are identified on the document labeled "Exhibit B-2; Deletion of Equitable Cost Recovery" (attached hereto and incorporated herein by reference). To implement the deletion of the Equitable Cost Recovery provisions, and to eliminate references to Exhibit "B," Section 7, the following amendments are also made to the Agreement:

a. Agreement Section 9.2 is hereby amended by deleting the previous text, and replacing it with: "The City may initiate termination of this Agreement in accordance with Section 9.4 without cause at any time by giving ten (10) days written notice of termination to Redflex."

b. Agreement Section 9.3 is hereby amended by deleting the previous text, and replacing it with: "Redflex may initiate termination of this Agreement in accordance with Section 9.4 without cause by giving ninety (90) days written notice to the City signed by Redflex's Authorized Representative."

c. Agreement Section 9.4.1.5 is hereby deleted in its entirety.

d. Agreement Exhibit "B," Section 4 is hereby amended (by deleting the reference to Exhibit "B" Section 7), so that it reads as follows:

"4. No other compensation. Except as provided in Section 5, 6, and 7 of this Exhibit B, it is specifically understood by the Parties that the payment specified in Section 1 covers any and all costs to Redflex in providing the services identified in Exhibit A, including but not limited to all

installation, operation, processing, maintenance, upgrade, licensing, leasing and support costs, and all cost incurred after expiration of the Agreement or initiation of termination of the Agreement and before final termination. It is also specifically understood by the Parties that there shall be no cost, charge or fee whatsoever to the City for the installation of any new system, or for the service, maintenance, operation thereof.”

5. ENTIRE AGREEMENT. This Amendment (including the Agreement as amended herein and all documents incorporated herein by reference) comprises the entire integrated understanding between the parties concerning the services described in this Amendment. This Amendment supersedes all prior negotiations, agreements and understandings regarding the additional services described herein, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all.

6. SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the Contractor and

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the City. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year first above written.

CITY OF NAPA:

Richard Melton
(Signature)

RICHARD MELTON, CHIEF OF POLICE
(Type name and title)

CONTRACTOR:

Redflex Traffic Systems, Inc.

ATTEST:

Dorothy Roberts
(Signature)

Dorothy Roberts, City Clerk
(Type name and title)

By: Karen Finley 7/8/11
(Signature)

KAREN FINLEY, CEO + President
(Print name and title)

By: Jean K. Nolen 7/8/11
(Signature)

JEAN K. NOLEN, CFO + Treasurer
(Print name and title)

COUNTERSIGNED:

Ann Mehta
(Signature)

Ann Mehta, City Auditor
(Type name and title)

APPROVED AS TO FORM:

Michael W. Barrett
(Signature)

Michael W. Barrett, City Attorney
(Type name and title)

*Corporation, partnership, limited liability corporation, sole proprietorship, etc. Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President and the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.

Budget Code: 20104-53201

Exhibit "B-1"

Deletion of Cost Neutrality

Pursuant to Amendment No. 1 to Agreement No. 9613, the City and Contractor hereby agree to delete the "Cost Neutrality" provisions that were previously set forth in Agreement Exhibit "B," Section 1.2. In order to clearly document the portion of Exhibit "B" that is hereby deleted by this Amendment No. 1, the text of former Exhibit "B," Section 1.2 is set forth below:

"1.2 Cost Neutrality. Cost neutrality is assured to City - City will never be required to pay Redflex more than actual cash received.

The City agrees to pay Redflex within thirty (30) days after the invoice is received. City shall be obligated to pay the cumulative balance invoiced by Redflex, in accordance with terms set forth above, to the extent of gross cash received by the City from automated red light violations. In the event that a balance remains unpaid due to a deficit in gross cash received by the City compared to invoiced amounts, City will provide to Redflex with each monthly payment, an accounting of such gross receipts supporting the amount withheld.

In the event that the contract ends or is terminated and an invoiced balance is still owed to Redflex, all subsequent receipts from automated Violations for a period of 12 months from date of termination will be applied to such balance and paid to Redflex. Payment will only be made by City up to the amount of cash received by City through the collection of automated red light Violations up to the amount currently due.

City to open special revenue account and payments to Redflex will come only from the available balance in that account up to the amount currently due, including any unpaid prior invoiced amounts.

Cost neutrality is guaranteed except as follows:

If police fail to approve violations by within five (5) days of receipt from Redflex.
If police do not enforce right-hand turn violations
If systems are de-activated due to City requirement"

Exhibit "B-2"
Deletion of Equitable Cost Recovery

Pursuant to Amendment No. 1 to Agreement No. 9613, the City and Contractor hereby agree to delete the "Equitable Cost Recovery" provisions that were previously set forth in Agreement Exhibit "B," Section 7. In order to clearly document the portion of Exhibit "B" that is hereby deleted by this Amendment No. 1, the text of former Exhibit "B," Section 7 is set forth below:

7. Equitable Cost Recovery by Redflex Upon Termination Without Cause By the City. In the event the City exercises its right to terminate this Agreement under Section 9.2, Contractor shall be entitled to a cancellation fee for each installed approach which reflects reimbursement of the direct labor costs and direct material costs (not including Equipment costs and salvageable material costs) solely associated with the installation of the Contractor's Photo Red Light System at all Intersection Approaches where such system(s) have been installed prior to the effective date of Termination (the "Reimbursable Costs"). Contractor shall provide an itemization of the Reimbursable Costs, with supporting invoices and labor expense documentation, to the City within thirty (30) days of the completion of installation of the Contractor's Photo Red Light System at each designated Intersection Approach. Said Reimbursable Costs are currently estimated to equal approximately \$50,000 to \$80,000 per Intersection Approach but, in no event, shall said amount exceed \$80,000 per Intersection Approach. For the purpose of this Section, the cancellation fee shall be derived in accordance with the following formula:

The cancellation fee shall be derived in accordance with the following formula:

X = the number of months remaining in the Agreement

Y = the number of months of the Agreement

X/Y = the percentage of remaining Agreement

Z = the Reimbursable Costs per Installed Approach (not to exceed \$80,000)

(X/Y)*Z = amount to be paid as cancellation fee

For example, if the Agreement ends on the last day of the 24th month and the Installed Approach was installed in month 12, the cancellation fee would be:

X = 12 (36 months – 24 months transpired under the Agreement).

Y = 36 (number of months of the Agreement).

Z = \$60,000 (value of reimbursable costs)

X/Y * Z = (12/36 * \$60,000)

Calculation of Fee = \$20,000"

**AGREEMENT BETWEEN THE CITY OF NAPA
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR
AUTOMATED PHOTO ENFORCEMENT CAMERAS**

This Agreement (this "Agreement") is dated this 13th day of June, 2008 by and between Redflex Traffic Systems, Inc., a Delaware corporation with offices at 15020 North 74th Street, Scottsdale, AZ. 85260 ("Redflex" or "Contractor"), and the City of Napa, a municipal corporation, with offices at 960 School Street, Napa, CA. 94559 ("City").

RECITALS

THIS AGREEMENT is entered into with reference to the following facts and circumstances:

WHEREAS, the City desires to engage Contractor to furnish all equipment, licenses, applications and back office processor related to the Redflex System, including digital traffic enforcement cameras and equipment for monitoring and enforcement of red light violations at up to ten (10) Intersections within the City of Napa; and

WHEREAS, the Contractor is qualified to provide such services to the City, and

WHEREAS, it is a mutual objective of both Redflex and the City to reduce the incidents of vehicle collisions at the traffic Intersections that will be monitored pursuant to the terms of this Agreement, and

WHEREAS, violations of Sections 21453(a) and 21453(c) of the California Vehicle Code, failing to stop for a red light or failing to stop for a red arrow, has been shown to pose a significant risk to life and property.

NOW, THEREFORE, said City and said Contractor for the considerations hereinafter set forth, mutually agree to the following terms and conditions:

1. **SCOPE OF SERVICES.** Redflex shall perform the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
2. **COORDINATION.** Contractor shall initially assign Jack Weaver or such a person as Contractor shall designate by providing written notice thereof to the City from time to time, who shall personally participate in said project and to coordinate the activities of Contractor.

3. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor by the City. Contractor shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
4. **COMPENSATION.**
- 4.1. **Payment.** Contractor shall have the right to receive, and the City shall be obligated to pay, the compensation set forth in Exhibit "B", attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
- 4.2. **Contractor's Failure to Perform.** In the event that Contractor performs services which do not comply with the requirements of this Agreement, Contractor shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Contractor). If Contractor's failure to perform in accordance with this Agreement causes damages to the City, Contractor shall reimburse the City for the damages incurred (which may be charged as an offset to Contractor's payment).
5. **TERM OF THE AGREEMENT.** The term of this Agreement shall commence on June 17, 2008, and shall continue through June 17 2011. The City of Napa shall have the right, but not the obligation, to extend the term of this Agreement for up to three (3) additional consecutive one (1) year periods following the expiration of this Agreement. The City may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Reflex not less than thirty (30) days prior to the last day of this Agreement.
6. **OTHER RIGHTS AND OBLIGATIONS.** During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Contractor and the City shall have the respective rights

and obligations set forth on Exhibit "C" attached hereto and incorporated herein by reference.

7. **LICENSE; RESERVATION OF RIGHTS.** Subject to the terms and conditions of this Agreement, Redflex hereby grants the City and the City hereby accepts from Redflex upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City, access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations under the terms of this Agreement, and to print copies of any content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City) that Redflex is providing services to the City in connection with Red Light Photo Enforcement Program under the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Red Light Photo Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 7.1. **RESERVATION OF RIGHTS.** The City hereby acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.
- 7.2. **RESTRICTED USE.** The 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 Redflex 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 Redflex, or (e) disassemble, decompile 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 Redflex, or cause any other Person to do any of the foregoing.
- 7.3. **PROTECTION OF RIGHTS.** Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex,

including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.

7.4. **INFRINGEMENT**. The City shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this Section, then the City shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex, and Redflex shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that Redflex must reimburse the City for any reasonable costs incurred in providing cooperation and assistance.

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

8. REPRESENTATIONS AND WARRANTIES.

8.1. Redflex Representations and Warranties.

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

- 9.1. Either party may immediately initiate termination of this Agreement in accordance with Section 9.4 by providing written notice to the other if:
- 9.1.1.1. state statutes are amended to prohibit or substantially change the operation of photo enforcement systems;
 - 9.1.1.2. any court having jurisdiction over City rules, or California or federal statute declares, that results from the Redflex System of photo enforcement are inadmissible in evidence; or
 - 9.1.1.3. the other party commits any material breach of any of the provisions of this Agreement which breach is not remedied within forty-five (45) calendar days (or within such other time period as the City and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-breaching party setting forth in reasonable detail the events which caused the breach. The rights to terminate this Agreement given under this Subsection shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement. In the event of a termination due to Section 9.1.1.1 or 9.1.1.2 above, City shall be relieved of any further obligation for payment to Redflex other than as specified in Exhibit B.
- 9.2. The City may initiate termination of this Agreement in accordance with Section 9.4 without cause at any time by giving ten (10) days written notice of termination to Redflex. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall be obligated to pay Contractor for all services satisfactorily performed in accordance with this Agreement, through and including the initiation of termination date, but not to exceed the payments according to the rates specified in Exhibit "B" and shall pay Contractor the amount of equitable cost recovery, if any, to which Contractor is entitled as set forth in Exhibit B, Section 7.
- 9.3. Redflex may initiate termination of this Agreement in accordance with Section 9.4 without cause by giving ninety (90) days written notice to the City signed by Redflex's Authorized Representative. In the event Redflex terminates this agreement, Redflex shall not be entitled to equitable cost recovery under Exhibit "B" Section 7.
- 9.4. Procedures Upon Expiration or Initiation of Termination.
- 9.4.1.1. Upon the expiration of the Term of this Agreement and any extensions agreed upon by the Parties under Section 5 or upon initiation of termination as provided in Sections 9.1, 9.2 or 9.3 (the "Termination Initiation Date");
 - 9.4.1.2. Redflex shall immediately stop capturing and collecting new Violation Data for the Designated Intersection Approaches and invoice the City for the monthly fee, pro rated to the date of Termination Initiation. Redflex shall continue to provide violation

processing services at no additional cost to the City until all Citations issued before the Termination Initiation Date are adjudicated (the "Final Termination Date").

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

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

9.4.1.5. If City initiated termination under Section 9.2, Redflex shall immediately invoice City for equitable cost recovery due under the provisions of Exhibit B, Section 7, if any. City will be obligated to pay such amount no more than four months after the Termination Initiation Date. No late fee or penalty shall accrue for any equitable cost recovery due and not paid within four months after the Termination Initiation Date.

9.5. Final Termination. After the Final Termination Date:

9.5.1.1. Redflex shall promptly deliver to the City (i) Confidential Information required to be returned under Section 10.3, (ii) a final invoice stating all outstanding fees and charges properly owed by City to Redflex, if any, for work performed under this Agreement, and (iii) a final report regarding the collection of data and the issuance of Citations in such format and for such periods as the City may reasonably request, and which final report Redflex shall update or supplement from time to time when and if additional data or information becomes available.

9.5.1.2. City shall deliver to Redflex Confidential Information required to be returned under Section 10.3. Upon receipt of the final invoice from Redflex, City shall promptly pay any and all fees,

charges and amounts, properly owed by City to Redflex for work performed under the Agreement.

9.6. **SURVIVAL.** The following provisions Sections shall survive final termination of this Agreement: the definitions as defined in this Agreement, Section 7.1 (Reservation of Rights), Section 8.1 (Redflex Representations and Warranties), Section 10 (Confidentiality), Section 18 (Indemnification), and Section 19 (Limited Liability), Section 20 (Notices), Section 21 (Dispute Resolution), Sections 22 through 31, and those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.

10. **CONFIDENTIALITY.**

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

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

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

10.1.1.3. To agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential,

10.2. Contractor acknowledges that the City is a governmental agency and may be required to retain records, and to release certain information under requests made according to provisions of the Public Records Act. In the event City receives a request for public records related to Confidential Information, City shall immediately notify Contractor so that Contractor may, at its sole expense, take any and all measures necessary to prevent or limit the disclosure of Contractor's Confidential Information. Nothing in this section shall be construed to prevent City from complying with disclosure requirements imposed by the California Public Records Act, California Government Code 6250 *et seq*, including applicable time limits for responding to record requests. Contractor agrees to indemnify, defend and hold harmless the City from any and all losses and attorney's fees that may be incurred by the City arising

out of any and all efforts to limit or prevent disclosure of Contractor's Confidential Information.

10.3. Upon Final Termination of this Agreement:

10.3.1.1. Contractor shall return to City all tangible Confidential Information of City.

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

11. **RELATIONSHIP BETWEEN THE PARTIES.** Contractor is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Contractor is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City's Authorized Representative provides prior written authorization to Contractor. Contractor is not an officer or employee of City, and Contractor shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

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

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

14. **STANDARD OF CARE AND COMPLIANCE WITH LAW.** City relies upon the professional ability of Contractor and representations regarding the type of work to be performed as a

material inducement to entering into this Agreement. Contractor agrees to use reasonable care and diligence in rendering services under this Agreement. Contractor is responsible for the work of all employees, subcontractors, and agents, and the negligence of one of them, if not adequately remedied by Contractor, shall be conclusively deemed to be the negligence of Contractor. Contractor agrees that the acceptance of his work by City shall not operate as a waiver or release of said obligation of Contractor. The absence, omission, or failure to include in this Agreement, items which are normally considered to be a part of generally accepted professional procedure or which involve specialized professional judgment appropriate to the type of work to be performed under this Agreement shall not be used as a basis for submission of inadequate work or incomplete performance.

14.1. Contractor shall study and comply with all applicable federal, his/her work hereunder and shall ensure that all subcontractors do the same. Contractor represents and warrants to City that Contractor has and will keep in effect during the term of this Agreement all licenses (including but not limited to the City of Napa business license), permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice Contractor's profession and to do the work hereunder.

14.2. Contractor agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of Contractor performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. Contractor shall make the required documentation available upon request to City for inspection.

14.3. 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.

15. BUSINESS LICENSE. The Contractor shall apply for and pay the business tax and registration tax for a business license, in accordance with Napa Municipal Code.

16. INSURANCE. Without limiting Contractor's indemnification provided herein, Contractor shall take out and maintain, throughout the period of this Agreement, the following policies of insurance placed with insurers (if other than the State Compensation Fund) with a current A.M. Bests rating of no less than A: VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Contractor, its agents, employees or subcontractors:

A. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000.00 per occurrence. If work involves explosive, underground or collapse risks, XCU must be included. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:

(1) The City, its officers, employees and agents, are covered as insured's for liability arising out of the operations performed by or on behalf of Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, agents and employees.

(2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of premium to City by certified mail.

B. Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), for vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident combined single limit (CSL). Such policy shall contain or be endorsed with the provision that coverage shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of premium to City by certified mail.

C. Worker's Compensation insurance meeting statutory limits of Labor Code which policy shall contain or be endorsed to contain a waiver of subrogation against City, its officers, agents, and employees and] provide for thirty (30) days prior written notice to City in the event of

cancellation. If Contractor has no employees, Contractor may sign and file the following certification in lieu of insurance:

"I am aware of the provisions of California Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with the provisions of that code before commencing with and during the performance of the work of this contract."

D. Professional liability insurance/errors and omission coverage in an amount no less than \$1,000,000.00 combined single limit (CSL). If insurance is written on a claim-made basis, Contractor agrees to maintain such insurance in effect for at least three (3) years following completion of performance under this Agreement.

E. Contractor shall furnish City with certificates and original endorsements affecting the required coverage prior to execution of this Agreement by City. The endorsements shall be on forms provided by City or as approved by City Attorney. Any deductible or self-insured retention over \$100,000.00 shall be disclosed to and approved by City. If Contractor does not keep all required insurance policies in full force and effect, City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

17. ACCIDENT REPORT. If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Contractor shall promptly submit to the City Clerk's Office a written notice of such accident with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Contractor's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

18. INDEMNIFICATION. Indemnification by Redflex. Redflex hereby agrees to defend and indemnify the Customer and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "Customer Party" and collectively, the "Customer Parties") against, and to protect, save and keep harmless the Customer Parties from, and to pay on behalf of or reimburse the

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

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

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

Notices to Contractor:

Redflex Traffic Systems, Inc.
15020 North 74th Street
Scottsdale, AZ 85260
Attention: Ms. Karen Finley
Facsimile: (480) 607-5552

Notices to City:

Napa Police Department
City of Napa

P.O. Box 660
Napa, CA 94559

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

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

22. FORCE MAJEURE. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Redflex, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

23. CONSTRUCTION Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.

24. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State

of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.

25. ATTORNEY'S FEES. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred, whether or not such action precedes to judgment.

26. ASSIGNMENT AND DELEGATION. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Contractor's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

27. HEADINGS. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

28. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

29. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.


30. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

31. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Contractor and the City.

SIGNATURES ON NEXT PAGE

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

CITY OF NAPA,
a Municipal Corporation



Richard Melton, Chief of Police

CONTRACTOR:
Redflex Traffic Systems, Inc.

Employer I.D. No94-3292233

ATTEST:


Sara Cox, City Clerk

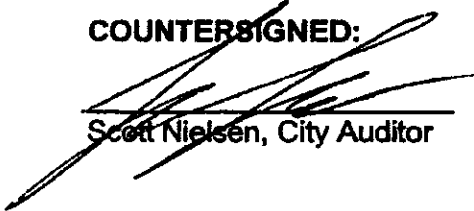

Karen Finley, President and CEO

Address:
15020 N 74th St
Scottsdale, AZ

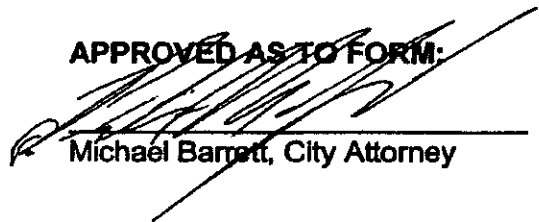
Telephone: 480-607-0705


Cris Weeks, ~~Treasurer~~ Secretary

COUNTERSIGNED:


Scott Nielsen, City Auditor

APPROVED AS TO FORM:


Michael Barrett, City Attorney

Budget Code: 20301-35102

*Corporation, partnership, limited liability corporation, sole proprietorship, etc. Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President and the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.

EXHIBIT "A"

SCOPE OF SERVICES

This Scope of Services, Exhibit "A," is incorporated by reference into the above referenced Agreement, under Agreement Section 1. Redflex shall provide the services for each Designated Intersection Approach, in accordance with the terms and provisions set forth in this Agreement. Such services may be referred to herein as the "Red Light Photo Enforcement Program."

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

Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise

part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.

- 1.6 **"Designated Intersection Approaches"** means the Intersection Approaches set forth in Section 4 of this Scope of Services.
- 1.7 **"Electronic Signature"** means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.
- 1.8 **"Enforced Approach"** means a direction of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) digital, rear shot multiple image color camera and at least one (1) digital face camera has been installed by Redflex for the purposes of facilitating Red Light Photo Enforcement by the City.
- 1.9 **"Enforcement Documentation"** means the necessary and appropriate documentation related to the Red Light Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Judicial Council and the Napa Police Department), a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.
- 1.10 **"Equipment"** means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex System, including but not limited to all camera systems, housings and poles.
- 1.11 **"Fine"** means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.12 **"Governmental Authority"** means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.13 **"Installation Date"** means the date on which Redflex completes the construction and installation of each Intersection Approach in accordance with the terms and conditions of the Agreement for an automated enforcement system between Redflex and the City in effect at the time of the installation and construction, so that the Intersection

Approach is fully operational for the purposes of functioning with the Red Light Photo Enforcement Program.

- 1.14 **"Intellectual Property"** means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person.
- 1.15 **"Intersection Analysis"** means conducting a video assessment during peak traffic periods as determined by the Police Traffic Project Manager to evaluate violation volume and violation movements as a means to determine Intersection feasibility.
- 1.16 **"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) Redflex System has been installed by Redflex for the purposes of facilitating Red Light Photo Enforcement by the City.
- 1.17 **"Malfunction"** means any failure of the Redflex System to capture a clear photographic image of any given incident.
- 1.18 **"Operational Period"** means the period of time during the Term, commencing on the Installation Date, during which the Red Light Photo Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by the City and the issuance of Citations for such approved Violations using the Redflex System.
- 1.19 **"Person"** means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.20 **"Police Traffic Project Manager"** means the project manager appointed by the Authorized Representative in accordance with this Agreement and upon written notice to Redflex. The manager shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Red Light Photo Enforcement Program. The manager shall have the power and authority to make management decisions relating to the City's obligations under this Agreement, including but not limited to Change Order Authorizations, specified in Exhibit 'C' under Other Rights and Obligations, subject to any limitations set forth in the City's charter or other organizational documents of the City or by the city council or other governing body of the City.
- 1.21 **"Potential Violation"** means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the

Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System in accordance with City's screening criteria for the purposes of allowing the Authorized Officer to review such data and determine whether a Violation has occurred.

- 1.22 **"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, memorandum, 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, projects and invoices.
- 1.23 **"Redflex Marks"** means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Red Light Photo Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
- 1.24 **"Redflex Project Manager"** means the project manager designated by Redflex in accordance with this Agreement and upon written notice to the City. The project manager shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Red Light Photo Enforcement Program, and shall have the power and authority to make management decisions relating to Redflex's obligations under this Agreement, including but not limited to change-order authorizations.
- 1.25 **"Redflex System"** means, collectively, the SmartCam™ System, the SmartOps™ System, SmartScene System, the Red Light Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.26 **"Red Light Photo Enforcement Program"** means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of the Redflex System.
- 1.27 **"Red Light Violation Criteria"** means the standards and criteria by which Potential Violations will be evaluated by Authorized Officers of the City, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an Intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in

compliance with all applicable laws, rules and regulations of Governmental Authorities.

- 1.28 "SmartCam™ System" means the proprietary digital speed and red light photo enforcement system of Redflex relating to the Red Light Photo Enforcement Program.
 - 1.29 "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Red Light Photo Enforcement Program.
 - 1.30 "SmartScene™ System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
 - 1.31 "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
 - 1.32 "Violation" means any traffic violation contrary to the terms of the Vehicle Code or any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.
 - 1.33 "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.
 - 1.34 "Warning Period" means the period of thirty (30) days after the Installation Date of each of the Designated Intersection Approaches.
- 2 **Redflex System.** Redflex will provide the Redflex System to the City for the Designated Intersection Approaches in accordance with the terms and conditions set forth in the Agreement, including this Scope of Services. For each Intersection Approach, the Redflex System will operate on a 24-hour basis across up to four lanes of width.
- 3 **Video Technology.** Redflex will provide the SmartScene™ video monitoring system at the Designated Intersection Approaches.
- 4 **Designated Intersection Approaches.** "Designated Intersection Approaches" includes:
- 4.1 Up to ten (10) Intersection approaches that the City's Authorized Representative may select from time to time using criteria including, but not limited to, traffic volume, collision data, and red light running violation statistics, and Redflex video analysis.
 - 4.2 If it is determined that there are no intersections within the City that are appropriate for the Redflex System or program, then both parties shall have the right to terminate this Agreement at no cost to either party.
- 5 **Implementing Agreements.** The Parties hereby authorize their respective Authorized Representative to execute Implementing Agreements consistent with the terms of the Agreement. "Implementing Agreement" means a written agreement and any written amendments thereto signed by the Parties'

authorized representatives on behalf of the Parties defining the operational details of the Agreement.

- 6 **Installation.** Redflex will install and activate each Designated Intersection Approach in accordance with the terms and conditions of this Agreement and any Implementing Agreements. For each installation, Redflex must:
 - 6.1 Use reasonable commercial efforts to install new systems in accordance with the schedule set forth in an Implementing Agreement (Scope of Services, Section 5.) Construction must begin within 30 days and systems must be activated and operational within sixty (60) days of City Engineering final plan approval.
 - 6.2 Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the city traffic engineer.
 - 6.3 Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for, pavement loops, electrical connections and traffic controller connections, as required, and on the condition that there are no direct connections within the controller cabinet; and
 - 6.4 Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications.
 - 6.5 Finalize the acquisition of the Approvals;
 - 6.6 Submit to the City a public awareness strategy for the City's consideration and approval, which strategy shall include media and educational materials for the City's approval or amendment (the "Awareness Strategy");
 - 6.7 Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches (under the supervision of the City);
 - 6.8 Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersection Approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
 - 6.9 Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
- 7 **Violation Processing.** During the Operational Period, Violations shall be processed as follows:
 - 7.1 Redflex must store all Violations Data on the Redflex System.

- 7.2 Redflex must use the Redflex System in conjunction with the Red Light Violation Criteria provided by the City and registered owner information Redflex obtains from the Department of Motor Vehicles to process Violation Data gathered from the Designated Intersection Approaches into a format capable of review by Authorized Officers via the Redflex System. Redflex shall be responsible for establishing and maintaining procedures, to be approved by the Traffic Project Manager, for quality assurance of Violation Data.
- 7.3 The Redflex System must be accessible by Authorized Officers through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser.
- 7.4 Redflex must provide the Authorized Officer with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within six (6) days of the gathering of the Violation Data from the applicable Designated Intersection Approach.
- 7.5 Redflex hereby acknowledges and agrees that the decision to issue a citation shall be the sole, unilateral and exclusive decision of the Authorized Officer and shall be made in such Authorized Officer's sole discretion (a "Citation Decision"), and in no event shall Redflex have the ability or authorization to make a Citation Decision.
- 7.6 Except during the Warning Period, Redflex must print and mail a Citation and other appropriate Enforcement Documentation, within the earlier of four (4) days or at a maximum of ten (10) days after the violation occurring after Redflex's receipt of each Authorized Violation from an Authorized Officer or ten (10) days after the violation date, to the vehicle's registered owner,. The Citation must include or be accompanied by, as appropriate:
 - 7.6.1 The location, date and time of the Violation;
 - 7.6.2 Number of seconds into the red traffic signal;
 - 7.6.3 Vehicle speed;
 - 7.6.4 One (1) close-up view of the vehicle rear license plate;
 - 7.6.5 One (1) close-up frontal view of the vehicle driver;
 - 7.6.6 One (1) view of the Intersection and the vehicle taken before the vehicle's front tires cross the limit line showing the traffic signal in the red phase and the rear license plate of the vehicle;
 - 7.6.7 One (1) view of the Intersection and the vehicle taken after in the Intersection past the limit line;
 - 7.6.8 Any other information deemed necessary by an Authorized Officer for successful prosecution of violations;
 - 7.6.9 Any information or documents that may be required by state law, including but not limited to:
 - 7.6.9.1 A certificate of mailing as required by Vehicle Code Section 40518, subdivision (a);
 - 7.6.9.2 An affidavit of non-liability and information as to what constitutes non-liability, information as to the effect of executing the

affidavit, and instructions for returning as required by Vehicle Code Section 40520.

- 7.7 During the Warning Period for each Designated Intersection Approach, Redflex must print and mail a warning notice provided by the City to the register owner of the vehicle following receipt of an Authorized Violation within the same time timeframes as required herein for Redflex to mail a Notice to Appear.
- 7.8 If deemed necessary by the City, Redflex must provide and staff a toll-free telephone number for citizen inquiries so that the City of Napa and Redflex can respond to citizen inquiries, respond to complaints and Redflex shall provide necessary personnel for such purpose.
- 7.9 Redflex shall provide quarterly speed and volume reports.
- 7.10 Redflex shall provide access and support to the Authorized Officer to generate monthly reports using the Redflex Standard Report System.
- 7.11 Redflex shall provide upon written request from the Authorized Officer, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the City in such format and for such periods as the City may reasonably request.
- 7.12 During the six (6) month period following the Installation Date, Redflex shall provide expert witnesses for use by the Customer in prosecuting Violations. After the initial 6 month period following the Installation Date, Redflex shall provide expert witnesses for use by the Customer in prosecuting Violation upon Customer notifying Redflex at least fourteen (14) calendar days in advance of the scheduled court proceeding. Customer shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses, but in no case shall such failure by Customer to seek judicial notice relieve Redflex from its obligation to provide expert witnesses for use by Customer. Following the initial six (6) month period, Redflex will provide expert witnesses to the Customer at no charge for the first three (3) requests in a calendar year, and will be reimbursed for all travel related expenses for any additional requests for expert witness testimony within the calendar year.

8 Maintenance

- 8.1 Redflex is solely responsible for all repair and maintenance of the Redflex System, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
- 8.2 Redflex must inspect the Equipment and the functionality of the Redflex System at each Intersection Approach no less than once every month with remote inspections weekly and automated camera checks on each business day.

- 8.3 Redflex must respond to any material malfunction of any of the Redflex System within twenty four (24) hours of receiving malfunction notice from the Police Traffic Project Manager ("Malfunction Notice").
- 8.4 In the event that the Redflex System suffers any damage from whatever cause, Redflex discovers material malfunction or defect, or Redflex receives a Malfunction Notice, Redflex shall use its best efforts to cause the damage malfunction or defect to be repaired within forty-eight (48) hours of discovery by Redflex or receipt by Redflex of a Malfunction Notice.
- 8.5 In the event that the damage, malfunction or defect has not been substantially repaired within forty eight (48) hours, Redflex shall notify the Police Traffic Project Manager and Redflex's compensation shall be reduced by the out of service cost offset set forth in the Section 8.3 of the Agreement.
- 8.6 Redflex must not open the Traffic Signal Controller Boxes without a representative of City's Traffic Engineering Division present.
- 8.7 The provision of all necessary electrical power services to the equipment Designated Intersection Approaches will be the sole responsibility of the City.
- 8.8 In the event that images of a quality suitable to the Police Traffic Project Manager to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install flash units.
- 8.9 Redflex must promptly make available to the City any and all upgrades and technology modifications, including but not limited to software, hardware, camera systems, violation detection systems upon the products general availability (GA release readiness and not in alpha, beta and testing phases) as Redflex and the City mutually agree. The upgrades and enhancements must be provided to the City at no cost within 30 days of the City's acceptance of the upgrade or enhancement.
- 8.10 In the event a camera system is knocked down, the City will secure the camera system by removing the system from the scene and storing it in a secure location. Redflex Traffic Systems must pay the City for the cost of a City maintenance team to secure their camera system when an after hours callout is required. Redflex is not required to reimburse the City when a City maintenance team secures a camera system during regular business hours.
- 8.11 The City shall follow the knockdown procedures mutually agreed to in Exhibit 'C' Section 2.4.

EXHIBIT "B"

PAYMENT PROVISIONS

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

1. **Compensation.** Subject to Agreement Section 8.3, the City shall pay Redflex the fixed monthly fee per Intersection identified below.

Commencing on the expiration of the Warning Period for each Designated Intersection Approach, City shall be obligated to pay Redflex a fixed fee of five Thousand Six Hundred and Seventy (\$5,670) Dollars per month for each Designated Intersection Approach with up to two (2) contiguous lanes and a fixed fee Six Thousand (\$6,000) Dollars per month for three (3) or more contiguous lanes as full remuneration for performing all of the services contemplated in this Agreement.

Redflex's right to the monthly fee for the Designated Intersection Approaches ends upon the expiration of the Term of this Agreement and any extensions agreed upon by the Parties under Agreement Section 5, or upon initiation of termination as provided in Agreement Sections 9.1, 9.2 or 9.3.

1.1 **Implementation.** The fee paid to Contractor under this contract are for a full turnkey program, inclusive of all hardware, software, and support services required to implement and maintain a functional photo enforcement program. Including but not limited to a program and process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Contractor, including but not limited to cameras,

1.2 **Cost Neutrality.** Cost neutrality is assured to City - City will never be required to pay Redflex more than actual cash received.

The City agrees to pay Redflex within thirty (30) days after the invoice is received. City shall be obligated to pay the cumulative balance invoiced by Redflex, in accordance with terms set forth above, to the extent of gross cash received by the City from automated red light violations. In the event that a balance remains unpaid due to a deficit in gross cash received by the City compared to invoiced amounts, City will provide to Redflex with each monthly payment, an accounting of such gross receipts supporting the amount withheld.

In the event that the contract ends or is terminated and an invoiced balance is still owed to Redflex, all subsequent receipts from automated Violations for a

period of 12 months from date of termination will be applied to such balance and paid to Redflex. Payment will only be made by City up to the amount of cash received by City through the collection of automated red light Violations up to the amount currently due.

City to open special revenue account and payments to Redflex will come only from the available balance in that account up to the amount currently due, including any unpaid prior invoiced amounts.

Cost neutrality is guaranteed except as follows:

If police fail to approve violations by within five (5) days of receipt from Redflex.
If police do not enforce right-hand turn violations
If systems are de-activated due to City requirement

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

3. **Invoicing.** Redflex shall invoice the City monthly for the compensation earned under Section 1. Unless otherwise specified in an Implementing Agreement, the City shall pay Redflex within thirty (30) days after an invoice is received. A monthly late fee of 1.5% is payable for payments past due 60 days from the date of the invoice.

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

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

6. **Equipment Removal.** If equipment is removed, moved and/or replaced without mutual consent between the Contractor and the City and absent any of the conditions outlined in the termination section of this agreement, the City shall

have the sole responsibility for all associated costs (i.e. construction, post-mortem conditions, equipment remedies, etc).

7. Equitable Cost Recovery by Redflex Upon Termination Without Cause By the City. In the event the City exercises its right to terminate this Agreement under Section 9.2, Contractor shall be entitled to a cancellation fee for each installed approach which reflects reimbursement of the direct labor costs and direct material costs (not including Equipment costs and salvageable material costs) solely associated with the installation of the Contractor's Photo Red Light System at all Intersection Approaches where such system(s) have been installed prior to the effective date of Termination (the "Reimbursable Costs"). Contractor shall provide an itemization of the Reimbursable Costs, with supporting invoices and labor expense documentation, to the City within thirty (30) days of the completion of installation of the Contractor's Photo Red Light System at each designated Intersection Approach. Said Reimbursable Costs are currently estimated to equal approximately \$50,000 to \$80,000 per Intersection Approach but, in no event, shall said amount exceed \$80,000 per Intersection Approach. For the purpose of this Section, the cancellation fee shall be derived in accordance with the following formula:

The cancellation fee shall be derived in accordance with the following formula:

X = the number of months remaining in the Agreement

Y = the number of months of the Agreement

X/Y = the percentage of remaining Agreement

Z = the Reimbursable Costs per Installed Approach (not to exceed \$80,000)

(X/Y)*Z = amount to be paid as cancellation fee

For example, if the Agreement ends on the last day of the 24th month and the Installed Approach was installed in month 12, the cancellation fee would be:

X = 12 (36 months – 24 months transpired under the Agreement).

Y = 36 (number of months of the Agreement).

Z = \$60,000 (value of reimbursable costs)

X/Y *Z = (12/36 * \$60,000)

Calculation of Fee = \$20,000

EXHIBIT "C"

ADDITIONAL RIGHTS AND OBLIGATIONS

- 1 **Redflex Obligations.** Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1 Submit to the City a public awareness strategy for the City's consideration and approval, which strategy shall include media and educational materials (Materials), including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of new Red Light Photo Enforcement approaches (actual print and production costs are the sole responsibility of the City). Reflex shall deliver Materials to the City.
 - 1.2 Appoint the Redflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project Manager.
 - 1.3 Review all Enforcement Documentation for approval by the City, which approval shall not be unreasonably withheld.
 - 1.4 Once a year Redflex shall provide training for personnel of the City, including but not limited to the persons who City shall appoint as Authorized Officers and other persons involved in the administration of the Red Light Photo Enforcement Program, for at least sixteen (16) hours in the aggregate, regarding the operation of the Redflex System and the Red Light Photo Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation.
 - 1.5 Interact with court and judicial personnel to address issues of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings and coordination between Redflex, the City and juvenile court personnel.
 - 1.6 Redflex is solely responsible for providing all necessary communication infrastructures, including but not limited to telephone services, (DSL), cable or other broadband services to the Designated Intersection Approaches.
 - 1.7 The Redflex Project Manager (or a reasonable alternate) shall be available to the Authorized Officers each day, on a reasonable best efforts basis.
 - 1.8 Upon notification of a malfunction to a camera system, Redflex shall respond and use commercial best efforts to repair the system to full operational status within 3 business days. In the event that a system cannot be operational within 3 business days, then Agreement Section 8.3 shall apply.

- 1.9 The Contractor shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the Vehicle Code, and shall assist in determining the placement of such Signage, and the Contractor hereby acknowledges and agrees that the Contractor shall be solely responsible for installing such Signage. City shall assist the placement of such signage.
 - 1.10 Comply with all applicable laws including laws governing automated enforcement systems.
 - 1.11 Develop the Enforcement Documentation for approval by the City, which approval shall not be unreasonably withheld.
 - 1.12 Implement the use of Redflex System at each of the Designated Intersection Approaches.
 - 1.13 Issue citation notices for the Authorized Violations.
 - 1.14 Citation processing and citation re-issuance.
 - 1.15 Violation Review Station. Redflex will provide two (2) laptop workstations and one (1) printer, to be used by the City for citation approval, violation video viewing appointments, and court hearings. The aggregate cost of the equipment described in this section shall not exceed \$2,000.
- 2 **City Obligations.** the City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):
- 2.1 The City shall be solely responsible for the installation of LED lights at enforced Intersections.
 - 2.2 The City shall not access the Redflex System or use the Red Light Photo Enforcement Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo Enforcement Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Photo Enforcement Program, and the City shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other Person to do any of the foregoing.
 - 2.3 The City shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Red Light Photo Enforcement Program.
 - 2.4 In the event a camera system is knocked down from a vehicle collision or suffers any vandalism rendering the approach inoperative, Redflex Traffic Systems shall be notified as soon as possible. The City will secure damaged property until Redflex can respond.
 - 2.5 Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;

- 2.6 Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the ongoing implementation of the Red Light Photo Enforcement Program;
 - 2.7 Provide ongoing assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the City.
 - 2.8 Assist Redflex in seeking the Approvals.
 - 2.9 Provide reasonable access to the City's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Red Light Photo Enforcement Program.
 - 2.10 Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training.
 - 2.11 Provide the services of necessary personnel during future Warning Period(s).
 - 2.12 Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date.
 - 2.13 Develop the Red Light Violation Criteria; and consult with Redflex.
 - 2.14 Seek approval of the Enforcement Documentation.
 - 2.15 Responsible for providing power to the designated Intersection approaches.
- 3 Other Rights and Obligations.**
- 3.1 **Change Orders.** The 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 providing written notice thereof to Redflex, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Redflex's receipt of a Change Order Notice, Redflex shall deliver a written statement describing the effect, if any, the proposed changes would have on the pricing terms set forth in Exhibit B (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 the City. Following the 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 increase 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 Exhibit B shall govern. Any failure of the parties to reach agreement with respect to any of the following as a result of the proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 21 of the Agreement.

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

EXHIBIT "D"

FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of _____, 2008, is entered into by and between the City of Napa (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement for Photo Enforcement Program, dated as of _____, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Credit Agreement, dated as of August 3, 2004 (the "Harris-Redflex Credit Agreement"), with Harris Trust and Savings Bank (the "Bank"), pursuant to which the Bank has provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.
2. Pursuant to the Harris-Redflex Credit Agreement, Redflex has granted Harris a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement. Such security interest applies to and covers all of Redflex's contract rights, including, without limitation, all of Redflex's rights and interests under the Agreement.
3. Redflex will not, by virtue of the Harris-Redflex Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Bank has not assumed any liability or obligation of Redflex under the Agreement.
4. The City hereby acknowledges notice of, and consents to, Redflex's grant of such security interest in favor of the Bank in all of Redflex's rights and interests under the Agreement pursuant to the Harris-Redflex Credit Agreement.
5. The City further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the City and shall inure to the benefit of the successors and assigns of the Bank and to any replacement lender which refinances Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement.