

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

This Agreement ("Agreement") is made as of this 12th day of September, 2017 ("Effective Date") by and between Redflex Traffic Systems, Inc., a Delaware corporation ("the Provider"), and City of Solana Beach, a municipal corporation, (City") to provide professional services to the City for the equipment, installation and maintenance ("Professional Services") for red light photo enforcement ("Project").

RECITALS

WHEREAS, The City requires outside assistance to provide automated red light photo enforcement in the City of Solana Beach; and

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

WHEREAS, the City desires to engage the services of the Provider to provide certain equipment, processes and back office services so that Authorized Employees of the City are able to monitor, identify and enforce red light running violations; and

WHEREAS, it is a mutual objective of both the Provider and the City to reduce incidence of vehicle collisions at the traffic intersections city streets that will be monitored pursuant to the terms of this Amendment to the Agreement.

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

1.0 TERM OF AGREEMENT

1.1 This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective for a period of five (5) years from the Program's installation date ("Initial Term"). Upon expiration of the initial Term, the City 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 (each a "Renewal Term" and collectively with the Initial Term, the "Term").

1.2 The City may extend the term of this Agreement, as provided in Section 1.1, by providing written notice to Provider not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.

1.3 Renewal Terms shall be governed by this Agreement.

2.0 PAYMENT FOR EQUIPMENT AND SERVICES (ATTACHMENT A)

The City shall pay the Provider for performance of all Professional Services rendered in accordance with this Agreement as set forth in the "Compensation and Fee Schedule," Attachment A, attached hereto and incorporated herein.

3.0 PROVIDER'S OBLIGATIONS

3.1 Maintain sole responsibility for the care and maintenance of all materials and equipment used in the performance of this Agreement. All repair and maintenance of camera systems and related equipment will be the sole responsibility of Provider, including but not limited to maintaining the casings of the cameras included in the Provider system and all other equipment in a reasonably clean and graffiti-free condition;

3.2 Provider shall not open the traffic signal controller boxes without a representative of City's Signal Contractor or Traffic Engineering present;

3.3 Provide and install flash units, in the event that images of a quality suitable for the Authorized Officer to identify violations cannot be reasonably obtained without the use of flash units; and

3.4 Provider's project manager (or a reasonable alternate) shall be available to the City's Authorized Officer or project manager each day, on a reasonable best efforts basis.

3.5 Provider's performance under this Agreement shall comply with all applicable federal, state, and local laws.

3.6 Provider shall maintain professional certifications as required by City, state and federal law.

3.7 Provider shall take all reasonable steps necessary to satisfy the purpose of this Agreement, as described in the Recitals. Provider's inability to fulfill the purpose of this Agreement or any obligation under this section 3.0, shall constitute a material breach.

4.0 SUBCONTRACTING

4.1 If Provider subcontracts for any of the equipment or support services that are to be provided under this Agreement, Provider shall be as fully responsible to the City for the acts and omissions of Provider's subcontractors and for the persons either directly or indirectly employed by Provider. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor of Provider and the City. Provider shall bind every subcontractor to the terms of the Agreement applicable to Provider's work unless specifically noted to the contrary in the subcontract and approved in writing by the City.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or provide equipment to the Provider in performing this Agreement shall be submitted to the City on a yearly basis..

5.0 CITY'S OBLIGATIONS

The City shall do or cause to be done each of the following at City's sole expense, unless otherwise stated below:

5.1 Designate Authorized Officer(s) to review the violation information from the Provider.

5.2 Appoint a project manager to coordinate the issuance of citations with the Authorized Officer.

5.3 Assist Provider, in its capacity as an independent contractor, in accessing records data of the Department of Motor Vehicles.

5.4 Provide reasonable access to the City's properties and facilities so that Provider may test the functionality of the Approaches and Project performance overall.

5.5 Provide reasonable access to City personnel and relay their respective City duties so that Provider may better tailor the training required under this Agreement.

5.6 Provide electrical power to Provider's installation at each installation location through existing traffic signal system's electrical power meters and electrical pull boxes.

5.7 Coordinate access to the traffic signal system with the City's signal contractor and/or the City's Traffic Engineer. Provider shall not at any time modify the City's timing patterns for traffic signals as programmed by the City within the traffic signal controllers.

5.8 Post all signage as required by law.

6.0 EXTRA WORK

Provider shall not provide equipment or perform support services in excess of the Professional Services described herein without the City's prior written approval. All requests for extra work ("Extra Work") shall be by a written change order submitted to and approved by the City prior to the delivery of such equipment or the commencement of such work.

7.0 TERMINATION OF AGREEMENT

7.1 Termination: The City may terminate this Agreement without cause at any time by giving thirty (30) calendar days advance written notice of termination to the Provider. If the City so terminates this Agreement, the City shall be obligated to pay the Provider for all services satisfactorily performed in

accordance with this Agreement, through and including the termination date in accordance with the fees specified in Attachment "A".

7.2 Provider may terminate this Agreement without cause at any time by giving ninety (90) days written notice to City signed by Provider's project manager. If the Provider so terminates this Agreement, the City shall be obligated to pay the Provider for all services satisfactorily performed in accordance with this Agreement, through and including the termination date in accordance with the fees specified in Attachment "A".

7.3 Non-Preclusion: The rights to terminate the Agreement under this section are not exclusive of and shall not preclude the Parties' rights to exercise other rights or remedies.

7.4 Procedures upon Termination: The termination of this Agreement shall not relieve either Party of any liability that accrued prior to such termination. Upon receipt of the Notice of Termination, the following procedures apply:

7.4.1 Provider shall:

- (i) immediately cease to provide any work or services in furtherance of the Project;
- (ii) promptly deliver to the City any and all proprietary property of the City provided to the Provider pursuant to the Agreement;
- (iii) promptly deliver to the City a final report detailing the Provider's collection of data and the issuance of citations. The report shall be in such format and for such periods as the City may reasonably request and the Provider shall update or supplement a final report when and if additional data or information becomes available;
- (iv) promptly deliver to the City a final invoice itemizing all fees and charges properly owed by the City to the Provider for work performed and citations issued prior to the termination; and
- (v) provide such assistance as the City requests related to the prosecution and enforcement of citations issued prior to the termination of this Agreement.

7.4.2 The City shall:

- (i) immediately cease using the Provider's system, accessing Provider's system and using any other intellectual property of the Provider;

- (ii) promptly deliver to the Provider any and all proprietary property of Provider provided to the City pursuant to the Agreement; and
- (iii) promptly pay any and all fees, charges and amounts properly owed by City to the Provider for work performed and citations issued prior to the termination.

7.4.3 Unless the City and the Provider have agreed to enter into a new Agreement for this Project or have agreed to extend the term of this Agreement, the Provider shall remove any and all Equipment or other materials of the Provider installed in connection with Provider's performance under this Agreement, including but not limited to, housings, poles and camera systems. The Provider shall, at the Provider's sole expense, restore the Approaches to substantially the same condition such Approaches were in immediately prior to this Agreement.

8.0 INSURANCE

8.1 With respect to performance of work under this Agreement, the Provider shall maintain and shall require all of its subcontractors to maintain insurance as described below:

- (i) Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than:
 - \$1,000,000 Bodily Injury by Accident-Each Accident
 - \$1,000,000 Bodily Injury by Disease-Each Employee
 - \$1,000,000 Bodily Injury by Disease-Policy Limit
- (ii) Commercial general liability insurance with a combined single limit of not less than \$2,000,000 per occurrence. Limits can be met with any combination of Primary and Excess Liability policies. Such insurance shall include products/completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Such insurance shall (1) name the City, its appointed and elected officials, officers, employees, and agents as additionally insureds, and (2) be primary with respect to any insurance or self-insurance programs maintained by the City, and (3) contain standard cross liability provisions.
- (iii) Professional liability insurance coverage of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate.

8.2 The Provider shall furnish properly executed certificates of insurance to City prior to commencement of work under this Agreement. Such certificates shall:

- (i) Clearly evidence all coverages required above, including specific evidence of a separate endorsement naming the City as an additionally insured;
- (ii) Indicate whether coverage provided is on claims-made or occurrence basis; and
- (iii) Evidence that the policy is endorsed to provide that the insurance company will endeavor to send thirty (30) days prior written notice to the City in the event the policy is cancelled prior to its normal expiration date for reasons other than non-payment of premium. However, the City agrees and accepts that failure by the insurance company to send such notice shall impose no liability on the Provider, the insurer, and/or its agents and representatives, and shall not prevent nor delay any such cancellation.

8.3 Commercial general liability insurance shall be maintained from the time work first commences until completion of the work under this Agreement if an occurrence policy form is used. If a Commercial General Liability claims-made policy is used, coverage shall be maintained during the contract term and for a period extending five (5) years beyond the contract date. The Provider shall replace such certificates for policies expiring prior to completion of work under this Agreement and shall continue to furnish certificates five (5) years beyond the contract terms, when Provider has a claims-made form. Should the five (5) year "tail" of a claims-made policy prove impossible to secure, at the City's option, an agreement or bond may be substituted to provide the necessary coverage.

8.4 If the Provider, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from Provider resulting from said breach. Alternatively, the City may purchase such required insurance coverage, and without further notice to the Provider, the City may deduct from sums due the Provider any premium costs advanced by the City for such insurance.

9.0 VIOLATION PROCESSING

During the operational period, violations shall be processed in accordance with the provisions of this section.

9.1 Authorized Officer: The City's Authorized Officer shall review the violation data from Provider. Within seven (7) days of gathering the violation data, Provider shall grant the Authorized Officer access to the Provider's system for purposes of reviewing this data. The Authorized Officer shall independently determine whether to issue a citation in each case.

PROVIDER 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 PROVIDER HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION.

9.2 Violation Date: All violation data shall be stored on the Provider's system. Any photos, documents, film or evidence of any kind related to a potential violation, shall be deemed violation data. The Provider's system shall process violation data gathered from the Approached into a format capable of review by the City's Authorized Officer via the Provider's System.

9.3 Accessibility: The Provider's system shall be accessible by the City's Authorized Officer 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.

9.4 Issuance of Citation: The Authorized Officer shall notify the Provider of a determination to issue a citation via an electronic format. Provider shall provide the necessary software, applications or procedures on Provider's System for the transmission and receipt of this information.

9.5 Upon notification by the Authorized Officer of the determination to issue a citation, Provider shall print and mail a citation within five (5) days; provided, however, during the Warning Period, warning violation notices shall be issued in lieu of all citations.

9.6 Records Maintenance:

- (i) The City or its Authorized Officer shall track the collection of fines assessed on each citation. The City shall maintain complete and accurate records for all citations.
- (ii) Provider shall permit the Authorized Officer to generate monthly reports using the Provider's standard report system.
- (iii) Upon Provider's receipt of a written request from the City and in addition to standard reports, Provider shall provide, without cost to the City, reports detailing the processing and issuance of citations, the maintenance and downtime records of the Approached and the functionality of the Provider's system in such format and for such periods as the City may reasonably request; provided, however, Provider shall not be obliged to provide in excess of six (6) such reports in any given twelve (12) month period without cost to the City;

- (iv) Upon the City's receipt of a written request from Provider, the City shall provide, to the extent permitted by law, without cost to Provider, reports regarding the prosecution of citations and the collection of fines, fees and other monies in such format and for such periods as Provider may reasonably request; provided, however, the City shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to Provider.

9.7 During the three (3) month period following the installation of the first camera ("Installation Date") and upon Provider's receipt of a written request from the City at least fourteen (14) calendar days in advance of a court proceeding, Provider shall provide expert witnesses for use by the City in prosecuting violations; provided, however, the City shall use reasonable best efforts to seek judicial notice in lieu of requiring Provider to provide such expert witnesses.

10.0 INDEMNIFICATION

10.1 City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Provider or any other person for, and Provider shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgements, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by Provider's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Provider, its agents, officers, directors, subcontractors or employees, committed in performing any of the Services under this Agreement.

10.2 If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Provider has agreed to indemnify Indemnitees as provided above, Provider, upon notice from City, shall defend Indemnitees at Provider's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Provider, as described in Section 8, shall ensure Provider's obligations under this section, but the limits of such insurance shall not limit the liability of Provider hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

10.3 The provisions of this section do not apply to Claims occurring as a result of this City's sole negligence or willful acts or omissions.

10.4 All units and equipment provided by Provider and used in performing this Agreement belong to, or are leased by the Provider. City shall pay for or reimburse Provider for any and all damage to said units and equipment provided by Provider pursuant to this Agreement, which occurs as a result of the negligence of City, or any of its agents or employees. Provider will notify City of the damage within (30) days of the discovery of the damage. In the event of damage to Provider provided equipment by third parties, City will use its best efforts to assist Provider to identify and obtain compensation from any third party responsible for damage to Provider equipment.

10.5 City shall not be responsible for any damage to persons or property due to the use, misuse, or failure of any equipment used by the Provider, or by any of its employees, and third parties even though such equipment may be provided to City by Provider.

11.0 NON-DISCRIMINATION

Provider shall not discriminate against any employee or applicant for employment because of sex, race, color, age, religion, ancestry, national origin, military or veteran status, disability, medical condition, genetic information, gender expression, marital status, or sexual orientation. Provider shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their sex, race, color, age, religion, ancestry, national origin, military or veteran status, disability, medical condition, genetic information, gender expression, marital status, or sexual orientation and shall make reasonable accommodation to qualified individuals with disabilities or medical conditions. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Provider agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

12.0 DISPUTES

12.1 If a dispute should arise regarding the performance of this Agreement, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute under this Agreement, shall be reduced to writing by the complainant. A copy of such documented dispute shall be forwarded to the other party involved, along with a recommended method of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

12.2 If the dispute is not resolved, the aggrieved party shall send to the City's Manager a letter outlining the dispute for Manager's resolution.

12.3 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. Upon receipt of written notice of either party, each of the parties shall appoint a designated officer 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.

12.4 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may seek remedies available to them at law.

13.0 ATTORNEY'S FEES AND COSTS

In the event that one party incurs expenses, including attorneys' fees and costs, in enforcing the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party reimbursement for those costs, including reasonable attorneys' fees.

14.0 MANDATORY ASSISTANCE

14.1 If a third party dispute or litigation, or both, arises out of, or related in any way to the Professional Services provided under this Agreement, upon the City's request, the Provider, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Provider's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

14.2 Compensation for Mandatory Assistance: The City will compensate the Provider for fees incurred for providing Mandatory Assistance as Extra Work under Section 6.0. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Provider, its agents, officers, and employees, the Provider shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Provider, its agents, officers, and employees for Mandatory Assistance.

14.3 Attorney Fees Related to Mandatory Assistance: In providing the City with dispute or litigation assistance, the Provider or its agents, officers, and employees may incur expenses and/or costs. The Provider agrees that any attorney fees it may incur as a result of assistance provided under Section 13.1 are not reimbursable. The Parties

agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 12.0 of this Agreement.

15.0 COVENANTS AGAINST CONTINGENT FEES

Provider warrants that it has not employed or retained any company or person, other than bona fide employee working for Provider, to solicit or secure this Agreement, and that Provider has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability, or, at the City's discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

16.0 ASSIGNMENT OF CONTRACT

Assignment. Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent, shall not be unreasonably withheld or delayed; provided, however, City hereby acknowledges and agrees that the execution (as outlined in Attachment B), delivery and performance of Provider's rights pursuant to this Agreement shall require a significant investment by Provider, and that in order to finance such investment, Provider may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). The City hereby agrees that Provider shall have the right to assign, pledge, hypothecate or otherwise transfer its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Provider and any such Financial Institution, subject to the City's prior written approval, which approval shall not be unreasonably withheld or delayed. The City further acknowledges and agrees that in the event that Provider provides written notice to the City that it intends to transfer all or any of Provider's rights pursuant to this Agreement, and in the event that the City fails to provide such approval or fails to object to such transfer within forty-five (45) business days after its receipt of such notice from Provider, for the purposes of the Agreement, the City shall be deemed to have consented to and approved such transfer by Provider. Notwithstanding the above, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective successors or assigns.

17.0 INTEGRATION

This Agreement, the Attachments and references incorporated herein fully express all understanding of the parties regarding this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both parties or an

amendment to this Agreement agreed to by both parties. All prior negotiations and agreements are merged into this Agreement.

18.0 INDEPENDENT CONTRACTOR STATUS OF PROVIDER

The Provider and any subconsultants employed by the Provider shall be independent contractors and not agents of the City.

19.0 CITY BUSINESS LICENSE

Provider shall obtain and hold a current City business license.

20.0 CITIZEN ASSISTANCE

Provider shall provide a toll-free telephone number for citizen inquiries and provide assistance and respond to these inquiries.

21.0 NOTICES

21.1 Any notices to be given under this Agreement, or otherwise, shall be served by certified mail.

21.2 For the purposes hereof, unless otherwise provided in writing by the parties, the address of the City and the proper person to receive any notice on the City's behalf is:

City of Solana Beach
Attn: Mohammad Sammak, Director of Public Works

With a copy to: City Manager, Gregory Wade
635 S. Highway 101
Solana Beach, CA 92075

21.3 Unless otherwise provided in writing by the parties, the address of Provider and the proper person to receive any notice on the Provider's behalf is:

Redflex Traffic Systems, Inc.
Attn: Legal Department
5651 W. Talavi Blvd.
Glendale, AZ 85306
Facsimile: (623) 207-2056
Email: legaldepartment@redflex.com

22.0 PROVIDER'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

Provider certifies that Provider is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

23.0 CALIFORNIA LAW; VENUE

This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the Superior Court for the State of California in the County of San Diego. The Provider hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year first hereinabove written.

CITY OF SOLANA BEACH, a municipal corporation

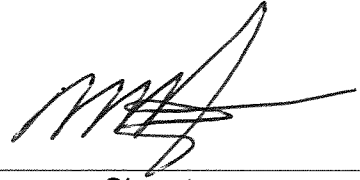
REDFLEX, a Delaware corporation

By:



City Manager, Gregory Wade

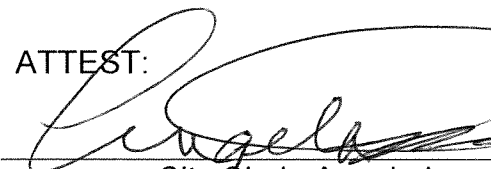
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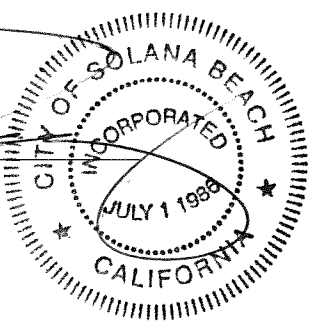
Signature

Michael Finn-President/CEO
Print Name and Title

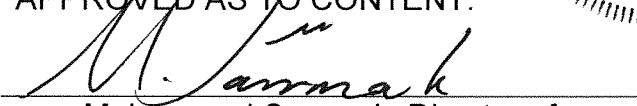
ATTEST:



City Clerk, Angela Ivey

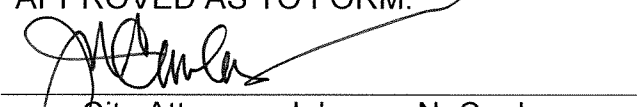


APPROVED AS TO CONTENT:



Mohammad Sammak, Director of
Engineering and Public Works

APPROVED AS TO FORM:



City Attorney, Johanna N. Canlas

Attachment "A"
Compensation and Fee Schedule

Provider will be paid on the following basis for providing described contract services to the City:

1. Flat Fee Plan

The City shall render payment to Provider a flat fee in the amount of \$2,386 per month per Approach. This monthly rate shall be prorated for any system malfunction (down time) that exceeds one day (considered in increments of one day) within the month. For instance, Provider's DSL service is not operations for two days. Based on a thirty (30) day month, the rate would then be calculated as follows: $28/30 \times \$2,227$ (rounded to the nearest dollar amount).

An 8% annual downtime will be permitted for regularly scheduled routine maintenance by Provider, so long as such maintenance is performed on non-peak, midweek days (Tuesday through Thursday). The pro-rata rate above will not apply to the 8% downtime for regular maintenance.

ADDITIONAL BUSINESS ASSUMPTIONS

1. The City agrees to pay Provider within thirty (30days) after the invoice is received. A monthly late fee of 1.5% is payable for payments past due 60 days.
2. Prices do not include supply of power and supply of DSL, cable or other broadband services. The City shall be solely responsible for power and Provider will be responsible for the communication infrastructure.
3. Each year the pricing will increase by the Consumer Price Index ("CPI"), as published by the Bureau of Labor Statistics for the United States Department of Labor, All Items, Los Angeles-Long Beach Area, 1967 = 100. If the Index is discontinued or revised during the long term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Any increase in compensation, other than as provided in the Agreement, shall be limited to the aforementioned CPI increase.
4. The full program has been outlined throughout the proposal, however it is important to note that our flat fee pricing includes the following aspects at no additional charge:
 - All system hardware and software
 - Approach installation, construction, and maintenance
 - Secure data transmission and storage
 - Redflex 3-tier violation processing
 - SMARTops® back office including a tool for PD incident review and incident life cycle status
 - Full in-house printing and mailing
 - Program training for authorized personnel

- Online program reporting module
- Unlimited users online applications
- Adjudication support
- Public Awareness / Community outreach support
- Violator support including online incident review and variety payment options

Attachment "B"
Form of Acknowledgment and Consent

THIS ACKNOWLEDGMENT AND CONSENT is entered into by and between the City of Solana Beach (the "City") and Redflex Traffic Systems, Inc. ("Redflex"), dated _____, 2017, related to that certain Agreement dated _____, 2017, by and between the City and Redflex ("Agreement") which hereby acknowledges, consents and agrees to the following ("Consent"):

1. Redflex has financed certain operations and equipment related to its business, including but not limited to camera systems, housing and poles ("Equipment") through certain lenders ("Lenders"). Redflex has granted to Lenders a security interest in the Equipment, related property including software and proceeds thereto, as collateral for the performance, when due, of its obligations to Lenders. Redflex desires to assign all of its rights, but none of its liabilities or obligations under the Agreement (the "Assignment") to [Insert Name], as collateral agent for the Lenders (the "Collateral Agent"). Redflex will not, by virtue of the Assignment, be relieved of any liability or obligation under the Agreement or otherwise, and neither Collateral Agent nor Lenders are assuming any liabilities or obligations under the Agreement. City hereby acknowledges notice of the Assignment and hereby consents thereto and to assignment to any similar subsequent financing party of Redflex, and further acknowledges that Collateral Agent or Lenders, and their respective successors and assigns, and any other subsequent future lender, may assign the rights received from Redflex.
2. Redflex hereby authorizes City upon Collateral Agent's written request to make any payments due to Redflex under the Agreement directly to Collateral Agent, c/o [Insert Address], or to whomever Collateral Agent may from time to time direct in writing.
3. City acknowledges that the attached Agreement is a true, correct and complete copy of the Agreement.
4. City agrees that City shall not assert against Collateral Agent and Lenders any right or claim of set off, recoupment, counterclaim or other defense in respect of amounts or obligations owed by Collateral Agent and Lenders to City against amounts or obligations that City owes to Collateral Agent and Lenders under the Agreement.
5. In accordance with the Section 15 of this Agreement, this Consent shall be deemed to be notice to City. IN the event that City fails to provide such approval or object to this Consent within a reasonable time which shall include at least three weeks prior to the next City Council meeting; including this City Council meeting; and three days following the meeting after its receipt of such notice from Redflex, for the purposes of this Agreement, **the City shall be deemed to have consented to and approved this Consent.**

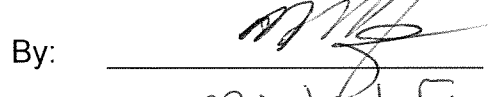
IN WITNESS THEREOF, each of the undersigned have caused this Acknowledgment and Consent to be executed by their duly elected officers duly authorized as of the date first above written.

[APPLICABLE MUNICIPALITY] REDFLEX TRAFFIC SYSTEMS INC.

By: 
Print Name: GREGORY WADE

Date: 10-27-17

Address: 635 S. HWY 101
SOLANA BEACH, CA 92075

By: 
Print Name: Michel Finn

Date: 10-11-17

Address: 5651 W. Tabavi Blvd
Suite 200
Glendale, AZ 85306