

A-2663

AGREEMENT FOR RED LIGHT PHOTO ENFORCEMENT SERVICES

This AGREEMENT, made and entered into this 29th day of December 2003, by and between the City of Escondido, a California municipal corporation ("City") and Redflex Traffic Systems, Inc., a California corporation, (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, City desires to obtain the services of a contractor to perform installation and support of a Red Light Photo Enforcement program for the enforcement of red light violations at intersections with the City of Escondido; and

WHEREAS, Contractor has represented that it possesses the necessary qualifications and experience to provide such services; and

WHEREAS, City has authorized the preparation of an agreement to retain the services of Contractor as hereinafter set forth.

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

1. Scope of Services.

Contractor agrees to perform the services set forth in Exhibit "A" "Scope of Services" and made a part hereof.

Contractor represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner.

2. Compensation.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Contractor at the rate of eighty-nine dollars (\$89.00), for each citation issued by City. City shall have no financial liability to Contractor for red light camera system installation, service or maintenance except for the citation fee as set forth herein.

(b) Each month Contractor shall furnish to City an **original** invoice which includes the total number of citations issued in the previous month and which identifies each citation by its citation number. City shall independently review each invoice submitted by Contractor to determine whether City issued each citation. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event City disputes any charges or expenses, the original invoice shall be returned by City to Contractor for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor's invoice.

(d) In the event any court of competent jurisdiction or subsequent legislation determines that the current method of compensating Redflex to be illegal or otherwise prohibited, or if following an audit of the previous six (6) months of revenue generated and costs incurred by City, utilizing standard accounting procedures, the results thereof establish that City's net recovery after deducting all payment made to Contractor during that six month period is less than 100% of the amount of revenue collected during that period, then both parties shall meet and confer in good faith within thirty (30) days and shall make reasonable efforts to agree upon a new compensation formula. That formula shall: (1) comply with then existing laws regarding compensation to Contractor; (ii) provide Reflex with a reasonable return: (iii) provide City with a monthly net rate of return that is not less than the amount set forth above in this section based upon the previous six months revenues. After using that new formula for a period of not less than ninety (90) days, the parties shall again assess their respective financial positions for that period. If it appears that the new formula produces the agreed upon return for the parties, or if the parties are otherwise satisfied with the return, then this Agreement shall continue in full force and effect subject to all of its terms. If the new formula is not producing the agreed upon rate of return, then, at either party's option, the formula may be further revised, or this Agreement may be terminated upon sixty (60) days prior written notice.

3. Term of Agreement.

Subject to the provisions of Section 4 below, "Termination of Agreement", the term of this Agreement shall be for a period of five (5) years from the date of execution of this Agreement, as first shown above. Such term may be extended upon written agreement of both parties to this Agreement.

Upon expiration or termination of this Agreement, Contractor shall provide all reasonable assistance and use its best efforts to deliver to City, in an orderly and expedient manner, all records and photo files prepared for or belonging to City. Notwithstanding expiration or termination of the Agreement, City shall pay Contractor all amounts due and payable under this Agreement, and Contractor shall continue to provide the contracted Services, for violations occurring prior to the date of expiration or termination.

4. Termination of Agreement.

(a) Either party shall have the right to terminate this Agreement immediately by written notice to the other as specified in Section 4b, below. In the event such notice is given, Contractor shall cease immediately all work in progress.

(b) This Agreement may be terminated under the following circumstances:

(1) Upon expiration of the original term or any extension of this Agreement.

(2) Upon giving thirty (30) days written notice to City if City fails to support the system pursuant to the terms of the Agreement, and City has not corrected such failure within the thirty-day period.

(3) Upon fifteen (15) days notice to Contractor if any court of last resort shall rule (other than dicta) that the red light camera results are inadmissible or other wise contrary to law.

(4) Upon fifteen (15) days notice to Contractor if any provision of California State Law, which authorizes operation of red light photo enforcement systems, is repealed or otherwise amended to prohibit the operation of such systems.

(5) Upon sixty (60) days notice to Contractor if payment provisions of this Agreement result in the dismissal or the exclusion from evidence of the photos and data provided by Contractor.

(6) Upon thirty (30) days written notice to City if City fails to pay amounts due to Contractor as specified in Section 2, above.

(7) Upon thirty (30) days written notice to Contractor if Contractor fails to provide equipment or perform services required under this Agreement, and Contractor has not corrected such failure within the thirty (30) day period.

(c) Upon termination of this Agreement as provided herein, Contractor shall provide all reasonable assistance and use its reasonable efforts to deliver to City, in an orderly and expedient manner, all records and photo files prepared for or belonging to City. Notwithstanding termination or expiration of the Agreement, City shall pay Contractor all amounts due and payable under this Agreement, and Contractor shall continue to provide the contracted Services, for violations occurring prior to the date of expiration or termination.

(d) Within sixty (60) days of termination or expiration of the Agreement, all equipment belonging to Contractor shall be removed from public rights of way. Damaged infrastructure shall be repaired and left in a manner acceptable to City.

5. Confidential Relationship.

City may from time to time communicate to Contractor certain information to enable Contractor to effectively perform the Services. Contractor shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without prior written consent of City. Contractor shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the Services. The foregoing obligation of this Section 5, however, shall not apply to any part of the information that (1) has been disclosed in publicly available sources of information; (2) is, through no fault of Contractor, hereafter disclosed in publicly available sources of information; (3) is now in the possession of Contractor without any obligation of confidentiality; or (4) has been hereafter rightfully

disclosed to Contractor by a third party, but only to the extent that the uses or disclosure thereof has been or is rightfully authorized by that third party.

Contractor shall not disclose any reports, recommendations, conclusions or other results of the Services or the existence of the subject matter of this Agreement without the prior written consent of City, which shall not be unreasonably withheld. In its performance hereunder, Contractor shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Subject to the City's obligations under the Public Records Act, proprietary and technical information, including information about the use, design specifications and other matters related to the red light camera system learned from and about Contractor during the term of this Agreement shall be held in confidence and shall not be used or disclosed by City without the express written consent of Contractor. City agrees that it will take all reasonable measures necessary to protect the secrecy and confidentiality of, and avoid disclosure or use of, the confidential information of and about Contractor.

The obligations of confidentiality shall not apply to information which: (1) has entered the public domain other than as a result of an act or omission of City; or (2) which subsequent to disclosure hereunder is obtained by the recipient party on a non-confidential basis from a third party who has the right to disclose such information to the recipient party.

6. Office Space and Clerical Support. Contractor shall provide its own office space and clerical support at its sole cost and expense.

7. Covenant Against Contingent Fees. Contractor represents and warrants that it has not employed nor retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, that it 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 of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability, or, at its sole 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.

8. Ownership of Documents. All memoranda, reports, plans, specifications, maps and other documents prepared or obtained under the terms of this Agreement, shall be the property of City and shall be delivered to City by Contractor upon demand.

9. Conflict of Interest and Political Reform Act Obligations. During the term of this Agreement, Contractor shall not act as Contractor or perform services of any kind for any person or entity whose interests conflict in any way with the City of Escondido. Contractor shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. Contractor shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City of Escondido in which Contractor has a financial interest as defined in Government Code Section 87103. Contractor represents and

warrants that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

10. Assignment.

The expertise and experience of Contractor are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Contractor's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. City acknowledges, however, that Contractor, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

Notwithstanding the above, City hereby agrees that Redflex shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them (but not its duties and obligations), under this Agreement to any financial institution in connection with any financing transaction between Redflex and any such financial institution, subject to City's prior written approval, which approval shall not be unreasonably withheld or delayed.

11. Maintenance of Records.

Contractor shall maintain any and all documents and records demonstrating or relating to Contractor's performance of services pursuant to this Agreement, including but not limited to ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Contractor pursuant to this Agreement. Any and all such documents or records shall be maintained for three years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

Contractor agrees to prepare and submit financial, program progress, monitoring, evaluation, and other reports as required by City or by State law authorizing the use of automated enforcement systems. Contractor shall maintain and permit on-site inspections of such property, personnel, financial and other records and accounts as are considered necessary by City to assure proper accounting for all Agreement funds.

To ensure proper performance of this Agreement and that the automated enforcement program service is operated by City, City will monitor, evaluate and provide guidance to Contractor in the performance of this Agreement. Authorized representatives of City shall have the right to access all activities and facilities operated by Contractor under this Agreement. Facilities include all files, records and other documents related to the performance of this Agreement. Such activities will include attendance at meetings directly related to Contractor's performance of its duties to City. Contractor will ensure the cooperation of its staff in such efforts.

12. Independent Contractor. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. City shall not have the right to control the means by which Contractor accomplishes the Services as required under this Agreement; however, City is the operator of the automated enforcement system. At no time shall Contractor hold itself out as the operator of the system or conduct itself other than in accordance with the supervision and direction of City.

13. Licenses, Permits, Etc. Contractor represents and warrants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required to practice its profession.

14. Insurance.

(a) With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors to maintain insurance as described below:

(1) Commercial general liability insurance with a combines single limit of not less than \$2 Million per occurrence. Such insurance shall include products/completed operations liability, owner's and Contractor's protective, blanket contractual liability, personal injury liability, and broad form property damage coverage.

(2) Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage.

(3) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship.

(4) Errors and Omissions professional liability insurance with minimum coverage of \$1 Million.

(b) Contractor shall furnish properly executed certificates of insurance to City prior to commencement of work under this Agreement. Each insurance policy required above shall:

(1) Name the City specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation and the Errors and Omissions policies.

(2) Provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.

(3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.

(c) If Contractor, 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 Contractor resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to Contractor, City may deduct from sums due Contractor any premium costs advanced by City for such insurance.

15. Warranties. Contractor warrants and represents that:

(a) It has the full power to enter into this Agreement; and

(b) Any and all services and equipment, including but not limited to software, utilized by Contractor its performance under this Agreement does not infringe upon any copyright, patent, trade secret, or other proprietary right held by any third party.

16. Indemnification.

(a) City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Contractor or any other person for, and Contractor shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, 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 the Contractor's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Contractor, its agents, officers, directors, subcontractors or employees, committed in performing any of the Services under this Agreement.

(b) If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Contractor has agreed to indemnify Indemnitees as provided above, Contractor, upon notice from City, shall defend Indemnitees at Contractor'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 Contractor under Section 14 shall ensure Contractor's obligations under this section, but the limits of such insurance shall not limit the liability of contractor hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

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

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

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

17. Modification of Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by City. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

18. Exclusivity. Through the term of this Agreement, Contractor shall be the sole provider of red light photo enforcement technology to City unless it is demonstrated that another vendor can provide City with technology that Contractor cannot emulate.

19. Contractor Not an Agent. Except as City may specify in writing, Contractor shall have no authority, expressed or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, expressed or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

20. Continuity of Personnel. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff assigned to perform the services required under this Agreement, prior to any such performance.

21. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: Ronald W. Anderson
Assistant Public Works Director/City Engineer
201 N. Broadway,
Escondido, CA 92025
Phone: (760) 839-4572 ext. 3865
Fax: (760) 839-4597

To Contractor: Karen Finley
Redflex Traffic Systems, Inc.
15020 North 74th Street
Scottsdale, AZ 85260
Phone: 480 998 4442
Fax: (480) 607 0752

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

22. Authority to Execute. The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

23. Waiver. Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

24. Law To Govern; Venue. This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Diego. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Southern District of California, in San Diego.

25. Attorneys Fees, Costs and Expenses. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

26. Entire Agreement. This Agreement, including the attached Exhibit "A", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this Agreement

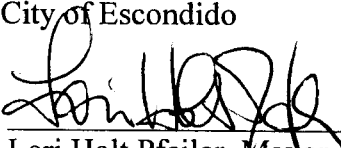
shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

27. Severability. If an term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the agreement shall be read and construed without the invalid, void or unenforceable provision(s).

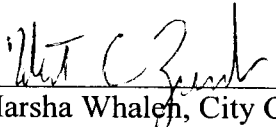
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

City of Escondido

Date: 12-29-03

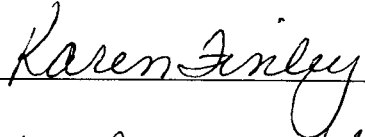
By: 
Lori Holt Pfeiler, Mayor

Date: 12-29-03

By:  deputy city clerk
Marsha Whalen, City Clerk

Redflex Traffic Systems, Inc.

Date: _____

By: 
Title: Vice President Secretary
(Signature must be acknowledged by a Notary)

Approved as to Form:

By: 
Susan D. Ryan, Deputy City Attorney



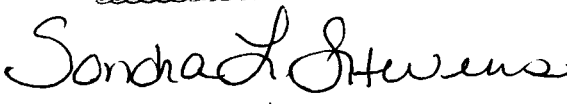

12/29/03

EXHIBIT A
SCOPE OF SERVICES

A. DEFINITIONS

Certain words and phrases used herein shall have the following meaning:

(a) "Authorized Officer" means the Police Project Manager or such other individual(s) as City shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto, and in any event, a sworn peace officer as defined in California Penal Code § 830.

(b) "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.

(c) "Citation" means a Notice of Violation in a criminal or civil traffic action relating to a violation captured the Redlight Photo Enforcement System.

(d) "Confidential Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, customers or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:

(i) Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and

(ii) Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets as defined by §3426.1(d) of the California Civil Code (the "Uniform Trade Secrets Act") and cases interpreting the scope of the Uniform Trade Secrets Act.

(iii) "Personal information" as described in California Civil Code § 1798.3(a).

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 disclosed.

(e) “Designated Intersection Approaches” means the Intersection Approaches as initially identified by City, and such additional Intersection Approaches as Redflex and City shall mutually agree from time to time.

(f) “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.

(g) “Enforcement Documentation” means the necessary and appropriate documentation related to the Redlight Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the California Judicial Council and the Escondido 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 California Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.

(h) “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.

(i) “Fine” means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.

(j) “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.

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

(l) “Intersection Approach” means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound, or westbound) on which at least one (1) digital, rear shot multiple image color camera and at least one (1) digital face camera has been installed by Reflex for the purposes of facilitating Redlight Photo Enforcement by City.

(m) "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Redlight Photo Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by a sworn police officer of City and the issuance of Citations for such approved Violations using the Redflex System.

(n) "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.

(o) "Police Project Manager" means the project manager appointed by City in accordance with this Agreement, which manager shall initially be a special purpose officer or City engineer, or such person as City shall designate by providing written notice thereof to Redflex from time to time, which manager shall be sworn peace officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight Photo Enforcement Program.

(p) "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Officer to review such data and determine whether a Violation has occurred.

(q) "Proprietary Property" means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.

(s) "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, which project manager shall initially be Karen Finley, or such person as Redflex shall designate by providing written notice thereof to City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Redlight Photo Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex's obligations pursuant to this Agreement, including but not limited to change-order authorizations.

(t) "Redflex System" means, collectively, the SmartCam™ System, the SmartOps™ System, the Redlight Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.

(u) "Redlight Photo Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles and/or their drivers.

(v) "Redlight Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by sworn police officers of City, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.

(w) "SmartCam™ System" means the proprietary digital speed and redlight photo enforcement system of Redflex relating to the Redlight Photo Enforcement Program.

(x) "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Redlight Photo Enforcement Program.

(y) "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.

(z) "Violation" means any traffic violation contrary to the terms of the California Vehicle Code or any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.

(aa) "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.

(bb) "Warning Period" means the period of thirty (30) days after the Installation Date.

B. CONSTRUCTION AND INSTALLATION OBLIGATIONS-TIMEFRAME FOR INSTALLATION

(1) The actual detection system installed, or caused to be installed by Redflex, shall be determined by mutual agreement between the parties, at no additional cost to City.

(2) Any and all construction and installation activities undertaken by Redflex, including existing loop restoration shall be completed to the satisfaction of City, and shall be completed at no additional cost to City.

(3) Reflex shall install Real-Time Streaming Video which shall enable City to monitor Designated Intersection Approaches via “streaming” video cameras, which are included as part of the Reflex Camera configuration. Such system shall be provided at no cost to City.

(4) Reflex will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Reflex Traffic Systems and the Municipality.

(5) Reflex will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

(6) Reflex will use reasonable commercial efforts to install and activate the first specified intersection within the first sixty (60) days subsequent to formal project kick-off. City agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Reflex and are not guaranteed.

(7) In order to provide City with timely completion of the photo enforcement project Reflex Traffic Systems requires that City assist with providing timely approval of City permit requests. City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule City is to provide City engineers review of Reflex permit requests and all documentation within five (5) business days. Reflex will also review and correct if necessary any redlines within two (2) business days. Permits need to be received within ten (10) business days of first submittal in order to implement the program in a timely manner.

C. REFLEX OBLIGATIONS. Reflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Reflex’s sole expense):

(1) Appoint the Reflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Reflex Project Manager;

(2) Conduct video analysis activities for red light violations on all approaches of each designated intersection to develop a baseline of red-light violations;

(3) Request current “as-built” engineering drawings for the Designated Intersection Approaches (the “Drawings”) from the Escondido Public Works/Engineering Department;

(4) Develop and submit to City for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for all radar sensors, pavement loops, video sensors, electrical connections and traffic controller connections, as required;

(5) 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) Finalize the acquisition of the Approvals;
- (7) Submit to City a public awareness strategy for City's consideration and approval, which strategy shall include media and educational materials for City's approval or amendment (the "Awareness Strategy");
- (8) Work with City to develop the Redlight Violation Criteria;
- (9) Develop the Enforcement Documentation for approval by City, which approval shall not be unreasonably withheld;
- (10) Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches (under the supervision of City);
- (11) 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;
- (12) 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;
- (13) Implement the use of the Redflex System at each of the Designated Intersection Approaches;
- (14) Deliver the Materials to City;
- (15) Issue "warning letters" for Authorized Violations which occurred at each Designated Intersection Approach during the Warning Period; and
- (16) During the Warning Period, Redflex shall provide training (i) for up to fifteen (15) personnel of City, including but not limited to the persons who Customer shall appoint as Authorized Officers and other persons involved in the administration of the Redlight Photo Enforcement Program, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Redlight Photo Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation;
- (17) Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System (including transfer of citation information from Redflex to the San Diego County Court Case System and determining proportion of fine distributed to

