

recd 11-9-05  
By mail

RESOLUTION NO. 2005-309

RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF ROCKLIN  
AUTHORIZING THE CITY MANAGER TO EXECUTE AN  
AGREEMENT BETWEEN THE CITY OF ROCKLIN AND  
REDFLEX TRAFFIC SYSTEMS, INC., FOR  
PHOTO RED LIGHT ENFORCEMENT PROGRAM

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin hereby authorizes the City Manager to execute an Agreement between the City of Rocklin and Redflex Traffic Systems, Inc., for Photo Red Light Enforcement Program in substantially the form attached hereto as Exhibit A and by this reference incorporated herein.

PASSED AND ADOPTED this 13<sup>th</sup> day of September, 2005, by the following roll call vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:



\_\_\_\_\_  
Peter Hill, Mayor

ATTEST:



\_\_\_\_\_  
City Clerk

The foregoing instrument is a  
correct copy of the original document  
on file in this office.

Attest:   
\_\_\_\_\_  
City Clerk, City of Rocklin

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

This Agreement (this "Agreement") is made as of September 13, 2005 by and between Redflex Traffic Systems, Inc. with offices at 6047 Bristol Parkway 1<sup>st</sup> Floor, Culver City, California 90230 ("Redflex"), and The City of Rocklin a municipal corporation, with offices at 3970 Rocklin Road, Rocklin, California, 95677 ("City").

**RECITALS**

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

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

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

**AGREEMENT**

1. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
  - 1.1. "Authorized Officer" means the Law Enforcement Project Manager or such other individual(s) as the City shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto, and in any event, a sworn peace officer or a qualified employee of the Rocklin Police Department
  - 1.2. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Officer by using the Redflex System.
  - 1.3. "Citation" means the notice of a Violation, which is mailed or otherwise delivered by Redflex to the violator on the

appropriate Enforcement Documentation in respect of each Authorized Violation.

1.4. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, Citys 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:

1.4.1. 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 Citys, or at which such Person sells or has sold its services; and

1.4.2. 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.

1.4.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be disclosed, or (v) was required by applicable state law, including but not limited to the California Public Records Act (California Government Code Sections 6250, et seq.) to be disclosed.

1.5. "Designated Intersection Approaches" means the Intersection Approaches set forth on **Exhibit A** attached hereto,

and such additional Intersection Approaches as Redflex and the City shall mutually agree from time to time.

- 1.6. "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.
- 1.7. "Enforcement Documentation" means the necessary and appropriate documentation related to the Photo Red Light Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Judicial Council and the City), a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers .
- 1.8. "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Photo Red Light System(s), including but not limited to all camera systems, housings, radar units, servers and poles.
- 1.9. "Fine" means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.10. "Governmental Authority" means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.11. "Installation Date of the Photo Red Light Program" 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.
- 1.12. "Intellectual Property" means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, 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.

- 1.13. "Intersection Approach" means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the City.
- 1.14. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated City Streets and Intersection Approaches by a sworn peace officer of the City and the issuance of Citations for such approved Violations using the Redflex System.
- 1.15. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.16. "Police Project Manager" means the project manager appointed by the City in accordance with this Agreement, which shall be a sworn peace officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight Photo Enforcement Program, and which manager shall have the power and authority to make management decisions relating to the City's obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the City's charter or other organizational documents of the City or by the city counsel or other governing body of the City.
- 1.17. "Potential Violation" means, with respect to any motor vehicle passing through a Designated City Street and/or Intersection Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Officer to review such data and determine whether a Red Light Violation has occurred.
- 1.18. "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.

- 1.19. "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 Photo Red Light 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.
- 1.20. "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, which project manager shall initially be Ray Torrez or such person as Redflex shall designate by providing written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Photo Red Light Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex's obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.21. "Redflex Photo Red Light 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.
- 1.22. "Photo Red Light Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and 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.

- 1.23. "Photo Redlight Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by sworn peace 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.
- 1.24. "SmartCam™ System" means the proprietary digital redlight photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
- 1.25. "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program.
- 1.26. "SmartScene™ System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
- 1.27. "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
- 1.28. "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.
- 1.29. "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated City Streets and/or Intersection Approaches.
2. **TERM.** The term of this Agreement shall commence as of the date of full execution of this Agreement by both parties and shall continue for a period of five (5) years after the Installation Date (the "Initial Term"). The City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive and automatic two (2) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.

3. **SERVICES.** Redflex shall provide the Photo Red Light Enforcement Program to the City, in each case in accordance with the terms and provisions set forth in this Agreement.
  - 3.1. **INSTALLATION.** With respect to the construction and installation of the Designated Intersection Approaches and the installation of the Redflex System at such Designated Intersection Approaches, the City and Redflex shall have the respective rights and obligations set forth on **Exhibit B** attached hereto.
  - 3.2. **MAINTENANCE.** With respect to the maintenance of the Redflex System at the Designated Intersection Approaches the City and Redflex shall have the respective rights and obligations set forth on **Exhibit C** attached hereto.
  - 3.3. **VIOLATION PROCESSING.** During the Operational Period, Violations shall be processed as follows:
    - 3.3.1. All Violations Data shall be stored on the Redflex System;
    - 3.3.2. The Redflex System shall process Violations Data gathered from the Designated City Streets and/or Intersection Approaches into a format capable of review by the Authorized Officer via the Redflex System;
    - 3.3.3. The Redflex System shall be accessible by the 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;
    - 3.3.4. Redflex shall provide the Authorized Officer with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within seven (7) calendar days of the gathering of the Violation Data from the applicable Designated City Streets and/or Intersection Approaches
    - 3.3.5. The City shall cause the Authorized Officer to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose, and 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;

- 3.3.6. With respect to each Authorized Violation, Redflex shall print and mail a Citation within six (6) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;
- 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries
- 3.3.8. Redflex shall permit the Authorized Officer to generate monthly reports using the Redflex Standard Report System.
- 3.3.9. Upon Redflex's receipt of a written request from the City and in addition to the Standard Reports, Redflex shall provide, without cost to the City, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the City in such format and for such periods as the City may reasonably request; provided, however, Redflex shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to the City;
- 3.3.10. Upon the City's receipt of a written request from Redflex, the City shall provide, without cost to Redflex, reports regarding the prosecution of Citations and the collection of fines, fees and other monies in respect thereof in such format and for such periods as Redflex 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 Redflex;
- 3.3.11. During the six (6) month period following the Installation Date and/or upon Redflex's receipt of a written request from the City at least fourteen (14) calendar days in advance of court proceeding, Redflex 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 Redflex to provide such expert witnesses; and
- 3.3.12. During the three (3) month period following the Installation Date, Redflex shall (in addition to training required pursuant to section 1.15 of Exhibit B) provide such training to Police personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses

on behalf of the City with respect to the Redlight Enforcement Program.

- 3.4. PROSECUTION AND COLLECTION; COMPENSATION. The City shall diligently prosecute Citations and the collection of all Fines in respect thereof, and Redflex shall have the right to receive, and the City shall be obligated to pay, the compensation set forth on **Exhibit D** attached hereto.
- 3.5. OTHER RIGHTS AND OBLIGATIONS. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Redflex and the City shall have the respective rights and obligations set forth on **Exhibit E** attached hereto.
- 3.6. 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 by 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 D (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 increases or decreases, as the case may be, and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing Designated Intersection Approaches, Designated City Vehicles, 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 D shall govern and no cost increase shall become necessary. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 10. INSURANCE. The insurance requirements set forth in this section shall be implemented by Redflex on the

effective date of this Agreement. During the Term, Redflex shall procure and maintain and Redflex's sole cost and expense the insurance coverage set forth in this section with respect to claims for injuries to persons or damages to property which may arise from or in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees, and shall comply with all other requirements specified in this section.

3.7.1 Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage.

3.7.2 Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury or property damage, including but not limited to coverage for all automobiles owned by Redflex, hired by Redflex, and/or owned by third parties.

3.7.3 Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than the limits required by the Labor Code of the State of California, Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.

3.7.4 Deductibles and Retentions. With respect to the insurance coverages described in this section, any deductibles or self-insured retentions must be declared to and approved by the City, and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the City.

3.7.5 Additional Insured. The City Parties shall be covered as additional insureds with respect to any liability arising from any act or omission of any Redflex Parties on the premises upon which any such Redflex Parties may perform services pursuant to this Agreement, and such coverage shall contain no special limitations on the scope of protection afforded to such additional insureds.

3.7.6 Primary Coverage. The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the City Parties in

connection with this Agreement, and any insurance or self-insurance maintained by any of the City Parties shall be in excess, and not in contribution to, such insurance.

3.7.7 Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the City Parties, and such insurance policies shall state the such insurance coverage shall apply separately with respect to each additional insured against whom any claim is made or suit is brought, except with respect to the limits set forth in such insurance policies.

3.7.8 Non-cancellation. Each insurance policy shall be endorsed to state that the coverage provided thereby shall not be cancelled except after thirty (30) calendar days' prior written notice to the City. If any of the Redflex Parties are notified by any insurer that any insurance coverage will be cancelled, Redflex shall immediately provide written notice thereof to the City and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the City of the date and nature of such correction. If Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the City shall have the right, but not the obligation and exercisable in its sole discretion, to either (i) terminate this Agreement and seek damages from Redflex for such breach, or (ii) purchase such required insurance, and without further notice to Redflex, deduct from any amounts due to Redflex pursuant to this Agreement, any premium costs advanced by the City for such insurance. If the premium costs advanced by the City for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the City upon receipt of written notice thereof.

3.7.9 Certificates of Insurance. Redflex shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the City prior to Redflex commencing any work pursuant to the terms of this Agreement.

#### **4. License; Reservation of Rights.**

- 4.1. License. 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 of Rocklin access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City of Rocklin that Redflex is providing services to the City in connection with Photo Red Light Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. 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.
- 4.3. 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, de-compile or otherwise perform any type of reverse engineering to the Redflex System, 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.

- 4.4. 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.
- 4.5. 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 4.5, 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 shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance.
- 4.6. INFRINGEMENT 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 such 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.

## **5. Representations and Warranties.**

### **5.1. Redflex Representations and Warranties.**

5.1.1. **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.

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

### **5.2. City Representations and Warranties.**

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

5.2.2. **Professional Services.** The City hereby warrants and represents that any and all services provided by the City pursuant to this Agreement shall be performed in a professional and workmanlike manner.

5.3. **LIMITED WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE CITY'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, REDFLEX DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION APPROACHES OR THE REDFLEX SYSTEM WILL OPERATE IN THE WAY THE CITY SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CITY HEREBY ACKNOWLEDGES THAT THE REDFLEX SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, REDFLEX SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

## **6. Termination.**

6.1. **TERMINATION FOR CAUSE:** Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of photo red light

enforcement systems; (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the Redflex System of photo red light enforcement are inadmissible in evidence; or (iii) the other party commits any material breach of any of the provisions of this Agreement. Which aforementioned causes for termination (section 6.1) are 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.

6.2. The rights to terminate this Agreement given in this Section 6.1 shall be without prejudice to any other right or remedy of either party to seek recompense or other remedial action for breach or default.

6.3. PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in Section 6.4, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

6.3.1. Redflex shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Photo Red Light Enforcement Program, (ii) promptly deliver to the City any and all Proprietary Property of the City provided to Redflex pursuant to this Agreement, (iii) promptly deliver to the City a final report to the City 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, (iv) promptly deliver to City a final invoice stating all fees and charges properly owed by City to Redflex for work performed and Citations issued by Redflex prior to the termination, and (v) provide such assistance as the City may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement.

6.3.2. The City shall (i) immediately cease using the Photo Red Light Enforcement Program, accessing the Redflex System and using any other Intellectual Property of Redflex, (ii)



promptly deliver to Redflex any and all Proprietary Property of Redflex provided to the City pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by City to Redflex for work performed and Citations issued by Redflex prior to the termination.

6.3.3. Unless the City and Redflex have agreed to enter into a new agreement relating to the Photo Red Light Enforcement Program or have agreed to extend the Term of this Agreement, 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 City Vehicles and Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement.

6.4. **SURVIVAL**. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: (i) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (City Representations and Warranties), 5.3 (Limited Warranty), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Applicable Law), 11.16 (Injunctive Relief; Specific Performance) and 11.18 (Jurisdiction and Venue), and (ii) 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.

7. **CONFIDENTIALITY**. The parties agree and understand that the provisions of the California Public Records Act (California Government Code Sections 6250 et seq.), except as limited by California Vehicle Code Section 21455.5, apply to this agreement and to all documents and materials relating to this Agreement. Subject to the provisions of that Act, 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. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in

