

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

This Agreement ("Agreement") is made as of this ~~3<sup>rd</sup>~~ day of MARCH, 2009 by and between Redflex Traffic Systems, Inc. with offices at 23751 N. 23<sup>rd</sup> Avenue, Phoenix, Arizona, 85027 ("Redflex"), and the City of San Rafael, a charter city, with offices at 1400 Fifth Avenue, San Rafael, CA 94901 (the "Customer").

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

WHEREAS, it is a mutual objective of both Redflex and the Customer 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 Employee" means the Customer's Project Manager or such other individual(s) as the Customer shall designate to review Potential Violations and to authorize the issuance of Citations in respect thereto,
  - 1.2. "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 Confirmed Violation.
  - 1.3. "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, 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:
    - 1.3.1. 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 customers, or at which such Person sells or has sold its services; and

- 1.3.2. 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.
- 1.3.3. 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 described, or (v) was required by applicable state law to be described.
- 1.4. “Confirmed Violation” means each Potential Violation in the Violation Data for which authorization to issue a citation (or warning notice) in the form of an Electronic Signature is given by the Authorized Employee by using the Reflex System.
- 1.5. “Customer’s Project Manager” means the project manager appointed by the Customer in accordance with this Agreement, which shall be an Authorized Employee and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Red Light Photo Enforcement Program, and which manager shall have the power and authority to make management decisions relating to the Customer’s obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the Customer’s charter or other organizational documents of the Customer or by the City Council or other governing body of the Customer.
- 1.6. “Designated Intersection Approaches” means the Intersection Approaches as Reflex and the Customer shall mutually agree from time to time. See Exhibit A for the number of approaches.
- 1.7. “Electronic Signature” means the method through which the Authorized Employee indicates his or her approval of the issuance of a Citation for a Confirmed Violation using the Reflex System.
- 1.8. “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 Customer , a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including but not limited to 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 applicable vehicle registry), and technical support documentation for applicable court and judicial officers .
- 1.9. “Equipment” means any and all approach cameras, sensors, equipment, photo enforcement signage, components, products, software and other tangible and intangible property relating to the Redflex System(s).
  - 1.10. “Fine” means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
  - 1.11. “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.
  - 1.12. “Installation Date” means the date on which Redflex completes the construction and installation of the Redflex System at a Designated Intersection Approach in accordance with the terms of this Agreement so that such Designated Intersection Approach is operational for the purposes of functioning with the Photo Red Light Enforcement Program.
  - 1.13. “Intellectual Property” means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, 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.
  - 1.14. “Intersection Approach” means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) Redflex System has been installed by Redflex for the purposes of facilitating Red Light Photo Enforcement by the Customer.
  - 1.15. “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light Enforcement Program is functional in order to permit the issuance of Citations using the Redflex System.
  - 1.16. “Person” means an individual, company, Governmental Agency, partnership, firm, corporation, or other legal entity.
  - 1.17. “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 sensor arrays which, collectively, are capable of

measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.

- 1.18. “Photo Red Light Violation Criteria” means the standards and criteria by which Potential Violations will be evaluated by Authorized Employees of the Customer, 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.
- 1.19. “Potential Violation” means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Employee to review such data and determine whether a Red Light Violation has occurred.
- 1.20. “Proprietary Property” means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person’s business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
- 1.21. “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 Programs 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.
- 1.22. “Redflex’s Project Manager” means the project manager appointed by Redflex in accordance with this Agreement, 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. The Redflex Project Manager shall initially be Jack Weaver, who may be replaced by Redflex upon ten (10) business days written notice to Customer.
- 1.23. “Redflex System” means, collectively, the Salus™ and/or SMARTcam™ System, the SMARTscene™ System, and all of the other equipment, applications, cameras, sensors, components, motor vehicles and other tangible and intangible property relating thereto, to enable Redflex to enforce a minimum of one lane of travel at a designated location, together with the SMARTops™

- System, the Photo Red Light Enforcement Program, and all of the other equipment, applications, back office processes, servers, off-site backup systems, software and other tangible and intangible property relating thereto.
- 1.24. “Records Retention” means the period of time that Redflex will retain confidential information to include photographic evidence and data associated with the photo enforcement program.
  - 1.25. “SMARTcam™ System” means the proprietary software system that controls the photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
  - 1.26. “Salus™ System” means the proprietary software system that controls the photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
  - 1.27. “REDFLEXred™ System” means the proprietary digital redlight photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
  - 1.28. “SMARTops™ System” means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program.
  - 1.29. “SMARTscene™ System” means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
  - 1.30. “Traffic Signal Controller Boxes” means the signal controller interface and vehicle detection owned and operated by the Customer. This includes, but is not limited to, the Customer’s traffic controller, Customer’s vehicle detection equipment, Customer’s communication equipment, and Customer’s controller cabinet, .
  - 1.31. “Violation” means any traffic violation subject to photo enforcement as prohibited by 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.
  - 1.32. “Violations Data” means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.
  - 1.33. “Warning Period” means a period of thirty (30) days after the Installation Date during which only warning notices shall be issued by Redflex for a Violation.
2. **TERM.** The term of this Agreement shall commence as of the date first written hereinabove and shall continue for a period of five (5) year(s) thereafter, which initial term may be extended at Customer’s election for two (2) additional two (2) year terms, by Customer’s City Manager giving written notice to Redflex at least sixty (60) days prior to the last day of the previous term.
  3. **SERVICES.** Redflex shall provide the Photo Red Light Enforcement Program to the Customer, 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 Redflex System at the Designated Intersection Approaches, the Customer 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 Customer 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 Intersection Approaches into a format capable of review by the Customer or the Authorized Employee via the Redflex System;
  - 3.3.3. The Redflex System will be accessible by Authorized Staff through a secure and encrypted connection by use of a confidential user account on any computer equipped with a high-speed Internet connection and Microsoft's Internet Explorer version 6.1 SP1 or another web browser agreed upon by Redflex and Customer's IT Director.
  - 3.3.4. Redflex shall provide the Customer's Authorized Employee 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 Intersection Approaches.
  - 3.3.5. The Customer shall cause the Authorized Employee to review the Violations Data and to determine whether a citation (or warning notice during the Warning Period) shall be issued with respect to each Potential Violation captured within such Violation Data within three (3) calendar days, and shall transmit each such determination of a Confirmed Violation 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. REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION (OR WARNING NOTICE DURING THE WARNING PERIOD) SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'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 Confirmed Violation, Redflex shall print and mail, a Citation (or warning notice during the Warning Period) within five (5) calendar days after Redflex's receipt of an Electronic Signature for such Confirmed Violation. The Certificate of Mailing shall be completed on each Citation and accompanied by a declaration under penalty of perjury that the mailing was conducted in compliance with the laws of the State of California.
  - 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries, and shall include such number on each Citation (and Warning Notice).

- 3.3.8. Redflex shall permit the Authorized Employee to generate reports using the Redflex Standard Report System.
- 3.3.9. Upon Redflex's receipt of a written request from the Customer and in addition to the Standard Reports, Redflex shall provide, without cost to the Customer, 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 Customer in such format and for such periods as the Customer may reasonably request.
- 3.3.10. During the six (6) month period following the Installation Date and/or upon Redflex's receipt of a written request from the Customer at least fourteen (14) calendar days in advance of court proceeding, Redflex shall provide expert witnesses for use by the Customer in prosecuting Violations; provided, however, the Customer shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses. During the initial 6 month period such expert witnesses shall be provided by Redflex at no cost to Customer, but following the initial 6 month period such expert witnesses shall be provided by Redflex to Customer on a cost reimbursement basis as specified in Exhibit "D" attached hereto.
- 3.3.11. During the six (6) month period following the Installation Date, Redflex shall provide such training to Customer personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the Customer with respect to the Red Light Photo Enforcement Program.
- 3.4. RECORDS RETENTION. Redflex will retain the Violations Data for a period of time that is compliant with California Vehicle Code (CVC) requirements. Equipment maintenance records will be retained for five (5) years.
- 3.5. COMPENSATION. Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit "D" attached hereto.
- 3.6. 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 Customer shall have the respective rights and obligations set forth on Exhibit "E" attached hereto.
- 3.7. CHANGE ORDERS. The Customer 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 cost, if any (the "Change Order Proposal"). The 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 Customer. Following the Customer'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 fee increases or decreases, as the case may be, and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing Designated Intersection Approaches, or the addition of Intersection Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern, but in no event shall any additional Customer's payments for such Change Orders exceed \$50,000 over the Term of this Agreement, without the approval of the Customer's City Council. 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.

**4. LICENSE; RESERVATION OF RIGHTS.**

- 4.1. LICENSE. Subject to the terms and conditions of this Agreement, Redflex hereby grants the Customer, and the Customer 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) access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations (and warning notices during the Warning Period) 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 San Rafael) that Redflex is providing services to the Customer 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, which approval shall not be unreasonably withheld. The Customer shall have access to the Redflex System to review Potential Violations and to print copies of any content posted on the Redflex System related thereto for the Term of this Agreement and for a period of six (6) months following its expiration.
- 4.2. RESERVATION OF RIGHTS. The Customer 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 Customer 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 Customer pursuant to this Agreement, the Customer shall gain no additional right, title or interest therein.
- 4.3. RESTRICTED USE. The Customer 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 Customer'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 Customer shall not take any action to remedy or prevent such infringing activities by third parties, 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. **INFRINGING USE.** The Customer shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending, against the Customer 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 Customer 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 Customer 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 Customer the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

5. **REPRESENTATION 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 Customer.
- 5.1.3. **Maintenance and Support.** Redflex hereby warrants and represents that for the Term of this Agreement, Redflex will provide ongoing maintenance and support at the same or greater level than the previous year on all components of the Reflex System and the Photo Red Light Enforcement Program. In addition, it is mutually agreed that if there are any available upgrades or

enhancements that will materially improve the effectiveness of the Redflex System or Photo Red Light Enforcement Program, Redflex will perform any necessary modifications, upgrades or replacements and install any necessary components at no additional cost to the Customer.

5.1.4. Media Defects, Software Operation, and Malicious Code. Redflex hereby warrants and represents that (a) any media on which software is provided to Customer will be free from defects in materials or workmanship, (b) any Redflex software provided to or accessed by Customer will operate substantially in accordance with documentation provided to Customer, and (c) any Redflex software will be free of potentially malicious code, including by not limited to viruses, worms, spyware, and key-loggers.

5.1.5. Intellectual Property. Redflex warrants that it owns the intellectual property rights to and may legally license the use of the Redflex System and the Photo Red Light Enforcement Program by Customer, and that no part of such Redflex System and Photo Red Light Enforcement Program violates any intellectual property rights owned by any third parties.

5.1.6. Malfunction Free Operation. Redflex warrants that the Redflex System and the Photo Red Light Enforcement Program will operate free of any malfunctions twenty-eight (28) or more days during any thirty (30) day period during the Term of this Agreement.

5.2. CUSTOMER REPRESENTATIONS AND WARRANTIES.

5.2.1. Authority. The Customer 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 Customer hereby warrants and represents that any and all services provided by the Customer 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 CUSTOMER'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 CUSTOMER SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CUSTOMER 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 or providing controlling precedent for the Customer, making a ruling, or any 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, including any warranties in Paragraph 5. In the event of a termination due to Section 6.1(i) or 6.1(ii) above, Customer shall be relieved of any further obligations for payment to Redflex other than as specified in Exhibit "D". Either party shall have the right to remedy the cause for termination (Sec 6.1) within forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination. The right to terminate this Agreement given in this Section 6.1 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

6.2. **TERMINATION WITHOUT CAUSE:**

6.2.1. The Customer may terminate this Agreement without cause at any time by giving thirty (30) calendar days advance written notice of termination to Redflex. If the Customer so terminates this Agreement, the Customer shall be obligated to pay Redflex for all services satisfactorily performed in accordance with this Agreement, through and including the termination date in accordance with the fees specified in Exhibit "D". In addition, the Customer shall pay Redflex the cost recovery reimbursement as specified in Exhibit "D".

6.2.2. Redflex may terminate this Agreement without cause by giving ninety (90) days written notice of Customer signed by Redflex's Project Manager. If Redflex so terminates this Agreement, the Customer shall be obligated to pay Redflex for all services satisfactorily performed in accordance with this Agreement, through and including the termination date in accordance with the fees specified in Exhibit "D").

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 6.3, 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 Customer any and all Proprietary Property of the Customer provided to Redflex pursuant to this Agreement, (iii) promptly deliver to the Customer a final report to the Customer regarding the collection of data and the issuance of Citations in such format and for such periods as the Customer 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 Customer a final invoice stating all fees and charges properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination, and (v) provide such assistance as the Customer may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement. Immediately upon termination Redflex is no longer bound to the Data Retention Requirements for any data and if the customer wishes to obtain the data it must be conveyed at the time of termination. Redflex will transfer the data and relevant information to the Customer by a mutually agreed upon method. The Customer will assume the burden for all costs associated with this task including but not limited to administrative, storage media, storage media authoring devices, and internet bandwidth used for transferring data. Redflex will provide no tools for accessing this data or other guarantees.

- 6.3.2. The Customer 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 Customer pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination. If Customer terminates the Agreement without cause under Section 6.2.1, Redflex shall invoice Customer for the cost recovery reimbursement due under the provisions of Exhibit "D", and Customer shall be obligated to pay such amount no more than six (6) months after the Termination date, provided that no late fee or other penalty shall accrue for any cost recovery reimbursement not paid by Customer by such date.
- 6.3.3. Unless the Customer 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 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: (x) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (Customer Representations and Warranties), 5.3 (Limited Warranties), 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 (y) 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.** Except as provided in this Section 7, 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 confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) to the extent required by law, whether in response to an administrative or judicial subpoena or to a request under the California Public Records Act or similar law, provided that prior reasonable advance notice has been given to the other party to allow that party to seek relief against such disclosure.

8. **INDEMNIFICATION AND LIABILITY.**

8.1. **INDEMNIFICATION BY REDLEX.** Subject to Section 8.3, Redflex hereby agrees to defend and indemnify the Customer and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "Customer Party" and collectively, the "Customer Parties") against, and to protect, save and keep harmless the Customer Parties from, and to pay on behalf of or reimburse the Customer Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any Customer Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Redflex contained in this Agreement, or (b) the negligent (passive or active) acts or willful misconduct of Redflex, its employees or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the negligent or willful misconduct of any Customer Party, or (c) any claim that the Redflex System infringes the patents, trademarks, copyrights or any other intellectual property proprietary property rights of third parties, or (d) any claim that Redflex's employees or agents are entitled to be considered Customer's

employees or entitled to receive employee benefits from Customer including but not limited to retirement benefits.

8.2. INDEMNIFICATION PROCEDURES. In the event any claim, action or demand (a "Claim") for which the Customer seeks indemnification from Redflex, the Customer shall give Redflex written notice of such Claim promptly after the Customer first becomes aware thereof.. Redflex shall have the right to choose counsel to defend such Claim, subject to the approval of such counsel by the Customer, which approval shall not be unreasonably withheld. Customer shall have the right to participate in the defense at its sole expense; provided, however, the Customer shall have the right to take over the control of the defense of such Claim at any time if the Customer irrevocably waives all rights to indemnification from and by Redflex. The Customer shall cooperate with Redflex in the defense or settlement of any Claim. In no event shall Redflex enter into any settlement agreement without the Customer's prior written consent, which consent will not be unreasonably withheld.

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

9. NOTICES. Any notices to be given hereunder shall be in writing, and shall be deemed to have been given (a) upon delivery, if delivered by hand, (b) three (3) days after being mailed first class, certified mail, return receipt requested, postage and registry fees prepaid, or (c) one Business Day after being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery, if the courier service obtains a signature acknowledging receipt, in each case addressed or sent to such party as follows:

9.1. Notices to Redflex:

Redflex Traffic Systems, Inc.  
15020 North 74<sup>th</sup> Street  
Scottsdale, AZ 85260  
Attention: PROGRAM MANAGEMENT  
Facsimile: (480) 607-5552

9.2. Notices to the Customer:

City of San Rafael  
1400 Fifth Avenue  
San Rafael, CA 94901  
Attention: Police Chief  
Facsimile: 415-458-5344

10. **DISPUTE RESOLUTION.** Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 10, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation, or either party may unilaterally initiate litigation or pursue other available remedies. The rights and obligations under this Section 10 shall not limit in any way the right of either party to terminate this Agreement as provided in Section 6.

11. **MISCELLANEOUS.**

11.1. **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, the Customer hereby acknowledges and agrees that the execution (as outlined in Exhibit F), delivery and performance of Redflex's rights pursuant to this Agreement shall require a significant investment by Redflex, and that in order to finance such investment, Redflex 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 Customer hereby agrees that Redflex shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Redflex and any such Financial Institution, subject to the Customer's prior written approval, which approval shall not be unreasonably withheld or delayed. The Customer further acknowledges and agrees that in the event that Redflex provides written notice to the Customer that it intends to Transfer all or any of Redflex's rights pursuant to this Agreement, and in the event that the Customer 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 Redflex, for the purposes of this Agreement, the Customer shall be deemed to have consented to and approved such Transfer by Redflex. Notwithstanding the above, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective successors or assigns.

11.2. **RELATIONSHIP BETWEEN REDFLEX AND THE CUSTOMER.** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee

between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).

- 11.3. AUDIT RIGHTS. Each of parties hereto shall have the right to audit to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than ten (10) calendar days' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.
- 11.4. FORCE MAJEURE. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Redflex, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 11.5. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both parties.
- 11.6. SEVERABILITY. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 11.7. WAIVER. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 11.8. CONSTRUCTION Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.



- 11.9. HEADINGS. The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the parties hereto, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any term, condition or provision hereof.
- 11.10. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.
- 11.11. COVENANT OF FURTHER ASSURANCES. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.
- 11.12. REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.
- 11.13. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.
- 11.14. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.
- 11.15. NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.
- 11.16. INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The parties hereby agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other party, which injury could not be adequately compensated by an award of money damages, and the parties therefore agree and acknowledge that they shall be entitled to injunctive relief in the event of any breach of any material term, condition or provision of this Agreement, or to enjoin or prevent such a breach, including without limitation an action for specific performance hereof.

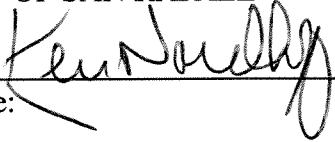
- 11.17. APPLICABLE LAW. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of California, United States.
- 11.18. JURISDICTION AND VENUE. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the courts located in the County of Marin, CA and both parties specifically agree to be bound by the jurisdiction and venue thereof.
- 11.19. SHUT DOWN FOR SAFETY. The Customer reserves the right to shut down power to all or part of the Redflex System for such period of time as may be required to protect the public health or safety as determined by the sole judgment of the Customer.

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

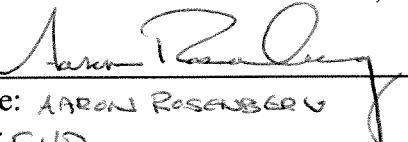
“Customer”

CITY OF SAN RAFAEL

By:   
Name:  
Title:

“Redflex”

REDFLEX TRAFFIC SYSTEMS, INC.,

By:   
Name: AARON ROSENBERG  
Title: E.V.P

APPROVED AS TO FORM

  
ROBERT F. EPSTEIN, CITY ATTORNEY

ATTEST:


  
ESTHER C. BEIRNE, CITY CLERK

EXHIBIT "A"  
Designated Intersection Approaches

The contract is for the implementation of up to ten (10) intersection approaches. Identification of enforced intersection approaches will be based on mutual agreement between Redflex and the Customer as warranted by community safety and traffic needs.

The Customer will make all reasonable efforts to provide Redflex's Project Manager with a list of Customer's initial proposed intersection approaches within ten (10) calendar days after execution of this Agreement..

If there is no mutual agreement on any intersection approaches within one hundred and twenty (120) calendar days after execution of this Agreement, then either party may give notice to the other party terminating this Agreement at no cost to either party, as defined in Paragraph 6.

EXHIBIT "B"  
Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light System

Redflex shall have each Designated Intersection Approach installed and activated with the Redflex System in phases in accordance with an implementation plan, including a Traffic Control Plan, to be mutually agreed to by Redflex and the Customer. Whenever any installation, maintenance, repair or removal of the Redflex System will be undertaken by Redflex or its contractor, an encroachment permit shall be obtained by Redflex or its contractor from the Customer unless such requirement is waived by Customer, provided that no fees shall be required for any such permit.

Redflex will use reasonable commercial efforts to install the Redflex System in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Redflex will use reasonable commercial efforts to install and activate the first designated intersection approach within sixty (60) days subsequent to the issuance of all required permits and receipt of the required Customer approved program business rules. The Customer agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Redflex and are not guaranteed. However, after issuance of all permits required by the Customer and other Governmental Authority, if Redflex fails to install and activate the Redflex System at the first designated intersection approach, the Customer shall have the right to give notice to Redflex terminating this Agreement at no cost to the Customer.

In order to provide the Customer with timely completion of the Red Light Photo Enforcement Program, Redflex requires that the Customer assist with obtaining timely approval of permit requests. The Customer acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the Customer will provide engineering review(s) of Redflex permit requests and all documentation in a timely manner.

1. Redflex Obligations. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
  - 1.1. Appoint the Redflex Project Manager and a project implementation team;
  - 1.2. Organize a pre-design meeting at the Customer's Project Manager's offices and/or in the field with pertinent Customer staff to discuss the design prior to plan submittal;
  - 1.3. Request available "as-built" electronic or hard copy engineering drawings for the Designated Intersection Approaches (the "Drawings") from the Customer's Traffic Engineer;
  - 1.4. Develop and submit to Customer construction and installation specifications in detail satisfactory to the Customer's Traffic Engineer for the Designated Intersection Approaches, including but not limited to specifications for all radar

- sensors, camera detection systems, pavement loops, electrical connections and traffic controller connections, as required;
- 1.5. Obtain approvals from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Redflex System in the Designated Intersection Approaches (collectively, the “Approvals”);
  - 1.6. Submit to the Customer a public awareness strategy (the “Awareness Strategy”), which strategy shall include media and educational materials (“Materials”), including radio and television public service announcements in English and Spanish, outdoor and print advertisements and web page ready animation video of the entire Photo Red Light Enforcement Program from the operation of the Redflex System through the payment of the citation, for the Customer’s use and amendment;
  - 1.7. Develop the Photo Red Light Violation Criteria in consultation with the Customer;
  - 1.8. Develop the Enforcement Documentation for approval by the Customer, which approval shall not be unreasonably withheld;
  - 1.9. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches, including the adjustment, modification or alteration of existing traffic safety equipment necessary to accommodate the Redflex System, in conformance with the plans and specifications approved by the Customer’s Traffic Engineer;
  - 1.10. Cause a licensed 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, and in conformance with the plans and specifications approved by the Customer’s Traffic Engineer, provided that no Customer conduit or pull boxes may be used except as agreed upon by Customer;
  - 1.11. Provide and install circuit breakers in Customer’s supplied power pedestals. In the event that there is not sufficient capacity within the existing source of power at a specific intersection, Redflex will supply a new power pedestal;
  - 1.12. 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;
  - 1.13. Implement the use of the Redflex System at each of the Designated Intersection Approaches;
  - 1.14. Provide and install required Photo Red Light Enforcement Program signage in compliance with Caltrans specifications at each intersection where a Redflex System is installed. In addition, provide two signs per Redflex System installed that will be stored and installed by Customer as required for replacement of the initial signs provided by Redflex.
  - 1.15. Deliver the Materials to the Customer; and
  - 1.16. Provide warning notices during the Warning Period, and Citation processing and citation issuance/re-issuance for Confirmed Violations;

- 1.17. Provide training (i) for up to fifteen (15) personnel of the Customer, including but not limited to the persons whom Customer shall appoint as Authorized Employees and other persons involved in the administration of the Photo Red Light Enforcement Program, (ii) for up to twenty-four (24) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Photo Red Light 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; (iv) training to be conducted at Customer's site; (v) Redflex will provide additional training in their offices in Phoenix for a maximum of two (2) personnel designated by Customer for up to two days (Redflex will cover airfare and hotel costs only with a cap on this expenditure of seven hundred fifty dollars (\$750.00)).
- 1.18. Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, and coordination between Redflex, the Customer and juvenile court personnel;
- 1.19. Install camera equipment at the Designated Intersection Approaches that shall produce at least 12.1 pixel quality pictures;
- 1.20. Provide electronically to Customer for import into the Customer's Record's Management System (RIMS-Sunridge Systems, Inc.) the data from any Warning Notice or Citation issued to the violator, in a format specified in Exhibit "G", within seventy-two (72) hours of Redflex's mailing of the Warning Notice or Citation to the violator;
- 1.21. In addition to providing the Marin County Superior Court a paper copy of any citation issued/re-issued for a Confirmed Violation, Redflex shall provide electronically to the Marin County Superior Court for import into the Court's Record's Management System the data from any Citation issued to the violator in a format to be provided by the court, within seventy-two (72) hours of Redflex's mailing of the Citation to the violator;
- 1.22. Provide to Customer, at least thirty (30) days prior to the start of the Warning Period for the first Designated Intersection Approach at which the Redflex System is installed, the following computer equipment for the Customer's use:
  - (a) Two (2) Dell UltraSharp 3008WFP flat panel widescreen monitors with 30 inch display and adjustable stand, and with an extended warranty of at least 5 years.
  - (b) One (1) Dell Optiplex 755 minitower computers with Energy Smart rating, Intel Core 2 Duo processor E6550 running at 2.33 GHz with 1.33 GHz FSB, 2 GB DDR2 SDRAM running at 800 MGz, XFX PVT84JYDF3 8600GT 512 MB dual video card with dual monitor output, 160 GB SATA hard drive running at 10K RPM and 3.0 Gb/s, 16X DVD+/-RW SATA optical drive, with an extended warranty of at least 5 years.

(c) One (1) Dell Latitude D830 laptop computer with Energy Smart rating. Intel Core 2 Duo processor running at 2.4GHz, 2 GB DDR2-667 SDRAM, 256 NVIDIA Quadro NVS 140M video card, 15.4 inch WUXGA widescreen LCD panel, 120 GB hard drive running at 5400 RPM, 8X DVD +/- RW optical drive, and with an extended warranty of at least 5 years.

(d) One (1) Xerox Phaser 6360DN network ready color laser printer, with memory upgrade to 1 GB, and with an extended warranty of at least 5 years.

(e) One (1) Primera Bravo Xr CD/DVD Publisher Systems with an extended warranty of at least 5 years.

2. CUSTOMER OBLIGATIONS. The Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):

- 2.1.1. Appoint the Customer's Project Manager;
- 2.1.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;
- 2.1.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Photo Red Light Enforcement Program;
- 2.1.4. Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the Customer;
- 2.1.5. Assist Redflex in seeking the Approvals;
- 2.1.6. Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Photo Red Light Enforcement Program;
- 2.1.7. Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
- 2.1.8. Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of Materials that the Customer will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending four (4) months after the Installation Date for the last Designated Intersection Approach completed;
- 2.1.9. Provide on-going adequate electrical power in order to operate the systems.
- 2.1.10. Assist Redflex in developing the Photo Red Light Violation Criteria;
- 2.1.11. Seek approval of the Enforcement Documentation;
- 2.1.12. The Customer shall provide on an agreed upon frequency, without cost to Redflex, reports regarding available collision data, and will assist Redflex in obtaining from the Marin County Superior Court reports on the prosecution of Citations, the collection of fines, fees and other monies, in such format and for such periods as Redflex may reasonably request;



- 2.1.13. Yellow Light Timing Review: The Customer is responsible to ensure that the yellow or amber light phase timing at all photo enforced intersections meets minimum standards according to Federal, State, and local laws, guidelines, and/or rules;
- 2.1.14. The Customer shall be responsible to provide and install LED traffic signal lights (yellow and red) at all enforced locations;
- 2.1.15. The Customer shall be responsible for the maintenance, repair and replacement of all Photo Enforcement signage installed at each intersection where the Redflex System is operational.
- 2.1.16. Customer is responsible for the web browsers and high speed Internet access necessary to access the Redflex system;

## EXHIBIT "C"

### Maintenance

1. All repair and maintenance of the Redflex Systems and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System, and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not do any Redflex System maintenance work within the Traffic Signal Controller Boxes or Traffic Signal Control System except after giving reasonable advance notice to the Customer's Traffic Engineer and any such maintenance work shall be done under the supervision of the Customer's Traffic Engineer or designee.
3. The provision and maintenance of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of Redflex.
4. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide, install and maintain such flash units.
5. Redflex shall assign specific personnel to provide follow up assistance to the Customer in the form of the HELPDESK, a designated Customer Service Representative and a Director of Accounts.
6. Redflex will inspect the Equipment and the functionality of the Redflex System at each Designated Intersection Approach at least monthly, conduct remote inspection of the System at least weekly, and make automated camera checks each business day. Redflex shall respond to any material malfunction of any Redflex System within twenty-four (24) hours of its receipt of a notice of malfunction from the Customer or its own discovery of such malfunction. In the event of any Redflex System malfunction at a Designated Intersection Approach, Redflex shall use its best efforts to cause the malfunction to be repaired within forty-eight (48) hours of its receipt of a malfunction notice from the Customer or discovery of the malfunction itself. If the malfunction has not been satisfactorily repaired so that functionality has been restored within such forty-eight (48) hour period, Redflex shall notify the Customer's Project Manager and Redflex's compensation shall be reduced according to Exhibit "D", Credit for Malfunctioning or Non-Operating Designated Intersection Approached.
7. Redflex will provide copies of any maintenance reports on the Redflex System at the request of the Customer's Traffic Engineer upon two (2) business days notice.

## EXHIBIT "D"

### Compensation and Pricing

#### **1. Fixed Fee**

Commencing on the expiration of the Warning Period for each Designated Intersection Approach, Customer shall be obligated to pay Redflex a fixed fee of \$5,900 per month for each Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement. Such fixed fee shall be pro-rated for any month in which the Redflex System at a Designated Intersection Approach is not operational for the entire month.

#### **1. Cost Recovery Reimbursement for Termination Without Cause.**

In the event the Customer terminates this Agreement without cause under Section 6.2, Redflex shall be entitled to a cost recovery reimbursement for the Redflex System installed at each Designated Intersection Approach prior to the termination notice, which reflects reimbursement for the direct labor costs and direct material costs (not including Equipment costs and salvageable material costs). Redflex shall provide the Customer with an itemization of the reimbursable costs for each Designated Intersection Approach, with supporting invoices and labor expense documentation, within thirty (30) days of the completion of the Redflex System at each Designated Intersection Approach. Said reimbursable costs shall not exceed \$70,000 per Designated Intersection Approach. The cost recovery reimbursement shall be calculated by the following formula for each Designated Intersection Approach:

Cost Recovery Reimbursement per Designated Intersection Approach =  $(X/Y) \times Z$ ,

Where the foregoing terms have the following meaning:

X = the number of months remaining in the Agreement;

Y = the number of months in the Agreement;

X/Y = the percentage of remaining Agreement;

Z = the reimbursable costs for the installed Designated Intersection Approach.

#### **2. Credit for Malfunctioning Redflex System**

The Customer shall not be obligated to pay, and will not be invoiced, for each calendar day that the Redflex System at a particular Designated Intersection Approach is not functioning for a period of more than two days in any thirty day period due to Equipment related malfunction. This credit will not apply to a situation where the Customer requests to shut down power to address public health and safety as described in Section 11.19. The invoice for the relevant period will show a credit of 1/30<sup>th</sup> of the Fixed Fee for each day that the Redflex System was not functioning in that month. In any month where the Redflex System is not functioning for twenty-four (24) or more days at a particular Designated Intersection Approach, the Customer shall not be obligated to pay and will not be invoiced for the Fixed Fee for that Designated Intersection Approach.

### **3. Business Assumption for all Pricing Options**

- a. Redflex may utilize Customer's existing conduit for installation of the Redflex System only where specified in the plans and specifications approved by Customer in connection with the Encroachment Permit issued to Redflex. Redflex will place Redflex tags on any of its wiring or other Equipment placed within the Customer's conduit. Redflex will promptly reimburse Customer for the cost of repairing any damages caused to Customer's conduit or equipment as a result of Redflex's use of such conduit, provided Customer has provided Redflex with an invoice describing the damaged conduit or equipment and detailing the cost of such repair. Redflex will assume the cost of installation of new conduit where the use of Customer's existing conduit is not approved by the Customer, and the placement of such conduit shall be in compliance with the Encroachment Permit issued by the Customer.
- b. Each year, on the anniversary date of the contract, the pricing will increase or decrease by the previous one year change in the CPI. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for All Urban Consumers-San Francisco-Oakland-San Jose, CA.
- c. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of Redflex
- d. Redflex shall be solely responsible for installing required signage. Redflex shall be solely responsible for the fabrication of any signage, notices or other postings required by the Customer in Exhibit "B", or pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to Caltrans specifications and the Vehicle Code, and Customer shall assist in determining the placement of such Signage. Redflex shall submit signage design drawings to the appropriate local authority for approval.
- e. Required Credit Card fees will not be considered to be revenue received and are the responsibility of the violator.
- f. If a Redflex System is deactivated at a Designated Intersection Approach at the Customer's request due to roadway construction work, including work on utilities, the monthly fee will be pro-rated for the period of such deactivation.

## EXHIBIT "E"

### Additional Rights and Obligations

Redflex and the Customer shall respectively have the additional rights and obligations set forth below:

1. Redflex shall assist the Customer in public information and education efforts, including but not limited to fielding media inquiries, the development of artwork for print and outdoor public service announcements and a web page ready animation video of the entire Photo Red Light Enforcement Program. Also radio and television advertisements, in English and Spanish, will be provided as well as utility bill inserts, press releases templates and planning for any public launch of the Photo Red Light Enforcement Program (actual media placement and ad buys are the sole responsibility of the Customer).
2. The Customer shall not access the Redflex System or use the Photo Red Light Enforcement Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Redflex System or the Photo Red Light Enforcement Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Photo Red Light Enforcement Program, and the Customer shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the Customer by means of hacking, password mining or any other method whatsoever, nor shall the Customer cause any other Person to do any of the foregoing.
3. The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Photo Red Light Enforcement Program.
4. Redflex and the Customer shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, Redflex and the Customer shall obey any and all such rules and regulations to the extent permitted by law.
5. The Customer shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the Customer, or any of its employees, contractors or agents, provided that Redflex has provided Customer with an invoice describing the damaged property or equipment and detailing the costs required to repair or replace such property or equipment.
6. Redflex shall keep the Violations Data in its computers secure from being appropriated by any of its employees or other persons for purposes other than as provided under this Agreement.

### Insurance

1. During the Term, Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage 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:
  - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage;
  - Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned by Redflex and hired by Redflex;
  - Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$1,000,000) per claim and in the aggregate;
  - Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of California, and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) each accident.
2. With respect to the insurance described in the foregoing Section of this Exhibit E, any deductibles or self-insured retentions in excess of \$100,000 must be approved in advance in writing by the Customer.
3. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
  - The Customer Parties shall be named as additional insureds with respect to the Commercial General Liability insurance, and such coverage shall contain no special limitations on the scope of protection afforded to such additional insureds;
  - The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the Customer Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the Customer Parties shall be in excess, and not in contribution to, such insurance;
  - Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the Customer 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.
4. With respect to the insurance described in the foregoing Section of this Exhibit "E", 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 Customer and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the Customer 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 Customer 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 Customer for such insurance. If the premium costs advanced by the Customer for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the Customer upon receipt of written notice thereof.

5. Redflex shall provide certificates of insurance and policy endorsements 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 Customer prior to Redflex commencing any work pursuant to the terms of this Agreement.

EXHIBIT "F"

FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of MARCH 3, 2009, is entered into by and between the City of San Rafael (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the City of SAN RAFAEL and Redflex Traffic Systems, Inc., for Photo Red Light Enforcement Program and Violation Processing Program, dated as of MARCH 3, 2009, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Multicurrency Credit Agreement, dated as of June 2, 2008 (the "Multicurrency Credit Agreement"), by and among Redflex, as Borrower, the guarantors from time to time party thereto, as Guarantors, the lenders from time to time party thereto, as Lenders (the "Lenders"), and Bank of Montreal, as Administrative Agent (the "Administrative Agent"), pursuant to which the Lenders have provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.

2. Pursuant to the Multicurrency Credit Agreement, Redflex has granted the Administrative Agent, for the benefit of the secured creditors, a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Administrative Agent and the Lenders under the Multicurrency Credit Agreement. Such security interest applies to and covers all of Redflex's contract rights, including, without limitation, all of Redflex's rights and interests under the Agreement.

3. Redflex will not, by virtue of the Multicurrency Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Administrative Agent has not assumed any liability or obligation of Redflex under the Agreement.

4. The City hereby acknowledges notice of, and consents to, Redflex's grant of such security interest in favor of the Administrative Agent, for the benefit of the secured creditors, in all of Redflex's rights and interests under the Agreement pursuant to the Multicurrency Credit Agreement.

5. The City further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the City and shall inure to the benefit of the successors and assigns of the Administrative Agent, and to any replacement lenders which refinance Redflex's obligations to the Administrative Agent and the Lenders under the Multicurrency Credit Agreement.


[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the City and Redflex have caused this Acknowledgement and Consent to be executed by their respective duly authorized and elected officers as of the date first above written.



The City:

SAN RAFAEL, a Charter City

By:   
Name: KEN NORDHOFF  
Title: CITY MANAGER

Redflex:

REDFLEX TRAFFIC SYSTEMS, INC.,  
a Delaware Corporation

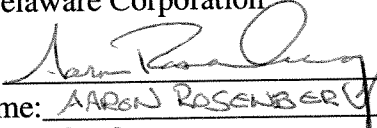
By:   
Name: AARON ROSENBERG  
Title: E.U.P.

EXHIBIT "G"

Format for Electronic Data

TRAFFIC VIOLATION (NON-PARKING)

=====  
 This format is one citation for one line in the file.

<b>Name</b>	<b>Start Pos</b>	<b>Length</b>	<b>Special Info</b>
"S"	1	1	S indicates Traffic Violation
Cite #	6	8	
Cite Date	14	10	MM/DD/YYYY
Issued Time	24	5	00:00
Beat	29	11	
Officer ID	55	7	
Court Date	62	10	MM/DD/YYYY
DL #	103	9	
DL State	112	2	
DL Class	114	5	
Date of Birth	119	8	MM/DD/YY
Last Name	127	15	
First Name	142	12	
Middle Name	154	15	
House #	169	24	
Street	193	24	
Apt	218	6	
Zip Code	224	9	
City	233	15	
State	248	2	
Sex	250	1	
Race	251	1	
Hair	252	3	
Eyes	255	3	
HtFt	258	1	
HtInches	260	2	
Weight	262	3	
Phone Number	265	12	
Vehicle License	277	20	
Vehicle License St	297	2	
Vehicle Year	299	4	
Make	303	4	
Model	307	10	
Color 1	324	3	
Color 2	327	3	
Reg Owner Last	330	15	

<b>Reg Owner First</b>	<b>345</b>	<b>12</b>
<b>Reg Owner Mid</b>	<b>357</b>	<b>15</b>
<b>Reg House No</b>	<b>372</b>	<b>24</b>
<b>Reg Street</b>	<b>396</b>	<b>24</b>
<b>Reg State</b>	<b>442</b>	<b>2</b>
<b>Reg Zip</b>	<b>444</b>	<b>9</b>
<b>Vio 1</b>	<b>453</b>	<b>16</b>
<b>Vio 1 Desc</b>	<b>469</b>	<b>50</b>
<b>Vio 1 Type</b>	<b>519</b>	<b>1</b>
<b>Vio 2</b>	<b>520</b>	<b>16</b>
<b>Vio 2 Desc</b>	<b>536</b>	<b>50</b>
<b>Vio 2 Type</b>	<b>586</b>	<b>1</b>
<b>Vio 3</b>	<b>587</b>	<b>16</b>
<b>Vio 3 Desc</b>	<b>603</b>	<b>50</b>
<b>Vio 3 Type</b>	<b>653</b>	<b>1</b>
<b>Vio Street #</b>	<b>654</b>	<b>8</b>
<b>Vio Street Name</b>	<b>686</b>	<b>24</b>
<b>Vio City</b>	<b>710</b>	<b>15</b>
<b>Remarks1</b>	<b>725</b>	<b>71</b>
<b>Remarks2</b>	<b>796</b>	<b>71</b>
<b>Remarks3</b>	<b>867</b>	<b>80</b>
<b>Remarks4</b>	<b>947</b>	<b>80</b>
<b>Remarks5</b>	<b>1027</b>	<b>80</b>
<b>Remarks6</b>	<b>1107</b>	<b>80</b>
<b>Remarks7</b>	<b>1187</b>	<b>80</b>