

Recd 10-15-04

To:

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Public Records Request

Attached is a copy of the original contract between the City of South Gate and Red Flex Traffic Systems, Inc. for the automated red light photo enforcement camera program. The City Clerk's office does not keep record of the Invoices, requests to pay said vendor, and payments made to said vendor. Therefore we have forwarded the requested to the proper department. We will try to provide you with records as soon as possible we are provided with them.

If you have any more questions feel free to give us a call at (323) 563-9510.

City Clerk's Office  
8650 California Ave,  
South Gate, Ca 90280  
Phone (323) 563- 9510  
Fax (323) 563-5411

Recd 10-15-04

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~~ORIGINAL~~

rec'd at hr.net on  
10-15-04

AGREEMENT NO. 2043

**AGREEMENT BETWEEN THE CITY OF SOUTH GATE  
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR  
AUTOMATED RED LIGHT PHOTO ENFORCEMENT CAMERA PROGRAM**

**AGREEMENT**

This Agreement (this "Agreement") is made as of this 22nd day of July 2002 by and between Redflex Traffic Systems, Inc., a California corporation with offices at 5813A Uplander Way, Culver City, California 90230 ("Redflex"), and The City of South Gate, a municipal corporation, with offices at 8650 California Avenue, South Gate, CA 90280 (the "Customer").

**RECITALS**

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

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

WHEREAS, it is the mutual objective of both Redflex and the Customer to reduce the incidence of vehicle collisions at the traffic intersections 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 Police 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, and in any event, a sworn police officer.

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 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:

(a) 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

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

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.

1.2 “Designated Intersection Approaches” means the Intersection Approaches set forth on Exhibit A attached hereto, and such additional Intersection Approaches as Redflex and the Customer shall mutually agree from time to time.

1.3 “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.

1.4 “Enforcement Documentation” means the necessary and appropriate documentation related to the Redlight Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the California Judicial Council and the South Gate Police Department), a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to

coordinating with the California Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers .

1.5 “Equipment” means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex System, including but not limited to all camera systems, housings and poles.

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

1.7 “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.

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

1.9 “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.

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

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

1.12 “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.

1.13 “Police Project Manager” means the project manager appointed by the Customer in accordance with this Agreement, which manager shall initially be [\_\_\_\_\_], or such person as the Customer shall designate by providing written notice thereof to Redflex from time to time, which manager shall be a sworn police 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 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.

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

1.15 "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.

1.16 "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 Redlight Photo Enforcement at any time during the Term of this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.

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

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

1.19 "Redlight Photo Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether

loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles and/or their drivers.

1.20 “Redlight Violation Criteria” means the standards and criteria by which Potential Violations will be evaluated by sworn police officers 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.

1.21 “SmartCam™ System” means the proprietary digital speed and redlight photo enforcement system of Redflex relating to the Redlight Photo Enforcement Program.

1.22 “SmartOps™ System” means the proprietary back-office processes of Redflex relating to the Redlight Photo Enforcement Program.

1.23 “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.

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

1.25 “Violations Data” means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.

1.26 “Warning Period” means the period of thirty (30) days after the Installation Date.

2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years after the Installation Date (the “Initial Term”). The Customer shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive one (1) year periods following the expiration of the Initial Term (each, a “Renewal Term” and collectively with the Initial Term, the “Term”). The Customer 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 Redlight Photo Enforcement Program to the Customer with respect to the Designated Intersection Approaches, in each case in accordance with the terms and provisions set forth in this Agreement.

3.1 **INSTALLATION.** With respect to the construction of the Designated Intersection Approaches and the installation of the Redflex System at such 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:

- (a) All Violations Data shall be stored on the Redflex System;
- (b) The Redflex System shall process all Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Officer via the Redflex System;
- (c) 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;
- (d) 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) days of the gathering of the Violation Data from the applicable Designated Intersection Approach;
- (e) The Customer 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;

With respect to each Authorized Violation, Redflex shall issue and mail a Citation within five (5) days after Redflex's receipt of such authorization and shall generate a certificate or other evidence of mailing with respect thereto; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;

- (f) The Customer shall track the collection of Fines assessed on each Citation and complete and accurate records shall be maintained by the Customer with respect each such Citation;
- (g) Redflex shall provide a toll-free telephone number during the business hours of 9AM-4PM MST Monday through Friday for the purposes of answering citizen inquiries, responding to complaints and scheduling appointments during which recipients of Citations may view the applicable Violations Data, and Redflex shall provide necessary personnel for such purpose;

(h) Redflex shall generate or permit the Authorized Officer to generate monthly reports using the Redflex System in a format and containing such data as Redflex and the Customer shall mutually agree, and in no event less often than once every calendar month and, in respect of any given month, no later than the fifteenth (15<sup>th</sup>) day of the month following such month (the "Standard Reports");

(i) Upon Redflex's receipt of a written request from the Customer and in addition to the Standard Reports, Redflex shall provide reports without cost to the customer 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 .

(j) During the three (3) month period following the Installation Date and upon Redflex's receipt of a written request from the Customer at least fourteen (14) calendar days in advance, 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; and

(k) During the three (3) month period following the Installation Date, Redflex shall 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 Customer with respect to the Redlight Enforcement Program.

3.4 **PROSECUTION AND COLLECTION; COMPENSATION.** The Customer shall diligently process Citations and the collection of all Fines in respect thereof, and Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit D attached hereto.

3.5 **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 Customer shall have the respective rights and obligations set forth on Exhibit E attached hereto.

3.6 **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 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 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 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, 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. 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) solely within the City of South Gate, 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 South Gate) that Redflex is providing services to the Customer in connection with Redlight Photo 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 Redlight Photo Enforcement Program, so long as any and all such publications or materials are approved in advance in writing by Redflex.

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 written consent of Redflex, or (e) disassemble, decompile or otherwise perform any type of reverse engineering to the Redflex System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.

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, 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 Customer shall give Redflex prompt written 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 Customer 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 Customer for any reasonable costs incurred in providing such cooperation and assistance.

4.6 **INFRINGING USE.** The Customer shall give Redflex prompt written notice of any 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. **REPRESENTATIONS AND WARRANTIES.**

### 5.1 **REDFLEX REPRESENTATIONS AND WARRANTIES.**

(a) **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.

(b) **Compliance with Laws.** 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 in accordance with all applicable laws and regulations and in compliance with all specifications provided to Redflex by the Customer

### 5.2 **CUSTOMER REPRESENTATIONS AND WARRANTIES.**

(a) **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.

(b) Compliance with Laws. The Customer hereby warrants and represents that any and all services provide by the Customer pursuant to this Agreement shall be performed in a professional and workmanlike manner in accordance with all applicable laws and regulations.

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, RELIABLE OR FREE OF ERRORS OR VIRUSES. THE CUSTOMER HEREBY ACKNOWLEDGES THAT THE REDFLEX SYSTEM MAY MALFUNCTION 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. Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) Redflex fails to deliver red light violation data in accordance with the contract; (ii) the incidence of vehicle collisions at the Designated Intersection Approaches is not decreased; (iii) Redflex or the Customer are unable to recover their respective (e.g. Redflex = costs of installation; Customer = lease payments) costs they incurred in connection with the installation of the intersection monitoring equipment based on an annual review process which calculates the annual system average revenue to ensure sufficient cost recovery ; or (iv) the other party commits any material breach of any of the provisions of this Agreement which breach is not remedied within forty-five (45) calendar days after written notice from the non-breaching party setting forth in reasonable detail the events which caused the breach. The rights to terminate this Agreement given 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 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:

(a) Redflex shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation of Intersection Approaches and services in connection with the Redlight Photo 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.

(b) The Customer shall (i) immediately cease using the Redlight Photo 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.

(c) Unless the Customer and Redflex have agreed to enter into a new agreement relating to the Redlight Photo Enforcement Program or have agreed to extend the Term of this Agreement, Redflex shall remove any and all Equipment or other materials of Redflex installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement.

6.3 **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 Warranty), 6.4 (Consequences of Early Termination),] 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.7 (Attorneys Fees), 11.18 (Applicable Law), 11.17(Injunctive Relief; Specific Performance) and 11.19 (Jurisdiction and Choice of Law), 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**. 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) pursuant to, and to the extent of, a request or order by any Governmental Authority.

## 8. INDEMNIFICATION AND LIABILITY.

8.1 INDEMNIFICATION BY REDFLEX. 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 acts or omissions or willful misconduct of Redflex, its employees, contractors 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 acts or omissions of or the willful misconduct of any Customer Party.

8.2 INDEMNIFICATION BY CUSTOMER. Subject to Section 8.3, the Customer hereby agrees to defend and indemnify Redflex and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them, or any of them (individually a "Redflex Party" and collectively, the "Redflex Parties") against, and to protect, save and keep harmless the Redflex Parties from, and to pay on behalf of or reimburse the Redflex Parties as and when incurred for, any and all Losses which may be imposed on or incurred by any Redflex Party arising out of or in any way related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of the Customer contained in this Agreement, (b) the negligent acts or omissions or willful misconduct of the Customer, its employees, contractors 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 acts or omissions of or the willful misconduct of any Redflex Party.

8.3 INDEMNIFICATION PROCEDURES. In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of the institution of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure so to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval

shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party.] The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no party shall have the right to enter into any settlement agreement that materially affects the other party's material rights or material interests without such party's prior written consent, which consent will not be unreasonably withheld or delayed.

8.4 **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) upon receipt, if delivered by facsimile transmission to the fax number of the receiving party and if receipt is confirmed electronically or by the addressee by return fax, (c) three (3) days after being mailed first class, certified mail, return receipt requested, postage and registry fees prepaid, or (d) one Business Day after being delivered to a reputable overnight courier 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:

Notices to Redflex:

Redflex Traffic Systems, Inc.  
15020 North 79<sup>th</sup> Street  
Scottsdale, AZ 85260  
Attention: Ms. Karen Finley  
Facsimile: (480) 607-0752

With a copy to:

Alschuler Grossman Stein & Kahan LLP

Thirty-Ninth Floor  
2049 Century Park East  
Los Angeles, CA 90067-3213

Telephone: 310-277-1226  
Facsimile: 310-552-6077

Notices to the Customer:

