



ADMINISTRATIVE REPORT

Date: December 2, 2002

Agenda Item No.: ~~-12-~~ 13

Council Action Date: December 9, 2002

Continued to: JANUARY 6, 2003

To: DONNA LANDEROS, CITY MANAGER

From: MIKE TRACY, POLICE CHIEF

Subject: AMENDMENT TO AUTOMATED RED LIGHT ENFORCEMENT CONTRACT

RECOMMENDED ACTION

- a. Approve the Second Amended and Restated Agreement between The City of San Buenaventura and Redflex Traffic Systems, Inc. for Automated Red Light Photo Enforcement Cameras and authorize the City Manager to execute the Agreement.
- b. Reduce the Police Department's authorized staffing level by one police officer position (currently unfilled). If Council takes this action, the Police Department will have one remaining authorized police officer position to staff the Redflex Program.

SUMMARY

One of the largest causes of serious injury accidents in the City is related to red light violations. Over several years, the City has implemented a number of engineering solutions with signal timing and equipment upgrades to reduce the number of red light violations, with some limited success. In May 2000, the City entered into an agreement with Redflex Traffic Systems, Inc to install an automated enforcement system at intersections with the highest number of accidents and violations.

The City is accomplishing the primary objective of automated enforcement—reducing the number of red-light related accidents. Since implementing the Redflex system, red light related accidents have been reduced 13%. Even more significant, red light violations at the mentioned intersections have decreased by 31% from the levels surveyed prior to the onset of the program.

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The initial contract with Redflex was negotiated with the expectation and a mutual program objective of five or more paid fines per camera location per day. This expectation has not been met. After eighteen months of operation, the total system volume is averaging less than one paid fine per camera per day. The proposed contract amendment acknowledges this lower volume and adjusts the distribution of proceeds while eliminating the cost of project management. While the program revenues have not met expectations, the City is covering costs associated with the program and providing for an increased level of public safety.

DISCUSSION

On May 15, 2000, the City Council entered into a five-year agreement with Redflex Traffic Systems, Inc. (Redflex) to install and operate an automated red light enforcement program. Sixteen camera systems have been installed and are operating in the City. During these first eighteen months, the number of accidents related to red-light violations has declined, which is the primary objective of this program. However, the number of automated red-light citations upon which the original contract with Redflex was based is lower than projected, creating lower than expected gross revenues. Furthermore, the original contract stated that effective November 1, 2002 the City would pay a significant monthly Project Management fee to Redflex for each camera system. These factors caused staff to re-open contract negotiations with Redflex about 60 days ago. The recommended amendment and restatement of the agreement proposes a revision to the distribution of proceeds and eliminates the Project Management fees, retroactive to November 1, 2002.

FISCAL IMPACTS

Based on our citation collection experience to date, we estimate the automated red light program will generate \$650,000 in gross revenues from an estimated 4700 paid citations per fiscal year.

The current contract provides that through October 2002 Redflex and the City split revenues 85%/15%, respectively, and then effective November 1, 2002 Redflex would receive 24% of the revenues, and the City 76%. Effective the same date, however, the City incurs a project management cost of \$2,500 per camera per month, or \$480,000 annually. The City's percentage of gross revenues under this contract would cover the project management fees, but would not cover the cost of the police officer assigned to the program.

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It should be noted that the Administrative Report considered by the Council when approving the original agreement on May 15, 2000 understated the project management fee. The calculations prepared for the Administrative Report were made on the basis of a fixed fee per year per camera, rather than a fixed fee per month per camera. (The contractual language is unambiguous, clearly defining the management fee at \$2500 per camera per month.)

Under the proposed amendment to the contract, Redflex will receive a fixed rate of \$118 per paid citation. (This equates to an approximate 85.5% of the gross revenues received by the City for its Automated Red Light Enforcement Program.) The City will retain the remaining revenues, and there will be no project management fees incurred for the remaining three and one half years of the contract. Based on the projections noted above, the revised agreement would result in the City paying Redflex on an annual basis \$555,000 for both the operation and maintenance of the Program. The City would retain \$95,000, which is sufficient revenue to cover the salary and benefits of the full time Police Officer assigned to this program.

ALTERNATIVES

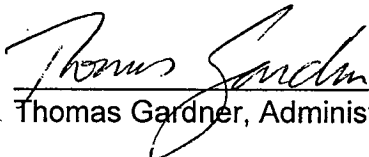
The City Council could decide to continue with Agreement No 2000-32 as originally negotiated.

Prepared by



FOR Mike Tracy, Police Chief

Reviewed as to fiscal impacts



Thomas Gardner, Administrative Services Director

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FORWARDED TO THE CITY COUNCIL

Donna Landier

Office of the City Manager

**SECOND AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF SAN
BUENAVENTURA AND REDFLEX TRAFFIC SYSTEMS, INC. FOR
AUTOMATED RED LIGHT PHOTO ENFORCEMENT CAMERAS**

This Agreement ("Agreement") is made as of this ___ day of December, 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 San Buenaventura, a municipal corporation, located at 501 Poli Street, Ventura, CA 93002 (the "Customer"). The Effective Date of the Agreement shall be November 1, 2002.

RECITALS

WHEREAS, Redflex and the Customer have previously entered into a certain agreement dated May 15, 2000, to provide automated red light photo enforcement in the City of San Buenaventura;

WHEREAS, that certain agreement dated May 15, 2000, was amended on May 21, 2001.

WHEREAS, Redflex and the Customer mutually agree that the terms of the agreement dated May 15, 2000, as amended, require significant modification in order to reflect the realities of automated red light photo enforcement in the City of San Buenaventura; and

WHEREAS, the Customer continues to desire to engage the services of Redflex to provide automated red light photo enforcement.

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 for 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.

1.5 "Designated Intersection Approaches" means the Intersection Approaches set forth in Exhibit A attached hereto, which may be amended by mutual agreement from time to time.

1.6 "Effective Date" means November 1, 2002.

1.7 "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.

1.8 "Enforcement Documentation" means the necessary and appropriate documentation related to the Redlight Photo Enforcement Program (Program), including but not limited to warning letters, citation notices (using the specifications of the California Judicial Council and the City of San Buenaventura 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 .

1.9 "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.

1.10 "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 "Intellectual Property" means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person.

1.13 "Intersection Approach" means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) 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.

1.14 "Paid Citation" means the Fine collected by the Ventura County Superior Court for a Citation after final disposition as recited in the monthly disposition report provided by the Manager, Automation & Technology Unit of the Ventura County Superior Court.

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

1.16 "Police Project Manager" means the project manager appointed by the Customer in accordance with this Agreement, 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 counsel or other governing body of the Customer.

1.17 "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.

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

1.19 "Redflex Marks" means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Redlight Photo Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.

1.20 "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, 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.

1.21 "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.

1.22 "Redlight Photo Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of the Redflex System in the City of San Buenaventura.

1.23 "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.

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

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

1.26 "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.

1.27 "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.

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

2. **TERM.** The term of this Agreement shall commence as of the Effective Date and shall continue for a period of forty-two (42) months thereafter (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 any new Designated Intersection Approaches and the installation of the Redflex System at such new

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**. Violations shall be processed as follows:

- (a) All Violations Data shall be stored on the Redflex System;
- (b) The Redflex System shall process 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;
- (f) With respect to each Authorized Violation, Redflex shall print 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;
- (g) 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 to the extent possible;
- (h) Redflex shall provide a toll-free telephone number 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;

(i) 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 (15th) day of the month following such month (the "Standard Reports");

(j) 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; provided, however, Redflex shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to the Customer;

(k) Upon the Customer's receipt of a written request from Redflex, the Customer shall provide, without cost to Redflex, reports regarding the prosecution of Citations and the collection of fines, fees and other monies in respect thereof in such format and for such periods as Redflex may reasonably request; provided, however, the Customer shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to Redflex;

(l) 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 use its own personnel or to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; and

(m) 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 prosecute Citations 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 San Buenaventura, 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 San Buenaventura) 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 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 consent of Redflex, or (e) disassemble, decompile 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, 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 use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this Section 4.5, then the 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 **INFRINGEMENT 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. **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) **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.

5.2 **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) **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 the operation or use of the redflex system 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. **PROGRAM EVALUATION.** The Customer's expectation is that the Program will cover its reasonable operating expenses. To the extent the Program does not cover Customer's reasonable operating expenses for any consecutive six month period, the Customer may initiate a request to meet and confer to discuss re-negotiation of the terms of this Agreement by providing written notice to Redflex. For purposes of this Section only, Customer and Redflex agree that reasonable operating expenses in a six month period is \$45,000. The parties shall use their best efforts to discuss and adopt options to bring the Program into compliance with Customer's expectation including amending the material terms of this Agreement. In the event no resolution is reached, either party may, but is not obligated, to terminate the Agreement.

7. **TERMINATION.**

7.1 **TERMINATION.** The Customer shall have the right to terminate this Agreement immediately by written notice if (i) Redflex fails to deliver redlight violation data in accordance with this Agreement; (ii) pursuant to section 6 the parties are unable to resolve the matter after meeting and conferring; or (iii) Redflex commits any material breach of any of the provisions of this Agreement which breach is not remedied 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 Customer setting forth in reasonable detail the events which caused the breach; (iv) any court with binding authority shall rule that red light photo enforcement system results are unenforceable or inadmissible; or (v) California State Law is amended to prohibit the operation of red light photo enforcement systems.

Redflex shall have the right to terminate this Agreement immediately by written notice if (i) the Customer fails to make timely payments pursuant to Exhibit "D" which is not cured within a forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree) after written notice of which is received from Redflex; (ii) the Customer commits any other material breach of any of the provisions of this Agreement which breach is not remedied 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 Reflex.

The rights to terminate this Agreement given in this Section 7.1 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.

7.2 **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 7.3, 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.

7.3 **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), 8 (Confidentiality), 9 (Indemnification and Liability), 10 (Notices), 11 (Dispute Resolution), 12.1 (Assignment), 12.17 (Applicable Law), 12.16 (Injunctive Relief; Specific Performance) and 12.18 (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.

8. **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, (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records, and (d) as otherwise may be required by law.

9. **INDEMNIFICATION AND LIABILITY.**

9.1 **INDEMNIFICATION BY REDFLEX.** Subject to Section 9.3, 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 act or omission, whether negligent or intentional, by Redflex, or other persons acting on its behalf, in the performance of this Agreement, or (b) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Redflex contained in this Agreement,

9.2 **INDEMNIFICATION BY CUSTOMER.** Subject to Section 9.3, 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 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 willful misconduct of any Redflex Party, (c) except as provided in 9.1 (a) or (b) any claim, action or demand not caused by Redflex's failure to perform its obligations under this Agreement, or (d) any claim, action or demand challenging the Customer's use of the Redflex System or any portion thereof, the validity of the results of the Customer's use of the Redflex System or any portion thereof, or the validity of the Citations issued, prosecuted and collected as a result of the Customer's use of the Redflex System or any portion thereof only if Redflex fully cooperates in good faith with the City in defending such claims including providing documents, expertise, expert witnesses and witnesses or other necessary items to defend such a suit at no cost or charge to Customer.

9.3 **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 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. Notwithstanding the foregoing, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at the expense of the Indemnifying Party if there is a conflict between the Indemnified Party and Indemnifying Party, and independent counsel has not been assigned to each. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no party shall have the right 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.

9.4 **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.

10. **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:

Notices to Redflex:

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

With a copy to:

Alschuler Grossman Stein & Kahan LLP
2049 Century Park East
39th Floor
Los Angeles, CA 90067
Attn: Michael B. Miller, Esq.
Facsimile: (310) 552-6077

Notices to the Customer:

City of San Buenaventura
501 Poli Street
P.O. Box 99
Ventura, CA 93002
Attention: City Manager

With a copy to:

City of San Buenaventura
501 Poli Street
P.O.Box 99
Ventura, CA 90000
Attention: City Attorney

11. **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.

12. **MISCELLANEOUS.**

12.1 **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.

12.2 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).

12.3 AUDIT RIGHTS. Each of parties hereto shall have the right 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 forty-eight (48) hours' 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.

12.4. 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.

12.5 ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties, and supercedes and any and all prior agreements, written or oral, between the parties. This Agreement may be amended only by a subsequent written agreement signed by both parties.

12.6 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.

12.7 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.

12.8 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.

12.9 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.

12.10 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.

12.11 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.

12.12 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.

12.13 **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.

12.14 **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.

12.15 **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.

12.16 **INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE.** The parties hereby agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 8 (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.

12.17 **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.

12.18 **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 Ventura, California, and both parties specifically agree to be bound by the jurisdiction and venue thereof.

(The remainder of this page is left intentionally blank)

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

"Customer"

"Redflex"

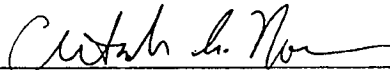
CITY OF SAN BUENAVENTURA

REDFLEX TRAFFIC SYSTEMS, INC.,
a California corporation

By: _____
Donna Landeros
City Manager

By: _____
Name:
Title:

APPROVED AS TO FORM:
Robert G. Boehm, City Attorney

By:  _____
Christopher G. Norman
Assistant City Attorney

ATTEST:

By: _____
Barbara J. Kam
City Clerk

Designated Intersection Approaches

Operational Redflex Systems are currently located at sixteen (16) Intersection Approaches within the City of San Buenaventura. Redflex has the option, but is not required, to install an additional four (4) Redflex Systems at Intersection Approaches mutually agreeable to Redflex and the Customer.

The parties may by mutual agreement add, delete, or relocate Redflex Systems. However, in no event shall the total number of Redflex Systems exceed twenty (20) citywide.

Construction and Installation Obligations

In the event that Redflex and the Customer agree to add or relocate Redflex Systems at new Designated Intersection Approaches, the parties shall have the following obligations:

1. REFLEX OBLIGATIONS.

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

(b) Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for any new Designated Intersection Approaches (collectively, the "Approvals") which will include compliance with City permit applications.

(c) Complete the installation and testing of all necessary Equipment, including hardware and software, at any new Designated Intersection Approaches (under the supervision of the Customer);

(d) Cause an electrical sub-contractor to complete all reasonably necessary electrical work at any new 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;

(e) Install and test the functionality of any new Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;

(f) Cooperate with the Customer as to any other matter reasonably necessary to ensure proper installation and construction of any new Designated Intersection Approaches.

2. CUSTOMER OBLIGATIONS.

(a) Notify Redflex of any specific requirements relating to the construction and installation of any new Designated Intersection Approaches or the implementation of the Redlight Photo Enforcement Program;

(b) Assist Redflex in seeking the Approvals;(c) Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of any new Designated Intersection Approaches and the Redlight Photo Enforcement Program;

(d) 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;

(e) Cooperate with Redflex as to any other matter reasonably necessary to ensure proper installation and construction of any new Designated Intersection Approaches.

Maintenance

1. All repair and maintenance of camera 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 open the Traffic Signal Controller Boxes without a representative of city Traffic Engineering present.
3. Redflex shall be responsible for coordination and installation costs of any necessary electrical and telephone services. Provision of all necessary incremental direct electrical costs to any new Designated Intersection Approaches will be the sole responsibility of the Customer. If additional power supply is required, the City and the Contractor will mutually pay the incremental energy costs.
4. In the event that images of a quality suitable for the Authorized Officer to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
5. Redflex shall inspect the Equipment and the functionality of the Redflex System at each of the Designated Intersection Approaches no less than once every two (2) business days, and Redflex shall respond to any material malfunction of any of the Redflex System within twenty four (24) hours after the Customer provides written notice thereof to Redflex (the "Malfunction Notice"). In the event that Redflex discovers any material malfunction or defect, or in the event that Redflex receives a Malfunction Notice, Redflex shall use its best efforts to cause such malfunction or defect to be repaired within forty-eight (48) hours, and in the event that such malfunction or defect has not been substantially repaired within forty eight (48) hours, Redflex shall notify the Police Project Manager.
6. Redflex shall have the Equipment and the functionality of the Redflex System at each of the Designated Intersection Approaches inspected and tested no less than once annually by an independent laboratory mutually agreeable to Redflex and the Customer, and following each such annual inspection and testing, the independent laboratory shall issue a certificate of calibration in form and substance reasonably acceptable to the Customer which can be used as evidence in court and judicial proceedings involving Citations or any other use by the Customer of the Redflex System.
7. The Redflex Project Manager (or a reasonable alternate) shall be available to the Police Project Manager each day, on a reasonable best efforts basis.

COMPENSATION & PRICING

1. Customer currently receives between \$137 and 139 per fully fined and paid red-light ticket from the County, but on average receives \$138 per fully fined and paid red-light ticket. Based on the above, Redflex shall be entitled to \$118 for each fully fined and Paid Citation. If the court reduces the amount of the fine, so that Customer collects less than \$137 on a paid ticket or if there is only a partial payment received by Customer, then Redflex's share of such paid citation will be 85.5% of the amount received by Customer. If the amount Customer is entitled to receive per ticket changes to less than \$137 or more than \$139 per paid red-light ticket, Redflex will be entitled to 85.5% of the average amount received by Customer. If the amount does so change, the City shall give notice in writing of the change to Redflex.

2. The Customer agrees to pay Redflex monthly based on the number of Paid Citations listed in the monthly disposition report ("Report") received from the Manager, Automation & Technology Unit of the Ventura County Superior Court. Customer shall prepare and send to Redflex an invoice documenting the number of Paid Citations and the amount owed to Redflex with its payment within thirty (30) days of the Customer receiving the Report from the Court

3. The Customer agrees to pay a monthly late fee of 1.5% for payments past due 30 days.

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Prices do not include supply of power and supply of DSL, cable or other broadband services. The Customer shall be solely responsible for power and communication infrastructure.

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 the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Redlight Photo Enforcement Program.
2. The Customer shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the California Vehicle Code, and shall assist in determining the placement of such Signage, and the Customer hereby acknowledges and agrees that the Customer shall be solely responsible for installing such Signage.
3. The Redflex Project Manager and the Police Project Manager shall meet on a monthly basis for the Term, at such times and places as the Redflex Manager and the Customer Manager shall mutually agree.
4. The Customer shall not access the Redflex System or use the Redlight Photo Enforcement Program in any manner which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo 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 Redflex Photo 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.
5. The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Redlight Photo Enforcement Program.
6. Each of 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, each of Redflex and the Customer shall obey any and all such rules and regulations.
7. 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,

Ventura

damaged directly or indirectly by the Customer, or any of its employees, contractors or agents.

8. **INSURANCE.** During the Term, Redflex shall procure and maintain and 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:

(a) Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage;

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

(c) 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 occurrence and in the aggregate.

(d) Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than the limits required by the Labor Code of the State of California, Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence, and the applicable insurer(s) shall waive all rights of subrogation against the City of San Buenaventura, the members of the City of San Buenaventura City Council, boards, commissions, officers, employees, agents and volunteers of City of San Buenaventura (collectively, "Ventura Parties") for losses arising from or relating to work performed by any Redflex Party for or on behalf of the Customer.

(e) With respect to the insurance described in this Section 8 of this Exhibit E, any deductibles or self-insured retention must be declared to and approved by the Customer, and any changes to such deductibles or self-insured retention during the Term must be approved in advance in writing by the Customer.

(f) With respect to the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance described in Sections 8 of this Exhibit E, the following additional provisions shall apply:

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

(h) The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the Ventura Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the Ventura Parties shall be in excess, and not in contribution to, such insurance.

(i) Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the Ventura 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.

(j) With respect to the insurance described in the foregoing Section 8 of this Exhibit E, each such insurance policy shall be endorsed to state that the coverage provided thereby shall not be suspended, voided, cancelled or reduced except after thirty (30) calendar days' prior written notice to the Customer. If any of the Redflex Parties are notified by any insurer that any insurance coverage will be suspended, voided or reduced in coverage limits, Redflex shall immediately provide written notice thereof to the Customer and shall take all necessary actions to correct such suspension, voiding or reduction 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 advance 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.

(k) Redflex shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the Customer prior to Redflex commencing any work pursuant to the terms of this Agreement.

(l) Except as otherwise authorized by the Customer in writing, Redflex shall include any and all of its subcontractors as additional insureds under the insurance policies required pursuant to this Agreement or, alternatively, shall provide to the Customer evidencing satisfactory compliance by each such subcontractor with the insurance requirements set forth herein.

FORM OF ACKNOWLEDGMENT AND CONSENT

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

1. Redflex has financed certain operations and equipment related to its business, including but not limited to camera systems, housing and poles (the "Equipment") through certain lenders (the "Lenders"). Redflex has granted to Lenders a security interest in the Equipment, related property including software and proceeds thereto as collateral for the performance when due of its obligations to Lenders. Redflex desires to assign all of its rights, but none of its liabilities or obligations under the Agreement (the "Assignment") to **[Inset Name]**, as collateral agent for the Lenders (the "Collateral Agent"). Redflex will not, by virtue of the Assignment, be relieved of any liability or obligation under the Agreement or otherwise, and neither Collateral Agent nor Lenders are assuming any liabilities or obligations under the Agreement.— City hereby acknowledges notice of the Assignment and hereby consents thereto and to assignment to any similar subsequent financing party of Redflex, and further acknowledges that Collateral Agent or Lenders, and their respective successors and assigns, and any other subsequent future lender, may assign the rights received from Redflex.

2. Redflex hereby authorizes City upon Collateral Agent's written request to make any payments due to Redflex under the Agreement directly to Collateral Agent, c/o **[Insert Address]**, or to whomever Collateral Agent may from time to time direct in writing.

3. City acknowledges that the attached Exhibit A is a true, correct and complete copy of the Agreement.

4. In accordance with Section **[11.1]** of the Agreement, this Consent shall be deemed to be notice to City. In the event that City fails to provide such approval or object to this Consent within ten (10) business days after receipt of this Consent, City shall be deemed to have consented to and approved this Consent.

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

[APPLICABLE MUNICIPALITY]

REFLEX TRAFFIC SYSTEMS INC.

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____