

Agreement No. 2006-037

City Council Approved: 5/22/2006

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

This Agreement (this "Agreement") is made as of this 27th day of May, 2006 by and between Redflex Traffic Systems, Inc., a Delaware corporation with offices at 6047 Bristol Parkway, Culver City, California 90230 ("Redflex"), and the City of San Buenaventura, a municipal corporation and charter city, with offices at 501 Poli Street, Ventura, California 93002 (the "Customer").

RECITALS

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

WHEREAS, the agreement dated May 15, 2000, was amended on May 21, 2001; and

WHEREAS, the agreement dated May 15, 2000, as amended on May 21, 2001, was again amended and restated on January 6, 2003; and

WHEREAS, Redflex and the Customer mutually agree that the terms of the restated agreement dated January 6, 2003, require significant modification in order to reflect the realities of automated red light enforcement in the City of San Buenaventura and to comply with state law; and

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

WHEREAS, the Customer continues to desire 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 a 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; and

WHEREAS, violations of sections 21453(a) and 21453(c) of the California Vehicle Code, failing to stop for a red light and failing to stop for a red arrow, continue to pose a significant risk to life and property,

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, an employee of the San Buenaventura Police Department as designated by the Chief of Police.
 - 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 Persons suppliers, licensors, licensees, customers, or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including, but not limited to:
 - 1.4.1 Matters of a business nature, including, but not limited to, information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and
 - 1.4.2 Matters of a technical nature, including, but not limited to, product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results, and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets 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.
 - 1.4.3 Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure; (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement; (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto; (iv) was required by a court of competent jurisdiction to be described;

or (v) was required by applicable state law to be described.

- 1.5 "Designated Intersection Approaches" means the Intersection Approaches set forth on Exhibit A attached hereto and such additional Intersection Approaches the Customer shall determine.
- 1.6 "Electronic Signature" means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the **Redflex System**
- 1.7 "Enforcement Documentation" means the necessary and appropriate documentation related to the Red Light Photo Enforcement Program, including, but not limited to, warning letters, citation notices (using the specifications of the California Judicial Council and the 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), system maintenance logs and technical support documentation for applicable court and judicial officers.
- 1.8 "Equipment" means any and all cameras, sensors, equipment, components, products, software, and other tangible and intangible property relating to the Redflex System, including, but not limited to, all camera systems, housings and poles.
- 1.9 "Fines" means a monetary sum assessed for a Citation, including, but not limited to, bail forfeitures, but excluding suspended fines and court security fees as assessed by Ventura County Superior Court.
- 1.10 "Governmental Authority" means any state or federal 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 with jurisdiction over the City of San Buenaventura.
- 1.11 "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 Red Light Photo Enforcement Program.
- 1.12 "Intellectual Property" means, with respect to any Person, any and all now known *or* hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including, but not limited to, copyrights, moral rights, and mask-works; (b) trademark and trade name rights and similar rights; (c) trade secrets rights; (d) patents, designs, algorithms, and other industrial property rights; (e) all other intellectual and industrial property rights (of every kind and nature and 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 Analysis" means conducting a video assessment during peak traffic periods as determined by the Police Project Manager to evaluate violation volume and violation movements as a means to determine intersection feasibility.
- 1.14 "Intersection Approach" means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g. northbound, southbound, eastbound, or westbound) on which at least one (1) digital, rear shot multiple image color camera, at least one (1) digital face camera (showing a clear image of the driver of the vehicle), and at least one (1) rear shot digital video camera capturing at least twelve (12) seconds of video of Potential Violations installed by Redflex for the purposes of facilitating Red Light Photo Enforcement by the Customer.
- 1.15 "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Red Light 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.
- 1.16 "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity, or other business association.
- 1.17 "Police Project Manager" means the project manager appointed by the Customer in accordance with this Agreement or such person as the Customer shall designate by providing written notice thereof to Redflex from time to time, which the manager shall be a member of the San Buenaventura Police Department designated by the Chief of Police and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Red Light Photo Enforcement Program, and which the 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.
- 1.18 "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.
- 1.19 "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.

- 1.20 "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 Red Light 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.
- 1.21 "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, which the project manager shall initially be Joe Bernard 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 Red Light 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.
- 1.22 "Redflex Program Manager" means the program manager appointed by the Redflex in accordance with this Agreement, which the program manager shall initially be Layne Slapper, or such person as Redflex shall designate by providing written notice thereof to the Customer from time to time, who shall be responsible for the customer relationship, and program oversight for the duration of the Operational Period.
- 1.23 "Redflex System" means, collectively, the SmartCamTM System, the SmartOpsTM System, the Red Light 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.
- 1.24 "Red Light 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.
- 1.25 "Red Light 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.
- 1.26 "SmartCamTM System" means the proprietary digital speed and red light photo enforcement system of Redflex relating to the Red Light Photo Enforcement Program.

- 1.27 "SmartOps™ System" means the proprietary back-office processes of Kedflex relating to the Red Light Photo Enforcement Program.
- 1.28 "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.
- 1.29 "Violation" means any traffic violation contrary to the terms of the California Vehicle Code or any applicable rule, San Buenaventura Municipal Code, 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.
- 1.30 "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.
- 1.31 "Warning:Period" means the period of thirty (30) days after the Installation Date of the first intersection approach.
2. **TERM.** The term of this Agreement shall commence May 1, 2006 and shall continue for a period of three (3) years (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 Kedflex 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 Red Light 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:
- 3.3.1 All Violations Data shall be stored on the Redflex System;
- 3.3.2 The Redflex System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Officer and Ventura County Superior Court via the Redflex System;

- 3.3.3 The Redflex System shall be accessible by the Authorized Officer through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser;
- 3.3.4 Redflex shall provide the Authorized Officer with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violation Data from the applicable Designated Intersection Approach;
- 3.3.5 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;
- 3.3.6 With respect to each Authorized Violation, Redflex shall print and mail a Citation via certified mail within five (5) days or the period prescribed by law, whichever is less, 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;
- 3.3.7 The Customer shall make reasonable efforts to 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;
- 3.3.8 Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries, responding to complaints, and Redflex shall provide necessary personnel for such purpose. If deemed necessary by the Police Project Manager, Redflex shall also provide a portable work station (laptop) for the purpose of citizen review of the citation incident(s) and additional work stations will be provided based on customer needs;
- 3.3.9 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");

3.3.10 Upon Redflex's receipt of request from the Customer and in addition to the Standard Reports, Redflex shall provide, without cost to the Customer, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches, and the functionality of the Redflex System with respect thereto to the Customer in such format and for such periods as the Customer may reasonably request.

3.3.11 Upon the Customer's receipt of a written request from Redflex, the Customer shall make reasonable best efforts to 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.

3.3.12 Upon special request of the Customer and upon Redflex's receipt of a written request from the Customer that shall be given within five (5) business days of the Customer being notified from the relevant agencies (i.e. Court), Redflex shall provide expert witnesses for use by the Customer in prosecuting Violations; provided, however, the Customer shall use reasonable efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; and

3.3.13 Data pertaining to each violation captured by the Redflex System, including not less than three (3) digital images of the violation, will initially be stored on the data storage system. The data stored on the system will be securely encrypted and transferred to Redflex's central server complex not less than once each workday. Within seven (7) calendar days of the images being generated, the data will be processed into a format approved by the Customer and submitted or otherwise made available to the Customer for review and approval. After Customer approval, a Citation will be created by Redflex. Redflex shall then complete issuance of the Citation within the time period required by California law. The Violation data included for the Citation will include, but not necessarily be limited to:

1. Location, date, and time;
2. Number of seconds into red traffic signal;
3. Vehicle speed;
4. One (1) close-up view of automobile rear license plate;
5. One (1) close-up frontal view of automobile driver;
6. One (1) view of the intersection and the violating automobile taken before the automobile has crossed the limit (stop) line showing the traffic signal in the red phase and the rear license plate of the vehicle.
7. One (1) view of the intersection and the violating automobile taken subsequent to the photograph after the vehicle has crossed the limit line;
8. Digital video clip of the alleged violation;
9. Any other information deemed necessary by an Authorized Officer for successful prosecution of violations.

- 3.3.14 Redflex shall be responsible for retrieval of Department of Motor Vehicle ownership information;
- 3.3.15 Customer shall provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles;
- 3.3.16 Redflex shall make available to Customer data regarding collection of fines from the court records system; and
- 3.3.17 Redflex shall coordinate, facilitate and transfer electronically the data to the Ventura County Superior Court for the processing of the Citations.
- 3.4 PROSECUTION AND COLLECTION; COMPENSATION. The Customer shall diligently prosecute 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 the Change Order Proposal shall include: (i) a detailed breakdown of the charge and schedule effects; (ii) a description of any resulting changes to the specifications and obligations of the parties; (iii) a schedule for the delivery and other performance obligations; and (iv) any other information relating to the proposed changes reasonably requested by the Customer. Following the Customer's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or 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.

3.7 TRAINING

- 3.7.1 Redflex shall provide training (i) for up to fifteen (15) personnel of the Customer, including, but not limited to, Authorized Officers and other persons involved in the administration of the Redlight Photo Enforcement Program; (ii) for at least sixteen

(16) hours in the aggregate per person; (iii) up to twenty-four (24) hours regarding the operation of the Redflex System and the Red Light Photo Enforcement Program, to include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings, and a review of the Enforcement Documentation;

- 3.7.2 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 Red Light Enforcement Program;
- 3.7.3 Redflex will provide training for Customer staff members at Redflex's Scottsdale, Arizona processing center or on site at customers discretion prior to implementation of the Warning Period;
- 3.7.4 Redflex will interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, and coordination between Redflex, the Customer, and juvenile court personnel; and
- 3.7.5 Provide reasonable public relation resources and media materials to the Customer in the event that the Customer elects to conduct a public launch of the Red Light Photo Enforcement Program.

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 Red Light 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 to its actual present knowledge without inquiry or investigation: (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, 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, 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 claim, claim action, or action, 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.

4.7 **INDEMNITY.** Redflex shall save, defend, indemnify, and hold harmless the Customer and any of their agents, officers, employees, elected officials, volunteers, representatives, and successors against any claims, losses, liabilities, causes of action, suits, damages, penalties, demands, judgments, settlements, costs, expenses, attorney fees, and other disbursements (including, but not limited to, expert witnesses) of whatever kind or nature arising out of any claim, claim action, or action alleging that 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, corporation, entity, or other group. The obligations of this paragraph are in addition to the indemnity obligation of paragraph eight (8) and any subsections thereto.

5. **REPRESENTATIONS AND WARRANTIES.**

5.1 **REDFLEX REPRESENTATIONS AND WARRANTIES.**

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

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

5.2 **CUSTOMER REPRESENTATIONS AND WARRANTIES.**

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

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

5.3 **LIMITED WARRANTIES. REDFLEX WARRANTS THAT THE REDFLEX SYSTEM WILL OPERATE IN THE MANNER PRESCRIBED AS RED LIGHT PHOTO ENFORCEMENT SYSTEM, INCLUDING THE ABILITY TO ACCURATELY CAPTURE VIOLATION IMAGES AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE CUSTOMER'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, REDFLEX DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION APPROACHES OR THE REDFLEX SYSTEM WILL OPERATE IN THE WAY THE CUSTOMER SELECTS FOR USE, OR THAT THE OPERATION OR**

USE THEREOF, WILL BE UNINTERRUPTED. THE CUSTOMER HEREBY ACKNOWLEDGES THAT THE REDFLEX SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, REDFLEX SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

6. **TERMINATION.**

6.1 **TERMINATION.** Either party shall have the right to terminate this Agreement immediately by written notice to the other if: (i) Redflex is unable to recover the costs it incurred in connection with the installation of the intersection monitoring equipment; (ii) state statutes are amended to prohibit or substantially change the operation of red light photo enforcement systems; (iii) any court having jurisdiction over City rules, or California or federal statute declares, that results from the Redflex System of red light photo enforcement are inadmissible in evidence; 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 (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-breaching party setting forth in reasonable detail the events which caused the breach. Customer and Redflex agree that the agreement herein is conditioned upon Ventura County and or Superior Court's establishing or otherwise creating a system or software application which segregates automated red light violations from red light violations ticketed by traffic patrol officers. The segregation or separation of automated red light violations from violations cited by traffic or other officers is a material term of this agreement. Violations captured by both automated Redflex Systems and traffic patrol officers, shall not be designated as automated systems violations unless the citation is contested and the court relies upon automated systems evidence. The rights to terminate this Agreement given in this section, 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.

Customer may also terminate this Agreement in the event that Customer fails to recoup all of its Operating Costs, as defined in Exhibit D, from payments received from Ventura County for Violations during any three (3) consecutive months.

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:

6.2.1 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 Red Light 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 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 the Customer a final invoice stating all fees and charges properly owed by the 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.

6.2.2 The Customer shall: (i) immediately cease using the Red Light Photo Enforcement Program, accessing the Redflex System, and using any other Intellectual Property of Redflex; and (ii) promptly deliver to Redflex any and all Proprietary Property of Redflex provided to the Customer pursuant to this Agreement.

6.2.3 Unless the Customer and Redflex have agreed to enter into a new agreement relating to the Red Light 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, at its sole cost and expense, shall within sixty (60) days restore the Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement including, but not limited to, pavement stripes and concrete flatwork, including, but not limited to, curb, gutter, and sidewalk refurbishment as required by City of San Buenaventura and the California Department of Transportation (CalTrans) standards, if impacted by the Redflex System.

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

CONFIDENTIALITY. To the extent permitted by the California Public Records Act (Government Code Section 6250 *et seq.*) or the California Vehicle Code, during the term of this Agreement and subject to State Laws 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, including laws relating to public records.

8. INDEMNIFICATION AND LIABILITY.

- 8.1 INDEMNIFICATION BY REDFLEX. Subject to Section 8.3, Redflex hereby agrees to defend and indemnify the Customer, councilpersons, managers, officers, directors, employees, agents, representatives, volunteers 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 conduct of Redflex, its employees or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Customer Party, and Redflex agrees to indemnify the Customer and the above-mentioned categories of persons for any and all legal liability based on any and all civil, criminal, and administrative actions challenging the legality or constitutionality of the Automated Red Light Enforcement Program or any action seeking to halt the red light enforcement program that are not caused by material breach, willful misconduct, and material misrepresentation by the Customer; (c) any claim, action, or demand not caused by Redflex's failure to perform its obligations under this Agreement; (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; or (e) any claim, action, or demand challenging Redflex's failure to maintain the Redflex System or any portion thereof.
- 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 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.

- 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 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 effects 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) 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 74th Street
Scottsdale, Arizona 85260
Attn: Ms. Karen Finley
Facsimile: (480) 607-0752

Notices to the Customer:

City of San Buenaventura
501 Poli Street
Ventura, California 93002
Attn: City Manager

With a copy to:

City of Buena Ventura
501 Poli Street
Ventura, California 93002
Attn: City Attorney

10. **DISPUTE RESOLUTION.** Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute

11. **MISCELLANEOUS.**

11.1 **ASSIGNMENT.** Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, the Customer hereby acknowledges and agrees that the execution (as outlined in Exhibit F), delivery and performance of Redflex's rights pursuant to this Agreement shall require a significant investment by Redflex, and that in order to finance such investment, Redflex may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions, or other similar persons or entities (each, a "Financial Institution" and, collectively, "Financial Institutions"). The Customer hereby agrees that Redflex shall have the right to assign, pledge, hypothecate, or otherwise transfer (Transfer) its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Redflex and any such Financial Institution, subject to the Customer's prior written approval, which approval shall not be unreasonably withheld or delayed. The Customer further acknowledges and agrees that in the event that Redflex provides written notice to the Customer that it intends to Transfer all or any of Redflex's rights pursuant to this Agreement, and in the event that the Customer fails to provide such approval or fails to object to such Transfer within forty-five (45) business days after its receipt of such notice from Redflex.

11.2 **RELATIONSHIP BETWEEN REDFLEX AND THE CUSTOMER.** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).

11.3 **AUDIT RIGHTS.** Each of the 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 not less than forty-eight (48) hours prior notice to 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.

- 11.4 FORCE MAJEURE. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays, which are not caused by any act or omission by Redflex, and unusually severe weather. The party whose performance is effected agrees to notify the other promptly of the existence and nature of any delay.
- 11.5 ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which effect its terms. This Agreement may be amended only by a subsequent written agreement signed by both parties.
- 11.6 SEVERABILITY. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the effected provision.
- 11.7 WAIVER. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 11.8 CONSTRUCTION. Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated, and neither the Agreement nor any provision thereof shall be construed more strictly against either party.
- 11.9 HEADINGS. The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the parties hereto, and shall not in any way be deemed to effect the meaning, interpretation, or applicability of this Agreement or any term, condition, or provision hereof
- 11.10 EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.
- 11.11 COVENANT OF FURTHER ASSURANCES. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions, and provisions hereof or to carry out the intent of this Agreement.

- 11.12 REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative, and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy or a waiver of any other remedy.
- 11.13 BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors, and permitted assigns.
- 11.14 COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition, or provision of this Agreement and any present or future statute, law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition, or provision of this Agreement effected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law; provided that such construction is consistent with the intent of the parties as expressed in this Agreement.
- 11.15 NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.
- 11.16 INJUNCTIVE RELIEF: SPECIFIC PERFORMANCE. The parties hereby agree and acknowledge that a breach of sections: 4.1 (License), 4.3 (Restricted Use), or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other party, which injury could not be adequately compensated by an award of money damages, and the parties therefore agree and acknowledge that they shall be entitled to injunctive relief in the event of any breach of any material term, condition, or provision of this Agreement, or to enjoin or prevent such a breach, including, without limitation, an action for specific performance hereof.
- 11.17 APPLICABLE LAW. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of California, United States.
- 11.18 JURISDICTION AND VENUE. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the courts located in the County of Ventura, California, and both parties specifically agree to be bound by the jurisdiction and venue thereof.

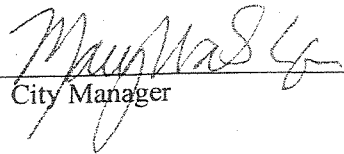
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

"Customer"

"Redflex"

CITY OF SAN BUENAVENTURA

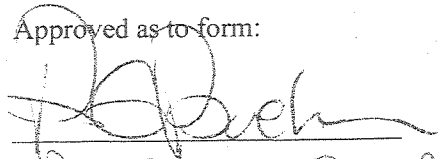
REFLEX TRAFFIC SYSTEMS, INC.,

By: 
City Manager

By: _____

By: _____

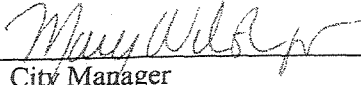
Approved as to form:


R.G. BOEHM, CITY ATTORNEY

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

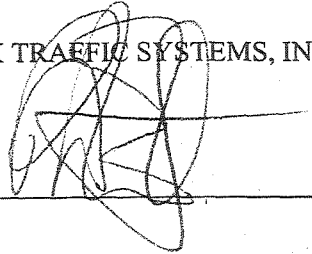
"Customer"

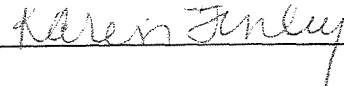
CITY OF SAN BUENAVENTURA

By: 
City Manager

"Redflex"

REFLEX TRAFFIC SYSTEMS, INC.,

By: 

By: 

Approved as to form:

EXHIBIT "A"
DESIGNATED INTERSECTION APPROACHES

The Agreement is for the implementation of up to 20 approaches with the option for a second phase to include up to an additional 10 approaches. This number includes the 17 approaches already enforced as at the date of this Agreement. Intersections will be determined by mutual agreement between the Customer and Redflex based on intersection collision history, average daily traffic volumes, and other pertinent safety factors.

Intersections with the greatest historical number of collisions will be utilized to determine designated intersections that warrant photo enforcement.

EXHIBIT "B"
CONSTRUCTION AND INSTALLATION OBLIGATIONS

Redflex will have each specified intersection installed and activated in phases and will use reasonable commercial efforts to install the system in accordance with an implementation plan set forth below for intersections designated after the date of this Agreement:

1. FORTY-FIVE (45) DAY PERIOD.

1.1 REDFLEX OBLIGATIONS. Within the first forty five (45) days subsequent to the date hereof, Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):

- (a) Appoint the Redflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project Manager;
- (b) Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the Customer traffic engineer;
- (c) Develop and submit to the Customer for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including, but not limited to, specifications for all radar sensors, pavement loops, electrical connections, and traffic controller connections, as required; and
- (d) Use reasonable best efforts to seek approval (from the relevant Governmental Authorities, including, but not limited to, California Department of Transportation (CalTrans), having authority or jurisdiction over the construction and installation specifications for the Designated Intersection Approaches (collectively, the "Approvals") which will include compliance with Customer permit applications.
- (e) Redflex will assess existing Designated Intersection Approaches in place at the date of this agreement and complete appropriate upgrading or retro-fitting to achieve maximum gains in public safety.

1.2 CUSTOMER OBLIGATIONS. Within the first forty-five (45) days subsequent to the date hereof, the Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):

- (a) **Appoint** the Police Project Manager;
- (b) Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;
- (c) Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Red Light Photo Enforcement Program;

- (d) Provide assistance to Redflex in obtaining access to the records data of the California Department of Motor Vehicles in Redflex's capacity as an independent contractor to the Customer; and
- (e) Assist Redflex in seeking all necessary Approvals.

2. **ONE HUNDRED AND TWENTY (120) TO ONE HUNDRED AND SIXTY (160) DAY PERIOD.**

2.1 **REDFLEX OBLIGATIONS.** Within at least one hundred and twenty (120) days and at most one hundred and sixty (160) days subsequent to the date hereof, Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):

- (a) Finalize the acquisition of the Approvals;
- (b) Submit to the Customer a public awareness strategy for the Customer's consideration and approval, which the strategy shall include media and educational materials for the Customer's approval or amendment (the "Awareness Strategy");
- (c) Develop the Red Light Violation Criteria in consultation with the Customer;
- (d) Develop the Enforcement Documentation for approval by the Customer, which the approval shall not be unreasonably withheld;
- (e) Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches (under the supervision of the Customer);
- (f) Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersection Approaches, including, but not limited to, the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment, and wiring, which work shall be performed in compliance with all applicable local, state, and federal laws and regulations;
- (g) Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
- (h) Implement the use of the Redflex System at each of the Designated Intersection Approaches;
- (i) Deliver the Materials to the Customer;
- (j) Issue "warning letters" for Authorized Violations which occurred at each Designated Intersection Approach during the Warning Period;

- (k) During the Warning Period, Redflex shall provide training (i) for up to fifteen (15) personnel of the Customer, including but not limited to the persons who the Customer shall appoint as Authorized Officers and other persons involved in the administration of the Red Light Photo Enforcement Program, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Red Light Photo Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings, and a review of the Enforcement Documentation;
- (l) Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, the establishment of a court hearing schedule for adjudicating upon Citations, and coordination between Redflex, the Customer, and juvenile court personnel; and
- (m) Provide reasonable public relations resources and media materials to the Customer in the event that the Customer elects to conduct a public launch of the Red Light Photo Enforcement Program.

2.2 CUSTOMER OBLIGATIONS. Within at least one hundred and twenty (120) days and at most one hundred and sixty (160) days subsequent to the date hereof, the Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):

- (a) Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Red Light Photo Enforcement Program;
- (b) 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;
- (c) Provide the services of necessary personnel during the Warning Period;
- (d) Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the Customer will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date;
- (e) Assist Redflex in developing the Red Light Violation Criteria; and
- (f) Seek approval of the Enforcement Documentation.

EXHIBIT "C"
MAINTENANCE

With respect to the maintenance of the Reflex System at the Designated Intersection Approaches, the Customer and Redflex shall have the respective rights and obligations set forth as follows:

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 California Department of Transportation (CalTrans) and the Customer present and only then after approval from CalTrans.
3. The provision of all necessary electrical and telephone services to the Designated Intersection Approaches will be the sole responsibility of the Customer.
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 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. The Redflex Project Manager (or a reasonable alternate) shall be available to the Police Project Manager each day, on a reasonable best efforts basis.
7. Support issues shall be categorized as follows:
 1. **Category 1 Fault** means a fault, which renders the system unable to perform absolutely necessary functionality.
 2. **Category 2 Fault** means a fault which is not a Category 1 Fault, but which imposes limits or restrictions on use of important functionality of the supported system.
 3. **Category 3 Fault** means a fault which is neither a Category 1 or 2 Fault, but which may cause Customer to suffer inconvenience in performing regularly used functions of the system.
 4. **Category 4 Fault** means a fault which is neither a Category 1, 2, or 3 Fault.

Fault means anything which does, or could result in, the supported system not performing in accordance with the specified functionality.

Normal Business hours means from 9:00am to 4:30pm (PST), Monday through Friday, excluding public holidays observed.

Response Times means:

1. For a **Category 1 Fault**, response by REDFLEX within twenty-four (24) hours.
2. For a **Category 2 Fault**, response by REDFLEX within forty-eight (48) hours.
3. For a **Category 3 Fault**, response by REDFLEX within five (5) working day.
4. For a **Category 4 Fault**, response by REDFLEX within seven (7) working days.

EXHIBIT "D"
COMPENSATION AND PRICING

TERMS

A fixed fee ("Fixed Fee") of \$6,030 per month per Designated Intersection Approach as full remuneration for performing all of the services contemplated in this Agreement to commence upon the completion of any required Warning Phase.

IMPLEMENTATION

The Fixed Fee paid to Redflex under this contract is for a full turnkey program, inclusive of all hardware, software, and support services required to implement and maintain a functional photo enforcement program, including, but not limited to, a program and 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. Services include Training Services, Citation Processing, Expert Witness, and System Maintenance.

ASSUMPTIONS AND ADJUSTMENTS FOR COMPENSATION AND PRICING:

1. Redflex construction will be able to utilize existing conduit for installation where space is available. Where it is determined by both parties that additional conduit is necessary, cost and access for use of such additional conduit shall be the sole responsibility of Redflex. Any such additional conduit shall become the exclusive property of the Customer upon termination of this Agreement.
2. The Customer agrees to pay Redflex within thirty (30) days after the invoice for the Fixed Fee is received; the City shall only be obligated to pay the cumulative balance invoiced by Redflex, subject to the conditions, adjustments, and limitations contained in paragraph 5 below.
3. In the event that the contract ends or is terminated and an invoiced balance is still owed to Redflex, all subsequent receipts from automated red light violations for a period of twelve (12) months from date of termination will be applied to such balance and paid to Redflex.
4. Customer will provide Redflex each month an analysis of collections of automated red light citations. Using this analysis, Redflex will calculate the balance due in accordance with the terms herein.
5. Any gross cash receipts received by Customer from Ventura County through the collection of red light citations shall first be applied to the Customer's monthly program operating costs ("Customer Operating Costs") which is initially established at \$14,767.25 per month. In order to ensure cost neutrality to the Customer, Customer will only be

obligated to pay Redflex from the gross cash receipts received from Ventura County after first deducting Customer Operating Costs, In the event that a balance remains unpaid due to a deficit in gross cash received by the Customer compared to the invoiced amount, Redflex will provide to Customer, with each monthly invoice, an accounting of such amounts supporting the amount invoiced. Customer shall not be liable for any unpaid balance except as provided in this paragraph.

Cost neutrality is assured to the Customer using this methodology as the Customer will never pay Redflex more than the actual cash received from Ventura County after deducting Customer Operating Costs.

6. Starting May 1, 2007, and every year thereafter, the Fixed Fee and Customer's Operating Cost will increase by the Consumer Price Index ("CPI") as published by the Bureau of Labor Statistics for the United States Department of Labor, or 4%, whichever is greater. If the CPI is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised. Any increase in the Fixed Fee and Customer Operating Cost shall be limited by this paragraph.
7. Redflex will not charge the Customer for any time the system is not operational (defined as a material malfunction causing no violations to be captured) in excess of forty-eight (48) hours, The down time will be measured in daily increments and shall be prorated on the monthly fee as held in this Agreement.

EXHIBIT "E"
ADDITIONAL RIGHTS AND OBLIGATIONS

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

1. Redflex shall assist the Customer in public information and education efforts, including, but not limited to, the development of artwork for utility bill inserts, press releases, and schedules for any public launch of the Red Light Photo Enforcement Program (actual print and production costs are the sole responsibility of the Customer).
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 Customer shall not access the Redflex System or use the Red Light Photo Enforcement Program in any manner which restricts or inhibits any other Person from using the Redflex System or the Red Light 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 Red Light 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.
4. To the extent allowed by law, the Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Red Light Photo Enforcement Program.
5. 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.
6. **Redflex shall be responsible for repairing or replacing damaged portions of the Redflex System or any equipment or property related hereto.**

8. INSURANCE.

8.1 Without limiting Redflex's indemnification of the Customer, Redflex shall provide and maintain in full force and effect throughout the entire term of this Agreement at its own cost and expense, during the term of this Agreement, or as may be further required herein, the following insurance coverage and provisions 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. This coverage shall insure not only Redflex but, also, with the exception of workers' compensation and professional liability insurance, shall name as additional insured Customer, its officers, agents, employees, and volunteers, and each of them:

- (a) **Commercial General Liability Insurance.** Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage;
- (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 procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence;
- (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) and Reflex shall waive all rights of subrogation against the Customer, its elected or appointed officials, agents, volunteers, and employees ("San Buenaventura Parties") for losses paid under Redflex's Workers' Compensation Insurance Policy which arise from the work performed by the Customer or Redflex. Redflex warrants that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. Redflex further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement

8.2 With respect to the insurance described in the foregoing section, Section 8.1 of this Exhibit E, any deductibles or self-insured retentions must be declared to and approved by the Customer, and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the Customer.

8.3 With respect to the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance described in sections 8.1 and 8.2 of this Exhibit E, the following additional provisions shall apply and all policies shall contain, or be endorsed to contain, the following provisions:

- (a) The San Buenaventura Parties shall be covered as additional-insured 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-insured.
- (b) The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the San Buenaventura Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the San Buenaventura Parties shall be in excess, and not in contribution to, such insurance.
- (c) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not effect coverage provided to the Customer, its elected or appointed officials, agents, volunteers, or employees.
- (d) Redflex's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (e) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits by either party, except after giving Customer thirty (30) days' prior-written notice by certified mail, return receipt requested.

8.4 Any failure to comply with the reporting provisions of the various insurance policies described above shall not effect the coverage provided to the San Buenaventura 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.

8.5 With respect to the insurance described in the foregoing section, Section 8.1 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 in coverage or in limits, 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, cancelled, or reduced in coverage or in limits, Redflex shall immediately provide written notice thereof to the Customer and shall take all necessary actions to correct such suspension, voiding, cancellation, or reduction in coverage or in limits, and shall provide written notice to the Customer of the date and nature of such correction. If Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the Customer shall have the right, but not the obligation and exercisable in its sole discretion, to either (i) terminate this Agreement and seek damages from Redflex for such breach, or (ii) purchase such required insurance, and without further

notice to Redflex, deduct from any amounts due to Redflex pursuant to this Agreement any premium costs advanced by the Customer for such insurance. If the premium costs advanced by the Customer for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the Customer upon receipt of written notice thereof.

- 8.8 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.
- 8.9 Except as otherwise authorized by the Customer in writing, Redflex shall include any and all of its subcontractors as additional-insured 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.
- 8.10 Any deductibles or self-insured retentions must be declared to and approved by the Customer.
- 8.11 Redflex shall place insurance with insurers with a current A.M. Best's rating of no less than A:VII unless Redflex requests and obtains Customer's express written consent to the contrary.
- 8.12 Redflex must provide complete, certified copies of all required insurance policies, including original endorsements effecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by Redflex's insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Customer before work commences.

Exhibit F
FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of 2006, is entered into by and between the City of San Buenaventura (the "City") and Redflex Traffic Systems, Inc., a Delaware corporation ("Redflex"), with reference to the **THIRD AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF SAN BUENAVENTURA AND REDFLEX TRAFFIC SYSTEMS, INC. FOR AUTOMATED RED LIGHT PHOTO ENFORCEMENT CAMERAS** by and between the City and Redflex (the "Agreement")

1. Redflex has entered into a Credit Agreement, dated as of August 3, 2004 (the "Harris-Redflex Credit Agreement"), with Harris Trust and Savings Bank (the "Bank"), pursuant to which the Bank has provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.

2. Pursuant to the Harris-Redflex Credit Agreement, Redflex has granted Harris a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement. Such security interest applies to and covers all of Redflex's contract rights, including, without limitation, all of Redflex's rights and interests under the Agreement.

3. Redflex will not, by virtue of the Harris-Redflex Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Bank has not assumed any liability or obligation of Redflex under the Agreement.

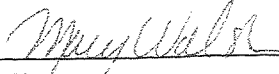
4. The City hereby acknowledges notice of, and consents to, Redflex's grant of such security interest in favor of the Bank in all of Redflex's rights and interests under the Agreement pursuant to the Harris-Redflex Credit Agreement.

5. The City further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the City and shall inure to the benefit of the successors and assigns of the Bank and to any replacement lender which refinances Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement.

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

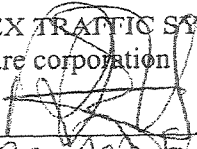
The City:

City of San Buenaventura

By: 
Name: _____
Title: _____

Redflex:

REDFLEX TRAFFIC SYSTEMS, INC.,
a Delaware corporation

By: 
Name: Richard Brown
Title: CEO

