

rec'd 6-5-10

AGREEMENT NO.

406-07

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

This Agreement (this "Agreement") is made and entered into on October 2, 2007, by and between Redflex Traffic Systems, Inc. with offices at 6076 Bristol Parkway, Suite 106, Culver City, California 90230, a corporation ("Redflex"), and City of Beverly Hills, a municipal corporation, with offices at 455 N. Rexford Drive, Beverly Hills, CA 90210 (the "City").

RECITALS

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

B. City desires to engage the services of Redflex to provide certain equipment, processes and back office services so that sworn peace officers of the City are able to monitor, identify and enforce red light running violations in order to reduce the incidence of vehicle collisions and injuries at City traffic intersections and streets; and

C. City further desires to retain Redflex to provide an automated red light intersection enforcement system in support of City's Photo Safety Program at City selected approaches within City.

D. Redflex represents that it has the qualifications and means to provide such services and City desires to retain Redflex to perform such services.

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 City Project Manager who is a sworn peace officer or a qualified employee of the Police Department, which City shall designate to review Potential Violations and to authorize the Issuance of Citations.
 - 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 Photo Red Light System.

- 1.3. "Citation" or "Complaint" or "Notice to Appear" means the initial pleading in a criminal or civil traffic action relating to a Violation documented or evidenced by the Photo Safety Program.
- 1.4. "Designated Intersection Approaches" means the Intersection Approaches set forth on Exhibit A attached hereto and incorporated herein, and such additional Intersection Approaches as City shall determine from time to time.
- 1.5. "Electronic Signature" means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation with respect to a Potential Violation using the Redflex Photo Red Light System.
- 1.6. "Enforcement Documentation" means the necessary and appropriate documentation related to the Photo Safety Program, including but not limited to, warning letters, Citation notices (using the specifications of the Judicial Council and City, a numbering sequence for use on all Citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex Photo Red Light System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.
- 1.7. "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Photo Red Light System(s), including but not limited to, all camera systems, housings, radar units, servers and poles owned/leased by Redflex.
- 1.8. "Fine" means a monetary sum assessed for a Citation, including, but not limited to, bail forfeitures, but excluding suspended fines.
- 1.9. "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.
- 1.10. "Installation Date of the Photo Safety Program" means the date on which Redflex completes the construction and installation of at least one (1) Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational and actively being monitored to measure Violations by motor vehicles and recording such Violations for the Photo Safety Program.
- 1.11. "Intersection Approach" means a conduit of travel on which at least one (1) system has been installed by Redflex for the purposes of facilitating the Photo Safety Program. The system shall be capable of monitoring all contiguous lanes of traffic at an intersection approach, including left-hand, straight through and right-hand turning movements.
- 1.12. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Photo Safety Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by a sworn peace officer of the City and

the issuance of Citations for such approved Violations using the Redflex Photo Red Light System.

- 1.13. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.14. "Police Project Manager" means the Chief of Police or his designee in accordance with this Agreement, which shall be a sworn peace officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Photo Safety Program.
- 1.15. "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex Photo Red Light System with respect to such motor vehicle, which data shall be processed by the Redflex Photo Red Light System for the purposes of allowing the Authorized Officer to review such data and determine whether a Violation has occurred.
- 1.16. "Redflex Marks" means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to the Redflex Photo Red Light System 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.
- 1.17. "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, which project manager shall initially be Jack Weaver or such person as Redflex shall designate by providing written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches, and the implementation the Photo Safety 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 agreed upon in writing by the City Manager or his designee.
- 1.18. "Redflex Photo Red Light System" means, collectively, the SmartCam™ System, the SmartOps™ System, the Redlight Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.19. "Photo Safety Program" means automated photo safety enforcement program as authorized by California Vehicle Code Section 21455.5 and operated by City through its Police Department. It shall also include 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 Violations Data in the form of photographic images of motor vehicles.
- 1.20. "Photo Redlight Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by sworn peace officers of the City,

which standards and criteria shall be in compliance with all applicable laws, rules and regulations of California State law.

- 1.21. "SmartCam™ System" means the proprietary digital red light photo enforcement system of Redflex relating to the Redflex Photo Red Light System.
 - 1.22. "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Redflex Photo Red Light Enforcement System.
 - 1.23. "SmartScene™ System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
 - 1.24. "Traffic Signal Controller Boxes" means the signal controller interface and detector, including, but not limited to, the inductive loop, Lidar, radar or video loop, as the case may be.
 - 1.25. "Violation" means any traffic violation contrary to the terms of the Vehicle Code, the City Municipal Code or any other local statute, law or ordinance which the Photo Safety Program equipment is monitoring in accordance with the terms and conditions of this Agreement.
 - 1.26. "Violations Data" means the images and other Violations data gathered by the Redflex Photo Red Light System at the Designated Intersection Approaches.
 - 1.27. "Warning Period" means the period of thirty (30) days after the Installation Date of the first intersection approach.
2. **TERM.** Pursuant to the Request for Proposals issued by the City on September 12, 2006, this Agreement shall be effective for a one-year term measured from the Installation Date of the Photo Safety Program ("Initial Term"). The City may terminate this Agreement in whole or in part, without cause and for any reason including City's convenience, upon thirty (30) days written notice prior to the conclusion of the Initial Term. At the conclusion of the Initial Term, this Agreement shall extend for an additional four (4) year term if the Agreement has not been otherwise terminated ("Extended Term").
3. **SERVICES.** Redflex shall provide the Photo Safety Program and other services to the City as set forth in this Agreement. Redflex's obligations shall include the following:
- 3.1. **INSTALLATION.** Construct and install the Redflex Photo Red Light System as set forth in Exhibit B.
 - 3.2. **MAINTENANCE.** Maintains the Redflex Photo Red Light System at the Designated Intersection Approaches, the City as set forth in Exhibit C.
 - 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 Photo Red Light System under the control of the City pursuant to the City's guidelines for screening and issuing violations and the processing and storage of confidential information;
 - 3.3.2. The Redflex Photo Red Light System shall process Violations Data into a format capable of review by the Authorized Officer via the Redflex Photo Red Light System;

- 3.3.3. The Redflex Photo Red Light 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 Photo Red Light System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violation Data;
- 3.3.5. The City shall cause the Authorized Officer to review the Violations Data and to determine whether a Citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex Photo Red Light System for such purpose. Redflex hereby acknowledges and agrees that the decision to issue a Citation shall be the sole, unilateral and exclusive decision of the Authorized Officer. In no event shall Redflex be authorized to make such a Citation decision.
- 3.3.6. With respect to each Authorized Violation, Redflex shall print the Citation, obtain a postal certificate of mailing and mail within two business days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued with respect to all Authorized Violations;
- 3.3.7. Redflex shall provide a toll-free telephone number with bilingual interface capability for the purposes of answering citizen inquiries
- 3.3.8. Redflex shall permit the Authorized Officer to generate monthly reports using the Redflex Standard Report System.
- 3.3.9. Upon Redflex's receipt of a written request from the City and in addition to the Standard Reports, Redflex shall provide, without cost to the City, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex Photo Red Light System in such format and for such periods as the City may reasonably request;
- 3.3.10. Redflex shall provide expert witnesses for use by the City in prosecuting Violations; and
- 3.3.11. Redflex shall provide such training to law enforcement personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of City with respect to the Photo Safety Program.
- 3.3.12. All Violations shall be processed locally from Redflex's operations center located in Culver City.
- 3.3.13. If the Agreement is terminated, Redflex shall continue to process Violations for a period of 90 days after the date of termination.
- 3.4. COMPENSATION. In consideration of the satisfactory performance of the services required by this Agreement, City shall pay the compensation set forth on Exhibit D, attached hereto and incorporated herein.
- 3.5. OTHER RIGHTS AND OBLIGATIONS. During the Term, whether the Initial or Extended Term, in addition to all of the other rights and obligations set forth

in this Agreement, Redflex and the City shall have the respective rights and obligations set forth on Exhibit E, attached hereto and incorporated herein.

- 3.6. **CONFIDENTIALITY.** All confidential records and information as defined in California Vehicle Code Section 21455.5 maintained in connection with the Photo Safety Program that have obtained final disposition and where appeal dates have passed shall be destroyed in accordance with proper procedures described in Vehicle Code section 21455.5. Written proof of destruction shall be submitted to the City's Police Department Traffic Bureau within five (5) business days from destruction.
- 3.7. In the event that the City desires to make changes to the Photo Safety Program, there are new developments in photo enforcement technology which become accepted enforcement systems in California courts, or if the courts render decisions which require the City to modify the Photo Safety Program, the price for installation and implementation of such additional Intersection Approaches shall not exceed the price per Designated Intersection Approach set forth in Exhibit D of this Agreement.
4. **License; Reservation of Rights.**
 - 4.1. **License.** Subject to the terms and conditions of this Agreement, Redflex hereby grants the City, and the City hereby accepts from Redflex, a non-exclusive, non-transferable license of the necessary Redflex Photo Redlight System equipment for the Photo Safety Program solely for use in documenting Violations at City selected Designated Intersection Approaches in the City.
 - 4.2. **RESERVATION OF RIGHTS.** The City hereby acknowledges and agrees that:
 - (a) Redflex is the sole and exclusive owner of the Redflex Photo Red Light System, the Redflex Marks, , and any and all related Equipment, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.
 - 4.3. **RESTRICTED USE.** The City hereby covenants and agrees that it shall not (a) make any modifications to the Redflex Photo Red Light System, including but not limited to any of Redflex's Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex Photo Red Light System, the Redflex Photo Red Light System, including but not limited to any Equipment, or cause any other Person to do any of the foregoing to the extent authorized by law.
 - 4.4. **PROTECTION OF RIGHTS.** Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any intellectual property of Redflex, including without limitation, the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the intellectual property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Redflex Marks or the intellectual property of Redflex without the prior written consent of Redflex.

4.5. INFRINGING USE. The City shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending against the City of which the City has actual constructive knowledge alleging that the Redflex Marks, infringes or violates any patent, trademark, copyright, trade secret or other intellectual property of any third party. City shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex in the defense thereof; provided, that Redflex shall reimburse the City for all costs incurred in providing such cooperation and assistance. If such a claim is made and Redflex determines, in the exercise of its sole discretion, that an infringement may exist, Redflex shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items. In such case, the City has the option to terminate the Agreement without cancellation fee, if any, to Redflex.

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 Photo Red Light System, subject to applicable law, in compliance with all specifications provided to Redflex by the City.

5.2. City Representations and Warranties.

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

6. Termination.

6.1 Termination during Initial Term. During the Initial Term of this Agreement, City may terminate this Agreement with or without cause and in its sole discretion at any time by giving Redflex at least thirty (30) days' written notice of such termination. In the event of termination during the Initial Term due to no fault or failure of performance by Redflex, Redflex shall be paid the monthly fees earned prior to the effective date of termination, as calculated in Exhibit D of this Agreement.

6.2 Termination during Extended Term. If this Agreement is extended past the Initial Term (the "Extended Term"), City may terminate this Agreement during the Extended Term with or without cause and in its sole discretion at any time by giving Redflex at least thirty (30) days' written notice of such termination. In the event of termination during the Extended Term due to no fault or failure of performance by Redflex, Redflex shall be paid the monthly fees earned prior to the effective date of termination, as calculated in Exhibit D of this Agreement.

6.3 Termination for Convenience. In the event the City exercises its right to terminate this Agreement during the Extended Term, Redflex shall be entitled to a cancellation fee for each installed approach which reflects reimbursement of the direct labor costs and direct material costs (not including Equipment costs and salvageable material costs) solely associated with the installation of the Redflex Photo Red Light System at all Intersection Approaches where such system(s) have been installed prior to the effective date of Termination (the "Reimbursable Costs"). Redflex shall provide an itemization of the Reimbursable Costs, with supporting invoices and labor expense documentation, to the City within thirty (30) days of the completion of installation of the Redflex Photo Red Light System at each designated Intersection Approach. Said Reimbursable Costs are currently estimated to equal approximately \$50,000 to \$80,000 per Intersection Approach but, in no event, shall said amount exceed \$80,000 per Intersection Approach. For the purpose of this section, the cancellation fee shall be derived in accordance with the following formula:

X = the number of months remaining in the Agreement

Y = the number of months of the Agreement

X/Y = the percentage of remaining Agreement

Z = the Reimbursable Costs per Installed Approach (not to exceed \$80,000)

(X/Y)*Z = amount to be paid as cancellation fee

For example, if the Agreement ends on the last day of the 24th month and the Installed Approach was installed in month 12, the cancellation fee would be:

X = 36 (60 months – 24 months transpired under the Agreement).

Y = 60 (number of months of the Agreement).

Z = \$60,000 (value of reimbursable costs)

X/Y *Z = (36/60 * \$60,000)

Calculation of Fee = \$36,000

6.4 Termination for Cause. City or Redflex may, with cause, terminate this Agreement effective immediately upon written notice to the other party in the event such other party materially fails to perform any material provision of this Agreement or fails to perform any of its material obligations under the Agreement and such failure continues unremedied for a period of thirty (30) days after written notice of such failure from the party alleging such failure. City may, with cause, terminate this Agreement effective immediately upon written notice in the event Contractor fails to abide by their reasonable

directive of City or City's Police Department. In the event City terminates this Agreement for cause, Contractor shall not be entitled to a cancellation fee.

6.5 City may also terminate this Agreement effectively immediately with cause in the event of Contractor's gross misconduct, or acts or omissions of Contractor contrary to law. In the event City terminates this Agreement for cause, Contractor shall not be entitled to a cancellation fee.

6.6 In the event that, in City's judgment, this Agreement and/or the type of Photo Safety Program provided pursuant to this Agreement shall be deemed to be invalid or unconstitutional by any act of any branch of government, or a decision of any branch of government makes the implementation of City's Photo Safety Program unconstitutional or impossible to continue to implement, such decision shall be treated as a mutual termination and Redflex shall not be entitled to a cancellation fee.

6.7 Upon termination of this Agreement as herein provided, Redflex shall cease all work on or before the date of such termination. Redflex shall deliver to City in an orderly and expedient manner, all records prepared for or belonging to City pursuant to this Agreement. Redflex shall be responsible for the removal and return to Redflex of the Redflex Photo Red Light System in good working order. Redflex shall be responsible for repair of any damage to public property caused by the Redflex Photo Red Light System or removal of the Redflex Photo Red Light System.

7. Indemnification.

A. Redflex agrees to indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Redflex or any person employed by Redflex in the performance of this Agreement except with respect to causes of action raising a constitutional facial challenge to the use of red light enforcement technology.

B. Redflex shall indemnify, defend and hold harmless City, City Council, and each member thereof, and every officer, employee and agent of City, from any liability or financial loss (including attorneys fees) arising out of or related to any claim that the software, any other goods, services or deliverables provided to City under this Agreement, or license granted hereunder to City, infringes or violates the copyright, trade secret or other proprietary right of any third party. Redflex shall, at its sole expense, defend and settle all suits or proceedings arising out of the foregoing, provided City gives Redflex prompt notice of such claim of which it learns.

C. All Equipment provided by Redflex and used in the performance of this Agreement belongs to, or is leased by Redflex.

8. **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:

8.1. Notices to Redflex:

Redflex Traffic Systems, Inc.
15020 North 74th Street
Scottsdale, AZ 85260
Attention: Ms. Karen Finley
Facsimile: (480) 607-5552

8.2. Notices to the City:

City of Beverly Hills
Police Department
464 North Rexford Drive
Beverly Hills, CA 90210

Attention: Mike Hines
Facsimile: (310) 246-9854

With a copy to

City of Beverly Hills
City Attorney
455 North Rexford Drive
Beverly Hills, CA 90210
Facsimile: 310-285-1056

9. **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 9, 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 nonbinding arbitration or mediation.

10. Miscellaneous.

- 10.1. RELATIONSHIP BETWEEN REDFLEX AND THE CITY. 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).
- 10.2. ASSIGNMENT. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of Redflex's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 10.3. AUDIT RIGHTS. City shall have the right to audit and obtain copies of the books and records of Redflex related to this Agreement, and to inspect Redflex premises at all times with or without notice.
- 10.4. 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.
- 10.5. ENTIRE AGREEMENT. This Agreement represents the entire integrated Agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Redflex.
- 10.6. 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.
- 10.7. CONFLICT OF INTEREST PROHIBITED. Redflex agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Redflex "financially interested" (as provided in California Government Code Sections 1090 and 87100), in any decision made by City, on any matter in connection with which Redflex has been retained pursuant to this Agreement.
- 10.8. 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.

- 10.9. 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.
- 10.10. 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.
- 10.11. 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.
- 10.12. 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.
- 10.13. 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.
- 10.14. 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 as set forth herein
- 10.15. 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.
- 10.16. 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.
- 10.17. 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.
- 10.18. 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 Los Angeles and both parties specifically agree to be bound by the jurisdiction and venue thereof.

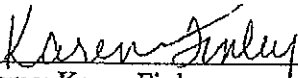
10.19. ATTORNEY FEES. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

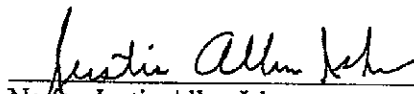
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

REFLEX:

REFLEX TRAFFIC SYSTEMS,
INC.,

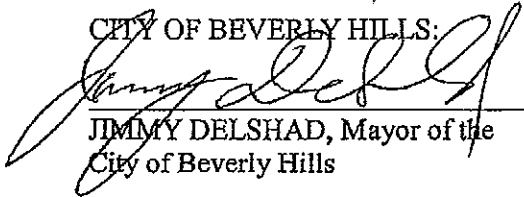

Name: Karen Finley
Title: President and CEO


Name: Justin Allen Iske
Title: Company Secretary

[signatures continued]

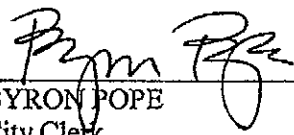
"City"

CITY OF BEVERLY HILLS:


JIMMY DELSHAD, Mayor of the
City of Beverly Hills

ATTEST:

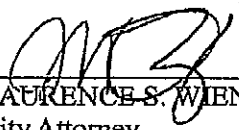
APPROVED AS TO CONTENT:


BYRON POPE
City Clerk


(SEAL)


RODERICK J. WOOD
City Manager

APPROVED AS TO FORM:


LAURENCE S. WIENER
City Attorney


DAVID SNOWDEN
Chief of Police


SCOTT MILLER
Director of Administrative Services/Chief
Financial Officer

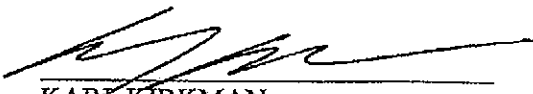

KARL KIRKMAN
Risk Manager

EXHIBIT A
Designated Intersection Approaches

This Agreement is for the implementation of up to 20 Intersection Approaches. Identification of Designated Intersection Approaches will be at the sole discretion of City.

EXHIBIT B
Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light System

Redflex shall install and activate intersections specified by City and activated in phases in accordance with a written implementation plan to be mutually agreed to by Redflex and City. Redflex will use reasonable commercial efforts to install the Photo Safety System in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Redflex will use reasonable commercial efforts to install and activate the first specified intersection within forty-five (45) to sixty (60) days subsequent to formal project kick-off. City agrees that the estimated timeframe for installation and activation are subject to conditions that may arise beyond the control of Redflex and are not guaranteed.

In order to provide City with timely completion of the Photo Safety System, Redflex requires that City assist with providing timely approval of City permit requests. City acknowledges the importance of the Photo Safety Program and understands that in order to keep the project on schedule the City is to provide city engineers review of Redflex permit requests and all documentation in a timely manner.

1. Redflex Obligations. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1. Appoint the Redflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project Manager;
 - 1.2. Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the City traffic engineer;
 - 1.3. Develop and submit to the City 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
 - 1.4. Seek approval from the relevant City and any other Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications.
 - 1.5. Finalize the acquisition of the Approvals;
 - 1.6. If requested by City, paint the Redflex supplied infrastructure (poles and housings) a custom color. City to advise Redflex of any custom color requirements 30 days prior to installation of the system.
 - 1.7. Submit to the City a written public awareness strategy for the City's consideration and approval, which strategy shall include media and educational materials for the City's approval or amendment (the "Awareness Strategy"); Redflex is solely responsible for providing all necessary communication infrastructures, including but not limited to telephone services, DSL, cable or other broadband services to the Designated Intersection Approaches.

- 1.8. Assist in developing the Redlight Violation Criteria as directed and approved by City;
- 1.9. Develop the Enforcement Documentation for approval by City;
- 1.10. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches (under the supervision of the City);
- 1.11. Cause a licensed electrical sub-contractor approved by City 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;
- 1.12. Install and test the functionality of the Designated Intersection Approaches with the Redflex Photo Red Light System and establish fully operational Violation processing capability with the Redflex Photo Red Light System;
- 1.13. In the event that Redflex installs a System that does conform to the drawings and/or specifications that have been approved by the City, Redflex shall, upon receipt of written notice from City, make the necessary corrections (without additional compensation to Redflex). If Redflex fails to remedy construction deficiencies within a reasonable period of time and as a result of these actions causes damages to the City, Redflex shall reimburse the City for the damages incurred.
- 1.14. Implement the use of the Redflex Photo Red Light System at each of the Designated Intersection Approaches under the control and direction of City;
- 1.15. Deliver the Materials as defined in this Exhibit to City and Issue Citation notices for Authorized Violations;
- 1.16. Once a year, Redflex shall provide training (i) for up to fifteen (15) personnel of the City, including, but not limited to, the persons whom City shall appoint as Authorized Officers and other persons involved in the administration of the Photo Safety Program, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex Photo Red Light System and the Photo Safety Program, which training shall include training with respect to the Redflex Photo Red Light System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation;
- 1.17. Interact with court and judicial personnel to address issues regarding the implementation of the Redflex Photo Red Light 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 City and juvenile court personnel; and
- 1.18. Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch of the Photo Safety Program.
- 1.19. Citation processing and Citation re-issuance under the control and direction of City

- 1.20. Upon notification of a knockdown or vandalism to the Redflex Photo Red Light System, Redflex shall respond and use commercial best efforts to repair the system to full operational status within three business days.
 - 1.21. Comply with all applicable laws governing automated enforcement systems.
 - 1.22. The Redflex Project Manager (or a reasonable alternate) shall be available to the City Project Manager each day, on a reasonable best efforts basis.
 - 1.23. Provide City with real-time access to streaming video for each system operational.
 - 1.24. Record and store streaming video produced by each system for a period of 60 days from date captured. Provide selected video clips from stored streaming video upon request from City.
 - 1.25. Redflex will provide one (1) laptop workstation (which shall remain the property of Redflex) to be used by the City for court viewings.
 - 1.26. After the Initial Term of this contract, based on an intersection analysis at intersections determined solely by the City, if the traffic patterns adjust and/or engineering measures have been implemented that reduce the occurrence of red light running, then Redflex will relocate the system to an alternative location at no additional cost if requested by the City. The City's request must be based on a reasonable basis supported by the intersection analysis described herein.
2. CITY OBLIGATIONS. City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):
- 2.1.1. Appoint City Project Manager;
 - 2.1.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;
 - 2.1.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Photo Safety Program;
 - 2.1.4. Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the City; and
 - 2.1.5. Assist Redflex in seeking the Approvals
 - 2.1.6. Provide reasonable access to the City's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Photo Safety Program;
 - 2.1.7. Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
 - 2.1.8. Seek approval or amendment of the Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the City 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
 - 2.1.9. Establish the Redlight Violation Criteria; and

2.1.10. Seek approval of the Enforcement Documentation.

EXHIBIT C

Maintenance

Redflex shall provide maintenance of the Redflex Photo Red Light System and related Equipment to ensure that the system is functioning properly and is performing for its intended purposes. All maintenance services set forth in this Exhibit C shall be subject to the direction and control of City pursuant to the provisions of the California Vehicle Code.

1. The Redflex Photo Red Light System 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 Photo Red Light System and all other related Equipment in reasonably clean and graffiti-free condition.
2. Redflex must inspect the Equipment and the functionality of the Redflex Photo Red Light System at each Intersection Approach no less than once every month with remote inspections weekly and automated camera checks on each business day
3. Redflex must respond to any material malfunction of the Equipment or of the Redflex Photo Red Light System without twenty-four (24) hours of receiving malfunction notice from the City ("Malfunction Notice").
4. In the event that the Redflex Photo Red Light System suffers any damage from whatever cause, Redflex discovers material malfunction or defect, or Redflex receives a Malfunction Notice, Redflex shall use its best efforts to cause the damage malfunction or defect to be repaired within forty-eight (48) hours of discovery by Redflex or received by Redflex of a Malfunction Notice.
5. Redflex shall not open the Traffic Signal Controller Boxes without a representative of City Traffic Engineering present at all times.
6. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of Redflex
7. The provision of all necessary electrical services to the Designated Intersection Approaches will be the sole responsibility of City
8. 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.
9. Redflex must promptly make available to City any and all upgrades and technology modifications, including but not limited to software, hardware, camera systems, violation detection systems upon their general availability (i.e. release readiness and not in alpha, beta and testing phases,) as Redflex and City mutually agree. The upgrades and enhancements must be provided to City at no cost within 30 days of the City's acceptance of the upgrade or enhancement.
10. In the event a camera system is knocked down during normal business hours, the City will secure the camera system by removing the system from the scene and storing it in a secure location at no cost to Redflex. In the event that a camera system is knocked down outside of normal business hours, Redflex will secure the camera system by removing the system and arranging storage of the same.

11. The Redflex Project Manager (or a reasonable alternate) shall be available to the City Project Manager each day, on a reasonable best efforts basis.

EXHIBIT "D"
Compensation and Pricing

Commencing on the expiration of the Warning Period for each Designated Intersection Approach and upon written notice from Redflex that the Warning Period has expired for each Designated Intersection, City shall be obligated to pay Redflex a fixed fee of Five Thousand Five Hundred and Seventy (\$5,570) Dollars per month for each Designated Intersection Approach with up to two (2) contiguous lanes and Five Thousand Eight Hundred and Seventy (\$5,870) Dollars per month for three (3) or more contiguous lanes ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement. If the Warning Period expires during any given month, City shall pay Redflex a pro-rata portion of the monthly fee for the period of time the Warning Period has expired.

City shall not be obligated to pay, and will not be billed for each calendar day that a particular Designated Intersection Approach is not functioning for a period of 48 hours due to equipment related malfunction, including if the Intersection Approach is knocked down and has not been replaced. The invoice for the relevant period will show a credit for a fraction of the Fixed Fee based on the number of calendar days in that month.

Redflex shall provide City with a monthly statement of the fee for the previous month. Such statement shall be provided on a form approved by City.

Upon receipt of such monthly statement, City shall pay Redflex for services satisfactorily performed by Redflex, within thirty (30) business days after the invoice is received by City.

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Redflex construction will be able to utilize existing conduit for installation where space is available.
2. Each year Redflex may increase the pricing by the Consumer Price Index ("CPI") upon written notice to City. The CPI is based on the 12-month change in the Los Angeles-Long Beach-Anaheim Metropolitan Area Consumer Price Index for All Urban Consumers (All Items) with June as the base month.

Exhibit E

Additional Rights and Obligations

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

1. Redflex shall assist the City 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 Photo Safety Program. Actual print and production costs are the sole responsibility of the City. Such work shall be under the direction and control of City.
2. Redflex shall be solely responsible for the fabrication and installation of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority including the California Traffic Manual ("Signage") in connection with the Photo Safety Program, including, but not limited to the Vehicle Code, and shall assist in determining the placement of such Signage. Such work shall be under the direction and control of City.
3. The Redflex Project Manager and the City Project Manager shall meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the Installation Date, and on a monthly basis for the remainder of the Term, at such times and places as the Redflex Manager and the City Project Manager shall mutually agree.
4. Except as provided in this Agreement or under applicable law, the City shall not access the Redflex Photo Red Light System in any manner other than as prescribed by law and which restricts or inhibits any other Person from using the Redflex Photo Red Light System with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex Photo Red Light System, and the City 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 Photo Red Light System, or (iii) any materials or information not intentionally made available by Redflex to the City by means of hacking, password mining or any other method whatsoever.
5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex Photo Red Light System or using the Photo Safety Program.
6. The City shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex Photo Red Light System, or any property or Equipment related thereto, damaged directly or indirectly by the City's negligence or willful misconduct, or any of its employees, contractors or agents.
7. Redflex shall provide discovery support to City as required by City in connection with enforcement of and challenges to the Photo Safety Program.

Insurance

1. During the Term, Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage with respect to claims for injuries to persons or damages to property which may arise from or in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
2. 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;
3. Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned by Redflex, hired by Redflex, Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.
4. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of (insert name), and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
 - A. Said policies shall be issued by an insurer satisfactory to City and rated in Best's Insurance Guide with a rating of at least B+VII. Redflex agrees that if it does not keep the aforesaid insurance in full force and effect, City may either immediately terminate this Agreement for cause or, if insurance is available at reasonable cost, City may take out the necessary insurance and pay, at Redflex's expense, the premium thereon.
 - B. At all times during the terms of this Agreement, Redflex shall maintain on file with the City Clerk certificate(s) of insurance on a form approved by City's Risk Manager and City Attorney showing that the aforesaid policies are in effect in the required amounts. The policies (other than workers compensation and professional liability) shall contain an endorsement naming City, its City Council, officers, and employees as additional insureds. The policies shall also state that the insurance coverage shall not be cancelled or materially changed except on thirty (30) days' notice to City. Redflex shall promptly file with the City Clerk such certificate(s) of insurance.
 - C. The Commercial General Liability insurance policy provided by Redflex shall include provisions for waiver of subrogation.
 - D. The insurance provided by Redflex shall be primary to any coverage available to City.

- E. Any deductibles or self-insured retentions to Redflex's insurance policies shall be the responsibility of Redflex.
- F. Any deductibles or self-insured retentions must be declared to and approved by City prior to the commencement of work under this Agreement. At the option of City, Redflex shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Redflex shall procure a bond guaranteeing payment of losses and expenses.
- G. All subcontractors hired by Redflex to perform work under this Agreement shall be required to comply with the insurance requirements of this Agreement.