

**COUNCIL ACTION:** (For City Clerk use only)

- ADOPTED RESOLUTION NO. \_\_\_\_\_
- APPROVED  APPROVED WITH CHANGES
- CONTINUED TO \_\_\_\_\_  DENIED
- INTRODUCED ORDINANCE NO. \_\_\_\_\_
- NO ACTION TAKEN/DID NOT PASS
- RECEIVED AND FILED  RETURNED TO STAFF
- REFERRED TO \_\_\_\_\_
- SET FOR PUBLIC HEARING



Agenda Report No. 6.C.1.

## AGENDA REPORT REQUEST FOR CITY COUNCIL ACTION

DATE: November 5, 2008  
TO: Honorable Mayor and City Council Members  
FROM: Finance and Police Departments  
SUBJECT: **APPROVAL OF AGREEMENT WITH REDFLEX TRAFFIC SYSTEMS, INC. TO PROVIDE SMARTCAM DIGITAL RED LIGHT TRAFFIC ENFORCEMENT CAMERAS FOR MONITORING AND ENFORCEMENT OF RED LIGHT VIOLATIONS AT INTERSECTIONS WITHIN THE CITY OF CORONA**

**RECOMMENDED ACTION:**

That the City Council:

1. Approve the Agreement with Redflex Traffic Systems, Inc. of Delaware to provide SMARTCAM digital red light traffic enforcement cameras for monitoring and enforcement of red light violations at intersections within the City of Corona.
2. Appropriate \$350,000 from the General Fund unappropriated fund balance to the ECB base for the Police Department and authorize a reduction to this amount at the end of each contract year if revenues are less than actual expenditures.
3. Authorize the Purchasing Agent to issue a purchase order to Redflex Traffic Systems Inc. not to exceed \$350,000.
4. Authorize the amount of revenue in excess of actual expenditures be added to the Police Department operating budget, beginning at the end of the first contract year.
5. Authorize the City Manager or his designee to approve contract extensions for up to two additional one-year renewals.

File No. CC - 550.

***ANALYSIS:***

The City of Corona requested proposals from qualified consultants for an Automated Photo Red Light Enforcement System. The successful consultant was to provide the City a turnkey program.

California State and local agencies have found that the use of red light camera enforcement can reduce red light traffic violations and reduce the number of automobile accidents attributed to these violations. Statistics have shown that accidents occurring as a result of red light violations result in more deaths and property damage than any other type of automobile accident. With the Public's safety in mind, the ultimate goal is to reduce the number of collisions caused by red light violations. The presence of an automated enforcement system has been proven to modify driver's behavior and reduce the number of red light violations, thus reducing the number of accidents.

This item was discussed at the Council Study Session on September 26, 2007. A Public Hearing was conducted on January 2, 2008 after which City Council directed the Police and Purchasing Departments to solicit proposals to determine the most effective program to meet the City's needs.

The Request For Proposal (RFP) No. 08-258JB, titled "Red Light Enforcement System" was advertised in the Press Enterprise on March 22, 2008 and sent to four firms. Proposals were received from two firms. City staff thoroughly evaluated all components of this proposal and recommends award to Redflex Traffic Systems, Inc. as the best qualified for this project.

The City anticipates the red light traffic enforcement cameras to be installed at a minimum of five intersections with the number of approaches to be determined. The cost per intersection with up to two approaches will be \$5,675 per month for up to two contiguous lanes; \$5,995 per month for three or more contiguous lanes per designated intersection approach.

The initial term for this Agreement is for a period of three years, with options to automatically extend for up to two additional one year renewals.

***COMMITTEE ACTION:***

This item was discussed at Public Services Committee Meeting on June 4, 2008.

***FISCAL IMPACT:***

Cost neutrality is assured to the City in that the City will not pay the consultant more than the actual revenue received. The exceptions to cost neutrality are failure by Police Department to review violations when due, de-activation of system at City's request, and failure to maintain the minimum yellow light change interval as required by the California Vehicle Code.

The appropriation of \$350,000 to the Police Department may be reduced at the end of each contract year if the red light traffic enforcement revenue is less than \$350,000. Revenue in excess of actual costs shall be designated for the Police Department. In the event the actual costs of the contract exceed the revenue, the shortfall will be funded by the department's ECB budget.

**ENVIRONMENTAL ANALYSIS:**


No environmental review is required because the proposed action is not a project under CEQA or is exempt.

REVIEWED BY:



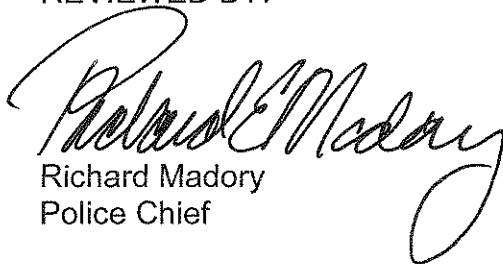
Greg Irvine  
Assistant City Manager

SUBMITTED BY:




Bradly L. Robbins  
City Manager

REVIEWED BY:



Richard Madory  
Police Chief

REVIEWED BY:



Debra A. Foster  
Finance Director

PREPARED BY:



Scott Briggs  
Purchasing Manager



**CITY OF CORONA  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 5<sup>th</sup> day of November, 2008 by and between the City of Corona, a municipal corporation organized under the laws of the State of California with its principal place of business at 400 South Vicentia Avenue, Corona, California 92882 ("City") and Redflex Traffic Systems Inc., a Delaware Corporation with its principal place of business at 6076 Bristol Parkway, Suite 106, Culver City, CA 90230 ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

**2. RECITALS.**

**2.1 City.**

That City desires to engage Consultant to furnish all equipment, licenses, applications and back office processing related to the SMARTCAM digital red light traffic enforcement cameras for monitoring and enforcement of red light violations at up to thirty (30) intersections within the City of Corona;

**2.2 Consultant.**

That Consultant is qualified to provide such services to the City and is agreeable to the terms and conditions set forth in this Agreement. City desires to engage Consultant to render such services for the Red Light Enforcement System ("Services") as set forth in this Agreement.

**2.3 Definitions.**

2.3.1 "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.

2.3.2 "Citation" means the notice of a Violation, which is mailed or otherwise delivered by Consultant to the violator for each Authorized Violation.

2.3.3 "Consultant Project Manager" means the project manager appointed by Consultant in accordance with this Agreement, which project manager shall be such person as Consultant 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 Red Light Enforcement Program, and who shall have the power and authority

to make management decisions relating to Consultant's obligations pursuant to this Agreement, including but not limited to change-order authorizations.

2.3.4 "Designated 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) Photo Red Light System has been installed by Consultant for the purposes of facilitating enforcement of Violations by the City. The Designated Intersection Approaches shall be determined by mutual agreement of City and Consultant as warranted by community safety and traffic needs.

2.3.5 "Electronic Signature" means the method through which the Police Project Manager indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Photo Red Light System.

2.3.6 "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Photo Red Light System, including but not limited to all camera systems, housings, radar units, servers and poles.

2.3.7 "Governmental Authority" means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.

2.3.8 "Installation Date" means the date on which Consultant completes the construction and installation of at least one (1) Designated Intersection Approach in accordance with the terms of this Agreement so that such Designated Intersection Approach is operational for the purposes of functioning with the Photo Red Light Photo Enforcement Program.

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

2.3.10 "Police Project Manager" means the project manager appointed by the City in accordance with this Agreement, which shall be a sworn police officer and shall be responsible for overseeing the installation of the Designated Intersection Approaches and the implementation of the Photo Red Light Enforcement Program, and which manager shall have the power and authority to make management decisions relating to the City's obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the City's organizational documents or by the City Council.

2.3.11 "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Photo Red Light System with respect to such motor vehicle, which data shall be processed by the Photo Red Light System for the purposes of allowing the Police Project Manager to review such data and determine whether a Violation has occurred.

2.3.12 “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.

2.3.13 “Redflex Marks” means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Consultant or any of its affiliates on or in relation to the Photo Red Light Enforcement Program 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.

2.3.14 “Photo Red Light System” means, collectively, the SmartCam™ System, the SmartOps™ System, the SmartScene™ System, the Photo Red Light 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.

“SmartCam™ System” means the proprietary digital redlight photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.

“SmartOps™ System” means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program. “SmartScene™ System” means the proprietary digital video camera unit, hardware and software required for providing supplemental Violation Data.

2.3.15 “Photo Red Light Enforcement Program” means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and 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.

2.3.16 “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.

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

2.3.18 “Violations Data” means the images and other Violations data gathered by the Photo Red Light System at the Designated Intersection Approaches.

2.3.19 “Warning Period” means the time period commencing on the Installation Date for each Designated Intersection Approach and ending on the date that is thirty (30) days later.

### 3. TERMS.

#### 3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the Services. The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The Services shall commence upon execution of this Agreement by the Parties and shall continue for a period of three (3) years ("Initial Term"). Following the expiration of the Initial Term, the Agreement shall be automatically extended for up to two (2) additional one (1) year terms ("Renewal Term"), (from the date of execution), unless either party provides written notice of termination at least sixty (60) days prior to expiration of the Initial Term or Renewal Term, as applicable.

#### 3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City. Approval of work by City shall not be unreasonably withheld and completed on a timely basis.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. Approval of Consultant key personnel shall not be unreasonable withheld by the City. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property, shall be promptly removed by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Mike Negrette and Jack Weaver.**

3.2.5 City's Representative. The City hereby designates **Chief Richard Madory**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **Jack Weaver** or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any



employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by the Consultant and shall not be re-employed to perform any of the Services.

3.2.8.1 Period of Performance and Liquidated Damages. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage; (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage; and (3) *Workers' Compensation and Employer's Liability:* Workers'

Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) *Excess Liability*: \$1,000,000 coverage .

3.2.10.3 Professional Liability. (Deleted, Not Applicable )

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. As respects each insurance policy required by this Agreement: (A) if the Consultant is notified by any insurer that any insurance coverage will be cancelled, the Consultant shall immediately provide 30 days written notice thereof to the City and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the City of the date and nature of such correction. If Consultant, 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 City shall have the right, but not the obligation and exercisable in its sole discretion, to either (i) terminate this Agreement and seek damages from Consultant for such breach, or (ii) purchase such required insurance, and without further notice to Consultant, deduct from any amounts due to Consultant pursuant to this Agreement, any premium costs advanced by the City for such insurance. If the premium costs advanced by the City for such insurance exceed any amounts due to Consultant pursuant to this Agreement, Consultant shall promptly remit such excess amount to the City upon receipt of written notice thereof, and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to the City.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving

equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.3 Reimbursement for Expenses. Except as set forth in this Agreement, Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all

work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Termination For Cause: Either party shall have the right to terminate this Agreement immediately by written notice to the other if: (i) state statutes are amended to prohibit or substantially change the operation of photo red light enforcement systems; (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the Photo Red Light System of photo red light enforcement are inadmissible in evidence; or (iii) the other party commits any material breach of any of the provisions of this Agreement. In the event of a termination pursuant to this subsection, City shall be relieved of any further obligations for payment to Consultant other than as specified in Exhibit "C". Either party shall have the right to remedy the cause for termination within forty-five (45) calendar days (or within such other time period as the City and Consultant shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

3.5.1.2 Termination Without Cause. The City may initiate termination of this Agreement without cause at any time by giving ten (10) days' written notice of termination to Consultant. If the City exercises its right to terminate this Agreement in accordance with this subsection, the City shall be obligated to pay Consultant the Cancellation Fee, as described in Exhibit "C". Consultant may initiate termination of this Agreement without cause by giving ninety (90) days' written notice to the City, signed by Consultant's authorized representative.

3.5.1.3 The right to terminate this Agreement set forth in Section 3.5.1.1 shall be without prejudice to any other right or remedy of either party for any breach of this Agreement.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

Redflex Traffic System Inc.  
6076 Bristol Parkway, Suite 106  
Culver City, CA 90230  
Attn: Karen Finley, President and CEO

**City:**

City of Corona  
400 South Vicentia Avenue  
Corona, CA 92882  
Attn: Richard Madory, Police Chief

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 License. Subject to the terms and conditions of this Agreement, Consultant hereby grants the City, and the City hereby accepts from Consultant 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 Corona, access and use the Photo Red Light 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 Photo Red Light System in connection therewith, (b) disclose to the public (including outside of the City of Corona that Consultant is providing services to the City in connection with Photo Red Light Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light Enforcement Program, so long as any and all such publications or materials are approved in advance by Consultant.

3.5.3.2 Reservation of Rights. The City hereby acknowledges and agrees that: (a) Consultant 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 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.

3.5.3.3 Restricted Use. The City 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 Consultant therein, (d) use any trademarks or other marks other than the Redflex Marks in connection with the City's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Consultant, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex Marks, including but not limited to, any Equipment, or to any, Intellectual Property or Proprietary Property of Consultant, or cause any other person to do any of the foregoing.

3.5.3.4 Protection of Rights. Consultant shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Consultant, 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 Consultant, 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 Consultant without the prior written consent of Consultant.

3.5.3.5 Infringement. The City shall use its reasonable best efforts to give Consultant 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 Consultant'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 Consultant. Consultant 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 Consultant commences any enforcement action under this Section 3.5.3.5, then the City shall render to Consultant such reasonable cooperation and assistance as is reasonably requested by Consultant. Consultant shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance.

3.5.3.6 Infringing Use. The City shall give Consultant prompt written notice of any action or claim action or claim, whether threatened or pending, against the City alleging that the Redflex Marks, or any other Intellectual Property of Consultant, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the City shall render to Consultant such reasonable cooperation and assistance as is reasonably requested by Consultant in the defense thereof; provided, that Consultant shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Consultant determines, in the exercise of its sole discretion, that an infringement may exist, Consultant 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.

3.5.3.7 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this

Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Indemnification by Consultant. Consultant hereby agrees to defend and indemnify the City, its elected officials, contractors, employees, affiliates, shareholders or other interest holders, managers, officers, directors, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "City Party" and collectively, the "City Parties") against, and to protect, save and keep harmless the City Parties from, and to pay on behalf of or reimburse the City Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, stop notices, mechanics liens, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be asserted against, imposed on or incurred by any City Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Consultant contained in this Agreement, (b) failure of Consultant to pay any supplier of materials or labor, (c) the negligent acts or omissions, or willful misconduct of Consultant, its employees or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the negligent acts or omissions, or willful misconduct of any City Party.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to



City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.15 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### **3.6 Subcontracting.**

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7 Assignment. Neither party may assign all or any portion of this Agreement without prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, the City hereby acknowledges and agrees that the execution (as outlined in Exhibit D), delivery and performance of the Consultant's rights and obligations pursuant to this Agreement shall require a significant investment by Consultant, and that in order to finance such investment, Consultant 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 City hereby agrees that Consultant 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 Consultant and any such Financial Institution, subject to the City's prior written approval, which approval shall not be unreasonably withheld or delayed. The City further acknowledges and agrees that in the event that Consultant provides written notice to the City that it intends to Transfer all or any of Consultant's rights pursuant to this Agreement, and in the event that the City fails to provide such approval or fails to object to such Transfer with ten (10) business days after its receipt of such notice from Consultant, for the purposes of this Agreement, the City shall be deemed to have consented to and approved such Transfer by Consultant. Notwithstanding the above, this Agreement shall insure to the benefit of, and be binding upon, and be binding upon the parties hereto, and their respective successors or assigns.

### **3.8 Representations and Warranties.**

#### **3.8.1 Consultant Representations and Warranties.**

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

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

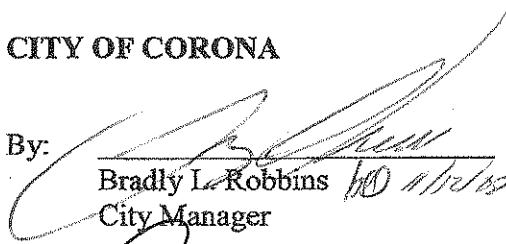
3.8.2 City Representations and Warranties.

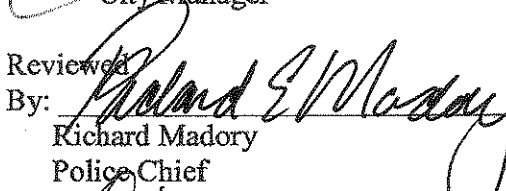
3.8.2,1 Authority. The City hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.


3.8.3 LIMITED WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CONSULTANT 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 PHOTO RED LIGHT SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE CITY'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, CONSULTANT DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION APPROACHES OR THE PHOTO RED LIGHT SYSTEM WILL OPERATE IN THE WAY THE CITY SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CITY HEREBY ACKNOWLEDGES THAT THE PHOTO RED LIGHT SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, CONSULTANT SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

[SIGNATURES ON NEXT PAGE]

CITY OF CORONA

By:   
Bradly L. Robbins *11/05/08*  
City Manager

Reviewed  
By:   
Richard Madory  
Police Chief

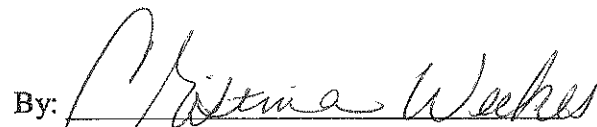
Attest:   
Victoria J. Wasko, City Clerk  
City of Corona, California

REFLEX TRAFFIC SYSTEMS, INC.

By: 

Print Name: Karen Finley

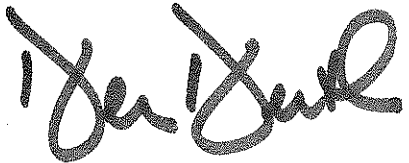
Title: President & CEO  
(CEO, President or Vice President)

By: 

Print Name: Cristina Weekes

Title: EVP / Secretary  
(Secretary, CFO, or Treasurer)

APPROVED AS TO FORM:



Corona City Attorney

Dated: November 5, 2008

## EXHIBIT "A"

### SCOPE OF SERVICES

Consultant shall provide the City with a turn-key program that will include but not be limited to:

1. **Services.** Consultant shall provide the Redlight Photo Enforcement Program to the City with respect to the Designated Intersection Approaches, in each case in accordance with the terms and provisions set forth in this Agreement.

a. INSTALLATION. With respect to the construction of the Designated Intersection Approaches and the installation of the Photo Red Light System at such Designated Intersection Approaches, the City and Consultant shall have the respective rights and obligations set forth herein and in the Professional Services Agreement to which this Exhibit A is attached.

b. TRAINING. With respect to training of law enforcement, court personnel and other relevant City personnel, Consultant will provide a comprehensive two-day training program. Specific modules will include information on the following topics:

- i. Camera equipment orientation
- ii. WebOps (Redflex web-based citation authorization module)
- iii. Camera maintenance, support & certification
- iv. Court documentation, review & defense protocols
- v. Court administration of the program, including introduction & familiarization
- vi. Subpoena processing timelines for evidence development
- vii. Development and coordination of hearing schedules
- viii. Evidence introduction and familiarization

c. MAINTENANCE. With respect to the maintenance of the Photo Red Light System at the Designated Intersection Approaches, the Consultant shall have the following obligations:

i. All repair and maintenance of camera systems and related equipment will be the sole responsibility of the Consultant, including but not limited to maintaining the casings of the cameras included in the Photo Red Light System and all other Equipment in reasonably clean and graffiti-free condition.

d. VIOLATION PROCESSING. Violations shall be processed as follows:

- i. All Violations Data shall be stored on the Photo Red Light System;
- ii. The Photo Red Light System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Police Project Manager via the Photo Red Light System;
- iii. The Photo Red Light System shall be accessible by the Police Project Manager 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;
- iv. Consultant shall provide the Police Project Manager with access to the Photo Red Light System for the purposes of reviewing the pre-processed Violations Data within six (6) days of the gathering of the Violation Data from the applicable Designated Intersection Approach;

v. The City shall cause the Police Project Manager 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 Consultant using the software or other applications

EXHIBIT "A"

or procedures provided by Consultant on the Photo Red Light System for such purpose, and CONSULTANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE POLICE PROJECT MANAGER AND SHALL BE MADE IN SUCH POLICE PROJECT MANAGER'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL CONSULTANT HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;

vi. With respect to each Authorized Violation, Consultant shall print and mail a Citation within five (5) days after Consultant's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued for all Authorized Violations;

vii. Consultant shall provide a toll-free telephone number for the purposes of answering citizen inquiries, responding to complaints and scheduling appointments during which recipients of Citations may view the applicable Violations Data, and Consultant shall provide necessary personnel for such purpose;

viii. Consultant shall permit the Police Project Manager to generate monthly reports using the Consultant's standard report system.

ix. Upon Consultant's receipt of a written request from the City, Consultant shall provide, in addition to the standard reports and 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 Photo Red Light System with respect thereto to the City in such format and *for* such periods as the City may reasonably request; provided, however, Consultant shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to the City;

x. Upon the City's receipt of a written request from Consultant, the City shall provide, without cost to Consultant, 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 Consultant may reasonably request; provided, however, the City shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to Consultant.

e. EXPERT WITNESS TESTIMONY. Expert Witness Testimony shall be provided by the Consultant as follows:

i. During the three (3) month period following the Installation Date and upon Consultant's receipt of a written request from the City at least fourteen (14) calendar days in advance of court proceeding, Consultant shall provide expert witnesses *for* use by the City in prosecuting Violations; provided, however, the City shall use reasonable best efforts to seek judicial notice in lieu of requiring Consultant to provide such expert witnesses; and

ii. During the three (3) month period following the Installation Date, Consultant 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 City with respect to the Photo Red Light Enforcement Program.

## EXHIBIT "A"

2. **Designated Intersection Approaches:** This Agreement is for the implementation of up to thirty (30) intersections. Identification of enforced intersections will be based on mutual agreement between Consultant and the City as warranted by community safety and traffic needs.

3. **Construction Obligations & Timelines. Timeframe for Installation.** Consultant will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Consultant and the City. Consultant will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement. Consultant shall utilize subcontractors licensed by the State of California. Consultant will use reasonable commercial efforts to install and activate the first specified intersection within forty-five (45) days subsequent to receipt of permits.

a. **CONSULTANT OBLIGATIONS.** Consultant shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Consultant's sole expense):

i. Appoint the Consultant Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Consultant's Project Manager;

ii. Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the city traffic engineer;

iii. 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

iv. Seek approval from the relevant 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.

v. Finalize the acquisition of the Approvals;

vi. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches (under the supervision of the City);

vii. 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;

viii. Install and test the functionality of the Designated Intersection Approaches with the Photo Red Light System and establish fully operational Violation processing capability with the Photo Red Light System;

ix. Implement the use of the Photo Red Light System at each of the Designated Intersection Approaches;

x. Consultant shall comply with City-developed guidelines for processing and storage of confidential information as those guidelines may be revised from time to time; and

## EXHIBIT "A"

xi. In order to ensure that City maintains overall control and supervision of the system, Consultant shall maintain records of the following services, and shall deliver quarterly reports to City summarizing: (A) regular inspections of the equipment; and (B) certification of proper installation and calibration, and operation of equipment.

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

- i. Appoint the Police Project Manager;
- ii. Assist Consultant in obtaining the Drawings from the relevant Governmental Authorities;
- iii. Notify Consultant of any specific requirements relating to the construction and installation of any Designated Intersection Approaches or the implementation of the Redlight Photo Enforcement Program;
- iv. Provide reasonable access to the City's properties and facilities in order to permit Consultant to install and test the functionality of the Designated Intersection Approaches and the Redlight Photo Enforcement Program;
- v. 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;
- vi. Consultant shall not open the Traffic Signal Controller Boxes without a representative of City Traffic Engineering present.
- vii. The provision of all necessary electrical services to the Designated Intersection Approaches will be the sole responsibility of the City.
- viii. In the event that images of a quality suitable for the Police Project Manager to identify Violations cannot be reasonably obtained without the use of flash units, Consultant shall provide and install such flash units.
- ix. The Police Project Manager (or a reasonable alternate) shall be available to the Consultant Project Manager each day, on a reasonable best efforts basis.

#### 4. Business Assumptions.

a. Consultant's construction can 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 equally shared by Consultant and the City. Any such additional conduit shall become the exclusive property of the City upon termination of this Agreement.

b. As described in Exhibit C, Compensation, item titled Cost Neutrality, the City shall be obligated to pay the Fixed Fee invoiced by Consultant to the extent the gross cash received by the City from Violations is at least equal to the Fixed Fee. The City agrees to pay Consultant within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for payments 60 days past due.



## EXHIBIT "A"

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

d. Each year the pricing will increase by the Consumer Price Index. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for U.S. City average. The index to be used is the "West A". (1,500,000 residents or more).

**5. Additional Rights & Obligations.** Consultant and the City shall respectively have the additional rights and obligations set forth below:

a. Consultant shall assist the City in public information and education efforts

b. Consultant 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. The City hereby acknowledges and agrees that the City shall be solely responsible for installing such Signage.

c. The City shall be solely responsible for the installation of LED lights at the Designated Intersection Approaches.

d. The Consultant's Project Manager (or reasonable alternate) and the Police Project Manager shall meet as is reasonably necessary to facilitate the successful implementation of the project. The dates, times and places of the meetings shall be mutually agreed upon by both party.

e. The City shall not access the Photo Red Light System or use the Redlight Photo Enforcement Program in any manner other than prescribe by law or in a manner that restricts or inhibits any other person from using the Redflex System or the Redflex Photo Enforcement Program with respect to any Intersection Approaches constructed or maintained by Consultant for such person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Photo Enforcement Program, 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 System, or (iii) any materials or information not intentionally made available by Consultant to the City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other Person to do any of the foregoing.

f. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Redlight Photo Enforcement Program.

g. The Consultant and the City 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, Consultant and the City shall each obey any and all such rules and regulations.

h. The City shall promptly reimburse Consultant for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly by the City, or any of its employees, contractors or agents.

**EXHIBIT "A"**

**In the event of a conflict in terms and conditions between documents, the following precedence shall apply:**

- 1. City of Corona Professional Services Agreement dated 6/6/08**
- 2. City of Corona Purchase Order**
- 3. Consultants Response to RFP No. 08-258JB**

**EXHIBIT "B"**

**SCHEDULE OF SERVICES**

Consultant will be required to mutually agree to an implementation plan.  
Consultant will be responsible for assigning an employee as the Consultant Project Manager and a project implementation team.

**In the event of a conflict in terms and conditions between documents, the following precedence shall apply:**

- 1. City of Corona Professional Services Agreement dated 6/6/08**
- 2. City of Corona Purchase Order**
- 3. Consultants Response to RFP No. 08-258JB**

## EXHIBIT "C"

### COMPENSATION

#### Fixed Fee

Commencing on the expiration of the Warning Period for the first Designated Intersection Approach and the Installation Date for each subsequent Designated Intersection Approach, City shall be obligated to pay Consultant a fixed fee of Five Thousand Six Hundred and Seventy-five (\$5,675) Dollars per month for each Designated Intersection Approach with up to two (2) contiguous lanes and Five Thousand Nine Hundred and Ninety-five (\$5,995) Dollars per month for three (3) or more contiguous lanes per Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

#### Implementation

The fees paid to Consultant under this Agreement are 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 Consultant, 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. As described in Exhibit A, services include Training, Violation Processing, Expert Witness Testimony, and Maintenance.

#### Cost Neutrality

**Cost neutrality is assured to City. Cost neutrality is assured to City using this methodology as City will never pay Consultant more than actual cash received.**

Each month after the expiration of the Warning Period, City and Consultant shall compare the aggregate revenue received from all Citations ("Revenue") to the total amount invoiced by Consultant for the Fixed Fee ("Amount Invoiced") during the previous month. If the Amount Invoiced exceeds the Revenue, then City shall only be obligated to pay the Revenue to Consultant and the difference between the Revenue and the Amount Invoiced for that month will carry over to the next month as a deficit ("Deficit Amount"). In the next following month and each month thereafter, if the Revenue exceeds the Amount Invoiced, Customer shall pay the Amount Invoiced plus all or any portion of the Deficit Amount, as applicable, to the extent that there is sufficient Revenue to pay all or any portion of the Deficit Amount. In the event that this Agreement ends or is terminated and a Deficit Amount is still owed to Consultant, all

EXHIBIT "C"

subsequent receipts from Citations issued by Consultant for a period of 12 months from date of termination will be applied to such Deficit Amount and paid to Consultant

1. Designated Intersection approaches can be relocated to a new site at the City's request and expense.

2. **Equitable Cost Recovery by Redflex Upon Termination Without Cause By the City.** In the event the City exercises its right to terminate this Agreement under Section 3.5.1.2, Consultant shall be entitled to a cancellation fee for each Designated Intersection 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 Photo Red Light System at all Designated Intersection Approaches where such system(s) have been installed prior to the effective date of termination (the "Reimbursable Costs"). Consultant shall provide an itemized statement 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 Consultant's 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:

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 = 12 (36 months – 24 months transpired under the Agreement).

Y = 36 (number of months of the Agreement).

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

**EXHIBIT "C"**

$$X/Y * Z = (12/36 * \$60,000)$$

Calculation of Fee = \$20,000

3. Cost neutrality is guaranteed except as follows:
- If police routinely fail to review violations by the due date
  - If systems are de-activated due to Customer requirement
  - If the Customer fails to maintain the minimum yellow light change interval as established by Section 21455.7 of the California Vehicle Code (CVC).

**BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:**

1. Each year the pricing will increase by the Consumer Price Index ("CPI"), as published by the Bureau of Labor Statistics for the United States Department of Labor. If the Index 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 Index had not been discontinued or revised. Any increase in compensation, other than as provided in the Agreement, shall be limited to the aforementioned CPI increase.

**In the event of a conflict in terms and conditions between documents, the following precedence shall apply:**

1. **City of Corona Professional Services Agreement dated 6/6/08**
2. **City of Corona Purchase Order**
3. **Consultants Response to RFP No. 08-258JB**

**EXHIBIT "D"**

**FORM OF ACKNOWLEDGMENT AND CONSENT**

This Acknowledgement and Consent, dated as of November 5, 2008, is entered into by and between the City of Corona (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the City of Corona and Redflex Traffic Systems, Inc., for Photo Red Light Enforcement Program and Violation Processing Program, dated as of November 5, 2008 by and between the City and Redflex (the "Agreement").

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

**EXHIBIT "D"**

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

**"CITY"**  
**CITY OF CORONA**

By: [Signature]  
City Manager  
Dated: November 5, 2008

**"REFLEX TRAFFIC SYSTEM INC"**  
**NAME OF SERVICE PROVIDER**

By: [Signature]  
Title: Cristina Weekes  
Dated: Oct 17, 2008

**ATTEST**  
[Signature]  
City Clerk  
Dated: November 5, 2008

**APPROVED AS TO FORM:**  
[Signature]  
Corona City Attorney  
Dated: November 5, 2008