

8.3. **Overhead Cost Deduction.** Prior to calculating Cost Neutrality as outlined in Section 8.2, the City will deduct \$500.00 per month per designated intersection approach from the Gross Cash received.

8.4 In the event that a monthly invoice balance remains unpaid due to deficit in Gross Cash received from the Court, CITY will provide CONSULTANT with an accounting of such gross receipts supporting the amount withheld.

8.5 Payment will only be made by CITY up to the amount of cash received by CITY from the County through the collection of red light citation up to the amount currently due.

8.6 CITY will open special revenue account and monthly payments to CONSULTANT will come only from the available balance in that account up to the monthly amount currently due, including any unpaid prior invoiced amounts.

8.7 If CITY requires additional services not included in this Agreement, CONSULTANT and CITY shall negotiate the additional services, mutually agree on the amount of additional compensation, and memorialize the terms in an amendment to this Agreement.

8.6 **Taxes.** CONSULTANT shall pay all applicable (federal, state, county, local, CITY) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon CONSULTANT's services under this Agreement.

8.7 **Invoices.** CONSULTANT shall submit an original, itemized invoice to CITY for approval, before receiving compensation. CONSULTANT shall submit the invoice at no more than monthly intervals. All invoices must include a summary of total costs, description of the Services performed, a brief itemization of costs associated with each task or phase, and the total phase or project costs to date.

8.8 **Business Assumptions for All Pricing Options.**

(A) CONSULTANT's construction will be able to utilize existing conduit for installation where space is available.

9.0 AUDIT BY CITY

9.1. During this Agreement's Term and for a period of four (4) years after the expiration, cancellation, or termination of this Agreement, or any extension of it, CONSULTANT shall:

(A) Keep and maintain, in their original form, all records, books, papers, or documents related to CONSULTANT's performance of this Agreement; and

(B) Permit CITY or its authorized representatives, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to CONSULTANT's performance of this Agreement

including, but not limited to: direct and indirect charges, and detailed documentation, for work CONSULTANT has performed or will perform under this Agreement. Any such audit shall be conducted upon reasonable prior notice at mutually convenient times and during CONSULTANT'S normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by CITY. In the event any such audit establishes any underpayment of any payment payable by CONSULTANT to CITY pursuant to this Agreement, CONSULTANT shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that CONSULTANT has underpaid any payment, CITY shall promptly refund to CONSULTANT the amount of the excess.

10.0 DATA, RECORDS, PROPRIETARY RIGHTS

10.1. **Copies of Data.** CONSULTANT shall provide CITY with copies or originals of all data that CONSULTANT collects in relation to all work associated with this Agreement. Data that CONSULTANT collects, stores, or provides must be in a form acceptable to, and agreed upon by, CITY.

10.2. **Ownership and Use.** Unless CITY states otherwise in writing, each document— including, but not limited to, each report, draft, record, drawing, or specification (collectively, “Work Product”) — that CONSULTANT prepares, reproduces, or causes its preparation or reproduction for this Agreement is CITY's exclusive property. CONSULTANT acknowledges that its use of the Work Product is limited to the purposes contemplated by the Scope of Work. CONSULTANT makes no representation of the Work Product's application to, or suitability for use in, circumstances not contemplated by the Scope of Work.

10.3. **Intellectual Property.** If CONSULTANT uses or incorporates patented, trademarked, or copyrighted work, ideas, or products— in whole or in part— into CONSULTANT's work product, CONSULTANT represents that:

- (A) CONSULTANT holds the patent, trademark, or copyright to the work, idea, or product; or
- (B) CONSULTANT is licensed to use the patented, trademarked, or copyrighted work, idea, or product.

10.3.1 Unless CITY states otherwise in writing, all proprietary rights or intellectual property rights, including copyrights, that arise from creation of the work under this Agreement vest in CITY. CONSULTANT waives and relinquishes all claims to proprietary rights and intellectual property rights, including copyrights, in favor of CITY. CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, and representatives from and against all liability, claims, suits, demands, damages, royalties, Fines, penalties, costs, or expenses arising out of or alleging any infringement or misappropriation of a patent, copyright, trade secret, trade name, trademark, or other intellectual property right or proprietary right.

10.4. **Confidentiality.** CONSULTANT shall not use any information that it obtains from performing the work set forth in this Agreement for any purpose other than for fulfillment of CONSULTANT's Scope of Work. Without CITY's prior written authorization, CONSULTANT shall not disclose or publish— or authorize, permit, or allow others to disclose or publish— design data, drawings, specifications, reports, or other information relating to the Services or the work that CITY assigns to CONSULTANT or to which CONSULTANT has access.

10.5. **Public Records Act.** CONSULTANT acknowledges that this Agreement is a public record. This Agreement, its Exhibits, and all documents produced under this Agreement are subject to the California Public Records Act (Government Code Sections 6250 *et seq.*), including its exemptions. If CITY receives a Public Records Act request, CONSULTANT shall identify— within the time period CITY specifies— all records, or portions of them, that CONSULTANT believes are exempt from production under the Public Records Act. If CONSULTANT claims a privilege against public disclosure or otherwise objects to the records' disclosure, then CITY may either decline to produce the requested information or redact portions of the documents and produce the redacted records. If CONSULTANT fails to identify one or more protectable documents, or if CONSULTANT fails to respond to CITY within the time period that CITY sets, in its sole discretion CITY may produce the records— in whole, in part, or redacted— or may decline to produce them. CONSULTANT may seek protection from disclosure by timely applying for relief in a court of competent jurisdiction. CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, Fines, penalties, costs, or expenses arising out of or alleging CITY's refusal to publicly disclose one or more records that CONSULTANT identifies as protectable, or asserts is protectable.

11.0 DEFAULT, REMEDIES, AND TERMINATION

11.1. **Default.** Default under this Agreement occurs upon any one or more of the following events:

(A) CONSULTANT refuses or fails— whether partially, fully, temporarily, or otherwise— to:

- (1) Provide or maintain enough properly trained and licensed personnel to perform the Services that this Agreement requires;
- (2) Pay for, obtain, maintain, or renew the insurance policies or coverages that this Agreement requires;
- (3) Comply with indemnification, defense, or hold harmless provisions that this Agreement requires; or

(B) CONSULTANT, or its personnel, or both— whether partially, fully, temporarily, or otherwise:

- (1) Disregards or violates a law, ordinance, rule, procedure, regulation, or order;
- (2) Refuses or fails to pay for, obtain, maintain, or renew requisite licenses;
- (3) Refuses or fails to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement;
- (4) Commits an unlawful, false, fraudulent, dishonest, deceptive, or dangerous act while performing the Services under this Agreement;

(C) CONSULTANT:

- (1) Or another party for or on behalf of CONSULTANT: institutes proceedings under any bankruptcy, reorganization, receivership or other insolvency; or assigns or transfers assets to its creditors;
- (2) Delegates— whether in whole, in part, temporarily, or otherwise— its duties or obligations under this Agreement, without notifying CITY, or without CITY’s written authorization;
- (3) Assigns, transfers, pledges, hypothecates, grants, or encumbers— whether in whole, in part, temporarily, or otherwise— this Agreement or any interest in it, without notifying CITY, or without CITY’s written authorization;
- (4) Or one of its partners, directors, officers, or general managers, or a person who exercises managerial authority on CONSULTANT’s behalf, is convicted under state or federal law, during this Agreement’s Term, of embezzlement, theft, fraud, forgery, bribery, deceptive or unlawful business practices, perjury, falsifying or destroying records or evidence, receiving stolen property, or other offense indicating a lack of business integrity or business honesty;

(D) Any other justifiable cause or reason, as reasonably determined by the City Manager, or a designee.

11.2. **Notice of Default.** If CITY deems that CONSULTANT is in Default, or that CONSULTANT has failed in any other respect to satisfactorily perform the Services specified in this Agreement, CITY may give written notice to CONSULTANT specifying the Default(s) that CONSULTANT shall remedy within thirty (30) 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 receiving the notice. The Notice of Default will set forth one or more bases for any dissatisfaction and may suggest corrective measures.

11.3. **Remedies upon Default.** Within the time limit set forth in Section 11.2 after receiving CITY's Notice of Default, if CONSULTANT refuses or fails to remedy the Default(s), or if CONSULTANT does not commence steps to remedy the Default(s) to CITY's reasonable satisfaction, CITY may exercise any one or more of the following remedies:

(A) CITY may, in whole or in part and for any length of time, immediately suspend this Agreement until such time as CONSULTANT has corrected the Default;

(B) CITY may provide for the Services either through its own forces or from another consultant, and may withhold any money due or (that may become owing to) CONSULTANT for a task related to the claimed Default;

(C) CITY may withhold all moneys, or a sum of money, due CONSULTANT under this Agreement, which in CITY's sole determination, are sufficient to secure CONSULTANT's performance of its duties and obligations under this Agreement;

(D) CITY may immediately terminate the Agreement;

(E) CITY may exercise any legal or equitable remedy, or both, including, but not limited to, filing and action in court:

(1) Seeking CONSULTANT's specific performance of all or any part of this Agreement; or

(2) Recovering damages for CONSULTANT's Default, breach, or violation of this Agreement; or

(F) CITY may pursue any other available, lawful right, remedy, or action.

11.4. **Termination for Convenience.** Independent of the remedies provided in Section 11.3, CITY may elect to terminate this Agreement at any time upon fifteen (15) prior written notice. Upon termination, CONSULTANT shall receive compensation only for that work which CONSULTANT had satisfactorily completed to the termination date. CITY shall pay CONSULTANT for de-mobilization, takedown, disengagement, wind-down, or other costs incurred arising out of this Agreement's termination.

11.5 **Termination for Cause-Pilot Project Only.** The Parties agree that either Party shall have the right to terminate this Agreement immediately by five (5) days written notice to the other if any of the following events occur: (i) state statutes are amended to prohibit or substantially change the operation of photo red light enforcement systems; or (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the

Redflex System of photo red light enforcement are inadmissible in evidence. In the event of a termination due to a default under Section 11.1., CITY shall be relieved of any further obligations for payment to CONSULTANT other than as specified in Section 8.0. The rights to terminate this Agreement given in this Section 11.5 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

11.6 **Procedures Upon Termination.** The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in Section 5.2, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and

11.6.1 CONSULTANT shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Photo Red Light Enforcement Program, (ii) promptly deliver to the CITY any and all Proprietary Property of CITY provided to CONSULTANT pursuant to this Agreement, (iii) promptly deliver to CITY a final report to CITY regarding the collection of data and the issuance of Citations in such format and for such periods as CITY may reasonably request, and which final report CONSULTANT shall update or supplement from time to time when and if additional data or information becomes available, (iv) promptly deliver to CITY a final invoice stating all fees and charges properly owed by CITY to CONSULTANT for work performed and Citations issued by CONSULTANT prior to the termination, and (v) provide such assistance as CITY may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement.

11.6.2 CITY shall (i) immediately cease using the Photo Red Light Enforcement Program, accessing the Redflex System and using any other Intellectual Property of CONSULTANT, (ii) promptly deliver to CONSULTANT any and all Proprietary Property of CONSULTANT provided to CITY pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by CITY to CONSULTANT for work performed and Citations issued by CONSULTANT prior to the termination.

11.6.3 Unless CITY and CONSULTANT have agreed to enter into a new agreement relating to the Photo Red Light Enforcement Program or have agreed to extend the Term of this Agreement, CONSULTANT shall, within 45 days remove any and all Equipment and other materials of CONSULTANT installed in connection with CONSULTANT's performance of its obligations under this Agreement, including but not limited to housings, poles, pole foundations and camera systems, and CONSULTANT shall restore the Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement. As an option, CITY may purchase some or all of the equipment including but not limited to signs, poles and camera housings. Should CITY desire to purchase the existing street hardware, each pole plus pole base shall cost \$350.00 and each camera enclosure (housing only) shall cost \$9,490.00.

12.0 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 12**, 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 mediation.

13.0 INSURANCE

13.1. When CONSULTANT signs and delivers this Agreement to CITY, CONSULTANT also shall deliver insurance forms that fully meet the requirements of, and contain provisions entirely consistent with, all of the "Insurance Requirements," which are attached as "Exhibit D" to this Agreement and are incorporated into it by this reference.

13.2. This Agreement's insurance provisions:

(A) Are separate and independent from the indemnification and defense provisions in Article 14 of the Agreement; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 14 of the Agreement.

14.0 INDEMNITY

14.1. To the maximum extent permitted by law— including, but not limited to, California Civil Code Section 2778— CONSULTANT shall indemnify, defend, and hold harmless CITY, its officers, agents, employees, and representatives (individually and collectively, "CITY Indemnitee") from and against all liability, suits, actions, proceedings, judgments, claims, losses, liens, damages, injuries (collectively, "liability") [whether the liability is in contract or in tort, including bodily injury, personal injury, accidental death, or property damage], fees, costs, sums, penalties, Fines, and expenses [including attorney's fees, litigation, arbitration, mediation, appeal expenses] (collectively, "expense") that in whole or in part arise out of, pertain to, or relate to an act, error, or omission of CONSULTANT, or of an employee, agent, Subconsultant of CONSULTANT, or of a person whom CONSULTANT employs or hires (individually and collectively, "CONSULTANT Indemnitor").

14.2. To the extent that it is covered by CONSULTANT Indemnitor's insurance, CONSULTANT Indemnitor's obligation to defend a City Indemnitee under this Article:

(A) Means that CONSULTANT Indemnitor shall provide and pay for legal counsel, acceptable to CITY, for the CITY Indemnitee;

(B) Occurs when a claim, suit, complaint, or action against a City Indemnitee arises out of, pertains to, relates to, or asserts an act, error, or omission of CONSULTANT Indemnitor; and

(C) Arises regardless of whether a claim, suit, complaint, or action specifically names or identifies CONSULTANT Indemnitor.

14.3. Paragraph 14.2 does not limit or extinguish CONSULTANT Indemnitor's obligation to reimburse CITY for the costs of defending a CITY Indemnitee against any liability within the scope of this Article.

14.4. If CONSULTANT subcontracts all or any portion of the Services under this Agreement, CONSULTANT shall provide CITY with a written agreement from each Subconsultant, who must indemnify, defend, and hold harmless CITY Indemnitee under the terms in this Article.

14.5. CONSULTANT's obligation to indemnify, defend, and hold harmless CITY will remain in effect and will be binding upon CONSULTANT whether the liability or the expense accrues, or is discovered, before or after this Agreement's expiration, cancellation, or termination.

14.6. Except for Paragraph 14.2, this Article's indemnification and defense provisions are separate and independent from the insurance provisions in Article 13. In addition, the indemnification and defense provisions in this Article 14:

(A) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in Article 13; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in Article 13.

15.0 CONFLICT OF INTEREST

15.1. CONSULTANT affirms that to the best of CONSULTANT's knowledge, no actual or potential conflict exists between CONSULTANT, CONSULTANT's principals, officers, members, shareholders, family members, business, or financial interests and the Services that CONSULTANT will provide under this Agreement. During this Agreement's Term, CONSULTANT shall inform CITY regarding any possible conflict of interest that may arise as a result of any change in circumstances.

16.0 GENERAL PROVISIONS

16.1. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Parties. This Agreement supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written. Neither CONSULTANT nor CITY has made any promises or representations, other than those contained in this Agreement or those implied by law.

16.2. **Interpretation.** This Agreement is the product of negotiation and compromise by both Parties. Every provision in this Agreement must be interpreted as though the Parties equally participated in its drafting. Therefore, despite the provisions in California Civil Code Section 1654, if this Agreement's language is uncertain, the Agreement must not be construed against the Party causing the uncertainty to exist. In interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachments. If a conflict occurs between a provision in this Agreement and a provision in an attachment, the following order of precedence applies:

- (1) The Agreement.
- (2) Exhibit D.
- (3) Exhibit C and E together
- (4) Exhibit A.
- (5) Exhibit B.

16.3. **Headings.** All headings or captions in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any term, condition, or provision.

16.4. **Governing Law.** California's laws govern this Agreement's construction and interpretation. Unless this Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendments, modifications, and successor legislation.

16.5 **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.

16.6 **Severability.** The invalidity, in whole or in part, of any term of this Agreement will not affect this Agreement's remaining terms.

16.7 **Attorney's Fees.** If CITY or CONSULTANT brings an action at law or in equity to enforce or interpret one or more provisions of this Agreement, the "prevailing party" is entitled to "reasonable attorney's fees" in addition to any other relief to which the prevailing party may be entitled. A "prevailing party" has the same meaning as that term is defined in California Code of Civil Procedure Section 1032(a)(4). "Reasonable attorney's fees" of the City Attorney's office means the fees regularly charged by private attorneys who:

(A) Practice in a law firm located in Los Angeles County; and

(B) Have an equivalent number of years of professional experience in the subject matter area of the law for which the City Attorney's services were rendered.

16.8 **Waiver of Breach.** If a Party waives the other Party's breach of a term in this Agreement, that waiver is not treated as waiving a later breach of the term and does not prevent the Party from later enforcing that term, or any other term. A waiver of a term is valid only if it is in writing and signed by the Party waiving it. This Agreement's duties and obligations:

(A) Are cumulative (rather than alternative) and are in addition to (rather than a limitation on) any option, right, power, remedy, or privilege; and

(B) Are not exhausted by a Party's exercise of any one of them.

16.9 **Further Assurances.** Upon CITY's request at any time, CONSULTANT shall promptly:

(A) Take further necessary action; and

(B) Sign, acknowledge, and deliver all additional documents as may be reasonable, necessary, or appropriate to carry out this Agreement's intent, purpose, and terms.

16.10 **Assignment.**

(A) This Agreement does not give any rights or benefits to anyone, other than to CITY and CONSULTANT. All duties, obligations, and responsibilities under this Agreement are for the sole and exclusive benefit of CITY and CONSULTANT, and are not for the benefit of another person, entity, or organization. Without CITY's prior written authorization, CONSULTANT shall not do any one or more of the following:

(1) Assign or transfer a right or interest— whether in whole, in part, temporarily, or otherwise— in this Agreement; or

(2) Delegate a duty or obligation owed— whether in whole, in part, temporarily, or otherwise— under this Agreement.

(B) Any actual or attempted assignment of rights or delegation of duties by CONSULTANT is wholly void and totally ineffective for all purposes; and does not postpone, delay, alter, extinguish, or terminate CONSULTANT's duties, obligations, or responsibilities under this Agreement.

(C) Notwithstanding anything in this Section 16.10 to the contrary, CITY hereby acknowledges and agrees that the execution (as outlined in Exhibit G), delivery and performance of CONSULTANT's rights 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”). 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 CITY’s prior written approval, which approval shall not be unreasonably withheld or delayed. CITY further acknowledges and agrees that in the event that CONSULTANT provides written notice to CITY that it intends to Transfer all or any of CONSULTANT’s rights pursuant to this Agreement, and in the event that CITY fails to provide such approval or fails to object to such Transfer within forty-five (45) business days after its receipt of such notice from CONSULTANT, for the purposes of this Agreement, CITY shall be deemed to have consented to and approved such Transfer by CONSULTANT.

(C) If CITY consents to an assignment of rights, or a delegation of duties, or both, CONSULTANT’s assignee or legal representative shall agree in writing to personally assume, perform, and to be bound unconditionally by the covenants, obligations, terms, and conditions in this Agreement.

16.11. **Successors and Assigns.** Subject to the provisions in Paragraph 14.9, this Agreement is binding on the heirs, executors, administrators, successors, and assigns of the respective Parties.

16.12. **Time is of the Essence.** Except when this Agreement states otherwise, time is of the essence in this Agreement. CONSULTANT acknowledges that this Agreement’s time limits and deadlines are reasonable for CONSULTANT’s performing the Services under this Agreement. Unless this Agreement specifies otherwise, any reference to “day” or “days” means calendar and not business days. Any reference to the time of day refers to local time for Glendale, California.

16.13. **Recycled Paper.** CONSULTANT shall endeavor to submit all reports, correspondence, and documents related to this Agreement on recycled paper.

16.14. **Notices.**

(A) The Parties shall submit in writing all notices and correspondence that this Agreement requires or permits, and shall deliver the notices and correspondence to the places set forth below. The Parties may give notice by:

- (1) Personal delivery;
- (2) U.S. mail, first class postage prepaid;
- (3) “Certified” U.S. mail, postage prepaid, return receipt requested; or

(4) Facsimile.

(B) All written notices or correspondence sent in the described manner will be presumed "given" to a Party on whichever date occurs earliest:

- (1) The date of personal delivery;
- (2) The third (3rd) business day following deposit in the U.S. mail, when sent by "first class" mail;
- (3) The date on which the Party or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by "certified" mail; or
- (4) The date of transmission, when sent by facsimile.

(C) At any time, by providing written notice to the other Party, CITY or CONSULTANT may change the place, or facsimile number, for giving notice.

CITY: City of Glendale
Police Department
131 North Isabel Street
Glendale, CA 91206
Attn: Carl Povalitis
Tel. No. _____
Fax. No. _____

CONSULTANT:
Redflex Traffic Systems, Inc.
15020 North 74th Street
Scottsdale, AZ 85260
Attention: Ms. Karen Finley
Facsimile: (480) 607-2287
Tel. No. (480) 998-4442

16.15. **Counterparts.** This Agreement may be executed in counterparts, each of which is an original, but all of which constitutes one and the same document. The Parties shall sign a sufficient number of counterparts, so that each Party will receive a fully executed original of this Agreement.

16.16. **Representations – Authority.** The Parties make the following representations:

(A) They have read this Agreement, fully understand its contents, and have received a copy of it;

(B) Through their duly authorized representative, they are authorized to sign this Agreement, and they are bound by its term; and

(C) They have executed this Agreement on the date opposite their signature.

16.17 CONSULTANT's Warranties.

16.17.1 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 Redflex System, subject to applicable law, in compliance with all specifications provided to CONSULTANT by CITY.

16.17.2 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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.

16.18 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.

16.19 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.

16.20 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.

