

AGREEMENT WITH REDFLEX TRAFFIC SYSTEMS, INC. FOR THE PROVISION OF TRAFFIC CONTROL EQUIPMENT AND SUPPORT SERVICES

This Agreement is made and entered into as of the date of execution by the City of Poway ("City"), a municipal corporation, and Redflex Traffic Systems, Inc. ("Consultant") to provide professional services to the City for the equipment, installation and maintenance ("Professional Services") for red light photo enforcement ("Project").

RECITALS

The City requires outside assistance to provide red light enforcement cameras and data management system.

Consultant warrants that Consultant is capable of providing such equipment.

The purpose of this Agreement is to enable the City to enforce red light violations through a cost-effective camera enforcement program.

At the City's sole discretion, the City seeks to use Consultant's technology and equipment to assist the City's law enforcement agency in the determination whether a red light violation exists at designated intersections.

Consultant warrants it has the expertise, experience, patents, qualifications and personnel necessary to provide the Professional Services for the Project.

Now therefore, in consideration of these recitals and the mutual covenants contained herein, the City and Consultant agree as follows:

1. Scope of Services.

Consultant shall provide services as described in Exhibit "A" entitled "Special Provisions", attached hereto and made a part hereof.

2. Compensation and Reimbursement.

City shall compensate and reimburse Consultant as provided in Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

3. Term of Agreement.

The term of this Agreement shall be as described on Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

4. Termination.

This Agreement may be terminated for cause by City. This Agreement may be terminated by City for cause in the event of a material breach of this Agreement, misrepresentation by Consultant in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by City. Termination for cause shall be effected by delivery of written notice of termination to Consultant. Such termination shall be effective upon delivery of said notice.

This Agreement may be terminated without cause by the City. Termination without cause shall be effective only upon 60-day written notice to Consultant. During said 60-day period Consultant shall perform all consulting services in accordance with this Agreement. City agrees to reimburse the Consultant for all unamortized direct costs associated with the installation and management of the City's program.

5. Confidential Relationship.

City may from time to time communicate to Consultant certain information to enable Consultant to effectively perform the services. Consultant shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of the City. Consultant shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Paragraph 5, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of Consultant, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of Consultant without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to Consultant by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

Consultant shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this contract without the prior written consent of the City. In its performance hereunder, Consultant shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

6. Office Space and Clerical Support.

Consultant shall provide its own office space and clerical support at its sole cost and expense.

7. Covenant Against Contingent Fees.

Consultant declares that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona

fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, City shall have the right to annul this Agreement without liability; or, at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

8. Ownership of Documents.

All memoranda, reports, plans, specifications, maps and other documents prepared or obtained under the terms of this Agreement shall be the property of City and shall be delivered to City by Consultant upon demand.

9. Conflict of Interest and Political Reform Act Obligations.

During the term of this Agreement Consultant shall not act as consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the City of Poway. Consultant shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. Consultant shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the Consultant has a financial interest as defined in Government Code Section 87103. Consultant represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the City.

Consultant shall comply with all of the reporting requirements of the Political Reform Act and local ordinance. Specifically, Consultant shall file Statements of Economic Interest with the City Clerk of the City of Poway in a timely manner on forms which Consultant shall obtain from the City Clerk.

10. No Assignments.

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which City, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

11. Maintenance of Records.

Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the contract period and for three (3) years from the date of final payment under this Agreement, for inspection by City and copies thereof shall be furnished, if requested.

12. Independent Contractor.

At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the City of Poway. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Consultant accomplishes such services.

13. Licenses, Permits, Etc.

Consultant represents and declares to City that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for Consultant to practice its profession.

14. Consultant's Insurance.

Consultant shall provide insurance as set forth in Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

15. Liability.

Notwithstanding any other provision contained in this Agreement, Consultant shall be responsible for all injuries to persons and for all damage to real or personal property of City or others, caused by or resulting from the wrongful act or negligent acts, errors, or omissions of itself, its employees, or its agents during the progress of, or in connection with, the rendition of services hereunder. Consultant shall hold harmless and indemnify City, and all officers and employees of City and City from all costs and claims for damages to real or personal property, or personal injury to any third party, including reasonable attorney fees resulting from the negligent performance of Consultant, its employees, or its agents, under this Agreement.

16. Consultant Not an Agent.

Except as City may specify in writing, Consultant shall have no authority, expressed or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, expressed or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

17. Personnel.

Consultant shall assign qualified and certified personnel to perform requested services. The City shall have the right to review and disapprove personnel for assignment to City projects.

City shall have the unrestricted right to order the removal of any person(s) assigned by Consultant by giving oral or written notice to Consultant to such effect.

Consultant's personnel shall at all times comply with City's drug and alcohol policies then in effect.

18. Notices.

Notices shall be given as described on Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

19. Gender.

Whether referred to in the masculine, feminine, or as "it," "Consultant" shall mean the individual or corporate consultant and any and all employees of consultant providing services hereunder.

20. Entire Agreement.

This Agreement shall constitute the entire understanding between Consultant and City relating to the terms and conditions of the services to be performed by Consultant.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first above written.

CONSULTANT:
Redflex Traffic Systems, Inc.

By Karen Ailey 10-22-04
(Signature) Date
Vice President/Secretary
(Title)

CITY:
City of Poway

By James L. Bowersox
James L. Bowersox Date
City Manager

APPROVED AS TO FORM:

Tamara A. Smith
Tamara A. Smith, City Attorney

EXHIBIT "A"
SPECIAL PROVISIONS

1.0 TERM OF AGREEMENT

1.1 This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective for a period of three (3) years from the program's installation date ("Initial Term"). Upon expiration of the Initial Term, the City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive one (1) year periods (each a "Renewal Term" and collectively with the Initial Term, the "Term").

1.2 The City may extend the term of this Agreement, as provided in Section 1.1, by providing written notice to Consultant not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.

2.0 PAYMENT FOR EQUIPMENT AND SERVICES

City shall pay Consultant a fee as follows: \$5,370 per month per Designated Intersection Approach. Consultant's fee shall include and Consultant shall be responsible for the payment of all federal, state, and local taxes of any kind which are attributable to the compensation received. Consultant's fee shall also include expenses, including lodging, telephone, and travel (air, auto, rail) necessarily incurred in performance of the services.

3.0 CONSULTANT'S OBLIGATIONS

3.1 At the direction of the City, Consultant shall provide the City with the specific equipment and shall perform the Professional Services, at Consultant's sole expense, unless expressly stated below, to wit, Consultant shall:

3.1.1 Appoint the Consultant's project manager and a project implementation team of a minimum of one (1) and up to four (4) people, as necessary, to assist the Consultant's project manager;

3.1.2 Conduct video analysis activities for red light violations on all approaches of each designated intersection to develop a baseline of red light violations;

3.1.3 Request current "as-built" electronic engineering drawings ("Drawings") for the Designated Intersection Approaches from the Development Services Department of the City of Poway. A "Designated Intersection Approach" ("Approach") shall be defined as a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which cameras have been installed by Consultant for this Project;

3.1.4 Develop and submit for the City's approval, the construction and installation specifications for the Approaches in reasonable detail, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required;

3.1.5 Obtain approval from the relevant governmental authorities having authority or jurisdiction over the construction and installation specifications for the Approaches (collectively, the "Approvals"), which will include compliance with City permit applications;

3.1.6 Finalize the acquisition of the approvals;

3.1.7 Submit to the City a public awareness strategy ("Awareness Strategy") for the City's consideration, approval and amendment, to include media and educational materials in the event that City elects to conduct a public launch of the Project. Consultant shall assist the City in public information and education efforts, including but not limited to, artwork for utility bill inserts, press releases and schedules for any public launch of Project;

3.1.8 Develop the violation criteria in consultation with the City;

3.1.9 Develop the documentation necessary for enforcement ("Enforcement Documentation"), subject to the City's approval. The City shall not unreasonably withhold approval;

3.1.10 Complete the installation and testing of all necessary equipment, including hardware and software, at the Approaches, under the supervision of the City;

3.1.11 Complete all necessary electrical connection work at the Approaches, including but not limited to the installation of all related equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring. All work shall be performed in compliance with all applicable local, state and federal laws and regulations;

3.1.12 Install and test the functionality of the Approaches with the Consultant system and establish fully operational violation processing capability with the Consultant system;

3.1.13 Implement the use of the Consultant system at each of the Approaches;

3.1.14 Deliver the materials necessary for Project implementation to the City;

3.1.15 Issue warning violation notices for authorized violations which occurred at each Approach during the 30 day Warning Period;

3.1.16 During the Warning Period, Consultant shall provide training (i) for up to fifteen (15) personnel of the City, including City's Officers authorized to review violations under this Project ("Authorized Officers") and other persons involved in the administration of red light photo enforcement, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Consultant system and red light photo enforcement. Training shall include training with respect to the Consultant system and its operations, strategies for presenting violation data in court and judicial proceedings and a review of related Enforcement Documentation;

3.1.17 Interact with court and judicial personnel to address issues regarding the implementation of the Consultant system, the development of a subpoena processing timeline that will permit the offering of violation data in court and judicial proceedings, the establishment of a court hearing schedule for adjudicating upon citations, and coordination between Consultant, the City and juvenile court personnel;

3.1.18 Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch of the Project;

3.1.19 Maintain sole responsibility for the care and maintenance of all materials and equipment used in the performance of this Agreement. All repair and maintenance of camera systems and related equipment will be the sole responsibility of Consultant, including but not limited to maintaining the casings of the cameras included in the Consultant system and all other equipment in a reasonably clean and graffiti-free condition;

3.1.20 Consultant shall not open the traffic signal controller boxes without a representative of City's Signal Consultant or Traffic Engineering present;

3.1.21 Consultant shall be solely responsible for the provision of all necessary communication/broadband services to the designated approaches. Any changes or enhancements including, but not limited to, engineering, design and construction of any modifications to the City's existing electrical equipment provided for under section 5.12, shall be the sole responsibility of the Consultant.

3.1.22 In the event that images of a quality suitable for the Authorized Officer to identify violations cannot be reasonably obtained without the use of flash units, Consultant shall provide and install flash units, at no cost to City; and

3.1.23 Consultant's project manager (or a reasonable alternate) shall be available to the City's Authorized Officer or project manager each day, on a reasonable best efforts basis.

3.2 Consultant shall commence delivery of the equipment as described herein. Consultant shall be responsible for ensuring that all required permits and agreements are in place, including those required by adjacent municipalities, prior to the delivery and installation of the equipment. The equipment shall be fully delivered and installed by Consultant, and instruction and support services shall be provided in accordance with this Agreement; or, upon termination of the Agreement.

3.3 Consultant's performance under this Agreement shall comply with all applicable federal, state, and local laws.

3.4 Consultant shall maintain professional certifications as required by City, state, and federal law.

3.5 Consultant shall take all reasonable steps necessary to satisfy the purpose of this Agreement. Consultant's inability to fulfill the purpose of this Agreement or any obligation under this Section 3.0, shall constitute a material breach.

3.6 Consultant shall provide the City with one (1) laptop computer with a docking station, which includes a 20" flat-panel monitor (Dell #320-1578) and keyboard (Dell SKU310-4170) that meets the San Diego Sheriff's department laptop computer specifications to be utilized to support the Consultant's program. Consultant shall be solely responsible for maintenance and repair of the laptop computer. San Diego Sheriff's department laptop computer specifications as of August 2004: Dell Latitude D800 Laptop

- a. Intel Pentium 4, 1.7 GHZ
- b. 512 MB DDR SDRAM
- c. 15.4" WXGA Display
- d. 40 GB Hard Drive
- e. 8X 24X 24X 24X SWDVD/CDRW Drive

The above specifications are subject to change.

3.7 Construction and Installation Obligations-Timeframe for Installation

3.7.1 At no additional cost to the City, the actual detection system shall be installed, or caused to be installed by the Consultant for the redlight photo enforcement system, to be determined by the City.

3.7.2 Any and all construction and installation activities undertaken by the Consultant for the Redlight Photo Enforcement Program, which may damage the existing traffic signal equipments, including existing loop restoration, shall be completed to the satisfaction of City, and shall be restored at no additional cost to City.

3.7.3 The Consultant shall have each designated intersection installed and activated in phases in accordance with an implementation plan to be submitted by consultant and approved by City.

3.7.4 The Consultant shall use every effort to install the system in accordance with the schedule set forth in the implementation plan submitted by Consultant and approved by the City before commencement of work.

3.7.5 The Consultant shall install and activate the first specified intersection within the first sixty (60) calendar days subsequent to formal project kick-off and the remaining four (4) approaches subject to this Agreement within the first ninety (90) calendar day from the project kick-off date. City may extend the installation periods if the City, at its sole discretion, finds reasonable justification to extend the implementation period.

3.7.6 In order to provide City with timely completion of the Photo Enforcement Program, the Consultant requires that City assist with providing timely approval of City permit requests. City acknowledges the importance of the program. In order to keep the project on schedule, City engineers shall review the Consultant permit requests and all related documentation within five (5) business days. The Consultant shall also review and correct if necessary any redlines within two (2) business days. Permits need to be received within ten (10) business days of first submittal in order to implement the program in a timely manner.

4.0 SUBCONTRACTING

If after written consent by the City is provided, Consultant subcontracts for any of the equipment or support services that are to be provided under this Agreement, Consultant shall be as fully responsible to the City for the acts and omissions of Consultant's subcontractors and for the persons either directly or indirectly employed by the subcontractors as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor of Consultant and the City. Consultant shall bind every subcontractor to the terms of the Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract and approved in writing by the City.

5.0 CITY'S OBLIGATIONS

The City shall do or cause to be done each of the following at City's sole expense, unless otherwise stated below:

5.1 Designate Authorized Officer(s) to review the violation information from the Consultant.

5.2 Appoint a project manager to coordinate the issuance of citations with the Authorized Officer.

5.3 Assist Consultant in obtaining necessary drawings from the relevant governmental authorities.

5.4 Notify Consultant of any specific requirements for the construction and installation of any of the Approaches or for the implementation of the Project.

5.5 Assist Consultant, in its capacity as an independent Consultant, in accessing records data of the Department of Motor Vehicles, to the extent allowed by law.

5.6 Assist Consultant in the permit and approval process required for the Project by governmental agencies.

5.7 Provide reasonable access to the City's properties and facilities so that Consultant may install and test the functionality of the Approaches and Project performance overall.

5.8 Provide reasonable access to City personnel and relay their respective City duties so that Consultant may better tailor the training required under this Agreement.

5.9 Seek approval or amendment of Consultant's proposed Awareness Strategy and provide written notice to Consultant of the quantity of media and program materials that the City requires. The Awareness Strategy shall begin on the date of the first camera installation at an Approach and end one (1) month thereafter.

5.10 Assist Consultant in developing the violation criteria.

5.11 Approve the Enforcement Documentation.

5.12 Provide electrical power to Consultant's installations at each installation location through existing traffic signal system's electrical power meters and electrical pull boxes.

5.13 Provide conversion of existing signal heads to LED signal heads as needed for photo enforcement.

5.14 Coordinate access to the traffic signal system. Consultant shall not at any time modify the City's timing patterns for traffic signals as programmed by the City within the traffic signal controllers.

5.15 Post all signage as required by law.

5.16 Printing and production costs for press released, bid instructions, and other media shall be the responsibility of the City.

6.0 ADDITIONAL RIGHTS AND OBLIGATIONS

6.1 The Consultant Project Manager and the City's Project Manager shall meet at the City's Sheriff building on a weekly basis during the period commencing on the date of execution hereof and ending on the Installation Date, and on a monthly basis for the remainder of the Term, at such times as the Consultant Manager and City's Project Manager shall mutually agree.

6.2 City shall not access the Consultant's System or use the Redlight Photo Enforcement Program in any manner other than prescribed by law and/or contemplated by this Agreement.

6.3 City shall maintain the confidentiality of any username, password or other process or device for accessing the Consultant's System or using the Redlight Photo Enforcement Program.

6.4 The Parties shall adhere to and advise each other in writing of any applicable rules or regulations governing the conduct of the other with respect to the other's property, including but not limited to safeguarding of confidential or proprietary information.

7.0 EXTRA WORK

Consultant shall not provide equipment or perform support services in excess of the Professional Services described herein without the City's prior written approval. All requests for extra work ("Extra Work") shall be by a written change order submitted to and approved by the City prior to the delivery of such equipment or the commencement of such work.

8.0 TERMINATION OF AGREEMENT

8.1 Procedures Upon Termination: The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Upon receipt of the Notice of Termination, the following procedures apply.

8.1.1 Consultant shall:

- (i) immediately cease to provide any work or services in furtherance of the Project;
- (ii) promptly deliver to the City any and all proprietary property of the City provided to Consultant pursuant to this Agreement;
- (iii) promptly deliver to the City a final report detailing Consultant's collection of data and the issuance of citations. The report shall be in such format and for such periods as the City may reasonably request and Consultant shall update or

supplement a final report when and if additional data or information becomes available;

(iv) promptly deliver to City a final invoice itemizing all fees and charges properly owed by City to Consultant for work performed and citations issued prior to the termination; and

(v) provide such assistance as the City requests related to the prosecution and enforcement of citations issued prior to the termination of this Agreement.

8.1.2 The City shall:

(i) immediately cease using Consultant's system, accessing Consultant's system and using any other intellectual property of Consultant;

(ii) promptly deliver to Consultant any and all proprietary property of Consultant provided to the 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 prior to the termination.

8.1.3 Unless the City and Consultant have agreed to enter into a new agreement for this Project or have agreed to extend the term of this Agreement, Consultant shall remove any and all Equipment or other materials of Consultant installed in connection with Consultant's performance under this Agreement, including but not limited to, housings, poles and camera systems. Consultant shall, at Consultant's sole expense, restore the Approaches to substantially the same condition such Approaches were in immediately prior to this Agreement.

9.0 CONSULTANT'S INSURANCE

9.1 Consultant shall obtain and during the term of this Agreement, shall maintain, at the minimum, the following insurance policies:

9.1.1 Comprehensive General Liability, including premises-operations, products/completed, broad form property damage, and blanket contractual liability with the following coverages:

General Liability: \$500,000 per person per occurrence
\$1,000,000 aggregate per occurrence
\$500,000 property damage per occurrence

9.1.2 Automobile Liability, including owned, hired, and non-owned vehicles with the following insurance coverages:

Auto Liability: \$500,000 per person per occurrence

\$1,000,000 aggregate per occurrence
\$100,000 property damage per occurrence

9.1.3 Consultant shall obtain and maintain, during the life of the Agreement, a policy of Professional Errors and Omissions Liability Insurance with policy limits of not less than \$1,000,000 combined single limits, per claim and annual aggregate.

9.1.4 For all of the Consultant's employees who are subject to this Agreement and to the extent required by State law, the Consultant shall keep in full force and effect, a Worker's Compensation policy. The Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives.

9.2 Endorsements shall be obtained so that each policy contains the following three provisions:

9.2.1 Additional Insured. (Not required for Professional Errors and Omissions Liability Insurance or Workers' Compensation.)

"City of Poway and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."

9.2.2 Notice. "Said policy shall not terminate, nor shall it be canceled, until thirty (30) days after written notice is given to the City."

9.2.3 Primary Coverage. "The policy provides primary coverage to City and its elected and appointed boards, officers, agents, and employees. It is not secondary or in any way subordinate to any other insurance or coverage maintained by City."

9.3 Consultant shall provide City certificates of insurance showing the insurance coverages described in the paragraphs above, in a form and content approved by City, prior to beginning work under this Agreement.

10.0 VIOLATION PROCESSING

Violations shall be processed in accordance with the provisions of this section.

10.1 Authorized Officer: The City's Authorized Officer shall review the violation data from Consultant. Within seven (7) days of gathering the violation data, Consultant shall grant the Authorized Officer access to the Consultant's system for purposes of reviewing this data. The Authorized Officer shall independently determine whether to issue a citation in each case.

**CONSULTANT HEREBY ACKNOWLEDGES AND AGREES THAT THE
DECISION TO ISSUE A CITATION SHALL BE THE SOLE,**

UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED OFFICER AND SHALL BE MADE IN SUCH AUTHORIZED OFFICER'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL CONSULTANT HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION.

10.2 Violation Data: All violation data shall be stored on the Consultant's system. Any photos, documents, film or evidence of any kind related to a potential violation, shall be deemed violation data. The Consultant's system shall process violation data gathered from the Approaches into a format capable of review by the City's Authorized Officer via the Consultant's System.

10.3 Accessibility: The Consultant's system shall be accessible by the City's Authorized Officer through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser. The Consultant shall provide the City with one (1) laptop computer and one (1) desktop computer to be utilized to support the Consultant's program. Consultant shall be solely responsible for the maintenance and repair of the laptop.

10.4 Issuance Of Citation: The Authorized Officer shall notify the Consultant of a determination to issue a citation via an electronic format. Consultant shall provide the necessary software, applications or procedures on Consultant's System for the transmission and receipt of this information.

10.5 Upon notification by the Authorized Officer of the determination to issue a citation, Consultant shall print and mail a citation within five (5) days. The Consultant shall further generate a certificate or other appropriate evidence of mailing with respect thereto; provided, however, during the Warning Period, warning violation notices shall be issued in lieu of all citations.

10.6 Records Maintenance:

(i) The City or its Authorized Officer shall track the collection of fines assessed on each citation. The City shall maintain complete and accurate records for all citations.

(ii) Consultant shall generate or permit the Authorized Officer to generate monthly reports using the Consultant's standard report system.

(iii) Upon Consultant's receipt of a written request from the City and in addition to the standard reports, Consultant shall provide, without cost to the City, reports detailing the processing and issuance of citations, the maintenance and downtime records of the Approaches and the functionality of the Consultant's system 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;

(iv) Upon the City's receipt of a written request from Consultant, the City shall provide, to the extent permitted by law, without cost to Consultant, reports regarding the prosecution of citations and the collection of fines, fees and other monies 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.

10.7 Consultant shall provide a toll-free telephone number during the business hours of 9:00 a.m. through 4:00 p.m. (Pacific Standard Time), Monday through Friday (excluding City's recognized national holidays) for the purposes of answering citizen inquiries and responding to complaints.

10.8 Upon Consultant's receipt of a written request from the City at least fourteen (14) calendar days in advance of a court proceeding, Consultant shall provide expert witnesses for use by the City in prosecuting violations at no cost to the City; provided, however, the City shall, at its own discretion, use reasonable best efforts to seek judicial notice in lieu of requiring Consultant to provide such expert witnesses. Nothing in this provision shall relieve the Consultant from responding to a properly served subpoena or other legal service of process.

11.0 INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or the Consultant's employees, agents, and officers, arising out of any services performed involving this Project, except liability for the professional services covered under Section 10.1, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. This section in no way alters, affects or modifies the Consultant's obligations and duties under Section 8.0 herein.

11.1 Indemnification for Professional Services: As to the Consultant's professional obligations, work or services involving this Project, the Consultant agrees to indemnify and hold harmless the City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the Consultant or the Consultant's employees, agents or officers.

11.2 Enforcement Costs: The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 11.0.

11.3 Limited Liability: Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability arising out of or relating to this Agreement.

12.0 MANDATORY ASSISTANCE

If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

13.0 CITY ASSISTANCE

In order to provide the City with timely completion of the photo Enforcement Program, Consultant requires that the City assist in providing timely approval of City permit requests. The City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule, the City is to provide City engineers review of Consultant permit requests and all documentation within two business days. Consultant will also review and correct if necessary any redlines within two business days. Permits shall be received within five business days of first submittal in order to implement the program in a timely manner. City will need approvals from other cities for installation of components of system within their jurisdictional boundaries. These other city agreements may alter timing as mentioned above.

14.0 COVENANTS AGAINST CONTINGENT FEES

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability, or, at the City's discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

15.0 INTEGRATION

This Agreement, and references incorporated herein fully express all understandings of the parties regarding this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both parties or an amendment to this

Agreement agreed to by both parties. All prior negotiations and agreements are merged into this Agreement.

16.0 CITY BUSINESS LICENSE

Consultant shall obtain and hold a current City business license.

17.0 NOTICES

17.1 Any notices to be given under this Agreement, or otherwise, shall be served by certified mail.

17.2 All notices, billings and payments hereunder shall be in writing and sent to the following addresses:

To Engineering Services: City of Poway
13325 Civic Center Drive
P. O. Box 789
Poway, CA 92074

To Consultant: Redflex Traffic Systems, Inc.
15020 N. 74th Street
Scottsdale, AZ 85260
ATTN: Karen Finley
(480) 998-4442

18.0 CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

Consultant certifies that Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.