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AGREEMENT
FOR
RED LIGHT PHOTO ENFORCEMENT PROGRAM

This Agreement ("Agreement") entered into this 17 day of March, 2010 by and between the CITY OF POWAY (hereinafter referred to as "City") and Redflex Traffic Systems, Inc., a California corporation with offices at 6076 Bristol Parkway, Culver City, California 90230 (hereinafter referred to as "Redflex").

RECITALS

WHEREAS, City desires outside assistance to provide Red Light Photo Enforcement Program including cameras and data management system; and

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

WHEREAS, City desires to engage the services of Redflex to provide certain equipment, processes and back office services so that Authorized Employees of the City are able to monitor, identify and enforce red light running violations; and

WHEREAS, City desires to reduce incidence of vehicle collisions at intersections monitored pursuant to the terms of this Agreement.

NOW THEREFORE, IT IS MUTUALLY AGREED THAT THE CITY DOES HEREBY RETAIN REDFLEX ON THE FOLLOWING TERMS AND CONDITIONS:

AGREEMENT

1. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
 - 1.1. "Authorized Employee" means the Project Manager or such other individual(s) as the City shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto. The Authorized Employee shall be an employee of the San Diego County Sheriff's Department.
 - 1.2. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Employee by using the Redflex System.
 - 1.3. "Citation" means the notice of a Violation, which is mailed or otherwise delivered by Redflex to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.
 - 1.4. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or

not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, city or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:

- 1.4.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or City, or at which such Person sells or has sold its services; and
- 1.4.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets as defined by §3426.1(d) of the California Civil Code (the "Uniform Trade Secrets Act") and cases interpreting the scope of the Uniform Trade Secrets Act.
- 1.4.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.
- 1.5. "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) system has been installed by Redflex for the purposes of facilitating Red Light Photo Enforcement by the City.
- 1.6. "Designated Intersection Approaches" means the Intersection Approaches as Redflex and the City shall mutually agree from time to time. See Exhibit A for the number of approaches.
- 1.7. "Electronic Signature" means the method through which the Authorized Employee indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.
- 1.8. "Enforcement Documentation" means the necessary and appropriate documentation related to the Red Light Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the California Judicial Council and the City, a numbering sequence for use on all

- citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the California Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers .
- 1.9. “Equipment” means any and all approach cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Red Light Photo Enforcement System(s).
 - 1.10. “Fine” means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
 - 1.11. “Governmental Authority” means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
 - 1.12. “Installation Date of the Red Light Photo Enforcement Program” means the date on which Redflex completes the construction and installation of at least one (1) Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational for the purposes of functioning with the Red Light Photo Enforcement Program.
 - 1.13. “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.
 - 1.14. “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Red Light Photo Enforcement Program is functional in order to permit the issuance of Citations using the Redflex System.
 - 1.15. “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
 - 1.16. “Project Manager” means the project manager appointed by the City in accordance with this Agreement, which shall be an Authorized Employee and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Red Light Photo 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 charter or other organizational documents of the City or by the city counsel or other governing body of the City.

- 1.17. "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Employee to review such data and determine whether a Red Light Violation has occurred.
- 1.18. "Proprietary Property" means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
- 1.19. "Redflex Marks" means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Red Light Photo Enforcement 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.
- 1.20. "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Red Light Photo Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex's obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.21. "Redflex System" means, collectively, the Salus™ and/or SMARTeam™ System, the SMARTscene™ System, and all of the other equipment, applications, cameras, sensors, components, motor vehicles and other tangible and intangible property relating thereto, to enable Redflex to enforce a minimum of one lane of travel at a designated location. The SMARTops™ System, the Photo Enforcement Program, and all of the other equipment, applications, back office processes, servers, off-site backup systems, software and other tangible and intangible property relating thereto.
- 1.22. "Red Light Photo Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex,

including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.

- 1.23. “Photo Redlight Violation Criteria” means the standards and criteria by which Potential Violations will be evaluated by Authorized Employees of the City, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities. Should physical criteria change (intersection geometries and pavement reconstruction), which requires re-location and/or modification to the Photo Red Light Enforcement System or its detection equipment, any costs incurred is the responsibility of the City. The City will re-route conduits, relocate the pole (Redflex will need to agree to the new location to make sure the system will be optimized) with new foundation, stand up the pole and enclosure on top and re-pull wiring to the termination points. Redflex will bear the cost for wire termination, and reinstallation of proprietary equipment, to include cameras, computers and electronic equipment enclosed in Redflex’ enclosure.
- 1.24. “Records Retention” means the period of time that Redflex will retain confidential information to include photographic evidence and data associated with the photo enforcement program.
- 1.25. “SMARTcam™ System” means the proprietary software system that controls the photo enforcement system of Redflex relating to the Photo Enforcement Program.
- 1.26. “Salus™ System” means the proprietary software system that controls the photo enforcement system of Redflex relating to the Photo Enforcement Program.
- 1.27. “REDFLEXred™ System” means the proprietary digital redlight photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
- 1.28. “SMARTops™ System” means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program.
- 1.29. “SMARTscene™ System” means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
- 1.30. “Traffic Signal Controller Boxes” means the signal controller interface and vehicle detection owned and operated by the City. This includes, but not limited to, the City’s traffic controller, City’s vehicle detection equipment, City’s communication equipment, City’s controller cabinet, etc.
- 1.31. “Violation” means any traffic violation authorized for photo enforcement as prohibited by the California 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.

1.32. "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.

1.33. "Warning Period" means a period after the Installation Date of the first intersection approach, wherein only warning notices shall be issued, commencing within 3 days after the system has been installed.

2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of FIVE (5) years. The City shall have the right, but not the obligation, to extend the term of this Agreement for up to TWO (2) additional consecutive TWO (2) year period following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.

3. **SERVICES.** Redflex shall provide the Red Light Photo Enforcement Program to the City, in each case in accordance with the terms and provisions set forth in this Agreement.

3.1. **Installation.** With respect to the construction and installation of (1) the Designated Intersection Approaches and the installation of the Redflex System at such Designated Intersection Approaches, the City and Redflex shall have the respective rights and obligations set forth on Exhibit B attached hereto.

3.2. **Maintenance.** With respect to the maintenance of the Redflex System at the Designated Intersection Approaches the City and Redflex shall have the respective rights and obligations set forth on Exhibit C attached hereto.

3.3. **Violation Processing.** During the Operational Period, Violations shall be processed as follows:

3.3.1. All Violations Data shall be stored on the Redflex System;

3.3.2. The Redflex System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Employee via the Redflex System;

3.3.3. The Redflex Photo Enforcement System will be accessible by Authorized Staff through a secure and encrypted connection by use of a confidential user account on a computer equipped with a high-speed Internet connection and an approved web browser.

3.3.4. Redflex shall provide the Authorized Employee with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within five (5) days of the gathering of the Violation Data from the applicable Designated Intersection Approaches.

- 3.3.5. The City shall cause the Authorized Employee to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose, and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION.
- 3.3.6. With respect to each Authorized Violation, Redflex shall print and mail a Citation within one (1) day after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;
- 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries
- 3.3.8. Redflex shall permit the Authorized Employee to generate reports using the Redflex Standard Report System.
- 3.3.9. Upon Redflex's receipt of a written request from the City, or the City's agent for the purpose of prosecuting Violations, and in addition to the Standard Reports, Redflex shall provide, without cost to the City, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the City in such format and for such periods as mutually agreed upon.
- 3.3.10. Upon Redflex's receipt of a written request from the City, or the City's agent for the purpose of prosecuting Violations, at least fourteen (14) calendar days in advance of court proceeding, Redflex shall provide expert witnesses for use by the City, or the City's agent for the purpose of prosecuting Violations, in prosecuting Violations; provided, however, the City, or the City's agent for the purpose of prosecuting Violations, shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; After the initial 6 month period, expert testimony may be provided on a cost reimbursement basis.
- 3.3.11. Redflex shall provide training to City 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 Red Light Photo Enforcement Program.
- 3.3.12. Violation Review Station. Redflex shall provide the City one (1) Laptop Computer and ink jet printer to be used by the City for citation approval, Violation Video viewing appointments, and court hearings. Redflex shall

provide the software licenses and install the software to the laptop necessary for law enforcement personnel to access the System for Citation approval/and/or Violation Video viewing appointments. Redflex will provide the city with a replacement laptop every third year anniversary of the delivery date of the initial laptop computer to the city and upon receipt of the old laptop during the term of the contract. The City is responsible to provide for general IT support, including consumables for the laptop and printer.

- 3.4. Records Retention. Redflex will retain confidential information to include photographic evidence and data associated with the photo enforcement program for a period of up to six months from disposition date or as directed by the City of Poway, California and in accordance with CVC 21455 and 21455.5.
- 3.5. Prosecution and Collection. The City shall diligently prosecute issued Citations and the collection of all Fines in respect thereof.
- 3.6. Other Rights and Obligations. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Redflex and the City shall have the respective rights and obligations set forth on Exhibit E attached hereto.
- 3.7. Change Orders. The City may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to Redflex, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Redflex's receipt of a Change Order Notice, Redflex shall deliver a written statement describing the cost, if any (the "Change Order Proposal"). The Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the City. Following the City's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing Designated Intersection Approaches, or the addition of Intersection Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 10.

4. License; Reservation of Rights.

- 4.1. License. Subject to the terms and conditions of this Agreement, Redflex hereby grants the City, and the City hereby accepts from Redflex 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 Poway, access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City of Poway that Redflex is providing services to the City in connection with Red Light Photo Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Red Light Photo Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.

- 4.2. Reservation of Rights. The City hereby acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.
- 4.3. Restricted Use. The City hereby covenants and agrees that it shall not (a) make any modifications to the Redflex System, including but not limited to any Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) use any of the Redflex Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Redflex therein, (d) use any trademarks or other marks other than the Redflex Marks in connection with the City's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex System, including but not limited to any Equipment, or to any Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.
- 4.4. Protection of Rights. Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.
- 4.5. Infringement. The City shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute a misappropriation of trade secrets or act

of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this Section 4.5, then the City shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex, and Redflex shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that Redflex shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance.

4.6. Infringing Use. The City shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending, against the City alleging that the Redflex Marks, or any other Intellectual Property of Redflex, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the City shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex in the defense thereof; provided, that Redflex shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Redflex determines, in the exercise of its sole discretion, that an infringement may exist, Redflex shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

5. Representations and Warranties.

5.1. Redflex Representations and Warranties.

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

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

5.2. City Representations and Warranties.

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

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

5.3. LIMITED WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND.

EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE CITY'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, REDFLEX DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION APPROACHES OR THE REDFLEX SYSTEM WILL OPERATE IN THE WAY THE CITY SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CITY HEREBY ACKNOWLEDGES THAT THE REDFLEX SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, REDFLEX SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

6. Termination.

- 6.1. Termination 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 Redflex 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 due to Section 6.1(i) or 6.1(ii) above, City shall be relieved of any further obligations for payment to Redflex other than as specified in Exhibit "D". Either party shall have the right to remedy the cause for termination (Sec 6.1) within forty-five (45) calendar days (or within such other time period as the City and Redflex 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.
- 6.2. The rights to terminate this Agreement given in this Section 6.1 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.
- 6.3. Termination for Convenience. In the event the City exercises its right to terminate this Agreement during the Term, Redflex shall be entitled to a cancellation fee, hereinafter referred to as "reimbursable costs" for each new installed approach installed under this agreement. Reimbursable costs will be defined as direct labor costs and direct material costs (not including equipment costs and salvageable materials) required to install Redflex photo Red Light System at approaches pursuant to this agreement and terminated prior to the projected duration of this contract (five years from date of acceptance). Redflex shall provide an itemization of the Reimbursable Costs, with supporting invoices and labor expense documentation, to the City within thirty (30) days of the completion of installation of the Redflex photo Red Light System at each designated Intersection Approach. Said Reimbursable Costs are currently

estimated to equal approximately \$60,000 to \$80,000 per Intersection Approach. For the purpose of this section, the cancellation fee shall be derived in accordance with the following formula:

X = the number of months remaining on the Agreement;

Y = the number of months of the Agreement;

X/Y = the percentage of remaining Agreement;

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

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

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

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

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

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

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

Calculation of Fee = \$36,000.

6.4. Procedures Upon Termination. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

6.4.1. Redflex 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 Red Light Photo Enforcement Program, (ii) promptly deliver to the City any and all Proprietary Property of the City provided to Redflex pursuant to this Agreement, (iii) promptly deliver to the City a final report to the City regarding the collection of data and the issuance of Citations in such format and for such periods as the City may reasonably request, and which final report Redflex shall update or supplement from time to time when and if additional data or information becomes available, (iv) promptly deliver to City a final invoice stating all fees and charges properly owed by City to Redflex for work performed and Citations issued by Redflex prior to the termination, and (v) provide such assistance as the City, or the City's agent for the purpose of prosecuting Violations, may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement. Immediately upon termination Redflex is no longer bound to the Data Retention Requirements for any data and if the City wishes to obtain

the data it must be conveyed at the time of termination. Redflex will transfer the data and relevant information to the city by a mutually agreed upon method. The City will assume the burden for all costs associated with this task including but not limited to administrative, storage media, storage media authoring devices, and internet bandwidth used for transferring data. Redflex will provide no tools for accessing this data or other guarantees.

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

6.4.3. Unless the City and Redflex have agreed to enter into a new agreement relating to the Red Light Photo Enforcement Program or have agreed to extend the Term of this Agreement, Redflex shall remove any and all Equipment or other materials of Redflex installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to the installation of the Systems.

6.5. Survival. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: (x) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (City Representations and Warranties), 5.3 (Limited Warranty), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Applicable Law), 11.16 (Injunctive Relief; Specific Performance) and 11.18 (Jurisdiction and Venue), and (y) those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.

7. CONFIDENTIALITY. During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know

such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

8. INDEMNIFICATION AND LIABILITY.

- 8.1. City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Redflex or any other person for, and Redflex shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by Redflex's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Redflex, its agents, officers, directors, subcontractors or employees, committed in performing any of the Services under this Agreement.
- 8.2. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Redflex has agreed to indemnify Indemnitees as provided above, Redflex, upon notice from City, shall defend Indemnitees at Redflex's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Redflex, as described in Exhibit E, shall ensure Redflex's obligations under this section, but the limits of such insurance shall not limit the liability of Redflex hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.
- 8.3. The provisions of this section do not apply to Claims occurring as a result of this City's sole negligence or willful acts or omissions.
- 8.4. All units and equipment provided by Redflex and used in performing this Agreement belong to, or are leased by Redflex. City shall pay for or reimburse Redflex for any and all damage to said units and equipment provided by Redflex pursuant to this Agreement, which occurs as a result of the negligence of City, or any of its agents or employees. Redflex will notify City of the damage within thirty (30) days of the discovery of the damage. In the event of damage to Redflex provided equipment by third parties, City will use its best efforts to

assist Redflex to identify and obtain compensation from any third party responsible for damage to Redflex equipment.

8.5. City shall not be responsible for any damage to persons or property due to the use, misuse, or failure of any equipment used by the Redflex, or by any of its employees, and third parties even though such equipment may be provided to City by Contractor.

9. **NOTICES.** Any notices to be given hereunder shall be in writing, and shall be deemed to have been given (a) upon delivery, if delivered by hand, (b) three (3) days after being mailed first class, certified mail, return receipt requested, postage and registry fees prepaid, or (c) one Business Day after being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery, if the courier service obtains a signature acknowledging receipt, in each case addressed or sent to such party as follows:

9.1. **Notices to Redflex:**

Redflex Traffic Systems, Inc.
Traffic Systems, Inc.
23751 North 23rd Avenue
Phoenix, AZ 85027
Attention: PROGRAM MANAGEMENT
Facsimile: (623) 207-2050

9.2. **Notices to the City:**

City of Poway
Development Services
13325 Civic Centre Drive
Poway, CA 92064
Attention: Zoubir Ouadah, Senior Traffic Engineer
Facsimile: (858) 668 - 1212

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

11. MISCELLANEOUS.

- 11.1. **Assignment.** Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, The City hereby acknowledges and agrees that the execution (as outlined in Exhibit F), delivery and performance of Redflex's rights pursuant to this Agreement shall require a significant investment by Redflex, and that in order to finance such investment, Redflex may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). The City hereby agrees that Redflex shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Redflex and any such Financial Institution, subject to the 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 Redflex provides written notice to the City that it intends to Transfer all or any of Redflex'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 within forty-five (45) business days after its receipt of such notice from Redflex, for the purposes of this Agreement, the City shall be deemed to have consented to and approved such Transfer by Redflex. Notwithstanding the above, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective successors or assigns.
- 11.2. **Relationship between Redflex and the City.** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).
- 11.3. **Audit Rights.** Each of parties hereto shall have the right to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit

establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.

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

instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.

- 11.12. Remedies Cumulative. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.
- 11.13. Binding Effect. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.
- 11.14. Compliance with Laws. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.
- 11.15. No Third Part Benefit. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.
- 11.16. Injunctive Relief; Specific Performance. The parties hereby agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other party, which injury could not be adequately compensated by an award of money damages, and the parties therefore agree and acknowledge that they shall be entitled to injunctive relief in the event of any breach of any material term, condition or provision of this Agreement, or to enjoin or prevent such a breach, including without limitation an action for specific performance hereof.
- 11.17. Applicable Law. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of California, United States.
- 11.18. Jurisdiction and Venue. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the courts located in the County of San Diego, California and both parties specifically agree to be bound by the jurisdiction and venue thereof.
- 11.19. 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.

11.20. 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.

a. "Consultant" means an individual who, pursuant to a contract with a state or local agency:

(i) Makes a governmental decision whether to:

- (a) Approve a rate, rule or regulation;
- (b) Adopt or enforce a law;
- (c) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- (d) Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
- (e) Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
- (f) Grant City approval to a plan, design, report, study, or similar item;
- (g) Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or

(ii) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

b. Disclosure Determination:

X

(i) Consultant/Contractor will not be “making a government decision” or “serving in a staff capacity” as defined in Sections 11.20(a) (i) and (ii) above. No disclosure required.

(ii) Consultant/Contractor will be “making a government decision” or “serving in a staff capacity” as defined in Sections 11.20(a) (i) and (ii) above. As a result, Consultant/Contractor shall be required to file a Statement of Economic Interest with the City Clerk of the City of Poway in a timely manner as required by law.

Department Director Initials

SM

11.21 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.

11.22 Contractor 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.

(The remainder of this page is left intentionally blank)

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

“City”

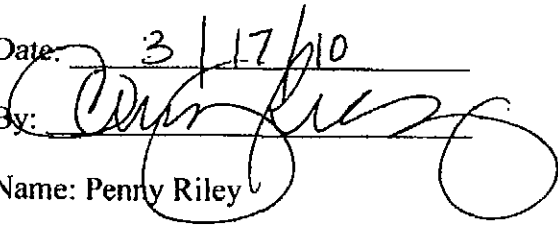
“Redflex”

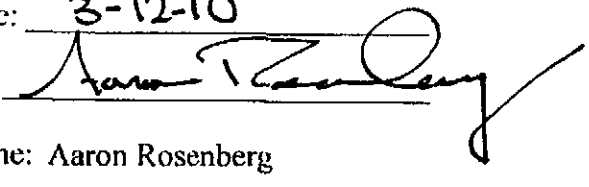
CITY OF POWAY

REDFLEX TRAFFIC SYSTEMS, INC.,

Date: 3/17/10

Date: 3-12-10

By: 

By: 

Name: Penny Riley

Name: Aaron Rosenberg

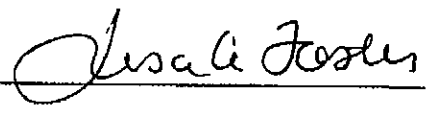
Title: City Manager

Title: Executive Vice President

APPROVED AS TO FORM:

Office of the City Attorney

Date: 3-17-10

By: 

Its: Lisa A. Foster, City Attorney

Attachment: Exhibits A, B, C, D, E, and F___

EXHIBIT "A"
Statement of Work

The contract is for the continued operational services of the following five (5) approaches/systems:

Poway and Pomerado Road, two approaches East and West Bound
Scripps Poway Parkway and Community Road, one approach Eastbound
Ted Williams Parkway and Pomerado Road, two approaches South and Eastbound.

and implementation of up to 10 additional intersections or 20 approaches. Identification of enforced intersection approaches will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.

EXHIBIT "B"

Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light System

Redflex will have each specified approach installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Redflex Traffic Systems and the City.

Redflex 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.

Redflex will use reasonable commercial efforts to install and activate the first specified intersection within sixty (60) days subsequent to formal project kick-off and receipt of the required City's approved program business rules. The City agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Redflex and are not guaranteed.

In order to provide the City with timely completion of the photo enforcement project, Redflex Traffic Systems requires that the City assist with obtaining timely approval of permit requests, which includes attend meetings, review construction plans for permit approval and generally staff permit requests through city departments. The City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the City will provide engineering review(s) of Redflex permit requests and all documentation in a timely manner.

1. Redflex Obligations. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1. Appoint the Redflex Project Manager and a project implementation team;
 - 1.2. Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the City;
 - 1.3. Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required; and
 - 1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications.
 - 1.5. Finalize the acquisition of the Approvals;
 - 1.6. Assist the City in developing a public awareness strategy, which may include media and educational materials;
 - 1.7. Develop the Redlight Violation Criteria in consultation with the City;

- 1.8. Develop the Enforcement Documentation for approval by the City, which approval shall not be unreasonably withheld;
 - 1.9. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches to the satisfaction of the City.
 - 1.10. 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;
 - 1.11. Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
 - 1.12. Implement the use of the Redflex System at each of the Designated Intersection Approaches;
 - 1.13. Deliver the Materials to the City; and
 - 1.14. Citation processing and citation issuance/re-issuance for Authorized Violations;
 - 1.15. Redflex shall provide training (i) for up to fifteen (15) personnel of the City, including but not limited to the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the Red Light Photo Enforcement Program, (ii) for up to sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Red Light Photo Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation;
 - 1.16. Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, and coordination between Redflex, the City and (WHERE APPLICABLE juvenile court personnel).
2. 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):
- 2.1.1. Appoint the Project Manager;
 - 2.1.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;

- 2.1.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Redlight Photo Enforcement Program;
- 2.1.4. Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles by completing the necessary forms and request a code be assigned so that Redflex can seek records data in Redflex's capacity as an independent contractor to the City, and
- 2.1.5. Assist Redflex in seeking the Approvals
- 2.1.6. Provide reasonable access to the City's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Red Light Photo Enforcement Program;
- 2.1.7. Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
- 2.1.8. Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date;
- 2.1.9. Assist Redflex in developing the Redlight Violation Criteria; and
- 2.1.10. Seek approval of the Enforcement Documentation.
- 2.1.11. The City shall provide on an agreed upon frequency, without cost to Redflex, reports regarding the prosecution of Citations, the collection of fines, fees and other monies and available collision data, in such format and for such periods as Redflex may reasonably request.
- 2.1.12. Yellow Light Timing Review: The City is responsible to ensure that the yellow or amber light phase timing at all photo enforced intersections meets minimum standards according to Federal, State, and local laws, guidelines, and/or rules.
- 2.1.13. Provide on-going adequate electrical power in order to operate the systems.
- 2.1.14. The City, at its sole discretion, may allow Redflex to use existing traffic signal/streetlight conduit available space as the City deems appropriate.
- 2.1.15. The City shall be responsible to provide and install LED traffic signal lights (yellow and red) at all enforced locations,
- 2.1.16. City is responsible for all computer hardware, web browsers and high speed Internet access necessary to operate the systems within the confines of the city buildings.
- 2.1.17. Review and approval of enforcement signage design.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of Red Light Photo Enforcement systems and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Cabinet or Boxes without a representative of city Traffic Engineering present.
3. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
4. Redflex may assign specific personnel to provide follow up assistance to the City in the form of the HELPDESK, a designated City's Service Representative and a Director of Accounts.
5. Redflex shall inspect the Equipment and functionality of the Redflex System at each of the designated Intersection Approaches no less than once every two (2) business days, and Redflex shall respond to any material malfunction of any of the Redflex System within twenty four (24) hours after the City provides written notice thereof to Redflex (the "Malfunction Notice"). In the event that Redflex discovers any material malfunction or defect, or in the event that Redflex receives a Malfunction Notice, Redflex shall use its best efforts to cause such malfunction or defect to be repaired within forty-eight (48) hours, and in the event that such malfunction or defect has not been substantially repaired within forty-eight (48) hours, Redflex shall notify the Police Project Manager.
6. Redflex will provide the City with a repair and maintenance log every month.
7. Redflex will provide the City a Certification of the System installation and operation in accordance with the standard norms and procedures.
8. Redflex will provide the City with the original construction plans and any future changes to the plans
9. Redflex shall provide the City a new laptop computer for courtroom use upon the execution of this contract and every three (3) years thereafter through the life of the contract.

EXHIBIT "D"

Compensation & Pricing

FIXED FEE

Commencing on the execution of this agreement City shall be obligated to pay Redflex a fixed fee for each Existing Designated Intersection:

Tier 1: Fixed Fee of \$1,000 per month for each of the following approaches:

Poway and Pomerado Road (1 approach)
Eastbound left turn lanes and two through lanes

Note: Where improvements or additional lanes (right turns) are added the intersection will automatically revert to Tier 2 Fixed Fee.

Tier 2: Fixed Fee of \$4370 per month for each of the following approaches

Poway and Pomerado Road (1 approach)
Westbound left turn lane and three through lanes
Scripps Poway Parkway and Community Road (1 approach):
Eastbound left turn lanes and three through lanes
Ted Williams Parkway and Pomerado Road (2 approaches):
Southbound left turn lane and three through lanes
Eastbound left turn lanes and two through lanes

Upon mutual agreement that upgrades to existing facial cameras would significantly improve the prosecution of violations, Redflex will upgrade face cameras to those approaches listed under Tier Two, where appropriate at no additional cost to the city.

Redflex will add fifth lane to two approaches by mutual agreement with city and where construction constraints do not apply whereby the image quality would suffer.

Tier 3: New approaches:

At the expiration of the Warning Period for each Designated Intersection Approach, City shall be obligated to pay Redflex a fixed fee of \$6070 per month for each Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Customer agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.
2. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of Redflex
3. Redflex shall be solely responsible for the on-going supply of DSL or cable services to the Designated Intersections.
4. The on-going provision of any and all necessary electrical power to the Designated Intersection Approaches will be the sole responsibility of the Customer
5. The Customer shall be solely responsible for installing required signage.
6. If a system is deactivated at the Customer's request due to roadway construction, the monthly fee will continue.

EXHIBIT "E"

Additional Rights and Obligations

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

1. Redflex shall assist the City in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Redlight Photo Enforcement Program (actual print and production costs are the sole responsibility of the City).
2. The City shall not access the Redflex System or use the Redlight Photo Enforcement Program in any manner other than prescribe by law and which 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 Redflex 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 Redflex 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.
3. 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.
4. Redflex 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, Redflex and the City shall obey any and all such rules and regulations.
5. The City shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the City, or any of its employees, contractors or agents.

Insurance

1. During the Term, Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage with respect to claims for injuries to persons or damages to property which may arise from or in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
 - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000)

- combined single limit per occurrence for bodily injury and property damage;
- Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned by Redflex and hired by Redflex;
 - Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.
 - Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of California, and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence, and the policy shall contain a waiver of subrogation in favor of the City, its mayor, council, officers, agents, employees and volunteers..
2. With respect to the insurance described in the foregoing Section of this Exhibit E, any deductibles or self-insured retentions must be declared to and approved by the City and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the City;
 3. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
 - The City Parties shall be named as additional insureds with respect to the Commercial General Liability insurance; and such coverage shall contain no special limitations on the scope of protection afforded to such additional insured's.
 - The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the City Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the City Parties shall be in excess, and not in contribution to, such insurance.
 - Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the City Parties, and such insurance policies shall state the such insurance coverage shall apply separately with respect to each additional insured against whom any claim is made or suit is brought, except with respect to the limits set forth in such insurance policies.
 4. With respect to the insurance described in the foregoing Section of this Exhibit E, if any of the Redflex Parties are notified by any insurer that any insurance coverage will be cancelled, Redflex shall immediately provide 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 Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the 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 Redflex for such breach, or (ii) purchase such required insurance, and without further notice to Redflex, deduct from any amounts due to Redflex pursuant to this Agreement, any premium costs advance by the City for such insurance. If the premium costs advanced by the City for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the City upon receipt of written notice thereof.

5. Redflex shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the City prior to Redflex commencing any work pursuant to the terms of this Agreement.

EXHIBIT "F"

FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of March 17, 2010, is entered into by and between the City of Poway (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the city of Poway and Redflex Traffic Systems, inc. for Photo red light enforcement program, dated as of March 17, 2010, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Credit Agreement, dated as of August 3, 2003 (the "Harris-Redflex Credit Agreement"), with Harris Trust and Savings Bank (the "Bank"), pursuant to which the Bank has provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.
2. Pursuant to the Harris-Redflex Credit Agreement, Redflex has granted Harris a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement. Such security interest applies to and covers all of Redflex's contract rights, including, without limitation, all of Redflex's rights and interests under the Agreement.
3. Redflex will not, by virtue of the Harris-Redflex Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Bank has not assumed any liability or obligation of Redflex under the Agreement.
4. The City hereby acknowledges notice of, and consents to, Redflex's grant of such security interest in favor of the Bank in all of Redflex's rights and interests under the Agreement pursuant to the Harris-Redflex Credit Agreement.
5. The City further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the City and shall inure to the benefit of the successors and assigns of the Bank and to any replacement lender which refinances Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement.