

**CITY OF YUCAIPA
AGENDA REPORT**

TO: Honorable Mayor and City Council

FROM: *ms* Raymond A. Casey, Director of Public Works
Bart Gray, Captain and Chief of Police

FOR: City Council Meeting April 28, 2008

SUBJECT: Agreement Amendment –Automated Photo Red Light Enforcement System

RECOMMENDATION:

That City Council approve and authorize the Mayor to execute a revised three (3) year Professional Consultant Services Agreement with Redflex Traffic Systems, Inc for the implementation of an Automated Red Light Photo Enforcement Program at two signalized intersections within the City having a high frequency of traffic collisions or other high risk criteria as determined by staff.

DISCUSSION:

On December 10, 2007 the City Council authorized the execution of an agreement with Redflex Traffic Systems, Inc. for the implementation of an automated red light photo enforcement program at two signalized intersections within the City. This project is being undertaken in the community to reduce red light related violations and enhance safety for the motoring public over time.

Subsequent to recommending approval of the agreement with Redflex at the December 10, 2007 City Council Meeting, staff became aware of agreements between Redflex and several other agencies including language considered to be more beneficial to the agency. Since that time, staff has researched the language in other agency agreements, proposed alternative language in the City of Yucaipa agreement and conducted further negotiations with Redflex over a number of issues in the agreement. These issues were ultimately addressed in the revisions to the attached agreement, reviewed and approved by Redflex. The recommended revisions to the agreement include revising the monthly cost for each approach from \$6,000 to; \$5,570 per month for each designated intersection approach with up to two (2) continuous lanes and \$5,870 per month for three (3) or more contiguous lanes. In addition, language was added to allow for an annual review of the financial status of the program to be conducted and if the program is in a negative financial condition, the City then has the right to conduct good faith discussions with Redflex to remedy the situation. If no remedy is found the contract may be terminated by the City. The City will be billed in arrears and will have 30 days to pay, allowing for the collection of sufficient fines to pay the fixed monthly fee at the beginning of the program. A clause was also added to

the Agreement to allow the City to receive a credit per approach in the monthly invoice for system down time exceeding two cumulative days per month. In addition, the revised Agreement stipulates that any adjustments, modifications or alterations to the existing traffic signals necessary to accommodate the system will be completed at Redflex's expense (under the supervision of the City).

FISCAL IMPACT:

Using the number of observed red light violations at the two intersections with a high incident rate, the citation issuance rate (total number of actual citations issued), fine collection rate and the statistical reduction in violations per year after the program is initiated, it is estimated that the program would generate approximately \$90,000 over its three year period. The estimated monthly cost of the program for each approach is \$5,570 (assuming the approaches to be monitored include only two lanes) for a total of \$16,710 per month for two intersections. In addition to the monthly program costs to be paid to Redflex, there would be an additional cost incurred for staff program administration. Using information collected from other local agencies it was estimated that administration of the proposed program would require a police officer to dedicate approximately five (5) hours per week and a Sheriff's Office Assistant ten (10) hours per week. It is believed that the reallocation of existing resources from field services, associated with the traffic violations and related citations, to the administration of this program will be adequate to fund that element of the program.

Two to three approaches at the two referenced signalized intersections are anticipated to be monitored. Each year the pricing will increase in accordance to the Consumer Price Index (CPI). The CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for U.S. City average. It is recommended that a separate account be established in the General Fund and if citation revenues exceed the cost of the program over the three-year period, those funds will be held in that account for eventual allocation by Council. Based on staff's inquiries, it appears revenues are likely to exceed program costs over the three-year life of the program. However, in the event that the revenue generated becomes less than the actual program costs the City has the option to relocate a system to another viable intersection at the City's expense or with the revised agreement, terminate the contract entirely. Currently the estimated cost to relocate a typical system is \$40,000 to \$50,000.

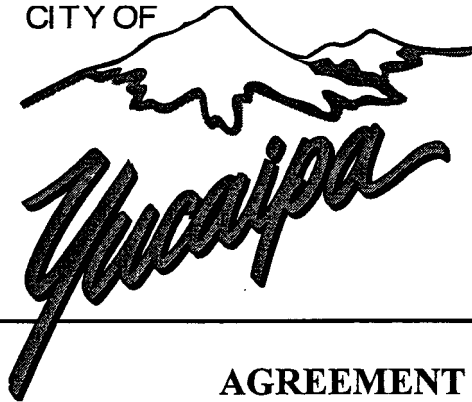
CONCLUSION:

Staff recommends that City Council award and authorize the Mayor to execute a revised three (3) year Professional Consultant Services Agreement with Redflex Traffic Systems, Inc for the implementation of an Automated Red Light Photo Enforcement Program at two signalized intersections within the City having a high frequency of traffic collisions or other high risk criteria as determined by staff and direct staff to establish a separate account in the General Fund to deposit any associated revenues to be held in reserve for funding any anticipated net Program expenses.

Attachment: Revised Agreement
December 10, 2007 Staff Report

Approved by:  _____

CITY OF



City of Yucaipa
34272 Yucaipa Blvd.
Yucaipa, CA 92399
(909) 797-2489 Phone
(909) 797-9203 fax

AGREEMENT FOR PROFESSIONAL SERVICES

TO PROVIDE AN AUTOMATED PHOTO RED LIGHT ENFORCEMENT SYSTEM FOR THE CITY OF YUCAIPA

On this 10th day of December, 2007, the City of Yucaipa, a Municipal Corporation, hereinafter referred to as City, and Redflex Traffic Systems, Inc., a California Corporation, hereinafter referred to as Consultant or Redflex, hereby mutually agree as follows:

RECITALS

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

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

WHEREAS, City desires to reduce the incidence of vehicle collisions at the traffic intersections and city streets that will be monitored pursuant to the terms of this Agreement, and Redflex represents that it can assist City in achieving that objective.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
 - 1.1 “Authorized Officer” means the Police 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, and in any event, a sworn peace officer or a qualified employee of the Police Department.
 - 1.2 “Authorized Violation” means each Potential Violation in the Violations Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Officer.



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, customers 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 customers, 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.

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 “Designated Intersection Approaches” means the Intersection Approaches set forth on Exhibit A attached hereto, and such additional Intersection Approaches as the City in consultation with the Redflex Project Manager may designate from time to time.

1.6 “Electronic Signature” means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.

1.7 “Enforcement Documentation” means the necessary and appropriate documentation related to the Photo Red Light Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the 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 Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers .

- 1.8 “Equipment” means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Photo Red Light System(s), including but not limited to all camera systems, housings, radar units, servers and poles.
- 1.9 “Fine” means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.10 “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.
- 1.11 “Installation Date” 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 Photo Redlight Enforcement Program.
- 1.12 “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 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. Intellectual Property does NOT include any information owned by or lawfully under the control of the City, including any such information placed on the Redflex System.
- 1.13 “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) Redflex System has been installed by Redflex for the purposes of facilitating Photo Redlight Enforcement by the City.
- 1.14 “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by a sworn peace officer of the City and the issuance of Citations for such approved Violations using the Redflex System.
- 1.15 “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.



- 1.16 “Police Project Manager” means the project manager appointed by the City in accordance with this Agreement, which shall be a sworn peace officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Photo Redlight Enforcement Program.
- 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 Officer 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. No property owned by or lawfully under the control of the City shall be deemed the Proprietary Property of Redflex.
- 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 Photo Red Light Enforcement 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, which project manager shall initially be _____ or such person as Redflex shall designate by providing written notice thereof to the City from time to time, who shall be the responsible person for Redflex for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Photo Red Light Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex’s obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.21 “Redflex Photo Red Light System” or “Redflex System” means, collectively, the SmartCam™ System, the SmartOps™ System, the Photo Redlight Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.22 “Photo Red Light Enforcement Program” means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring



Violations and recording such Violations 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 sworn peace officers 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.
 - 1.24 "SmartCam™ System" means the proprietary digital Photo Redlight enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
 - 1.25 "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program.
 - 1.26 "SmartScene™ System" means the proprietary digital video camera unit, hardware and software required for providing supplemental Violations Data.
 - 1.27 "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
 - 1.28 "Violation" means any violation of 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.
 - 1.29 "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.
 - 1.30 "Warning Period" means the period of thirty (30) days after the Installation Date of the first Intersection Approach.
 - 1.31 "Warning Violation Notice" means the courtesy notification of a violation that is mailed or otherwise delivered by Redflex to the violator in the form of a document that has been approved by the City.
2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of three (3) years after the Installation Date (the "Initial Term"). The City may terminate this Agreement in whole or in part, without cause and for any reason including City's convenience at the conclusion of the Initial Term, upon written notice to Redflex at least thirty (30) days prior the conclusion of the Initial Term. At the conclusion of the Initial Term, this Agreement shall automatically extend for an additional term of three (3) years (the "Extended Term") unless the City has provided Redflex at least thirty (30) days written notice of its election to terminate this Agreement.
 3. **SERVICES.** Redflex shall provide the Photo Red Light 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 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 Officer via the Redflex System;
 - 3.3.3 The Redflex System shall be accessible by the Authorized Officer through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser;
 - 3.3.4 Redflex shall provide the Authorized Officer with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violations Data from the applicable Designated Intersection Approaches;
 - 3.3.5 The City shall cause the Authorized Officer to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violations 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 OFFICER AND SHALL BE MADE IN SUCH AUTHORIZED OFFICER'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 six (6) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, Warning Violation Notices shall be issued in lieu of Citations for 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 Officer to generate monthly reports using the Redflex Standard Report System;
 - 3.3.9 Upon Redflex's receipt of a written request from the City and in addition to the Standard Reports, Redflex shall provide, without cost to the City, reports regarding the processing and



issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the City in such format and for such periods as the City may reasonably request; provided, however, Redflex 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;

3.3.10 Upon the City's receipt of a written request from Redflex, the City shall provide, without cost to Redflex, reports regarding the prosecution of Citations and the collection of fines, fees and other monies in respect thereof in such format and for such periods as Redflex 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 Redflex;

3.3.11 Upon Redflex's receipt of a written request from the City at least fourteen (14) calendar days in advance of court proceeding (unless such notice period is not feasible, in which case the City shall provide the maximum feasible notice), Redflex shall provide expert witnesses for use by the City in prosecuting Violations; provided, however, the City shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses, if appropriate. During the six (6) month period immediately following the Installation Date, Redflex will provide expert witnesses to the City at no charge. Following the initial six (6) month period after the Installation Date, Redflex will provide expert witnesses to the City at no charge for the first three (3) requests in a calendar year; for each additional request for expert witness testimony within the calendar year, the City shall reimburse Redflex for all travel related expenses.

3.3.12 During the three (3) month period following the Installation Date, and upon the assignment of additional or replacement personnel, Redflex shall provide such training to law enforcement personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Redlight Enforcement Program;

3.4 COMPENSATION. In consideration of the satisfactory performance of the services require by this Agreement, City shall pay the compensation set forth on Exhibit D, attached hereto and incorporated herein.

3.5 OTHER RIGHTS AND OBLIGATIONS. During the Term, 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.

3.6 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 effect, if any, the proposed changes would have on the pricing terms set forth in Exhibit D (the "Change Order Proposal"), which 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.

3.7 ADDITIONAL SCOPE OF WORK. Redflex shall also provide the services described in "Exhibit G" (Redflex Proposal). In the event of any conflict between the provisions of this Agreement and the Redflex Proposal, the provisions of this Agreement shall control.

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 Yucaipa, 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 Yucaipa) that Redflex is providing services to the City in connection with Photo Red Light Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex, which approval shall not unreasonably be withheld. The City shall have access to the Redflex System for the purpose of reviewing Potential Violations and to print copies of any content posted on the Redflex System in connection therewith during the term of this Agreement and for a period of six (6) months following its expiration.

4.2 RESERVATION OF RIGHTS. The City hereby acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex Photo Red Light System, the Redflex Marks, 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 Photo Red Light System, including but not limited to any of Redflex's 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 Photo Red Light 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 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. In such case, the City has the option to terminate this Agreement without cancellation fee, if any, to Redflex.

5. REPRESENTATIONS AND WARRANTIES.

5.1 Redflex Representations and Warranties.

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

5.1.2 Professional Services. Redflex hereby warrants and represents that any and all services provided by Redflex pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Redflex 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 during Initial Term. During the Initial Term of this Agreement, City may terminate this Agreement with or without cause and in its sole discretion at any time by giving Redflex at least thirty (30) days' written notice of such termination. In the event of termination during the Initial Term due to no fault or failure of performance by Redflex, Redflex shall be paid the monthly fees earned prior to the effective date of termination, as calculated in Exhibit D of this Agreement, and shall be entitled to the cancellation fee provided for in Section 6.3.

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

6.3 Termination for Convenience- Cancellation Fee. In the event the City exercises its right to terminate this Agreement without cause during the Initial Term, Redflex shall be entitled to a cancellation fee for each installed approach which reflects reimbursement of the direct labor costs and direct material costs (not including Equipment costs and salvageable material costs) solely associated with the installation of the Redflex Photo Red Light System at all Intersection Approaches where such system(s) have been installed prior to the effective date of Termination (the "Reimbursable Costs"). Redflex shall provide an itemization of the Reimbursable Costs, with supporting invoices and labor expense documentation, to the City within thirty (30) days of the completion of installation of the Redflex Photo Red Light System at each designated Intersection Approach. The Reimbursable Costs are currently estimated to equal approximately \$40,000 to \$80,000 per Intersection Approach, but in no event shall that amount exceed \$80,000 per Intersection Approach. For the purpose of this section, the cancellation fee shall be derived in accordance with the following formula:



X = the number of months remaining in the Initial Term

Y = the number of months of the Initial Term

X/Y = the percentage of remaining Initial Term

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 1, and if the Reimbursable Costs are \$60,000, the cancellation fee would be:

X = 12 (36 months – 24 months transpired under the Initial Term).

Y = 36 (number of months of the Initial Term).

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

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

Calculation of Fee = \$20,000

- 6.4 Termination for Cause. City or Redflex may, with cause, terminate this Agreement effective immediately upon written notice to the other party in the event such other party materially fails to perform any material provision of this Agreement or fails to perform any of its material obligations under the Agreement and such failure continues unremedied for a period of thirty (30) days after written notice of such failure from the party alleging such failure. City may, with cause, terminate this Agreement effective immediately upon written notice in the event Consultant fails to abide by the reasonable directive of City or City's Police Department, or in the event of Consultant's gross misconduct, or acts or omissions of Consultant contrary to law. In the event City terminates this Agreement for cause, Consultant shall not be entitled to a cancellation fee.
- 6.5 In the event that, in City's judgment, this Agreement and/or the type of Photo Safety Program provided pursuant to this Agreement shall be deemed to be invalid or unconstitutional by any act of any branch of government, or a decision of any branch of government makes the implementation of City's Photo Safety Program unconstitutional or impossible to continue to implement, such decision shall be treated as a mutual termination and Redflex shall not be entitled to a cancellation fee.
- 6.6 Upon termination of this Agreement as herein provided (or expiration of the term), Redflex shall cease all work on or before the date of such termination or expiration. Redflex shall deliver to City in an orderly and expedient manner, all records prepared for or belonging to City pursuant to this Agreement. Redflex shall be responsible for the removal and return to Redflex of the Redflex Photo Red Light System in good working order. Redflex shall be responsible for repair of any damage to public property caused



by the Redflex Photo Red Light System or removal of the Redflex Photo Red Light System.

6.7 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).

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, or as may be required by the California Public Records Act or other laws relating to public records.

8. INDEMNIFICATION AND LIABILITY.

8.1 Indemnification by Redflex. Subject to Section 8.3, Redflex hereby agrees to defend and indemnify the City and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "City Party" and collectively, the "City Parties") against, and to protect, save and keep harmless the City Parties from, and to pay on behalf of or reimburse the City Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any City Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Redflex contained in this Agreement, or (b) the willful misconduct of Redflex, its employees or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any City Party.

8.2 Indemnification by City. Subject to Section 8.3, the City hereby agrees to defend and indemnify Redflex and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted



assignees and all persons acting by, through, under or in concert with them, or any of them (individually a "Redflex Party" and collectively, the "Redflex Parties") against, and to protect, save and keep harmless the Redflex Parties from, and to pay on behalf of or reimburse the Redflex Parties as and when incurred for, any and all Losses which may be imposed on or incurred by any Redflex Party arising out of or in any way related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of the City contained in this Agreement, or (b) the willful misconduct of the City, its employees, contractors or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Redflex Party.

8.3 Indemnification Procedures. In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure so to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no party shall have the right enter into any settlement agreement that materially affects the other party's material rights or material interests without such party's prior written consent, which consent will not be unreasonably withheld or delayed.

8.4 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.

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

9.2 Notices to the City:

City of Yucaipa
34272 Yucaipa Blvd.
Yucaipa, CA 92399
Attention: Raymond A. Casey
Facsimile: (909) 790-9203

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 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, the 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, unless the invalidated provision(s) shall uniquely, materially and adversely affect the rights and obligations of a Party to this Agreement.



- 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 PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.



- 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 Bernardino and both parties specifically agree to be bound by the jurisdiction and venue thereof.



SIGNATURE PAGE

The City and Consultant hereby agree to the full performance of the covenants and conditions contained herein.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement the day and year first above written.

City of Yucaipa

By its Authorized Representatives:

_____	_____	_____	_____
Dick Riddell, Mayor	Date		Date

ATTEST:

_____	_____	_____	_____
City Clerk City of Yucaipa	Date	Raymond A. Casey, Director of Public Works/City Engineer	Date

APPROVED AS TO FORM:

_____	_____
City Attorney City of Yucaipa	Date

APPROVED AS TO CONTENT:

_____	_____
Greg Franklin Administrative Services Officer City of Yucaipa	Date



EXHIBIT "A"
Designated Intersection Approaches

The contract is for the implementation of up to 10 intersections. The City in consultation with the Redflex Project Manager shall designate the Designated Intersection Approaches.



EXHIBIT "B"
Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light System

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

Redflex will use commercially reasonable 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 commercially reasonable efforts to install and activate the first specified intersection within forty-five (45) to sixty (60) days subsequent to formal project kick-off. The Municipality 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 client with timely completion of the photo enforcement project Redflex Traffic Systems requires that the City assist with 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 Redflex permit requests and all documentation in a timely manner.

1. Redflex Obligations. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1 Appoint the Redflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project Manager;
 - 1.2 Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the city traffic engineer;
 - 1.3 Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required; and
 - 1.4 Seek approval from the relevant 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 Submit to the City a public awareness strategy for the City's consideration and approval, which strategy shall include media and educational materials for the City's approval or amendment (the "Awareness Strategy");
 - 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, including the adjustment, modification or alteration of existing traffic signal equipment necessary to accommodate the system (under the supervision 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 Issue citation notices 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 Officers and other persons involved in the administration of the Photo Redlight Enforcement Program, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Photo Redlight 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 juvenile court personnel; and
 - 1.17 Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch of the Photo Redlight Enforcement Program.
 - 1.18 Citation processing and citation re-issuance
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 Photo Redlight Enforcement Program;
- 2.1.4 Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the City; and
- 2.1.5 Assist Redflex in seeking the Approvals
- 2.1.6 Provide reasonable access to the City's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Photo Redlight 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.



EXHIBIT "C"

Maintenance

1. All repair and maintenance of Photo Red Light 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. Redflex shall acquire an encroachment permit from the Public Works Department prior to doing any work within City Right-of-Way.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of city Public Works Department present.
3. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of the Redflex.
4. The provision of all necessary electrical services to the Designated Intersection Approaches will be the sole responsibility of the City.
5. In the event that images of a quality suitable for the Authorized Officer to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
6. The Redflex Project Manager (or a reasonable alternate) shall be available to the Police Project Manager each day, on a reasonable best efforts basis.



EXHIBIT "D"
COMPENSATION & PRICING

Commencing on the expiration of the Warning Period for each Designated Intersection Approach, City shall be obligated to pay Redflex a fixed fee of \$5,570 per month for each Designated Intersection Approach with up to two (2) continuous lanes and \$5,870 per month for three (3) or more contiguous lanes. ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

The City agrees to pay Redflex within thirty (30) days after the invoice is received.

1. In the event that the contract ends or is terminated and an invoiced balance is still owed to Redflex, the outstanding balance shall be paid to Redflex within thirty (30) days.
2. The City may request that equipment be relocated at any time following the first year anniversary of the "go live" date for the system in question. If the decision to relocate the system is not mutually agreed to by Redflex, which agreement shall not unreasonably be withheld, the City will be solely responsible for all associated relocation costs (i.e. construction, post-mortem conditions, equipment remedies, etc.). Payment for relocation of each system will be paid in one of two ways: 1) Costs to be paid in full at the time of relocation; 2) Costs to be amortized over the remaining length of the contract term and applied to the monthly fee for the system being relocated. The City shall receive a credit in an amount equal to 1/30th of the Fixed Fee for each full or partial day that the system being relocated is not fully operational, and the Fixed Fee for the month during which the relocation occurs shall be reduced by the amount of the credit.
3. An annual review of the financial status of the program will be conducted and if the City is in a negative financial situation, City has a right to conduct good faith discussions seeking a remedy to eliminate the negative financial situation. If no remedy is found, the Contract may be terminated.
4. The City will be billed in arrears and will be allowed 30 days to pay to allow for the collection of sufficient fines to pay monthly fee at the beginning of the program.
5. Any Redflex System that is determined to be down or off for a period of two (2) consecutive days in any given month, must be responded to and fully operational within 48 hours. In the event that a Redflex System is not fully operational within two (2) days of reporting the incident, Redflex shall credit the monthly invoice in the amount of 1/30th of the fixed monthly fee for the downed approach for each day the approach is down, including the initial two (2) consecutive days. In the event that any Redflex System at an approach is determined to be down or off for a period of more than two (2) cumulative days in any given month, Redflex shall credit the monthly invoice in the amount of 1/30th of the approach fee for the downed approach for each day the approach is down, including the initial two (2) cumulative days. A Redflex System shall be deemed to be down or off when the Redflex System is incapable to process potential violations to be screened by the Authorized Officer. This does not include a System that is down or off due to power outage or other uncontrollable factors.



BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Redflex construction will be able to utilize existing conduit for installation where space is available.
2. Annually, commencing January 1, 2009 and each January 1 thereafter, the Fixed Fee shall be increased by the percentage change in the CPI. Such escalation shall be calculated by computing the percentage change in the CPI for the twelve month period ending September 30 of the preceeding calendar year, and multiplying the Fixed Fee to be escalated by 100% (one hundred percent) of that percentage change in the CPI. "CPI" means the Consumer Price Index for All Urban Consumers, All-Items Index, for the Los Angeles-Anaheim-Riverside Area, as published by the United States Department of Labor, Bureau of Labor Statistics.
3. Except where a balance remains unpaid due to a deficit in the gross cash received as described herein, City 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.



Exhibit "E"
Additional Rights and Obligations

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

1. Redflex shall assist the City in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Photo Redlight Enforcement Program (actual print and production costs are the sole responsibility of the City).
2. Redflex shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the Vehicle Code, and shall assist in determining the placement of such Signage. Redflex shall be solely responsible for installing such Signage.
3. The Redflex Project Manager and the Police Project Manager shall meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the Installation Date, and on a monthly basis for the remainder of the Term, at such times and places as the Redflex Manager and the City Manager shall mutually agree.
4. The City shall not access the Redflex System or use the Photo Redlight Enforcement Program in any manner other than as prescribed by law, 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.
5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Photo Redlight Enforcement Program.
6. Each of 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, each of Redflex and the City shall obey any and all such rules and regulations.
7. 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:
2. 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;
3. Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned by Redflex, hired by Redflex, Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.
4. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of California, and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
5. With respect to the insurance described in the 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.
6. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
7. The City Parties shall be covered as additional insureds with respect to any liability arising from any act or omission of any Redflex Parties on the premises upon which any such Redflex Parties may perform services pursuant to this Agreement, and such coverage shall contain no special limitations on the scope of protection afforded to such additional insureds.
8. 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.
9. 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.



10. With respect to the insurance described in 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 advanced 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.

11. 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 ____ day of _____, 2008, is entered into by and between the City of Yucaipa (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the City of Yucaipa and Redflex Traffic Systems, inc. for Photo red light enforcement program, dated as of 13th day of August, 2007, 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.

Exhibit G
Consultant Proposal