ITEM NO. 12

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 17, 2010

TO: Honorable Mayor and Councilmembers

FROM: Police Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH REDFLEX TRAFFIC SYSTEMS INC., FOR THE OPERATION OF EXISTING REDLIGHT PHOTO ENFORCEMENT CAMERAS AT THE INTERSECTIONS OF MISSION AVENUE/CANYON DRIVE AND COLLEGE BOULEVARD/ OCEANSIDE BOULEVARD**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement with Redflex Systems, Inc., of Culver City, for the continued operation of the Red Light Photo Enforcement Program at the intersections of Mission Avenue/Canyon Drive and College Boulevard/Oceanside Boulevard; and authorize the City Manager to execute the agreement.

BACKGROUND

In December 2003, the City Council approved the implementation of a Citywide Red Light Photo Enforcement Program. The program was implemented in December 2004. The program emphasis has been to reduce red-light violations Citywide and to reduce accident frequency and severity. The City Council approved implementation of the Red Light Photo Enforcement Program in two phases. In Phase I the intersections at Mission Avenue/Canyon Drive and College Boulevard/Oceanside Boulevard were outfitted with red-light photo-enforcement cameras. These intersections were selected for implementation based on an analysis conducted by the City's Transportation Division. This analysis revealed that these intersections had a high volume of traffic collisions related to red-light violations (specifically broadside collisions). Since implementation of the photo-enforcement program at Mission Avenue/Canyon Drive and Oceanside Boulevard/College Boulevard, the number of red-light violations and injury traffic collisions occurring at these intersections has decreased significantly. The City Council authorized the implementation of up to eight additional red-light photo-enforcement intersections in Phase II. To date Phase II has not been implemented.

The law governing what a company can charge and a City can pay for red-light photo-enforcement services has changed since implementation of the program in 2004. The prior contract with Redflex was consistent with the law at the time and predicated on a per-ticket fee structure. However, a per-ticket fee structure cannot be included in a contract entered into after January 1, 2004. The law currently allows a company to

charge and a city to pay for services based on a fixed dollar amount per approach. An approach is defined as the northbound, southbound, westbound, or eastbound lanes leading to or from an intersection. The proposed contract is based on this fixed cost structure.

The proposed contract contains two fee structures. One for the existing intersections and another for new intersections/approaches added during the term of this agreement.

For existing intersections under the proposed contract the cost would be $2,225 per approach, per month. The $2,225 amount for existing intersections is contingent upon the implementation of two additional intersections within 365 days of approval of this agreement. If this does not occur, the cost per approach on existing intersections will increase to $3,050 per approach, per month. The cost for additional intersections/approaches added during the term of this contract will be $6,070 per approach, per month. Considerable analysis and negotiation occurred to arrive at these fees.

The contract also contains a semiannual review provision. If the City's costs to operate and maintain the red-light camera systems at the various intersections is not fully realized under the proposed fee structures, the City and Redflex are obligated by this provision to meet and confer to develop a new fee structure that meets both parties' financial needs. If one cannot be reached, the contract can be terminated by either party with 45 days notice.

ANALYSIS

Experience indicates that increased levels of enforcement at problem locations will reduce accidents and improve traffic safety for motorists and pedestrians. In those cities where photo-enforcement technology has been deployed, red-light violations, traffic collisions, and resulting injuries and fatalities have been significantly reduced. Our experience over the past five years has been consistent with the nationwide experience; red-light violations and collisions related to these violations have decreased at the intersections where this technology has been implemented. As a traffic safety program, the Police Department believes continuation of red-light photo-enforcement technology at existing intersections and potential expansion to other intersections will further the goal of continually improving traffic and pedestrian safety throughout the community.

HISTORICAL EXPERIENCE WITH PHASE I

On December 10, 2004, Phase I began operation with red-light photo-enforcement cameras installed at the intersections of Mission Avenue/Canyon Drive and College Boulevard/Oceanside Boulevard. A thirty-day grace period was implemented after installation of the cameras. Warnings, and not citations, were issued for the first 30 days.

During 2005 an average of 273 violations were issued per month; 2006 an average of 289 violations were issued per month; 2007 an average of 287 violations were issued per month; 2008 an average of 247 violations were issued per month; 2009 an average of 169 violations were issued per month. The gradual reduction in violations represents a 56 percent decrease in hazardous red-light violations per month since implementation of the technology at the intersections of Mission Avenue/Canyon Drive and Oceanside Boulevard/College Boulevard. Moreover, since implementation of Phase I, red-light collisions at Mission Avenue/Canyon Drive have decreased from an average of 5 per year to none in 2009; red-light collisions at Oceanside Boulevard/College Boulevard have decreased from an average of 2 per year to less than 1 per year.

HOW THE RED-LIGHT CAMERA SYSTEM OPERATES

The red-light camera system in operation in the City of Oceanside is a computer-based digital imaging system. Four photographs and 12 seconds of video are taken of drivers who enter the intersection one tenth of a second after the signal turns red. The system does not activate on the yellow or green phases. The system will trigger **only** on the red-light phase of the signal. One photograph is taken of the car behind the limit line; one photograph is taken of the driver's face and upper body; one photograph is taken of the vehicle license plate and one photograph is taken of the vehicle after it has passed the limit line in violation of the California Vehicle Code. The video starts from before the limit line and continues as the vehicle travels through the intersection. The cameras capture red-light violators going left, right or straight through the intersection. Each violation is viewed by an OPD staff member to verify its authenticity before it is sent to the violator and court for adjudication.

FISCAL IMPACT

Redflex Traffic Systems purchases, installs and maintains the equipment at no cost to the City. Based on our experience with Phase I, and proposed contract language, the City should expect to recover its costs to operate and maintain the red-light photo-enforcement program at the two existing intersections and any additional approaches added during the life of this contract. The City's costs include a full-time position to review and issue the citations, which is approximately $80,000 per year. Of the fine imposed by the court for a Vehicle Code violation, the City, like other municipalities in the County, ultimately receives approximately 43 percent of each fine. If these costs are not realized, the proposed contract includes a clause that requires Redflex and the City to renegotiate the terms of the agreement; if an acceptable financial agreement cannot be reached at that time the contract can be terminated by either party with 45 days notice. The program is expected to be self-supporting. The program is also expected to result in a reduced number of accidents and injuries and provide an increased level of public safety to the community. Based on current conditions there are four approaches monitored for a total annual cost to Redflex of $213,600. The total cost to the City is approximately $293,600, which will be recovered by the fine revenue.

COMMISSION AND COMMITTEE REPORTS:

At the March 18, 2008, meeting, the Transportation Commission reviewed and approved implementation of Phase II of the Red Light Photo Enforcement Program for intersection traffic safety. At their June 19, 2008, meeting, the Police and Fire Commission also approved implementation of Phase II. Analysis is continuing to determine if additional photo-enforcement intersections, as part of Phase II implementation, are currently merited. If analysis reveals vehicle and pedestrian safety could be enhanced by the implementation of additional photo-enforcement cameras, the identified intersections will be brought before City Council at that time for review and approval.

CITY ATTORNEY'S ANALYSIS:

The City Attorney's Office has reviewed the proposed contract with Redflex Traffic Systems and has approved the contract as to form.

RECOMMENDATION

Staff recommends that the City Council approve a professional services agreement with Redflex Systems, Inc., of Scottsdale, Arizona, for the continued operation of the Red Light Photo Enforcement Program at the intersections of Mission Avenue/Canyon Drive and College Boulevard/Oceanside Boulevard; and authorize the City Manager to execute the agreement.

PREPARED BY:

For Shawn Murray
Police Lieutenant

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

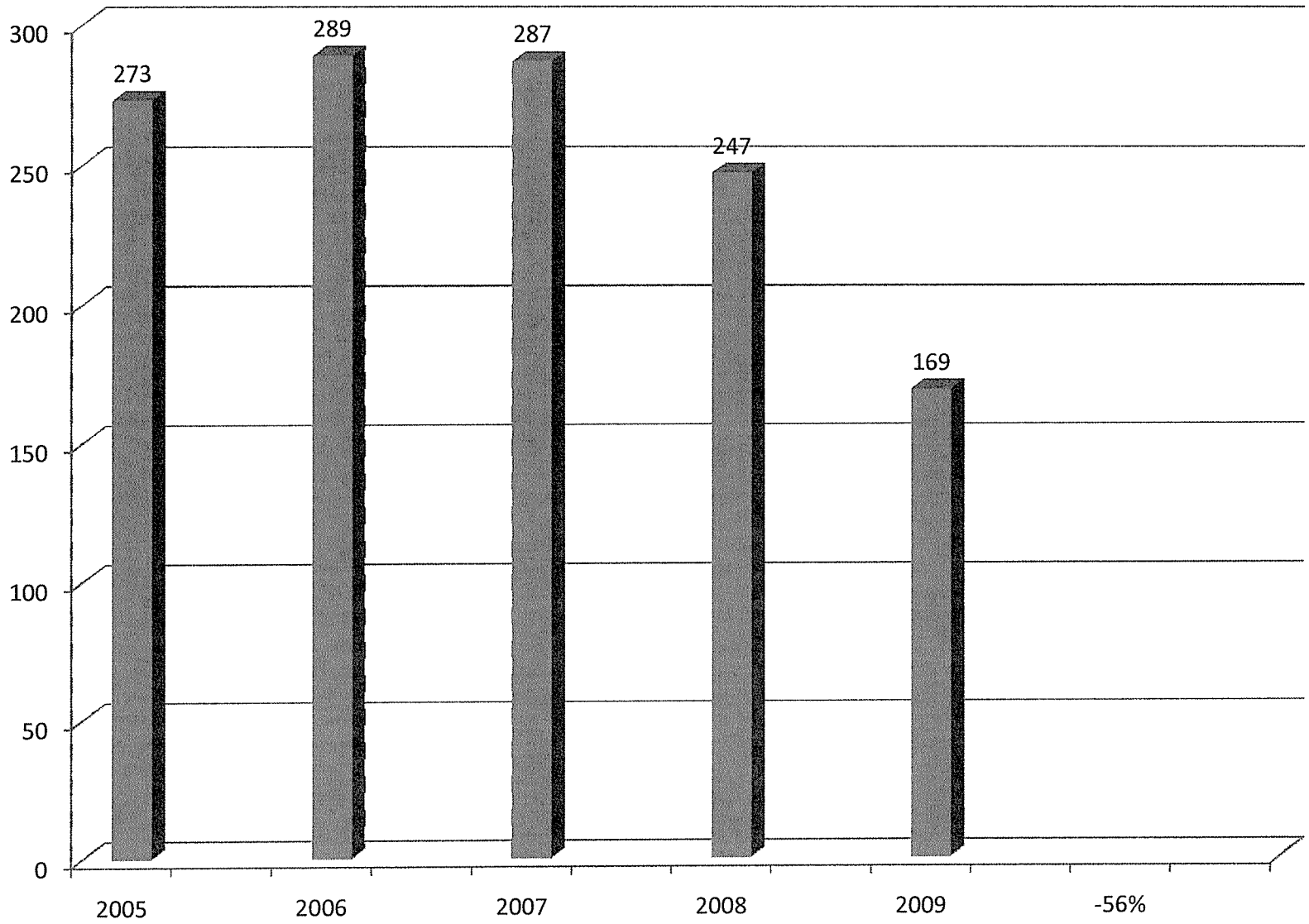
Michelle Skaggs Lawrence, Deputy City Manager

Frank McCoy, Police Chief

Teri Ferro, Financial Services Director

Attachment: Exhibit "A" – Average Number of Violations Issued per Month (bar graph).

Exhibit A
Average Number of Violations per Month



AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND REDFLEX TRAFFIC SYSTEMS, INC. FOR AUTOMATED RED LIGHT PHOTO ENFORCEMENT CAMERAS

This Agreement ("Agreement") is made as of this __ day of _____, 2010 by and between Redflex Traffic Systems, Inc., a California corporation with offices at 6076 Bristol Parkway, Culver City, California 90230 ("Redflex"), and The City of Oceanside, a municipal corporation, with offices at 300 N. Coast Highway, Oceanside, CA 92054 (the "City").

RECITALS

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

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

WHEREAS, it is a mutual objective of both Redflex and the City to reduce the incidence of vehicle collisions at the traffic intersections that will be monitored pursuant to the terms of this Agreement; and

WHEREAS, violation of sections 21453(a) and 21453(c) of the California Vehicle Code, failing to stop for a red light and failing to stop for a red arrow, has been shown to pose a significant risk to life and property,

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, an employee of the Oceanside Police Department as designated by the Chief of Police.

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 Officer 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 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, the 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, 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. Personal Information" as described in California Civil Code 51798.39a).

1.4.4. 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 the City shall determine.

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 Redlight Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the California Judicial Council and the Oceanside Police Department), 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), system maintenance logs 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 System, including but not limited to all camera systems, housings and poles.

1.9. "Fines" means a monetary sum assessed for a Citation, including but not limited to bail forfeitures, but excluding suspended fines and court security fees as assessed by San Diego County Superior

1.10. "Governmental Authority" means any state or federal 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 with jurisdiction over the City of Oceanside.

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 Redlight Photo 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, 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 and 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.

1.13. "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) digital, rear shot multiple image color camera, at least one (1) digital face camera (showing a clear image of the driver of the vehicle) and at least (1) rear shot digital video camera capturing at least (12) seconds of video of Potential Violations installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the City.

1.14. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Redlight Photo Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by a sworn police 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 manager shall initially be the Traffic Officer Dennis Hauck, or

such person as the City shall designate by providing written notice thereof to Redflex from time to time, which manager shall be a member of the Oceanside Police Department designated by the Chief of Police and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight 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 Council.

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 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 Redlight Photo 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 Joe Bernard or such person as Redflex shall designate by providing written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Redlight 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 SmartCam™ System, the SmartOps™ System, the Redlight Photo 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. "Redlight 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 detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles and/or their drivers.

1.23. "Redlight Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by sworn police 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 speed and redlight photo enforcement system of Redflex relating to the Redlight Photo Enforcement Program.

1.25 . "SmartOps™ System" means the proprietary back-office processes of Redflex relating to the Redlight Photo Enforcement Program.

1.26. "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.

1.27. "Violation" means any traffic violation contrary to the terms of the California Vehicle Code or any applicable rule, Oceanside Municipal Code, 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.

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

1.39. "Warning Period" means the period of thirty (30) days after the Installation Date of the first intersection approach.

2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years from the date of this Agreement (the "Initial Term"). The City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive one (1) year periods 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 Redlight Photo Enforcement Program to the City with respect to the Designated Intersection Approaches, in each case in accordance with the terms and provisions set forth in this Agreement.

3.1. Installation. With respect to the construction 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 and San Diego County Superior Court 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 Violation Data from the applicable Designated Intersection Approach;

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 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 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 via certified mail within five days or the period prescribed by law, whichever is less, after Redflex's receipt of such authorization and shall generate a certificate or other evidence of mailing with respect thereto; 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, responding to complaints and Redflex shall provide necessary personnel for such purpose. If deemed necessary by the Police Project Manager, Redflex shall also provide a portable work station (laptop) for the purpose of citizen review of the citation incident(s) and additional work stations will be provided based on City needs;

3.3.8. Redflex shall generate or permit the Authorized Officer to generate monthly reports using the Redflex System in a format and containing such data as Redflex and the City shall mutually agree, and in no event less often than once every calendar month and, in respect of any given month, no later than the fifteenth (15th) day of the month following such month (the "Standard Reports");

3.3.9. Upon Redflex's receipt of 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.

3.3.10. Upon the City's receipt of a written request from Redflex, the City shall make reasonable best efforts to 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.

3.3.11. During the three (3) month period following the Installation Date or upon special request of the City and upon Redflex's receipt of a written request from the City that shall be given within 5 business days of the City being notified from the relevant agencies (i.e. Court); Redflex shall provide expert witnesses for use by the City in prosecuting Violations; provided, however, the City shall use reasonable efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; and

3.3.12. During the course of the Agreement, Redflex shall provide such training to police personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to Redlight Enforcement Program.

3.4. Compensation. Redflex shall have the right to receive, and the City shall be obligated to pay, the compensation set forth in Exhibit D attached hereto consistent with the terms of this Agreement.

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.

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 Oceanside, 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 Oceanside) that Redflex is providing services to the City in connection with Redlight 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 Redlight 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 to its actual present knowledge without inquiry or investigation: (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. Redflex acknowledges and agrees that City is the sole and exclusive owner of all logos and other symbols of the City of Oceanside. Redflex shall not use any logo or symbol of the city of Oceanside in sales literature or other physical media, and in connection with any commercial activities of Redflex, without first obtaining the City.

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, decompile 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. ACCEPT 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. 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 red light photo enforcement systems; (ii) any court having jurisdiction over City rules, or California or federal statute declares, that results from the Redflex System of red light photo enforcement are inadmissible in evidence; or (iii) the other party commits any material breach of any of the provisions of this Agreement which breach is not remedied 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-

breaching party setting forth in reasonable detail the events which caused the breach. 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.

6.2. Redflex Initiated Termination of Contract. If Redflex breaches this contract for any reason the City of Oceanside will not be obligated to pay Redlfex for any provision of this contract beyond the date of breach.

6.3. Termination for Convenience. The City has the right to terminate this Agreement for convenience by providing written notice 45 days prior to the date of termination. In the event the City exercises its right to terminate this Agreement for convenience 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. No cancellation fee or reimbursable costs shall be due should the City terminate this Agreement for any reason set forth in Section 6.1. 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 relive 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 of Intersection Approaches and services in connection with the Redlight Photo Enforcement Program, and (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 may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement.

6.4.2 The City shall (i) immediately cease using the Redlight 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.

6.4.3. Unless the City and Redflex have agreed to enter into a new agreement relating to the Redlight 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 this Agreement.

6.5. Survival. Notwithstanding the foregoing; the definitions and each **of** the following shall survive the termination of this Agreement: (i) 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 (ii) 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.** To the extent permitted by the California Public Records Act (Government Code Section 6250 *et seq.*) or the California Vehicle Code, or the freedom of information act, during the term of this Agreement and subject to state laws 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. **LIABILITY INSURANCE**

8.1 Redflex shall, throughout the duration of this Agreement, maintain general comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of Redflex, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

8.2. Redflex shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance (bodily injury and property damage)	
Combined Single Limit Per Occurrence	$1,000,000
General Aggregate	$2,000,000
Commercial General Liability Insurance (bodily injury and property damage)	
Combined Single Limit Per Occurrence	$1,000,000
General Aggregate	$2,000,000
Automobile Liability Insurance	$1,000,000

*General Aggregate per year, or part thereof, with respect to losses or other acts or omissions of Redflex under this Agreement.

8.2.1. If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the City may require additional

coverage to e purchased by Redflex to restore the required limits. Redflex shall also notify the City's Project Manager promptly of all losses or claims over $25,000 resulting from work performed under this contract, or any loss or claim against Redflex resulting from any of Redflex's work.

8.3. All insurance companies affording coverage to Redflex for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance police for all work performed under this Agreement. Insurance coverage provided to the City as an additional insured shall be primary insurance and other insurance maintained by the City, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

8.4. All insurance companies affording coverage to Redflex pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

8.5. All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notification requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

8.6. Redflex shall provide evidence of compliance with the insurance requirements listed by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this agreement.

8.7. Redflex shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by Redflex to provide such a substitution and extend the policy expiration shall be considered a default by Redflex and may subject Redflex to Suspension or termination of work under the Agreement.

8.8. Maintenance by Insurance by Redflex as specified in this Agreement shall in no way be interpreted as relieving Redflex of any responsibility whatsoever and Redflex may carry, at its own expense, such additional insurance as it deems necessary.

9. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, Redflex shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of one million dollars ($1,000,000). Redflex shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

10. **INDEMNIFICATION BY REDFLEX**

10.1 Indemnification by Redflex. Redflex hereby agrees to defend and indemnify the City, councilpersons, managers, officers, directors, employees, agents, representatives, volunteers 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 conduct 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.

10.2. Indemnification by the City. 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.

11. **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:

Notices to Redflex:

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

Notices to the City:

City of Oceanside
300 North Coast Highway

Oceanside, CA 92054
Attn: Peter Weiss, City Manager
Facsimile: (760) 435-3081

With a copy to:

City Attorney
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Facsimile: (760) 435-3970

12. **DISPUTE RESOLUTION.** Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 12, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties shall mutually agree to submit to mediation provided, however, that nothing in this section shall prevent either party from bringing an action in a state or federal court of competent jurisdiction.

13. **MISCELLANEOUS.**

13.1. 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 purpose of this Agreement, the City shall be deemed to have consented to and approved

such Transfer by Redflex. Not withstanding the above, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective succors or assigns.

13.2. 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).

13.3. 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 not less than forty-eight (48) hours prior notice to 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 any underpayment of any payment payable to 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 amount by more than twenty-five percent (25%) of the amount 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.

13.4. 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.

13.5. Entire Agreement. This Agreement, together with all exhibits hereto, all of which are hereby incorporated by reference herein, represents the entire Agreement between the parties. In the event of any inconsistency between this Agreement and any of the Exhibits, the terms of this Agreement shall govern. 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.

13.6. 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, then, upon mutual consent of the parties, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

13.7. 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.

13.8. 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.

13.9. 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

13.10. 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.

13.11. 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.

13.12. 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.

13.13. 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.

13.14. 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.

13.15. 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.

13.16. 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.

13.17. 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.

13.18. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

"City"

CITY OF OCEANSIDE

By: _____

Peter Weiss
City Manager

APPROVED AS TO FORM:

By: _____ SALA FOR

John Mullen
City Attorney

"Redflex"

REDFLEX TRAFFIC SYSTEMS, INC.,

By: Karen Finley

Karen Finley
President & CEO

By: Cristina Weekes

Cristina Weekes
Secretary

Sandra L. Stevens 5 February 2010

Sandra L. Stevens
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
February 27, 2013

EXHIBIT "A"

DESIGNATED INTERSECTION APPROACHES

The contract is for the continued operational services of the following approaches/systems:

College Blvd & Oceanside Blvd (Southbound)
College Blvd & Oceanside Blvd (Eastbound)
Canyon Drive & Mission Ave (Eastbound)
Canyon Drive & Mission Ave (Westbound)

And implementation of additional intersections based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.

EXHIBIT "B"

CONSTRUCTION AND INSTALLATION OBLIGATIONS *FOR ADDITIONAL APPROACHES*

Redflex will have each specified intersection installed and activated in phases and will use reasonable commercial efforts to install the system in accordance with an implementation plan set forth in this section.

Should the City decide to add additional approaches this language (Exhibit B) shall govern the obligation of all parties

1. **FORTY FIVE (45) DAY PERIOD**.

1.1 **REDFLEX OBLIGATIONS**. Within the first forty five (45) days subsequent to the date hereof, Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):

(a) 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;

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

(c) 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

(d) 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.

1.2 **CITY OBLIGATIONS**. Within the first forty five (45) days subsequent to the date thereof, 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):

(a) appoint the Police Project Manager;

(b) Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;

(c) 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;

(d) To the extent permitted by law, provide assistance to Redflex in obtaining

access to the records data of the California Department of Motor Vehicles in Redflex's capacity as an independent contractor to the City; and assist Redflex in seeking the Approvals.

2. ONE HUNDRED AND TWENTY (120) TO ONE HUNDRED AND SIXTY (160) DAY PERIOD.

2.1 **REDFLEX OBLIGATIONS**. Within at least one hundred and twenty (120) days and at most one hundred and sixty (160) days subsequent to the date hereof, Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):

(a) Finalize the acquisition of the Approvals;

(b) 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");

(c) Develop the Redlight Violation Criteria in consultation with the City;

(d) Develop the Enforcement Documentation for approval by the City, which approval shall not be unreasonably withheld;

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

(f) 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;

(g) 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;

(h) Implement the use of the Redflex System at each of the Designated Intersection Approaches;

(i) Deliver the Materials to the City; and

(j) Issue "warning letters" for Authorized Violations which occurred at each Designated Intersection Approach during the Warning Period; and

(k) During the Warning Period, 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 Redlight Photo Enforcement Program, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Redlight 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) 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, the establishment of a court hearing schedule for adjudicating upon Citations, and coordination between Redflex, the City and juvenile court personnel; and

(m) 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 Redlight Photo Enforcement Program.

2.2. **CITY OBLIGATIONS**. Within at least one hundred and twenty (120) days and at most one hundred and sixty (160) days subsequent to the date hereof, 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):

(a) 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 Redlight Photo Enforcement Program;

(b) 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;

(c) Provide the services of necessary personnel during the Warning Period;

(d) 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;

(e) Assist Redflex in developing the Redlight Violation Criteria; and

(f) Seek approval of the Enforcement Documentation.

3. ONE HUNDRED AND FIFTY (150) TO ONE HUNDRED AND NINETY (190) DAY PERIOD.

3.1. Within at least one hundred and fifty (150) days and at most one hundred and ninety (190) days subsequent to the date hereof, Redflex shall commence the Operational Period, and the City shall provide the services of necessary personnel to support the Operational Period.

EXHIBIT "C"
MAINTENANCE

With respect to the maintenance of the Reflex System at the Designated Intersection Approaches, the City and Redflex shall have the respective rights and obligations set forth as follows:

1. All repair and maintenance of camera 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 Boxes without a representative of City Traffic Engineering present.
3. The provision of all necessary electrical and telephone services to the Designated Intersection Approaches will be the sole responsibility of the City.
4. 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.
5. 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

Fixed Monthly Fee

Phase One Pricing: Commencing with the written execution of this Agreement, the City of Oceanside will be obligated to pay Redflex a fixed fee of $2225.00 per approach, per month for the duration of this agreement absent a renegotiation of terms, conditions, fees or a cancellation of the contract for the following approaches:

College Blvd & Oceanside Blvd (Southbound)
College Blvd & Oceanside Blvd (Eastbound)
Canyon Drive & Mission Ave (Eastbound)
Canyon Drive & Mission Ave (Westbound)

Phase One pricing is predicated on City's representation that it will select and cause to be built two additional intersections (4 approaches) within one year of written acceptance of this Agreement. Phase one pricing on existing intersections has been discounted from $ 3052.00 to $2225.00 per approach. This discounted rate is predicated on the activation of four additional Redlight camera approaches within the City of Oceanside in the 365 day period following written acceptance of this agreement by all parties. Failure to institute two additional Redlight camera intersections within the designated time frame will revert pricing to $3052 per approach on existing intersections. Retroactivity is not contemplated by this agreement and will not be provided to Redflex by the City of Oceanside for the ***initial*** 365 day period after acceptance of this agreement, if two additional intersections are not instituted within the designated time frame.

Phase Two Pricing: Phase two pricing for the projected approaches contemplated by this agreement is $6070.00 per approach. Redflex represented that this fee is required to cover their material, construction, and operational costs to install, maintain and operate each new approach at newly constructed sites. At the expiration of the 30-day warning period for the new approaches, the City of Oceanside agrees to pay Redflex $6070.00 per approach, per month for the duration of this agreement, absent renegotiation of terms, conditions, fees or a cancellation of the contract.

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Redflex construction will be able to utilize existing conduit for installation where space is available. Where it is determined by both parties that additional conduit is necessary, cost and access for use of such additional conduit shall be equally shared by Redflex and the City. Any such additional conduit shall become the exclusive property of the City upon Termination of this Agreement.
2. The 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.
3. Prices do not include supply of power and supply of DSL, cable or other broadband services. The City shall be solely responsible for power and communication infrastructure.
4. If a system is deactivated at the City's request due to roadway construction, the monthly fee will continue.

5. Six (6) months after the implementation of this Agreement, and semiannually thereafter, both parties will meet and evaluate financial feasibility of the program. Based on generally accepted accounting principles, if the City and Redflex determine that the program is not financially feasible to maintain, the City will have the right to terminate the contract and Redflex shall have the right to remedy the cause for termination within forty-five (45) calendar days (or within such other time period as the City and Redflex shall mutually agree) after written notice from the City. Said evaluation of financial feasibility will not apply to newly installed approaches until twelve (12) months after the first citation issuance to allow for court process and billing procedures.

EXHIBIT "E"
ADDITIONAL RIGHTS AND OBLIGATIONS

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

1. Redflex shall diligently assist and support the City in attempts to secure the appropriate California Department of Transportation (CalTrans) permits for red light photo enforcement on CalTrans controlled roadways.
2. 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 (actually print and production costs are the sole responsibility of the City).
3. The City shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the California Vehicle Code, and shall assist in determining the placement of such Signage, and the. City hereby acknowledges and agrees that the City shall be solely responsible for installing such Signage.
4. 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.
5. The City shall not access the Redflex System or use the Redlight Photo Enforcement Program in any manner 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.
6. 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.
7. 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.
8. The City shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any other property or equipment related thereto, damaged directly or indirectly by the City, or any of its employees, contractors or agents.