

**AGREEMENT BETWEEN THE CITY OF FREMONT AND REDFLEX TRAFFIC SYSTEMS,
INC. FOR PHOTO RED LIGHT ENFORCEMENT PROGRAM**

This Service Agreement (hereinafter "Agreement") is made and entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter "City" or "Customer"), and **REDFLEX TRAFFIC SYSTEMS, INC. WITH OFFICES AT 5651 WEST TALAVI BOULEVARD, SUITE 200, GLENDALE ARIZONA 85306-1893 ("REDFLEX" OR "CONSULTANT")**. City and Consultant may be collectively referred to herein as the "parties."

RECITALS

WHEREAS, the City and Redflex have an existing agreement in which Reflex provides equipment and services for automated traffic enforcement systems installed at various intersections in the City that will expire by its terms on July 31, 2020 (the "Existing Agreement"); and

WHEREAS, Redflex owns the existing automated traffic enforcement system equipment installed in Fremont. Switching vendors most likely would entail removal of Redflex equipment and installation or a new vendor's equipment at a cost to the City of approximately \$1 million, whether paid directly by the City or indirectly through higher monthly rates, and cause significant delay to the program, caused by removal and reinstallation of equipment; and

WHEREAS, The Alameda County Superior Court is familiar with the technology and citation-issuing program RTS uses and has devoted substantial resources to integrate the two systems. The court currently supports seven agencies in Alameda County with automated collection programs that are directly linked to RTS. A change in vendor would significantly disrupt and/or delay court proceedings.

WHEREAS, the City desires to continue to engage the services of Redflex and Redflex desires to continue to provide equipment and services for automated traffic enforcement systems in the City.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the

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Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

3. PAYMENT.

3(A). Billing. In order to request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges based upon the Consultant's billing rates (set forth on Exhibit "B," attached hereto and incorporated herein by reference). The City shall make monthly payments to Consultant for services which are performed in accordance with this Agreement, to the satisfaction of the City.

3(B). "Not to Exceed" Compensation. The compensation payable to Consultant for the services identified in Exhibit "B" shall not exceed \$599,400. Consultant shall not perform any services beyond the services identified in Exhibit "A" without prior written authorization from the City's Authorized Representative.

3(C). Consultant's Failure to Perform. In the event that Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Consultant). If Consultant's failure to perform in accordance with this Agreement causes damages to the City, Consultant shall reimburse the City for the damages incurred (which may be charged as an offset to Consultant's payment).

4. AUTHORIZED REPRESENTATIVES.

4(A). Consultant's Authorized Representative. Consultant understands that, in entering into this Agreement, the City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of the Consultant (including the qualifications of its Authorized Representative, its personnel, and its subconsultants, if any) identified in Exhibit "A," attached hereto and incorporated herein by reference. Therefore, Consultant shall not replace its Authorized Representative, or any of the personnel or subconsultants identified in Exhibit "A," without the prior written consent of the City. All services under this Agreement shall be performed by, or under the direct supervision of, Consultant's Authorized Representative, as identified in Exhibit "A."

4(B). City's Authorized Representative. For the performance of Services under this Agreement, the City's Authorized Representative: Chief of Police, shall administer the Agreement unless otherwise designated in writing by the City's Authorized Representative or the City Manager.

5. INFORMATION AND DOCUMENTATION.

5(A). Information from City. City has made an effort to provide Consultant with all information necessary for Consultant's performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the City, and the City will provide to Consultant all relevant non-privileged information in

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City's possession.

5(B). Consultant's Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. Consultant's accounting records shall include, at a minimum, all documents necessary to verify the accuracy of Consultant's invoices related to this Agreement, including, but not limited to, reimbursable expenses however, the parties agree that such documents shall not include Consultant's proprietary cost and pricing information. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

5(C). Ownership of Work Product. All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("work product"), whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand by the City. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the City.

- 6. RELATIONSHIP BETWEEN THE PARTIES.** Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's agent and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Consultant. Consultant is not an officer or employee of City, and Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.
- 7. CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of California Government Code Section 1090 and the Political Reform Act (California Government Code Sections 81000, *et seq.*) and other state and local laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City.
- 8. NONDISCRIMINATION.** Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, gender or other legally protected status. Consultant will include this requirement in any subcontract.

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- 9. COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.
- 10. LICENSES.** Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession.
- 11. BUSINESS TAX.** The Consultant shall apply for and pay the business tax and registration tax in accordance with Fremont Municipal Code Chapter 5.05.
- 12. INSURANCE.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, subconsultants, and employees) in connection with the performance of services under this Agreement of the types and in the coverage amounts set forth in Exhibit D entitled "Insurance Requirements". This Agreement identifies the minimum insurance levels with which Consultant shall comply; however, the minimum insurance levels shall not relieve Consultant of any other performance responsibilities under this Agreement (including the indemnity requirements), and Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Consultant, and prior to the commencement of any services, the Consultant shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Consultant shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.
- 13. REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-284-4050, and Consultant shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.
- 14. INDEMNIFICATION.** Consultant shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims, litigation, demands, damages, liabilities, costs, and expenses, including court costs, attorney's fees, experts fees and other costs and fees of litigation or other dispute resolution proceedings ("Claims") resulting or arising from Consultant's willful misconduct, negligent performance or failure to perform under this Agreement, except Claims arising out of the

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City's negligence or willful conduct. In addition, Redflex shall defend the City from and against any claim, demand, or action in any form brought by a third party against City, and indemnify and hold City harmless from any damages, liabilities, losses, costs, and expenses, including reasonable attorneys' and experts' fees, in each case that are finally awarded to the third party by a court of competent jurisdiction or otherwise owed in any settlement, in each case to the extent arising from or related to any allegation that Redflex's automated traffic enforcement system or any intellectual Property as provided to the City and used within the scope of this Agreement, infringe any U.S. patent, copyright, or trade secret. Notwithstanding the foregoing, Redflex will have no liability or any infringement claim of any kind if the claim results from (a) modifications made other than Redflex; (b) unauthorized or unlicensed use; or (c) any third party elements.

15. TERM OF THE AGREEMENT. The term of this Agreement shall commence on August 1, 2020 and shall continue through July 30, 2025. The City of Fremont shall have the right, but not the obligation, to extend the term of the Agreement two (2) one (1) year periods following the expiration of this Agreement. The City of Fremont may exercise the right to extend the term of the Agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of this Agreement Term.

16. REPRESENTATIONS AND WARRANTIES.

16.1 Authority and Services.

16.1.1. 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.

16.1.2. Professional Services. Redflex hereby warrants and represents that any and all services provided by Redflex under 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 Customer.

16.2 Limited Warranties. Redflex warrants that the Redflex System will operate in the manner prescribed as Red-light photo enforcement system including the ability to accurately capture violation images and 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 Customer'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 Customer selects for use, or that the operation or use thereof will be uninterrupted. The customer 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.

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16.3 Credit For Malfunctioning or Non-operating Designated Intersection Approaches.

16.3.1 Notwithstanding section 16,2, for each malfunctioning Redflex System at a Designated Intersection Approach Redflex's compensation under Exhibit B, section 1 shall be reduced and Redflex shall credit the monthly invoice for each affected malfunctioning Designated Intersection Approach based on the following formula:

16.3.1.1 50% monthly malfunction rate = 50% base credit

16.3.1.2 An additional 1% credit for each percentage of malfunction rate above 50%, up to and including 80% malfunction rate, shall be added to the base credit.

16.3.1.3 If the malfunction rate exceeds 80%, then Redflex shall not be entitled to the monthly fixed fee and shall fully credit the monthly invoice.

16.3.1.4 The rate of malfunctioning shall be determined from the Redflex on-line customer management report but excluding rejections for driver obstruction, motor cycle helmet; plate obstruction; vehicle obstruction; extended vehicle; out of country and paper plates; wrong/no DMV; citations too old to process, emergency vehicles, officer discretion, and safe right turn on red.

16.3.2. 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 two (2) days after notification by the City's authorized representative or Redflex's discovery of 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 when inoperable and unable to capture images. This does not include a System that is down or off due to power outage or other uncontrollable factors.

17. TERMINATION. This Agreement shall terminate in two stages: Initiation of Termination and Final Termination.

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17.1 Termination by Either Party. Either party may immediately initiate termination of this Agreement in accordance with Section 17.4 by providing written notice to the other if:

17.1.1 state statutes are amended to prohibit the operation of red-light photo enforcement systems;

17.1.2 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.

17.1.3 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 Customer 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 under this subsection 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.

17.2 Termination by the Customer. The Customer may initiate termination of this Agreement in accordance with Section 17.4 without cause at any time by giving fifteen (15) days written notice of termination to Redflex. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall be obligated to pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the initiation of termination date, but not to exceed the payments according to the rates specified in Exhibit "B" and shall pay Consultant the amount of equitable cost recovery, if any, to which Consultant is entitled as set forth in Exhibit B, section 6.

17.3 Termination by Redflex. Redflex may initiate termination of this Agreement in accordance with Section 17.4 without cause by giving ninety (90) days written notice to the City signed by Redflex's Authorized Representative. In the event Redflex terminates this agreement, Redflex shall not be entitled to equitable cost recovery under Exhibit "B" section 6.

17.4 Procedures Upon Expiration or Initiation of Termination.

17.4.1 Upon the expiration of the Term of this Agreement and any extensions agreed upon by the Parties under Section 15 or upon initiation of termination as provided in Sections 17.1, 17.2 or 17.3 (the "Termination Initiation Date"):

17.4.1.1 Redflex shall immediately stop capturing and collecting new Violation Data for the Designated Intersection Approaches and invoice the Customer for the monthly fee, pro-rated to the date of Termination Initiation. Redflex shall continue to provide violation processing services at no additional cost

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to the City until all Citations issued before the Termination Initiation Date are adjudicated (the "Final Termination Date").

17.4.1.2 The Customer shall immediately cease using the Redlight Photo Enforcement Program, accessing the Redflex System and using any other Intellectual Property of Redflex, except as necessary to prosecute Citations issued before the initiation of termination date.

17.4.2 Unless the Customer 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 the installation of the equipment including but not limited to pavement stripes and concrete flatwork including, but not limited to, curb, gutter and sidewalk refurbishment as required by City standards, if damaged or altered by the installation or removal of the Redflex system. Redflex must begin removal and restoration the Designated Intersection Approaches within four months after the Termination Initiation Date, but in no event later than the Final Termination Date.

17.4.3 If Customer initiated termination under Section 17.2, Redflex shall immediately invoice Customer for equitable cost recovery due under the provisions of Exhibit B, section 6, if any. City will be obligated to pay such amount no more than four months after the Termination Initiation Date. No late fee or penalty shall accrue for any equitable cost recovery due and not paid within four months after the Termination Initiation Date.

17.5 **Final Termination.** After the Final Termination Date:

17.5.1 Redflex shall promptly deliver to the Customer (i) Confidential Information required to be returned under Section 18.3, (ii) a final invoice stating all outstanding fees and charges properly owed by Customer to Redflex, if any, for work performed under this Agreement, and (iii) a final report regarding the collection of data and the issuance of Citations in such format and for such periods as the Customer 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.

17.5.2 Customer shall deliver to Redflex Confidential Information required to be returned under Section 18.3. Upon receipt of the final invoice from Redflex, Customer shall promptly pay any and all fees, charges and amounts, properly owed by Customer to Redflex for work performed under the Agreement.

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17.6. **SURVIVAL.** The following provisions sections shall survive final termination of this Agreement: the definitions as defined in Exhibit A, section 6.2 (Reservation of Rights), section 16.0 (Redflex Representations and Warranties), section 18 (Confidentiality), section 14 (Indemnification and Liability), section 20 (Notices), section 21 (Dispute Resolution), sections 22 through 31, and 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.

18. CONFIDENTIALITY.

18.1. 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, except Confidential Information may be disclosed by the Recipient:

18.1.1. As required to be disclosed by court order or applicable law, provided prior notice is given to the Owner;

18.1.2. To employees who are reasonably required to have the Confidential Information;

18.1.3. To 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,

18.2. Consultant acknowledges that the Customer is a governmental agency and may be required to retain records, and to release certain information under requests made according to provisions of the Public Records Act. In the event Customer receives a request for public records related to Confidential Information, Consultant shall immediately notify Consultant so that Consultant may, at its sole expense, take any and all measures necessary to prevent or limit the disclosure of Consultant's Confidential Information. Consultant agrees to indemnify, defend and hold harmless the Customer from any and all losses and attorney's fees that may be incurred by the Customer arising out of any and all efforts to limit or prevent disclosure of Consultant's Confidential Information.

18.3. Upon Final Termination of this Agreement:

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18.3.1. Consultant shall return to Customer all tangible Confidential Information of Customer.

18.3.2. Customer shall return to Consultant all tangible Confidential Information of Consultant, except for records that Customer is required to maintain under applicable record retention laws which shall be returned to Consultant or destroyed at the conclusion of the applicable retention period.

19. DEFAULT. If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

20. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party’s Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: City

Fremont Police Department
2000 Stevenson Blvd.
Fremont, CA 94538
Attention: Chief of Police

To: Consultant

Redflex Traffic Systems, Inc.
5651 West Talavi Blvd.
Glendale, AZ **85306-**
Attention:
ProgramManagement with a
copy to the Legal Department

21. 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, 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, or either party may unilaterally proceed to litigation.

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The rights and obligations of the Parties under this Section shall not limit any right of either party set forth in Section 17 to terminate this Agreement.

22. HEADINGS. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

23. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

24. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

25. ASSIGNMENT AND DELEGATION. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

26. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

27. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

28. CONFLICTS. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

29. NO THIRD PARTY BENEFICIARIES. This Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, any third-party beneficiary rights), except as otherwise expressly provided for in this Agreement.

30. NEUTRAL INTERPRETATION. This Agreement represents the contributions of both parties, each of whom has had the opportunity to be represented by competent counsel. Accordingly, the rule stated in California Civil Code Section 1654 that a contract be construed against its drafter, shall have no application to the interpretation of this Agreement.

31. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by

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reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

32. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

33. COUNTERPARTS. This Agreement may be signed in counterparts, each of which shall be deemed to be an original.

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IN WITNESS WHEREOF, the City and Consultant do hereby agree to the terms set forth herein.

CITY OF FREMONT

**CONSULTANT "Redflex"
REDFLEX TRAFFIC SYSTEMS, INC.,**

DocuSigned by:
Brian Stott
F6D9A2C4EE0E406...
Brian Stott

By: _____
Title: Assistant City Manager
Date: 8/13/2020 | 1:02 PM PDT

DocuSigned by:
Mark Talbot
B3D059451BCF47B...
Mark Talbot

By: _____
Title: CEO
Date: 8/5/2020 | 5:20 PM PDT

APPROVED AS TO FORM:

DocuSigned by:
Bronwen Lacey
F900D31740534D5...
By: Bronwen Lacey
Title: Sr. Deputy City Attorney
Date: 8/12/2020 | 3:16 PM PDT

DocuSigned by:
Neville Joyce
4B1F9763052C44F...
By: Neville Joyce
Title: CFO
Date: 8/6/2020 | 12:29 AM PDT

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Exhibit "A"

SCOPE OF SERVICES

This Scope of Services, Exhibit "A." is incorporated by reference into the above referenced Agreement under Agreement section 1. Redflex hereby agrees to provide the following services to the City

1. DEFINITIONS. In the Agreement, the words and phrases below shall have the following meaning:

- 1.1 "Authorized Officer" means the Police Traffic Project Specialist or other person designated in writing by the Customer's Authorized Representative to review Potential Violations and to authorize Issuance of Citations in respect thereto.
- 1.2 "Authorized Representative" means for the City of Fremont, The Chief of Police or other persons designated in writing by the Chief of Police, and for Redflex means Mark Talbot or person designed in writing by Mark Talbot.
- 1.3 "Authorized Violation" means each Potential 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.
- 1.4 "Citation" means the Notice to appear prescribed by the California Vehicle Code for violations recorded by an automated enforcement system. Except during the Warning Period "Citation" means the warning notice provided to Redflex by the City to be mailed to the registered owner of the vehicle.
- 1.5 "Confidential Information" "Confidential Information" means any and all information which is disclosed by either party ("Owner") to the other ("Recipient") verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information includes, but is not limited to, trade secrets, computer programs, software, documentation, formulas, data inventions, techniques, marketing plans, strategies, forecast, customer lists, employee information, financial information, confidential information concerning Owner's business, as Owner has conducted it or as it may conduct itself in the future, confidential information concerning any of Owner's past, current, or possible future products or manufacturing or operational methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting marketing, selling or leasing, and any software (including third party software) provided by Owner.

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 Agreements, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv)

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was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.

- 1.6** “Designated Intersection Approaches” means the Intersection Approaches set forth in Section 4 of this Scope of Services.
- 1.7** “Intersection Approach” means to 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 and at least one (1) digital face camera has been installed by Redflex for purposes of facilitating Red Light Photo Enforcement by the Customer.
- 1.8** “Electronic Signature” means the method through which the Authorization Officer indicate his or her approval of the issuance of a citation in respect of Potential Violation using the Redflex System.
- 1.9** “Enforced Approach” means a direction 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 face camera and SmartsScene video has been installed by Redflex for the purposes of facilitating Red Light Photo Enforcement by the Customer.
- 1.10** “Enforcement Documentation” means the necessary and appropriate documentation related to the Red Light Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Judicial Council and the Fremont Police Department), a numbering sequence for use on all citation notices (in accordance with applicable court rules), instruction to accompany each issued Citation (including in such instruction a description of basic court procedures, payments options and information regarding the viewing of image and data collected by the Redflex Systems), 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.
- 1.11** “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, housing and poles.
- 1.12** “Fine” means monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.13** “Government 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.
- 1.14** “Installation Date” means the date on which Redflex completes the construction and installation of each Intersection Approach in accordance with the terms and

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conditions of the agreement for an automated enforcement system between Redflex and the City in effect at the time of the installation and construction, so that the Intersection Approach is fully operational for the purposes of functioning with the Red Light Photo Enforcement Program.

- 1.15** “Intellectual Property” means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works,(b) trademark and trade name rights and similar rights, (c) trade secrets rights. (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated). whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications renewals, extensions continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person.
- 1.16** “Malfunction” means any failure of the Redflex System to capture a clear photographic image of any given incident.
- 1.17** “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Red Light Photo Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by the Customer and the issuance of Citation for such approved Violations using the Redflex System.
- 1.18** “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.19** “Police Traffic Lieutenant and or Police Traffic Enforcement Project Specialist” means the police employee appointed by the Authorized Representative in accordance with this Agreement and upon written notice to Redflex. The Police Traffic Lieutenant or Specialist shall be responsible for overseeing the installation of the Intersection Approaches and the Implementation of the Red Light Photo Enforcement Program. The Police Traffic Lieutenant or Specialist shall have the power and authority to make management decision relating to the Customer’s obligation under Agreement.
- 1.20** “Potential Violation” means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by Redflex Systems with respect to such motor vehicle, which data shall be processed by the Redflex System in accordance with Customer’s screening criteria for the purposes of allowing the Authorized Officer to review such data and determine whether a Violation has occurred.
- 1.21** “Redflex Marks” means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Red light Photo Enforcement at any time during the term this Agreement, services marks, trade names, logos, brand and other marks owned by

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Redflex, and all modifications or adaptations of any of the foregoing.

- 1.22** RedflexProjectManager "" means the projectmanager designated by Redflex from time to time in accordance with this Agreement and upon written notice to the Customer. The project manager shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the Implementation of the Red Light Photo Enforcement Program, and shall have the power and authority to make management decisions relating to Redflex's obligations under this Agreement, including but not limited to change order authorizations.
- 1.23** "Redflex System" means, collectively, the SmartCam Systems, the SmartOps System, SmartScene System, The Red Light Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement camera, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.24** Red Light Photo Enforcement Program" means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of the Redflex System.
- 1.25** "Red Light Violation Criteria" mean the standards and criteria by which Potential Violations will be evaluated by Authorized Officer of the Customer, which standard 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 law, rules and regulations of Governmental Authorities.
- 1.26** "SmartCam System" means the proprietary digital speed and redlight photo enforcement system of Redflex relating to Red Light Photo Enforcement Program.
- 1.27** "SmartOps System" mean the proprietary back-office processes of Redflex relating to the Red Light Photo Enforcement Program.
- 1.28** "SmartScene System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
- 1.29** "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.
- 1.30** "Violation" mean any traffic violation contrary to the terms of the 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,

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and operating a motor vehicle without displaying a valid license plate or registration.

1.31 “Violations Data” means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.

1.32 “Warning Period” means the period of thirty (30) days after the Installation Date of each of Designated Intersection Approaches.

2. Redflex Systems. Redflex will provide the Redflex System to the City for the Designated Intersection Approaches in accordance with the terms and conditions set forth in the Agreement, including this Scope of Services. For each Intersection Approach, the Redflex System will operate on a 24-hour basis across up to four lanes of width.

3. Video Technology. Redflex will provide the Redflex System to the City for the Designated Intersection Approaches in accordance with the terms and conditions set forth in the Agreement, including this Scope of Services. For each Intersection Approach, the Redflex System will operate on a 24-hour basis across up to four lanes of width.

4. Designated Intersection Approaches “Designated Intersection Approaches” includes:

4.1 The following existing installed Intersection Approaches:

- 4.1.1 Automall/Fremont
- 4.1.2 Automall/Grimmer
- 4.1.3 Blacow/Mowry
- 4.1.4 Decota/Fremont
- 4.1.5 Decoto/Paseo Padre
- 4.1.6 Mowry/Farewell
- 4.1.7 Stevenson/Blacow
- 4.1.8 Fremont/Mowry
- 4.1.9 Warm Spring/Mohave
- 4.1.10 Eastbound Warm Springs/Mission

4.2 The following new Designated Intersection Approaches will be installed by Redflex on agreed upon timeframe with the latest HALO equipment existing as of the Execution Date of this Agreement:

- 4.2.1 Christy St/Automall Pkwy
- 4.2.2 Pacific Commons Bl./Automall Pkwy

4.3 Up to twelve (12) new intersection approaches that the City’s Authorized Representative may select from time to time using criteria including, but not limited to, traffic volume, collision data, red light running violation statistics.

5. Implementing Agreements. The Parties hereby authorize their respective Authorized Representative to execute Implementing Agreements consistent with the term of the

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Agreement, “Implementing Agreement” means a written agreement and any written amendments thereto signed by Parties’ authorized representatives on behalf of the Parties defining the operational details of the Agreement.

6. Installation. Redflex will install and activate each new Designated Intersection Approach in accordance with the terms and condition of this Agreement and any Implementing Agreements. For each installation, Redflex must:

6.1 Submit a set of completed project plans and specifications to the Public Works Department for review and approval. When approved, an encroachment permit will be issued to allow the work to proceed within City of Fremont public right of way.

6.2 Use reasonable commercial efforts to install new systems in accordance with the schedule set forth in an Implementing Agreement. Construction must begin within 30 days and systems must be activated and operational within sixty (60) days of City Engineering final plan approval. Due to the COVID-19 and the Shelter in Place Orders, construction, activation and operational timeline will commence when the Shelter in Place Orders permit these activities and corresponding extensions of time for any such COVID-19 delays will be added to all applicable Redflex timeframes and deliverable dates under this Agreement.

6.3 Request current “as-built” electronic engineering drawings for the Designated Intersection Approaches (the “Drawings”) from the city traffic engineer.

6.4 Develop and submit to the City for approach construction and installation specifications in reasonable detail for the new Designated Intersection Approaches, including but not limited to specifications for, pavement loops, electrical connections and traffic controller connections, as required, and on the condition that there are no direct connections within the controller cabinets; and

6.5 Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the new Designated Intersection Approaches (collectively, the “Approvals”), which will include compliance with City permit applications.

6.6 Finalize the acquisition of the Approvals;

6.7 Submit to the Customer a public awareness strategy for the Customer’s consideration approval, which strategy shall include media and educational material for the Customer’s approval or amendment (the “Awareness Strategy”);

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

6.9 Cause an electrical sub-contractor to complete all reasonable necessary

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electrical work at the Designated Intersection Approaches, including but not limited to 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 and regulations;

6.10 Install and Test the functionality of the Designated Intersection Approaches with the Redflex System and established fully operational Violation processing capability with Redflex System.

7. Violation Processing. During the Operational Period. Violations shall be processed as follows:

7.1 Redflex must store all Violations Data on the Redflex Systems.

7.2 Redflex must use the Redflex Systems in conjunction with the Red Light Violation Criteria provided by the City and registered owner information Redflex obtains from the Department of Motor Vehicles to process Violation Data gathered from the Designated Intersection Approaches into a format capable of review by Authorized Officers via the Redflex System. Redflex shall be responsible for establishing and maintaining procedures, to be approved by the Police Traffic Enforcement Project Specialist, for quality assurance of Violation Data.

7.3 The Redflex System must be accessible by Authorized Officers 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.

7.4 Redflex must provide the Authorized Officer with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within six (6) days of the gathering of the Violation Data from the applicable Designated Intersection Approach.

7.5 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 Office's sole discretion (a "Citation Decision"), and in no event shall Redflex have the ability or authorization to make a Citation Decision.

7.6 Except during the Warning Period, Redflex must print and mail a Citation and other appropriate Enforcement Documentation, within the earlier of four (4) days or at a maximum of ten (10) days after the violation occurring after Redflex's receipt of each Authorized Violation from an Authorized Officer or ten (10) days after the violation date, to the vehicle's registered owner. The Citation must include or be accompanied by, as appropriate:

7.6.1 The location, date and time of the Violation;

7.6.2 Number of seconds into the red traffic signal;

7.6.3 Vehicle speed;

7.6.4 One (1) close-up view of the vehicle rear license plate;

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- 7.6.5 One (1) close-up frontal view of the vehicle driver;
- 7.6.6 One (1) view of the intersection and the vehicle taken before the vehicle's front tires cross the limit line showing the traffic signal in the red phase and the rear license plate of the vehicle;
- 7.6.7 One (1) view of the intersection and the vehicle taken after in the intersection past the limit line;
- 7.6.8 Any other information deemed necessary by the Authorized Officer for successful prosecution of violations;
- 7.6.9 Any information of documents that may be required by state law, including but not limited to:

- 7.6.9.1 A certificate of mailing as required by Vehicle Code section 40518, subdivision (a);

- 7.6.9.2 An affidavit of non-liability and information as to what constitutes non-liability, information as to what constitutes non-liability, information as to the effect of executing the affidavit, and instructions for returning as required by Vehicle Code section 40520.

7.7 During the Warning Period for each Designated Intersection Approach, Redflex must print and mail a warning notice provided by the City to the registered owner of the vehicle following receipt of an Authorized Violation within the same timeframes as required herein for Redflex to mail a Notice to Appear.

7.8 If deemed necessary by the City, Redflex must provide and staff a toll-free telephone number for citizen inquires so that the City of Fremont and Redflex respond to citizen inquires, respond to complaints and Redflex shall provide necessary personnel for the following:

- 7.8.1 Quarterly speed and volume reports.
- 7.8.2 Access and support to the Authorized Officer to generate monthly reports using the Redflex Standard Report System.
- 7.8.3 Upon written request from the Authorized Officer, reports regarding the processing an issuance of Citation, the maintenance and downtime records of Designated Intersection Approaches and the functionality of the Redflex Systems and respect thereto to the City in such format and for such periods as the City may reasonably request.

7.9 Redflex must at its expense make available, including but not limited to appearing in court, appropriate Redflex employees, including the custodian of records and expert witnesses, for purpose of prosecuting Violations whenever deemed necessary by the City or required by the court or applicable law.

8. Maintenance

8.1 Redflex is solely responsible for all repair and maintenance of the Redflex System, including but not limited to maintain the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.

8.2 Reflex must inspect the Equipment and the functionality of the Redflex Systems at

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each Intersection Approach no less than once every month with remote inspections weekly and automated camera checks on each business day.

- 8.3** Redflex must respond to any material malfunction of any of the Redflex System within twenty-four (24) hours of receiving a malfunction notice from the Police Traffic Enforcement Project Specialist (Malfunction Notice”)
- 8.4** In the event that Redflex System suffers any damages from whatever cause, Redflex discovers material malfunction or defect, or Redflex receives a Malfunction Notice, Redflex shall use its best efforts to cause the damage malfunction or defect to be repaired within forty-eight (48) hours of discovery by Redflex or receipt by Reflex of a Malfunction Notice.
- 8.5** In the event that the damage, malfunction or defect has not been substantially repaired within forty-eight (48) hours, Redflex shall notify the Police Traffic Enforcement Project Specialist and Redflex’s compensation shall be reduced by the out of services cost offset set forth in Exhibit “B”.
- 8.6** Redflex must not open the Traffic Signal Controller Boxes without a representative of City’s Traffic Engineering Division present.
- 8.7** The provision of all necessary electrical power series to the equipment Designated Intersection Approaches will be the sole responsibility of the Customer.
- 8.8** In the event that images of a quality suitable to the Police Traffic Enforcement Project Specialist to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install flash units.
- 8.9** Within six months of executing this Agreement, Redflex agrees to begin upgrading existing installed equipment at all Designated Intersection Approaches with 45 megapixel digital cameras, new computers and internal components. The installation will be completed within thirty (30) days after COVID restrictions are officially lifted..
- 8.10** The City and Redflex shall meet annually (within 30 day of the anniversary date of signing of this agreement) and assess the effectiveness of each installed systems.
- 8.11** Redflex must promptly make available to the City any and all upgrades and technology modification, including but not limited to software, hardware, camera systems, violation detection systems upon the products general availability (GA release readiness and not in the alpha beta and testing phases) as Redflex and the City mutually agree. The upgrades and enhancements must be provided to the City at no cost within sixty (60) days of the City’s acceptance of the upgrade or enhancement.
- 8.12** In The event a camera system in knocked down, the City will secure the camera system by removing the system from the scene and storing it in a secure location. Redflex Traffic Systems must pay the City for the cost of a City maintenance team to

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secure their camera system when an after-hours callout is required. Redflex is not required to reimburse the City when a City maintenance team secures a camera system during regular business hours, which are 8 am to 5 pm Monday through Friday, excluding City holidays.

8.13 The City shall follow the knockdown procedures mutually agreed to in the Business Rules for notifying Redflex Traffic Systems of damage to their equipment.

ADDITIONAL RIGHTS AND OBLIGATIONS

- 9. 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):
- 9.1** Redflex shall assist the Customer 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 new Red Light Photo Enforcement approaches (actually print and production costs are the sole responsibility of the Customer).
 - 9.2** Appoint the Redflex Project Manager and project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project manager; Review all Enforcement Documentation for approval by the Customer, which approval shall not be unreasonably withheld;
 - 9.3** Delivered Materials to the Customer.
 - 9.4** Once a year Redflex shall provide training for personnel of the Customer, including but not limited to the persons who Customer shall appoint as Authorized Officers and other persons involved in the administration of the Red Light Photo Enforcement Program, for at least sixteen (16) hours in the aggregate, regarding the operation of the Redflex System and the Red Light Photo Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation.
 - 9.5** Interact with court and judicial personnel to address issues 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, and Customer and court personnel.
 - 9.6** Upon request, provide reasonable public relations resources and media materials to the Customer in the event that the Customer elects to conduct a public launch of the Red Light Photo Enforcement Program.
 - 9.7** Redflex is solely responsible for providing all necessary communication infrastructures, including but not limited to telephone services, (DSL), cable or other broadband services to the Designated Intersection Approaches.
 - 9.8** The Redflex Project Manager (or reasonable alternate) shall be available to the Authorized Officer each day, on a reasonable best effort basis.

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- 9.9** Upon notification of knockdown or vandalism to a camera system, Redflex shall respond and use commercial best efforts to repair the system to full operational status by the end of the third business day after notification of the event by the City or discovery of the event by Redflex. In the event that a system cannot be operational within 3 business days, then Agreement section 16.3 shall apply.
- 9.10** Comply with all applicable laws including laws governing automated enforcement systems..
- 10. Customer Obligations.** The Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):
- 10.1** The Customer shall be solely responsible for fabrication of any signage, notices or other posting 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, and the Customer hereby acknowledges and agrees that the Customer shall be solely responsible for installing such Signage.
- 10.2** The Customer shall be solely responsible for the installation of LED light at enforced intersections.
- 10.3** The Customer shall not access the Redflex System or use the Red Light Photo Enforcement Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo Enforcement Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Photo Enforcement Program, and the Customer 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 Systems, or (iii) any materials or information not intentionally made available by Redflex to the Customer by means of hacking, password mining or any other method whatsoever, nor shall the Customer cause any other Person to do any of the foregoing.
- 10.4** The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Red Light Photo Enforcement Program.
- 10.5** In the event a camera system is knocked down from a vehicle collision or suffers any vandalism rendering the camera system inoperative, Redflex Traffic Systems shall be notified as soon as possible. The customer will secure damaged property until Redflex can respond and will assist Redflex in obtaining the Drawings from relevant Governmental Authorities.
- 10.6** Notify Redflex of any specific requirements relating to construction and installation of any Intersection Approaches or the ongoing implementation of the Red Light Photo Enforcement Program;
- 10.7** Provide ongoing assistance to Redflex in obtaining access to the records data of

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the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the Customer.

10.8 Assist Redflex in seeking the Approvals for required permits for installation of new intersections

10.9 Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Red Light Photo Enforcement Program.

10.9.1 Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training.

10.10 Provide the services of necessary personnel during future Warning Period(s).

10.12 Seek approval or amendment of Awareness Strategy (10.12.1) and provide written notice to Redflex with respect to the quantity of media and program materials (the Materials") that the Customer 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 (1) month after the Installation Date.

10.12.1The Traffic Lieutenant, shall be responsible for all public notices and media releases as required by section 21455.5 of the California Vehicle Code, including but not limited to:

- a. Public announcement 30 days prior to commencement of the enforcement program.
- b. Notice of public hearing on the proposed use of any automated enforcement system at a new approach.
- c. Press Release for all new approaches and/or program announcements.
- d. The PERLP Unit shall maintain and update the Department's web-page for current information about the program.

10.13 Develop the Red Light Violation Criteria; and consult with Redflex.

10.14 Seek approval of the Enforcement Documentation.

10.15 Responsible for providing power to the designated intersection approaches.

11 Other Rights and Obligations.

11.13 The Redflex Project Manager and the Police Traffic Enforcement Project Specialist shall meet from time to time during the Installation of new approaches at such time and places as the Redflex Manager and the Customer manager shall mutually agree.

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11.14 The Customer and Redflex Traffic Systems shall agree on specific business rules governing the function and operation of the system. The business rules version 2.3 is attached in Exhibit “E”

Exhibit “B”

Payment Provisions

These Payment Provisions, Exhibit “B” are hereby incorporated by reference into the Agreement, under Agreement section 3. For all services identified in Exhibit “A’ Scope of Services, the City agrees to pay and Redflex agrees to accept as total compensation the following.

1. Compensation. Subject to Agreement section 16.3, the City shall pay Redflex according to the fixed monthly fee per intersection identified below, not to exceed \$599,400 annually.

For each Designated Intersection Approach identified in subsection 1.1 and 1.2, Redflex will earn the monthly fee for those intersections from the date of this Agreement. For each additional Designated Intersection Approach identified in subsection 1.3, Redflex will earn the monthly fee beginning at the end of the first day after the ending of the Warning Period.

Redflex’s right to monthly fee for the Designated Intersection Approaches ends upon the expiration of the Term of this Agreement and any extensions agreed upon by the Parties under Agreement section 3, or upon initiation of termination as provided in Agreement sections 17.1, 17.2, or 17.3.

1.1 For each of the following Designated Intersection Approaches, the fixed fee shall be \$3,995 per month, not to exceed \$479,400 annually:

- Automall/Fremont
- Automall/Grimmer
- Blacow/Mowry
- Decoto/Fremont
- DecotoPaseo Padre
- Mowry/Farwell
- Stevenson/Blacow
- Fremonth/Mowry
- Mission/Mohave
- Eastbound Mission/Warm Springs

1.2 For each of the following Designated Intersection Approaches built with the latest HALO equipment, the fixed fee shall be \$5,000 per month, not to exceed \$120,000 annually:

- Christy St at Automall Pkwy
- Pacific Commons Bl. at Automall Pkwy

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- 1.3 For each additional Designated Intersection Approach added during the term of the Agreement, the fixed fee shall be \$5,000 per month.
2. **Invoicing.** Redflex shall invoice the City monthly for the compensation earned under section 1. Unless otherwise specified in an implementing Agreement the Customer shall pay Redflex within thirty (30) days after an invoice is received. .
 3. **No other compensation.** Except as provided in section 5, 6, and 7 of this Exhibit “B”, it is specifically understood by the Parties that the payment specified in section 1 covers any and all cost to Redflex in providing the services identified in Exhibit A, including but not limited to all installation, operation, processing, maintenance, upgrade, licensing, leasing and support costs, and all cost incurred after expiration of the Agreement or initiation of termination of the Agreement and before final termination. It is also specifically understood by the Parties that there shall be no cost, charge or fee whatsoever to the City for installation of any new system, upgrade of equipment, or for the service, maintenance, operation thereof.
 4. **Conduit used in construction.** The Parties anticipates that Redflex will be able to utilize existing conduit for installation of new Intersection Approaches where space is available. If it is determined in writing and signed by both Parties respective Authorized Representative that additional conduit is necessary, cost and access for use of such additional conduit shall be equally shared by Redflex and the Customer. Any such additional conduit shall become the exclusive property of the Customer upon termination of this Agreement.
 5. **Equipment Removal.** Other than a knock down, if equipment is removed, moved and/or replaces without mutual consent between the Consultant and the City and absent any of the conditions outlined the termination section this agreement, the City shall have the sole responsibility for all associated cost (i.e. construction, post-mortem conditions, equipment remedies, etc.)
 6. **Equitable Cost Recovery by Redflex Upon Termination Without Cause by the City.** If the City elects to terminate the Agreement under Agreement section 17.2.2, Redflex shall be entitled to recover burden cost as follows.

Upon commencement of ticket issuance, the recovery of burdened cost will be calculated as follows: the burdened cost value per intersection approach installed during the term of this agreement equals \$150,000 within one month of ticket issuance. This value shall be decreased by \$8,300 per month thereafter until completion of month 18 but not to exceed \$100,000, whichever comes first, after which there will be no value associated with burdened cost.

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Exhibit “C”

QUALIFICATIONS:

Redflex has been providing Automated Traffic Enforcement Systems (ATES) to municipalities since 1998. Redflex provides ATES equipment with industry leading technology and established the current permits and infrastructure in use today. Redflex remains one of the top providers in the Photo Enforcement industry and will continue to provide industry leading technology for the City’s ATES along with its specialized knowledge of the system it implemented.

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EXHIBIT D

**INSURANCE REQUIREMENTS
Professional**

Consultant's performance of the services under this agreement shall not commence until Consultant shall have obtained all insurance required under this Exhibit and such insurance shall have been reviewed and approved by the Risk Manager. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Consultant shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for alleged injuries to persons or damages to property which may arise from or in connection with the performance of the services by the Consultant, the Consultant's agents, representatives, employees and subcontractors. Required professional liability insurance shall be maintained at the level specified herein for the duration of this agreement and any extension thereof and for twelve additional months following the agreement termination or expiration.

INSURANCE COVERAGE AND LIMITS RESTRICTIONS

1. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Fremont before the City of Fremont's own insurance or self-insurance shall be called upon to protect it as a named insured.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage:
 - a. Blanket contractual liability
 - b. Broad form property coverage
 - c. Personal injury
2. Insurance Services Office form covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Professional Liability insurance
5. Such other insurance coverages and limits as may be required by the City of Fremont.

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B. MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and a \$2,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident.
Bodily Injury by Disease - \$1,000,000 policy limit.
Bodily Injury by Disease - \$1,000,000 each employee.
4. Professional Liability insurance: \$2,000,000.
5. Such other insurance coverages and limits as may be required by the City of Fremont.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

1. Any changes to the existing deductibles or self-insured retentions accepted under the Existing Agreement must be declared to and approved by the City of Fremont. For any such changes, at the option of the City of Fremont, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Fremont, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.
2. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City of Fremont.
3. The City of Fremont reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

D. ADDITIONAL INSURED REQUIREMENTS:

1. The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:
 - a. The City of Fremont, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects alleged: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Fremont, its officers, officials, employees, agents or volunteers.
 - b. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Fremont, its officers, officials, employees, agents or volunteers.

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- c. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
- d. Consultant shall furnish properly executed Certificates of Insurance from insurance companies acceptable to the City of Fremont and signed copies of the specified endorsements for each policy prior to commencement of work under this agreement. Such documentation shall clearly evidence all coverages required above including specific evidence of separate endorsements naming the City of Fremont and shall provide that such insurance shall not be materially changed, terminated or allowed to expire except after providing prior written notice in accordance with the policy provisions specified on the Certificate of Insurance Form by certified mail, return receipt requested, has been filed with the City Clerk. The above notwithstanding, such notice shall at least be ten (10) days before any cancellation becomes effective.
Such insurance shall be maintained from the time work first commences until completion of the work under this agreement. Consultant shall replace such certificates for policies expiring prior to completion of work under this agreement.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. COMPLETED OPERATIONS

Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event the Consultant fails to obtain or maintain completed operations coverage as required by this agreement, the City of Fremont at its sole discretion may purchase the coverage required and the cost will be paid by the Consultant.

G. CROSS-LIABILITY

The Liability policy shall include a cross-liability or severability of interest endorsement.

H. FAILURE TO MAINTAIN INSURANCE COVERAGE

If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this agreement, the same shall be deemed a material breach of contract. The City of Fremont, at its sole option, may terminate this agreement and obtain damages from the Consultant resulting from said breach. Alternatively, the City of Fremont may purchase such required insurance coverage, and without further notice to Consultant, the City of Fremont may deduct from sums due to Consultant any premium costs advanced by the City of Fremont for such insurance.

I. PRIMARY AND NON-CONTRIBUTORY

For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City of Fremont, its officers, officials, employees,

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agents and volunteers. Any insurance or self-insurance maintained by the City of Fremont, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

The additional insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from the City of Fremont's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

J. SUBCONTRACTORS

Consultant shall require all subconsultants to maintain the same levels of insurance and provide the same indemnity that the Consultant is required to provide under this Agreement. A subconsultant is anyone who is under contract with the Consultant or any of its subconsultants to perform work contemplated by this Agreement. The Consultant shall require all subconsultants to provide evidence of valid insurance and the required endorsements prior to the commencement of any work.

K. SUBROGATION WAIVER

Consultant agrees to waive subrogation rights against City of Fremont regardless of the applicability of any insurance proceeds, and to require all Consultants, subcontractors or others involved in any way with the services to do likewise.

L. VERIFICATION OF COVERAGE

Consultant shall furnish the City of Fremont with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City of Fremont before the services commence.