

033073

AGREEMENT FOR PROFESSIONAL SERVICES

Project Name:
Project Code:
Consultant Name:
Agreement #:
Authorizing Ordinance:

I N D E X

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AGREEMENT

THIS AGREEMENT, entered into on the 23 day of December, 2009, by and between the CITY OF ROCHESTER, a municipal corporation having its principal office located at CITY HALL, 30 Church Street, Rochester, New York, 14614, hereinafter referred to as the "City", and Redflex Traffic Systems Inc. with offices at 23751 N. 23rd Avenue, Phoenix, AZ 85085, hereinafter referred to as "Redflex".

WITNESSETH:

WHEREAS, the City desires to secure the professional services of Redflex to provide certain services related to a digital photo red light enforcement system for the City in compliance with Chapter 22 of the Laws of New York of 2009, hereinafter referred to as the Project and;

WHEREAS, Redflex covenants that it has the personnel, skills and expertise required and wishes to undertake the Project.

NOW THEREFORE, the City and Redflex do mutually agree, in consideration of the covenants, terms and conditions contained herein, as follows:

ARTICLE I, Part 1. Description of Project

Section 1.101 General Description

- A. **SERVICES.** Redflex will perform the services as set forth in Addendum A of this Agreement in full compliance with Chapter 22 of the Laws of New York of 2009. The City will perform its contractual responsibilities in accordance with this Agreement.
- B. **AMENDMENTS.** Either party may request changes, in the form of Amendments within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, Redflex and the City will negotiate an equitable adjustment to the Contract Price, Performance Schedule, or both, and will reflect such adjustment in an Amendment. Any Amendment will be agreed to in writing by the parties hereto.
- C. **ADDENDUMS.** The Addendums listed below are incorporated into and made part of this Agreement. In interpreting this Agreement and resolving ambiguities or conflicts, the main body of this Agreement will take precedence over any Addendum.

ADDENDUM A

ARTICLE I, Part 2. Description of Professional Services

Section 1.201 General

- A. Redflex will perform the services as set forth in Addendum A of this Agreement. The City will perform its contractual responsibilities in accordance with this Agreement.
- B. Redflex is to have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the work and services required. Redflex shall provide a list of its employees assigned to the project which provides the employee's name and title prior to the start of work. Redflex shall notify the City prior to changing project personnel. No changes in project managers will be made without approval of the City.
- C. Redflex shall maintain an up-to-date, orderly, assembled file of Project notes and records. Notes shall include correspondence, calculations, documentation, references and other material necessary for the completion of the Project.
- D. Redflex is responsible for the professional quality, technical accuracy, timely completion and appropriate coordination of all designs, drawings, specifications, testing, reports and other services furnished under this Agreement. Redflex bears all responsibility for any errors, omissions or other deficiencies in Redflex's designs, drawings, specifications, reports and other services and shall correct or revise any such errors, omissions or other deficiencies without additional compensation.
- E. Redflex's obligations under this Section are in addition to Redflex's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the City may have against Redflex for faulty materials, equipment or work.
- F. Redflex shall furnish promptly all equipment, labor and materials needed to perform in a safe and convenient manner, such inspections as the City requires.
- G. Redflex shall keep the City informed of the progress of the work so that the City may inspect Redflex's work as determined necessary by the City. In particular, Redflex shall provide the City with at least forty-eight (48) hours notice prior to performing work which would prevent proper inspection of previously completed work.

- H. Redflex shall meet with the City at the City's request to discuss the Assessment results and recommendations as may be deemed necessary by the City.

ARTICLE I, Part 3. Subcontracts

All services to be performed under this Agreement shall be performed with Redflex's own employees, unless the City agrees that the Consultant may subcontract such services. Copies of all proposed Agreements between Redflex and subcontractors shall be submitted to the City along with a statement of the subcontractor's qualifications. Such Agreements must be approved by the City in writing prior to initiation of work. All subcontracts under this Agreement are subject to all applicable provisions of this Agreement unless otherwise directed in writing by the City. Redflex is responsible for the completion of all services under this Agreement in an acceptable and timely manner, including any services performed by a subcontractor, supplier or other party with whom Redflex has a contract.

ARTICLE I, Part 4. City Responsibilities

The City shall:

- A. Provide as complete information as is reasonably possible as to its requirements for the Project to Redflex.
- B. Assist the Redflex by making available to Redflex any information pertinent to the Project, including previous reports and any other relevant data.
- C. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals and other documents presented to the City by the Redflex for review and render decisions pertaining thereto within a reasonable period of time, so as not to delay the work of Redflex.
- D. Designate a representative (Authorized Agent) to act as liaison between the City and Redflex. The Authorized Agent will have the authority and responsibility to transmit instructions and to receive information with respect to the City policies and pertinent to the work covered by this Agreement, except as otherwise limited by Code or Charter of the City.
- E. Give written notice to Redflex where the City observes or otherwise becomes aware of any default in Redflex's performance hereunder or where the City does not concur with the design or other recommendations of Redflex.
- F. Obtain any required easements with the assistance of Redflex.

- G. Obtain or provide in a timely manner permission for Redflex to enter upon any sites, buildings, and facilities as deemed necessary by Redflex to perform the services required pursuant to this Agreement.

ARTICLE I, Part 5. Fees

Fees shall be payable as outlined in Exhibit D, "Compensation and Pricing".

ARTICLE I, Part 6. Term

This Agreement shall commence upon execution by the parties and shall terminate on December 1, 2014, when the state authorization in Section 1111-b of the Vehicle and Traffic Law is currently scheduled to expire, or earlier if current state authorization is rescinded. Should the state authorize an extension of this program, the City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive two (2) year 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.

ARTICLE I, Part 7. Time of Performance

- A. Redflex shall provide all reports, deliverables, and submittals in a timely fashion.
- B. Redflex shall not be held responsible for delays caused by the City of Rochester or by other parties not directly under its control.
- C. The above time limits may be extended only by mutual written agreement of the parties hereto. It is understood that it is the intention of the City to have the service performed under this Agreement carried out as expeditiously as possible.

ARTICLE I, Part 8. Removal of Personnel

All personnel assigned by Redflex shall be subject to the approval of the City and be required to cooperate with the City project personnel. In the event that Redflex's personnel fail to cooperate or perform their assigned tasks in a reasonable manner as determined by the City, the City may require Redflex to replace such personnel.

ARTICLE I, Part 9. Authorized Agent

- A. The City hereby designates the:

City Engineer
300B City Hall
30 Church Street
Rochester, New York 14614-1278

B. Redflex hereby designates:

Redflex Traffic Systems, Inc.
23751 North 23rd Avenue
Phoenix, AZ 85027
Attention: Program Management Office

or an authorized representative in case of absence, as Authorized Agents for the receipt of all notices, demands, vouchers, orders, permissions, directions, and other communications pursuant to this Agreement, if dispatched by registered or certified mail, postage prepaid, or delivered personally to the Authorized Agents designated herein. The City's agent is authorized to request in writing such additional services within the maximum authorized compensation as the Agent deems necessary.

The parties reserve the right to designate other or additional Authorized Agents upon written notice to the other.

ARTICLE I, Part 10. Ownership of Documents

All original notes, drawings, specifications and survey maps prepared by Redflex under this Agreement, upon completion of the work required herein, or upon acceptance by the City of each individual Assessment report will become the property of the City and shall be delivered to the City's Authorized Agent, unless otherwise deemed to be proprietary or information relating to Redflex's proprietary operations. Redflex may provide a complete reproducible set of drawings, specifications, survey maps and all other documents in lieu of the originals.

ARTICLE I, Part 11. Confidentiality

A. Redflex and the City agree that any and all data, analyses, materials or other information, oral or written, made available to Redflex with respect to this Agreement, and any and all data, analyses, materials, reports or other information, oral or written, prepared by Redflex with respect to this Agreement shall, except for information which has been or is publicly available, be treated as confidential; and shall not be utilized, released, published or disclosed by Redflex at any time for any purpose whatsoever other than to provide consultation or other services to the City.

- B. The City is subject to laws requiring disclosure of public documents, including the Freedom of Information Law ("FOIL"). Redflex and the City agree that in the event that the City receives a request or order for the release of confidential information, the City shall provide Redflex with prompt notice thereof so that Redflex may seek a protective order or other appropriate remedy prior to such disclosure, if Redflex chooses to do so. If, in the absence of a protective order or waiver from Redflex, the City is nonetheless, in the opinion of the Corporation Counsel and after consultation with Redflex, compelled to disclose information or else stand liable for contempt or suffer censure or other damages, the City may disclose such information to such person without penalty under the terms of this Agreement and shall immediately advise Redflex of such disclosure.

ARTICLE I, Part 12. Organizational Conflict of Interest

- A. Redflex warrants that to the best of Redflex's knowledge and belief, there are not relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that Redflex has disclosed all such relevant information.
- B. An organizational conflict of interest exists when Redflex performs or agrees to perform services for another party that could foreseeable implicate the City as a potentially responsible party in an environmental enforcement action or claim against the City or otherwise increase the potential liability of the City.
- C. Redflex agrees that if an actual or potential organizational conflict of interest is discovered, Redflex will make a full disclosure as soon as possible in writing to the City. This disclosure shall include a description of actions which Redflex has taken or proposed to take, after consultation with the City, to avoid, mitigate, or neutralize the actual or potential conflict.
- D. The City may terminate this Agreement in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If Redflex was aware of a potential organizational conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose it, or misrepresented relevant information to the City, the City may terminate the Agreement, debar Redflex from contracting with the City, or pursue such other remedies as may be permitted by law or this Agreement. In such event, termination of this Agreement shall be deemed a termination for default pursuant to Section 2.602.
- E. Redflex further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this Article.

ARTICLE II

ARTICLE II, Part 1. Qualifications, Indemnity and Insurance

Section 2.101 Consultant's Qualifications for Duties, Compliance and Permits

- A. Redflex hereby agrees that it has, or will have, on its staff and will retain during the performance of this service under this Agreement, all appropriate professional personnel necessary to completely and accurately perform the work and services under this Agreement.
- B. Redflex further agrees that the design of architectural or engineering features of the work shall be accomplished by professionals licensed to practice in New York State.
- C. Redflex further agrees to ensure that its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

Section 2.102 Redflex's Liability

2.102.A Redflex hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by the City, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of Redflex, its employees, agents or subcontractors. If a claim or action is made or brought against the City and for which Redflex may be responsible hereunder in whole or in part, then Redflex shall be notified and shall be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section.

2.102. B The City hereby agrees to defend, indemnify and save harmless Redflex against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which Redflex may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by Redflex, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of the City, its employees, agents or subcontractors. If a claim or action is made or brought against Redflex and for which the City may be responsible hereunder in whole or in part, then the City shall be notified

and shall be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section.

Section 2.103 Professional Liability Insurance

Redflex shall procure at its own expense professional liability insurance for services to be performed pursuant to this Agreement, insuring Redflex against malpractice or errors and omission of Redflex. The Certificate of Issuance will be issued on the accepted Acord Form 25. The amount of said insurance coverage shall be in the amount of Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. Redflex shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The certificate shall contain a thirty (30) day cancellation clause which Consultant shall provide that the City shall be notified not less than thirty (30) days prior to the cancellation of the insurance policy. Redflex shall also give at least thirty (30) days notice to the City of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.

Section 2.104 General Liability Insurance

Redflex shall obtain at its own expense general liability insurance in the amount of at least One Million Dollars, for protection against claims of personal injury, including death, or damage to property, arising out of the Project, and the Certificate will be issued on the accepted Acord Form 25. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured. Redflex shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, Redflex shall provide a copy of the Endorsement and Forms listing from the Policy. The insurance shall stipulate that, in the event of cancellation or modification Redflex shall provide the City with at least thirty (30) days written notice of such cancellation. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

Section 2.105 Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless Redflex shall require all Redflex's subcontractors to keep insured, during the life of this Agreement, all employees of said subcontractors as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event Redflex hires its own employees to do any work called for by this Agreement, then Redflex agrees to so insure

its own employees. Redflex shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Worker's Compensation and/or Disability Benefits coverage is not required by submitting the then current and required New York State Worker's Compensation Board's form.

Section 2.106 Copyright or Patent Infringement

Redflex shall defend actions or claims charging infringement of any copyright or patent by reason of the use of adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom, providing however, that the City within ten days after receipt of any notice of infringement or of summons in any action thereof shall have forwarded the same to Redflex in writing.

Section 2.107 No Individual Liability

Nothing contained in the Agreement shall be construed as creating any personal liability on the part of any officer or agent of the City.

ARTICLE II, Part 2. Employment Practices

Section 2.201 Equal Employment Opportunity

A. General Policy

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Employment Opportunity, in accordance with the requirements set forth herein. This policy is adopted pursuant to the City's Affirmative Action Plan, Article XV - Contract Compliance. The City further does not discriminate on the basis of handicap status in admission, or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall agree to comply with State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

GOOD FAITH EFFORT - shall mean every reasonable attempt to comply with the provisions of this policy by making every reasonable effort to achieve a level of employment of minority groups and female workers that is consistent with their presence in the local work force.

MINORITY GROUP PERSONS - shall mean a person of Black or African American, Hispanic or Latino, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaskan Native ethnic or racial origin and identity.

C. Compliance

Redflex shall comply with all of the following provisions of this Equal Opportunity Requirement:

1. Redflex agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. Redflex agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their age, race, creed, color, national origin, sex, sexual orientation, disability, or marital status.
2. If Redflex is found guilty of discrimination in employment on the grounds of age, race, creed, national origin, sex, sexual orientation, disability or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and Redflex shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as Redflex can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.
3. Redflex shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

Section 2.202 The MacBride Principles

Redflex agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting

to provide goods and services to the City to comply with the MacBride principles. A copy of the MacBride principles is on file in the Office of the Director of Finance.

Section 2.203 Compliance with Labor Laws

Redflex specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220, 220-a, 220-d and 220-e of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and require preference in the employment of New York residents, and prohibit discrimination based on race, creed, color, sex, national origin, or age, and prohibit the permitting or requiring of more than eight hours per day and forty hours per week from laborers, mechanics, or workers on a public works construction project. The foregoing requirements do not generally apply to professional staff, draftsmen, or clerical help or most other employees of an engineer or architect who is performing design, research, or inspection work only. Redflex shall, however, comply with all state, federal and local non-discrimination and equal employment opportunity laws and rules and will be subject under this Agreement to fines, penalties and contract termination when the City reasonably determines that Redflex has unlawfully discriminated because of the race, color, creed, national origin, sex or age of any applicant for employment or any employees.

Section 2.204 Living Wage Requirements

A. Applicability of Living Wage Requirements

This section shall apply and Redflex shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the Rochester Living Wage Ordinance, in the event that payments by the City to Redflex under this Agreement shall exceed fifty thousand dollars (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to more than fifty thousand dollars (\$50,000) during a period of one year, then any such amendment shall be subject to Section 8A-18.

B. Compliance

Redflex shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at www.cityofrochester.gov. Redflex shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and

notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

C. Exemption

This section shall not apply to any of Redflex=s employees who are compensated in accordance with the terms of a collective bargaining agreement.

ARTICLE II, Part 3. Operations

Section 2.301 Political Activity Prohibited

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used during the performance of the Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

Section 2.302 Lobbying Prohibited

None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the United States Congress, the Legislature of the State of New York or the Council of the City of Rochester.

Section 2.303 Anti-Kickback Rules

Salaries of employees performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions that are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 108; title 18 U.S.C., section 874; and title 40 U.S.C., section 276c). Redflex shall comply with applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to insure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

Section 2.304 Withholding of Salaries

If, in the performance of this Agreement, there is notice to the City of any underpayment of salaries by Redflex or by any subcontractor thereunder, the City shall withhold from Redflex out of payments due to it an amount sufficient to pay the employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may

be disbursed by the City for and on account of Redflex or subcontractor to the respective employees to whom they are due.

Section 2.305 Discrimination Because of Certain Labor Matters

No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because the person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify at any proceeding relating to the labor standards applicable hereunder to that person's employer.

Section 2.306 Status as Independent Contractor

Redflex, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the City by reason hereof, and that it and its employees will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit.

ARTICLE II, Part 4. Documents

Section 2.401 Patents and Copyrights

Redflex agrees that, in the event it, or any of its employees' develop any material for which a copyright can be obtained which material was developed as a result of or in connection with the work required pursuant to this Agreement, the City shall be granted a royalty-free, non-exclusive license to use, reproduce and distribute such copyrightable material. Pursuant to the work in connection solely with this agreement, Redflex further agrees that in the event it, or any of its employees, develops any process, machinery or product for which a patent would be obtainable, Redflex shall provide the necessary information to the City, so that the City can apply for such patent at its own expense. Such patent shall become the property of the City; provided, however, that Redflex shall acquire a royalty-free, non-exclusive license to produce or reproduce such patented product. The benefits of either a patent or a copyright shall also inure to any public agency which finances, in whole or in part, this project and such agency shall receive a royalty-free, non-exclusive license to use, reproduce, manufacture and distribute the product or mater which has been patented or copyrighted.

Section 2.402 Audit

Redflex agrees to maintain sufficient on-site records and information necessary for the documentation of any and all facets of program operation specified by this Agreement. Redflex shall maintain all books, documents, papers and other evidence pertinent to the

performance of work under this Agreement in accordance with generally acceptable accounting principles, and 40 CFR Part 30 in effect during the term of this Agreement. Redflex agrees to permit on-site inspection and auditing of all records, books, papers and documents associated with this Agreement by authorized representatives of the City and further agrees to provide necessary staff support to the performance of such audit. Redflex agrees to maintain for a period of six (6) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the performance of this Agreement; however, this period shall be extended beyond six years for any and all records and information pertaining to unresolved questions, which have been brought to Redflex's attention by written notice by the City. Redflex agrees to furnish to the City data to include but not be limited to, intake records, status change notices, termination notices, and follow-up records. Said reports will be submitted periodically as required by the City.

Section 2.403 Content of Sub-Agreements

Redflex agrees that all sub-agreements authorized by this Agreement shall be in written form. Redflex shall require all subcontractors to comply with any of the following sections which may be in this Agreement: "Equal Employment Opportunity; Affirmative Action and Employment of Local Labor; Compliance with Labor Laws; Certifications Regarding Conflicts of Interest; Anti-Kickback Rules; Interest of City and Contractor in Contract." It is the purpose of this section to insure that all Agreements obligate all parties performing work under this Agreement to comply with necessary governmental programs and policies. The City may require Redflex to submit copies of such sub-agreements to the City. If such copies are not submitted upon request, the City may have the right to withhold any and all payments to Redflex to those items of work which have not complied with this section.

ARTICLE II, Part 5. Termination

Section 2.501 Termination for Convenience of the City

- A. This Agreement may be terminated by the City in accordance with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to Redflex. However, no such termination shall relieve Redflex of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.
- B. If the Agreement is so terminated the City and Redflex will continue to address any outstanding violations, process citations captured up to the date of termination and address all work in process.

- C. After receipt of written notice of termination, Redflex shall promptly submit to the City its termination claim in a form acceptable to the City. Such claim shall in no event be submitted later than one year from the effective date of termination.
- D. In the event that the parties cannot agree, in whole or in part, as to the amount due by reason of the termination of the Agreement pursuant to this clause, the City shall pay Redflex the amount determined as the total of the following:
 - 1. The unamortized non-recoverable cost of the work performed prior to the effective date of termination, including such costs associated with the installation and construction and de-installation activities. The City shall pay Redflex only upon submission of invoices identifying the costs incurred by Redflex. In the event work is performed by a subcontractor, the invoice shall be supplied directly to the City by such subcontractor. The amortization schedule is 60 months and is based on the approximate term of this agreement.
 - 2. The cost of settling and paying claims arising out of and as a direct result of the termination;
 - 3. A sum as profit on subdivision 1. above, determined to be fair and reasonable, provided however, that if Redflex would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision 3., and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid under this section shall not exceed the total price of this Agreement specified hereinabove, reduced by the amount of payments otherwise made, and further secured by the value of work remaining incomplete at the time of the termination of this Agreement.

Section 2.502 Termination for Default

- A. The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or, from time to time, in part, whenever Redflex shall materially default in performance of this Agreement in accordance with its terms (including in the term "default" any failure by Redflex to make progress in the prosecution of the work hereunder which endangers such performance) and shall fail to cure diligently such default within a period of ten days or (or such longer period as the City may allow) after delivery by the City of a notice specifying the default.
- B. If this Agreement is to be terminated, the City and Redflex will continue to address any outstanding violations, process citations captured up to the date of termination and address all work in process.

- C. The total fee payable shall be such proportionate part of the fee as the value of the actual work completed and delivered bears to the value of the work required or contemplated by this Agreement.
- D. This Agreement may not be so terminated if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of Redflex.
- E. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that Redflex was not in default or that the default was excusable the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."
- F. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE II, Part 6. General

Section 2.601 Prohibition Against Assignment

- A. Redflex agrees that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein, or of its power to execute such contract to any other person or corporation without the previous consent in writing of the City.
- B. Redflex shall be permitted to contract with other professions (particularly in the fields of forestry, horticulture or landscape architecture) for portions of the Project provided, however,
 - 1. The City approves, in writing, the selection of the individual, firm or firms contracted with.
 - 2. Redflex shall remain responsible to the City for all provisions of this Agreement pertaining to services by other professionals.

Section 2.602 Compliance with All Laws

Redflex agrees that during the performance of the work required pursuant to this Agreement, Redflex, and all employees working under its direction, shall strictly comply with all local, state or federal laws, ordinances, rules or regulations controlling or limiting in any way their actions during their said performance of the work required by this Agreement. Furthermore, each and every provision of law, and contractual clause required by law to be inserted in this Agreement shall be deemed to be inserted herein.

If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

Section 2.603 Successors

The City and Redflex each bind their successors, executors, administrators and assigns in respect of all covenants of this Agreement.

Section 2.604 Interest of City and Redflex in Contract

The City and Redflex agree that no member, officer, or employee of the City or of Redflex or assignees agents shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.

Section 2.605 Permits, Laws and Taxes

- A. In the event that services performed by Redflex for the City are subject to taxation under Article 28 of the Tax Law (sales and compensating use tax) Redflex shall receive from the City the material necessary to obtain a tax exempt certificate upon written request.
- B. Redflex shall pay all taxes, applicable to the work and materials supplied under this Agreement, it being understood that in no case shall any such tax be borne by the City, except as provided in subparagraph A. above.

Section 2.606 Obligations Limited to Funds Available

The parties specifically agree that Redflex's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of Redflex, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

Section 2.607 Extent of Agreement

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, Agreements, and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by its authorized agent.

Section 2.608 Law and Forum

This Agreement shall be governed by and under the laws of the State of New York and the Charter of the City of Rochester. The parties further agree that Supreme Court of the State of New York, held in and for the County of Monroe shall be the forum to resolve disputes arising out of either this Agreement or work performed according thereto. The parties waive all other venue or forum selections. The parties may agree between themselves on alternative forums.

Section 2.609 No Waiver

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

Section 2.610 Severability

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

Section 2.611 Debarment and Suspension

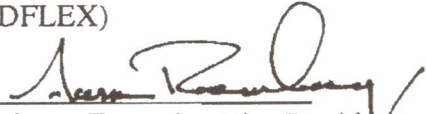
Redflex certifies, by the signing of this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency. Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

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

THE CITY OF ROCHESTER

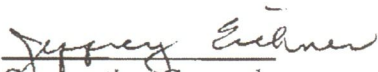
(REDFLEX)

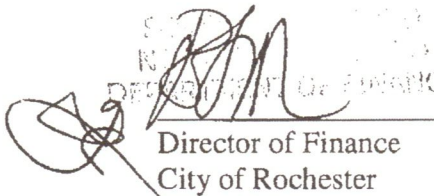
By: 
Robert J. Duffy, Mayor

By: 
Name: Aaron Rosenberg- Executive Vice President
Federal Tax Payer Id. No.: 94-3292283

Approved As to Form:

Approved for Funds:


Corporation Counsel
City of Rochester

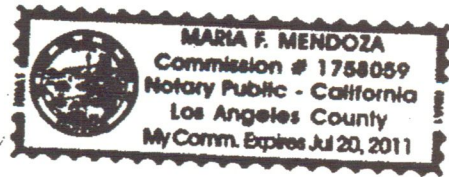

Director of Finance
City of Rochester

INDIVIDUAL ACKNOWLEDGMENT

State/Commonwealth of California
County of Los Angeles } ss.

On this the 23rd day of December, 2009, before
me, Maria F. Mendoza, the undersigned Notary
Public, personally appeared Aaron Rosenberg,
Name of Notary Public Name(s) of Signer(s)

- personally known to me - OR -
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.

WITNESS my hand and official seal.

Maria F. Mendoza
Signature of Notary Public

Maria F. Mendoza 3911 1/2 S. Hilldale
Other Required Information (Printed Name of Notary, Residence, etc.)
LA, CA 90062

Place Notary Seal and/or Any Stamp Above

OPTIONAL

Although the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement for Professional Serv.

Document Date: 12/23/09 Number of Pages: 52

Signer(s) Other Than Named Above: _____

Right Thumbprint of Signer
Top of thumb here

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 11th day of January, 2010, before me the subscriber, personally came Robert J. Duffy, known, who being by me duly sworn, did depose and say that he resides in the City of Rochester; that he is the Mayor of the City of Rochester, the municipal corporation described in and which executed the above instrument; and that he signed his name to the foregoing instrument by virtue of the authority vested in him by the laws of the State of New York and the local laws and ordinances of the City of Rochester.

Angela Sorber
Notary Public

ANGELA SORBER
Notary Public, State of New York
Monroe County
Commission Expires April 6, 2011

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the _____ day of _____, 200_ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ADDENDUM A
REDFLEX TERMS AND CONDITIONS

1. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
 - 1.1. "Agreement" means this Addendum attached to and made a part of the Agreement between the City of Rochester and Redflex,
 - 1.2. "Authorized Employee" means the Project Manager or such other individual(s) as the City shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto,
 - 1.3. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Employee by using the Redflex System.
 - 1.4. "Citation" means the notice of liability, which is mailed or otherwise delivered by Redflex to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.
 - 1.5. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, customers or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:
 - 1.5.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and
 - 1.5.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets.
 - 1.5.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be disclosed, or (v) was required by applicable state law to be disclosed.

- 1.6. “Intersection Approach” means a conduit of travel with up to six (6) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the City.
- 1.7. “Designated Intersection Approaches” means the Intersection Approaches as Redflex and the City shall mutually agree from time to time. See Exhibit A for the number of approaches.
- 1.8. “Electronic Signature” means the method through which the Authorized Employee indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.
- 1.9. “Enforcement Documentation” means the necessary and appropriate documentation related to the Photo Red Light Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Parking Violations Bureau (“PVB”) and the City, a numbering sequence for use on all citation notices (in accordance with applicable PVB 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 applicable vehicle registry), and technical support documentation for PVB hearing officers .
- 1.10. “Equipment” means any and all approach cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Photo Red Light System(s).
- 1.11. “Fine” means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.12. “Governmental Authority” means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.13. “Installation Date of the Photo Red Light Program” means the date on which Redflex completes the construction and installation of at least one (1) Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational for the purposes of functioning with the Redlight Photo Enforcement Program.
- 1.14. “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.

- 1.15. “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light Enforcement Program is functional in order to permit the issuance of Citations using the Redflex System.
- 1.16. “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.17. “Project Manager” means the project manager appointed by the City in accordance with this Agreement, which shall be an Authorized Employee and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the 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 or other governing body of the City.
- 1.18. “Potential Violation” means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Employee to review such data and determine whether a Red Light Violation has occurred.
- 1.19. “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.
- 1.20. “Redflex Marks” means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Photo Red Light Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
- 1.21. “Redflex Project Manager” means the project manager appointed by Redflex in accordance with this Agreement, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Photo Red Light Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex’s obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.22. “Redflex System” means, collectively, the Salus® and/or SMARTcam® System, the SMARTscene® System, and all of the other equipment, applications, cameras, sensors, components, motor vehicles and other tangible and intangible

property relating thereto, to enable Redflex to enforce a minimum of one lane of travel at a designated location. The SMARTops® System, the Photo Enforcement Program, and all of the other equipment, applications, back office processes, servers, off-site backup systems, software and other tangible and intangible property relating thereto.

- 1.23. “Photo Red Light Enforcement Program” means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.
- 1.24. “Photo Redlight Violation Criteria” means the standards and criteria by which Potential Violations will be evaluated by Authorized Employees of the City, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.
- 1.25. “Records Retention” means the period of time that Redflex will retain confidential information to include photographic evidence and data associated with the photo enforcement program in accordance with Record Retention and Disposition Schedule MU-1 (current version “Revised 2003”) issued by the New York State Education Department.
- 1.26. “SMARTcam® System” means the proprietary software system that controls the photo enforcement system of Redflex relating to the Photo Enforcement Program.
- 1.27. “Salus® System” means the proprietary software system that controls the photo enforcement system of Redflex relating to the Photo Enforcement Program.
- 1.28. “REDFLEXred® System” means the proprietary digital redlight photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
- 1.29. “SMARTops® System” means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program.
- 1.30. “SMARTscene® System” means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
- 1.31. “Traffic Signal Controller Boxes” means the signal controller interface and vehicle detection owned and operated by the County of Monroe. This includes, but not limited to, the traffic controller, vehicle detection equipment, communication equipment, controller cabinet, etc.
- 1.32. “Violation” means any traffic violation authorized for photo enforcement as prohibited by the New York State Vehicle and Traffic Law (“V&T”) or any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals,

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

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

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

2. **SERVICES.** Redflex shall provide the Photo Red Light Enforcement Program to the City, in each case in accordance with the terms and provisions set forth in this Agreement and in accordance with the Proposal submitted by Redflex to the City on June 30, 2009.

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

2.2. **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.

2.3. **VIOLATION PROCESSING.** During the Operational Period, Violations shall be processed as follows:

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

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

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

2.3.4. Redflex shall provide the Authorized Employee with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violation Data from the applicable Designated Intersection Approaches.

2.3.5. The City shall cause the Authorized Employee to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose, and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX

HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION.

- 2.3.6. Redflex shall prepare a Citation in a format approved by the City and in full compliance with Section 1111-b of the V&T and all other applicable laws, rules and regulations, including but not limited to the New York State Technology Law and associated rules and regulations and Federal Law, rules and regulations governing electronic signatures. Redflex shall prepare such other necessary forms and notices in a format approved by the City, and shall mail necessary notices.
- 2.3.7. With respect to each Authorized Violation, Redflex shall print and mail a Citation within five (5) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;
- 2.3.8. Redflex shall provide a multi-lingual toll-free telephone number for the purposes of answering citizen inquiries from 8am to 7pm EST.
- 2.3.8.1. Redflex shall permit the Authorized Employee to generate reports using the Redflex Standard Report System. Upon Redflex's receipt of a written request from the City and in addition to the Standard Reports, Redflex shall provide, without cost to the City, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the City in such format and for such periods as mutually agreed upon. The standard reports are:
- i. Incident Lookup
 - ii. Customer Management Report
 - iii. Work in progress
 - iv. Delinquent Report
 - v. Red light offender report
 - vi. Process Service Report
 - vii. Cash Reconciliation Report
 - viii. Revenue Report
 - ix. Citation Receivable Report
- 2.3.9. Such reports shall include all of the information maintained and captured by the Redflex system, as outlined above and will assist the City in meeting the reporting requirements of Section 1111-b of the V&T.
- 2.3.10. During the six (6) month period following the Installation Date and/or upon Redflex's receipt of a written request from the City at least fourteen (14) calendar days in advance of court proceeding, Redflex shall provide expert witnesses for use by the City in prosecuting Violations; provided, however, the City shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; After the initial 6 month period, expert testimony may be provided on a cost reimbursement basis, billing will be for direct costs only to include travel, time and materials and are subject to City prior approval.

2.3.11. During the six (6) month period following the Installation Date, Redflex shall provide such training to City personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Redlight Enforcement Program.

2.4. Records Retention: Redflex will retain confidential information to include photographic evidence and data associated with the photo enforcement program as required to meet state guidelines.

2.5. PROSECUTION. The City shall diligently prosecute Citations.

2.6. OTHER RIGHTS AND OBLIGATIONS. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Redflex and the City shall have the respective rights and obligations set forth on Exhibit E attached hereto.

2.7. CHANGE ORDERS. The City may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to Redflex, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Redflex's receipt of a Change Order Notice, Redflex shall deliver a written statement describing the cost, if any (the "Change Order Proposal"). The Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the City. Following the City's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing Designated Intersection Approaches, or the addition of Intersection Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any attempt to resolve the disagreement shall first comply with Section 7.

3. License; Reservation of Rights.

3.1. 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 Rochester, 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 Rochester that Redflex is providing services to the City in connection with Photo Red Light Enforcement Program pursuant to the terms of this Agreement, and (c) use and

display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.

- 3.2. RESERVATION OF RIGHTS. The City hereby acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of the City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.
- 3.3. RESTRICTED USE. The City hereby covenants and agrees that it shall not (a) make any modifications to the Redflex System, including but not limited to any Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) use any of the Redflex Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Redflex therein, (d) use any trademarks or other marks other than the Redflex Marks in connection with the City's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.
- 3.4. 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.
- 3.5. 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 3.5, then the City shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex, and that Redflex shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance.

3.6. 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.

4. Representations and Warranties.

4.1. Redflex Representations and Warranties.

4.1.1. 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.

4.1.2. 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.

4.2. City Representations and Warranties.

4.2.1. 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.

4.2.2. 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.

4.3. LIMITED WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE CITY'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, REDFLEX DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION APPROACHES OR THE REDFLEX SYSTEM WILL OPERATE IN THE WAY THE CITY SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CITY HEREBY ACKNOWLEDGES THAT THE REDFLEX SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, REDFLEX SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

- 4.4. **SURVIVAL.** The definitions and each of the following shall survive the termination of this Agreement: (x) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (City Representations and Warranties), 5.3 (Limited Warranty), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Applicable Law), 11.16 (Injunctive Relief; Specific Performance) and 11.18 (Jurisdiction and Venue), and (y) those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.
5. **CONFIDENTIALITY.** During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.
6. **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 6, 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. In the event, the parties cannot agree to an alternate dispute resolution method, this Addendum in no way prevents the parties from pursuing any of their legal remedies in a court of competent jurisdiction.
7. **Miscellaneous.**
- 7.1. **Assignment.** Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, the City hereby acknowledges and agrees that the execution (as outlined in Exhibit F), delivery and performance of Redflex's rights pursuant to this Agreement shall require a

significant investment by Redflex, and that in order to finance such investment, Redflex may be required to enter into certain agreements or arrangements (“Financing Transactions”) with equipment lessors, banks, financial institutions or other similar persons or entities (each, a “Financial Institution” and collectively, “Financial Institutions”). The City hereby agrees that Redflex shall have the right to assign, pledge, hypothecate or otherwise transfer (“Transfer”) its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Redflex and any such Financial Institution, subject to the City’s prior written approval, which approval shall not be unreasonably withheld or delayed. The City further acknowledges and agrees that in the event that Redflex provides written notice to the City that it intends to Transfer all or any of Redflex’s rights pursuant to this Agreement, and in the event that the City fails to provide such approval or fails to object to such Transfer within forty-five (45) business days after its receipt of such notice from Redflex, for the purposes of this Agreement, the City shall be deemed to have consented to and approved such Transfer by Redflex. Notwithstanding the above, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective successors or assigns.

- 7.2. 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. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 7.3. 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.
- 7.4. 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.
- 7.5. 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.
- 7.6. 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.
- 7.7. 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.
- 7.8. SYSTEM RELOCATION. Should the City's program meet the maximum amount of systems allowed by law, which is 50 intersections, Redflex and the City will meet, assess and mutually confer on system relocation; should an existing location no longer warrant a system based on the public safety needs of the community, Redflex will incur the cost of system relocations under this section.
- 7.9. 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.
- 7.10. 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.

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EXHIBIT "A"
Designated Intersection Approaches

The contract is for the implementation of up to 50 intersections. Identification of enforced intersection approaches will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.

The City will make all reasonable efforts to provide the list of proposed intersections under consideration prior to formal project kick-off to the designated Redflex project manager. Redflex shall review the list with the City and perform a video survey which will provide a baseline accounting for violation volume based on an approximate 8-hour survey period. This information may assist in the identification of appropriate intersections.

EXHIBIT "B"
Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light System

Redflex will have each specified approach installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Redflex Traffic Systems and the City. The City is desirous of implementing the system in approximately 20-25 intersections in the first phase.

Redflex will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

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

In order to provide the City with timely completion of the photo enforcement project, Redflex Traffic Systems requires that the City assist with obtaining timely approval of permit requests. The City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the City will provide engineering review(s) of Redflex permit requests and all documentation in a timely manner.

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

- 1.10. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersection Approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
- 1.11. Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
- 1.12. Implement the use of the Redflex System at each of the Designated Intersection Approaches;
- 1.13. Deliver the materials, forms and documentation in accordance with Redflex submission to the City for City approval; and
- 1.14. Citation processing and citation issuance/re-issuance for Authorized Violations;
- 1.15. Redflex shall provide training (i) for up to fifteen (15) personnel of the City, including but not limited to the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the Redlight Photo Enforcement Program, (ii) for up to 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, additional training will be provided on a "as-needed basis at no additional cost to the City;
- 1.16. Interact with PVB 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 PVB proceedings, and coordination between Redflex and the City .

Functional Requirements

The system shall have the ability to satisfy the following minimum requirements:

1. Ability to capture license plate numbers for all types of vehicles
2. Ability to capture license plate numbers across 6 lanes of traffic.
3. Ability to capture left and right turn lanes.
4. Ability to capture multiple vehicles that simultaneously drive through the red light.
5. Ability to capture the speed of the vehicle
6. Ability to capture still camera image (minimum 8 mega pixels) and full motion video capture (30 frames per second)
7. Ability to capture license plate numbers in a variety of lighting and weather conditions including snow and ice conditions.

8. Ability to view still camera and video images to determine if a citation should be issued (approve/reject capability)
 9. Ability for the system to produce a citation that can be sent to the vehicle owner.
 10. Pursuant to Section 1111-b of the V&T, such system shall utilize necessary technologies to ensure, to the extent practicable, that photographs produced by such system shall not include images that identify the driver, the passengers, or the contents of the vehicle.
 11. Ability to provide reporting capability
 12. Ability to provide data in standard acceptable formats to the City for analysis and reporting purposes.
 13. Ability to provide still camera and video images to the City on DVD or other media for the purpose of evidence.
 14. Ability to track citation payments.
 15. Ability to operate the Red Light Camera equipment without interference to existing traffic light systems.
 16. Ability for the Red Light Camera equipment to operate in a wide range of temperatures (-10o F – 100oF).
 17. Ability for the vendor to provide assistance in the evaluation of intersections for the number of cameras and placement
 18. Ability to assign individual security based on user ID and password
 19. Ability to ensure that data is securely transmitted and stored
 20. Ability to define retention time of data
 21. Ability to provide vehicle owner's name and address based on license plate number from all jurisdictions
 22. Ability to view video images in real-time.
 23. Ability to provide educational services to the City
 24. Ability to provide materials for education purposes
 25. Ability to move cameras to different intersections
 26. Ability to work with the City to define the parameters that would control the cameras
 27. Ability to provide information required by New York State law for annual reporting.
 28. Ability for the vehicle owner to view still camera and video images
2. **CITY OBLIGATIONS.** The City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):
- 2.1. Appoint the Project Manager;
 - 2.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;
 - 2.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Redlight Photo Enforcement Program;
 - 2.4. Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the City; and
 - 2.5. Assist Redflex in seeking the Approvals

- 2.6. Provide reasonable access to the City's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Redlight Photo Enforcement Program;
- 2.7. Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
- 2.8. Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date;
- 2.9. Assist Redflex in developing the Redlight Violation Criteria; and
- 2.10. Seek approval of the Enforcement Documentation.
- 2.11. The City shall provide on an agreed upon frequency, without cost to Redflex, reports regarding the prosecution of Citations, the collection of fines, fees and other monies and available collision data, in such format and for such periods as Redflex may reasonably request.
- 2.12. Yellow Light Timing Review. The City and Consultant will work with the County to seek sign-off that yellow light timing meets the minimum federal standards. The City and Redflex shall have no influence over these timings.
- 2.13. City will assist Redflex with process for accessing power, signal connections and conduit if capacity is available from the County of Monroe.
- 2.14. The City is responsible for all computer hardware, web browsers and high speed Internet access necessary for the City to access the systems
- 2.15. The City will fabricate signage and Consultant will install and maintain the applicable signage.

EXHIBIT "C"

Maintenance

1. All **repair and maintenance** of Photo Red Light Enforcement systems and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of County of Monroe Traffic Engineering present.
3. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
4. Redflex may assign specific personnel to provide follow up assistance to the City in the form of the HELPDESK, a designated Customer Service Representative and a Director of Accounts.

Maintenance Requirements

Maintenance is provided directly by Redflex and by no subcontractor or third party vendor. Through proactive and on-site maintenance, remote status check and emergency response, Redflex ensures optimal system performance.

- Proactive and On-Site Maintenance: Redflex's Smartcam™ technologies allow for download of systems diagnostics for scheduling of preventive maintenance on a daily basis.
- Remote-Status Checks: Redflex's Smartcam™ technologies allow daily operational and quality checks on each installed camera system.
- Emergency Response: Redflex provides local emergency response from qualified Redflex field technicians, which will ensure optimum system operation.

Redflex will be exclusively responsible for the servicing and maintenance of red light camera enforcement equipment. Redflex maintenance plan is designed to proactively catch any malfunction and fix it remotely immediately or on-site within 24 hours (in most cases just a few hours after notification of the problem). Our system is designed so that in excess of 90 percent of all repairs will be accomplished within a 48 hour period. The system is designed to automatically notify appropriate Redflex personnel of any systems failure, malfunction or other problems that would cause key components of the Automated Enforcement Program system to be inoperable.

Preventative Maintenance

Monthly onsite maintenance inspections are performed to ensure potential problems are identified before a malfunction occurs. Preventative maintenance is executed each time a technician responds to perform **any** maintenance function requiring them to be onsite.

Preventative maintenance includes but is not limited to:

- Cleaning the camera enclosure glass when required.
- Inspect the cabinet for signs of leaks, wear and/or damage and clean as necessary.
- Inspecting cables, connectors and hardware for signs of wear or damage.
- Inspecting poles, bases and enclosures for signs of damage and to ensure proper alignment.
- Inspecting detection devices for signs of wear or damage.
- Testing cabinet safety devices for proper operation to ensure safe working conditions for maintenance personnel and the general public in the case of an accident that could expose the public to operating voltages.

Each site is to be visited on a monthly basis to perform preventative maintenance.

Preventative maintenance tasks will be documented in the intersection maintenance log for every inspection being performed. This document is stored on the approach computer to allow Redflex technicians to keep track of prior maintenance issues. Entries will include:

- Date and time inspection was performed
- Technician performing inspection
- Results of the inspection
- Reason for inspection (i.e. scheduled or as a result of other maintenance)

Preventative maintenance inspections will be performed on a rotational basis to ensure each site is visited within a 30 day period. While onsite the technician will fill out a form (punch list) indicating what has been checked.

General Maintenance

The general maintenance program is based on a strict regimen of daily checks. These steps along with the immediate response to problems as they are found will be pivotal to both system uptime and producing increased issuance rates in Rochester.

Remote status checks

Remote status checks consist of two distinct segments; daily operational and quality checks, which together provide positive, near real time, and daily operational feedback that the system is functioning properly and producing the desired results.

Daily Operational Checks

The central server automatically downloads digital violation images from the camera locations to the centrally located server. This process allows for automated reports to be generated by the system and provided to the Director of Operations, Technician Supervisor, the Technician assigned to Rochester and the Redflex Helpdesk. These key

individuals evaluate the daily activity of the intersection cameras and the central server to determine if there are any anomalies in the data provided.

The reports generated contain red light offense detection information, which indicates the number of red light incidents detected in each lane for each monitored approach and incidents reviewed that do not meet the minimum required amount of still images. If detections have occurred and there are no missing images reported at an approach the system is operating properly. Operational verification and image quality is done by the violation processing associates. If there have been no detections at an entire approach (each lane of travel for a specific enforced intersection) a series of systems checks are performed and documented in a comprehensive intersection maintenance log.

The daily operational system checks are performed on each individual camera and are accessed remotely via the system's computers through the secure, high-speed communication connection.

The system checks as described below include verifying that the system parameters are properly configured, verifying software settings are accurate, confirm that the download folder is properly configured, authenticate that the detection system is exhibiting proper activity and signaling sequencing, and complete a real life offense simulation (usually triggered during a green phase) to validate it is capturing successfully.

System parameters that are verified include:

- The camera has a valid certificate to ensure it is authorized to process encrypted information.
- The amnesty period (time in the red phase at which point the cameras can capture offenders) is properly configured.
- The detection device that interfaces to the external input signals at the intersection is configured and functioning correctly.
- Each lane enforced has the appropriate image capture settings configured to capture the offending vehicle at the appropriate time during the violation.

The system settings are checked for accuracy, these settings include:

- The speed limit is selected to be imprinted on the violation.
- The data block has accurate information identifying the proper location, machine identification and software version used.
- The loop separation is accurate in accordance with loop installation positioning.
- The individual cameras settings are correct; focus, zoom and exposure are properly configured for each.

The download folder is the place on the camera system where offense files are stored until the import server successfully downloads them. It acts as a temporary storage facility at the intersection that can handle up to 5,000 offense files. This folder is checked to ensure proper connectivity to the importer server by verifying:

- The software is configured to place the offense files in the proper file folder location.
- The file folder location has the correct security access and is accessible to the import server.

The detection systems are checked for proper activity and signaling sequencing:

- Ensure the detection device is communicating with the main camera system.
- Ensure red, amber and green phase indications are represented for each signal phase change. Still images can be captured in real time remotely to verify that the phase message received from the detection device corresponds to the phase shown in the live still image taken.
- Ensure each lane being monitored by the detection device has the appropriate number of messages to capture an offending vehicle.

Each system is equipped with light monitoring software, allowing the cameras to adjust for different conditions:

- The communications to the light detection device are confirmed.
- Software settings are verified; polling time, lux values are set properly.
- Images are confirmed to have appropriate settings for lighting conditions.

Recording of streaming video, each approach will be equipped with software allowing video to be stored for a minimum of 72 hours:

- Technicians to confirm video is up to date by replaying file
- Verify video is actively recording; validate file size is increasing while onsite.

A Real Time offense simulation system check is performed during the “green phase” of the signal cycle to verify proper operation and sequencing of image sets. This final check simulates an offense to verify all system parameters including image capture and encryption packaging are functioning properly.

Daily Quality Checks

Daily quality checks are performed by two departments; Operations and Technical Services. Images are viewed by the Violation Processing Department as they are downloaded by the system and processed to be forwarded to Police Department for approval. If a Processing Associate discovers a quality problem such as a license plate is blurry, camera alignment is not correct or the video is not functioning properly, they log the malfunction on an internal website, which is monitored by the Helpdesk and technical staff assigned to Rochester. The technician monitors the website during the day to accept inputs from the Processing Associates, performing initial evaluations on the validity of the submitted reports. This helps to ensure timely repair by a member of the Technical Services Staff.

The other procedure occurs with checks performed by the Lead Technician. Part of the daily routine will include reviewing images from Rochester. The Lead Technician will view an incident from each approach throughout the City. This allows the technician to confirm the enforcement systems to be working properly; flashes to be firing, data blocks to be correct, precise camera alignment and phasing sequence is working properly. With either process when an issue is recognized a Work Order is generated through the Redflex Maintenance Database.

Once the discrepancies are logged, the Lead Technician develops a work order to be assigned to the Technician responsible for handling Rochester's system issues. The work order provides a means for tracking open and resolved issues, as well as providing a means to track on-going system issues to identify opportunities for system enhancements.

The Lead Technician will assign the work order to the appropriate Technician. The technician attempts to perform remote repair activities as previously discussed to remedy the problem. If the problem cannot be resolved via the remote capabilities previously described, the technician will then be dispatched to repair the problem at the intersection.

Emergency Response - Knockdown Procedures Recognition

Upon recognition, via notification or site checks of damaged, defective equipment or any that may need repair; Redflex will coordinate the removal of the damaged equipment and ensure the site is safe. Once this has been accomplished, arrangements will be made to return the approach to normal operating conditions as soon as possible. **Redflex will us commercial best efforts contractually guarantee the approach will be back up and operational within 48 hours.** This may be accomplished in a number of ways; the most common method of this is to use local sub-contractors to repair the construction damage while Redflex Technicians prepare the replacement of the computer and camera systems.

Reconstruction

Redflex technicians will evaluate the damaged equipment and existing infrastructure to determine the extent of the damage caused by the vehicle accident.

Sub-contractors will be notified of required repairs and necessary equipment will be supplied by Redflex to facilitate repairs. Redflex Technicians will install camera and computer systems and return the system to an operational status.

Testing and commissioning

Upon completion of reconstruction, the Redflex Technician will conduct a series of tests and system alignments to ensure the equipment is properly configured and checked. When satisfied the approach is returned to its previous condition and the Redflex Technician will return the system to an operational state.

Maintenance program – Detailed

Preventative Maintenance

In a proactive effort to minimize equipment failure, Redflex performs onsite preventative maintenance on a monthly basis. Each approach has operations confirmed by a trained Redflex Technician at a minimum of once a month. The onsite checks are detailed via Preventative Maintenance Check List; these forms are stored electronically and are available to Rochester upon request.

Visual Inspection

While onsite, the technician performs a visual inspection of the area looking for any potential image blocking objects. If an object is found the tech will photograph and inform the City and plan a resolution. If possible, the tech will use the camera from the enclosure to show how the object impedes the image quality. The visual inspection will also include the surrounding public and City property; the general boundary being a one block radius of the intersection. If an issue is found the appropriate City department is notified. Redflex keeps an up-to-date notification list of phone numbers within the cabinet. Additionally, Redflex technicians have a digital camera available to document anything they may find out of order.

Wipe Down the Enclosure and Glass

Each approach has the glass wiped down. After the enclosure is cleaned, the camera alignment is verified prior to the technician leaving the site. While on the ladder, the enclosure and glass seals are examined for cracks or weathering.

Clean Flashes

With each onsite visit the flash alignment is checked and the flashes are cleaned.

Clean Cabinet

The technician wipes down the cabinet and paints over any markings or graffiti present.

Street Inspection

The lanes are inspected for street deterioration, looking for potholes or cracking. The loops will be checked; sealant levels are confirmed good and the technician will verify the loop wires are not protruding. Finally, the violation and lane lines are confirmed in place.

Loops Dives and Splices

Redflex personnel inspect loop dive boxes for wear or cracks and verify that it is properly sealed. While the box is open each splice is checked for weathering. If the epoxy appears

to be cracked or the splice has been exposed, a new splice is made. The wire is determined to be of good quality (no corrosion or discoloration) before a new splice is made.

Foundation Seals

During the visit, the technician checks each piece of equipment and ensures that it has a silicon seal between the base and the foundation.

Grounding

Each foundation is provided with a ground rod, the connections are checked with each visit.

AC Power

The AC power is checked using a digital volt meter (DVM); to verify that the incoming AC voltage is +/- 10% of what is required. If the voltage is outside of this range the appropriate City staff will be notified.

Lubricate Locks

Each padlock is treated with graphite, helping to prevent the locks from freezing.

Enclosure Communications

The computers are accessed by the technician while onsite using software that dials into each approach computer. Confirmation of open communication, streaming video server, routers and modems are performed.

EXHIBIT "D"
COMPENSATION & PRICING

Fixed Monthly Fee

The fixed fee shall be \$ 3,740 Per Month per System. The fee shall commence upon the expiration of a 15 day warning period for program commencement. The fee shall be reduced on a prorated daily basis for each system that is inoperative for a period of longer than 48 hours.

1.1. **Cost Neutrality is assured to City** – The City will never be required to pay Redflex under any provision of this Agreement, the Addendum or Exhibits thereto, more than actual cash received. The City agrees to pay Redflex within thirty (30) days after the invoice is received. The City shall be obligated to pay the cumulative balance invoiced by Redflex, in accordance with terms set forth, to the extent of gross cash received by the City from automated red light violations. In the event that a balance remains unpaid due to a deficit in gross cash received by the City compared to invoiced amounts, the City will provide to Redflex with each monthly payment, an accounting of such gross receipts supporting the amount withheld.

1.1.1. In the event that the contract ends or is terminated and an invoiced balance is still owed to Redflex, all subsequent receipts from automated red light violations for a period of 12 months from date of termination will be applied to such balance and paid to Redflex

1.1.2. Payment will only be made by the City up to the amount of cash received by the City through the collection of red light citation up to the amount currently due.

1.1.3. Cost neutrality is guaranteed except as follows:

1.1.3.1. If the City regularly, after written notice has been given, fails to approve violations at least 48 hours before the prescribed expiration date under the law, provided that Redflex has sent the proposed violations to the City at least 120 hours before the prescribed expiration date.

1.1.3.2. If the City by policy chooses not to enforce right-hand turn violations.

The City will collect all payments on citations. The City will offer the following payment methods:

By Mail: When paying a Citation by mail, individuals will be asked to enclose the Citation and a personal check, money order or cashier's check for the penalty amount indicated on the front of the Citation. Checks will be made payable as directed by the City and will be mailed to a specified address. Redflex will enclose a standard envelope with the Citation, having a return address determined by the City, to be used for mail and lockbox processing. The City will deposit all payments into a lockbox account operated by a City Depository, an FDIC member bank, and designated

exclusively for the City (the "Lockbox Account"). The City, through its City Depository, shall provide a daily Electronic File Transfer (Redflex Ad-Hoc Reporting #1) to Redflex of all lockbox transactions.

By Phone: Credit card payments will be accepted over the telephone by calling the City. Payments will be processed by the City through the City's merchant card processor. The City shall provide a daily Electronic File Transfer to Redflex of all credit card payments made by phone.

Pay by Web: Credit card payments will be accepted by the City via the Internet. The City will transmit to Redflex a daily Electronic File Transfer of all citations paid. Redflex will transmit to the City's website manager daily a current file of open citations.

Walk-in payments: The City will accept walk-in payments via the City's Cashiering System. The City will transmit to Redflex a daily Electronic File Transfer of all citations paid and amounts paid.

Lockbox fees will be the responsibility of City.

Online convenience fees are the responsibility of violator and are passed through to the City. This is not to be considered revenue of the City.

Monthly credit card merchant fees are the responsibility of the City and shall be deducted up front from revenues. Credit card usage merchant fees are the responsibility of the City and shall be deducted up front from revenues.

The City shall be responsible for managing the collection of delinquent Citations by managing a 3rd party collections program. The City may choose to use Redflex's business partners and recommendations based on region and rates. Collection fees shall not be considered a revenue of the City. The City will transmit or cause the 3rd party collections program to transmit a daily Electronic File Transfer of all citations paid and amounts paid.

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Redflex construction will be able to utilize existing conduit for installation where space is available. If it is determined that new conduit must be installed the cost of the installation of the same shall be borne by Redflex.
2. Each year, on the anniversary date of the commencement of the fee for the initial system, the monthly fee payable by the City during the ensuing year shall be increased or decreased by the same percentage, if any, that the Consumer Price Index – All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics, United States Department of Labor, has increased or decreased during the most recent twelve-month period prior to the anniversary date for which such Index has been published.
3. Redflex will provide a monthly invoice to the City.

4. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of Redflex
5. Redflex shall be solely responsible for installing required signage. 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 V&T, and the City shall assist in determining the placement of such Signage. Redflex shall submit signage design drawings to the appropriate local authority for approval. Any changes or modifications to signage requirements will be the responsibility of the City.
6. Roadway/Intersection improvement projects: The City shall reimburse Redflex the costs of replacing and or modification of operational system approaches through the monthly invoice, with appropriate documentation.
7. If a system is deactivated at the City's request due to roadway construction, the monthly fee will continue at the pro rata amount of \$1,500.
8. Equipment Failure. Where Redflex equipment failure causes system downtime of greater than 48 hours the City will be prorated daily credit for each approach day down (i.e. 1/30th of \$3740 per day).
9. Approach Knockdown. A knockdown of equipment is considered damage to infrastructure by a third party. Equipment knockdowns will be treated separately from the normal maintenance agreement and restoral time will be within 72 hours after which a prorated daily credit begins.
10. In the event that the state rescinds authorization or the program is found unconstitutional, this Agreement shall immediately terminate. However, to the extent allowed by law, outstanding citations can be collected to apply to amounts owed prior to the termination. If the state adds a surcharge to the citations, surcharge collections shall not be considered revenue to the City.
11. The City will notify Redflex of all adjudication results so that citation records can be reconciled.
12. If the City requests a 2nd notice to be generated, printed and mailed to the violator a fee of \$1.50 per mailed 2nd notice will be paid to Redflex. Redflex may agree to provide additional notices for a fee approved by the City.
13. Redflex will provide the following reports in a form approved by the City or will provide a means for the City to obtain said reports direct from the Redflex system:

All Reports must show totals for each field required.

Financial Reporting

All financial reporting from Redflex is dependent upon daily Electronic file transfer(s) from the City or City designee/partner. A file transfer from all locations accepting payments for the City for citation issued from the Redflex system will include all data elements as agreed upon by both Redflex and the City.

Redflex Standard Financial Reporting

- 1) Customer Performance Report – This is a cumulative report updating the status of all citations based on the month in which they were issued. (Month Citation was Issued,

Original Fine Amount, Assessed Fees, Waived Fees/Fines, Net Collectible Amount, Gross Collected Amount, Collection Rate)

- 2) Revenue Report – Reports on all revenue affecting dollar amounts, positive and negative, showing in the Redflex Database. (Citation Number, Approach Name, Detection Type, Vehicle Speed, Posted Speed, Payments from Individuals, Payments from Collection agency, Any Collection agency Fees, Online Convenience Fees, Refunds, Returned Checks, Chargebacks, Balance Due, First Name, Middle Name, Last Name, Address, City, State, Zip Code)

Note: The revenue report is generated on a monthly basis. This report is provided from Redflex accounting in an excel file for filtering and sorting. Online access to the monthly report will be made available in 2010.

- 3) Citation Receivable Report – lists all balances open, positive or negative, showing in the Redflex Database. (Citation Number, Issued Date, Outstanding Amount, Current, 31-60 Days Past Due, 61-90 Days Past Due, 91-120 Days Past Due, 121+ Days Past Due, First Name, Middle Name, Last Name, Address, City, State, Zip Code)

Note: The Citation Receivable Report is generated on a monthly basis. This report is provided from Redflex accounting in an excel file for filtering and sorting. Online access to the monthly report will be made available in 2010.

- 4) Cash Reconciliation Report – Redflex will only provide this report if the City chooses to utilize Redflex's lockbox payment processing.

Redflex ad-hoc system reporting

- 1) Redflex will make available agreed upon ad-hoc reporting based upon the information provided in the daily Electronic File Transfer(s). An Online Application for the City to create and export reports capable of reporting on the information provided in the daily Electronic File Transfer(s) will be made available to the city upon completion by Redflex. Information related to the program will be limited to the information as provided in the Redflex system for notices issued and the daily Electronic File Transfer(s) sent to Redflex by the City or City designees/partners. Details of the Electronic File Transfer shall include: Contract/Account Code (assigned by Redflex), Citation Number, Transaction Type (payment, Return/RDI, Chargeback, refund, adjustment), Transaction Detail (NSF/Uncollected, Account Closed, Stop Pay, Refer to Maker, Invalid Account, Fraudulent, Hold, Other, Unauthorized), Payment Type (check, credit card, money order, cash, online credit card), Transaction Date, Settlement/Posting date, Transaction Amount, Credit Card Number (last 4 digits), Check Number, Lockbox Number/City Number. The online application will allow for the reports to be exported into a format for the city to total and summarize based on the needs of the City.

- 2) Daily Collection Report – This report will include Date of Payment, Citation Number, Original Fine Amount, Assessed Fees, Waived Fees/Fines, Amount Paid, Balance Due, Name, Address, Date and Time of Incident. Sent daily via email.

3) Detail Payment Report by Method – This report will include Date of Payment, Citation Number, Amount Paid, Method of Payment, Location of Payment (if collected as part of the File Transfer). Sent monthly via email.

4) Dismissed Report – a monthly email will be sent to the city detailing all citations with a status of dismissed. The program manager for the city will provide Redflex with the current email address in which to provide this report.

Management Reporting – Available via Redflex SmartOps online reporting

City will be required to update the Redflex Smartops Online or like system to update the status of citations as necessary to complete the reporting.

1) Customer Management Report – details information on approach unit performance. The report is filtered by date and provides summary for each approach, total violations, itemized uncontrollable factors, rejections and notices printed.

2) Incident Look-up Report – for review of all incidents captured within a given time frame for an intersection, all intersections. This report will display incident number, Citation Number or User ID if rejected, Location Code, Detection Date and Time.

3) Redlight Offender Statistics – a graph display of red light offences per monitored lane at a specific approach. The graph will show number of offending vehicles based on the time in the red phase, time of the day and day of the week.

EXHIBIT "E"
Additional Rights and Obligations

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

1. Redflex shall assist the City in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Redlight Photo Enforcement Program (actual print and production costs are the sole responsibility of the City).
2. The City shall not access the Redflex System or use the Redlight Photo Enforcement Program in any manner other than prescribe by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo Enforcement Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Photo Enforcement Program, and the City shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other Person to do any of the foregoing.
3. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Redlight Photo Enforcement Program.
4. Redflex and the City shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, Redflex and the City shall obey any and all such rules and regulations.
5. The City shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly by the City, or any of its employees, contractors or agents.

EXHIBIT "F"
FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of _____, 2008, is entered into by and between the City of _____ (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the City of _____ and Redflex Traffic Systems, Inc., for Photo Red Light Enforcement Program and Violation Processing Program, dated as of _____, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Multicurrency Credit Agreement, dated as of June 2, 2008 (the "Multicurrency Credit Agreement"), by and among Redflex, as Borrower, the guarantors from time to time party thereto, as Guarantors, the lenders from time to time party thereto, as Lenders (the "Lenders"), and Bank of Montreal, as Administrative Agent (the "Administrative Agent"), pursuant to which the Lenders have provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.
2. Pursuant to the Multicurrency Credit Agreement, Redflex has granted the Administrative Agent, for the benefit of the secured creditors, a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Administrative Agent and the Lenders under the Multicurrency Credit Agreement. Such security interest applies to and covers all of Redflex's contract rights, including, without limitation, all of Redflex's rights and interests under the Agreement.
3. Redflex will not, by virtue of the Multicurrency Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Administrative Agent has not assumed any liability or obligation of Redflex under the Agreement.
4. The City hereby acknowledges notice of, and consents to, Redflex's grant of such security interest in favor of the Administrative Agent, for the benefit of the secured creditors, in all of Redflex's rights and interests under the Agreement pursuant to the Multicurrency Credit Agreement.
5. The City further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the City and shall inure to the benefit of the successors and assigns of the Administrative Agent, and to any replacement lenders which refinance Redflex's obligations to the Administrative Agent and the Lenders under the Multicurrency Credit Agreement.