



RESOLUTION 2018-042

AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH REDFLEX TO PROVIDE PHOTO ENFORCEMENT AND RELATED SERVICES

WHEREAS, during a public meeting on February 6, 2018, the City Council was presented with information about the need for enhanced speed enforcement along Hwy 99 in the City of Sherwood; and

WHEREAS, city staff has posted a Request for Proposals and completed a competitive solicitation process for a photo enforcement vendor; and

WHEREAS, Redflex was the selected proposer and city staff has negotiated a favorable contract with Redflex; and

WHEREAS, it appears to the City Council that the proposed contract with Redflex meets the public safety needs of the citizens of the City of Sherwood.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to sign a contract with Redflex, in a form substantially similar to that attached hereto as Exhibit 1.

Section 2. This Resolution shall be effective upon its approval and adoption

Duly passed by the City Council this 15 day of May, 2018.


Keith Mays, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder

EXCLUSIVE AGREEMENT BETWEEN THE CITY OF SHERWOOD, OREGON AND REDFLEX
TRAFFIC SYSTEMS, INC. FOR AN AUTOMATED PHOTO ENFORCEMENT PROGRAM

This Agreement (this "Agreement") is made as of this _____ day of _____ 2018 ("Effective Date") between Redflex Traffic Systems, Inc., a Delaware Corporation ("Redflex"), and the City of Sherwood, Oregon, a municipal corporation (the "City") for an Automated Photo Enforcement Program.

RECITALS

- A. On April 30, 2009, the Parties entered into the Agreement with Redflex Traffic Systems, Inc. to Provide Red Light Photo Enforcement Services to the City of Sherwood, Oregon ("2009 Agreement");
- B. On August 20, 2013, the Parties amended the 2009 Agreement and extended its term through August 20, 2018 ("First Amendment") (the 2009 Agreement together with the First Amendment, the "Original Agreement");
- C. On or about March 2, 2018, the City issued a Request For Proposals for Photo Enforcement Systems & Related Services (the "RFP"). On April 5, 2018 the City issued its Notice of Intent to Award Photo Enforcement Systems & Related Services Contract to Redflex.
- D. The City desires that Redflex furnish, and Redflex desires to furnish, all equipment, licenses, applications and back office processing related to the Automated Photo Enforcement Program, including digital traffic enforcement cameras and equipment for the monitoring and enforcement of laws regulating traffic signals and speeding pursuant to the terms of this Agreement.

The Parties accordingly agree as follows:

AGREEMENT

1. **DEFINITIONS.** In this Agreement, the words and phrases capitalized below shall have the following meanings:
 - 1.1. "**Authorized Employee**" means the Project Manager or such other individual(s) as the City shall designate to review Potential Violations and to authorize the Issuance of Citations.
 - 1.2. "**Authorized Violation**" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Employee by using the Redflex System.
 - 1.3. "**Automated Photo Enforcement Program**" or "**the Program**" are interchangeable and synonymous and mean 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 detecting Violations and recording Violation Data in the form of photographic images of motor vehicles.
 - 1.4. "**Business Rules**" means the set of rules, guidelines, structures and methods of operation that define specific operational components of the Program.
 - 1.5. "**Citation**" means the notice of a Violation, which is mailed or otherwise delivered by Redflex on behalf of the City to the violator on the appropriate Enforcement Documentation for each Authorized Violation.
 - 1.6. "**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:
 - 1.6.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing

methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or City's, or at which such Person sells or has sold its services; and

- 1.6.2. 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 have the meaning provided under Oregon law.
- 1.6.3. 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 of a Party in breach of this Agreement, (iii) was lawfully disclosed to a Party by a person other than a Party, (iv) was required by a court of competent jurisdiction to be disclosed, or (v) was required by applicable law to be disclosed.
- 1.7. "Designated Intersection Approaches" means the Existing Intersection Approaches and New Intersection Approaches that the Parties mutually agree on 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 for a Potential Violation using the Redflex System.
- 1.9. "Enforcement Documentation" means the necessary and appropriate documentation related to the Program, including but not limited to warning letters, Citation notices (using the specifications of the applicable court(s) and the City), a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including for coordinating with the applicable vehicle registry), and technical support documentation for applicable court and judicial officers .
- 1.10. "Equipment" means any and all approach cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Program.
- 1.11. "Existing Intersection Approach" means an Intersection Approach that was installed and operational prior to the Effective Date.
- 1.12. "Fine" means a monetary sum assessed for a Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.13. "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.
- 1.14. "Installation Date" means the date on which Redflex completes the construction and installation of (i) at least one (1) New Intersection Approach, or (ii) all Existing Intersection Approach upgrades (as set forth in Exhibit A), and has completed the Warning Period in accordance with the terms of this Agreement so that such New Intersection Approach or Existing Intersection Approach upgrades, as applicable, is/are fully operational for the purposes of functioning with the Program.
- 1.15. "Intellectual Property" means, for any Person, any and all now known or later known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other intellectual or 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 in force (including any rights in any of the foregoing), of such Person.
- 1.16. "Intersection Approach" means a conduit of travel with up to four (4) contiguous lanes from the curb for traffic moving in a particular direction (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed for the purposes of facilitating the Program by the City.

- 1.17. "Lost Profits" means profits that would have been received by a Party had the other Party fully performed this Agreement, including, but not limited to (a) revenues that would have been received by City on account of Citations that might have been issued during periods in which the Redflex System was not functioning properly, and (b) amounts that must be refunded or disgorged by City due to Fines collected as a result of an improper or invalidly issued Citation.
- 1.18. "New Intersection Approach" means an Intersection Approach that is installed and made operational after the Effective Date.
- 1.19. "Operational Period" means the period of time during the Term, commencing on the Effective Date, during which the Program is functional in order to permit the issuance of Citations using the Redflex System.
- 1.20. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.21. "PLATESCAN® System" means the license plate scanning system of Redflex.
- 1.22. "Potential Violation" means, for any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System concerning 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 traffic violation has occurred.
- 1.23. "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 Redflex Systems at the Designated Intersection Approaches and the implementation of the 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.
- 1.24. "Proprietary Property" means, for 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.
- 1.25. "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 the Program at any time during the Term, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
- 1.26. "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 Redflex System and related equipment at the Designated Intersection Approaches and the implementation of the 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.
- 1.27. "Redflex System" means, collectively, the Salus® System, SMARTcam® System, the SMARTscene® System, REDFLEXred® System, REDFLEXradar® System, SMARTops® System, the Program, and all of the other equipment, applications, software, hardware, back office processes, servers, off-site backup systems, cameras, sensors, components, motor vehicles and other related tangible and intangible property, to enable Redflex to enforce a minimum of one lane of travel at a designated location.
- 1.28. "REDFLEXradar®" means the detection and tracking system of Redflex relating to the Program.
- 1.29. "REDFLEXrail® System" means the proprietary digital railroad grade crossing photo enforcement system of Redflex.
- 1.30. "REDFLEXred® System" means the proprietary digital redlight photo enforcement system of Redflex relating to the Program.
- 1.31. "REDFLEXslimline® System" means the proprietary photo enforcement system of Redflex.
- 1.32. "Salus® System" means the proprietary software that controls the systems of Redflex relating to the Program.

- 1.33. "REFLEXspeed® System" means the proprietary speed enforcement system of Redflex.
- 1.34. "REFLEXstop® System" means the proprietary stop sign enforcement system of Redflex.
- 1.35. "SMARTcam® System" means the proprietary software system that controls the systems of Redflex relating to the Program.
- 1.36. "SMARTops® System" means the proprietary back-office processes of Redflex relating to the Program.
- 1.37. "SMARTscene® System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data relating to the Program.
- 1.38. "Traffic Signal Controller Boxes" means the signal controller interface and vehicle detection owned and operated by the City. This includes the City's traffic controller, the City's vehicle detection equipment, the City's communication equipment, and the City's controller cabinet.
- 1.39. "Violation" means any traffic violation as provided for in any applicable rule, regulation or law of any 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.
- 1.40. "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 through which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities. Should physical criteria change which requires additional modification to the Program or its detection equipment, any costs incurred in connection with such modifications shall be the responsibility of Redflex.
- 1.41. "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.
- 1.42. "Warning Period" means the period of time after the installation and activation of a New Intersection Approach during which period only warning notices shall be issued for a period of thirty (30) days, unless otherwise agreed by the Parties.

2. **TERM.**

- 2.1. The term of this Agreement shall commence on the Effective Date and continue for a period of five (5) years (the "Initial Term"), unless terminated earlier as provided for in this Agreement. The City shall have the option to extend the Initial Term for an unlimited number of additional consecutive and automatic one (1) year time periods (each a "Renewal Term"). The Initial Term together with each exercised Renewal Term is collectively the "Term." Each Renewal Term shall automatically and without any required notice or action be deemed to have been exercised unless the City provides written notice to Redflex in accordance with Section 9 of its election not to extend at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term.
- 2.2. The Original Agreement shall expire on the Effective Date of this Agreement without any further notice of termination from either Party. All terms and conditions of the Original Agreement that survive termination shall remain in full force and effect.

3. **SERVICES.** Redflex shall provide the following services in connection with the Program (such services, including those outlined in Exhibits B and C, are subject to change if required by law):

- 3.1. **INSTALLATION.** With respect to the construction and installation of the New Intersection Approaches and the installation of the Redflex System at such New Intersection Approaches, the City and Redflex shall have the respective rights and obligations set forth on Exhibit B.
- 3.2. **MAINTENANCE.** With respect to the maintenance of the Redflex System at the Designated Intersection Approaches, the City and Redflex shall have the respective rights and obligations set forth on Exhibit C.
- 3.3. **VIOLATION PROCESSING.** During the Operational Period, Violations shall be processed as follows:
 - 3.3.1. All Violations Data shall be stored on the Redflex System;
 - 3.3.2. The Redflex System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Employee via the Redflex System;

- 3.3.3. The Redflex System will be accessible by Authorized Staff through a secure and encrypted connection by use of a confidential user account on a computer equipped with a high-speed Internet connection and an approved web browser;
- 3.3.4. Within six (6) days after gathering of the Violations Data from the applicable Designated Intersection Approaches Redflex shall provide the Authorized Employee with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data;
- 3.3.5. The City shall cause the Authorized Employee to review the Violations Data and to determine whether a Citation shall be issued with respect to each Potential Violation captured within such Violations Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose. REDFLEX ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;
- 3.3.6. For 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, only warning violation notices shall be issued for all Authorized Violations;
- 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries;
- 3.3.8. Redflex shall permit the Authorized Employee to generate reports using the Redflex Standard Report System;
- 3.3.9. Upon Redflex's receipt of a written request from the City and in addition to the Standard Reports, Redflex shall provide, without cost to the City, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System to the City in such format and for such periods as mutually agreed upon;
- 3.3.10. Upon Redflex's receipt of a written request from the City at least fourteen (14) calendar days in advance of a 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. During the six (6) month period following the Installation Date, Redflex shall provide such expert witnesses at no cost to City. After the initial six (6) month period, the City shall be obligated to reimburse Redflex for the cost of expert witnesses provided at the City's request in an amount not to exceed \$300 per court day.
- 3.3.11. During the three (3) month period following the Installation Date, Redflex shall provide training to City personnel as shall be reasonably necessary to allow City personnel to act as expert witnesses on behalf of the City.
- 3.4. RECORDS RETENTION. Redflex shall retain Violations Data in accordance with all applicable law as outlined in the Business Rules.
- 3.5. PROSECUTION AND COLLECTION; COMPENSATION. REDFLEX ACKNOWLEDGES AND AGREES THAT PROSECUTION DECISIONS IN RELATION TO CITATIONS SHALL BE IN THE SOLE, UNILATERAL AND EXCLUSIVE DISCRETION OF THE CITY (A "PROSECUTION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A PROSECUTION DECISION. Redflex shall have the right to receive, and the City shall be obligated to pay Redflex, the compensation set forth on Exhibit D.
- 3.6. TAXES. Where obligated by applicable law, Redflex shall timely pay all taxes relating to or arising out of the Program. Unless otherwise indicated, the City agrees to pay any applicable taxes including but not limited to use, property or sales taxes required at the municipal, county, state or any other taxing authority level on all applicable consumer services and materials purchased and/or leased by City. No charge by the City shall be made for federal excise taxes and City agrees to furnish Redflex with an exemption certificate where appropriate for any applicable sales and/or use taxes. For the avoidance of doubt, it is the Parties intent that this Agreement does not alter the tax liability of either Party under the applicable law.

- 3.7. OTHER RIGHTS AND OBLIGATIONS. 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.
- 3.8. CHANGE ORDERS.
- 3.8.1. 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 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 any schedule impact, (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 in writing 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 provided each Party acted in good faith.
- 3.8.2. In the event that the change outlined in the Change Order Notice and the Change Order Proposal, and approved by the Parties, concerns moving an installed Redflex System to a new Designated Intersection Approach, then the City shall be responsible for the costs associated with the removal and reinstallation of the Redflex System and the Term of this Agreement shall be extended by a number of days equal to the period of time in which the Redflex System at issue is inactive, if that period of time is fourteen (14) or more continuous calendar days, unless the City has a Fixed Monthly Fee and chooses to continue paying the Fixed Monthly Fee for the inactive Designated Intersection Approach, as outlined in Exhibit D, during such period of time.
- 3.9. ROAD REPAIRS AND CONSTRUCTION PROJECTS. If any road repairs, street improvements or stop work order substantially interrupts, impedes, obstructs or interferes with the successful performance of Redflex System at any Designated Intersection Approach for a period of fourteen (14) or more continuous calendar days, the Term of this Agreement shall be extended by a number of days equal to the period of time in which the Redflex System at issue is affected, unless the City elects to continue paying the Fixed Monthly Fee for the impacted Designated Intersection Approach, as outlined in Exhibit D, during such period of time.
- 3.10. OWNERSHIP OF NON-VIOLATOR DATA. The Parties agree that Redflex shall have exclusive ownership of all Non-Violator Data generated as a result of the Program. "Non-Violator Data" shall include incident data, infraction rates, average speeds and other categories of data as mutually agreed by Redflex and the City. Non-Violator Data shall not include any data identifying the registered owner or the violator, or relating in any way to the registered owner's identity or the violator's identity. During the term of this Agreement, the City shall have a non-exclusive royalty free license to use the Non-Violator Data. This license shall terminate upon termination or expiration of this Agreement.
- 3.11. FUTURE SERVICES. If Oregon law allows, now or in the future, a Governmental Authority to suspend the ability to register a vehicle, as controlled by the Oregon Department of Transportation, for Persons with delinquent or unpaid fines, whether criminal or civil, the Parties have the option to execute an amendment to this Agreement for Redflex to provide the City certain automated scofflaw services under its ASP and ASP2 Programs, as applicable, to implement such law.

4. LICENSE; RESERVATION OF RIGHTS.

- 4.1. LICENSE. Subject to the terms and conditions of this Agreement, Redflex grants the City, and the City accepts from Redflex, a non-exclusive, non-transferable license during the Term to: (a) solely within the City, 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 related content posted on the Redflex System, (b) disclose that Redflex is providing services to the City in connection with 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 Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. RESERVATION OF RIGHTS. The City acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest.
- 4.3. RESTRICTED USE. The City 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 Redflex's goodwill, (d) use any trademarks or other marks other than the Redflex Marks in connection with the City's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, decompile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex Program, including but not limited to any Equipment, or to any Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.
- 4.4. PROTECTION OF RIGHTS. Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.
- 4.5. INFRINGEMENT. The City shall give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates or potentially infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute or potentially 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 its rights to its Marks and Intellectual Property and to make settlements relating to its Marks and Intellectual Property. In the event that Redflex commences any enforcement action relating to its Marks or Intellectual Property, the City shall provide Redflex with any reasonable cooperation and assistance that Redflex requests. Redflex shall be entitled to any damages or other monetary amount that might be awarded provided that after deduction of Redflex's actual costs and attorney's fees, Redflex shall reimburse the City for any reasonable costs incurred by City in providing such cooperation and assistance.
- 4.6. INFRINGEMENT USE. The City shall give Redflex prompt written notice of any 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 provide to Redflex reasonable cooperation and assistance as is requested by Redflex; provided, that Redflex shall reimburse the City for its reasonable costs incurred in providing such cooperation and assistance. If 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.

4.7. UNAUTHORIZED REFERENCES TO REDFLEX. Except as set forth in this Agreement, the City shall not utilize, make use of and/or make any reference to Redflex, its name or likeness, its affiliated, parent or subsidiary companies or corporations, its logos, insignias, trademarks, trade names, brand, websites, property, assets, products or services, including, but not limited to: "PLATESCAN® System"; "REDFLEXradar® System"; "REDFLEXrail® System"; "REDFLEXred® System"; "REDFLEXslimline® System"; "REDFLEXspeed® System"; "REDFLEXstop® System"; "Redflex Student Guardian® System"; "Salus® System"; "SMARTcam® System"; "SMARTops® System"; "SMARTscene® System"; and/or any and all combinations, variants and derivatives of the foregoing, for any reason or purpose without the prior written approval of Redflex which may be withheld, denied, delayed, rejected and/or refused, by Redflex in its sole discretion.

5. REPRESENTATIONS AND WARRANTIES.

5.1. REDFLEX REPRESENTATIONS AND WARRANTIES.

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

5.1.2. Professional Services. Redflex warrants and represents that any and all services that it provides pursuant to this Agreement shall be performed in a professional and workmanlike manner and in compliance with applicable law and by agreed upon specifications.

5.2. CITY REPRESENTATIONS AND WARRANTIES.

5.2.1. Authority. The City warrants and represents that it has all legal right, power and authority to execute and deliver this Agreement and perform its obligations. City further warrants and represents that it has complied with all applicable laws and regulations in entering into this Agreement and will comply with all applicable laws and regulations in performing under this Agreement.

5.2.2. Professional Services. The City warrants and represents that any and all services that it provides pursuant to this Agreement shall be performed in a professional and workmanlike manner and in compliance with applicable law and by agreed upon specifications.

5.3. LIMITED WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING ANY MAINTENANCE OBLIGATIONS SET FORTH IN SECTION 3.2, 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 SOFTWARE, OR WITH RESPECT TO THE RESULTS OF THE PROGRAM.

6. TERMINATION.

6.1. TERMINATION: Either Party shall have the right to terminate this Agreement by written notice to the other Party if (i) federal law or state statutes are amended, interpreted by a court, or otherwise changed to prohibit or substantially change the operation of the Program or the City is prohibited from paying for such work from the planned funding source; (ii) an appellate court with jurisdiction in the City rules that the Violations Data are inadmissible in evidence; (iii) Redflex no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation, or other law to be held by Redflex to provide the services required by this Agreement is for any reason denied, revoked, suspended, not renewed, or changed in such a way that Redflex no longer meets requirements for such license or certificate; or (iv) the other Party commits a material breach of this Agreement. In the event of a breach pursuant to (iv) above, the breaching Party shall have the right to remedy or cure the material breach within thirty (30) calendar days (or within such other time period as the Parties shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after receipt of written notice from the terminating Party setting forth in reasonable detail the facts giving rise to the material breach. Termination of this Agreement based upon an alleged material breach shall not be enforceable or effective unless the terminating Party mails written notice to the breaching Party not less than thirty (30) calendar days before the termination date and provides to the breaching Party the opportunity to remedy or cure the breach within the time period provided above. The right to terminate this Agreement shall be

without prejudice to any other right or remedy of any Party with respect to the breach concerned (if any) or any other breach of this Agreement except as otherwise provided in this Agreement.

- 6.2. TERMINATION FOR NON-APPROPRIATION. Notwithstanding any provision to the contrary, if the City is unable to appropriate funds to fulfill its obligations under this Agreement, the City shall give written notice to Redflex not less than thirty (30) days prior to the end of the fiscal year for which funds have already been appropriated, together with a financial statement showing the inability to appropriate funds for the next fiscal year, and this Agreement shall terminate at the end of the fiscal year in which notice is given. In no event shall this paragraph be construed as granting the City the right to terminate this Agreement for convenience, and the City shall use all reasonable efforts to ensure appropriated funds are available to satisfy the City's obligations under this Agreement.
- 6.3. TERMINATION FOR CONVENIENCE. Either Party may terminate this Agreement upon one year's written notice to the other Party. If the City chooses to exercise its option to terminate the Agreement for convenience, the City shall pay Redflex for work performed in accordance with the contract prior to the termination date.
- 6.4. PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relieve either Party of any liability that accrued before termination. Except as set forth in Section 6.5, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:
 - 6.4.1. Redflex shall: (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Program, provided, however, that, at its option, and to the extent permitted by law, Redflex may continue to process data collected prior to the date of termination related to Potential Violations for the purpose of determining whether a Violation has occurred, and may continue to issue Citations based on such data; (ii) promptly deliver to the City any and all Proprietary Property or Confidential Information of the City provided to Redflex pursuant to this Agreement, except for any information necessary for Redflex, at its option, to process pre-termination data in accordance with the preceding clause (i); (iii) promptly deliver to the City a final report regarding the collection of data and the issuance of Citations in a format and for a period of time mutually agreed upon by Redflex and the City; (iv) promptly deliver to the City a final invoice for all amounts owed by City to Redflex for work performed and Citations issued by Redflex prior to the termination; and (v) provide such assistance as the City may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement or pursuant to clause (i) above. Except as required by applicable law or as mutually agreed by Redflex and the City, Redflex shall have no obligation to retain Violations Data after termination of this Agreement. At termination and upon the City's prior written request, Redflex will transfer the Violations Data to the City in an industry-standard database format or other format mutually agreed by the Parties. The City shall be responsible for all costs associated with the transfer of the Violations Data including but not limited to administrative costs, storage media and storage media authoring device costs, and internet bandwidth costs incurred in transferring the Violations Data. Upon completion of the transfer of the Violations Data to the City, Redflex shall have no obligation or responsibility concerning the Violations Data.
 - 6.4.2. The City shall (i) immediately cease using the Program, accessing the Redflex System and using any other Intellectual Property of Redflex, except in accordance with Section 6.4.1(i) above, (ii) promptly deliver to Redflex any and all Proprietary Property or Confidential Information of Redflex provided to the City pursuant to this Agreement, to the extent permitted by law, and (iii) promptly pay Redflex any and all fees, charges and amounts that the City owes Redflex for work performed and Citations issued prior to the termination, as outlined in Exhibit D.
 - 6.4.3. Unless the City and Redflex have agreed to enter into a new agreement relating to the Program or have agreed to extend the Term, Redflex shall remove any and all Equipment or other Redflex materials installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated Intersection Approaches to substantially the same condition that the Designated Intersection Approaches were in immediately prior to such

installations; provided however, that Redflex's financial obligation under this provision shall not exceed \$5,000 in the aggregate for any Designated Intersection Approach.

- 6.5. **SURVIVAL.** Notwithstanding the foregoing, the definitions provided for in Section 1, and each of the following Sections, shall survive the termination of this Agreement: (i) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (City Representations and Warranties), 5.3 (Limited Warranties), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Injunctive Relief; Specific Performance), 11.18 (Applicable Law) and 11.19 (Jurisdiction and Venue), and (ii) any Section in this Agreement which states, or evidences the intent of the Parties, that the Section survives the expiration or termination of the Agreement, or must survive to give effect to the Section.
7. **CONFIDENTIALITY.** To the extent permitted by law, during the Term and for a period of three (3) years after its expiration or termination, neither Party shall disclose to any third person, or use for itself in any way, any Confidential Information learned from the other Party during the course of the negotiations for this Agreement or during the Term, and upon termination of this Agreement, each Party shall return to the other all tangible Confidential Information of such Party. Each Party shall retain in confidence and not disclose to any third party any Confidential Information without the other Party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such Parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.
8. **INDEMNIFICATION AND LIABILITY.**
- 8.1. Redflex acknowledges responsibility for liability arising out of the performance of this Agreement and shall defend, indemnify, and hold harmless City and its officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from, attributable in whole or in part to, Redflex's and Redflex's officers', agents', volunteers', and employees' negligence or willful misconduct in the course of performing this Agreement. However, Redflex's duty to indemnify and hold harmless as required by this subsection shall not include any liability arising from the negligence or willful misconduct of City and its officers, agents, volunteers, and employees. Redflex's activities are deemed to include those of its subcontractors.
- 8.2. **Indemnification Procedures.** In the event any claim, action or demand (a "Claim") for which the City seeks indemnification from Redflex, the City shall give Redflex written notice of the Claim promptly after the the City first becomes aware of the Claim; provided, however, that failure to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. Redflex shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the City, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the City shall have the right to participate in the defense at its sole expense; provided, however, the City shall have the right to take over the control of the defense or settlement of such Claim at any time if the City irrevocably waives all rights to indemnification from and by Redflex. Redflex and the City shall cooperate in the defense or settlement of any Claim, and no Party shall have the right enter into any settlement agreement that materially affects the other Party's material rights or material interests without such Party's prior written consent, which consent will not be unreasonably withheld or delayed.
- 8.3. **LIMITED LIABILITY.** Notwithstanding anything contrary in this Agreement, neither Party shall be liable to the other Party for any special, incidental, indirect, consequential, exemplary or punitive damages, including damages resulting from Lost Profits, however caused and on any theory of liability arising out of or relating to this Agreement.
9. **NOTICES.** Any notices required by this Agreement shall be in writing, and shall be deemed to have been given (a) upon delivery, if delivered by hand, (b) three (3) days after being mailed either first class,

or certified mail, return receipt requested, postage and registry fees prepaid, or (c) one Business Day after being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery, in each case addressed or sent as follows:

9.1. Notices to Redflex:
Redflex Traffic Systems, Inc.
Attn: Legal Department
5651 W. Talavi Blvd., Suite 200
Glendale, Arizona 85306
E-Mail: legaldepartment@redflex.com

9.2. Notices to the City:
Sherwood Police Department
Attn: Jeff Groth, Police Chief
20495 SW Borchers Drive
Sherwood, Oregon 97140
E-Mail: grothj@sherwoodoregon.gov

10. **DISPUTE RESOLUTION.** The Parties shall engage in informal, good faith discussions and attempt to resolve any dispute or disagreement between the Parties arising out of or relating to this Agreement before initiating arbitration, mediation or litigation. In connection with those informal discussions, each Party shall appoint a designated officer and the designated officers of the Parties shall meet in person for the purpose of attempting to resolve the dispute. The designated officers shall meet as often as the Parties shall determine to be reasonably necessary. If the Parties are unable to resolve the dispute, and any Party concludes in good faith that amicable resolution through continued negotiation is not reasonably likely to result in resolution of the dispute, the Parties agree to submit the dispute to nonbinding mediation for resolution. The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both Parties. Mediation will be conducted in Portland, Oregon, unless both Parties agree in writing otherwise. Both Parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a Party requests mediation and the other Party fails to respond within ten (10) calendar days, or if the Parties fail to agree on a mediator within ten (10) calendar days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either Party. If the Parties' mediation does not resolve the dispute, any Party may initiate litigation.

11. **MISCELLANEOUS.**

11.1. **ASSIGNMENT.** Neither Party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Notwithstanding the City's approval of a subcontractor, Redflex shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Redflex. Redflex agrees that if subcontractors are employed in the performance of this Agreement, Redflex and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. Redflex further agrees that Redflex will be solely responsible for ensuring any subcontractor fully complies with the terms of this Agreement, and that Redflex will be solely liable for actions or omissions of subcontractors under this Agreement. Redflex must promptly pay any persons supplying services, material, or equipment to Redflex in its performance of the work under this Agreement. Redflex shall not take or fail to take any action in a manner that causes the City or any materials that the Redflex provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

11.2. **RELATIONSHIP BETWEEN REDFLEX AND THE CITY.** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the Parties. The relationship between the Parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either Party to incur any debts or liabilities or obligations on behalf of the other Party (except as specifically provided in this Agreement).

- 11.3. AUDIT RIGHTS. Each of Parties hereto shall have the right to audit the books and records of the other Party (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by five percent (5%) or more of the amount actually owing, the cost of such audit shall be borne by the Audited Party. If the audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, the non-Audited Party shall promptly refund to the Audited Party the amount of the overpayment. For the purposes of this Section, the Parties shall maintain all books, documents, papers, and records which are directly related to the Program for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon reasonable request. Payment for cost of copies is reimbursable by the non-Audited Party. The records referred to in this Section relate to the financial records generated as a result of the Program, and shall not be construed as requiring Redflex to retain Violations Data or any personally identifying information of the Violator in contravention of the retention laws as outlined in the Business Rules or Redflex's agreement with the National Law Enforcement Telecommunications System.
- 11.4. FORCE MAJEURE. No 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, war, terrorism, significant fires, floods, earthquakes, epidemics, severe weather, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission of Redflex. The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 11.5. ADDITIONAL SERVICES. This Agreement may be amended, in accordance with Section 11.6, to add additional Redflex systems and products, including, but not limited to, school bus stop arm enforcement and school zone speed enforcement.
- 11.6. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the Parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both Parties.
- 11.7. SEVERABILITY. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 11.8. WAIVER. Any waiver by either Party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision of this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
- 11.9. CONSTRUCTION. This Agreement shall be construed as having been fully and completely negotiated by both Parties and neither the Agreement nor any of its provision shall be construed more strictly against either Party.
- 11.10. HEADINGS. The headings of the sections contained in this Agreement are included for reference purposes only, solely for the convenience of the Parties, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any of its terms, conditions or provisions.
- 11.11. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be

sufficient for the purpose of proving the existence and terms of this Agreement, and no Party shall be required to produce an original or all of such counterparts in making such proof.

- 11.12. 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 of this Agreement.
- 11.13. REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.
- 11.14. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the Parties and their respective executors, administrators, successors and permitted assigns.
- 11.15. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be modified or limited only to the extent necessary to bring it within the requirement of the law, provided that such modification or limitation is consistent with the intent of the Parties as expressed in this Agreement.
- 11.16. NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a Party to this Agreement.
- 11.17. INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The Parties 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 these Sections, or to enjoin or prevent such a breach.
- 11.18. APPLICABLE LAW. This Agreement shall be governed solely by and construed, in all respects, in accordance with the laws of the State of Oregon.
- 11.19. JURISDICTION AND VENUE. Any conflict, claim or dispute between the Parties affecting, arising out of or relating to the subject matter of this Agreement shall be filed only in and litigated solely in the state courts of Oregon located in Washington County, and the Parties consent and agree to the jurisdiction of those courts. If the state courts of Oregon located in Washington County do not have subject matter jurisdiction over a dispute, the dispute shall be filed in the United States District Court for the District of Oregon, and all Parties specifically consent and agree to the exclusive jurisdiction of that court.
- 11.20. ATTORNEYS' FEES. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing Party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 11.21. STATUTORY PROVISIONS
 - 11.21.1. As provided by ORS 279B.220, Redflex shall:
 - 11.21.1.1. Make payment promptly, as due, to all persons supplying to Redflex labor or material for the performance of the work provided for in this Agreement.
 - 11.21.1.2. Pay all contributions or amounts due the Industrial Accident Fund from Redflex or subcontractor incurred in the performance of this Agreement.
 - 11.21.1.3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
 - 11.21.1.4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
 - 11.21.2. As provided by ORS 279B.230, Redflex shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Redflex of all sums that Redflex agrees to pay for the services and all moneys and sums that Redflex collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services. It

is a condition of this Agreement that all employers working under this Agreement are either subject employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

- 11.21.3. As provided by ORS 279A.110, Redflex may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women, or an emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. If Redflex violates this subsection, City may regard the violation as a breach of contract that permits the City to: (1) terminate this Contract; or (2) exercise any remedies for breach of contract that are reserved in this Contract.
- 11.21.4. As provided by ORS 279B.235, Redflex's employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. Consultant must give notice in writing to employees who work on this Agreement, either at the time of hire or before commencement of work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- 11.22. PREVAILING WAGE. Redflex will comply with applicable Prevailing Wage laws, and the City shall perform such actions as are necessary to allow Redflex to do so.
- 11.23. NO CONFLICT OF INTEREST. Except with City's prior written consent, Redflex shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Redflex's professional judgment with respect to this Agreement, including, without limitation, concurrent employment on any project in direct competition with the subject of this Agreement.
- 11.24. INTERGOVERNMENTAL COOPERATIVE PURCHASING. Pursuant to ORS 279A.215, other governmental agencies, public bodies or districts ("Participating Agencies") may participate in the award resulting in this Agreement as if said agencies had solicited bids and made this award on their own behalf. Redflex shall have the option of declining participation in any such agreement; that is, Redflex's participation in work or sales resulting from use of this Agreement shall be voluntary. If Redflex chooses to participate in such agreements, all agency relationships including those for contract administration, ordering, deliveries, approvals, billing, and collections shall be between the Participating Agency and Redflex. The originating agency, City of Sherwood, except for this enabling agreement, shall not participate in any aspects of commercial activity between Redflex and the Participating Agency. If Redflex agrees to participate, all such participation shall be on the basis of this Agreement except that reasonable changes in pricing and terms may be negotiated directly between the Participating Agency and Redflex to accommodate differences in delivery distances and local conditions. All such changes shall be solely between Redflex and the Participating Agency. Notwithstanding the ability to make reasonable changes to accommodate local conditions, no material changes may be made to the terms, conditions, or prices.

Time is of the essence under this Agreement. Each of the persons signing this Agreement are authorized to sign and to bind their respective Party to the terms of the Agreement.

The "City"

"Redflex"

SHERWOOD, OREGON

REFLEX TRAFFICSYSTEMS, INC.

Name: _____
Title: _____

Michael Finn
Vice President

EXHIBIT "A"

Designated Intersection Approaches

1. Existing Intersection Approaches

This Agreement allows for the continued operation of the following Existing Intersection Approaches:

<u>Redflex Identifier</u>	<u>Location</u>	<u>Direction</u>
SHE-PASU-01	Pacific Hwy West at Sunset Blvd	NB
SHE-PASU-03	Pacific Hwy West at Sunset Blvd	SB
SHE-PATS-01	Pacific Hwy West at Tualatin-Sherwood Rd	NB
SHE-PATS-03	Pacific Hwy West at Tualatin-Sherwood Rd	SB
SHE-TSPA-01	Pacific Hwy West at Tualatin-Sherwood Rd	EB

1.1. Existing Intersection Approach Upgrades: According to a plan mutually agreed to between the Parties, Redflex shall, no later than June 1, 2018, or as soon as reasonably practicable thereafter, make the following upgrades to the Equipment located at the Existing Intersection Approaches:

- 1.1.1. Each Existing Intersection Approach shall be equipped with mapping radar;
- 1.1.2. Each Existing Intersection Approach shall be equipped with 24MP cameras to capture facial images of the driver and license plate; and
- 1.1.3. Each Existing Intersection Approach shall be equipped with 11MP cameras to capture scene images.

1.2. Existing Intersection Approaches to Monitor for both Speed and Red Light Violations: Redflex shall install equipment at the following Existing Intersection Approaches to allow the Existing Intersection Approach to concurrently monitor for speed and red light Violations:

<u>Redflex Identifier</u>	<u>Location</u>	<u>Direction</u>
SHE-PASU-01	Pacific Hwy West at Sunset Blvd	NB
SHE-PATS-01	Pacific Hwy West at Tualatin-Sherwood Rd	NB
SHE-PATS-03	Pacific Hwy West at Tualatin-Sherwood Rd	SB

Redflex will install radar equipment for speed detection and secondary speed verification according to a plan mutually agreed to between the Parties. Redflex shall install such equipment and begin such enforcement no later than June 1, 2018, or as soon as reasonably practicable thereafter.

2. New Intersection Approaches

This Agreement allows for the installation of up to three (3) New Intersection Approaches. Identification of the New Intersection Approaches will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs. Nothing in this Agreement shall be construed as requiring the Parties to install the maximum number of New Intersection Approaches authorized herein. Whether equipment will be installed at each New Intersection Approach that is capable of concurrently monitoring for both red light and speeding Violations will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.

EXHIBIT "B"

Construction and Installation Obligations

Timeframe for Installation: Automated Photo Enforcement Program:

Redflex will have each New Intersection Approach installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Redflex and the City.

Redflex will use reasonable commercial efforts to install the Redflex System and the New Intersection Approaches in accordance with the schedule to be mutually agreed to between the Parties.

Redflex will use reasonable commercial efforts to install and activate the New Intersection Approaches within sixty (60) days subsequent to receipt of the required City approvals. 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 installation, Redflex 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.

- I. REFLEX 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 New 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 New Intersection Approaches, including but not limited to specifications for all radar sensors, electrical connections and traffic controller connections, as required;
 - 1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the New Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications;
 - 1.5. Finalize the acquisition of the Approvals;
 - 1.6. Apply for and pay the business tax and registration tax for a business license, in accordance with Sherwood Municipal Code and supply Redflex's Employer Identification Number to the City as required;
 - 1.7. Assist the City in developing a public awareness strategy, which may include media and educational materials;
 - 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 New Intersection Approaches;
 - 1.10. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the New 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 New 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 New Intersection Approaches;
 - 1.13. Deliver the Materials to the City;
 - 1.14. Citation processing and citation issuance/re-issuance for Authorized Violations;
 - 1.15. Once a year, 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 Program, (ii) for up to sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Program, which training shall include training with

- respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation;
- 1.16. Provide all necessary communication, broadband and telephone services to the Designated Intersection Approaches;
 - 1.17. Establish an interface by utilizing City's ability, as a government entity, to access the records data of the Department of Motor Vehicles. Redflex will assist the City in the design and implementation of a batch file to be provided by the Department of Motor Vehicles;
 - 1.18. Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, and coordination between Redflex, and the City; and
 - 1.19. The Redflex Project Manager (or a reasonable alternate) shall be available to the Authorized Officers each day, on a reasonable best efforts basis.
 - 1.20. The foregoing obligations relating to New Intersection Approaches shall also apply to the Existing Intersection Approach upgrades described in Exhibit A.
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 Program;
 - 2.4. Provide ongoing 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;
 - 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 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. Develop and provide the Violation Criteria to Redflex.;
 - 2.10. Seek approval of the Enforcement Documentation;
 - 2.11. 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 applicable State statute. City shall submit design drawings to the appropriate local authority for approval. City shall be solely responsible for installing required Signage. Any changes or modifications to Signage requirements will be the responsibility of the City;
 - 2.12. 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;
 - 2.13. Yellow Light Timing Review: The City is responsible to ensure that the yellow or amber light phase timing at all photo enforced intersections meets minimum standards according to Federal, State, and local laws, guidelines, and/or rules for all intersections where the light signals are owned and controlled by City;
 - 2.14. Provide on-going adequate electrical power in order to operate the Designated Intersection Approaches;
 - 2.15. Allow Redflex to use existing conduit space as available;
 - 2.16. Provide and install LED traffic signal lights (yellow and red) at all enforced locations where the traffic light signals are owned and controlled by City; and
 - 2.17. Be responsible for all computer hardware, web browsers and high speed Internet access necessary for the Authorized Employees to access the systems.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of the Program and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of City (or the applicable Governmental Authority that owns and controls the Traffic Signal Controller Boxes, as applicable) Traffic Engineering present.
3. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
4. Redflex may assign specific personnel to provide follow up assistance to the City in the form of the HELPDESK, a designated City Service Representative and a Director of Accounts.
5. Redflex will make commercially reasonable efforts to promote City's successful utilization of the System, including but not limited to providing City with user guides, online help, online training and presentations (as available). Redflex will respond to helpdesk requests for support within 8 hours of the request except where circumstances beyond its control preclude a response within that time. Redflex will use commercially-reasonable efforts to respond to all other support requests within 24 hours for requests received during the period of 8 am to 5 pm Central Standard Time, Monday through Friday. The e-mail support specialist shall be responsible for receiving City reports of errors in the System, and, to the extent practicable over email or telephone, making commercially-reasonable efforts to assist the City in resolving the City's reported problems. If the problem cannot be resolved telephonically, Redflex will use commercially-reasonable efforts to restore functionality in accordance with System specifications within 72 hours of Redflex's receipt of the reported problem.
6. Redflex must promptly make available to the City any and all upgrades and technology modifications, including but not limited to software, hardware, camera systems, violation detection systems upon the product's general availability (GA release readiness and not in alpha, beta and testing phases) as Redflex and the City mutually agree. The upgrades and enhancements must be provided to the City at no cost within thirty (30) days of City's acceptance of the upgrade or enhancement.
7. In the event a camera system is knocked down or suffers vandalism rendering the approach inoperative, the City will secure the camera system by removing the system from the scene and storing it in a secure location. Redflex must pay the City for the cost of a City maintenance team to secure their camera system when an after-hours callout is required. Redflex is not required to reimburse the City when a City maintenance team secures a camera system during regular business hours.
8. The City shall notify Redflex as soon as possible if any camera system is knocked down or subject to vandalism.
9. Roadway/Intersection improvement projects: Redflex shall be responsible for the costs of replacing and/or modification of operational system approaches necessitated or caused by roadway or intersection improvement projects.

EXHIBIT "D"

COMPENSATION & PRICING

I. PRICING PROVISIONS AND OPTIONS:

1.1. The City agrees to pay Redflex its Fixed Monthly Fee per **Existing Intersection Approach** in the following manner:

<u>Type of Intersection Approach</u>	<u>Redflex Monthly Fee</u>
Existing Intersection Approach that Concurrently Monitors for Red Light and Speed Violations ("Combo Approach")	\$5,000 per Combo Approach per month
Existing Intersection Approach that Monitors for Red Light Violations only ("Red Light Approach")	\$2,500 per Red Light Approach per month

1.2. The City agrees to pay Redflex its Fixed Monthly Fee for **New Intersection Approaches** in the following manner, unless otherwise agreed by the Parties:

<u>Type of Intersection Approach</u>	<u>Redflex Monthly Fee</u>
New Intersection Approach that Concurrently Monitors for Red Light and Speed Violations ("Combo Approach")	To be mutually agreed upon by the Parties prior to installing new Combo Approaches
New Intersection Approach that Monitors for Red Light Violations only ("Red Light Approach")	To be mutually agreed upon by the Parties prior to installing new Red Light Approaches

2. BUSINESS ASSUMPTIONS FOR ALL PRICING PROVISIONS AND OPTIONS:

- 2.1. Each year, on the anniversary date of the contract, the pricing will increase by a percentage equal to the U.S. Department of Labor CPI-U, U.S. City Average for the preceding calendar year.
- 2.2. On a monthly basis, Redflex shall send an invoice to the City for services performed pursuant to the terms on this Agreement. The City agrees to pay Redflex all undisputed invoices within thirty (30) days after the invoice is received. For disputed invoices, the City agrees to pay Redflex the undisputed amount within the parameters listed above and notify Redflex of the disputed portion within thirty (30) days after the disputed invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.
- 2.3. All fees charged by third parties for processing credit cards ("Merchant Fees") will be borne by the City and paid from the paid Citations. Online convenience fees are not considered Merchant Fees or revenue received or as payment toward the monthly fee to be paid by the City. Online convenience fees are the responsibility of the Violator and are passed solely onto Redflex. Redflex will use commercially reasonable efforts to ensure that all Merchant Fees and online convenience fees are consistent with industry norms.
- 2.4. Redflex shall be responsible for any monthly lockbox or merchant account fees, if the Parties decide to implement such services.
- 2.5. At the City's request, Redflex can implement a default collection process managed by a third party collections expert with the aim of increasing violator compliance. If the Parties decide to use a third party collections expert, they shall do so in a written amendment to this Agreement that shall provide for any corresponding changes to the terms and conditions in this Agreement.

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 Program (actual print and production costs are the responsibility of Redflex).
2. The City shall not access the Redflex System or use the Program in any manner other than prescribed by law or in any manner which restricts or inhibits any other Person from using the Redflex System or the 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, 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 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 reasonable rules and regulations. Redflex shall give prompt written notice to City if, at any time during the performance of this Agreement, Redflex becomes aware of actual or potential problems, faults, or defects in the project, any nonconformance with the Agreement, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Redflex shall constitute neither agreement with nor acquiescence in Redflex's statement or claim, and shall not constitute a waiver of any of City's rights.
5. The City shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the City, or any of its employees, contractors or agents.
6. The Parties shall agree on specific Business Rules governing the function and operation of the Redflex System.

EXHIBIT "F"

Insurance

1. Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
 - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage, Two Million Dollars (\$2,000,000) Products-Completed Operations Aggregate and Two Million Dollars (\$2,000,000) General Aggregate, such limits of coverage may be met through any combination of primary and excess liability policies;
 - Business Automobile Liability Insurance. Business Automobile Liability Insurance with coverage of not less than Two Million Dollars (\$2,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned, non-owned and hired by Redflex, such limits of coverage may be met through any combination of primary and excess liability policies;
 - Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than Two Million Dollars (\$2,000,000) each and every claim and in the Aggregate; and
 - Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of Oregon, and Employer's Liability Insurance with coverage of not less than:
 - \$1,000,000 Bodily Injury by Accident – Each Accident
 - \$1,000,000 Bodily Injury by Disease – Policy Limit
 - \$1,000,000 Bodily Injury by Disease – Each Employee
2. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
 - The City or Cities shall be named as additional insureds with respect to the Commercial General Liability insurance; and
 - The Commercial General Liability insurance shall be the primary insurance with respect to the City in connection with this Agreement, and any insurance or self-insurance maintained by the City shall be in excess, and not in contribution to, such insurance; and
 - The Commercial General Liability insurance shall include "Separation of Insureds" wording which states that such insurance coverage shall apply separately with respect to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or any rights or duties specifically assigned to Redflex in such insurance policies.
3. With respect to the Workers' Compensation Insurance, Waiver of Subrogation endorsement via ISO form CG 2404 or its equivalent shall be provided in favor of the City of Sherwood.
4. With respect to the insurance described above, Redflex shall not cancel or materially reduce the coverage without providing the City thirty (30) days prior written notice by certified mail.
5. With respect to the insurance described above, if any of the Redflex Parties are notified by any insurer that such coverage will be materially reduced or cancelled, Redflex shall provide written notice within thirty (30) business days of receipt of such notice to the City and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the City of the date and nature of such correction. If Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the City shall have the right, but not the obligation, exercisable in its sole discretion, to either (i) terminate this Agreement and seek damages from Redflex for such breach, or (ii) purchase such required insurance, and without further notice to Redflex, deduct from any amounts due to Redflex pursuant to this Agreement, any premium costs advanced by the City for such insurance. If the premium costs advanced by the City for such insurance exceed any amounts

due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the City upon receipt of written notice thereof.

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