

Harbor and Whinnier intersection from  
May 2004

# 4

## City of Santa Ana's Automated Red Light Enforcement System

The City of Santa Ana currently operates an Automated Red Light Enforcement System at several intersections throughout the city. The operation of an Automated Enforcement system is permitted and regulated by C.V.C. sections 21455.5 through 21455.7. The purpose of this document is to familiarize the reader with the establishment and operation of the Automated Red Light Enforcement System in the city of Santa Ana.

### 21455.5 C.V.C.

This section of the vehicle code permits a governmental agency to operate an Automated Red Light Enforcement System. The city of Santa Ana has installed this enforcement equipment at intersections (365 C.V.C.) in and around the city. At each intersection where an Automated Red Light Enforcement System is installed, signs have been erected in all four approaches to the intersection, indicating the presence of the system. In addition, the city of Santa Ana has installed these signs at most arterial entrances to the city.

Prior to issuing citations, the city of Santa Ana initiated a warning period that began May 18<sup>th</sup> 2003 and concluded on June 30<sup>th</sup> 2003. This warning period lasted 44 days, exceeding the statutory requirement of 30 days. On May 27<sup>th</sup> 2003 a press conference and media release was issued announcing the impending use of the Automated Red Light Enforcement System. The press release and conference resulted in local broadcast television stories aired on the evening of May 27, 2003, The Los Angeles Times and The Orange County Register on May 28, 2003, printed articles related to the use of the Automated Red Light Enforcement System. This public announcement was made 33 days prior to issuing any citations.

The city of Santa Ana in cooperation with the Santa Ana Police Department "operates" the Automated Enforcement system. The Santa Ana Police Department maintains operation control and oversight of the system. However, Redflex Traffic Systems (Redflex Holdings Ltd, a publicly listed company) is the contracted vendor who supplies the Automated Red Light Enforcement System, including installation, design, calibration and operational status of the equipment.

@ the  
Redflex  
Traffic  
Systems

The Santa Ana Police Department performs the administrative functions for the day-to-day functions of the Automated Red Light Enforcement System. This includes regular inspections of posted signs, establishing guidelines for selecting locations, verifying yellow phase timing with city traffic engineers, and maintaining control of access to citation approval. The Santa Ana Police Department has established business rules and procedures. This document addresses the storage procedure of confidential information and guidelines for screening and issuing violations.

### 21455.6 C.V.C.

The city of Santa Ana conducted public hearings on the proposed use of an Automated Red Light Enforcement System. This hearing was conducted on July 1<sup>st</sup> 2002 during a Santa Ana city Council meeting. The city passed a resolution to initiate a contract between the city of Santa Ana Redflex Traffic Systems.

City of Santa Ana's  
Automated Red Light Enforcement System

21455.7 C.V.C.

The intersections where the Automated Red Light Enforcement Systems are operated require compliance with the minimum yellow light standards established in the Traffic Manual of the Department of Transportation. These standards are found in section 9-04.5 of the traffic Manual. The chart correlates the posted speed to the appropriate yellow phase timing. The city of Santa Ana has established the speed limits on all major roadways by means of a traffic survey (627 C.V.C.). The office of Traffic Engineering, for the city of Santa Ana, uses this information to set and maintain the proper minimum yellow light phasing for each intersection equipped with Automated Red Light Enforcement Systems. For each intersection, Dowling Tsai, Senior Civic Engineer, has verified the proper minimum yellow light phasing is in place.

MAYOR  
Miguel A. Pulido  
MAYOR PRO TEM  
Brett E. Franklin  
COUNCIL MEMBERS  
Lidia C. Alvarez  
3rd  
3rd  
Alberta D. Christy  
Mike Garcia  
Jose Solorio



**CITY OF SANTA ANA**  
**POLICE DEPARTMENT**  
60 CIVIC CENTER PLAZA • P.O. BOX 1981  
SANTA ANA, CALIFORNIA 92702

CITY MANAGER  
David N. Ream  
CITY ATTORNEY  
Joseph W. Fletcher  
CLERK OF THE COUNCIL  
Patricia E. Healy

**COPY**

June 18, 2003

Redflex Traffic Systems  
15020 N. 74th Street  
Scottsdale, AZ 85260

RE: Final Acceptance -- NB Harbor Boulevard at McFadden Avenue

As of midnight, June 18, 2003, the City of Santa Ana accepts and approves as being complete, Redflex Traffic Systems' successful completion of the "Go Live" 30 day warning period of the red light automated enforcement system installed at McFadden Avenue and Harbor Boulevard in the City of Santa Ana. This acknowledgement constitutes "Final Acceptance" pursuant to Section 11(b) of the contract between Redflex and the City dated December 2, 2002, for this intersection.

A handwritten signature in black ink, appearing to read 'Paul M. Walters'.

**PAUL M. WALTERS**  
Chief of Police



# City of Santa Ana

RED LIGHT CAMERA ENFORCEMENT PROGRAM

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## WARNING LETTER ONLY - RED MEANS STOP

The California Legislature has enacted legislation authorizing cities to use automated enforcement systems to issue Citation Notices for red light traffic violations. The City of Santa Ana has therefore begun a photo red light traffic enforcement pilot program as a major effort to reduce the number of accidents and associated injuries and deaths due to red light violations.

The program uses automated camera systems and sensor devices to detect vehicles entering the intersection during the red light phase. The camera system is *only active when the light is red*. Vehicles crossing the stop bar or entering the pedestrian crosswalk after the light turns red are detected automatically and the camera system records images of the violator, vehicle and surroundings. On each image of the violation is the date, time, location, and the time into the red signal when the violation occurred.

A vehicle registered in your name was noted to be in violation of the California Vehicle Code Section 21453(a) or (c) pursuant to Section 21455.5. The information below describes the vehicle photographed violating the traffic signal:

Location:	Harbor & McFadden
Date of Violation:	6/18/2003
Time:	4:48:22PM
License Plate #:	123 VIO

This letter is being sent to you *as a courtesy* during the first 30 days of the program, to remind you to drive defensively, and to adhere to all traffic laws.

You do not need to respond to this letter.

For more information please call Toll-free 1-877-84SAFE-T (1-877-847-2338)
--

John Q. Public  
100 Any Street  
Any Town, CA 90000

INSURANCE NOT ON FILE  
WORK MAY NOT PROCEED  
CLERK OF COUNCIL  
DATE: 12/23/02

AGREEMENT BETWEEN THE CITY OF SANTA ANA  
AND  
REDFLEX TRAFFIC SYSTEMS, INC.

THIS AGREEMENT, is made and entered into this 2<sup>nd</sup> day of December, 2002, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (hereinafter referred to as "City") and REDFLEX TRAFFIC SYSTEMS, INC., a California corporation (hereinafter referred to as "Contractor").

RECITALS

- A. Motor vehicle operators violating the California Vehicle Code pose a serious threat to the lives and property of the residents of and visitors to the City; and
- B. Violation of Vehicle Code Section 21453, failing to stop for a red light, has been shown to pose a significant risk to life and property; and
- C. The City desires to obtain the services of a Contractor to perform installation and support of a Red Light Photo Enforcement program for the enforcement of red light traffic violations at designated intersections within the City of Santa Ana; and
- D. Contractor represents that Contractor possesses the necessary qualifications and experience to provide such services to the City; and
- E. City has authorized the preparation of an agreement to retain the services of Contractor as hereinafter set forth.

THEREFORE, in consideration of their mutual and respective promises, the parties hereto do hereby state as follows:

1. TERM

The term of this Agreement shall commence upon execution of this agreement by all parties and shall continue for a period of five (5) years after the Installation Date (the "Initial Term"). The City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional consecutive one (1) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Contractor not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.

2. DEFINITIONS

In this Agreement, the words and phrases below shall have the following meanings:

- a. "Authorized Officer" means such individual(s) as the Police Chief shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto, and in any event, a sworn police officer.

b. “Authorized Violation” means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Officer by using the Redflex System.

c. “Citation” means the notice of a Violation which is mailed or otherwise delivered by Contractor to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.

d. “City Representative” means the Police Chief or his designee. The City Representative shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight Photo Enforcement Program.

e. “Designated Intersection Approach” means a single direction of travel at those intersections in the City of Santa Ana chosen by the City Representative using criteria including, but not limited to, traffic volume, collision data, and red light running violation statistics.

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

g. “Enforcement Documentation” means the necessary and appropriate documentation related to the Redlight Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the California Judicial Council and the Santa Ana Police Department), a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the California Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers .

h. “Equipment” means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex System, including but not limited to all camera systems, housings and poles installed and maintained by the Contractor.

i. “Fine” means a monetary sum assessed for a violation, including but not limited to bail forfeitures, but excluding suspended fines.

j. “Installation Date” means the date on which the City issues Final Acceptance for at least one intersection approach.

k. “Intersection Approach” means a direction of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) for which at least one (1) digital, rear shot multiple image color camera and at least one (1) digital face camera has been installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the Customer.

l. “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Redlight Photo Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by a sworn police officer of the City and the issuance of Citations for such approved Violations using the Redflex System.

m. “Person” means a natural individual, company, governmental authority, partnership, firm, corporation, legal entity or other business association.

n. “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 an Authorized Officer to review such data and determine whether a Violation has occurred.

o. “Redflex Marks” means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Contractor or any of its affiliates on or in relation to Redlight Photo Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Contractor, and all modifications or adaptations of any of the foregoing.

p. “Redflex Project Manager” means the project manager appointed by Contractor in accordance with this Agreement, which project manager shall initially be Eric Makepeace, or such person as Contractor shall designate by providing written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Redlight Photo Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex’s obligations pursuant to this Agreement, including but not limited to change-order authorizations.

q. “Redflex Program Manager” means the program manager appointed by the Contractor in accordance with this Agreement, which program manager shall initially be Ron Frazier, or such person as Contractor shall designate by providing written notice thereof to the City from time to time, who shall be responsible for the customer relationship and program oversight for the duration of the Operational Period.

r. “Redflex System” means, collectively, the SmartCam™ System, the SmartOps™ System, the Redlight Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors (whether loop, radar or video loop), components, products, software and other tangible and intangible property relating thereto.

s. “Redlight Photo Enforcement Program” means the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of the Redflex System.

t. “Redlight Violation Criteria” means the standards and criteria by which Potential Violations will be evaluated by an Authorized Officer 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.

u. “SmartCam™ System” means the proprietary digital speed and redlight photo enforcement system of Redflex relating to the Redlight Photo Enforcement Program.

v. “SmartOps™ System” means the proprietary back-office processes of Redflex relating to the Redlight Photo Enforcement Program.

w. “Traffic Signal Controller Boxes” means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.

x. “Violation” means a traffic violation contrary to the terms of the California Vehicle Code Section 21453, failing to stop for a red light.

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

z. “Warning Period” means the period of thirty (30) days after the Installation Date of the first intersection approach.

**3. INSTALLATION.** Contractor shall install up to twenty (20) Redflex Systems at Designated Intersection Approaches; actual number of systems implemented and implementation schedule will be based on mutual agreement between the City of Santa Ana and Redflex Traffic Systems and will be based on safety expectations, traffic volume and flows, etc. Each Redflex System will operate on a 24-hour basis across up to four lanes of width per approach. These system units will be installed and become operational as follows (tentative schedule, which is based on mutual agreement):

a. At least two (2) single approaches shall be operational by March 1, 2003.  
At least ten (10) additional single approaches shall be operational by June 1, 2003.  
The remaining eight (8) single approaches shall be operational by August 1, 2003.

b. If installation dates are not met within the time frame set forth above, the City has the right, but not the obligation to terminate this Agreement; or renegotiate the terms of the this Agreement; or reduce the number of Redflex Systems to be installed.

c. Designated Intersection Approaches shall be chosen by the City’s Representative and be reasonably acceptable to Contractor.

d. Contractor will be responsible for obtaining all required permits, licenses, and insurance required for installation.

e. The Contractor shall be responsible for coordination of any necessary electrical



service changes with Southern California Edison Company. The Contractor shall be responsible for applying for electrical permits, if necessary, and connecting the units to a source of electrical power. In order to provide for the electrical energy costs for this program, the City will pay the incremental direct electrical energy costs for this program. If additional power supply is required, the City and the Contractor will mutually pay for the incremental energy costs.

f. City shall provide Contractor with “as built” drawings of designated intersections as may be reasonably required by Contractor.

g. Contractor may employ subcontractors to perform certain of its responsibilities hereunder provided. Any subcontracts shall be let with prevailing wage and the City’s bid requirements as approved by the City’s Public Works Agency. Contractor shall not subcontract any portion of its operational responsibilities without receiving express written authorization from City. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor not shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law.

h. In the event installation of a Redflex System requires the removal or relocation of a City traffic sensor device, the cost of such removal or relocation shall be borne by Contractor and authorized and approved by the City’s Public Works Agency.

i. The Contractor shall be responsible for the installation costs and coordination of any necessary telephone services. The monthly service charges, applicable to the Designated Intersection Approaches will be the sole responsibility of the City.

**4. MAINTENANCE.** With respect to the maintenance of the Redflex System at the designated Intersection Approaches, the City and Contractor shall have the respective rights and obligations set forth:

a. All repair and maintenance of Redflex Systems and related equipment will be the sole responsibility of Contractor, 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.

b. Contractor shall not open the Traffic Signal Controller Boxes without a representative of City’s Public Works Agency present.

c. Contractor shall make available a technician to be present during any construction projects at designated intersections that will have a direct impact and implications on the overall functioning of the Redflex Systems.

d. Contractor shall inspect the Equipment and the functionality of the Redflex System either remotely and/or on-site at each of the Designated Intersection Approaches no less than once every two (2) business days, and Contractor shall respond to any material malfunction of any of the Redflex System within twenty four (24) hours after the City provides notice by telefacsimile or via email thereof to Contractor (the “Malfunction Notice”). In the event that Contractor discovers any material malfunction or defect, or in the event that Contractor receives a Malfunction Notice, Contractor shall use its best efforts to cause such malfunction or defect to

be repaired within forty-eight (48) hours, and in the event that such malfunction or defect has not been substantially repaired within forty eight (48) hours, Contractor shall notify the City Representative.

e. The Redflex Program Manager (or a reasonable alternate) shall be available to the City Representative each day, on a reasonable best efforts basis.

f. Contractor will promptly make available to City any and all upgrades and/or technology modifications, including but not limited to software, hardware, camera systems, violation detection systems, which become available and implemented by Contractor. Such upgrades and enhancements shall be provided at no cost to City within 30 days of the product's general availability (GA release readiness and not in alpha, beta and testing phases) upon City's acceptance of such upgrades or enhancements.

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

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

b. The Redflex System shall process Violations Data (substantially as set forth in sub-section k, infra). gathered from the Designated Intersection Approaches into a format capable of review by an Authorized Officer via the Redflex System;

c. The Redflex System shall be accessible by Authorized Officers through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser (DSL or better);

d. Contractor shall provide Authorized Officers with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violation Data from the applicable Designated Intersection Approach;

e. The City with reasonable best effort shall cause an Authorized Officer to review the Violation Data daily during normal City business hours (i.e. Monday through Friday) 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 Contractor using the software or other applications or procedures provided by Contractor on the Redflex System for such purpose. **CONTRACTOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE AND EXCLUSIVE DECISION OF AN AUTHORIZED OFFICER AND SHALL BE MADE IN SUCH AUTHORIZED OFFICER'S SOLE DISCRETION (A "CITATION DECISION"). IN NO EVENT SHALL CONTRACTOR HAVE THE ABILITY OR AUTHORIZATION TO ISSUE A CITATION;**

f. With respect to each Authorized Violation, Contractor shall print and mail a Citation within five (5) calendar days after Contractor's receipt of such authorization and shall generate a certificate or other evidence of mailing with respect thereto; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;

g. Contractor shall provide a toll-free telephone number for the purposes of answering inquiries from cited violators, responding to complaints and scheduling appointments during which recipients of Citations may view the applicable Violations Data, and Contractor shall provide necessary personnel for such purpose;

h. Contractor shall generate or permit an Authorized Officer to generate monthly reports using the Redflex System in a format and containing such data as Contractor and the City shall mutually agree, ( which shall include a report of all fines paid to Orange County Superior Court assuming that the OCSC is able to provide the information in an mutually acceptable electronic format ) and in no event less often than once every calendar month and, in respect of any given month, no later than the fifteenth (15<sup>th</sup>) day of the month following such month (the “Standard Reports”);

i. Standard Reports, which will include but are limited to: (1) citations processing and issuance, (2) maintenance and downtime records, and (3) the functionality of the Redflex Systems with respect thereto to the City in such a format and for such periods as the City may reasonably request; shall be provided to the City with no further costs;

j. During the six (6) month period following the Installation Date and upon Contractor’s receipt of a written request from the City at least five (5) business days in advance, Contractor 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 Contractor to provide such expert witnesses; and

k. Data pertaining to each violation captured by Contractors Redflex System, including not less than three (3) digital images of the violation, will initially be stored on the data storage system. The data stored on the system will be securely encrypted and transferred to Contractor’s central server complex not less than once each workday. Within seven (7) calendar days of the images being generated, the data will be processed into a format approved by City and submitted or otherwise made available to City for review and approval. After City approval, a Citation will be created by Contractor. Contractor shall then complete issuance of the Citation within the time period required by California law. The Violation data included for the Citation will include, but not necessarily be limited to:

1. Location, date and time;
2. Number of seconds into red traffic signal;
3. Vehicle speed;
4. One (1) close-up view of automobile rear license plate;
5. One (1) close-up frontal view of automobile driver;
6. One (1) view of the intersection and the violating automobile taken before the automobile has crossed the limit (stop) line showing the traffic signal in the red phase and the rear license plate of the vehicle;

7. One (1) view of the intersection and the violating automobile taken subsequent to the photograph after the vehicle has crossed the limit line;
8. Video clip of the alleged violation;
9. Any other information deemed necessary by an Authorized Officer for successful prosecution of violations.
  - l. Contractor shall be responsible for retrieval of Department of Motor Vehicle ownership information;
  - m. City shall provide assistance to Contractor in obtaining access to the records data of the Department of Motor Vehicles;
  - n. Contractor shall make available to City data regarding collection of fines from the court records system; and
  - o. Contractor shall coordinate, facilitate and transfer electronically the data to the Orange County Superior Court for the processing of the Citations.

## **6. TRAINING**

- a. Contractor shall provide training (i) for up to fifteen (15) personnel of the City, including but not limited to Authorized Officers and other persons involved in the administration of the Redlight Photo Enforcement Program, (ii) for at least sixteen (16) hours in the aggregate per person, (iii) up to twenty-four (24) hours regarding the operation of the Redflex System and the Redlight Photo Enforcement Program, to 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;
- b. During the three (3) month period following the Installation Date, Contractor shall provide such training to police personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Redlight Enforcement Program;
- c. Contractor will provide training for City staff members at Contractor's Scottsdale, Arizona processing center, prior to implementation of the Warning Period;
- d. Contractor will interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, the establishment of a court hearing schedule for adjudicating upon Citations, and coordination between Redflex, the City and juvenile court personnel; and
- e. Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch of the Redlight Photo Enforcement Program.

## **7. CITY OF SANTA ANA RESPONSIBILITIES**

In addition to the City's responsibilities set forth elsewhere in this Agreement, Santa Ana shall also have the following responsibilities:

a. City, through its law enforcement personnel, shall be solely responsible for determining which Violations to cite and prosecute;

b. It shall be the exclusive responsibility of City to establish signal timing for all phases (green, yellow, and red) of traffic signals at monitored intersections in conformance with legal requirements; and

c. The City shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the California Vehicle Code, and shall assist in determining the placement of such Signage, and the City hereby acknowledges and agrees that the City shall be solely responsible for installing such Signage.

## **8. STANDARDS OF PERFORMANCE**

Contractor shall meet the following Standards of Performance in the installation and operation of the Redflex System.

a. City will establish minimum red light signal timing for each Designated Intersection Approach. Contractor warrants that its camera systems will detect and capture all red light violations that occur at such approach. Contractor further warrants that not less than 50% of the violations detected and captured by the camera systems (for vehicles for which DMV information is obtainable) at each approach, based on mutually agreeable intersections and approved intersection configurations as dependent on intersection geometries and characteristics; will be of sufficient content and quality so as a Citation may be issued by City. Any anticipated constraints which might produce less than a 50% capture rate shall be set forth in the Final Acceptance form and both parties shall acknowledge any such constraint; and

b. Should a camera system fail to produce at least a 50% capture rate of violations detected (absent any identified constraints pursuant to the Final Acceptance form) upon receipt of written notice from City, Contractor shall have sixty (60) days to bring the camera systems into compliance with this Standard of Performance. If Contractor fails or is unable to correct such cause, City shall have the right, but not the obligation to terminate this Agreement.

## **9. ADDITIONAL RIGHTS AND OBLIGATIONS**

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

a. Contractor 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;

b. 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; and

c. Contractor 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, Contractor and the City shall obey any and all such rules and regulations.

## 10. COMPENSATION

a. Compensation shall be made as follows: A monthly fee in the amount of Five thousand three hundred and seventy dollars (\$5370.00) for each functioning approach containing an operational system within the City. A system shall be deemed to have a functioning approach and be operational for purposes of this Agreement when the Santa Ana Police Department determines that the system is then issuing Citations under the California Motor Vehicle Code without defect and malfunction and has delivered a Final Acceptance form for a particular functioning approach. In the event a system is not deemed by the Santa Ana Police Department to have a functioning approach or not be operational for part of a month, either because it is installed mid-month or is in need of repair for part of a month, the monthly fee for such month shall be prorated based upon a thirty (30) day month;

b. It is specifically understood by the parties hereto that the monthly fee covers any and all upgrades and replacements to any existing and future systems. It is also specifically understood by the parties hereto that there shall be no cost, charge or fee whatsoever to the City for the installation of any new system, or for the service, maintenance, operation thereof. The monthly fee includes all hardware/software lease and license fees, all maintenance and support, operations and processing;

c. If equipment is removed, moved and/or replaced without mutual consent between the Contractor and the City and absent any of the conditions outlined in the termination section of this agreement, the City shall have the sole responsibility for all associated costs (i.e. construction, post-mortem conditions, equipment remedies, etc.);

d. Contractor shall send a monthly invoice to the City reflecting the monthly fee due to Contractor for such month. The first monthly invoice shall not be sent until Contractor is in receipt of a "Final Acceptance" form signed by the City Representative; and

e. The City agrees to use its best efforts to pay Contractor within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for payments past due 30 days (i.e. 60 days after receipt of the Redflex invoice).

## **11. GO LIVE AND FINAL ACCEPTANCE**

a. "Go Live" is the event in which the City begins to issue the first Warning Letters from the first Designated Intersection Approach and the first Citation for each additional Designated Intersection Approach.

b. "Final Acceptance" is the event for each Designated Intersection Approach, in which the City Representative accepts and approves as being complete Contractors successful completion of "Go Live". The City Representative shall execute a "Final Acceptance" form indicating "Final Acceptance" when all of the following "Operational Conditions" are met:

1. Contractor delivers to City hardware and software products and services which constitute the Redflex System; and
2. The Redflex System performs in a manner consistent with Contractor documentation and with representations made to City by Contractor during the request for qualifications process.

c. Upon receiving "Final Acceptance" from the City, the Contractor will be owed the monies associated with system costs commencing from Day 1 of "Go-Live" (i.e. the issuance of "Warning Letters for the first system as outlined in the Compensation section of this agreement

## **12. INSURANCE**

Prior to undertaking performance of work under this Agreement, Contractor shall obtain and cause to remain in full force and effect during the Term insurance as described below, all such insurance shall be project specific insurance for the City of Santa Ana:

a. Commercial General Liability Insurance. Contractor shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting there from and damage to property, resulting from any act or occurrence arising out of Contractor's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage, in the total amount of \$2,000,000.00 per occurrence, and a general aggregate limit of not less than \$5,000,000.00. Contractor shall supply City with a fully executed additional insured endorsement in substantially the form attached hereto as Exhibit A upon execution of this Agreement and shall be approved in form by the City Attorney.

b. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$2,000,000 per occurrence, and a general aggregate limit of not less than \$5,000,000.00. Such insurance shall include coverage for owned, hired and non-owned automobiles.

c. Worker's Compensation Insurance. In accordance with the provisions of Section 3300 of the Labor Code, Contractor, if Contractor has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Contractor agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000.00 per accident.

d. If Contractor is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$2,000,000.00 per occurrence.

e. The following requirements apply to the insurance to be provided by Contractor pursuant to this section:

- (i) Contractor shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
- (ii) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved in form by the City Attorney.
- (iii) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

f. If Contractor fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Contractor's right to be paid for its time and materials expended prior to notification of termination. Contractor waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

### **13. INDEPENDENT CONTRACTOR**

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

### **14. INDEMNIFICATION**

Contractor agrees to and shall indemnify and hold harmless the City, its officers, agents, employees, consultants, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage, which may arise from the



active (direct) or passive (indirect) operations and execution of the work covered by this Agreement by the Contractor or its contractors, subcontractors, agents, employees, or other persons acting on their behalf which relates to the services described in this Agreement; (2) from any claim, whether the same proceed to judgment or not, that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reasons of the terms of or effects arising from this Agreement; and (3) any material representation, inaccuracy or breach of any covenant, warranty or representation of the Contractor in this Agreement. This indemnity and hold harmless agreement applies to all claims for damages (including reasonable attorneys', accountants' and expert witness' fees). The City may make all reasonable decisions with respect to its representation in any legal proceeding.

## **15. CONFIDENTIALITY**

If Contractor receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Contractor agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Contractor disclosed in a publicly available source; (c) is in rightful possession of the Contractor without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Contractor without reference to information disclosed by the City.

## **16. LICENSES; RESERVATION OF RIGHTS**

Subject to the terms and conditions of this Agreement, Contractor hereby grants the City, and the City hereby accepts from Contractor 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 Santa Ana, 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 Santa Ana) that Contractor is providing services to the City in connection with Redlight Photo Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Redlight Photo Enforcement Program, so long as any and all such publications or materials are approved in advance by Contractor.

The Contractor hereby represents and warrants and the City hereby acknowledges and agrees that: (a) Contractor 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

