

AUTOMATED REGISTRATION HOLD SERVICES PROGRAM AGREEMENT  
BETWEEN  
THE CITY OF COPPELL  
AND  
REDFLEX TRAFFIC SYSTEMS, INC.

This Agreement (“Agreement”) is made as of this 01 day of May, 2013 by and between Redflex Traffic Systems, Inc., a Delaware Corporation, with offices located at 23751 N. 23<sup>rd</sup> Avenue, Phoenix, Arizona 85085 (“Redflex”) and The City of Coppell, a municipal corporation, with offices at 255 Parkway Boulevard, Coppell, TX 75019 (the “Customer”). Redflex and the Customer are sometimes individually referred to as a “Party” and/or collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, technologies, computer programs and citation processes related to the verification of delinquent civil penalties related to and/or associated with automatic photo red light citations, hereinafter the “Violation Verification Program” and/or the “Program”; and

WHEREAS, the Customer desires to engage the services of Redflex to provide certain Citation Verification Program services so that the Customer may identify and/or confirm automatic photo red light citation recipients who have unpaid, outstanding and/or delinquent civil penalties citations related thereto; and

WHEREAS, it is a mutual objective of both Redflex and the Customer to reduce the incidence of vehicle collisions at the traffic intersections and city streets by providing the services pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**AGREEMENT**

1. **Definitions.** In this Agreement, the words and phrases below shall have the follow meanings as follows:

1.1. “Monthly Submitted Batch Files” means the computer batch files submitted to either the Customer and/or the Texas Department of Motor Vehicles each month consisting of any and all combinations of 1) “PROBE files” and/or 2) “FLAG files”; and/or 3) “CLEAR files”.

1.2. “Verification System” and/or “Redflex System” means the Redflex proprietary methods, applications, technologies, systems, programs, equipment, machinery, and processes employed by Redflex in connection with the Violation Verification Program that indicate compliance with the Verification Criteria and that confirms, compares and verifies, pursuant to the Customer’s

“Verification Criteria”, whether the driver named in an outstanding and/or unpaid civil penalty related to and/or associated with automatic photo red light violation is the current owner of record of the automotive vehicle relevant thereto.

1.3 “Verification Criteria” means the standards and criteria determined solely by the Customer that are utilized and applied by Redflex in connection with the Verification System and include the following four (4) conditions:

Redflex shall only perform the services expressly stated in the below described Violation Verification Program if:

- a) the unpaid civil penalty related to and/or associated an automatic photo red light violation is for a monetary amount of \$75.00 or more; and
- b) the unpaid civil penalty related to and/or associated an automatic photo red light violation is delinquent for a period of time of 91 days or more; and
- c) the involved vehicle listed in a delinquent civil penalty related to and/or associated with automatic photo red light violation is currently registered in the State of Texas, and/or any Customer specified County within the State of Texas; and
- d) the owner named in an outstanding and/or unpaid civil penalty related to and/or associated an automatic photo red light violation matches the current owner of record of the automotive vehicle relevant thereto.

1.4. “PROBE files” means the computer files that are submitted to the Texas Department of Motor Vehicles in a format that is fully compliant with the “TxDMV file format” specifications of the Texas Department of Motor Vehicles.

1.5. “Registration Data” means the automotive vehicle registration data received from the Texas Department of Motor Vehicles relevant to the license plate data identified in the “PROBE files” that Redflex utilizes in order to confirm and verify that the driver/owner named in an outstanding and/or unpaid civil penalty related to and/or associated an automatic photo red light violation matches the current owner of record of the automotive vehicle relevant thereto.

1.6. “FLAG files” means computer files that have been submitted to the Texas Department of Motor Vehicles that comply with and satisfy the Verification Criteria and indicate that a driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation does match the current owner of record of the automotive vehicle relevant thereto.

1.7. “CLEAR files” means the computer files containing the list of citation recipients identified in FLAG files who have paid in full the delinquent civil penalty related to and/or associated with an automatic photo red light violation(s).

1.8 “Violation Verification Program” and/or the “Program” means any and all systems, methods, processes equipment, applications and back office processes of Redflex related to and/or associated the products and services contained in this Agreement including, but not

limited to the Monthly Submitted Batch Files, the Verification System, the Verification Criteria, the PROBE files, the FLAG files; and/or the CLEAR files.

1.9. “Confidential or Private Information” means, with respect to Redflex, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with Redflex’s business or methods of operation or concerning any of Redflex’s suppliers, licensors, licensees, customers or others with whom Redflex has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to Reflex, including but not limited to:

- i. 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 Redflex obtains or has obtained from its clients or customers, or at which Redflex sells or has sold its services; and
- ii. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulas, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term “trade secrets” shall mean the broadest and most inclusive interpretation of trade secrets.
- iii. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.

1.10. “Intellectual Property” means, with respect to any Redflex, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of Redflex.

1.11. “Proprietary Property” means, with respect to any Redflex, any written or tangible property owned or used by Redflex in connection with Redflex’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 Redflex, financial statements, budgets, projections and invoices.

1.12. “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 this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.

1.13. “Registration Hold”, “Flag” and/or “REGISTRATION DECISION” are interchangeable and synonymous and mean the determination and/or decision by the Texas Department of Motor Vehicles to refuse to register a motor vehicle in connection with the outstanding, unpaid and/or delinquent civil penalty related to and/or associated with an automatic photo red light violation in compliance with the Verification Criteria and issued in accordance with the terms and conditions expressly set forth in the Agreement Between the Customer and Redflex Traffic Systems, Inc. for a Photo Red Light Enforcement Program (the Photo Red Light Enforcement Agreement”) made on or about December 1, 2006.

1.14. “Escrow Account” means the escrow account into which Redflex deposits monetary amounts payable to the Texas Department of Motor Vehicles. The monetary amounts payable to the Texas Department of Motor Vehicles by Redflex are as specified in Section 43 of the Texas TAC, Chapter 217.

2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years there from (“Term” and/or “Initial Term”). The Customer shall have the right, but not the obligation to extend the Term of this Agreement for up to two (2) additional consecutive (5) year periods following the expiration of the Initial Term (each a “Renewal Term”) by providing written notice to Redflex not less than thirty (30) calendar days prior to the last day of the Initial Term or the Renewal Term, as the case may be.

3. **SERVICES.** Redflex shall provide the Program to the Customer, in each case in accordance with the terms and provisions set forth in this Agreement and which include the following products and services:

3.1. Using data and information generated in accordance with the terms and conditions expressly set forth in the Agreement between the Customer and Redflex Traffic Systems, Inc. for a Photo Red Light Enforcement Program executed on or about December 1, 2006 (the Photo Red Light Enforcement Program Agreement”), Redflex shall implement the Program using the Verification System and applying the Verification Criteria to generate Monthly Submitted Batch Files containing PROBE files, FLAG files and/or CLEAR files as appropriate under the circumstances.

3.2. PROBE files shall be generated by Redflex in electronic and computerized form after applying and adhering to Verification Criteria 1.3 a), 1.3 b) and 1.3 c) and thereafter Redflex shall submit one or more electronic requests for certain Registration Data relevant thereto from the Texas Department of Motor Vehicle such that Redflex may apply and adhere to Verification Criteria 1.3. d). Customer agrees and acknowledges that Redflex shall be unable to comply with Verification Criteria 1.3. d). unless and until Redflex receives certain Registration Data from the Texas Department of Motor Vehicles.

3.3. After Redflex receives relevant Registration Data from the Texas Department of Motor Vehicles, Redflex shall generate FLAG files, as appropriate under the circumstances. Customer agrees and acknowledges that the files generated by Redflex in connection therewith are based upon the Verification Criteria determined solely by the Customer.

3.4. FLAG files shall be generated and submitted by Redflex in an electronic and computerized format to the Texas Department of Motor Vehicles and in a format satisfactory to the Department of Motor Vehicles if, after application of the Verification Criteria by Redflex, the driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation matches the current owner of record of the automotive vehicle relevant thereto.

3.5. CLEAR files shall be generated and submitted in an electronic and computerized format by Redflex to the Customer and/or the Texas Department of Motor Vehicle to the extent and degree that the driver named in an outstanding and/or unpaid civil penalty related to and/or associated with an automatic photo red light violation pays in full the civil penalty relevant thereto.

3.6. Compensation. Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit B attached hereto.

3.7. Customer acknowledges, understands and agrees that the refusal to register a motor vehicle is a decision and determination made in the sole, absolute and unilateral discretion of the Texas Department of Motor Vehicles and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO REFUSE TO REGISTER A MOTOR VEHICLE SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES AND SHALL BE MADE AT TEXAS DEPARTMENT OF MOTOR VEHICLES' SOLE DISCRETION (A "REGISTRATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORITY TO MAKE, DETERMINE AND/OR ENFORCE A REGISTRATION DECISION.

3.8. Tax Assessor Fees. Should the County Tax Assessor elect to assign fees as described under 2011 SB 1386 relating to scofflaw registration processes, Redflex agrees to add said fees to the existing balance due. The transfer of any collected tax assessor fee to the tax assessor shall be the responsibility of the Customer.

4. **CHANGE ORDERS.** The Customer 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 change and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the Customer. Following the Customer’s receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other material matters relating to the proposed changes. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Dispute Resolution provisions set forth below in Section 19 of this Agreement.

5. **LICENSE; RESERVATION OF RIGHTS.**

5.1. **RESERVATION OF RIGHTS.** The Customer hereby acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the Customer 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 Customer pursuant to this Agreement, the Customer shall gain no additional right, title or interest therein.

5.2. **RESTRICTED USE.** The Customer hereby covenants and agrees that it shall not (a) make any modifications to the Redflex System, including but not limited to any Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) use any of the Redflex Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Redflex therein, (d) use any trademarks or other marks other than the Redflex Marks in connection with the Customer’s use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex System, 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.

5.3 **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 Customer 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.

5.4 INFRINGEMENT. The Customer shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any person, party, entity, company, business, corporation, partnership, association and the like of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this Section, then the Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex, and Redflex shall be entitled to any damages or other monetary amount that might be awarded after deduction of actual costs; provided, that Redflex shall reimburse the Customer for any reasonable costs Customer incurred in providing such cooperation and assistance.

5.5 INFRINGING USE. The Customer shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending, against the Customer 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 Customer shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex in the defense thereof; provided, that Redflex shall reimburse the Customer for any reasonable costs Customer incurred in providing such cooperation and assistance. If such a claim is made and Redflex determines, in the exercise of its sole discretion, that an infringement may exist, Redflex shall have the right, but not the obligation, to procure for the Customer the right to continue using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

6. UNAUTHORIZED REFERENCES TO REDFLEX. Unless required by applicable law, Customer 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, the Program, the Verification System, the Redflex System, the Verification Criteria, "SMARTcam™ System", "Salus™ System", "REDFLEXred™ System", "REDFLEXspeed™ System", "REDFLEXrail™ System", "REDFLEXstop™ System", "REDFLEXslimline™ System", "SMARTops™ System", "SMARTscene™ System"; "PLATESCAN™ System" and/or and any and all combinations, variants and derivatives thereof, in, on or about, Customer marketing, publicity, media, public relations, advertising, education or training materials, information, data, papers and/or documents, for any reason or purpose, whatsoever, without the prior written approval of Redflex which may be withheld, denied, delayed, rejected and/or refused, by Redflex in its sole, absolute and unilateral discretion. A violation of this section shall not be deemed a material breach of this Agreement unless Customer receives a written notice of violation by Redflex, specifying the violation, and the Customer fails to prevent a violation of this section from occurring after the receipt of the notice.

## 7. REPRESENTATIONS AND WARRANTIES.

### 7.1 Redflex Representations and Warranties.

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

Professional Services. Redflex hereby warrants and represents that any and all services provided by Redflex pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Redflex System, subject to applicable law, in compliance with all specifications provided to Redflex by the Customer.

### 7.2. Customer Representations and Warranties.

Authority. The Customer hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.

Professional Services. The Customer hereby warrants and represents that any and all services provided by the Customer pursuant to this Agreement shall be performed in a professional and workmanlike manner.

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

## 9. TERMINATION.

9.1 TERMINATION FOR CAUSE: Either party shall have the right to terminate this Agreement by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of the Program; (ii) the Supreme Court for the State of Texas rules that the Citations from the Program are inadmissible in evidence; or (iii) the other party commits any material breach of any of the provisions of this Agreement. Either party shall have the right to remedy or cure the cause for termination or breach within forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the appropriate party setting forth in reasonable detail the events of the cause for termination or

breach. Termination of this Agreement shall not be enforceable or effective unless the terminating party mails written notice of termination to the non-terminating party not less than forty-five (45) calendar days prior to the Agreement termination date and provides to the non-terminating party the opportunity to remedy or cure the cause of the termination or breach within the forty-five (45) calendar day time period provided herein.

10. RIGHTS AND REMEDIES. In connection with any breach and/or termination of this Agreement, Redflex shall have and hereby reserves, in full, all rights and remedies available in law and/or in equity. The rights to terminate this Agreement given in this Section shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

11. PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in Section 12 of this Agreement, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

- i. 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, (ii) promptly deliver to the Customer any and all Proprietary Property of the Customer provided to Redflex pursuant to this Agreement, (iii) promptly deliver to the Customer a final report to the Customer regarding the collection of data and the issuance of Citations in such format and for such periods as the Customer may reasonably request, and which final report Redflex shall update or supplement from time to time when and if additional data or information becomes available, (iv) promptly deliver to Customer a final invoice stating all fees and charges properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination, and (v) provide such assistance as the Customer may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement. Immediately upon termination Redflex is no longer bound to the Data Retention Requirements for any data and if the customer wishes to obtain the data it must be conveyed at the time of termination. Redflex will transfer the data and relevant information to the city by a mutually agreed upon method. The customer will assume the burden for all costs associated with this task including but not limited to administrative, storage media, storage media authoring devices, and internet bandwidth used for transferring data. Redflex will provide no tools for accessing this data or other guarantees.
- ii. The Customer shall (i) immediately cease using the Program, accessing the Redflex System and using any other Intellectual Property of Redflex, (ii) promptly deliver to Redflex any and all Proprietary Property of Redflex provided to the Customer pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination.

- iii. Unless the Customer and Redflex have agreed to enter into a new agreement relating to the Program or have agreed to extend the Term of this Agreement, Redflex shall remove any and all Equipment or other materials of Redflex installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated Intersection Approaches to substantially the same condition such Designated Intersection Approaches were in immediately prior to this Agreement.

11.1 In addition to any and all other rights and remedies available and/or reserved herein, the Customer shall pay to Redflex a pro rata share of all monies or revenue generated, collected and/or received by Customer after the Agreement termination date that are, in any way, a result of, associated with and/or attributable to, in whole or in part, the products or services rendered to Customer by Redflex.

12. SURVIVAL. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: Reservation of Rights, Redflex Representations and Warranties, Customer Representations and Warranties, Limited Warranty, Confidentiality, Indemnification and Liability, Notices, Dispute Resolution, Assignment, Injunctive Relief, Specific Performance, Applicable Law, and Jurisdiction and Venue, and (ii) those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.

13. CONFIDENTIALITY. During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

14. Indemnification by Redflex. Subject to Section entitled "Indemnification Procedures", Redflex hereby agrees to defend and indemnify the Customer and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "Customer Party" and collectively, the "Customer Parties") against, and to protect, save and keep harmless the Customer Parties from, and to pay on behalf of or reimburse the Customer Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments,

settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any Customer Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Redflex contained in this Agreement, or (b) the willful misconduct of Redflex, its employees or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Customer Party.

15. Indemnification by Customer. Subject to Section entitled "Indemnification Procedures", the Customer hereby agrees to defend and indemnify Redflex and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them, or any of them (individually a "Redflex Party" and collectively, the "Redflex Parties") against, and to protect, save and keep harmless the Redflex Parties from, and to pay on behalf of or reimburse the Redflex Parties as and when incurred for, any and all Losses which may be imposed on or incurred by any Redflex Party arising out of or in any way related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of the Customer contained in this Agreement, (b) the negligence or willful misconduct of the Customer, its employees, contractors or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Redflex Party, (c) any claim, action or demand not caused by Redflex's failure to perform its obligations under this Agreement, or (d) any claim, action or demand challenging the Customer's use of the Redflex System or any portion thereof, the validity of the results of the Customer's use of the Redflex System or any portion thereof, or the validity of the Citations issued, prosecuted and collected as a result of the Customer's use of the Redflex System or any portion thereof.

16. Indemnification Procedures. In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure so 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. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party 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.

17. LIMITED LIABILITY. Notwithstanding anything contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any special, incidental, indirect, consequential or punitive damages however caused and on any theory of liability arising out of or relating to this Agreement, except and only to the extent expressly authorized pursuant to provision entitled "PREVAILING PARTY" of this Agreement. In the event of any breach of this Agreement, however, the non-breaching party is entitled to recover expectation damages from the breaching party, which are defined as the amounts that non-breaching party would have received under the Agreement had the breaching party fully performed pursuant to the terms and conditions of this Agreement.

18. NOTICES. Any notices to be given hereunder shall be in writing, and shall be deemed to have been given (a) upon delivery, if delivered by hand, (b) three (3) days after being mailed first class, certified mail, return receipt requested, postage and registry fees prepaid, or (c) one Business Day after being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery, if the courier service obtains a signature acknowledging receipt, in each case addressed or sent to such party as follows:

i. Notices to Redflex:

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

ii. Notices to the Customer:

City of Coppell  
255 Parkway Boulevard  
Coppell, TX 75019  
Attention: Chief of Police  
Facsimile: (972) 304-3535

19. DISPUTE RESOLUTION. Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such

Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 19, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

20. Assignment. Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, The Customer hereby acknowledges and agrees that the execution (as outlined in Exhibit F), delivery and performance of Redflex's rights pursuant to this Agreement shall require a significant investment by Redflex, and that in order to finance such investment, Redflex may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). The Customer hereby agrees that Redflex shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between Redflex and any such Financial Institution, subject to the Customer's prior written approval, which approval shall not be unreasonably withheld or delayed. The Customer further acknowledges and agrees that in the event that Redflex provides written notice to the Customer that it intends to Transfer all or any of Redflex's rights pursuant to this Agreement, and in the event that the Customer fails to provide such approval or fails to object to such Transfer within forty-five (45) business days after its receipt of such notice from Redflex, for the purposes of this Agreement, the Customer shall be deemed to have consented to and approved such Transfer by Redflex. Notwithstanding the above, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective successors or assigns.

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

20.2 AUDIT RIGHTS. Each of Parties 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 more than twenty five percent (25%) of the amount of actually owing, the cost

of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.

20.3 FORCE MAJEURE. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Redflex, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

20.4 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.

20.5 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 the other provisions thereof and the remainder of the affected provision.

20.6 WAIVER. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

20.7 CONSTRUCTION Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either party.

20.8 HEADINGS. The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the parties hereto, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any term, condition or provision hereof.

20.9 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.

20.10 COVENANT OF FURTHER ASSURANCES. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.

20.11 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.

20.12 BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.

20.13 COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.

20.14 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.

20.15 INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The parties hereby agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other party, which injury could not be adequately compensated by an award of money damages, and the parties therefore agree and acknowledge that they shall be entitled to injunctive relief in the event of any breach of any material term, condition or provision of this Agreement, or to enjoin or prevent such a breach, including without limitation an action for specific performance hereof.

20.16 APPLICABLE LAW. This Agreement shall be governed only by and construed, in all respects, solely in accordance with the laws of the State of Texas.

20.17 JURISDICTION AND VENUE. Any conflict, claim or dispute between Redflex and the Customer affecting, arising out of or relating to the subject matter of this Agreement shall be filed only in and litigated solely in the United States District Court for the Northern District of Texas or in a state court of competent jurisdiction in Dallas County, Texas, and both parties specifically agree to be bound by the exclusive jurisdiction and venue thereof.

20.18 PREVAILING PARTY. In the event of any conflict, claim or dispute between Redflex and the Customer affecting, arising out of or relating to the subject matter of this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party all attorneys' fees, expert fees, and related costs. Attorneys' fees, expert fees, and related costs shall be assessed by a Court and not by a jury and shall be included in any judgment obtained by the prevailing party.

(The remainder of this page is left intentionally blank)

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

“Customer”

“Redflex”

CITY OF COPPELL, TEXAS

REDFLEX TRAFFIC SYSTEMS, INC.,

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date:

## EXHIBIT "A"

### Insurance

1. During the Term, Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage with respect to claims for injuries to persons or damages to property which may arise from or 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 One Million Dollars (\$1,000,000) 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;
  - Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) 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;
  - 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 (insert name), and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
2. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
  - The Customer Parties shall be named as additional insured with respect to the Commercial General Liability insurance; and
  - The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the Customer Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the Customer Parties shall be in excess, and not in contribution to, such insurance; and
  - Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the Customer Parties, and such insurance policies shall state the such insurance coverage shall apply separately with respect to each additional insured against whom any claim is made or suit is brought, except with respect to the limits set forth in such insurance policies.
3. With respect to the insurance described in the foregoing Section of this Exhibit A, if any of the Redflex Parties are notified by any insurer that any insurance coverage will be cancelled, Redflex shall immediately provide 30 days written notice thereof to the Customer and shall take all necessary actions to correct such cancellation in coverage

limits, and shall provide written notice to the Customer 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 Customer shall have the right, but not the obligation and 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 Customer for such insurance. If the premium costs advanced by the Customer for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the Customer upon receipt of written notice thereof.

4. 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 Customer prior to Redflex commencing any work pursuant to the terms of this Agreement.

Exhibit "B"

Compensation Payable to Redflex.

1. Customer shall pay to Redflex \$5 per each and every "Registration Hold", "FLAG" and/or "REGISTRATION DECISION" issued, determined, approved and/or rendered by the Texas Department of Motor Vehicles, and/or Dallas County Tax Assessor at the Customer's discretion and/or agent and/or authorized representative thereof, in the initial batch file submitted.
2. Customer shall pay to Redflex \$10 per each and every "Registration Hold", "FLAG" and/or "REGISTRATION DECISION" issued, determined, approved and/or rendered by the Texas Department of Motor Vehicles, and/or Dallas County Tax Assessor at the Customer's discretion and/or agent and/or authorized representative thereof, in each subsequent batch file submitted.
3. Invoicing for the service herein to be held for 90 days following the submission of the initial batch file.