

Contract Number: 4648

Vendor: REDFLEX TRAFFIC SYSTEMS INC

Subject: Photo Red Light Enforcement Program

Department: Engineering

File Class: LEG 12-1

Begin Date: 09/10/2007

End Date: 06/29/2019

Review Date: 04/01/2019

Vault Date:

Comments: Right to extend for 2 additional consecutive &
automatic 2 year periods w/written notice no less
than 30 days prior to expiration
Amendment #1-6/09

FIRST AMENDMENT TO AGREEMENT BETWEEN THE CITY OF BREMERTON
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR
PHOTO ENFORCEMENT SERVICES

This First Amendment (the "Amendment") is executed this 30th day of June, 2009 by and between Redflex Traffic Systems, Inc. with offices at 27351 N. 23rd Avenue, Phoenix, Arizona 85085 ("Redflex"), and the City of Bremerton a municipal corporation and, with offices at 345 6th Street, Suite 600 , Bremerton, WA 98337 (the "Customer").

RECITALS

WHEREAS, Redflex and the Customer previously entered into an agreement dated September 10th, 2007, to provide automated red light photo enforcement and school zone speed enforcement in the City of Bremerton;

WHEREAS, Redflex and the Customer mutually agree it's desirable to modify the terms of the 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 that the Agreement should be amended as follows:

AGREEMENT

1. Paragraph 2 of the Agreement, entitled "TERM," is amended in its entirety to read as follows:

"From the executed date of the First Amendment, the term of this agreement will continue for a period of ten (10) years (the "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 two (2) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the ("Term")). The Customer may exercise the right to extend the term of this agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of the Initial term or the Renewal Term, as the case may be."

2. Exhibit "D" is replaced in its entirety with the attached revised Exhibit "D" signed by Redflex and Customer attesting to the agreed changes. Revised Exhibit "D" shall become operative upon the executed date of this Amendment.

3. All other provisions of the Agreement shall remain in effect.

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

“Customer”

CITY OF BREMERTON

By: *Licia E. Tonnell*

Name:

Title: *Mayor Pro Tem*

“Redflex”

REDFLEX TRAFFIC SYSTEMS, INC.,

By: *Aaron Rosenberg*

Name: Aaron Rosenberg, PhD

Title: Executive Vice President

Approved as to form:
BREMERTON CITY ATTORNEY

By: 

EXHIBIT "D"
COMPENSATION & PRICING

Fixed Photo Red Light System

Existing Approaches: Commencing June 1, 2009, each Designated Enforcement Site, Customer shall be obligated to pay Redflex a fixed fee of **\$4,000** per month for each of the existing Designated Intersection Approaches listed below ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement:

- Warren Ave and 11th Street, Westbound
- Warren Ave and 11th Street, Northbound
- Callow Ave and 11th Street, Northbound
- Kitsap Way and Marine Drive/Adele, Eastbound
- Kitsap Way and Marine Drive/Adele, Southbound
- Wheaton Way and Sylvan Way, Westbound
- Warren Ave and 16th Street, Northbound
- Warren Ave and 16th Street, Southbound
- Wheaton Way and Sylvan Way, Northbound

New Approaches: Commencing on the date of this First Amendment for each Designated New Enforcement Site, Customer shall be obligated to pay Redflex a fixed fee of **\$4,850** per month for each new Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement:

Fixed Speed School Zone

Commencing on the installation date, for each Designated School Zone, Customer shall be obliged to pay Redflex a fixed fee as outlined in the Pricing Table below ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

Tier	Fixed Fee Per Month	Volume
1	\$4,870	Up to 100 Paid Citations
2	\$5,870	101-160 Paid Citations
3	\$6,870	161+ Paid Citations

The "Volume" ranges are based on a monthly extrapolation generated by a mutually agreed to methodology

Mobile Speed System Component

Commencing on the deployment date, for each Mobile Speed System Unit, Customer shall be obliged to pay Redflex a fixed fee of **\$7,870** per month ("Fixed Fee") as full remuneration for performing all the services contemplated in this Agreement.

Cost Neutrality

Notwithstanding the Fixed Fee provisions provided herein to the contrary, Redflex assures the Customer that the programs provided hereby shall be cost neutral to the Customer. The maximum compensation that Customer shall be obligated to pay to Redflex each month is the Fixed Fee or the gross receipts received by the Customer, whichever is the less. The Customer agrees to pay Redflex within thirty (30) days after the invoice is received. Customer shall be obligated to pay the cumulative balance invoiced by Redflex, in accordance with standard terms, to the extent of gross receipts to the Customer from automated infractions. In the event that a balance remains unpaid due to a deficit in gross receipts compared to invoiced amounts, Customer will provide to Redflex with each monthly payment, an accounting of such gross receipts supporting the amount withheld.

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

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Redflex construction will be able to utilize existing conduit for installation where space is available. Cost for additional conduit shall be the sole responsibility of Redflex.
2. Each year, beginning January 1, 2010, the pricing will increase by CPI. CPI will be derived from the publication by the US Department of Labor Consumer Price Index for Seattle, and will measure the percentage change in the index from the prior July through June period.
3. Except where a balance remains unpaid due to a deficit in the gross cash received as described herein, Customer agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.
4. Redflex will collect all payments on Citations and will deposit all payments into a lockbox account operated by and FDIC member bank and designated exclusively for the Customer (the "Lockbox Account"). The Customer shall have controlled access to the Lockbox Account. Redflex shall provide a full accounting to the Customer on a monthly basis in accordance with the specifications set forth in the Contract Documents.
5. Redflex will offer the following payment methods:
 - 5.1. By Mail: When paying a Citation by mail, individuals will be asked to enclose the Citation and personal check, money order or cashier's check for the penalty amount indicated on the front of the Citations. Checks will be made payable as directed by the Customer and will be mailed to specified address
 - 5.2. Walk-in Payments: Walk-in payments by personal check, money order, cashier's check or credit card will be accepted at Customer facilities (i.e. Court). If the Customer receives a payment for a Citation, the Customer will forward the payment to Redflex's lockbox institution.

- 5.3. By Phone: Credit card payments will be accepted over the telephone by Redflex.
- 5.4. Pay-by-Web: Credit card payments will be accepted by Redflex via the Internet.

“Customer”

CITY OF BREMERTON

By: *Loretta McConnell*
Name: *Loretta McConnell*
Title: *Mayor Pro Tem*

“Redflex”

REDFLEX TRAFFIC SYSTEMS, INC.,

By: *Aaron Rosenberg*
Name: Aaron Rosenberg, PhD
Title: Executive Vice President.

Approved as to form:
BREMERTON CITY ATTORNEY

[Handwritten signature]

Contract Number 4648

Vendor REDFLEX TRAFFIC SYSTEMS INC
Subject Photo Red Light Enforcement Program
Department Engineering
Status Code SVC File Class LEG 12-1

Amount \$
Begin Date 09/10/2007
End Date 10/31/2007
Review Date 09/01/2007

Insurance GL \$2000000.00 Insurance Total \$5000000.00
AL \$1000000.00 Insurance Review Date 03/01/2008
E&O \$2000000.00

Comments Right to extend for 2 additional consecutive &
automatic 2 year periods w/written notice no less
than 30 days prior to expiration

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

This Agreement ("Agreement") is made as of this ~~10th~~ ^{September} day of ~~August~~, 2007 by and between Redflex Traffic Systems, Inc. with offices at 6047 Bristol Parkway 1st Floor, Culver City, California 90230 ("Redflex"), and The City of Bremerton a municipal corporation, with offices at 345 6th Street, Suite 600, Bremerton, WA 98337 ("Customer").

RECITALS

WHEREAS, Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and citation processes related to digital Photo Red Light and Speed enforcement systems; and

WHEREAS, the Customer desires to engage the services of Redflex to provide certain equipment, processes and back office services so that authorized city staff of the Customer are able to monitor, identify and enforce red light running and school zone speeding infractions; and

WHEREAS, it is a mutual objective of both Redflex and the Customer to reduce the incidence of vehicle collisions at the traffic intersections, city streets and school zones that will be monitored pursuant to the terms 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 following meanings:
 - 1.1. "Authorized Officer" means the Law Enforcement Project Manager and/or such other individual(s) as the Customer shall designate to review Potential Infractions and to authorize the Issuance of Citations with respect thereto, and in any event, a sworn peace officer or a qualified employee of the City of Bremerton.
 - 1.2. "Authorized Infraction" means each Potential Infraction in the Infraction Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized City Staff by using the Redflex System.
 - 1.3. "Citation" means the notice of an Infraction, which is mailed or otherwise delivered by Redflex to the violator on the appropriate Enforcement Documentation in respect of each Authorized Infraction.
 - 1.4. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, customers or others with whom such Person has a business relationship, and

which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:

- 1.4.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and
- 1.4.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term “trade secrets” shall mean the broadest and most inclusive interpretation of trade secrets.
- 1.4.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.
- 1.5. “Designated Enforcement Sites” means the Enforcement Sites set forth on Exhibit A attached hereto, and such additional Enforcement Sites as Redflex and the Customer shall mutually agree from time to time.
- 1.6. “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 Infraction using the Redflex System.
- 1.7. “Enforcement Documentation” means the necessary and appropriate documentation related to the Photo Red Light and Speed Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the Bremerton Municipal Court and the City, a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers .
- 1.8. “Equipment” means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the

Redflex Photo Red Light and Speed System(s), including but not limited to all camera systems, housings, radar units, servers and poles.

- 1.9. “Fine” means a monetary sum assessed for Citation, excluding suspended fines.
- 1.10. “Governmental Authority” means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.11. “Installation Date of the Photo Red Light and Speed Program” means the date on which Redflex completes the construction and installation of at least one (1) Intersection Enforcement Site in accordance with the terms of this Agreement so that such Intersection Enforcement Site is operational for the purposes of functioning with the Photo Red Light and Speed Program.
- 1.12. “Intellectual Property” means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person.
- 1.13. “Intersection Approach” means a conduit of travel with up to four (4) contiguous lanes from the curb originating from one direction (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by Redflex for the purposes of facilitating Redlight Photo Enforcement by the Customer.
- 1.14. “Operational Period” means the period of time during the Term, commencing on the Installation Date, during which the Photo Red Light and Speed Enforcement Program is functional in order to permit the identification and prosecution of Infractions at the Designated Enforcement Sites by a sworn peace officer of the Customer and the issuance of Citations for such approved Infractions using the Redflex System.
- 1.15. “Person” means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.16. “Police Project Manager” means the project manager appointed by the Customer in accordance with this Agreement, which shall be a sworn peace officer and shall be responsible for overseeing the installation of the Enforcement Sites and the implementation of the Photo Red Light and Speed Program, and which manager shall have the power and authority to make management decisions relating to the Customer’s obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the Customer’s charter or other organizational documents of the Customer or by the city counsel or other governing body of the Customer.

- 1.17. “Potential Infraction” means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized City Staff to review such data and determine whether a Red Light Infraction has occurred.
- 1.18. “Proprietary Property” means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person’s business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
- 1.19. “Redflex Marks” means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to Photo Red Light and Speed Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
- 1.20. “Redflex Project Manager” means the project manager appointed by Redflex in accordance with this Agreement, which project manager shall initially be Jack Weaver or such person as Redflex shall designate by providing written notice thereof to the Customer from time to time, who shall be responsible for overseeing the construction and installation of the Designated Enforcement Sites and the implementation the Photo Red Light and Speed Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex’s obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.21. “Redflex Photo Red Light and Speed System” means, collectively, the SmartCam™ System, the SmartOps™ System, the Photo Red Light and Speed Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.22. “Photo Red Light and Speed Enforcement Program” means the process by which the monitoring, identification and enforcement of Infractions is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Infractions and recording such Infraction data in the form of photographic images of motor vehicles.
- 1.23. “Infraction Criteria” means the standards and criteria by which Potential Infractions will be evaluated by Authorized City Staff of the Customer, to

- determine a infraction was committed, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.
- 1.24. “SmartCam™ System” means the proprietary digital redlight photo enforcement system of Redflex relating to the Photo Red Light and Speed Enforcement Program.
 - 1.25. “SmartOps™ System” means the proprietary back-office processes of Redflex relating to the Photo Red Light and Speed Enforcement Program.
 - 1.26. “SmartScene™ System” means the proprietary digital video camera unit, hardware and software required for providing supplemental infraction data.
 - 1.27. “Traffic Signal Controller Boxes” means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
 - 1.28. “Infraction” means any traffic infraction contrary to the terms of the RCW (Revised Code of Washington) or any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.
 - 1.29. “Infractions Data” means the images and other Infractions data gathered by the Redflex System at the Designated Enforcement Sites.
 - 1.30. “Warning Period” means the period of thirty (30) days after the Installation Date of the first intersection approach.
2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years after the Installation Date (the “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 and automatic two (2) year periods following the expiration of the Initial Term (each, a “Renewal Term” and collectively with the Initial Term, the “Term”). The Customer may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
 3. **SERVICES.** Redflex shall provide the Photo Red Light and Speed Enforcement Program to the Customer, in each case in accordance with the terms and provisions set forth in this Agreement.
 - 3.1. **INSTALLATION.** With respect to the construction and installation of the Designated Enforcement Sites and the installation of the Redflex System at such Designated Enforcement Sites, the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit B attached hereto.
 - 3.2. **MAINTENANCE.** With respect to the maintenance of the Redflex System at the Designated Enforcement Sites the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit C attached hereto.
 - 3.3. **INFRACTION PROCESSING.** During the Operational Period, Infractions shall be processed as follows:
 - 3.3.1. All Infractions Data shall be stored on the Redflex System;

- 3.3.2. The Redflex System shall process Infractions Data gathered from the Designated Enforcement Sites into a format capable of review by the Authorized City Staff via the Redflex System;
- 3.3.3. The Redflex System shall be accessible by the Authorized City Staff 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;
- 3.3.4. Redflex shall provide the Authorized City Staff with access to the Redflex System for the purposes of reviewing the pre-processed Infractions Data within seven (7) days of the gathering of the Infraction Data from the applicable Designated Enforcement Sites
- 3.3.5. The Customer shall cause the Authorized Officer to review the Infractions Data and to determine whether a citation shall be issued with respect to each Potential Infraction captured within such Infraction Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose, and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED CITY STAFF AND SHALL BE MADE IN SUCH AUTHORIZED CITY STAFF'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;
- 3.3.6. With respect to each Authorized Infraction, Redflex shall print and mail a Citation within six (6) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning infraction notices shall be issued in respect of all Authorized Infractions;
- 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries. The number shall be printed on the infraction including times and time zone as to when this number can be reached.
- 3.3.8. Redflex shall permit the Authorized City Staff to generate monthly reports using the Redflex Standard Report System.
- 3.3.9. Upon Redflex's receipt of a written request from the Customer and in addition to the Standard Reports, Redflex shall provide, without cost to the Customer, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Enforcement Sites and the functionality of the Redflex System with respect thereto to the Customer in such format and for such periods as the Customer may reasonably request; provided, however, Redflex shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to the Customer;
- 3.3.10. Upon the Customer's receipt of a written request from Redflex, the Customer shall provide, without cost to Redflex, reports regarding the prosecution of Citations and the collection of fines, fees and other monies in respect thereof in such format and for such periods as Redflex may

reasonably request; provided, however, the Customer shall not be obligated to provide in excess of six (6) such reports in any given twelve (12) month period without cost to Redflex;

3.3.11. During the six (6) month period following the Installation Date and/or upon Redflex's receipt of a written request from the Customer at least fourteen (14) calendar days in advance of court proceeding, Redflex shall provide expert witnesses for use by the Customer in prosecuting Infractions; provided, however, the Customer shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses. Following the initial six (6) month period, Redflex will provide expert witnesses to the Customer at no charge for the first two (2) requests in a calendar year, and will be reimbursed for all travel related expenses for any additional requests for expert witness testimony within the calendar year; and

3.3.12. During the three (3) month period following the Installation Date, Redflex shall provide such training to law enforcement personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the Customer with respect to the Redlight Enforcement Program. The initial training session will consist of two days of instruction.

3.4. PROSECUTION AND COLLECTION; COMPENSATION. The Customer shall prosecute Citations and the collection of all Fines in respect thereof, and Redflex shall have the right to receive, and the Customer shall be obligated to pay, the compensation set forth on Exhibit D attached hereto. When any infraction is contested or a request is made by the defendant to allow for payments or delay of payment then the Bremerton Municipal Court shall collect and account for all collection of fines. Redflex may request a report of the infractions and status of collections on a monthly basis. If the fines collected by Redflex do not meet the compensation as set forth in Exhibit D then Redflex may request the customer to compensate Redflex from the funds collected by the municipal court for photo enforcement up to the amount set forth in Exhibit D.

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

3.6. 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 thereof to Redflex, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Redflex's receipt of a Change Order Notice, Redflex shall deliver a written statement describing the effect, if any, the proposed changes would have on the pricing terms set forth in Exhibit D (the "Change Order Proposal"), which Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other

information relating to the proposed changes reasonably requested by the 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 matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition of equipment or services to the existing Designated Enforcement Sites, or the addition of Enforcement Sites to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 10.

4. License; Reservation of Rights.

- 4.1. License. Subject to the terms and conditions of this Agreement, Redflex hereby grants the Customer, and the Customer hereby accepts from Redflex upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City of Bremerton, access and use the Redflex System for the sole purpose of reviewing Potential Infractions 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 Bremerton that Redflex is providing services to the Customer in connection with Photo Red Light and Speed Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light and Speed Enforcement Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. 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.
- 4.3. 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, 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.

- 4.4. PROTECTION OF RIGHTS. Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The 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.
- 4.5. INFRINGEMENT. The Customer shall use its reasonable best efforts to give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Redflex commences any enforcement action under this Section 4.5, 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 incurred in providing such cooperation and assistance.
- 4.6. INFRINGEMENT 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 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 option to procure for the Customer the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.

5. Representations and Warranties.

5.1. Redflex Representations and Warranties.

- 5.1.1. Authority. Redflex hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.
- 5.1.2. Professional Services. Redflex hereby warrants and represents that any and all services provided by Redflex pursuant to this Agreement shall be

performed in a professional and workmanlike manner and, with respect to the installation of the Redflex System, subject to applicable law, in compliance with all specifications provided to Redflex by the Customer.

5.2. Customer Representations and Warranties.

5.2.1. 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.

5.2.2. 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.

5.3. **LIMITED WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE 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 ENFORCEMENT SITES 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.

6. Termination.

6.1. **TERMINATION FOR CAUSE:** Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state or local statutes or ordinances are amended to prohibit or substantially change the operation of Photo Red Light and Speed enforcement systems; (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the Redflex System of Photo Red Light and Speed enforcement are inadmissible in evidence; or (iii) the other party commits any material breach of any of the provisions of this Agreement. In the event of a termination due to Section 6.1(i) or 6.1(ii) above, Customer shall be relieved of any further obligations for payment to Redflex other than as specified in Exhibit "D". Either party shall have the right to remedy the cause for termination (Sec 6.1) within forty-five (45) calendar days (or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

- 6.2. The rights to terminate this Agreement given in this Section 6.1 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.
- 6.3. PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relive either party of any liability that accrued prior to such termination. Except as set forth in Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:
- 6.3.1. Redflex shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Photo Red Light and Speed Enforcement 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.
- 6.3.2. The Customer shall (i) immediately cease using the Photo Red Light and Speed Enforcement 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.
- 6.3.3. Unless the Customer and Redflex have agreed to enter into a new agreement relating to the Photo Red Light and Speed Enforcement Program or have agreed to extend the Term of this Agreement, Redflex shall remove any and all Equipment or other materials of Redflex installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated Enforcement Sites to substantially the same condition such Designated Enforcement Sites were in immediately prior to this Agreement.
- 6.4. SURVIVAL. Notwithstanding the foregoing, the definitions and each of the following shall survive the termination of this Agreement: (x) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (Customer Representations and Warranties), 5.3 (Limited Warranty), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Applicable Law), 11.16 (Injunctive Relief; Specific Performance) and 11.18 (Jurisdiction and Venue), and (y) those

provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.

7. CONFIDENTIALITY. Customer agrees to keep confidential any proprietary or confidential information to the extent permitted by law, including laws pertaining to public records, specifically RCW 42.56. Redflex shall be responsible for clearly and conspicuously identifying specific information it believes to be confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under Washington State or federal law. If the Customer receives a demand from any person for disclosure of any information designated by Redflex as confidential, Customer shall, so far as consistent with applicable law, advise contractor of such request and provide contractor with a copy of the written request by the party demanding access to such information within a reasonable time.

8. Indemnification and Liability.

8.1 Indemnification by Redflex. 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 negligence or 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.

8.2 Indemnification by Customer. 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 willful misconduct of the Customer or its employees, 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.

9. 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:

9.1 Notices to Redflex:

Redflex Traffic Systems, Inc.
15020 North 74th Street
Scottsdale, AZ 85260
Attention: Ms. Karen Finley
Facsimile: (480) 607-5552

9.2 Notices to the Customer:

City of Bremerton
3027 Olympus Drive
Bremerton, WA 98310
Attention: Michael Mecham, P.E. City Engineer
Facsimile: (360) 473-5398

10. 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 10, 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. If these options have been exhausted and no agreement has been reached, the parties may pursue other legal remedies.

11. Miscellaneous.

11.1 Assignment. Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; 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.

11.2 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).

11.3 AUDIT RIGHTS. Each of parties hereto shall have the right to audit the books and records of the other party hereto (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, including reimbursement for reasonable travel expenses. 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.

11.4 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.

11.5 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, with the exception of Exhibits A thru F contained herein, which affects its terms. This agreement may be amended by the parties only by a subsequent written agreement signed by both parties.

11.6 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.

11.7 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.

11.8 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.

11.9 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.

11.10 EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.

11.11 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.

11.12 REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.

11.13 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.

11.14 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.

11.15 NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a party to this Agreement.

11.16 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.

11.17 APPLICABLE LAW. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of Washington, United States.

11.18 JURISDICTION AND VENUE. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the

courts located in the County of Kitsap State of Washington and both parties specifically agree to be bound by the jurisdiction and venue thereof.

(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”

CITY OF Bremerton

By: _____

Name: Cary Bozeman

Title: Mayor

Approved as to Form:

Bremerton City Attorney

“Redflex”

REFLEX TRAFFIC SYSTEMS, INC.,

By: _____

Name: Karen Finley

Title: President and CEO

Attest:

Cherie Denny for
City Clerk

EXHIBIT "A"
Designated Enforcement Sites

The contract is for the implementation of up to 12 (twelve) intersections. Identification of Enforcement Sites, including designated school zones will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.

EXHIBIT "B"
Construction and Installation Obligations

Timeframe for Installation: Photo Red Light and Speed Enforcement System

Redflex will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Redflex Traffic Systems and the Customer.

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

Redflex will use reasonable commercial efforts to install and activate the first specified intersection within forty-five (45) to sixty (60) days subsequent to formal project kick-off. The Customer agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Redflex and are not guaranteed.

In order to provide the client with timely completion of the photo enforcement project Redflex Traffic Systems requires that the City assist with providing timely approval of City permit requests. The City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the customer is to provide city engineers review of Redflex permit requests and all documentation in a timely manner.

1. Redflex Obligations. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1. Appoint the Redflex Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Redflex Project Manager;
 - 1.2. Conduct traffic investigations to determine the appropriate location for photo enforcement.
 - 1.3. Request current "as-built" electronic engineering drawings for the Designated Enforcement Sites (the "Drawings") from the city engineer;
 - 1.4. Develop and submit to the Customer for approval construction and installation specifications in reasonable detail for the Designated Enforcement Sites, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required; and
 - 1.5. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Enforcement Sites (collectively, the "Approvals"), which will include compliance with City permit applications.
 - 1.6. Finalize the acquisition of the Approvals;
 - 1.7. Submit to the Customer a public awareness strategy for the Customer's consideration and approval, which strategy shall include media and educational materials for the Customer's approval or amendment (the "Awareness Strategy");
 - 1.8. Develop the Infraction Criteria in consultation with the Customer;

- 1.9. Develop the Enforcement Documentation for approval by the Customer, which approval shall not be unreasonably withheld;
 - 1.10. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Enforcement Sites (under the supervision of the Customer);
 - 1.11. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Enforcement Sites, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
 - 1.12. Install and test the functionality of the Designated Enforcement Sites with the Redflex System and establish fully operational Infraction processing capability with the Redflex System;
 - 1.13. Implement the use of the Redflex System at each of the Designated Enforcement Sites;
 - 1.14. Deliver the Materials to the Customer; and
 - 1.15. Issue citation notices for Authorized Infractions;
 - 1.16. Redflex shall provide training (i) for up to fifteen (15) personnel of the Customer, including but not limited to the persons who Customer shall appoint as Authorized City Staff and other persons involved in the administration of the Redlight Photo Enforcement Program, (ii) for at least sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Infractions Data in court and judicial proceedings and a review of the Enforcement Documentation;
 - 1.17. 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 Infractions Data in court and judicial proceedings, and coordination between Redflex, the Customer and juvenile court personnel; and
 - 1.18. Provide reasonable public relations resources and media materials to the Customer in the event that the Customer elects to conduct a public launch of the Photo Red Light and Speed Enforcement Program.
 - 1.19. Citation processing and citation re-issuance
2. CUSTOMER OBLIGATIONS. The Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):
- 2.1.1. Appoint the Project Manager;
 - 2.1.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;
 - 2.1.3. Notify Redflex of any specific requirements relating to the construction and installation of any Enforcement Sites or the implementation of the Photo Red Light and Speed Enforcement Program;

- 2.1.4. Provide assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the Customer; and
- 2.1.5. Assist Redflex in seeking the Approvals
- 2.1.6. Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Enforcement Sites and the Photo Red Light and Speed Enforcement Systems;
- 2.1.7. Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
- 2.1.8. Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the Customer will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Enforcement Sites and ending one (1) month after the Installation Date;
- 2.1.9. Assist Redflex in developing the Infraction Criteria; and
- 2.1.10. Seek approval of the Enforcement Documentation.

Timeframe for Installation: Mobile Speed System

Redflex shall provide the Customer provide a fully equipped vehicle for mobile school zone photo speed enforcement .

Redflex shall use reasonable commercial efforts to acquire and configure the vehicle or fixed enforcement site within the first sixty (60) days subsequent to providing in writing a formal Notice to Proceed. The Customer acknowledges that the estimated timeframe for acquisition, equipping and delivery of the vehicle are subject to conditions beyond the control of Redflex and are not guaranteed.

1. Redflex Obligations. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1. Supply a fully equipped vehicle for mobile photo speed enforcement.
 - 1.2. Complete the installation and testing of all necessary Equipment, including hardware and software, in the designated vehicle
 - 1.3. Install and test the functionality of the Designated Vehicle with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
 - 1.4. Issue citation notices for Authorized Violations;
 - 1.5. Redflex shall provide program training

2. CUSTOMER OBLIGATIONS. The Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):

- 2.1. Provide resources to deploy the vehicle at a minimum of five (5) hours per day.
- 2.2. Appoint the Police Project Manager;
- 2.3. Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
- 2.4. City will be responsible for all scheduled maintenance limited to oil changes every 3,000 miles or 3 months, whichever comes first, gasoline, tires and regular cleanings both to the interior and exterior of the vehicle.

EXHIBIT “C”

Maintenance

1. All repair and maintenance of Photo Red Light and Speed Enforcement systems and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition. Redflex will strive to correct maintenance issues within 48-hours of notification.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of city Traffic Engineering present.
3. The provision of all necessary communication, broadband and telephone services to the Designated Enforcement Sites will be the sole responsibility of the Redflex
4. The provision of all necessary electrical services to the Designated Enforcement Sites will be the sole responsibility of the Customer
5. In the event that images of a quality suitable for the Authorized City Staff to identify Infractions cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
6. The Redflex Project Manager (or a reasonable alternate) shall be available to the Police Project Manager each day, on a reasonable best efforts basis.

EXHIBIT "D"
COMPENSATION & PRICING

Fixed Photo Red Light System

Commencing on the installation date, for each Designated Enforcement Site, Customer shall be obligated to pay Redflex a fixed fee of \$4,850 per month for each Designated Intersection Approach ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

Fixed Speed School Zone

Commencing on the installation date, for each Designated School Zone, Customer shall be obligated to pay Redflex a fixed fee as outlined in the Pricing Table below ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

Tier	Fixed Fee Per Month	Volume
1	\$4,870	Up to 100 Paid Citations
2	\$5,870	101-160 Paid Citations
3	\$6,870	161+ Paid Citations

The "Volume" ranges are based on a monthly extrapolation generated by a mutually agreed to methodology.

Mobile Photo Speed System Component

Commencing on the deployment date, for each Mobile Speed Unit, Customer shall be obligated to pay Redflex a fixed fee as outlined in the Pricing Table below ("Fixed Fee") as full remuneration for performing all of the services contemplated in this Agreement.

Redflex provided vehicle = \$7,870.00 per month

Cost Neutrality

Notwithstanding the Fixed Fee provisions provided herein to the contrary, Redflex assures the Customer that the programs provided hereby shall be cost neutral to Customer. The maximum compensation that Customer shall be obligated to pay to Redflex each month is the Fixed Fee or the gross receipts received by the Customer, whichever is less. The Customer agrees to pay Redflex within thirty (30) days after the invoice is received. City shall be obligated to pay the cumulative balance invoiced by Redflex, in accordance with standard terms, to the extent of gross receipts to the city from automated infractions. In the event that a balance remains unpaid due to a deficit in gross receipts compared to invoiced amounts,

City will provide to Redflex with each monthly payment, an accounting of such gross receipts supporting the amount withheld.

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

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:

1. Redflex construction will be able to utilize existing conduit for installation where space is available.
2. Each year the pricing will increase by the CPI. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for Seattle.
3. Except where a balance remains unpaid due to a deficit in the gross cash received as described herein, Customer agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.
4. **Redflex will collect all payments on Citations and will deposit all payments into a lockbox account operated by an FDIC member bank and designated exclusively for the City (the "Lockbox Account"). The City shall have controlled access to the Lockbox Account. Redflex shall provide a full accounting to the City on a monthly basis in accordance with the specifications set forth in the Contract Documents.**
5. **Redflex will offer the following payment methods:**
 - 5.1. **By Mail:** When paying a Citation by mail, individuals will be asked to enclose the Citation and a personal check, money order or cashier's check for the penalty amount indicated on the front of the Citation. Checks will be made payable as directed by the City and will be mailed to a specified address.
 - 5.2. **Walk-in Payments:** Walk-in payments by personal check, money order, cashier's check or credit card will be accepted at City facilities (i.e Court). If the City receives a payment for a Citation, the City will forward the payment to Redflex's lockbox institution.
 - 5.3. **By Phone:** Credit card payments will be accepted over the telephone by Redflex.
 - 5.4. **Pay-by-Web:** Credit card payments will be accepted by Redflex via the Internet.

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

1. Redflex shall commit to scheduling video surveys to quantify the extent of red light infractions at intersections within the City that the Customer has determined are candidates for photo enforcement. Surveys will be twelve (12) hours in length and be conducted on a week day. Redflex shall provide the Customer with a summary of the infractions recorded during the initial survey within 60 days of the execution of this agreement. Additional surveys will be conducted by mutual agreement of the Customer and Redflex. The Customer shall not deny reasonable access to intersections for the purpose of conducting the video survey(s).
2. Redflex shall assist the Customer in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Redlight Photo Enforcement Program (actual print and production costs are the sole responsibility of the Customer).
3. Redflex shall be solely responsible for installing such Signage. The Redflex 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 Vehicle Code, and shall assist in determining the placement of such Signage.
4. The Redflex Project Manager and the Police Project Manager shall meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the Installation Date, and on a monthly basis for the remainder of the Term, at such times and places as the Redflex Manager and the Customer Manager shall mutually agree.
5. The Customer shall not access the Redflex System or use the Redlight Photo Enforcement Program in any manner other than prescribe by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Photo Enforcement Program with respect to any Enforcement Sites constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Photo Enforcement Program, and the Customer shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the Customer by means of hacking, password mining or any other method whatsoever, nor shall the Customer cause any other Person to do any of the foregoing.
6. The Customer 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.
7. Each of Redflex and the Customer 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, each of Redflex and the Customer shall obey any and all such rules and regulations.

8. The Customer shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the Customer, or any of its employees, contractors or agents.

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:
2. Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage;
3. 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 by Redflex, hired by Redflex,
4. 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 One Million Dollars (\$1,000,000) per claim and in the aggregate.
5. 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.
6. With respect to the insurance described in the foregoing Section of this Exhibit E, any deductibles or self-insured retentions must be declared to and approved by the Customer and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the Customer.
7. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
8. The Customer Parties shall be covered as additional insureds with respect to any liability arising from any act or omission of any Redflex Parties pursuant to this Agreement, and such coverage shall contain no special limitations on the scope of protection afforded to such additional insureds.
9. 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.
10. 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.
11. With respect to the insurance described in the foregoing Section of this Exhibit E, if any of the Redflex Parties are notified by any insurer that any insurance coverage will be cancelled, Redflex shall immediately provide 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.

12. Redflex shall provide certificates of insurance and additional insured endorsements 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 F

FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of Sept. 10, 2007, is entered into by and between the City of Bremerton (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the city of Bremerton and Redflex Traffic Systems, inc. for Photo Red Light and Speed enforcement program, dated as of Sept. 10, 2007, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Credit Agreement, dated as of August 3, 2003 (the "Harris-Redflex Credit Agreement"), with Harris Trust and Savings Bank (the "Bank"), pursuant to which the Bank has provided certain working capital credit facilities to Redflex. Such credit facilities will provide Redflex the working capital that it needs to perform its obligations to the City under the Agreement.

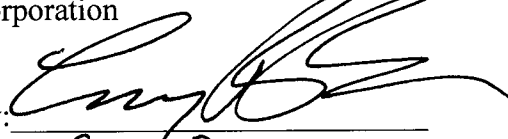
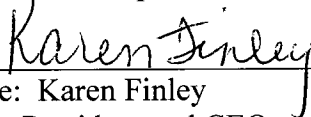
2. Pursuant to the Harris-Redflex Credit Agreement, Redflex has granted Harris a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement. Such security interest applies to and covers all of Redflex's contract rights, including, without limitation, all of Redflex's rights and interests under the Agreement.

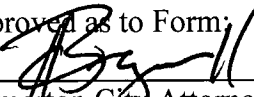
3. Redflex will not, by virtue of the Harris-Redflex Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Bank has not assumed any liability or obligation of Redflex under the Agreement.

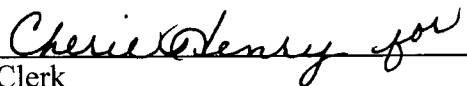
4. The City hereby acknowledges notice of, and consents to, Redflex's grant of such security interest in favor of the Bank in all of Redflex's rights and interests under the Agreement pursuant to the Harris-Redflex Credit Agreement.

5. The City further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the City and shall inure to the benefit of the successors and assigns of the Bank and to any replacement lender which refinances Redflex's obligations to the Bank under the Harris-Redflex Credit Agreement.

IN WITNESS WHEREOF, the City and Redflex have caused this Acknowledgement and Consent to be executed by their respective duly authorized and elected officers as of the date first above written.

<p>The City:</p> <p>CITY OF BREMERTON, a Municipal Corporation</p> <p>By: </p> <p>Name: <u>Cary Bozeman</u></p> <p>Title: <u>Mayor</u></p>	<p>Redflex:</p> <p>REFLEX TRAFFIC SYSTEMS, INC., a Delaware Corporation</p> <p>By: </p> <p>Name: Karen Finley</p> <p>Title: President and CEO</p>
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Approved as to Form: 
Bremerton City Attorney

Attest: 
City Clerk