

RESOLUTION NO. 1632

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH REDFLEX TRAFFIC SYSTEMS, INC. FOR A SCHOOL ZONE TRAFFIC CAMERA SAFETY IMPROVEMENT PROGRAM

WHEREAS, RCW 46.63.170, authorizes cities to implement automated traffic safety cameras programs to detect specified traffic violations, including red light and school speed zone enforcement, and to issue notices of infraction for the detected violations; and

WHEREAS, Ordinance No. 1896 established the authority to implement a school zone traffic camera safety improvement program in the City of Fife; and

WHEREAS, Redflex Traffic Systems, Inc. has provided photo red light enforcement services to the City of Fife since 2007; and

WHEREAS, traffic studies in the City's school zones showed a high number of speed violations, and the installation of additional signage and flashing warning lights have not significantly changed driver behavior; and

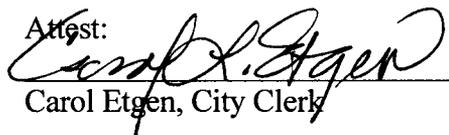
WHEREAS, school zone traffic camera safety improvement program will make school zones safer for students and other pedestrians by providing a disincentive (fine) for drivers to speed through school zones, and change driver behavior over time; and

WHEREAS, the City Council finds that it is in the best interests of the City to implement a school zone traffic camera safety improvement program; now, therefore

BE IT RESOLVED that the City Manager is authorized and directed to execute on behalf of the City, an agreement with Redflex Traffic Systems, Inc., for a school zone traffic camera safety improvement program, in the form attached hereto as Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 25th day of November, 2014.


~~Tim Curtis, Mayor~~ PAT HULCEY
DEPUTY ~~CITY~~ MAYOR

Attest:

Carol Etgen, City Clerk

Resolution No. 1632
EXHIBIT A

EXCLUSIVE AGREEMENT BETWEEN THE CITY OF FIFE, WASHINGTON
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR SCHOOL ZONE
TRAFFIC CAMERA SAFETY IMPROVEMENT PROGRAM

This Agreement ("Agreement") is made as of this ____ day of _____ 2014 by and between Redflex Traffic Systems, Inc., a Delaware Corporation ("Redflex"), and The City of Fife, Washington, a municipal corporation (the "Customer" or the "City"). Redflex and the City are additionally referred to herein as a "Party" and collectively as the "Parties".

RECITALS

- A. Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and citation processes related to the School Zone Traffic Camera Safety Improvement Program;
- B. The Customer desires to engage the services of Redflex to provide certain equipment, processes and back office services so that Authorized Employees of the Customer are able to monitor, identify and enforce school zone speeding violations; and
- C. It is a mutual objective of both Redflex and the Customer to reduce the incidence of vehicle collisions and speeding in the 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 Employee**" means the Project Manager or such other individual(s) as the Customer shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto.
 - 1.2. "**Authorized Violation**" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Employee by using the Redflex System.
 - 1.3. "**Citation**" means the notice of a Violation, which is mailed or otherwise delivered by Redflex to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.
 - 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 School Zone Approaches" means the School Zone Speed Approaches as Redflex and the Customer shall mutually agree from time to time. See Exhibit A for the number of approaches.
- 1.6. "Electronic Signature" means the method through which the Authorized Employee indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.
- 1.7. "Enforcement Documentation" means the necessary and appropriate documentation related to the Program, including but not limited to warning letters, citation notices (using the specifications of the Judicial Council 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 applicable vehicle registry), and technical support documentation for applicable court and judicial officers .
- 1.8. "Equipment" means any and all approach cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Program.
- 1.9. "Fine" means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but 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 Program" means the date on which Redflex completes the construction and installation of at least one (1) School Zone Approach in accordance with the terms of this Agreement so that such School Zone Approach is operational for the purposes of functioning with the 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. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Program is functional in order to permit the issuance of Citations using the Redflex System.
- 1.14. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.15. "Project Manager" means the project manager appointed by the Customer in accordance with this Agreement, which shall be an Authorized Employee and shall be responsible for overseeing the installation of the School Zone Approaches and the implementation of the 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 council or other governing body of the Customer.
- 1.16. "Potential Violation" means, with respect to any motor vehicle passing through a Designated School Zone Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Employee to review such data and determine whether a traffic violation has occurred.
- 1.17. "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.

- 1.18. "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.
- 1.19. "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, who shall be responsible for overseeing the construction and installation of the Designated School Zone Approaches and the implementation the Program, and who shall have the power and authority to make management decisions relating to Redflex's obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.20. "Redflex System" or the "System" are interchangeable and synonymous and mean, collectively, the Salus® System, SMARTcam® System, the SMARTscene® System, REDFLEXspeed® System, the Program, SMARTops® System and all of the other equipment, applications, software, hardware, back office processes, servers, off-site backup systems, cameras, sensors, components, motor vehicles and other tangible and intangible property relating thereto, to enable Redflex to enforce a minimum of one lane of travel at a designated location.
- 1.21. "School Zone" means the area on a street near a school or near a crosswalk leading to a school in which a reduced speed limit is enforced during certain hours.
- 1.22. "School Zone Approach" means a conduit of travel in a School Zone with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by Redflex for the purposes of facilitating the Program by the Customer.
- 1.23. "School Zone Traffic Camera Safety Improvement Program" or "the Program" are interchangeable and synonymous and mean the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles.
- 1.24. "Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by Authorized Employees of the Customer, which standards and criteria shall include, but are not limited to, operating a vehicle at a speed exceeding the speed limit in a School Zone during the hours of School Zone applicability, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities. Should physical criteria change which requires additional modification to the Program or its detection equipment, any costs incurred is the responsibility of the Customer.
- 1.25. "Records Retention" means the period of time that Redflex will retain confidential information to include photographic evidence and data associated with the Program.
- 1.26. "SMARTcam® System" means the proprietary software system that controls the systems of Redflex relating to the Program.
- 1.27. "Salus® System" means the proprietary software that controls the systems of Redflex relating to the Program.
- 1.28. "REDFLEXspeed® System" means the proprietary digital speed enforcement system of Redflex relating to the Program.
- 1.29. "SMARTops® System" means the proprietary back-office processes of Redflex relating to the Program.
- 1.30. "SMARTscene® System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data relating to the Program.
- 1.31. "Traffic Signal Controller Boxes" means the signal controller interface and vehicle detection owned and operated by the Customer. This includes, but not limited to, the Customer's traffic controller, Customer's vehicle detection equipment, Customer's communication equipment, Customer's controller cabinet, etc.
- 1.32. "Violation" means any traffic violation authorized for photo enforcement as prohibited by the Vehicle Code or any applicable rule, regulation or law of any other Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.

- 1.33. "**Violations Data**" means the images and other Violations data gathered by the Redflex System at the Designated School Zone Approaches.
- 1.34. "**Warning Period**" means a period after the Installation Date of the first Designated School Zone Approach, wherein only warning notices shall be issued, commencing within 3 days after the system has been installed.
2. **TERM.** The term of this Agreement is for five (5) years, commencing as of the date this Agreement is signed by both parties and continuing for a period of five (5) years (the "Initial Term"), unless terminated earlier as set forth herein. Thereafter, the City shall have the option to extend the Initial Term of this Agreement for up to two (2) additional, consecutive and automatic two (2) year periods (each a "Renewal Term") following the expiration of the Initial Term which will run successively. The Initial Term together with each exercised Renewal Term is herein called the "Term." Each Renewal Extension Term shall be automatically exercised unless the City provides written notice of the City's election to not extend by giving written notice to Redflex forty-five (45) days prior to the expiration of the Initial Term or the applicable Renewal Term.
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.
- 3.1. **INSTALLATION.** With respect to the construction and installation of (1) the Designated School Zone Approaches and the installation of the Redflex System at such Designated School Zone Approaches, 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 School Zone Approaches the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit C attached hereto.
- 3.3. **VIOLATION PROCESSING.** During the Operational Period, Violations shall be processed as follows:
- 3.3.1. All Violations Data shall be stored on the Redflex System;
- 3.3.2. The Redflex System shall process Violations Data gathered from the Designated School Zone Approaches into a format capable of review by the Authorized Employee via the Redflex System;
- 3.3.3. The Redflex System will be accessible by Authorized Staff through a secure and encrypted connection by use of a confidential user account on a computer equipped with a high-speed Internet connection and an approved web browser;
- 3.3.4. Redflex shall provide the Authorized Employee with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violation Data from the applicable Designated School Zone Approaches. Redflex acknowledges that it is aware that the state law (RCW 46.63.170(1)(e) requires that the citation be mailed to the violator within fourteen (14) days of the date of violation, inclusive of the time it takes for the Authorized Employee to review the Violations Data, and that the provisions of this paragraph are necessary for accomplishing this requirement.;
- 3.3.5. The Customer shall cause the Authorized Employee to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose, and REDFLEX HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;
- 3.3.6. With respect to each Authorized Violation, Redflex shall print and mail a Citation within five (5) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices shall be issued in respect of all Authorized Violations;
- 3.3.7. With respect to each Authorized Violation, within five (5) business days after Redflex's receipt of such authorization, Redflex shall file with the City of Fife Municipal Court, a copy (electronic or otherwise) of the Citation. Redflex acknowledges its understanding that

- Washington State law requires all Citations be filed within five days of issuance (date signed by Police Officer) or the Citation is subject to dismissal under Court Rule. Filing of issued Citations within five days shall be considered a material provision of this agreement.
- 3.3.8. Redflex shall provide an "evidence book" for use in court. The "evidence book" shall meet the specific requirement of the Fife Municipal Court.
 - 3.3.9. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries;
 - 3.3.10. Redflex shall permit the Authorized Employee to generate reports using the Redflex Standard Report System;
 - 3.3.11. 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 School Zone Approaches 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;
 - 3.3.12. 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 Violations; provided, however, the Customer shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses;
 - 3.3.13. During the three (3) month period following the Installation Date, Redflex shall provide such training to Customer 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 Program.
- 3.4. RECORDS RETENTION. Redflex shall retain confidential information and Violations Data, to include photographic evidence and data associated with the Program for a period outlined in the Business Rules. If not so outlined in the Business Rules, then in accordance with the Laws of the State of Washington.
 - 3.5. PROSECUTION AND COLLECTION; COMPENSATION. The Customer shall diligently 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.
 - 3.6. OTHER RIGHTS AND OBLIGATIONS. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Redflex and the Customer shall have the respective rights and obligations set forth on Exhibit E attached hereto.
 - 3.7. 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 cost, if any (the "Change Order Proposal"). The Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the 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 or subtraction of equipment or services to the existing Designated School Zone Approaches, or the addition or subtraction of School Zone Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern, provided further that subtraction of School Zone Approaches shall only be allowed if a new School Zone Approach is added, so that there is no net loss of School Zone Approaches, and the City pays the cost of transferring equipment from the Approach to be subtracted to the Approach to be added. 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 the "Dispute Resolution" provision of this Agreement.
 - 3.8. ROAD REPAIRS, CONSTRUCTION PROJECTS AND OTHER SUSPENSIONS. The Term of this Agreement shall be temporarily suspended as a result of any road repairs, street improvements,

stop work order or school vacation that interrupts, impedes, obstructs or interferes with the successful performance of the installed camera for a period of fourteen (14) or more calendar days, unless the Customer chooses to continue paying the Fixed Monthly Fee, as outlined in Exhibit D.

- 3.9. **VOIDS/IVIPS.** During the Term of this Agreement and any extensions, Redflex shall maintain, at Redflex sole cost and expense, a subscription to VOIDS/IVIPS service from Washington Department of Licensing, or equivalent service, that provides access to mailing and residence addresses (VOIDS) and purchaser information when there is a vehicle report of sale on file with the Department of Licensing.

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, access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City) that Redflex is providing services to the Customer in connection with Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. **RESERVATION OF RIGHTS.** The 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, 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 right, but not the obligation, 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.
- 4.7. **UNAUTHORIZED REFERENCES TO REDFLEX.** 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 "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, advertising, , 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.

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.
- 5.1.3. Redflex agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstances prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- 5.1.4. Redflex shall maintain a City of Fife business license pursuant to the provisions of Chapter 5.01 FMC throughout the term of this agreement.

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 SCHOOL ZONE 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.

6. **TERMINATION.**

- 6.1. **TERMINATION:** 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) any court having jurisdiction over the City rules, or state of federal statute declares, that the Citations from the Program are inadmissible in evidence; (iii) any time after three years from the issuance of the first Notice of Infraction for Speeding in a School Zone, the City repeals the provisions of Chapter 10.60 of the Fife Municipal Code authorizing use of automated school zone safety cameras; or (iv) 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)-(iii) above, the City 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 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.
- 6.2. **RIGHTS AND REMEDIES.** 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 this 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 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 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 will transfer all Violations Data and relevant information to the city by a mutually agreed upon method. The Violations Data and relevant information shall be transferred in such form as will enable the City to readily access the data and information transferred. Once information and records subject to the Records Retention Requirements are transferred to the City in a form that enables the City to readily access the data and information, Redflex's obligation to retain such data and information under the Records Retention Requirements shall cease.
- 6.3.2. 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.
- 6.3.3. 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 School Zone Approaches to substantially the same condition such Designated School Zone Approaches 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: (i) 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 (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.
7. **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. Redflex shall clearly mark any documents or records that it deems "Confidential" and which have been or will be provided to the City pursuant to this Agreement. The City will endeavor to notify Redflex of any public records requests for which these designated documents may be responsive. Redflex has the right, but not the duty, to seek any appropriate injunctive relief under RCW 42.56.540 to prevent disclosure of Confidential Information. Redflex understands that the City, as a government entity, is obligated to disclose documents requested pursuant to the Public Records Act and that the City will disclose responsive documents unless Redflex exercises its right to seek injunctive relief and gives notice to the City of the same. The provisions of paragraph 7 shall not be construed to constitute a waiver of the City's immunity under RCW 42.56.060.
8. **INDEMNIFICATION AND LIABILITY.**
- 8.1. **Indemnification by Redflex.** Subject to Section 8.3, 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.
- 8.2. **Indemnification by Customer.** Subject to Section 8.3, 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, 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.

8.3. **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.

8.4. **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 or lost profits however caused and on any theory of liability arising out of or relating to this Agreement.

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.
23751 North 23rd Avenue
Phoenix, AZ 85085
Attention: Program Management
Facsimile: (623) 207-2050

9.2. Notices to the Customer:
City of Fife
5411 23rd Street East
Fife, WA 98424
Attn: City Manager
Phone: 253-922-2489
Fax: 253-922-5355

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.

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 G), 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. 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. **ADDITIONAL SERVICES.** This Agreement may be amended, in accordance with section 11.7, to add additional Redflex systems and products, including, but not limited to, school bus stop arm enforcement.

- 11.6. EXHIBITS: All exhibits attached hereto shall be deemed fully integrated into the body of this Agreement. The terms/provisions of the exhibits shall control over any inconsistencies between the terms of the main body of the Agreement.
- 11.7. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both parties.
- 11.8. 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.
- 11.9. 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.
- 11.10. 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.
- 11.11. 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.
- 11.12. 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.
- 11.13. 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.
- 11.14. 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.
- 11.15. 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.
- 11.16. 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.
- 11.17. 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.
- 11.18. 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.
- 11.19. 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.
- 11.20. 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 either the United States District Court for the Western District of Washington at Tacoma, or Pierce County Superior Court and both parties specifically agree to be bound by the jurisdiction and venue thereof.

- 11.21. ATTORNEYS' FEES. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred, whether or not such action proceeds to judgment.
- 11.22. PREVAILING WAGE. If required by law or statute, Redflex shall be responsible for complying with the applicable prevailing wage requirements.

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

"Customer"

"Redflex"

CITY OF FIFE, WASHINGTON

REFLEX TRAFFIC SYSTEMS, INC.

By: _____
Name: Subir Mukerjee
Title: Interim City Manager

By: _____
Name: James A. Saunders
Title: President and CEO

EXHIBIT "A"
Designated School Zone Approaches

The contract is for the implementation of up to eight 8 School Zone Approaches. Identification of enforced School Zone Approaches will be based on mutual agreement between Redflex and the City as warranted by community safety, school safety and traffic needs.

The City will make all reasonable efforts to provide the list of proposed school speed zones under consideration prior to formal project kick-off to the designated Redflex Project Manager.

EXHIBIT "B"
Construction and Installation Obligations

Timeframe for Installation: School Zone Fixed Traffic Camera Safety Improvement Program:

Redflex will have each Designated School Zone Approach 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 Designated School Zone Approach within sixty (60) days subsequent to formal project kick-off and receipt of the required customer approved program business rules. 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 Customer with timely completion of the Program, Redflex requires that the Customer assist with obtaining timely approval of permit requests. The Customer acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the Customer will provide engineering review(s) of Redflex permit requests and all documentation in a timely manner. While recognizing the necessity of permit review and approval, the Customer is in no way abdicating its duty to provide full and complete review of permit applications.

1. REDFLEX OBLIGATIONS. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1. Appoint the Redflex Project Manager and a project implementation team;
 - 1.2. Request current "as-built" electronic engineering drawings for the Designated School Zone Approaches (the "Drawings") from the city traffic engineer;
 - 1.3. Develop and submit to the Customer for approval construction and installation specifications in reasonable detail for the Designated School Zone Approaches, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required; and
 - 1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated School Zone Approaches (collectively, the "Approvals"), which will include compliance with City permit applications.
 - 1.5. Finalize the acquisition of the Approvals;
 - 1.6. Assist the Customer in developing a Public Awareness Strategy, which may include media and educational materials;
 - 1.7. Develop the Violation Criteria in consultation with the Customer;
 - 1.8. Develop the Enforcement Documentation for approval by the Customer, which approval shall not be unreasonably withheld;
 - 1.9. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated School Zone Approaches.
 - 1.10. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated School Zone Approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
 - 1.11. Install and test the functionality of the Designated School Zone Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
 - 1.12. Implement the use of the Redflex System at each of the Designated School Zone Approaches;
 - 1.13. Deliver the Materials to the Customer;
 - 1.14. Citation processing and citation issuance/re-issuance for Authorized Violations;
 - 1.15. 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 Employees and other persons involved in the administration of the Program, (ii) for up to sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court

and judicial proceedings and a review of the Enforcement Documentation; (iv) additional training will be provided to the City upon request, at no additional cost to the City, and (v) annually, Redflex will work with the City and assist with arrangement of the City's representative(s) to visit Redflex NorthAmerica headquarters for operation audit purposes. Redflex's scope of work in this section specifically excludes travel costs.

- 1.16. Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, including juvenile where applicable, and coordination between Redflex, the Customer, and court personnel.
- 1.17. The Redflex Project Manager (or a reasonable alternate) shall be available to the Authorized Officers each day, on a reasonable best efforts basis.

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 School Zone Approaches or the implementation of the Program;
- 2.1.4. Provide ongoing assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the Customer;
- 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 School Zone Approaches and the Program;
- 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 School Zone Approaches and ending one (1) month after the Installation Date;
- 2.1.9. Assist Redflex in developing the Violation Criteria;
- 2.1.10. Seek approval from the Municipal Court of the Enforcement Documentation;
- 2.1.11. Provide on-going adequate electrical power in order to operate the systems.
- 2.1.12. Allow Redflex to use existing conduit space as available.
- 2.1.13. Be responsible for all computer hardware, web browsers and high speed Internet access necessary to operate the systems
- 2.1.14. Be responsible for installing required signage. The Customer shall be solely responsible for the fabrication, installation and maintenance of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage").

EXHIBIT "C"
Maintenance

1. All repair and maintenance of the Program and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of city Traffic Engineering present.
3. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
4. Redflex may assign specific personnel to provide follow up assistance to the Customer in the form of the HELPDESK, a designated Customer Service Representative and a Director of Accounts.
5. Redflex will initially respond to any camera or system malfunction within twenty-four (24) hours of detection, and make all reasonable efforts to have the system fully operational within seventy-two (72) hours. In the event that a Redflex System is not fully operational within seventy-two (72) hours of reporting the incident, Redflex shall credit the monthly invoice in the amount of the prorated Fixed Monthly Fee for the downed approach for each day the approach is down, including the initial twenty-four (24) hours.
6. A Redflex System shall be deemed to be down or off when the Redflex System is incapable to process violations to be screened by the Authorized Officer. This does not include a Redflex System that is down or off due to power outage or other uncontrollable factors, including, but not limited to, those outlined in the Force Majeure section.
7. In the event a camera system is knocked down, the City will secure the camera system by removing the system from the scene and storing it in a secure location.
8. The City shall notify Redflex as soon as possible if any camera system is knocked down or subject to vandalism.

EXHIBIT "D"
Compensation and Pricing

Fixed School Zone Speed System

For the Term of the Agreement, the Customer agrees to pay Redflex a fixed fee each month ("Fixed Monthly Fee") in the following manner for each Designated School Zone Approach, as full remuneration for performing all of the services contemplated in this Agreement.

Fixed Monthly Fee: \$4,870 per month, per Designated School Zone Approach

In the event that the system is or becomes inoperable or malfunctioning for a period of 72 hours or longer, Redflex shall credit the City, on a pro rata basis, for the period of time that the City was unable to properly utilize the system for its intended purpose.

Cost Neutrality.

Notwithstanding the Fixed Fee provisions provided herein to the contrary, Redflex assures the City that the programs provided hereby shall be cost neutral to the City. The maximum compensation that City shall be obligated to pay to Redflex each month is the Fixed Fee or the gross receipts received by the City, whichever is less. The City agrees to pay Redflex within thirty (30) days after the invoice is received. The City shall be obligated to pay the cumulative balance invoiced by Redflex, in accordance with standard terms, to the extent of gross receipts to the City from automated violations. In the event that a balance remains unpaid due to a deficit in gross receipts compared to invoiced amounts, the City shall provide 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 Redflex, including the invoice for the final month of service under the contract, all subsequent receipts from automated red light violations for a period of up to 12 months from the 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. If it is determined that new conduit must be installed the cost of the installation of the same shall be borne by Redflex.
2. On the sixth anniversary date of the contract, and on each anniversary date thereafter 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 U.S. City average.
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. The provision of all necessary communication, broadband and telephone services to the Designated School Zone Approaches will be the sole responsibility of Redflex
5. The on-going provision of any and all necessary electrical power to the Designated School Zone Approaches will be the sole responsibility of the Customer
6. The City shall be solely responsible for installing required Signage, including fabrication. The City shall submit Signage design drawings to the appropriate local authority for approval. Any changes or modifications to Signage requirements will be the responsibility of the Customer.
7. Online convenience fees are not considered revenue received or as payment toward the Fixed Monthly Fee to be paid by the Customer. Online convenience fees are the responsibility of the violator and are passed solely onto Redflex.
8. Required Credit Card fees will not be considered to be revenue received and are the responsibility of the violator.

9. **Roadway/School Zone improvement projects:** Customer shall reimburse Redflex the costs of replacing and or modification of operational School Zone Approaches, made necessary by Customer roadway improvement projects.
10. **The Fixed Monthly Fee is based on a projection of 500-600 violations per month per Designated School Zone Approach. If the average monthly violations for a year are more than 20% below 500 or 20% above 600, parties agree to negotiate in good faith an adjustment to the Fixed Monthly Fee.**

EXHIBIT "E"
Additional Rights and Obligations

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

1. 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 Traffic Camera Safety Improvement Program (actual print and production costs are the sole responsibility of the Customer).
2. The Customer shall not access the Redflex System or use the Program in any manner other than prescribe by law and which restricts or inhibits any other Person from using the Redflex System or the Program with respect to any School Zone Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the 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.
3. The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Program.
4. Redflex and the 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, Redflex and the Customer shall obey any and all such rules and regulations.
5. 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.
6. **COORDINATION WITH COURT AND PROCESSING OF PAYMENTS:**
 - a. Redflex and the Municipal Court (Court) and Court staff shall develop processes and procedures for processing and collection of Citations.
 - b. Redflex and the Court shall meet quarterly to review and update best business practices between the Court and Redflex.

EXHIBIT "F"

Insurance

1. During the Term, Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
 - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage limits of not less than 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;
 - Business 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 Washington, and Employer's Liability Insurance with coverage of not less than:
 - \$1,000,000 Bodily Injury by Accident – Each Accident
 - \$1,000,000 Bodily Injury by Disease – Policy Limit
 - \$1,000,000 Bodily Injury by Disease – Each Employee
2. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
 - The Customer or Customers shall be named as additional insureds with respect to the Commercial General Liability insurance; and
 - The Commercial General Liability insurance shall be the primary insurance with respect to the Customer or Customers in connection with this Agreement, and any insurance or self-insurance maintained by the Customer or Customers shall be in excess, and not in contribution to, such insurance; and
 - The Commercial General Liability insurance shall include "Separation of Insureds" wording which states that such insurance coverage shall apply separately with respect to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or any rights or duties specifically assigned to Redflex in such insurance policies.
 - Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the City 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 above, Redflex shall not cancel or materially reduce the coverage without providing the City thirty (30) days prior written notice by certified mail.
4. With respect to the insurance described above, if any of the Redflex Parties are notified by any insurer that such coverage will be materially reduced or cancelled, Redflex shall provide written notice within ten (10) business days of receipt of such notice to the Customer or Customers and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the Customer or Customers 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 or Customers shall have the right, but not the obligation and exercisable in its/their 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 advance by the Customer or Customers for such insurance.

If the premium costs advanced by the Customer or Customers for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the Customer or Customers upon receipt of written notice thereof.

5. 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 or Customers prior to Redflex commencing any work pursuant to the terms of this Agreement.

EXHIBIT "G"
Form of Acknowledgment and Consent

This Acknowledgement and Consent Form, dated _____, 2010, is entered into by and between the City of Fife, Washington (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the City of _____ and Redflex Traffic Systems, Inc. for a School Zone Traffic Camera Safety Improvement Program, dated as of _____, by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Credit Agreement, dated as of _____, 2009 ("the Credit Agreement"), with _____ ("the Creditor") pursuant to which the Creditor has provided certain working capital to Redflex. Such working capital is needed by Redflex to perform its obligations to the City under the Agreement.

2. Pursuant to the Credit Agreement, Redflex granted to the Creditor a security interest in all of Redflex's personal property relevant to and associated with the Agreement with the City as collateral for the payment and performance of Redflex's obligations to the Creditor under the 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 shall not, by virtue of the Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Creditor has not assumed any liability or obligation of Redflex under the Agreement.

4. The City hereby acknowledges notice of, approves and consents, in full, to Redflex's grant of the aforementioned security interest in favor of the Creditor in all of Redflex's rights and interests under the Agreement pursuant to the Credit Agreement.

5. The City further acknowledges and agrees that this Acknowledgement and Consent Form shall be binding upon the City and shall inure to the benefit of the successors and permitted assigns of the Creditor, and to any replacement lenders, banks and/or financial institutions which refinance Redflex's obligations to the Creditor under the Credit Agreement.

[SIGNATURE PAGE TO FOLLOW]

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.
Approved as to form, content and legality:

The City: City of FIFE, WASHINGTON By: _____ Name: _____ Title: _____	Redflex: REFLEX TRAFFIC SYSTEMS, INC., a Delaware Corporation By: _____ Name: James A. Saunders Title: CEO and President
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