

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

This Agreement (the "Agreement") is made as of this 13th day of October, 2008 by and between Redflex Traffic Systems, Inc. with offices at 23751 N. 23rd Ave, Phoenix AZ 85027 ("Redflex"), and The City of Bozeman, MT a municipal corporation, P.O. Box 1230, Bozeman, MT 59771 ("City").

RECITALS

WHEREAS, Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and citation processes related to digital photo red light enforcement systems; and

WHEREAS, the City desires to engage the services of Redflex to provide certain equipment, processes and back office services so that authorized employees of the City are able to monitor, identify and enforce red light running violations; and

WHEREAS, it is a mutual objective of both Redflex and the City to reduce the incidence of vehicle collisions at the traffic intersections on city streets 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 City 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,

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

- 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. "Intersection Approach" means a conduit of travel 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 Red-light Photo Enforcement by the City.
 - 1.6. "Designated Intersection Approaches" means the Intersection Approaches as Redflex and the City shall mutually agree from time to time. See Exhibit A for the number of approaches.
 - 1.7. "Electronic Signature" means the method through which the Authorized Employee indicates approval of the issuance of a Citation in respect of a potential violation using the Redflex System.
 - 1.8. "Enforcement Documentation" means the necessary and appropriate documentation related to the Digital Photo Red Light Enforcement System, including but not limited to warning letters, citation notices, and 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.
 - 1.9. "Equipment" means any and all approach cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex Digital Photo Red Light Enforcement System(s).
 - 1.10. "Fine" means a monetary sum assessed for citation, including but not limited to bail forfeitures, but excluding suspended fines.

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

- 1.11. "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.
- 1.12. "Installation Date of the Digital Photo Red Light Enforcement System" means the date on which Redflex completes the construction and installation of at least one (1) Intersection Approach in accordance with the terms of this Agreement so that such Intersection Approach is operational for the purposes of functioning with the Digital Red-light Photo Enforcement System.
- 1.13. "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.
- 1.14. "Materials" means all hardware, software, citation development, procedure development and all routing information necessary to successfully operate equipment for the Redflex Digital Photo Red Light Enforcement System.
- 1.15. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Digital Photo Red Light Enforcement System is functional in order to permit the issuance of Citations using the Redflex System.
- 1.16. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.17. "Project Manager" means the project manager appointed by the City in accordance with this Agreement, which shall be an Authorized Employee and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Red-light Digital Photo Enforcement System Program, and which project manager shall have the power and authority to make management decisions relating to the City's obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the City's charter or other organizational documents of the City or by the city commission or other governing body of the City
- 1.18. "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System with respect to such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the authorized employee to review such data and determine whether a Red Light Violation has occurred.
- 1.19. "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

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

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.

- 1.20. "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 Digital Photo Red Light Enforcement System 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.
- 1.21. "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 Intersection Approaches and the implementation the Digital Photo Red Light Enforcement System, 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.
- 1.22. "Redflex System" means, collectively, the Salus™ and/or SMARTcam™ System, the SMARTscene™ System, and all of the other equipment, applications, 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. The SMARTops™ System, the Photo Enforcement Program, and all of the other equipment, applications, back office processes, servers, off-site backup systems, software and other tangible and intangible property relating thereto.
- 1.23. "Digital Photo Red Light Enforcement System" means 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. "Photo Red-light Violation Criteria" means the standards and criteria by which potential violations will be evaluated by authorized employees of the City which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a violation being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a violation, all of which shall be in compliance with all applicable laws, rules and regulations of governmental authorities. Should physical criteria change which requires

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

additional modification to the Digital Photo Red Light Enforcement System or its detection equipment, any costs incurred is the responsibility of Redflex.

- 1.25. "Records Retention" means the period of time that Redflex will retain confidential information to include photographic evidence and data associated with the photo enforcement program.
 - 1.26. "SMARTcam™ System" means the proprietary software system that controls the photo enforcement system of Redflex relating to the Photo Enforcement Program.
 - 1.27. "Salus™ System" means the proprietary software system that controls the photo enforcement system of Redflex relating to the Photo Enforcement Program.
 - 1.28. "REDFLEXred™ System" means the proprietary digital red-light photo enforcement system of Redflex relating to the Photo Red Light Enforcement Program.
 - 1.29. "SMARTops™ System" means the proprietary back-office processes of Redflex relating to the Photo Red Light Enforcement Program.
 - 1.30. "SMARTscene™ System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data.
 - 1.31. "System" means the Redflex Digital Photo Red Light Enforcement System.
 - 1.32. "Traffic Signal Controller Boxes" means the signal controller interface and vehicle detection owned and operated by the City or Montana Department of Transportation (MDT) This includes, but is not limited to, the City's or MDT's traffic controller, City's or MDT's vehicle detection equipment, City's or MDT's communication equipment, City's or MDT's controller cabinet, etc.
 - 1.33. "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.
 - 1.34. "Violations Data" means the images and other Violations data gathered by the Redflex System at the designated intersection approaches.
 - 1.35. "Warning Period" means a period after the installation date of the first intersection approach, wherein only warning notices shall be issued, commencing within three (3) days after the system has been installed.
 - 1.36. "Per Paid Citation" means all notices of violation or citations that have been issued thru the system and are fully satisfied to the City thru all payment methods.
2. **TERM.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of three (3) years after the issuance of the first citation by the system. The City shall have the right, but not the obligation, to extend the term of this agreement for up to two (2) additional consecutive three (3) year periods following the expiration of the initial term (each, a "renewal term" and collectively with the initial term, the "term"). These extensions will automatically go into effect

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

unless the City chooses not to extend the term of this agreement by providing written notice to Redflex not less than forty five (45) days prior to the last day of the initial term or the renewal term, as the case may be. However, ninety (90) days before such termination or extension, Redflex shall request in writing a meeting or telephonic conference to discuss contract performance.

3. **SERVICES.** Redflex shall provide the Digital Photo Red Light Enforcement System to the City, in each case in accordance with the terms and provisions set forth in this agreement.
- 3.16. **INSTALLATION.** With respect to the construction and installation of the designated intersection approaches and the installation of the Digital Photo Red Light Enforcement System at such designated intersection approaches, the City and Redflex shall have the respective rights and obligations set forth on Exhibit B attached hereto.
- 3.17. **MAINTENANCE.** With respect to the maintenance of the Redflex System at the designated intersection approaches the City and Redflex shall have the respective rights and obligations set forth on Exhibit C attached hereto.
- 3.18. **VIOLATION PROCESSING.** During the operational period, violations shall be processed as follows:
- 3.18.1. All still digital cameras provided for the system shall be of high resolution industrial grade quality and assuring accuracy of evidence and producing of satisfactory image quality as determined by the City;
- 3.18.2. All Systems shall provide a minimum of two (2) still images, one (1) plate and twelve (12) seconds of video;
- 3.18.3. All violations data shall be stored on the Redflex System;
- 3.18.4. The Redflex System shall process violations data gathered from the designated intersection approaches into a format capable of review by the authorized employee via the Digital Photo Red Light Enforcement System;
- 3.18.5. The Digital Photo Red Light Enforcement System will be accessible by authorized employee through a secure and encrypted connection by use of a confidential user account on any computer equipped with a high-speed Internet connection and an approved web browser.
- 3.18.6. Redflex shall develop all citations and related notices to comply with municipal ordinance, as determined by the City
- 3.18.7. 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 Intersection Approaches.
- 3.18.8. The City shall cause the Authorized Employee to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such 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

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

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.

- 3.18.9. With respect to each Authorized Violation, Redflex shall print and mail a citation within five (5) days after Redflex's receipt of such authorization. During the warning period, warning violation notices only shall be issued in respect of all authorized violations;
- 3.18.10. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries
- 3.18.11. Redflex shall permit the authorized employee to generate reports using the Redflex standard report system including but not limited to customer management, dismissal, incident lookup, red-light summary reports and traffic flow data reports.
- 3.18.12. Upon Redflex's receipt of a written request from the City and in addition to the standard reports, Redflex shall provide, without cost to the City, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System with respect thereto to the City in such format and for such periods as mutually agreed upon.
- 3.18.13. During the six (6) month period following the installation date and/or upon Redflex's receipt of a written request from the City at least fourteen (14) calendar days in advance of court proceeding, Redflex shall provide expert witnesses for use by the City in prosecuting violations; provided, however, the City shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses; After the initial 6 month period, expert testimony may be provided on a cost reimbursement basis as determined mutually between Redflex and the City.
- 3.18.14. During the three (3) month period following the installation date, Redflex shall provide such training to City personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Digital Photo Red Light Enforcement System.
- 3.19. **RECORDS RETENTION:** Redflex will retain confidential information including photographic evidence and data associated with the violations generated by the digital photo red light enforcement program for a period of one (1) year from date of issuance, and up to a minimum of ten (10) years on all notice of violations that are escalated to citation and remain unsatisfied as defined and mutually agreed upon within the business rules and comply with the Montana Local Government Retention and Disposition Schedule and any applicable City of Bozeman records retention schedule.
- 3.20. **PROSECUTION AND COLLECTION: COMPENSATION.** The City shall diligently prosecute citations and the collection of all fines in respect

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

thereof, and Redflex shall have the right to receive, and the City shall be obligated to pay, the compensation set forth on Exhibit D attached hereto.

- 3.21. 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 City shall have the respective rights and obligations set forth on Exhibit E attached hereto.
- 3.22. CHANGE ORDERS. The City may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this agreement by providing written notice 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 City. Following the City'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 intersection approaches, or the addition of intersection approaches to be covered by the terms of this agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this agreement, and any disagreement shall be resolved in accordance with Section 10.
4. LICENSE; RESERVATION OF RIGHTS.
- 4.16. LICENSE. Subject to the terms and conditions of this agreement, Redflex hereby grants the City, and the City 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 Bozeman, MT, access and use the Redflex System for the sole purpose of reviewing potential violations and authorizing the issuance of citations pursuant to the terms of this agreement, and to print copies of any content posted on the Redflex System in connection therewith, (b) disclose to the public (including outside of the City of Bozeman, MT that Redflex is providing services to the City in connection with Digital Photo Red Light Enforcement System 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 Digital Photo Red Light Enforcement System, so long as any and all such publications or materials are approved in advance by Redflex.

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

- 4.17. RESERVATION OF RIGHTS. The City hereby acknowledges and agrees that: (a) Redflex believes it is the sole and exclusive owner of the Redflex System, the Redflex Marks, all intellectual property arising from or relating to the Redflex System, and any and all related Equipment, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein. Redflex warrants and represents entering into this agreement and providing the necessary equipment, software and system does not violate any intellectual property right of Redflex or others.
- 4.18. RESTRICTED USE. The City 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 City's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, 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.
- 4.19. PROTECTION OF RIGHTS. Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any intellectual property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex marks, the filing of patent application for any of the intellectual property of Redflex, and making any other applications or filings with appropriate governmental authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.
- 4.20. INFRINGEMENT. The City 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 City 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;

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

provided, that Redflex shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance.

- 4.21. INFRINGING USE. The City shall give Redflex prompt written notice of any action or claim action or claim, whether threatened or pending, against the City alleging that the Redflex marks, or any other intellectual property of Redflex, infringes or violates any patent, trademark, copyright, trade secret or other intellectual property of any other person, and the City shall render to Redflex such reasonable cooperation and assistance as is reasonably requested by Redflex in the defense thereof; provided, that Redflex shall reimburse the City 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 City 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.

5.16. REDFLEX REPRESENTATIONS AND WARRANTIES.

5.16.1. 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.

5.16.2. 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 City.

5.17. CUSTOMER REPRESENTATIONS AND WARRANTIES.

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

5.17.2. PROFESSIONAL SERVICES. The City hereby warrants and represents that any and all services provided by the City pursuant to this Agreement shall be performed in a professional and workmanlike manner.

5.3 REDFLEX'S REPRESENTATIONS AND WARRANTIES.

5.3.1 Redflex's equipment and services will perform in a manner consistent with the care and skill exercised by similar vendors practicing in the same locality and specialty under similar conditions. Redflex shall endeavor to follow and comply with federal, state and local government laws, rules, regulations, codes and ordinances.

5.3.2 Redflex shall be responsible for completeness and accuracy of its equipment and services and shall correct errors and omissions at its own expense. Should City become aware of defects, errors or omissions in the equipment or services or should City otherwise become dissatisfied with the System, City shall give prompt notice to Redflex so Redflex may take measures to minimize the consequences of such conditions and thereafter allow a reasonable time for correction by Reflex.

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

5.3.3 Redflex shall take out or contract with a local contractor who has a current municipal, county, state or federal licenses required to perform the services and install the equipment.

5.3.4 Redflex and City agree on the basis of good faith and fair dealing and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner.

5.3.5 Redflex represents it has no known direct or indirect interest, which would conflict with the performance of this Agreement. Moreover, except for the compensation to be paid hereunder, Redflex warrants it has not directly or indirectly paid or agrees to pay any person or company any fee, commission, contribution, donation, gift or any other type of consideration to solicit or secure an award of this Agreement. Redflex shall not subcontract any part of its services under this Agreement without the consent of City.

5.3.6 Redflex shall maintain during the term of this Agreement, if the City is not in default herein, for a period of two years after termination of this Agreement insurance of the kinds and with the limits not less than set forth on Exhibit "F" (Schedule of Insurance).

5.4 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 CITY'S USE OF ANY OF THE FOREGOING. THE CITY UNDERSTANDS THE DESIGNATED INTERSECTION APPROACHES MAY NOT OPERATE IN THE WAY THE CITY SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE CITY 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.

1.1. **TERMINATION FOR CAUSE:** Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of digital photo red light enforcement systems; (ii) any court having jurisdiction over City rules, or state or federal statute declares, that results from the Redflex System of digital photo red light 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, 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 the cause for termination (Sec 6.1) within forty-five (45) calendar days (or within such other time period as the City 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.

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

- 1.2. The rights to terminate this agreement given in Section 6.1 are 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.
- 6.16. PROCEDURES UPON TERMINATION. The termination of this Agreement does not relieve either party of any liability that accrued prior to such termination. Except as set forth in Section 6.1, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:
- 6.16.1 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 Digital Photo Red Light Enforcement System, (ii) promptly deliver to the City any and all proprietary property of the City provided to Redflex pursuant to this Agreement, (iii) promptly deliver to the City a final report to the City regarding the collection of data and the issuance of citations in such format and for such periods as the City 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 City a final invoice stating all fees and charges properly owed by City to Redflex for work performed and Citations issued by Redflex prior to the termination, and (v) provide such assistance as the City may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this agreement. Upon termination, Redflex remains bound to the data retention requirements for any data gathered prior to the termination date Redflex will transfer the data and relevant information to the City by a mutually agreed upon method. The City will assume the burden for all costs associated with this task including but not limited to administrative, storage media, storage media authoring devices, and internet bandwidth used for transferring data. Redflex will provide no tools for accessing this data or other guarantees, and (vi) Redflex will remove all of their Equipment that was installed to effectuate the Digital Photo Red Light Enforcement System within thirty (30) days of termination of this Agreement, as detailed in Section 6.3.3 herein.
- 6.16.2. The City shall (i) immediately cease using the Digital Photo Red Light Enforcement System, accessing the Redflex System and using any other Intellectual Property of Redflex, (ii) promptly allow Redflex to retrieve any and all Proprietary Property provided to the City pursuant to this Agreement, and (iii) promptly pay any and all fees, charges and amounts properly owed by City to Redflex for work performed and Citations issued by Redflex prior to the termination.
- 6.16.3. Unless the City and Redflex have agreed to enter into a new agreement relating to the Digital Photo Red Light Enforcement System 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

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

the designated intersection approaches to substantially the same condition such designated intersection approaches were in immediately prior to this agreement.

- 6.17. 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 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.
8. INDEMNIFICATION AND LIABILITY.
- 8.16. INDEMNIFICATION BY REDFLEX. Subject to Section 8.3, Redflex hereby agrees to defend, hold harmless and indemnify the City 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 "City Party" and collectively, the "City Parties") against, and to protect, save and keep harmless the City Parties from, and to pay on behalf of or reimburse the City 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 City 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 misconduct of Redflex, its employees or agents which result in death or bodily injury to any natural person (including

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

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 City Party.

- 8.17. Indemnification by City. Subject to Section 8.3 and existing statutory limitation on liability, the City hereby agrees to defend, hold harmless 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 City contained in this agreement, (b) the negligence or 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
- 8.18. 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.
- 8.19. LIMITED LIABILITY. 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 indirect, incidental, special, lost

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

profits or consequential damages, however caused and on any theory of liability arising out of or relating to this Agreement.

9. **NOTICES.** Any notices 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:

9.16. Notices to Redflex:

Redflex Traffic Systems, Inc.
23751 N. 23rd Ave
Phoenix AZ 85027
Attention: PROGRAM MANAGEMENT
Facsimile: (480) 607-5552

9.17. Notices to the City:

City of Bozeman, MT
Attention: City Attorney
P.O. Box 1230
Bozeman, MT 59771-1230

City of Bozeman, MT
Attention: Bozeman Police Department
P.O. Box 1230
Bozeman, MT 59771-1230

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

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 (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.**
- 11.16. **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 City hereby acknowledges and agrees that the execution (as outlined in Exhibit E), 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 City 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 City's prior written approval, which approval shall not be unreasonably withheld or delayed. The City further acknowledges and agrees that in the event that Redflex provides written notice to the City that it intends to Transfer all or any of Redflex's rights pursuant to this Agreement, and in the event that the City 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 City 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.
- 11.17. **RELATIONSHIP BETWEEN REDFLEX AND THE CITY.** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).

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

- 11.18. 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 seventy-two (72) 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.
- 11.19. 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.
- 11.20. 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.
- 11.21. 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.
- 11.22. 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.
- 11.23. 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.
- 11.24. 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.

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

- 11.25. 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.
- 11.26. 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.
- 11.27. 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.
- 11.28. BINDING EFFECT. This agreement shall inure to the benefit of and are binding upon all of the parties hereto and their respective executors, administrators, successors and permitted assigns.
- 11.29. COST NEUTRALITY. By default under the "Per Paid Violation" terms of this contract the City is indemnified against paying revenues for services beyond those which have been generated by the system; however this provision shall not apply if (1) the City elects not enforce illegal turns on red violations; (2) the City elects not to pursue collections on unpaid violations; (3) the City directs REDFLEX to install a camera at a site that is not mutually agreed upon; or (4) the authorized employee waives more than ten (10%) percent of valid violations forwarded to the City for acceptance according to mutually agreed upon business rules and that an officer chooses to pursue criminal or investigative proceedings.
- 11.30. 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.
- 11.31. 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.
- 11.32. 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

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

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.

- 11.33. **APPLICABLE LAW.** This agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of Montana.
- 11.34. **JURISDICTION AND VENUE.** The parties agree for purposes of 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 Eighteenth Judicial District of Gallatin County, Montana with both parties specifically agreeing to be bound by that jurisdiction.
12. **COMMUNITY OUTREACH AND EDUCATION.** Redflex will aid in the development of a focused and comprehensive Community Awareness Campaign prior to and after the System becomes operational. This aid shall include access to all pre-developed material covered in the "Public Outreach Campaign Kit", the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Digital Red-light Photo Enforcement Program (actual print and production costs are the sole responsibility of the City). Parties shall meet, as warranted; to discuss the effectiveness of the campaign and address any perceived defects in the campaign.
13. **DEVELOPMENT OF ORDINANCE.** Redflex will work with City leading up to the development of an ordinance for enabling automated enforcement consistent with Montana statutes and City ordinances. Redflex will confer with legal, constitutional, judicial and operational experts to assess Montana statutes and judicial precedent which may be necessary or relevant to the development, adoption and defense of automated enforcement ordinances. Redflex recognizes any court challenge to demonstrate a conflict of state law would jeopardize the automated enforcement program described in this Agreement. Therefore, Redflex will provide personnel and legal counsel necessary to fashion a successful ordinance and support the successful operation of the System.
14. **MAINTENANCE CERTIFICATION.** Redflex will develop and provide a routine monthly maintenance program allowing certification of the operation of each camera for each location for every month. Redflex will provide the certification for months prior to and after the contested violation to certify System performance and will provide at no cost, according to section 3.3.13 of this agreement, to the City expert witness testimony at contested court hearings which testimony shall include but not be limited to the accuracy, calibration, maintenance, repair records, technical, operational and effectiveness of the System.
15. **CITY PERSONNEL TRAINING.** Redflex will provide all necessary onsite training and operation of the System for appropriate City staff. This training will provide City with a basic understanding of how the System operates and a detailed understanding of how the System interfaces with the City's traffic signal equipment. Redflex will coordinate with finance, police and legal departments for training on the program for personnel so that City personnel can answer questions from the public. Redflex will provide a thorough training/education program to selected City staff which training is

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

intended to help City develop and enhance its existing knowledge, skill and competencies required to successfully maintain and operate the effective automated enforcement program. City staff will be trained utilizing specific training modules which will address the specific components of the programs. Training should include but may not be limited to predesigned courses, onsite instructor-lead training, computer-based training, self directed training, one-on-one training and infield training. Training shall include the use and operation of the System, the use and operation of software, citation generation and processing procedures, court testimony processes, data collection and reporting methods, court administration of the program including introduction and familiarization and subpoena processing timelines for evidence development. All training will be provided throughout the lifetime of this Agreement at no cost to the City. As personnel changes occur within the City, new personnel may receive training as requested by the City at no additional cost.

16. **DEVELOPMENT OF SYSTEM CITATION PROCESS.** Redflex will provide processing of citations in compliance with the City of Bozeman's Municipal Code and state law. The process will include a secure chain of custody, full 50 state vehicle registration access, driver's license information matching, three levels of incident review and quality assurance, multilingual call center with a toll free number, colored printing and mailing, City alert for license plate notifications on suspended, expired or stolen vehicles, printed copies of process service citations, secure Internet site for violators to review violation images and data.
17. **PUBLIC WEB CITATION REVIEW.** Redflex will provide secure, Internet based website viewing for members of the public who receive mailed citations in support of police, court and finance's operations.
18. **MUNICIPAL COURT.** To assure City is prepared and properly tracks with the Bozeman Municipal Court, Redflex will develop an efficient system for testing and introducing System into production including meeting with judicial officers and court personnel to introduce and implement the System. Consistent with the training and implementation of the System, Redflex will develop a subpoena processing timeline that will permit introduction into evidence of violation data and coordinate between Redflex, the City and municipal court personnel the executing of citations. Redflex shall supply the Municipal court with evidence packages and System maintenance records necessary to prosecute citations no more than ten (10) days after receipt of a notice of hearing. Redflex shall develop and implement a File Transfer Protocol for the purpose of updating the Municipal court's adjudication program.
19. **BUSINESS RULES.** Redflex shall develop in conjunction with the City Business Rules for the proper operation of the System and processing and collection of citations. Redflex shall provide access to video to authorize City personnel in accordance with the business rules and will develop and adhere to all rules and regulations governing the protection of chain of custody for all evidence.

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

20. **VIOLATION PAYMENT SERVICES.** Redflex shall provide credit card violation payment services through either telephone or Internet from Redflex's PhotoNotice.com porthole.

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

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

"City"

"Redflex"

CITY OF BOZEMAN, MT, a municipal
corporation.

REDFLEX TRAFFIC SYSTEMS, INC.,

Date: 10-17-08

Date: 10-13-08

By: Chris A. Kukulski

By: Karen Finley

Name: Chris A. Kukulski

Name: Karen Finley

Title: City Manager

Title: President & CEO

Approved as to Form:

J. Robert Planalp
J. Robert Planalp, Interim City Attorney

ATTEST:

Stacy Ulmer
Stacy Ulmer, City Clerk

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

EXHIBIT "A"
Designated Intersection Approaches

The contract is for the implementation of up to thirty (30) intersection approaches. Identification of enforced intersection approaches will be based on mutual agreement between Redflex and the City as warranted by community safety and traffic needs.

The City will make all reasonable efforts to provide the list of proposed intersections under consideration prior to formal project kick-off to the designated Redflex project manager.

Intersection selection is a mutual process. This will include a no cost, no obligation survey, and mathematical assessment of your proposed photo enforced intersections. Redflex will conduct an intersection survey and analyses suitable to capture morning and evening violations for each proposed intersection. This assessment will provide a baseline of data that outlines the total violations, type of violation (left-turn, straight, and right-turn) and time of day.

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

EXHIBIT "B"
Construction and Installation Obligations

Timeframe for Installation: Fixed Photo Red Light System

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

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 all specified intersection within ninety (90) days from execution of this Agreement. The City agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Redflex and are not guaranteed.

In order to provide the City with timely completion of the digital photo red light enforcement project, Redflex Traffic Systems requires that the City assist with obtaining timely approval of permit requests. The City acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the City will provide appropriate department review(s) 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 Develop, install and maintain an automated Digital Photo Red Light Enforcement System that will have the ability to operate in accordance with the terms of this contract and maintain operability through a wide range of climate conditions specific to the geographic location of the City.
 - 1.2 Appoint the Redflex Project Manager and a project implementation team;
 - 1.3 Request current "as-built" electronic (when available) engineering drawings for the Designated Intersection Approaches (the "Drawings") from the city Streets Superintendent;
 - 1.4 Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for all sensors and/or such other detection technology the City designates including 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 Intersection Approaches (collectively, the "Approvals"), which will include compliance with City permit applications.

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

- 1.6 Finalize the acquisition of the Approvals; Complete the installation and testing of all necessary equipment, including hardware and software, at the designated intersection approaches.
- 1.7 Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the designated intersection approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
- 1.8 Install and test the functionality of the designated intersection approaches with the Redflex System and establish fully operational violation processing capability with the Redflex System;
- 1.9 Implement the use of the Redflex System at each of the designated intersection approaches;
- 1.10 Deliver all the materials to the City; and
- 1.11 Citation processing including but not limited to DMV registration data, registered owner address information, violation screening, vehicle plate and vehicle matches and triple violation quality assurance to assure no misread information; citation issuance/re-issuance for authorized violations;
- 1.12 Redflex shall provide training (i) for up to fifteen (15) personnel of the City, including but not limited to the persons who City shall appoint as authorized employees and other persons involved in the administration of the Digital Photo Red Light Enforcement Program, (ii) for up to sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Red-light Digital Photo Red Light Enforcement Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting violations data in court and judicial proceedings and a review of the enforcement documentation;
- 1.13 Redflex will provide and install any required enforcement signage.
- 1.14 Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, and coordination between Redflex, the Customer and (WHERE APPLICABLE juvenile court personnel)
- 1.15 Redflex shall provide access or directly supply court evidence packages and system maintenance records no more than 10 business days
- 1.16 Redflex will provide a minimum acceptable monthly prosecutable image capture rate of 85% excluding uncontrollable exceptions; such as but not limited to emergency vehicle, funerals and extreme weather conditions.
- 1.17 Redflex shall provide access to streaming video to authorized City personnel in accordance with the guide lines set forth in the Business Rules.
- 1.18 Redflex shall adhere to all laws governing the protection of the "Chain of Custody" for all evidence sets.
- 1.19 Redflex shall develop and implement a File Transfer Protocol for the purposes of updating the City's court adjudication program

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

1.20 Redflex shall provide credit card violation payment services via the telephone or internet from our PhotoNotice.com porthole.

2. **CITY OBLIGATIONS.** The City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):
- 2.1 Appoint the Project Manager;
 - 2.2 Assist Redflex in obtaining the application record drawings and information from the relevant Governmental Authorities;
 - 2.3 Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Digital Photo Red light Enforcement System;
 - 2.4 Provide assistance to Redflex in obtaining access, as needed, to the records data of the Department of Motor Vehicles in Redflex's capacity as an independent contractor to the City; by providing any necessary verifying letters or memorandum's verifying the relationship between Redflex and the City.
 - 2.5 Assist Redflex in seeking the necessary City approvals
 - 2.6 Provide reasonable access to the City's properties and facilities in order to permit Redflex to install and test the functionality of the designated intersection Approaches and the Digital Photo Red light Enforcement Program;
 - 2.7 Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
 - 2.8 Seek approval or amendment of Public awareness strategy and provide written notice to Redflex with respect to the quantity of media and program materials the City will require in order to implement the public awareness strategy during the period commencing on the date on which Redflex begins the installation of any of the designated intersection approaches and ending one (1) month after the installation date;
 - 2.9 Assist Redflex in developing the Red light violation criteria; and
 - 2.10 Seek approval of the enforcement documentation.
 - 2.11 The City shall provide on a monthly bases, without cost to Redflex, reports regarding the prosecution of Citations, the collection of fines, fees and other monies and available collision data, in such format and for such periods as Redflex may reasonably request.
 - 2.12 Yellow Light Timing Review: The City is responsible to ensure that the yellow or amber light phase timing at all photo enforced intersections meets minimum standards according to Federal, State, and local laws, guidelines, and/or rules.
 - 2.13 Provide on-going adequate electrical power in order to operate the systems.
 - 2.14 The City will allow Redflex to use existing conduit space as available within City-owned conduit.
 - 2.15 The City shall be responsible to provide and install LED traffic signal lights (yellow and red) at all enforced locations

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

- 2.16 Customer City is responsible for providing all computer hardware, web browsers and high speed Internet access necessary to assess the system by their employees. Requirements include a computer with an up to date version of an approved browser, connected to a high speed internet connection.
- 2.17 City agrees to allow other municipalities within the state of Montana to adopt terms, and obligations outlined within this contract in accordance with state and local procurement laws.

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

EXHIBIT "C"

Maintenance

1. Redflex maintenance and service includes, but is not limited to, a comprehensive multi-tiered approach that includes preemptive maintenance which includes but is not limited to: cleaning the camera enclosure glass; inspect the cabinet for signs of leakage, wear and/or damage; and clean as necessary; inspecting cables, connectors and hardware for signs of wear or damage; inspecting poles, bases and enclosures for signs of damage and to ensure proper alignment; inspecting detection devices; testing safety devices for proper operation to ensure safe working conditions for maintenance personnel and the general public in the event of an accident that could expose the public to operating voltages, daily system checks, physical inspections and emergency response. Each site will be visited on a routine basis to perform preemptive maintenance at a monthly minimum. Preemptive maintenance tasks will be documented in the intersection maintenance log for every inspection being performed. Entries will include: date and time inspection performed; technician performing inspection; results of the inspection; the next scheduled maintenance inspection due date; results of inspection.
2. All repair and maintenance of Digital Photo Red Light 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.
3. Redflex shall not open the Traffic Signal Controller Boxes without a representative of city Street Department present.
4. 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.
5. Redflex will assign specific personnel to provide follow up assistance to the City in the form of the HELPDESK, a designated Customer Service Representative and a Director of Accounts at no additional cost.
6. Redflex assures the City that a malfunction of the digital photo red light enforcement system equipment will not interfere with or cause a malfunction in the normal cycling and operation of the existing traffic control system at the respective intersection.
7. All Redflex system's provide remote diagnostics to identify any system failures and electronically notify the service technician of such failures and will shut down to await repair and to assure that no citations are issued in error.
8. The City will not be responsible for any repairs that are attributed to acts of vandalism, unavoidable accidents or weather.
9. Redflex assures that a majority of repairs will be completed within forty eight (48) hours of identification or notification by the City.

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

EXHIBIT "D"

COMPENSATION & PRICING

Per Paid Fee

Intersection Approach of (1 to 2 Lanes)	1-65 citations = \$75*
	66+ citations = \$15
Intersection Approach of (3 to 6 Lanes)	1-65 citations = \$75*
	66+ citations = \$15

* The city will pay the top tier rate for the first 65 paid citations per system/month.

Collections Services

Includes all collections services on all in state and out of state delinquent payments remaining after 2nd or 3rd notice. Services include phone contact, noticing and credit reporting. Redflex will add the collection fee to the outstanding notice balance. (City will determine what constitutes a delinquency) 25% the amount of fine retained for services

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. Each year, on the anniversary date of the contract, 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 with City approval.
3. City 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 Intersection Approaches will be the sole responsibility of Redflex.
5. The on-going provision of any and all necessary electrical power to the Designated Intersection Approaches will be the sole responsibility of the City.

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

6. Redflex shall be solely responsible for installing required signage. 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 City shall assist in determining the placement of such Signage. Redflex 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 City.
7. Required Credit Card fees will not be considered to be revenue received and are the responsibility of the violator.
8. Roadway/Intersection improvement projects: City shall reimburse Redflex the costs of replacing and or modification of operational system approaches.
9. If a system is deactivated at the City's request due to roadway construction, the monthly fee will continue.

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

Exhibit "E"

Additional Rights and Obligations

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

1. Redflex shall assist the City in public awareness strategy, information and education efforts, including but not limited to the pre-developed material covered in the "Public Outreach Campaign Kit", the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Red-light Photo Enforcement Program (actual print and production costs are the sole responsibility of the City).
2. The City shall not access the Redflex System or use the Red-light Photo Enforcement Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Redflex System or the Redflex Digital Photo Red Light Enforcement Program with respect to any intersection approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the Redflex Digital Photo Red Light 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 City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other person to do any of the foregoing.
3. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Red-light Digital Photo Red Light Enforcement Program.
4. Redflex and the City shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, Redflex and the City shall obey any and all such rules and regulations.
5. The City shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex Digital Photo Red Light Enforcement System, or any property or equipment related thereto, damaged directly or indirectly by the City, or any of its employees, contractors or agents while attending to duties for the City.

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

Exhibit "F"

Insurance

1. During the Term, Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage with respect to claims for injuries to persons or damages to property which may arise from or in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
 - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage and Two Million Dollars (\$2,000,000) aggregate
 - Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned by Redflex 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 One Million Dollars (\$1,000,000) per claim and in the aggregate.
 - Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of (insert name), and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
2. With respect to the insurance described in the foregoing Section of this Exhibit F, any deductibles or self-insured retentions must be declared to and approved by the City and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the City.
3. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
 - The City Parties shall be named as additional insured with respect to the Commercial General Liability insurance, and such coverage shall contain no special limitations on the scope of protection afforded to such additional insured.
 - The insurance coverage procured by Redflex and described above shall be the primary insurance with respect to the City Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the City Parties shall be in excess, and not in contribution to, such insurance.
 - 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

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

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.

4. With respect to the insurance described in the foregoing Section of this Exhibit F, 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 City and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the City of the date and nature of such correction. If Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the City shall have the right, but not the obligation 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 City for such insurance. If the premium costs advanced by the City for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the City upon receipt of written notice thereof.
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 City prior to Redflex commencing any work pursuant to the terms of this Agreement.

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

FORM OF ACKNOWLEDGMENT AND CONSENT

This Acknowledgement and Consent, dated as of October 13th, 2008, is entered into by and between the City of Bozeman, MT (the "City") and Redflex Traffic Systems, Inc., ("Redflex"), with reference to the Agreement between the City of Bozeman, MT and Redflex Traffic Systems, Inc., for Digital Photo Red Light Enforcement System and Violation Processing Program, dated as of October 13th, 2008 by and between the City and Redflex (the "Agreement").

1. Redflex has entered into a Multicurrency Credit Agreement, dated as of June 2, 2008 (the "Multicurrency Credit Agreement"), by and among Redflex, as Borrower, the guarantors from time to time party thereto, as Guarantors, the lenders from time to time party thereto, as Lenders (the "Lenders"), and Bank of Montreal, as Administrative Agent (the "Administrative Agent"), pursuant to which the Lenders have 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 Multicurrency Credit Agreement, Redflex has granted the Administrative Agent, for the benefit of the secured creditors, a security interest in all of Redflex's personal property as collateral for the payment and performance of Redflex's obligations to the Administrative Agent and the Lenders under the Multicurrency 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 Multicurrency Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Administrative Agent 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 Administrative Agent, for the benefit of the secured creditors, in all of Redflex's rights and interests under the Agreement pursuant to the Multicurrency 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 Administrative Agent, and to any replacement lenders which refinance Redflex's obligations to the Administrative Agent and the Lenders under the Multicurrency Credit Agreement.

[SIGNATURE PAGE TO FOLLOW]

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

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 BOZEMAN, MT, a municipal corporation</p> <p>Date: <u>10-17-08</u></p> <p>By: <u>Chris A. Kukulski</u></p> <p>Name: <u>Chris A. Kukulski</u></p> <p>Title: <u>City Manager</u></p>	<p>Redflex:</p> <p>REDFLEX TRAFFIC SYSTEMS, INC., a Delaware Corporation</p> <p>Date: <u>10-13-08</u></p> <p>By: <u>Karen Finley</u></p> <p>Name: <u>Karen Finley</u></p> <p>Title: <u>President & CEO</u></p>
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