



MAKING A SAFER WORLD.

Via Federal Express

January 9, 2015

Chief James Leal
Chief of Police
Newark Police Department
37101 Newark Boulevard
Newark, CA 94560

Re: First Amendment to Exclusive Agreement between the City of Newark California and Redflex Traffic Systems Inc. for Photo Light Enforcement Program

Dear Chief Leal:

Please find enclosed two (2) originals pertaining to the above referenced agreement.

Please execute the enclosed originals on behalf of The City of Newark and return one fully executed original to our office (see below for mailing information).

If possible, prior to mailing, please scan and email a copy of the executed contract to kmarion@redflex.com. Then, please return the above requested original documents to:

Redflex Traffic Systems, Inc.
Attention: Karen Marion
23751 N. 23rd Avenue, Suite 150
Phoenix, AZ 85085

Should you have any questions, please contact Karen Marion at the above referenced email.

Sincerely,

A handwritten signature in black ink that reads "Sarah Crider".

Sarah Crider
Legal Affairs Coordinator

Cc: Darren Kolack

Enclosures

FIRST AMENDMENT TO EXCLUSIVE AGREEMENT BETWEEN THE CITY OF NEWARK CALIFORNIA AND REDFLEX TRAFFIC SYSTEMS INC. FOR PHOTO RED LIGHT ENFORCEMENT PROGRAM

This First Amendment (the "First Amendment") is made this 14th day of January, 2015 (the Effective Date") between the City of Newark, California, a municipal corporation (the "City") and Redflex Traffic Systems, Inc. ("Redflex") (individually referred to as the "Party", collectively referred to as the "Parties").

RECITALS

- A. Redflex and the City entered into the Exclusive Agreement between the City of Newark California and Redflex Traffic Systems Inc. for Photo Red Light Enforcement Program on April 20, 2011 (the "Agreement");
- B. The Parties desire to extend the Initial Term of the Agreement amend the Agreement to reflect new pricing and provisions.

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

TERMS AND CONDITIONS

1. Term. The Initial Term outlined in Section 2 of the Agreement is extended for an additional two (2) years with an expiration date of April 20, 2018. The City shall have the right, but not the obligation, to extend the term of this Agreement for up to one (1) additional consecutive and automatic two (2) year period following the expiration of the Initial Term (a "Renewal Term" and collectively with the Initial Term, the "Term"), as outlined in Section 2 of the Agreement. The City may exercise the right to not extend the Term for a Renewal Term by providing written notice to Redflex not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
2. New Installations. The City shall have the option to install additional Designated Intersection Approaches after the Effective Date ("New Designated Intersection Approaches"), which will include HD Incident Video.
3. Upgrades. Redflex shall upgrade Designated Intersection Approaches existing as of the Effective Date ("Existing Designated Intersection Approaches") to HD Incident Video by no later than February 27th 2015.
4. Pricing. As of the Effective Date, the pricing outlined in Exhibit D to the Agreement is amended as follows and shall supersede any prior pricing provisions, including the "Extension Period Pricing" provisions in the Agreement:
 - a. **EXISTING DESIGNATED INTERSECTION APPROACHES (TIER 1)**. For Existing Designated Intersection Approaches, the Fixed Monthly Fee, as outlined in Exhibit D to the Agreement, shall be \$4,700.00 per Existing Designated Intersection Approach.
 - b. **NEW DESIGNATED INTERSECTION APPROACHES (TIER 2)**. For New Designated

Intersection Approaches, the Fixed Monthly Fee, as outlined in Exhibit D to the Agreement, shall be \$5,700 per New Designated Intersection Approach.

- c. Section 2 under "BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS" is hereby deleted in its entirety. The pricing shall not be subject to any increase – CPI or otherwise – and shall be limited to the amount in Section 4(b) herein.

5. Termination Without Cause. Section 6.1 of the Agreement is amended as follows:

6.1. TERMINATION WITHOUT CAUSE:

6.1.1. The City reserves the right to terminate this Agreement without cause with forty-five (45) days written notice. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall be obligated to pay Redflex for all services satisfactorily performed in accordance with this Agreement, through and including the initial of termination date, but not to exceed the payment according to the rates specified in Exhibit D and shall pay Redflex the amount of Equitable Cost Recovery, if any, to which Redflex is entitled as set forth in Section 6.1.2.

6.1.2. Equitable Cost Recovery. In the event the City exercises its right to terminate this Agreement under Section 6.1.1, Redflex shall be entitled to a cancellation fee for each installed approach which reflects reimbursement of the direct labor costs and direct material costs (not including Equipment costs and salvageable material costs) solely associated with the installation of the Redflex's System, and any subsequent upgrades, at all Designated Intersection Approaches where such system(s) have been installed prior to the effective date of Termination (the "Reimbursable Costs"). For New Designated Intersection Approaches, Redflex shall provide an itemization of the Reimbursable Costs, with supporting invoices and labor expense documentation, to the City within thirty (30) days of the completion of installation of the Redflex's System at each New Designated Intersection Approach. Said Reimbursable Costs are currently estimated to equal approximately \$50,000 to \$80,000 per Designated Intersection Approach but, in no event, shall said amount exceed \$80,000 per Designated Intersection Approach. For the purpose of this Section, the cancellation fee shall be derived in accordance with the following formula:

The cancellation fee shall be derived in accordance with the following formula:

X = the number of months remaining in the Agreement

Y = the number of months that have elapsed between the date of installation of the Designated Intersection Approach and the date of termination. X/Y = the percentage of remaining Agreement

Z = the Reimbursable Costs per Designated Intersection Approach (not to exceed \$80,000)

$(X/Y) * Z$ = amount to be paid as cancellation fee

For example, if the Agreement ends on the last day of the 24th month and the Designated Intersection Approach was installed in month 12, the cancellation fee would be:

X = 12 (36 months - 24 months transpired under the Agreement)

Y = 36 (number of months of the Agreement)

Z = \$60,000 (value of reimbursable costs)

X/Y*Z = (12/36 * \$60,000)

Calculation of Fee = \$20,000

6.1.3. Reflex reserves the right to terminate this Agreement without cause with ninety (90) days written notice to the City. In the event Redflex terminates this Agreement under this subsection, Redflex shall not be entitled to Equitable Cost Recovery.


6. Ownership of Non-Violator Data. Section 3.8 shall be added to the Agreement and will provide the following:

3.8. OWNERSHIP OF NON-VIOLATOR DATA. The Parties agree that Redflex shall have exclusive ownership of all Non-Violator Data generated as a result of the Program. "Non-Violator Data" shall include incident data, infraction rates, average speeds and other categories of data as mutually agreed by Redflex and the City. Non-Violator Data shall not include any data identifying the registered owner or the violator, or relating in any way to the registered owner's identity or the violator's identity. During the term of this Agreement, the City shall have a non-exclusive royalty free license to use the Non-Violator Data. This license shall terminate upon termination or expiration of this Agreement.

7. Enforceability of Non-Amended Terms and Conditions. Except as expressly amended in this First Amendment, the Terms and Conditions of the Agreement shall remain in full force and effect. To the extent that this First Amendment conflicts with the terms of the Agreement, this First Amendment shall control.

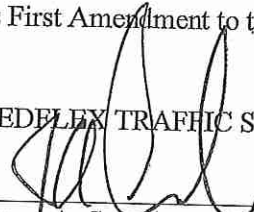
IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Agreement as set forth below

CITY OF NEWARK, CA:



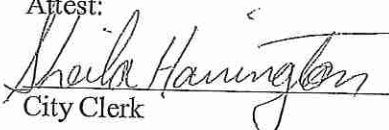
John Becker
City Manager

REDFLEX TRAFFIC SYSTEMS, INC.



James A. Saunders
President & CEO

Attest:



Sheila Harrington
City Clerk

1/14/2015
Date