

**SECOND AMENDMENT TO THE EXCLUSIVE AGREEMENT BETWEEN THE CITY
OF LOS ALAMITOS AND REDFLEX TRAFFIC SYSTEMS, INC. FOR TRAFFIC
CAMERA SAFETY IMPROVEMENT PROGRAM**

This Second Amendment to the Exclusive Agreement Between the City of Los Alamitos and Redflex Traffic Systems, Inc. for Traffic Camera Safety Improvement Program (“Second Amendment”) is executed this 31st day of July, 2017 (the “Execution Date”) by and between Redflex Traffic Systems, Inc. (“Redflex”) and the City of Los Alamitos, California (the “City”) (individually a “Party”; collectively, the “Parties”).

RECITALS

- A. On or about September 1, 2010, Redflex and the City entered into the Exclusive Agreement Between the City of Los Alamitos and Redflex Traffic Systems, Inc. for Traffic Camera Safety Improvement Program (the “Original Agreement”);
- B. By letter dated August 3, 2015, the Parties agreed to extend the Original Agreement on a month-to-month basis until the Parties terminated the Original Agreement or entered into an extension of the Original Agreement (the “Letter”);
- C. On or about August 24, 2015, the City approved the First Amendment to the Exclusive Agreement Between the City of Los Alamitos and Redflex Traffic Systems, Inc. for Traffic Camera Safety Improvement Program (“First Amendment”) (together with the Original Agreement and the Letter, the “Agreement”);
- D. The Agreement is set to expire on August 24, 2017; and
- E. Redflex and the City desire to extend the term of the Agreement and otherwise modify the Original Agreement as set forth below.

The parties agree as follows:

TERMS AND CONDITIONS

1. Term of Agreement. The Parties agree to extend the term of the Agreement as outlined in Section 2 of the Original Agreement and previously extended by Section A of the First Amendment, for an additional four (4) years commencing on August 24, 2017 and ending on August 24, 2021.

2. Malfunction Rate. The following language shall be added the to the Original Agreement as Section 3.11:

3.11. MALFUNCTION RATE.

3.11.1. If a Redflex System at any Designated Intersection Approach has a Malfunction Rate (as defined below), that is greater than or equal to twenty-one percent (21%) of the total incidents captured by that

Redflex System in a particular month, then Customer shall be entitled to a credit against the Fixed Monthly Fee for the Designated Intersection Approach at issue equal to the Malfunction Rate, and this credit shall only be applied to the month in which the twenty-one percent (21%) or higher Malfunction Rate occurred. For example, if a Redflex System at a Designated Intersection Approach having a \$5,200.00 Fixed Monthly Fee has a thirty-percent (30%) Malfunction Rate for a certain month, then Customer shall be entitled to a credit of \$1,560.00 ($\$5,200.00 \times .30$) for the Designated Intersection Approach for that month.

- 3.11.2. The "Malfunction Rate" shall be determined from the Redflex online Customer Management Report, and shall include rejections caused by one or more components of the Redflex System, including, but not limited to, camera malfunctions or video errors. The Malfunction Rate shall exclude rejections that are not controllable by Redflex or the Redflex System, including, but not limited to: driver obstruction; motor cycle helmet; plate obstruction; vehicle obstruction; extended vehicle; out-of-country and paper plates; emergency vehicles; sun glare; and non-prosecutable violation.
- 3.11.3. Upgrades. Redflex will continue the process of upgrading its curbside Equipment to assure the lowest Malfunction Rate possible.

The addition of Section 3.11 to the Original Agreement shall not become effective until August 24, 2017, and Redflex shall not be obligated to credit the City as provided for under Section 3.11 until after the first full month following August 24, 2017.

3. Downtime. The following language shall be added as Section 5 to Exhibit "C" attached to the Original Agreement:

5. In the event that Redflex or Customer discovers any material problem or defect that causes a Redflex System at a Designated Intersection Approach to be down or offline, Redflex shall use its best efforts to cause such problem or defect to be repaired within 48 hours, excluding weekends. This does not include a Redflex System that is down or offline due to a power outage or other causes beyond the reasonable control of Redflex. In the event that the Redflex System is not fully operational within forty-eight (48) hours of the material problem or defect occurring, Redflex shall credit the monthly invoice in the amount of 1/30th of the Fixed Monthly Fee for the downed Designated Intersection Approach for each day the approach is down, including the initial days of nonoperation.

The addition of Section 5 to Exhibit "C" attached to the Original Agreement shall not become effective until August 24, 2017, and Redflex shall not be obligated to credit the City as provided for under Section 5 of Exhibit "C" attached to the Original Agreement until after August 24, 2017.

4. **Road Repairs and Construction.** Section 3.9 of the Original Agreement is revoked in the entirety and the following substituted in its place:

3.9. **ROAD REPAIRS AND CONSTRUCTION PROJECTS.** The Customer shall not be responsible for the payment of the monthly fixed fee per Designated Intersection Approach for each Designated Intersection Approach that is rendered inoperable due to road repairs, street improvements, or stop work orders that interrupts, impedes, obstructs or interferes with the successful performance of the Redflex System at the applicable Designated Intersection Approach for a period of fourteen (14) or more calendar days within the same month. This waiver of payment is per Designated Intersection Approach, and in no event shall the waiver of payment for an inoperable Designated Intersection Approach be considered a waiver of payment for any other operational Designated Intersection Approach. The Customer's obligation to pay the monthly fixed fee per Designated Intersection Approach shall resume in the month in which the applicable Designated Intersection Approach resumes operation for at least sixteen (16) calendar days within the same month.

The amendment to Section 3.9 of the Original Agreement does not take effective until August 24, 2017.

5. **Termination for Convenience.** Section 6.1 of the Original Agreement, as amended by Section B of the First Amendment, is revoked in its entirety and the following substituted in its place:

6.1 **TERMINATION OF AGREEMENT**

6.1.1 **Termination for Cause.** Either party shall have the right to terminate this Agreement by written notice to the other if (i) state statutes are amended to prohibit or substantially change the operation of the Program; (ii) the Supreme Court for the State of California rules that the Citations from the Program are inadmissible in evidence; or (iii) the other Party commits any material breach of any of the provisions of this Agreement. Upon entry of an order restraining or enjoining the operation of the Program by a court of competent jurisdiction, or an order that substantially diminishes the financial value of the program to either party, the Camera Term of the Agreement shall be suspended until the later of the dissolution of the restraint, injunction, or order or the date the restraint, injunction, or order becomes final and not subject to any appeal. Either Party may elect to restart the operation of the Program if the restraint, injunction, or order is dissolved or otherwise rendered unenforceable. The Camera Term of the Agreement shall be extended by the period of time for which the Program was suspended. Either Party shall have the right to remedy or cure the cause for termination or breach within forty-five (45) calendar days

(or within such other time period as the Customer and Redflex shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the appropriate Party setting forth in reasonable detail the events of the cause for termination or breach. Termination of this Agreement for cause shall not be enforceable or effective unless the terminating Party mails written notice of termination to the non-terminating Party not less than forty-five (45) calendar days prior to the Agreement termination date and provides to the non-terminating Party the opportunity to remedy or cure the cause of the termination or breach within the forty-five (45) calendar day time period provided herein.

6.1.2 **Termination for Convenience.** The Parties may terminate this Agreement without cause upon the following conditions:

6.1.2.1 The Customer reserves the right to terminate this Agreement without cause upon thirty (30) days written notice. If the Customer exercises its right to terminate this Agreement in accordance with this paragraph, the Customer shall be obligated to pay Redflex for all services satisfactorily performed in accordance with this Agreement, through and including the initial notice of termination date, but not to exceed the payment according to the rates specified in Exhibit D.

6.1.2.2 Redflex reserves the right to terminate this Agreement without cause upon ninety (90) days written notice to the Customer.

The amendment to Section 6.1 of the Original Agreement as outlined in this Second Amendment is effective immediately.

6. **Notices.** Section 9 of the Original Agreement is amended to change the notice address for Redflex to the following:

Redflex Traffic Systems, Inc.
Attn: Legal Department
5651 W. Talavi Blvd., Suite 200
Glendale, AZ 85306
Facsimile: (623) 207-2056
Email: legaldepartment@redflex.com

The amendment to Section 9 of the Original Agreement as outlined in this Second Amendment is effective immediately, and all notices shall be served on Redflex at the address listed in this Second Amendment.

7. **Pricing Changes.** The "Tier 1" Fixed Fee outlined on Exhibit "D" to the Original Agreement for each Designated Intersection Approach existing at the Execution Date of this Second Amendment shall be reduced from the current rate of Four Thousand Five Hundred

Seventy Six Dollars (\$4,576) per Designated Intersection Approach per month (the current rate calculated by multiplying \$4,500 X the CPI as provided for under Exhibit "D") to Three Thousand Two Hundred Dollars (\$3,200) per Designated Intersection Approach per month.

The reduction to the "Tier 1" Fixed Fee as outlined above does not take effect until August 24, 2017, and the current rate per Designated Intersection Approach per month shall apply until August 24, 2017. Other than as expressly stated in this Second Amendment, all other terms of Exhibit "D" attached to the Original Agreement shall remain in full force and effect.

8. **Records Retention.** Section 3.4 of the Original Agreement shall be deleted in the entirety and the following language substituted in its place:

3.4. **RECORDS RETENTION.** Redflex shall retain Violations Data in accordance with applicable law.

9. **Enforceability of Non-Amended Terms and Conditions.** Except as expressly amended in this Second Amendment, the terms and conditions of the Agreement shall remain in full force and effect. To the extent that this Second Amendment conflicts with the terms and conditions of the Agreement, this Second Amendment shall control. Any capitalized terms not defined in the Second Amendment shall have the meanings ascribed to them in the Agreement.

**CITY OF LOS ALAMITOS,
CALIFORNIA**

REDFLEX TRAFFIC SYSTEMS, INC.



Bret Plumlee
City Manager



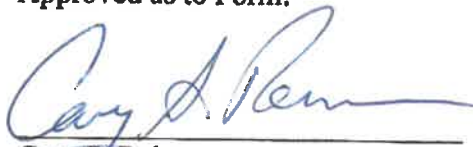
Michael Finn
President and CEO

Attest:



Windmera Quintanar
CMC, City Clerk

Approved as to Form:



Cary S. Reisman
City Attorney

