

Escondido Documents, Set # 2

July 2005 amendment (4 pages)

December 2003 contract, portion (5 pages)

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TrcDocsEscondidoAmend05Contr03.pdf



CITY OF ESCONDIDO
FIRST AMENDMENT TO PUBLIC SERVICE AGREEMENT

This "Amendment" is made this ____ day of July, 2005.

Between: CITY OF ESCONDIDO
a municipal corporation
201 N. Broadway
Escondido, California 92025
("CITY")

And: Reflex Traffic Systems, Inc.
a California corporation
15020 North 74th Street
Scottsdale, AZ 85260
("CONTRACTOR")

Witness that whereas:

- A. CITY and CONTRACTOR entered into an agreement on December 29, 2003 ("Agreement"), wherein CITY retained CONTRACTOR to provide installation and support of a Red Light Photo Enforcement Program for the enforcement of red light violations at intersections with the City of Escondido; and
- B. CITY and CONTRACTOR desire to amend the Agreement, which is defined in Attachment A to this Amendment, which is incorporated by reference;

NOW THEREFORE, it is mutually agreed by and between CITY and CONTRACTOR as follows:

- 1. The definitions of "Authorized Officer," "Operational Period" and "Redlight Violation Criteria," in Exhibit A, Scope of Services of the original agreement dated December 23, 2003, are hereby replaced with the definitions described in Attachment A to this Amendment.

- All other terms of the original Agreement between CITY and CONTRACTOR shall remain in full force and effect; in the event of any conflict between any specific provision of the original Agreement and this Amendment, this Amendment shall prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

CITY OF ESCONDIDO

Date: _____

Lori Holt Pfeiler, Mayor

Date: _____

Marsha Whalen, City Clerk

Date: _____

REDFLEX TRAFFIC SYSTEMS, INC.

Karen Finley
Vice President/Secretary
(The above signature must be notarized)

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY
Jeffrey R. Epp, City Attorney

By: _____

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES

ATTACHMENT A
FIRST AMENDMENT TO PUBLIC SERVICE AGREEMENT FOR RED LIGHT PHOTO ENFORCEMENT

A. Definitions

(a) "Authorized Officer" shall mean the individual(s) as City shall designate to review potential violations and to authorize the issuance of citations.

(m) "Operational Period" means the period of time during the term, commencing on the installation date, during which the Redlight Photo Enforcement Program is functional in order to permit the identification and prosecution of violations at the designated intersection approaches by the Authorized Officer of the City, and the issuance of citations for such approved violations using the Redflex System.

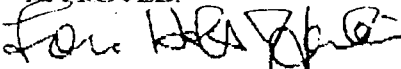
(v) "Redlight Violation Criteria" means the standards and criteria by which potential violations will be evaluated by authorized officers of the City, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a violation being 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.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 13th day of July, 2005 by the following vote to wit:

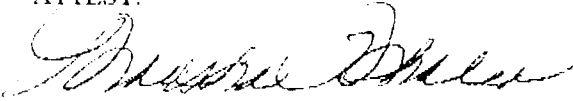
AYES : Councilmembers: ABED, GALLO, NEWMAN, PFEILER, WALDRON

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:

LORI HOLT PFEILER, Mayor of the
City of Escondido, California

ATTEST:



MARSHA WHALEN, City Clerk of the
City of Escondido, California

RESOLUTION NO. 2005-168

A-2663

AGREEMENT FOR RED LIGHT PHOTO ENFORCEMENT SERVICES

This AGREEMENT, made and entered into this 29th day of December 2003, by and between the City of Escondido, a California municipal corporation ("City") and Redflex Traffic Systems, Inc., a California corporation, (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, City desires to obtain the services of a contractor to perform installation and support of a Red Light Photo Enforcement program for the enforcement of red light violations at intersections with the City of Escondido; and

WHEREAS, Contractor has represented that it possesses the necessary qualifications and experience to provide such services; and

WHEREAS, City has authorized the preparation of an agreement to retain the services of Contractor as hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Scope of Services.

Contractor agrees to perform the services set forth in Exhibit "A" "Scope of Services" and made a part hereof.

Contractor represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner.

2. Compensation.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Contractor at the rate of eighty-nine dollars (\$89.00), for each citation issued by City. City shall have no financial liability to Contractor for red light camera system installation, service or maintenance except for the citation fee as set forth herein.

(b) Each month Contractor shall furnish to City an **original** invoice which includes the total number of citations issued in the previous month and which identifies each citation by its citation number. City shall independently review each invoice submitted by Contractor to determine whether City issued each citation. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event City disputes any charges or expenses, the original invoice shall be returned by City to Contractor for correction and resubmission.

**EXHIBIT A
SCOPE OF SERVICES**

A. DEFINITIONS

Certain words and phrases used herein shall have the following meaning:

(a) "Authorized Officer" means the Police Project Manager or such other individual(s) as City shall designate to review Potential Violations and to authorize the Issuance of Citations in respect thereto, and in any event, a sworn peace officer as defined in California Penal Code § 830.

(b) "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 Officer by using the Redflex System.

(c) "Citation" means a Notice of Violation in a criminal or civil traffic action relating to a violation captured the Redlight Photo Enforcement System.

(d) "Confidential 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:

(i) Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and

(ii) 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 as defined by §3426.1(d) of the California Civil Code (the "Uniform Trade Secrets Act") and cases interpreting the scope of the Uniform Trade Secrets Act.

(iii) "Personal information" as described in California Civil Code § 1798.3(a).

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 disclosed.

(e) “Designated Intersection Approaches” means the Intersection Approaches as initially identified by City, and such additional Intersection Approaches as Redflex and City shall mutually agree from time to time.

(f) “Electronic Signature” means the method through which the Authorized Officer indicates his or her approval of the issuance of a Citation in respect of a Potential Violation using the Redflex System.

(g) “Enforcement Documentation” means the necessary and appropriate documentation related to the Redlight Photo Enforcement Program, including but not limited to warning letters, citation notices (using the specifications of the California Judicial Council and the Escondido Police Department), 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 California Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.

(h) “Equipment” means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Redflex System, including but not limited to all camera systems, housings and poles.

(i) “Fine” means a monetary sum assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.

(j) “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.

(k) “Installation Date” 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 Redlight Photo Enforcement Program.

(l) “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) digital, rear shot multiple image color camera and at least one (1) digital face camera has been installed by Reflex for the purposes of facilitating Redlight Photo Enforcement by City.

(m) "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Redlight Photo Enforcement Program is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches by a sworn police officer of City and the issuance of Citations for such approved Violations using the Redflex System.

(n) "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.

(o) "Police Project Manager" means the project manager appointed by City in accordance with this Agreement, which manager shall initially be a special purpose officer or City engineer, or such person as City shall designate by providing written notice thereof to Redflex from time to time, which manager shall be sworn peace officer and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Redlight Photo Enforcement Program.

(p) "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 Officer to review such data and determine whether a Violation has occurred.

(q) "Proprietary Property" means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.

(s) "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, which project manager shall initially be Karen Finley, or such person as Redflex shall designate by providing written notice thereof to City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersection Approaches and the implementation the Redlight Photo Enforcement Program, and who shall have the power and authority to make management decisions relating to Redflex's obligations pursuant to this Agreement, including but not limited to change-order authorizations.

(t) "Redflex System" means, collectively, the SmartCam™ System, the SmartOps™ System, the Redlight Photo Enforcement Program, and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.

(u) “Redlight Photo Enforcement Program” 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 detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles and/or their drivers.

(v) “Redlight Violation Criteria” means the standards and criteria by which Potential Violations will be evaluated by sworn police officers of 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.

(w) “SmartCam™ System” means the proprietary digital speed and redlight photo enforcement system of Redflex relating to the Redlight Photo Enforcement Program.

(x) “SmartOps™ System” means the proprietary back-office processes of Redflex relating to the Redlight Photo Enforcement Program.

(y) “Traffic Signal Controller Boxes” means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.

(z) “Violation” means any traffic violation contrary to the terms of the California 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.

(aa) “Violations Data” means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.

(bb) “Warning Period” means the period of thirty (30) days after the Installation Date.

B. CONSTRUCTION AND INSTALLATION OBLIGATIONS-TIMEFRAME FOR INSTALLATION

(1) The actual detection system installed, or caused to be installed by Redflex, shall be determined by mutual agreement between the parties, at no additional cost to City.

(2) Any and all construction and installation activities undertaken by Redflex, including existing loop restoration shall be completed to the satisfaction of City, and shall be completed at no additional cost to City.