

 <p style="text-align: center;">CITY OF MODESTO COUNCIL AGENDA REPORT</p>	<p style="text-align: center;">DATE OF MEETING: May 05, 2015</p>
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Date: April 7, 2015

TO: Mayor & City Council

THROUGH: James N. Holgersson, City Manager

FROM: Galen L. Carroll, Chief of Police

SUBJECT: Second Amendment to Agreement with Redflex Traffic Systems, Inc.

CONTACT: Craig Gundlach, Police Lieutenant, gundlachg@modestopd.com, 572-9664

DESCRIPTION:

Consider approving the Second Amendment to Agreement with Redflex Traffic Systems, Inc. for a five-year agreement, with option for a two-year renewal; and authorizing the City Manager, or his designee, to execute the necessary documents.
(Funding Source: Traffic Safety Fund)

FISCAL IMPACT:

Under the previous agreement, each camera location incurred a cost of \$5,658 per month. This Second Amendment to the Agreement amends this fee to a fixed rate of \$3,400 per month for each existing camera system and \$5,000 per month for any new camera systems that may be added in the future. With four existing intersection camera systems in place, the cost to the Traffic Safety Fund would be \$13,600 per month and \$163,200 annually.

There are sufficient funds currently programmed in the FY 2014/15 Operating Budget for the Traffic Safety Fund to cover these costs.

BACKGROUND:

On June 8, 2004, Council approved Resolution 2004-301 implementing the automated red light enforcement program and approving a five-year base contract with Redflex Traffic Systems of Culver City, California, for the installation of red light photo enforcement equipment and all related maintenance services at up to ten (10) City designated intersections under a phased implementation plan.

Intersections were selected by reviewing collision data and identifying the intersections with the greatest number of collisions caused by red light violations. The first four intersections selected were:

Sisk and Standiford
Coffee and Sylvan (formerly Standiford Ave and Tully Rd)
E. Briggsmore and Oakdale Rd
Prescott and Briggsmore

The red light camera installed at Tully/Standiford on March 25, 2005 was moved to Sylvan and Coffee on April 5, 2007. The camera was moved because the collision rate and red light violations dropped considerably at Tully/Standiford and a camera was needed at Coffee/Sylvan because the intersection had an extremely high traffic collision rate.

On June 2, 2009, Council approved Resolution 2009-286 to designate four additional intersections to the initially four (4) installed intersections, for a total of eight (8) red light camera systems.

Northbound Carpenter Rd & Blue Gum Avenue
Eastbound Coffee Rd and Briggsmore Avenue
Eastbound Tully Rd and Briggsmore Avenue
Southbound Tully Rd and Briggsmore Avenue

These cameras were never installed because there were several appeals court cases from Southern California that gave conflicting decisions on the legality of red light cameras in the state. On June 5, 2014, the California Supreme Court posted its decision under case number S201443 which stated that red light cameras are legal in California and do not violate the defendants' rights. Given the lapse in time, another evaluation will need to be conducted on intersections collision rates before installing the additional new camera systems.

On May 16, 2014, the Modesto Police Department suspended the program effective May 16, 2014 for six (6) months. On November 16, 2014, the parties agreed to extend the suspension for an additional six (6) months expiring on May 16, 2015. The Modesto Police Department desires to end the suspension and amend the Agreement to take affect after Council approves.

The Second Amendment to Agreement is extended for an additional five (5) years commencing on the effective date stated in the Second Amendment. The City has the right to extend the Term of Agreement for one (1) additional and automatic two (2) year period following the expiration of the Initial Term. The City may exercise the right not to extend the Term for the Renewal Term by providing 30-day written notice to Redflex.

In the event the City exercises its right to terminate this Agreement, Redflex is 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 at all intersection approaches where systems have been installed prior to the effective date of Termination (the "Reimbursable Costs"). The Reimbursable Costs are currently estimated to equal approximately \$50,000 to \$100,000 per new designated intersection

approach and will not exceed \$100,000, and \$7,053.25 per existing designated intersection approach. The Reimbursable Costs will not exceed the current net book value at the time of termination. Net book value is the value at which Redflex carries the existing designated intersection approaches on its balance sheet.

Exhibit D to the original Agreement included a fixed fee of \$5,658 per month per system (Intersection Approach) as full remuneration for performing all the services. The Second Amendment to this Agreement amends this fee to a fixed fee for each existing designated intersection approach at a rate of \$3,400 per month. The fixed fee for each new designated intersection approaches will be \$5,000 per month.

Cost Neutrality has been deleted from the original agreement because the City currently has no way to determine the exact revenue generated specifically from red light cameras on a month-to-month basis.

Currently the cameras may only capture a right or left turn lane. As part of the Second Amendment, Redflex has agreed to upgrade all existing camera systems to capture movement in all lanes the camera is directed towards.

Redflex will have exclusive ownership of all Non-Violator Data generated as a result of the program. Non-Violator Data will include incident data, infraction rates, average speeds and other categories of data as mutually agreed by Redflex and the City. Non-Violator Data will 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 has non-exclusive royalty free license to use the Non-Violator Data.

STRATEGIC PLAN ELEMENT:

This item is related to the City Council adopted Strategic Commitment for a Great Safe Neighborhoods and a Healthy Economy.

RECOMMENDED COUNCIL ACTION:

Staff Recommendations:

Resolution approving the Second Amendment to Agreement with Redflex Traffic Systems, Inc. for a five-year agreement, with option for a two-year renewal; and authorizing the City Manager, or his designee, to execute the necessary documents.

Approved by:

Galen L. Carroll, Chief of Police

James N. Holgersson, City Manager

Attachments:

1. Redflex Traffic Systems, Inc. Agreement
2. First Amendment to Agreement with Redflex Traffic Systems, Inc.
3. Second Amendment to Agreement with Redflex Traffic Systems, Inc.
4. Suspension Letter Dated May 9, 2014 effective May 16, 2014
5. Suspension Letter Dated October 14, 2014 effective November 16, 2014
6. Suspension Letter Dated April 9, 2015 effective May 16, 2015
7. Resolution

SECOND AMENDMENT TO
AGREEMENT BETWEEN THE CITY OF MODESTO
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR
AUTOMATED RED LIGHT PHOTO ENFORCEMENT CAMERAS

This Second Amendment (the “Second Amendment”) to Agreement between the City of Modesto and Redflex Traffic Systems Inc. for Automated Red Light Photo Enforcement Cameras is made by and between Redflex Traffic Systems, Inc. (“Redflex”) and the City of Modesto, CA (“the City”) (individually the “Party” and collectively referred to as the “Parties”). The Effective Date of this Second Amendment is _____, 2015.

RECITALS

1. The Parties executed the Agreement between the City of Modesto and Redflex Traffic Systems Inc. for Automated Red Light Photo Enforcement Cameras in July 2004 (the “Original Agreement”);
2. The Original Agreement was amended on July 7, 2009 (the “First Amendment”) (collectively, with the Original Agreement, the “Agreement”);
3. The Parties suspended the Program on May 16, 2014 pursuant to a countersigned letter, which suspension was extended and shall expire on May 16, 2015 (the “Suspension”); and
4. The Parties desire to end the Suspension, extend the Term of the Agreement and modify the Agreement to reflect changes to the Program.

The Parties amend the Agreement as follows:

TERMS AND CONDITIONS

- A. **Definitions.** The following Sections 1.32 and 1.33 shall be added to the Agreement.

1.32 “Existing Designated Intersection Approaches” means the Designated Intersection Approaches that were installed and in operation prior to the Effective Date of the Second Amendment.

1.33 “New Designated Intersection Approaches” means the Designated Intersection Approaches that will be installed and in operation after the Effective Date of the Second Amendment.
- B. **Term.** The Initial Term outlined in Section 2 of the Agreement is extended for an additional five (5) years commencing on the Effective Date. The City shall retain the right to extend the Term of the Agreement for one (1) additional and automatic two (2) year period following the expiration of the Initial Term (the “Renewal Term” and collectively with the Initial Term, the “Term”), as outlined in Section 2 of the Agreement. The City may exercise the right not to extend the Term for the 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.
- C. **The Suspension.** The Parties agree to end the Suspension as of the Effective Date.

D. **Termination for Convenience and Equitable Cost Recovery.** Section 6.3 is amended in its entirety and shall provide the following:

6.3 **TERMINATION FOR CONVENIENCE.**

6.3.1 The City reserves the right to terminate this Agreement without cause with thirty (30) 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 below.

6.3.2 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.

6.3.3 **Equitable Cost Recovery by Redflex Upon Termination For Convenience By the City:** In the event the City exercises its right to terminate this Agreement under Section 6.3.1, 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 at all Intersection Approaches where such system(s) have been installed prior to the effective date of Termination (the "Reimbursable Costs"). 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 Designated Intersection Approach. The Reimbursable Costs are currently estimated to equal approximately \$50,000 to \$100,000 per New Designated Intersection Approach but, in no event, shall said amount exceed \$100,000 per New Designated Intersection Approach and \$7,053.25 per Existing Designated Intersection Approach (MOD-BRPR-01; MOD-COSY-01; MOD-OABR-01; MOD-STSI-01), and not exceed their current net book value at the time of termination. Net book value is the value at which Redflex carries the Existing Designated Intersection Approaches on its balance sheet. 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 of the Agreement

X/Y = the percentage of remaining Agreement

Z = the Reimbursable Costs per Installed Approach (not to exceed \$100,000)

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

For example, if the Agreement was for 36 months, but 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

- E. **Pricing**. The Fixed Fee outlined in Exhibit D to the Agreement is amended as follows:

Commencing on the Effective Date, the Fixed Fee for each Existing Designated Intersection Approach Date shall be Three Thousand Four Hundred Dollars (\$3,400.00) per month.

The Fixed Fee for each New Designated Intersection Approaches shall be Five Thousand Dollars (\$5,000.00) per month.

The Fixed Fee for each HALO system shall be determined by the Parties prior to installation and operation.

- F. **Existing Designated Intersection Approach Equipment Upgrades**- Upon execution of this Agreement and mutual acceptance by the City, Redflex shall upgrade the Existing Designated Intersection Approaches to the latest standard technology including but not limited to violation detection, HD Video, and enhanced digital still equipment appropriate for the specific approach geometry

- G. **Cost Neutrality**. Section 6.4 “Cost Neutrality” is deleted in its entirety and the Section is reserved.

- H. **Ownership of Non-Violator Data**. Section 3.7 is added and shall provide the following:

3.7. **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 which will be available online or upon request from the City during the contract period. This license shall terminate upon termination or expiration of this Agreement.

- I. **Future Services**. Section 3.8 is added and shall provide the following:

3.8. **Future Services**. If California law allows, now or in the future, a Governmental Authority to suspend the ability to register a vehicle, as controlled by the California Department of Transportation, for Persons with delinquent or unpaid fines, whether criminal or civil, the

Parties have the option upon written mutual agreement to execute an amendment to this Agreement for Redflex to provide the City certain automated scofflaw services under its ASP and ASP2 Programs, as applicable, to implement such law.

J. **Cooperative Use.** Section 11.20 is added and shall provide the following.

11.20. **Cooperative Use of Contract.** In addition to the City of Modesto, this contract may be extended for use by all California political subdivisions/local governments (including any city, county, city and county, district or other local governmental body, agency or corporation). Each political subdivision/local government should make its own determination whether this Agreement is in accord with its procurement policies and regulations and any other ordinance, charter, and/or rules and regulations of the respective political subdivision/local government entity. Notwithstanding the foregoing, the cooperative use of this Agreement by any entities not already identified by particular name in this Agreement shall be subject to the prior express written approval of Redflex

K. **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 of the Agreement, this Second Amendment shall control.

Approved as to form, content and legality:

CITY OF MODESTO, CALIFORNIA

REFLEX TRAFFIC SYSTEMS, INC.

By: _____
Name: _____
Title: _____
Date: _____

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