



**CITY OF MODESTO
COUNCIL AGENDA REPORT**

DATE OF MEETING:

July 7, 2009

Date: June 2, 2009

TO: Mayor & City Council
THROUGH: Greg Nyhoff, City Manager
FROM: Michael G. Harden, Interim Chief of Police
SUBJECT: First Amendment to Agreement with Redflex Traffic Systems, Inc.
CONTACT: Chris Fuzie, Police Lieutenant, fuziechris@modestopd.com, 342-6161

DESCRIPTION:

Consider approving a First Amendment to an Agreement with Redflex Traffic Systems for a seven-year agreement, with the option for one two-year renewal. (Funding Source: Traffic Safety Fund)

FISCAL IMPACT:

Under the existing contract, Redflex originally charged the City of Modesto \$6,030 per month for each camera location. The City currently has four camera locations throughout the City with a monthly expense of \$24,120 to Redflex, and utility costs averaging \$450 monthly. This cost is paid out of the Traffic Safety Fund (0600-190-1906-0235).

The proposed Amendment decreases the rate to \$5,500 per camera location for these four locations with a monthly expense of \$22,000. This represents a savings of \$2,000 per month or \$24,000 per year with the existing four approaches. Over the life of the new term the City will realize a savings of \$168,000. The Operating Cost Guarantee provision of the Agreement remains at \$500 per approach.

The proposed four new camera locations would begin at the rate of \$6,000 per location, which is \$24,000 monthly, with a seven year agreement.

The anticipated increase in revenue and operating expenses for the additional cameras has already been included in the FY 2009/10 Police Department operating budget recently approved by Council. Revenue is typically delayed up to 60 days after installation as traffic citations and fines begin to be processed through the courts.

BACKGROUND:

The City Council, on June 8, 2004, by Resolution No. 2004-301, approved implementing the automated red light enforcement program and approved 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. The City currently has four intersections installed with red light camera systems.

On April 6, 2009, the Safety & Communities Committee approved adding four additional intersections for installation:

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 four intersections are scheduled for installation upon approval of City Council. The remaining two intersections recommended for installation of red light photo enforcement technologies are at McHenry (S/R 108) at Briggsmore Avenue and McHenry (S/R 108) at Sylvan Avenue. Both of these intersections are part of the State's road system and require Cal-Trans approval before installation. Staff will continue to work with Cal-Trans to coordinate these last two locations.

Cost neutrality is assured to the City of Modesto. This means the City of Modesto will never pay Redflex more than actual cash received from the County through collection of red light citations. In the event that a balance remains unpaid due to a deficit in gross cash received by the City compared to invoiced amounts, City will provide Redflex with an accounting of such gross receipts supporting the amount withheld. Other key provisions include:

- The City of Modesto agrees to pay Redflex Traffic Systems within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for payments 60 days past due.
- In the event the contract ends or is terminated, all subsequent receipts from automated red light violations for a period of 12 months from the date of termination will be paid to Redflex.
- Intersection approaches can be relocated to a new site at the City of Modesto's request and expense.
- Each year the pricing will increase by the Consumer Price Index ("CPI"), as published by the Bureau of Labor Statistics for the United States Department of Labor. The term of this Agreement will for be for a seven-year "Initial Term."

COMMITTEE RECOMMENDATION:

The Safety and Communities Committee reviewed this item at its June 1, 2009 meeting, and recommending forwarding to full Council for approval. At that meeting an issue was raised by a member of the public concerning the affect that a recent court decision out of the City of Fullerton may have on the ability of the City to enter in to this amended agreement. The Committee directed the City Attorney to review this issue and address it in the Council Agenda staff report when the matter came before Council for action. Accordingly, in the case of People v. Debra Lynn Franco that involved a contract that the City of Fullerton made with a company by the name of NTS. The contract at issue involved a "cost neutrality" provision which entitled the City of Fullerton and NTS to negotiate the contractor's fee downward should the revenue

generated by the automated traffic enforcement system fall below the minimum fee amount provided by contract for any given billing period. The Court found that this contract provision was an impermissible incentive to the contractor to increase the number of citations being issued.

The contract which was involved in that case is distinguishable from the present contract between the City of Modesto and Redflex, in that, while our contract does have a provision for a minimum monthly fee to be paid by the City to Redflex for the services provided, regardless of the number of citations actually issued, and does contain a "cost neutrality" provision, that provision merely provides for the deferral of the payment of any difference between the revenues generated during a slow billing period and the minimum monthly fee to a later time at which revenue generated exceeds the minimum monthly fee. Under our contract's "cost neutrality" provision, in the event the revenue generated during a particular billing period fell short of the minimum fee amount due to Redflex, the City would realize a slight fiscal benefit by deferring the payment of the amount which represented the shortfall between revenues generated and the minimum monthly fee to a later date, but the full fee amount would still be owed and the City would still be required to pay it. Consequently, under our contract, Redflex does not face the prospect of a renegotiated minimum fee amount which adversely affects its compensation over the balance of the contract period in the event of a decline in ticket generation.

Because the City of Modesto contract does not provide for the renegotiation of the contract rate in a downward direction, but merely defers the payment of the amount representative of any shortfall between revenue generated and the periodic minimum fee amount until a future date, the Office of the City Attorney believes that our contract does not contain the same problematic "incentive" provision which the court found to be a fatal flaw in the Fullerton contract.

STRATEGIC PLAN ELEMENT:

This section directly relates to *Strategic Plan* goals:

- H.II.K.1.d. Target Safe Programs in high service call areas, and
- H.II.K.1.k. Identify critical problem areas and develop short and long term solutions/priorities to ensure Community Safety.

RECOMMENDED COUNCIL ACTION:

Resolution approving a First Amendment to an Agreement with Redflex Traffic Systems, Inc., for a seven-year agreement, with option for a one two-year renewal; and authorizing the City Manager, or his designee, to execute the Amendment.

Approved by:

Michael G. Harden, Interim Chief of Police

Greg Nyhoff, City Manager

Attachments:

1. First Amendment to Agreement with Redflex Traffic Systems, Inc.
2. Resolution