

5-25-04  
#1.11  
3421

**FIRST AMENDMENT TO AGREEMENT  
FOR RED LIGHT PHOTO ENFORCEMENT SERVICES**

THIS FIRST AMENDMENT is made and entered into effective this 25 day of June, 2004, by and between the CITY OF EL CAJON, a municipal corporation, hereinafter referred to as "City", and REDFLEX TRAFFIC SYSTEMS, INC., a California corporation, hereinafter referred to as "Contractor".

**RECITALS**

1. City and Contractor entered into that certain "AGREEMENT FOR RED LIGHT PHOTO ENFORCEMENT SERVICES" dated February 7, 2002 (the "Agreement"), by which City and Contractor established the terms and conditions for the installation and support of an automated enforcement equipment program at various intersections within the City of El Cajon.

2. California Vehicle Code section 21455.5 was amended in 2003 by Assembly Bill 1022 ("AB 1022"), providing, *inter alia*, that any contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include provision for the payment or compensation to the manufacturer or supplier of the equipment based on the number of citations issued, or as a percentage of the revenue generated.

3. Section 21455.5 further provides that the restrictions contained in AB 1022 will not apply to any contract between a governmental agency and a manufacturer or supplier of the automated enforcement equipment entered into prior to January 1, 2004, *unless* that agreement is renewed, extended, or amended on or after January 1, 2004.

4. The Agreement provides for an initial term of one (1) year following the date of acceptance of the system, by City, with automatic renewals of the Agreement on the same terms and conditions for four (4) one (1) year terms.

5. City and Contractor must amend the Agreement in order to comply with the terms of section 21455.5, as amended by AB 1022, and to extend the term of the Agreement, otherwise subject to the existing, terms and conditions of the Agreement.

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

Section 1. Section 2 of the Agreement is hereby amended to read as follows:

"2. Compensation.

"(a) Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the sum of Six Thousand Three Hundred Dollars and No Cents (\$6,300.00) each month for each intersection where Camera Units are installed and operational, initially at the following locations:

Intersection of Main and Mollison  
Intersection of Broadway and Mollison  
Intersection of Fletcher Parkway and Magnolia  
Intersection of Washington and El Cajon Boulevard  
Intersection of Jamacha/Second and Main  
Intersection of Washington and Mollison  
Intersection of Magnolia and Madison

“(b) Each month Contractor shall furnish to City an **original** invoice which includes the number of intersections where Camera Units were installed and fully operational for the prior month. Except as to any charges submitted by Contractor, which are disputed by City, City will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor’s invoice.

“(c) Notwithstanding the above, should City elect, after initial installation, to modify the physical installation of Camera Unit(s), such modification will be billed by Contractor to City on a time and materials basis.

“(d) Contractor's fee shall include and Contractor shall be responsible for the payment of all Federal, State, and local taxes of any kind that are attributable to the compensation received.

Section 2. Section 3 of the Agreement is hereby amended to read as follows:

“3. Term of Agreement and Extension.

“Subject to the provisions of Section 4 below, "Termination of Agreement", the term of this Agreement shall be from the date of execution of this Agreement, as first shown above, through the date City accepts the Red Light Camera System (the “Acceptance Date”), together with one five (5) year term immediately following the Acceptance Date.

“Upon expiration or termination of this Agreement, Contractor shall provide all reasonable assistance and use its reasonable efforts to deliver to City, in an orderly and expedient manner, all records and photo files prepared for or belonging to City. Notwithstanding expiration or termination of the Agreement, City shall pay Contractor all amounts due and payable under this Agreement, and Contractor shall continue to provide the Services, for Violations occurring prior to the date of expiration or termination.

Section 3. Section D (with the heading, “Standards of Performance,” erroneously designated “C” in the Agreement) is hereby amended to read as follows:

“D. Standards of Performance.”

“(1) Contractor is required to meet certain Standards of Performance in providing red light automated photo enforcement services to City.

“(2) City will establish minimum red light signal timing for each monitored approach movement at the monitored intersections. Contractor warrants that its RLCS will detect and capture all red light Violations that occur at each

monitored intersection in City. Contractor further warrants that not less than 50% of the Violations detected and captured by the RCLS at each monitored intersection will be of sufficient content and quality so as a Citation may be issued by City.

“(3) Citations shall be issued only by appropriate City law enforcement personnel.

“(4) Should the number of number of Citations issued by City in any two consecutive (2) months, in the aggregate for all intersections, fall below 50% of the Violations detected and captured by the RLCS in that same month, Contractor shall be deemed out of compliance with the Standards of Performance. Upon receipt of written notice from City, Contractor shall have thirty (30) days in which to bring the RCLS into compliance with this Standard of Performance. If Contractor fails or is unable to correct such cause, City shall reduce the amount of total monthly compensation invoiced by Contractor for each succeeding month until Contractor achieves compliance with the Standard of Performance as follows (the ranges being inclusive and without regard to portions of a percent): If the violations issued are less than fifty percent (50%) but at least forty-five percent (45%) the invoice shall be reduced by five percent (5%); if the violations issued are less than forty-five percent (45%) but at least forty percent (40%) the invoice shall be reduced by ten percent (10%); if the violations issued are less than forty percent (40%) the invoice shall be reduced by fifteen percent (15%). If the violations issued are less than forty percent (40%) for sixty (60) days or more, City has the right, but not the obligation, to terminate this Agreement. For the purpose of this subdivision (4) the following detections of violations will not be used in calculating compliance with the Standard of Performance: Right turns on a red light where no citation is issued; determinations not to issue citations due to vehicle registration problems; and determinations as described in the Business Rules/Issuing Criteria.

“(5) Should any of the RCLS approaches become inoperable for a period of time not less than three (3) days in any calendar month, during which time no citations are issued by City, whether the circumstances are scheduled or unscheduled, City shall reduce the compensation otherwise payable to Contractor by the amount of \$205 per location for each day the location is inoperable

“(6) Should a change in California law result in the Contractor’s inability to comply with the Standards of Performance, Contractor may seek to amend this Agreement.

Section 4. Except as otherwise provided in this First Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment the date and year first above written.

City of El Cajon, a municipal corporation.

Redflex Traffic Systems, Inc., a California corporation

By Bill Garrett  
Bill Garrett  
City Manager

By Karen Finley  
Karen Finley  
Vice-President of Operations

ATTEST:

Marilynn Linn  
Marilynn Linn, CMC  
City Clerk

APPROVED AS TO CONTENT:

A. Marvin Munzenmaier  
A. Marvin Munzenmaier  
Director of Public Works

APPROVED AS TO CONTENT:

James R. Davis  
James R. Davis  
Chief of Police

APPROVED AS TO FORM:

Morgan L. Foley  
Morgan L. Foley  
City Attorney

COUNCIL DATE: 5-25-04  
ITEM #: 1.11