

# REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

JUNE 7, 2010

TITLE:

## AMENDMENT TO AGREEMENT FOR REDLIGHT PHOTO ENFORCEMENT SYSTEM

  
CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1<sup>st</sup> Reading
- Ordinance on 2<sup>nd</sup> Reading
- Implementing Resolution
- Set Public Hearing For \_\_\_\_\_

CONTINUED TO \_\_\_\_\_

FILE NUMBER \_\_\_\_\_

## RECOMMENDED ACTION

Authorize the City Manager and the Clerk of the Council to execute the attached Third Amendment to Agreement with Redflex Traffic Systems, Inc., subject to non-substantive changes approved by the City Manager and City Attorney to support a Red Light Photo Enforcement program.

## DISCUSSION

On December 2, 2002, Council approved a five-year agreement with Redflex Traffic Systems, Inc. for the installation, maintenance, and support of an automated Red Light Photo Enforcement System. The original agreement included the installation and support for up to twenty approaches at designated intersection approaches throughout the City for the purpose of enforcing red light traffic violation. During the initial term, twenty approaches were installed in the City. The original agreement also provided for two consecutive one-year extension options at the expiration of the initial term to provide continuous, uninterrupted service. The parties exercised both of these options, providing for uninterrupted service through June 18, 2010.

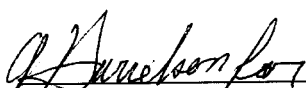
In order to continue uninterrupted service, the parties have prepared a Third Amendment to Agreement in order establish a new five year term commencing on June 18, 2010, and including two consecutive one-year extension options at the expiration of the initial term. This amendment also decreases the cost of service for existing intersections from \$5,370 to \$3,900 per approach per month, and sets the cost for new approaches at \$4,750 per month, which includes the cost of installation of new equipment, maintenance, and operational services. The amendment also allows the City to order the installation of up to twenty (20) new approaches in the City at its option. The contract is further amended to require Redflex to issue warning notices at each new approach, and to provide expert court testimony upon request. In addition, the City will have the opportunity to terminate the contract if there are any changes in the law or negative court rulings that would prevent prosecution of the subject incidents.

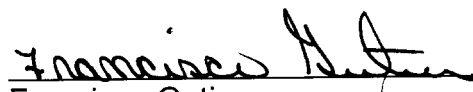

Redflex Traffic Systems, Inc has preformed satisfactorily with the system installation, software, maintenance, support and citation processing services provided. Staff recommends executing this agreement. Changing systems would be cost prohibitive and would require new construction at all existing intersections, changing software systems and retraining staff.

**FISCAL IMPACT**

Funds are available in the Police Department's Traffic Division Fund Account (account no. 01114405-62300) in the Fiscal Year 2010-11 budget.

APPROVED AS TO FUNDS AND ACCOUNTS:

  
\_\_\_\_\_  
Paul M. Walters  
Chief of Police  
Police Department

  
\_\_\_\_\_  
Francisco Gutierrez  
Executive Director  
Finance & Mgmt. Services Agency 

**THIRD AMENDMENT TO AGREEMENT BETWEEN THE CITY OF SANTA ANA AND  
REDFLEX TRAFFIC SYSTEMS, INC.**

THIS THIRD AMENDMENT (the "Amendment") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between REDFLEX TRAFFIC SYSTEMS, INC., a Delaware Corporation, with offices at 23751 N. 23<sup>rd</sup> Avenue, Suite 150, Phoenix, AZ 85085-1854 (hereinafter referred to as "Redflex"), and the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("City"), collectively referred to herein as "the Parties".

**RECITALS**

- A. The parties previously entered into an Agreement between the City of Santa Ana and Redflex Traffic Systems, Inc. , number A-2002-231, dated December 2, 2002 (the "Agreement"), to provide automated red light photo enforcement in the City of Santa Ana; and,
- B. The parties mutually agree to amend certain terms of the Agreement, including, among other revisions, the term, installation, violation processing, training, compensation, go live and final acceptance, insurance, and termination clauses.
- C. The Santa Ana City Council hereby authorizes the Chief of Police to exercise the option to extend the term for a one (1) year period upon the expiration of this five (5) year term, and to exercise the option to extend the term for a second one (1) year period upon the expiration of the first one (1) year extension of said agreement, upon the discretion of the Chief of Police,

WHEREFORE, in consideration of the mutual and respective covenants and promises contained herein, and subject to all of the terms and conditions of said Agreement as hereby amended, the parties agree as follows:

- 1. **TERM.** Paragraph 1 of the Amendment entered into February 4<sup>th</sup>, 2008, pertaining to the Term in Section 1, is amended as follows:  
As of the effective date of this Amendment, the term is extended for five (5) years commencing June 18<sup>th</sup>, 2010. By mutual agreement, the term of this Amendment may be extended by two (2) additional consecutive one-year (1) periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City has the right to extend by providing written notice to Redflex not less than 30 days prior to the last day of the renewal term. Even after termination of the instant contract, either through expiration of the term or invocation of the termination clause, Redflex will continue to provide the City with evidence packages and prosecutorial support for any violations captured by the red light camera equipment up to the date of termination of the contract.
- 2. **PARAGRAPH 3 - INSTALLATION** is amended as follows:  
With respect to the number of Designated Intersection Approaches mentioned in the first sentence of Paragraph 3 – Installations, the number of approaches is modified to include an additional twenty (20) approaches for a total of up to forty (40) approaches. The installation of such additional approaches, or research of the same by the City, is not required, and is at the sole discretion of the City. Redflex will provide site surveys for proposed approaches to the City at no charge at the request of the City. All other aspects of this paragraph are to remain unchanged.

Section J below is now added as follows:

j. Redflex construction will be able to utilize existing conduit for installation where space is available. Where it is determined by both parties that additional conduit is necessary, the cost shall be borne by Redflex; however, the City shall provide at no cost the necessary encroachment permits.

3. **PARAGRAPH 5 – VIOLATION PROCESSING**

Section j is amended as follows:

EXPERT COURT TESTIMONY: Contractor shall provide, at no cost to City, expert court testimony for use by City in prosecuting Violations. Such request must be made in writing with no less than fourteen (14) calendar day notification prior to court proceeding, when feasible and allowable. Otherwise, any request for testimony made in a reasonable manner and amount of time must be honored by Redflex. City will be provided with a local expert at no cost; however, should City warrant expert court testimony from Redflex Traffic Systems Arizona offices, after exhausting all other options, such expert shall be provided to City on a cost reimbursement basis. Such compensation is to include reasonable travel expenses only to appear at the venue for court testimony. The City reserves the right to review and scrutinize any travel invoices from Redflex, and to refuse payment for unreasonable charges. If testimony is regularly required from Redflex Traffic Systems Arizona offices, this shall serve as reasonable cause for termination of the contract pursuant to Paragraph 21 – Termination of the agreement.

4. **PARAGRAPH 6 – Training**

Section a is amended as follows:

Contractor shall provide training at no cost to the City for up to an additional fifteen (15) personnel of the City during the term of the instant amendment commencing on June 18, 2010. All other aspects of this section are to remain unchanged.

5. **PARAGRAPH 10 – COMPENSATION**

Section a - is amended as follows:

Commencing on the execution of this Third Amendment to the Agreement, City shall be obligated to pay Redflex a fixed fee for each Intersection Approach as full remuneration for performing all of the services contemplated in this Agreement as per the following three (3) pricing categories:

**Category 1:** Fixed Fee of \$3900.00 per month per approach for each of the following twenty (20) Existing Intersections Approaches:

Harbor / McFadden – N/B  
First St. / Euclid – N/B  
Euclid / First St. – N/B  
17<sup>th</sup> St. / Broadway – N/B  
17<sup>th</sup> St. / Bristol St. – N/B  
First St. / Grand – N/B  
Santa Ana Blvd. / Main St. – W/B  
First St. / Fairview – N/B  
Fairview / First St. – N/B  
Harbor / Warner – N/B  
Harbor / Westminster – N/B  
Westminster / Harbor – N/B  
Newhope St. / Hazard Ave. – S/B  
Bristol St. / Edinger – N/B  
17<sup>th</sup> St. / Tustin Ave. – W/B  
17<sup>th</sup> St. / Tustin Ave. – S/B  
Segerstrom Ave. / Raitt – W/B

Dyer Rd. / Pullman St. – W/B  
Bristol St. / Segerstrom Ave. – S/B  
Warner / Harbor – W/B

**Category 2:** Relocation of up to five (5) approaches, mutually agreed upon by both City and Contractor, will be at no cost to the City. Once the approach relocation is completed, the relocated approaches will be categorized as new Designated Intersection Approaches with a fixed fee of \$4750 per month per approach thereafter. Fixed fee for these relocated approaches will be prorated on the monthly billing to reflect the time each new approach is operational.

**Category 3:** For each new Designated Intersection Approach, City shall be obligated to pay Redflex a fixed fee of \$4750 per month per approach for each new Designated Intersection Approach as full remuneration for performing all of the services contemplated in this Agreement.

**Business Assumptions for All Pricing Options:** Where improvements to capture additional lanes are added to any of the above approaches, the fixed fee will be increased proportionally by mutual agreement between both parties.

In the event that a system is disabled for more than 24 hours, the monthly fee for that system will be reduced to the number of days operational and a prorated fee will apply for that system. However, in the instance of a system disabled for more than 48 hours due to a knockdown, the monthly fee will be prorated after 48 hours. If a system is disabled during a weekend, the monthly fee will be prorated after 48 hours.

Section f below is now added as follows:

f. **FAILURE TO APPEAR:** Requests for FTA Reports (Failure to Appear) made within one year of Violator's failure to appear, will be provided at no charge to City.

Section g below is now added as follows:

g. **ROADWAY PROJECTS:** Contractor will not be responsible for the construction costs of Roadway or Intersection improvement projects. Contractor shall be responsible for equipment placement for operational system approaches as a result of any roadway or intersection improvement project by City. If a system is deactivated at the City's request due to roadway construction or project, the City will not be billed for the Intersection Approach downtime for that system until the project is completed.

6. **PARAGRAPH 11 – GO LIVE AND FINAL ACCEPTANCE**

Section a is added as follows:

Redflex will be required to issue at least thirty (30) days worth of warning notices with no charge to the City for each new or moved intersection approach.

7. **PARAGRAPH 12 – INSURANCE** is amended as follows:

Prior to undertaking performance of work under this Agreement, Contractor shall obtain and cause to remain in full force and effect during the Term insurance as described below:

Section a is amended as follows:

Commercial General Liability Insurance. Contractor shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting there from and damage to property, resulting

from any act or occurrence arising out of Contractor's operations in the performance of this Agreement. The amounts of insurance shall be not less than the following: single limit coverage applying bodily and personal injury, including death resulting there from, and property damage, in the total amount of \$2,000,000.00 per occurrence, and a general aggregate limit of not less than \$5,000,000.00. Limits required can be provided through any combination of primary and excess policies. Contractor shall supply City with a fully executed additional insured endorsement in substantially the form attached hereto as Exhibit A upon execution of the Agreement and shall be approved in form by the City Attorney.

Section b is amended as follows:

Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$2,000,000.00 per occurrence, and a general aggregate limit of not less than \$5,000,000.00. Limits required can be provided through any combination of primary and excess policies. Such insurance shall include coverage for owned, hired and non-owned automobiles.

Section d is amended as follows:

If Contractor is or employs a licensed professional such as an architect or engineer, professional liability (errors and omissions) insurance is required, with a combined single limit of not less than \$2,000,000.00 per claim.

Section e (iii) is amended as follows:

Certificates of Insurance on all policies shall state that the insurer will endeavor to mail the City written notice of not less than thirty (30) days prior to cancellation, except only ten (10) days in the event of cancellation due to non-payment of premium.

8. **PARAGRAPH 21 – TERMINATION**

Section a is amended as follows:

Any negative ruling or order from any court pertaining to the admissibility of red light camera results, or the legality or sufficiency of the red light camera system, or any other issue that reasonably inhibits the prosecution of red light camera cases shall provide immediate cause for termination.<sup>9</sup> **EXCEPT AS AMENDED IN THIS AMENDMENT**, all other provisions of the Agreement shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Third Amendment to said Agreement as of the day and year first set forth above.

ATTEST:

CITY OF SANTA ANA

\_\_\_\_\_  
Maria D. Huizar  
Clerk of the Council

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David N. Ream  
City Manager

APPROVED AS TO FORM:  
Joseph W. Fletcher  
City Attorney

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Ryan O. Hodge  
Deputy City Attorney

REDFLEX TRAFFIC SYSTEMS, INC.,

RECOMMENDED FOR APPROVAL:

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Aaron Rosenberg  
Executive Vice President

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Paul M. Walters  
Chief of Police

