

SECOND AMENDMENT TO  
EXCLUSIVE AGREEMENT BETWEEN THE CITY OF CITRUS HEIGHTS  
AND REDFLEX TRAFFIC SYSTEMS, INC. FOR  
PHOTO RED LIGHT ENFORCEMENT PROGRAM

This Second Amendment (the "Second Amendment") to Exclusive Agreement between the City of Citrus Heights and Redflex Traffic Systems Inc. for Photo Red Light Enforcement Program is made by and between Redflex Traffic Systems, Inc. ("Redflex") and the City of Citrus Heights, CA ("Customer") (individually the "Party" and collectively referred to as the "Parties"). The Effective Date of this Second Amendment is December 11, 2015 ("Effective Date").

**RECITALS**

1. The Parties executed the Exclusive Agreement between the City of Citrus Heights and Redflex Traffic Systems Inc. for Photo Red Light Enforcement Program on December 10, 2007 (the "Original Agreement");
2. The Original Agreement was amended on November 8, 2012 (the "First Amendment") (collectively, with the Original Agreement, the "Agreement");
3. The Parties desire to extend the term of the Agreement and modify the Agreement to reflect changes to the Photo Red Light Enforcement Program.

The Parties amend the Agreement as follows:

**TERMS AND CONDITIONS**

- A. **Definitions.** Section 1, "Definitions" of the Agreement is amended to include the following definitions.

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

1.32 "New Designated Intersection Approaches" means the Designated Intersection Approaches that are installed and in operation after the Effective Date of the Second Amendment, if any.

- B. **Term.** Section 2, "Term" of the Agreement is replaced in its entirety to read as follows:

The term of this Agreement shall commence as of the date first set forth above and shall continue for a period of eight (8) years after the Installation Date (the "Initial Term"). The Agreement is hereby extended for three (3) years commencing on the Effective Date of the Second Amendment (the "Renewal Term"). Customer has the right, but not the obligation, to extend the Renewal Term of the Agreement for two (2) additional two (2) year periods following the expiration of the Renewal Term (each an "Additional Renewal Term"). Customer may exercise the right to extend the term of this Agreement for an Additional Renewal Term by providing written notice to Redflex not less than forty-five (45) days prior to the last day of the Renewal Term or Additional Renewal Term, as the case may be. The Initial Term, Renewal Term, and Additional Renewal Term(s), if any, shall be referred collectively to as the "Term."

- C. **Pricing.** Exhibit D of the Agreement, "Compensation & Pricing," is hereby replaced in its entirety with Exhibit D, "Compensation and Pricing, attached hereto and incorporated herein by reference to this Second Amendment.

- D. **Malfunction Rate.** Section 3.8 is added to the Agreement and shall provide the following:

3.8. Malfunction Rate.

- 3.8.1. If a Redflex Photo Red Light System at any Designated Intersection Approach has a Malfunction Rate (as defined below), that is greater than or equal to twenty-one percent (21%) of the total incidents captured by that Redflex Photo Red Light System in a particular month, then Customer shall be entitled to a credit against the Fixed Monthly Fee for the Designated Intersection Approach at issue equal to the Malfunction Rate, and this credit shall only be applied to the month in which the twenty-one percent (21%) or higher Malfunction Rate occurred. For example, if a Redflex Photo Red Light System at a Designated Intersection Approach having a \$5,200.00 Fixed Monthly Fee has a thirty-percent (30%) Malfunction Rate for a certain month, then Customer shall be entitled to a credit of \$1,560.00 ( $\$5,200.00 \times .30$ ) for the Designated Intersection Approach for that month.
- 3.8.2. The "Malfunction Rate" shall be determined from the Redflex online Customer Management Report, and shall include rejections caused by one or more components of the Redflex Photo Red Light System, including, but not limited to, camera malfunctions or video errors. The Malfunction Rate shall exclude rejections that are not controllable by Redflex or the Redflex Photo Red Light System, including, but not limited to: driver obstruction; motor cycle helmet; plate obstruction; vehicle obstruction; extended vehicle; out-of-country and paper plates; emergency vehicles; sun glare; and non-prosecutable violation.
- 3.8.3. Upgrades. Redflex will continue the process of upgrading its curbside Equipment to assure the lowest Malfunction Rate possible.

E. Tablets. Section 3.9 is added to the Agreement and shall provide the following:

- 3.9. Tablets. Redflex shall provide two (2) Dell Venue tablet computers, or comparable tablet computers, (the "Tablets") to Customer to enable access to certain Redflex programs and systems. Customer shall use the Tablets for the sole purpose of accessing Redflex programs and systems. Ownership of the Tablets shall remain with Redflex. Customer agrees that upon expiration or termination of the Agreement it will deliver possession of the Tablets to Redflex, unless otherwise agreed to in writing.

F. Prevailing Wages. Section 3.10 is added to the Agreement and shall provide the following:

- 3.10. Prevailing Wages. Pursuant to Labor Code section 1771, Customer requires that Redflex and any subcontractors of Redflex shall pay employees employed upon public work a salary or wage at least equal to the prevailing salary or wage for work of similar character in the locality in which the public work is performed. Redflex shall, as a penalty, forfeit to Customer the amount specified by law for each calendar day or portion thereof, for each employee paid less than the prevailing salary or wage for any public work done under this Agreement by Redflex or any subcontractor of Redflex. In accordance with California Labor Code section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the work is to be performed. In accordance with California Labor Code section 1773, Customer has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the work. In accordance with California Labor Code section 1773.2, copies of the prevailing rate of per diem wages are on file with Customer and will be made available on request.

B. Throughout the performance of the work, Redflex shall comply with all applicable laws and regulations that apply to wages earned in performance of public work. Redflex assumes all responsibility for such payments and shall defend, indemnify, and hold harmless Customer and its officers, employees, agents, and representatives from

all liability of any kind, including without limitation all penalties, assessments, causes of action, claims, demands, damages, expenses, costs and losses, including reasonable attorneys' fees, of any kind or nature, arising out of or related to noncompliance with such laws and regulations, including but not limited to, claims for noncompliance with California Labor Code section 1770, *et seq.* made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party with regard thereto.

C. During the term of this Agreement, Redflex warrants that it is currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5. Redflex further warrants that any subcontractors who engage in the performance of any public work are registered and qualified to perform public work consistent with Labor Code section 1725.5.

G. **Downtime.** Section 7 is added to Exhibit "C" and shall provide the following:

7. In the event that Redflex or Customer discovers any material problem or defect that causes a Redflex Photo Red Light System at a Designated Intersection Approach to be down or offline, Redflex shall use its best efforts to cause such problem or defect to be repaired within 48 hours, excluding weekends. This does not include a Redflex Photo Red Light System that is down or offline due to a power outage or other causes beyond the reasonable control of Redflex. In the event that the Redflex Photo Red Light System is not fully operational within forty-eight (48) hours of the material problem or defect occurring, Redflex shall credit the monthly invoice in the amount of 1/30th of the Fixed Monthly Fee for the downed Designated Intersection Approach for each day the approach is down, including the initial days of nonoperation.

H. **Notices.** Section 10.1 of the Agreement is amended in its entirety to read as follows:

10.1. Notices to Redflex:  
Redflex Traffic Systems, Inc.  
5651 W. Talavi Blvd., Suite 200  
Glendale, AZ 85306  
Attn: Michael R. Finn  
Facsimile: (623) 207-2056

I. **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.

J. **Governing Law and Forum.** This Second Amendment shall be construed in accordance with the laws of the State of California, and venue for any action shall lie in the County of Sacramento.

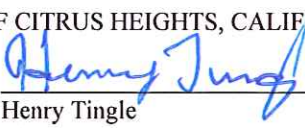
K. **Severability.** If any term, condition, or covenant of this Second Amendment is declared or determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Second Amendment shall not be affected thereby and the Second Amendment shall be read and construed without the invalid, void, or unenforceable provision(s).

L. **Interpretation of Second Amendment.** The headings within this Second Amendment are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Second Amendment. Each party hereto has had an equal opportunity to participate in the drafting of this Second Amendment and/or consult with legal counsel. Therefore the normal construction as against the drafting party shall not apply to this Second Amendment.


M. **Counterparts.** This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first set forth above.

CITY OF CITRUS HEIGHTS, CALIFORNIA

By:   
Name: Henry Tingle  
Title: City Manager  
Date: 1-6-16

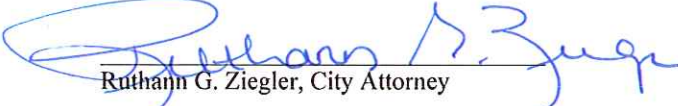
REFLEX TRAFFIC SYSTEMS, INC.

By:   
Name: Michael R. Finn  
Title: CEO and President  
Date: 1/22/16

ATTEST:

  
Amy Van, City Clerk

APPROVED AS TO FORM:

  
Ruthann G. Ziegler, City Attorney

**“EXHIBIT “D”  
COMPENSATION & PRICING**

**PRICING PROVISIONS AND OPTIONS:**

Additional Definitions:

For purposes of this Exhibit D, “Gross Photo Enforcement Revenue” shall mean funds Customer receives from the court(s) that is specifically designated as photo enforcement revenue.

A. Fixed Monthly Fee. Commencing on the Effective Date of the Second Amendment, the Fixed Monthly Fee for each Designated Intersection Approach is as follows:

1. Fixed Monthly Fee of \$4,562.50 per month, per Designated Intersection Approach for all Existing Designated Intersection Approaches.
2. Fixed Monthly Fee of \$6,070.00 per month, per Designated Intersection Approach for all New Designated Intersection Approaches.
- 3.

B. Customer Operating Costs. Customer’s monthly program operating costs are estimated to be \$1,214.28 per active Designated Intersection Approach each month (“Customer Operating Costs”). The gross cash receipts received by Customer each month from Gross Photo Enforcement Revenue shall first be applied to Customer Operating Costs. In order to ensure Cost Neutrality to Customer, as discussed in Section C of this Exhibit D, Customer will only be obligated to pay Redflex from the Gross Photo Enforcement Revenue after first deducting Customer Operating Costs (“Net Enforcement Revenue”). In the event that a balance remains unpaid due to a deficit in Net Enforcement Revenue compared to the invoiced amount, Customer will provide Redflex an accounting of such amounts supporting nonpayment of full invoiced amount and balance remaining, at the time of payment, or, if no payment is made, on the date payment is due.

C. Cost Neutrality.

1. Customer shall have the option to make payments to Redflex in accordance with the cost neutrality payment option described in Sections B and C (1)–(2) of this Exhibit D (“Cost Neutrality”). Under Cost Neutrality, Customer may defer payment of that portion of the Fixed Monthly Fees in excess of the Net Enforcement Revenue, until Customer has collected sufficient funds pursuant to this Agreement to pay that deferred portion of monthly service fees (“Deferred Monthly Fee”). A Deferred Monthly Fee shall be paid from funds collected in the following month pursuant to this Agreement, provided that sufficient funds are collected during that month to pay the all, or a portion of, the Deferred Monthly Fee. Specifically, the Net Enforcement Revenue for each month shall be applied first to any unpaid Deferred Monthly Fees and then to that month’s Fixed Monthly Fee; provided, however, that Customer shall never be required to pay in any month an amount in excess of the Net Enforcement Revenue for that month.
2. Redflex shall maintain an accounting of the net balance of Fixed Monthly Fees and Deferred Monthly Fees owed to Redflex. In all events, Customer will not be obligated to pay the full amount of an invoice for any given month unless there is sufficient Net Enforcement Revenue in that month to pay all of the amounts of the Deferred Monthly Fees as well as the full amount of that month’s Fixed Monthly Fees.
3. Cost Neutrality Reconciliation.
  - i. Cost Neutrality will be reconciled at the end of each year on the anniversary of the Effective Date (“Cost Neutrality Reconciliation”). If at that time there is an outstanding balance of Deferred Monthly Fees, the Term of the contract shall be extended

by a certain number of days ("Cost Neutrality Days") based on the amount of Deferred Monthly Fees in accordance with the formula below. Cost Neutrality Days will be calculated each year and will be added together at the end of the Term to determine the total amount of the days the Term will be extended (the "Cost Neutrality Term").

X = the total outstanding Deferred Monthly Fees for that year

Y = the average Fixed Monthly Fee for all active Designated Intersection Approaches during the year

For example: If there are eight (8) active Existing Designated Intersection Approaches listed above for the first six months of the year, and ten (10) active Designated Intersection Approaches (8 Existing and 2 New) for the second six months of the year, then Y would equal \$42,570.00 based on this calculation:  $[12 \times (8 \times \$4562.50) + 6 \times (2 \times \$6070)]/12$

X/Y = the ratio of the total Deferred Monthly Fees to the average Fixed Monthly Fee

$(X/Y) \times 30$  days = Cost Neutrality Days to be added to the Cost Neutrality Term for that year rounded up to the nearest full day.

For example: Assume the Agreement is for 3 years with the aforementioned active Designated Intersection Approaches for Year 1 (yielding a Y equal to \$42,570.00), and the 10 Designated Intersection Approaches remaining active for Years 2 and 3 (yielding a Y equal to \$48,640.00). Also assume the following Deferred Monthly Fees: Year 1, X = \$50,000; Year 2, X = \$30,000; and Year 3, X = \$10,000. The Cost Neutrality Term will be calculated as follows.

	X	Y	X/Y	(X/Y) x 30	Cost Neutrality Days
Year 1	\$50,000.00	\$42,570.00	1.18	35.4	36 days
Year 2	\$30,000.00	\$48,640.00	0.62	18.6	19 days
Year 3	\$10,000.00	\$48,640.00	0.21	6.3	7 days
<b>Cost Neutrality Term =</b>					<b>62 days</b>

ii. The outstanding balance of Deferred Monthly Fees will return to zero (\$0) at the end of each year as long as the Cost Neutrality Reconciliation process is in effect.

iii. The Cost Neutrality Term will begin upon the last the day of the Term. The Cost Neutrality Reconciliation process will not occur during the Cost Neutrality Term; however, Cost Neutrality will apply. For clarity, if any Deferred Monthly Fees accrue during the Cost Neutrality Term, and remain at the end of the Cost Neutrality Term, such remaining amount shall be waived by Redflex.

iv. Termination.

a. In the event of early termination pursuant to Section 6.1(i) or (ii) of this Agreement, then the total outstanding Deferred Monthly Fees accrued since the most recent Cost Neutrality Reconciliation, and the Cost Neutrality Term accrued in prior years, shall be waived by Redflex. The foregoing shall also apply to early termination pursuant to Section 6.1(iii) caused by Redflex's material breach of this Agreement.

b. In the event of early termination pursuant to Section 6.1(iii) of this Agreement caused by Customer's material breach, then the total outstanding Deferred Monthly Fees from the calendar year of the termination shall be owed by Customer to Redflex, and Cost Neutrality and Cost Neutrality Reconciliation shall not apply to such sums. Furthermore the Cost Neutrality Term accrued in prior years shall begin upon the last day of the forty-five (45) day notice period

described in Section 6, effectively extending the notice and performance period by the Cost Neutrality Term.

- v. The Fixed Monthly Fees for the Cost Neutrality Term shall be based on the Fixed Monthly Fees for each operational Designated Intersection Approach for the month immediately preceding the commencement of the Cost Neutrality Term.
4. Cost Neutrality is guaranteed except to the extent:
- i. The Authorized Officer fails to approve violations by the due date, in good faith and due diligence;
  - ii. Systems are de-activated due to Customer requirement;
  - iii. Collections are not reasonably pursued, unless, despite attempts by Customer to encourage collections by the courts, the courts fail to pursue unpaid collections; or
  - iv. Customer fails to enforce right turn violations (from automated red light violations), in good faith and due diligence, if and when systems are configured for this purpose as mutually agreed between Redflex and Customer.

D. Disabled Approaches. Redflex and Customer recognize that due to construction or maintenance by Customer, the State (or agency thereof), or Redflex, occasionally Approaches may be temporarily disabled. For Approaches disabled for a period of over seven (7) consecutive days, Customer shall only be invoiced and will only be obligated to pay an amount equal to fifty percent (50%) of the Fixed Monthly Fee for that specific Approach. For example, for a New Designated Intersection Approach where the fixed fee is \$6,070, if the Approach is temporarily disabled for a period of ten (10) days, Customer shall only be obligated to pay \$3,035 for that Approach for that month. The unpaid fifty percent (50%) shall be forgiven and shall not be considered a Deferred Monthly Fee for purposes of Cost Neutrality.

**BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS:**

- 1. Redflex construction will be able to utilize existing conduit for installation where space is available. If it is determined that new conduit must be installed the cost of the installation of the same shall be borne by Redflex.
- 2. The pricing will remain fixed for three (3) years. Each year thereafter, on the anniversary date of the Effective Date of the Second Amendment, the pricing will increase by the CPI, if any. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for U.S. City average, and based upon the CPI change from September of the previous year to September of the current calendar year.
- 3. Customer agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid sixty (60) days from date of invoice.
- 4. The provision of all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of Redflex.
- 5. The on-going provision of any and all necessary electrical power to the Designated Intersection Approaches will be the sole responsibility of Customer.
- 6. Redflex shall be responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to, the California Vehicle Code § 21455.5(a)(1), with Customer's approved design. Customer shall install and determine the placement of such signage in accordance with California Vehicle Code § 21455.5(a)(1).
- 7. Required Credit Card fees will not be considered to be revenue received and are the responsibility of the violator.
- 8. Roadway/Intersection improvement projects: Customer shall reimburse Redflex the costs of replacement or modification of operational Designated Intersection Approaches necessitated by roadway/intersection improvement projects. Redflex shall use reasonable efforts to mitigate the necessity or cost of such replacement or modification.

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