



RESOLUTION 2013-045

AMEND THE REDFLEX CONTRACT FOR THE PHOTO RED LIGHT ENFORCEMENT SYSTEM

WHEREAS, the City Council adopted Resolution 2009-023 in March 2009 authorizing the City Manager to enter into an agreement with RedFlex for Photo Red Light Services, and

WHEREAS, Staff has negotiated an amendment to the original contract as the original terms of the contract no longer fit the needs of the City of Sherwood; and

WHEREAS, the two significant amendments to the original agreement include 1) establishing a "flat rate" instead of a "per paid citation" amount to allow for consistency and stability for billing and budgeting, and 2) adding Performance Clause language to hold RedFlex financially accountable for errors on citations and for malfunctioning or non-operational equipment.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to proceed with the Amendment No. 1, attached hereto as Exhibit A, of the RedFlex Contract effective September 1, 2013.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 20th day of August 2013.



Bill Middleton, Mayor

Attest:



Sylvia Murphy, CMC, City Recorder

AMENDMENT NO. 1
TO April 29, 2009 AGREEMENT
BETWEEN
CITY OF SHERWOOD, OREGON
AND
REDFLEX TRAFFIC SYSTEMS, INC.
FOR
PHOTO REDLIGHT ENFORCEMENT SERVICES

This First Amendment ("Amendment") is executed this ___ day of July, 2013 by and between Redflex Traffic Systems, Inc. with offices at 23751 North 23rd Avenue, Phoenix, AZ 85085 ("Redflex"), and the City of Sherwood, an Oregon municipal corporation and with offices located at 22560 SW Pine Street, Sherwood, OR 97140 ("Sherwood").

RECITALS

WHEREAS, Redflex and Sherwood entered into an Agreement dated April 30th, 2009 ("Agreement") for provision of automated red light photo enforcement within Sherwood's corporate limits;

WHEREAS, Redflex has knowledge, possession and ownership of equipment, licenses, applications and citation processes related to digital photo red light enforcement systems;

WHEREAS, Sherwood wishes to continue using Redflex to provide equipment, processes and back office services for monitoring, identification and enforcement of red light violations;

WHEREAS, Redflex and Customer wish to amend certain Agreement terms relating to compensation and other matters.

NOW THEREFORE, in consideration of the mutual covenants contained herein Redflex and Customer agree the Agreement should be amended as follows:

AGREEMENT

1. Section 2.1 of the Agreement, entitled "Agreement Term" is hereby amended in its entirety and replaced with the following:

2.1. Agreement Term. This Amendment commences as of the execution date noted above and continues thereafter for a period of five (5) years ("Initial Term"). Sherwood may extend the Amended Agreement for an unlimited number of consecutive automatic one (1) year periods following expiration of the Amendment's Initial Term (each, "Renewal Term" and collectively with the Initial Term, "Term"). Sherwood may opt not to continue with the Amended Agreement by providing Redflex written notice of not less than forty-five (45) days.

2. Provision 12.4 of the Agreement entitled "Reimbursement of Direct Costs" is hereby deleted in its entirety and replaced with the following language:

12.4 Reimbursement of Direct Costs. Sherwood agrees to reimburse REDFLEX for direct costs related to installation and establishment of Sherwood's system, including:

- construction services;
- software configuration; and
- hardware depreciation.

REDFLEX shall, within 60 days of the system's installation present the amounts of direct costs subject to the reimbursement obligation noted below for Sherwood's approval.

All Sherwood approved direct costs shall be amortized by Redflex over a 36 month period with Sherwood being responsible for payment of unamortized costs should it terminate the Agreement prior to the end of the 36 month period. For example, in the event Sherwood terminates the Agreement after eighteen (18) months, the CITY would be responsible for payment of Fifty percent (50%) of City-approved Redflex direct costs. Sherwood shall not be responsible for payment for unamortized costs should Red-Flex terminate the Agreement.

In the event Sherwood terminates the Agreement, REDFLEX shall perform such additional work as may be necessary for the orderly filing of documents and closing of the Project. Such additional work shall not exceed ten percent (10%) of the time expended on the termination portion of the Project prior to the effective date of termination. REDFLEX shall be compensated for work actually performed prior to the effective date of termination plus the work required for filing and closing as described in this article.

3. "EXHIBIT C Maintenance" of the Agreement is deleted and replaced with "Amendment No. 1 EXHIBIT C MAINTENANCE" attached hereto.
4. Section 6.3 entitled "Fee per Paid Citation" is deleted and replaced with "Amendment No. 1 EXHIBIT G COMPENSATION & PRICING" attached hereto.
5. All other provisions of the April 30th, 2009 Agreement remain in full force and effect.

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

CITY OF SHERWOOD

By: _____
Joseph Gall
City Manager

REDFLEX
By:  _____
Robert DeVincenzi
President and CEO

EXHIBIT "C"
Amendment No.1

MAINTENANCE

1. All repair and maintenance of Photo Red Light Enforcement systems and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of either Sherwood's Traffic Engineering Department or the Oregon Department of Transportation present.
3. In the event images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
4. Redflex has full responsibility for the daily maintenance and support of the systems.

EXHIBIT "G"
Amendment No. 1

COMPENSATION & PRICING

Commencing the first day of the month following execution of this Amendment, Sherwood shall pay Redflex a fee for its performance of services covered by the Agreement based on the following:

\$3,600 per month per Designated Approach (maximum of four lanes)

Sherwood shall pay Redflex (and Redflex shall accept) Ten Thousand Dollars (\$10,000.00) in full and complete settlement of any and all disputed invoices as of the execution date of this Amendment.

Cost Neutrality

Sherwood is assured payment Cost Neutrality on Redflex monthly invoices, i.e., Sherwood has the option (in its discretion) to pay Redflex no more than its actual monthly receipts for red light violations.

In the event the City opts for this "Cost Neutral" approach, Sherwood will provide Redflex, along with the monthly payment, an accounting supporting the amount remaining unpaid. The City will not be subject to any penalty or interest for amounts subject to the exercise of this Cost Neutrality option.

Example:

Month 1

Month 1 Redflex Invoice:	\$17,500.00
Month 1 Revenue:	\$15,000.00
Cost Neutral Payment due Redflex:	(\$ 2,500.00)

Redflex would be entitled to payment of \$15,000.00 with a written accounting showing a balance of \$2500.00 to be carried forward without penalty or interest under the "Cost Neutrality" approach described above.

Month 2

Month 2 Redflex Invoice	\$17,500.00
Month 2 Revenue to City:	\$22,500.00
Cost Neutrality Payment due Redflex from Month 1:	\$2500.00
Payment Due Redflex:	\$20,000.00

In the event the Amended Agreement is terminated and a balance remains owing, all receipts from the termination date forward from automated red light violations will be first applied to said balance until satisfied or for a period of twelve (12) months therefrom, whichever first occurs.

Intersection approaches can be relocated to a new site at the customer's request and expense when mutually agreed.

Performance Credits.

Credits to Sherwood for Red-Flex processing errors and/or omissions:

- Errors or omissions resulting in a citation needing to be rescheduled in court shall be given an invoice credit of \$15 per citation.
- Errors or omissions resulting in dismissal of a citation or block thereof shall be given an invoice credit of \$125.00 per citation.

Credits for Malfunctioning or Non-Operating Designated Intersection approaches.

- In the event a system or intersection approach is disabled in excess of four (4) consecutive days or six (6) days in any one (1) month period, the monthly fee for that system will be reduced to the number of operational days and a prorated monthly fee will apply.
- In the event the citation issuance rate at an approach drops below 75%, Redflex shall give a 25% credit for that approach; should the issuance rate at an approach drop below 50%, Redflex shall credit the monthly invoice by 50% for that approach; should the issuance rate at an approach drop below 25%, Redflex shall credit the monthly invoice by 75% for that approach. Should the issuance rate drop to less than 15%, then Redflex shall not receive the monthly fixed fee and shall fully credit the monthly invoice for that approach.

The rate of issuance shall be determined from the on-line Customer Management Report excluding rejections for:

- driver obstruction,
- motor cycle helmet;
- plate obstruction;
- extended vehicle; out of country and paper plates;
- wrong/no DMV;
- citations too old to process;
- emergency vehicles; and
- safe right turn on red.

ASSUMPTIONS FOR ALL PRICING OPTIONS:

Redflex construction will be able to utilize existing conduit for installation where space is available. Each year, on the anniversary date of the Amended Agreement, pricing will increase based upon the Consumer Price Index (CPI) per the U.S. Department of Labor, Bureau of Labor

Except where a balance remains unpaid due to a deficit in the gross cash received as described herein, 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 60 days from date of invoice except outstanding balances remaining under Cost Neutrality provisions.