

CITY OF TAMARAC, FLORIDA

RESOLUTION R-2013-72

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF TAMARAC TO APPROVE THE SECOND ADDENDUM TO THE PROFESSIONAL SERVICES AGREEMENT WITH AMERICAN TRAFFIC SOLUTIONS, INC. ("ATS"); AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE SECOND ADDENDUM; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 14, 2012, the City of Tamarac and ATS entered into a Professional Services Agreement (the "Agreement"), attached hereto as Exhibit 1; and

WHEREAS, the Florida Legislature passed and the Governor of the State of Florida signed into law CS/CS/HB7125, authorizing local hearings for notices of violations connected with the use of red light cameras as traffic infraction detectors to enforce Chapter 316, the State of Florida Uniform Traffic Code and taking effect on July 1, 2013; and

WHEREAS, the City of Tamarac and ATS mutually desire to amend certain terms and conditions of the Agreement to align the provision of services by ATS with the provisions and requirements of Law of Florida 2013-160; and

WHEREAS, the City Commission of the City of Tamarac deems it to be in the best interest of the citizens and residents of the City of Tamarac to approve and authorize the appropriate City officials to execute the Second Addendum to the Professional Services Agreement with ATS.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE
CITY OF TAMARAC, FLORIDA:**

Section 1: The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct, and are incorporated herein by this reference. All exhibits referenced in this resolution are incorporated herein.

Section 2: The appropriate City Officials hereby approve and are authorized to execute the Second Addendum to the Professional Services Agreement with ATS, attached hereto as Exhibit 2.

Section 3: All resolutions inconsistent or in conflict herewith shall be and are hereby repealed insofar as there is conflict or inconsistency.

Section 4: If any section, sentence, clause, or phrase of this resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then such holding shall in no way affect the validity of the remaining portions of this resolution.

Section 5: This resolution shall become effective upon its passage and adoption by the City Commission.

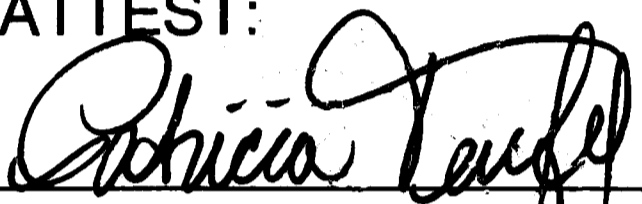
PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF TAMARAC,
FLORIDA THIS 10 DAY OF July, 2013.

CITY OF TAMARAC FLORIDA



BETH TALABISCO, MAYOR

ATTEST:

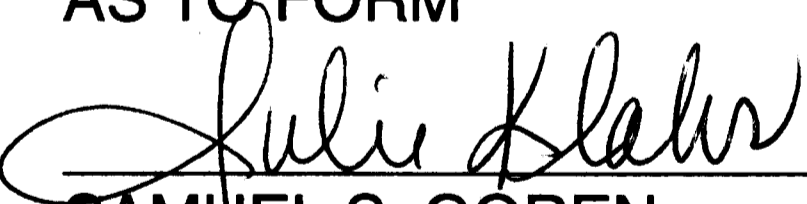


PATRICIA TEUFEL, CMC
CITY CLERK

RECORD OF COMMISSION VOTE:

MAYOR TALABISCO yes
DIST 1: COMM. BUSHNELL yes
DIST 2: COMM. ATKINSGRAD yes
DIST 3: COMM. GLASSER yes
DIST 4: V/M. DRESSLER yes

I HEREBY CERTIFY THAT I HAVE
APPROVED THIS RESOLUTION
AS TO FORM



for SAMUEL S. GOREN
CITY ATTORNEY

EXHIBIT 1

CITY OF TAMARAC, FLORIDA

RESOLUTION NO. R-2012 128

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, AUTHORIZING THE APPROPRIATE OFFICIALS TO AWARD AND EXECUTE AN AGREEMENT FOR A RED LIGHT RUNNING CAMERA ENFORCEMENT SYSTEM FOR A PERIOD OF THREE (3) YEARS FROM THE DATE OF A CITY ISSUED NOTICE TO PROCEED, AND TO EXERCISE UP TO TWO (2) RENEWAL OPTIONS OF UP TO TWO (2) YEARS EACH AS APPROVED BY THE CITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, traffic safety, is of paramount concern for motorists travelling the streets of Tamarac, especially due to accidents caused as a result of motorists failing to obey traffic signals; and

WHEREAS, the use of cameras to record red light violations is a means by which traffic safety can be enhanced within the City of Tamarac; and

WHEREAS, during the 2010 Legislative Session the Florida Legislature adopted Chapter 2010-80, Laws of Florida, known as the "Mark Wandall Traffic Safety Act" ("State Law"), which establishes uniform standards for local governments to use cameras to enforce state statutes relating to red light violations; and,

WHEREAS, on September 7, 2010, the City Commission of the City of Tamarac adopted Ordinance O-2010-16, which was codified as Chapter 14.5 in the City's Code of Ordinances, which authorized the City's Red Light Enforcement Program and provided for the implementation and operation the enforcement program set forth in State Law; and,

WHEREAS, the City desires to implement the enforcement program set forth in the State Law, in accordance with Ordinance O-2010-16; and

WHEREAS, the City issued RFP # 11-03R, to which the following two (2) vendors responded:

American Traffic Solutions (ATS)

Redflex Traffic Systems

copies of said proposal and proposal responses is on file with the City Clerk; and

WHEREAS, an Evaluation Committee comprised of the Director of Public Services, The Chief of the Broward Sheriff's Office Tamarac District, the Assistant Director of Public Services and the Management Analyst II from the City Manager's Office evaluated all proposals and ranked the proposal submitted by ATS as the highest ranked proposal based on providing the best overall value to the City, a copy of Evaluation Committee rankings attached hereto as Exhibit 1; and

WHEREAS, City staff entered into contract negotiations with ATS in order to negotiate the most favorable terms on behalf of the City; and

WHEREAS, the negotiated Agreement, a copy of said Agreement is attached hereto as "Exhibit 2", provides for an initial twenty (20) camera locations throughout the City; and

WHEREAS, the Agreement provides that the City will receive revenue for paid violations that are captured by the camera system; and

WHEREAS, the revenue will be utilized to pay administrative costs borne by the Broward Sheriff's Office (BSO) required to provide necessary review and due diligence related to the enforcement of violations captured by the camera system; and

WHEREAS, the Agreement provides for an initial term of three (3) years with two (2) renewal options of up to two (2) years each based on satisfactory performance under the Agreement; and

WHEREAS, the Public Services Director, and the Purchasing and Contracts Manager, recommend that the City award Request for Proposal #11-03R, and execute an agreement for a Red Light Running Camera Enforcement System with ATS, a copy of said Agreement is hereto attached as "Exhibit 2"; and

WHEREAS, the City Commission of the City of Tamarac, Florida deems it to be in the best interest of the citizens and residents of the City of Tamarac to award Request for Proposal #11-03R, and execute an Agreement for a Red Light Running Camera Enforcement System to ATS.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA THAT:

SECTION 1: The foregoing "WHEREAS" clauses are HEREBY ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof and all exhibits attached hereto are incorporated herein and made a specific part of this resolution.

SECTION 2: The City Commission of the City of Tamarac, Florida deems it to be in the best interest of the citizens and residents of the City of Tamarac to award Request for Proposal #11-03R, and execute an Agreement for a Red Light Running Camera Enforcement System to ATS.

SECTION 3: The City Commission of the City of Tamarac, Florida hereby awards Request for Proposal #11-03R to ATS, for a period of three (3) years, effective on the date of the first Notice to Proceed to be issued by the City, with two (2) additional two (2) year renewal options subject to satisfactory performance on the part of the contractor.

SECTION 4: The City Commission of the City of Tamarac hereby authorizes the appropriate City Officials to execute an agreement with ATS, a copy of said Agreement being hereto attached as Exhibit "2".

SECTION 5: All Resolutions or parts of Resolutions in conflict herewith are HEREBY repealed to the extent of such conflict.

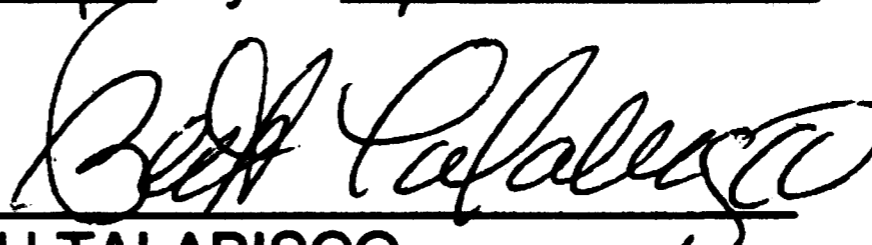
SECTION 6: If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect

October 25, 2012

without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

SECTION 7: This Resolution shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this 14 day of November 2012.


BETH TALABISCO
MAYOR

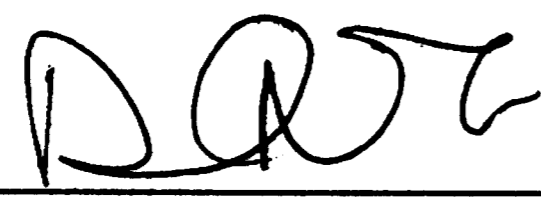
ATTEST:


PATRICIA TEUFEL, CMC
INTERIM CITY CLERK

RECORD OF COMMISSION VOTE:

MAYOR TALABISCO yes
DIST 1: COMM. BUSHNELL yes
DIST 2: COMM. GOMEZ yes
DIST 3: V/M GLASSER yes
DIST 4: COMM. DRESSLER yes

I HEREBY CERTIFY THAT I HAVE APPROVED THIS RESOLUTION AS TO FORM


SAMUEL S. GOREN
CITY ATTORNEY

RED LIGHT RUNNING CAMERA ENFORCEMENT SYSTEM
Final Evaluation Summary

Proposer's Name:	ATS		Redflex Ranking	Redflex Total Points (Rank x Weight)
	Ranking	Weight		
No Conflict of Interest	X		X	
Compliance with Request for Proposal (Y/N)	Y		Y	
SCOPE OF SERVICES PROPOSED (20%)				
Public Works Director	1	20	2	40
Asst. Public Works Director	1	20	2	40
BSO Chief	1	20	2	40
Management Analyst II	2	40	1	20
FIRM QUALIFICATIONS (30%)				
Public Works Director	1	30	2	60
Asst. Public Works Director	1	30	2	60
BSO Chief	1	30	2	60
Management Analyst II	1	30	2	60
REFERENCES (10%)				
Public Works Director	1	10	2	20
Asst. Public Works Director	1	10	2	20
BSO Chief	1	10	2	20
Management Analyst II	1	10	1	10
COST/REVENUE TO CITY (40%)				
Public Works Director	2	80	1	40
Asst. Public Works Director	2	80	1	40
BSO Chief	2	80	1	40
Management Analyst II	2	80	1	40
TOTAL RANKING				
Public Works Director		140		160
Asst. Public Works Director		140		160
BSO Chief		140		160
Management Analyst II		160		130
Evaluation Committee Total		440		450
Final Committee Ranking (Based on Lowest Composite Score)				2

Ex 1

AGREEMENT BETWEEN THE CITY OF TAMARAC AND AMERICAN TRAFFIC SOLUTIONS FOR PHOTO RED LIGHT ENFORCEMENT PROGRAM

This Agreement (this "Agreement") is made as of this 14 day of Nov, 2012 by and between American Traffic Solution, a Kansas corporation authorized to do business in Florida, with offices at 1330 West Southern Avenue, Tempe, AZ 85282, ("ATS" or "Vendor"), and The City of Tamarac, a Florida municipal corporation, with an address at 7525 NW 88th Avenue, Tamarac, Florida 33321 (the "City" or "Customer").

RECITALS

WHEREAS, the City Commission of the City adopted Ordinance O-2010-16, which was codified as Chapter 14.5 in the City's Code of Ordinances, which authorized the City's Red Light Enforcement Program and provided for the implementation and operation of such; and,

WHEREAS, the City issued RFP # 11-03, to which Vendor responded, and City selected Vendor to provide services to implement and carry on the City's red light enforcement program, and City desires to engage the services of Vendor to provide certain equipment, processes and back office services so that Authorized Employees of the City are able to monitor, identify and enforce red light running Violations; and,

WHEREAS, during the 2010 Legislative Session the Florida Legislature adopted CS/CS/HB 325, which establishes uniform standards for local governments to use cameras to enforce state statutes relating to red light violations; and,

WHEREAS, Governor Charlie Crist signed the legislation into law on May 14, 2010, resulting in Laws of Florida, Chapter 2010-80, which takes effect on July 1, 2010 (the "State Law"); and,

WHEREAS, on September 7, 2010, the City Commission of the City adopted Ordinance, to implement the enforcement program set forth in State Law; and,

WHEREAS, the City desires to implement the enforcement program set forth in the State Law, in accordance with Ordinance O-2010-16:

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

- 1.0 Definitions. All definitions set forth in Chapter 14.5, Section 3, City Code of Ordinances, and Laws of Florida, Chapter 2010-80 are incorporated herein. In addition, the following words and phrases shall have the following meanings in this Agreement:
 - 1.1. "Authorized Employee" means the Traffic Infraction Enforcement Officer, whose duties and qualifications are set forth in the City Ordinance and the State Law.
 - 1.2. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a Notice of Violation in the form of an Electronic Signature is given by the Authorized Employee by using the Vendor System.
 - 1.3. "Broward Sheriff's Office (BSO)" means the Broward Sheriff's Office – Tamarac District, an agency which provides all police services to the City of Tamarac on a contractual basis pursuant to an Agreement authorized by City of Tamarac Resolution R-2010-146 dated December 8, 2010, effective through September 30, 2015. For purposes of this Agreement, the BSO serves as the City's Chief Law Enforcement Officer.

- 1.4. **"City Ordinance O-2010-16"** means Ordinance O-2010-16, adopted September 7, 2010, which governs the City's enforcement program
- 1.5. **"Civil Fee"** means the penalty assessed for violations of Sections 316.074(1) or 16.075(1)(c)1, Florida Statutes, pursuant to Section 316.0083, Florida Statutes, as may be amended or recodified from time to time.
- 1.6. **"Confidential or Private Information"** means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, City's or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:
 - 1.6.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or City's, or at which such Person sells or has sold its services; and
 - 1.6.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets.
 - 1.6.3. Notwithstanding the foregoing, Confidential Information will not include information that:
 - (i) is a public record, and not otherwise exempt, pursuant to Florida law;
 - (ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure,
 - (iii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement,
 - (iv) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto,
 - (v) was required by a court of competent jurisdiction to be described,
 - (vi) was required by applicable state law to be described.
- 1.7. **"Designated Intersection"** means the Intersections as Vendor and the City shall mutually agree from time to time through the parties' Project Managers as provided in Exhibit A.
- 1.8. **"Electronic Signature"** means the method through which the Authorized Employee indicates his or her approval of the issuance of a Notice of Violation and Traffic Citation in respect of a potential Violation using the Vendor System.
- 1.9. **"Enforcement Documentation"** means the necessary and appropriate documentation related to the enforcement of a Violation pursuant to the State Law including but not limited to Notices of Violation (using the specifications of the State Law), instructions to accompany each issued Notice of Violation as required by State Law (including in such instructions a description of basic enforcement procedures, payment options and information regarding the viewing of images and data collected by the Vendor System), Traffic Citations, chain of custody records, document mailing detail report, Notice of Intent to Rely on Business Records pursuant to Section 90.803(6)(c), Florida Statutes criteria regarding operational policies for processing Notices of Violations and Traffic Citations (including with respect to coordinating with the applicable vehicle registry), and technical support documentation for a hearing in traffic court if necessary.

- 1.10. "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Vendor Photo Red Light System(s), including but not limited to all camera systems, housings, sensor arrays, severs and poles.
- 1.11. "Governmental Authority" means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.12. "Intellectual Property" means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person, consistent with the definition of such terms in Florida Statutes.
- 1.13. "Notice of Violation" shall mean the Notice of a Violation, which is mailed or otherwise delivered by Vendor to the alleged violator on the appropriate Enforcement Documentation in respect of each Authorized Violation pursuant to the requirements of the State Law.
- 1.14. "Notice Period" shall mean the period of time signage and other notice is provided for a new enforcement location as may be required by the City Commission of the City.
- 1.15. "Notice to Proceed" shall mean written direction from the City Manager to Vendor to proceed with any work under this Contract, including without limitation installation of equipment at specified locations.
- 1.16. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.17. "Project Manager" means the project manager appointed by the City in accordance with this Agreement, which shall be the City Manager, or his designee and shall be responsible for overseeing the installation of the Intersection and the implementation of the Red Light Photo Enforcement Program, and which manager shall have the power and authority to make management decisions relating to the City's obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the City's Charter or Ordinance or by the City Commission.
- 1.18. "Potential Violation" means, with respect to any motor vehicle passing through a Designated Intersection, the data collected by the Vendor System with respect to such motor vehicle, which data shall be processed by the Vendor System for the purposes of allowing the Authorized Employee to review such data and determine whether a Violation has occurred.
- 1.19. "Proprietary Property" means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.

- 1.20. **"State Law"** means those statutes adopted and enacted pursuant to Laws of Florida, Chapter 2010-80, as may be amended or recodified from time to time.
- 1.21. **"Traffic Citation"** means the traffic citation authorized by the State Law to be mailed to the registered owner of a motor vehicle when payment or an affidavit in compliance with the State Law is not timely received after a Notice of Violation is sent to the registered owner of a motor vehicle involved in a Violation.
- 1.22. **"Traffic Infraction Enforcement Officer"** means any individual designated by the City through its Chief Law Enforcement Officer to review Potential Violations, authorize the issuance of Notices of Violation and Uniform Traffic Citations, as well as take any other action authorized by the state law, and who shall meet the requirements of State Law.
- 1.23. **"Vendor Marks"** means all trademarks registered in the name of Vendor or any of its affiliates, such other trademarks as are used by Vendor or any of its affiliates on or in relation to Photo Red Light Enforcement at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Vendor, and all modifications or adaptations of any of the foregoing.
- 1.24. **"Vendor Project Manager"** means the project manager appointed by Vendor in accordance with this Agreement, which project manager shall initially be named by the Vendor within 14 calendar days of the execution of this Agreement or such person as Vendor shall designate by providing written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersections and the implementation the Photo Red Light Enforcement Program, and who shall have the power and authority to make management decisions relating to Vendor's obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.25. **"Vendor Photo Red Light System"** means, collectively, the Red Light Photo Enforcement Program provided by Vendor and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.26. **"Violation"** means any violations of Sections 316.074(1) or 316.075(1)(c)1, Florida Statutes, enforceable pursuant to Section 316.0083, Florida Statutes, as may be amended or recodified from time to time.
- 1.27. **"Violation Data"** means the images and other data gathered by the Vendor System at the Designated Intersection to support a Potential Violation.
- 1.28. **"Photo Red Light Enforcement Program"** means the process pursuant to the State Law by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of Vendor, including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of identifying Violations and recording such Violation Data in the form of photographic images of motor vehicles.
- 1.29. **"Photo Red Light Violation Criteria"** means the standards and criteria by which Potential Violations will be evaluated by the Broward Sheriff's Office – Tamarac District, which standards and criteria shall include, but are not limited to, the definition of a Red Zone Violation set forth in the State Law, relying upon the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.

- 1.30. **"Traffic Signal Controller Boxes"** means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
- 2.0 **Term.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of three (3) years beginning four (4) months after the date of the initial Notice to Proceed issued pursuant to Exhibit "G" (the "Initial Term"). The City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional, two (2) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Vendor not less than sixty (60) calendar days prior to the last day of the Initial Term or the Renewal Term, as the case may be. This notice period may be waived by the agreement of the parties.
- 3.0 **Requirement for Notice of Proceed.** Vendor shall not commence any work under this Agreement until such a time as a formal Notice to Proceed is issued in writing by the City. Any work commenced without authorization shall be at the vendor's risk, and the City shall not be liable for any actions or responsible for any payments as a result of the commencement of such unauthorized work.
- 4.0 **Services.** Vendor shall provide the Photo Red Light Enforcement Program to the City, in each case in accordance with the terms and provisions of the State Law.
- 4.1. **Installation.** With respect to the construction and installation of the Designated Intersection and the installation of the Vendor System at such Designated Intersection, the City and Vendor shall have the respective rights and obligations set forth on Exhibit B attached hereto.
- 4.2. **Maintenance.** With respect to the maintenance of the Vendor System at the Designated Intersections, the City and Vendor shall have the respective rights and obligations set forth on Exhibit C attached hereto.
- 4.3. **Violation Processing.** Violations shall be processed as set forth on Exhibit D.
- 4.4. **Prosecution.** The City shall diligently prosecute Notices of Violation and Traffic Citations pursuant to the State Law.
- 4.5. **Other Rights and Obligations.** During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Vendor and the City shall have the respective rights and obligations set forth on Exhibit F attached hereto.
- 4.6. **Change Orders.** The City may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to Vendor, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Vendor's receipt of a Change Order Notice, Vendor shall deliver a written statement describing the effect, if any, the proposed changes would have on the terms set forth in Exhibit F (the "Change Order Proposal"), which Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the City. Following the City's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 17.0.

5.0 License; Reservation of Rights.

5.1. License

- 5.1.1. Subject to the terms and conditions of this Agreement, Vendor hereby grants the City, and the City hereby accepts from Vendor upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City, access and use the Vendor System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Notices of Violation pursuant to the terms of this Agreement, and to print copies of any content posted on the Vendor System in connection therewith, (b) disclose to the public (including outside of the City) that Vendor is providing services to the City in connection with Photo Red Light Enforcement Program pursuant to the terms of this Agreement, and (c) use and display the Vendor Marks on or in marketing, public awareness or education, or other publications or materials relating to the Photo Red Light Enforcement Program, so long as any and all such publications or materials are approved in advance by Vendor.**
- 5.1.2. License for City Information. ATS acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to City are proprietary marks and ATS will not use the marks for any purpose except as expressly permitted in writing by the City. Upon termination of this Agreement, ATS shall immediately and permanently discontinue the use and display of any marks.**
- 5.2. Reservation of Rights. The City hereby acknowledges and agrees that: (a) Vendor is the sole and exclusive owner of the Vendor System, the Vendor Marks, all Intellectual Property arising from or relating to the Vendor System, and any and all related Equipment provided under this Agreement, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.**
- 5.3. Restricted Use. The City hereby covenants and agrees that it shall not (a) make any modifications to the Vendor System, including but not limited to any Equipment, (b) alter, remove or tamper with any Vendor Marks, (c) use any of the Vendor Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Vendor therein, (d) use any trademarks or other marks other than the Vendor Marks in connection with the City's use of the Vendor System pursuant to the terms of this Agreement without first obtaining the prior consent of Vendor, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Vendor System, the Vendor System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Vendor, or cause any other Person to do any of the foregoing.**
- 5.4. Protection of Rights. Vendor shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Vendor, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Vendor Marks, the filing of patent application for any of the Intellectual Property of Vendor, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Vendor Marks or the Intellectual Property of Vendor without the prior written consent of Vendor.**
- 5.5. Infringement. The City shall use its reasonable best efforts to give Vendor prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Vendor Marks or any of Vendor's Intellectual Property or that constitute a**

misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Vendor Marks or any other Intellectual Property of Vendor. Vendor shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto.

- 5.6. **Infringing Use.** The City shall give Vendor prompt written notice of any action or claim action or claim, whether threatened or pending, against the City alleging that the Vendor Marks, or any other Intellectual Property of Vendor, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the City shall render to Vendor such reasonable cooperation and assistance as is reasonably requested by Vendor in the defense thereof; provided, that Vendor shall reimburse the City for any reasonable costs, including without limitation attorney's fees and court costs, as well as City staff costs, incurred in providing such cooperation and assistance. If such a claim is made and Vendor determines in the exercise of its sole discretion, or a court or administrative proceeding of competent jurisdiction determines, that an infringement may exist, Vendor shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items, all at no cost to the City. In addition, in such event, the City has the right, but not the obligation, to terminate this Agreement pursuant to paragraph 7.2.

6.0 Representations and Warranties.

6.1 Vendor Representations and Warranties.

6.1.1 Authority. Vendor hereby warrants and represents that:

- 6.1.1.1. It has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; and,
- 6.1.1.2. To the extent legally required, Vendor has all ownership rights, licenses, or other required authority to use the software and hardware it installs to perform the services under this Agreement

6.1.2 Professional Services. Vendor hereby warrants and represents that any and all services provided by Vendor pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Vendor System, subject to applicable law, in compliance with all specifications provided to Vendor by the City.

6.2 City Representations and Warranties.

6.2.1 Authority. The City hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; provided that Vendor acknowledges that the initial program is premised on being consistent with the requirements and authority of state law, applicable attorney general opinions, and the City's Ordinance, and City cannot warrant the outcome of any judicial or legislative action that may be taken affecting these authorities subsequent to the execution of this Agreement.

6.3 Professional Services. The City hereby warrants and represents that any and all services provided by the City pursuant to this Agreement shall be performed in a professional and workmanlike manner.

7.0 Termination.

7.1 Termination Prior to City's issuance of initial Notice to Proceed. The City may terminate this Agreement for any or no cause at any time prior to the issuance of the initial Notice to Proceed. In such event, Vendor shall not be entitled to any payment from the City.

7.2. Termination for Cause: At any time during the term of this Agreement. Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state or federal statutes are amended, or regulations adopted by agencies with jurisdiction, to prohibit the operation of photo red light enforcement systems, to make it impracticable (for purposes of this paragraph impracticable means a change in law that reduces the City's share of the revenues, or increases the City's law enforcement costs for the program by 15%) to operate the red light enforcement program, or to impose restrictions on revenues and uses that are materially contrary to the terms of this Agreement or the provisions of the current State Law. Prior to a termination pursuant to this subsection 7.2(i), either party shall have the right to exhaust legal action seeking to overturn the court order or state or federal legislation that prohibits or makes the operation of the photo red light enforcement systems impracticable. However, the City shall have no obligation to pay ATS a fee for any period when it is unlawful or impracticable to operate the photo red light enforcement system, unless a Court places a stay of implementation on the legal action or new law. The term of the Agreement shall be suspended during any period in which the Customer is not obligated to pay ATS and such time period shall be added to the term of the Agreement once it becomes lawful and practical for the City to operate the photo red light enforcement systems, however no such additional time period shall exceed a period of twenty-four (24) months; (ii) any court having jurisdiction over City rules, or declares, that the City's red light enforcement program, or the program set forth in the State Law, is invalid or results from the Vendor System of photo red light enforcement are inadmissible in evidence due to a defect in the manner in which such results were obtained or processed (in which case, Vendor shall have the opportunity to cure such defect, as provided below), or otherwise renders a decision that makes it impracticable to operate the red light enforcement program; (iii) a determination by a court of competent jurisdiction or other applicable dispute resolution forum that Vendor has infringed upon a third party's patent, trademark, copyright, trade secret or other intellectual property; (iv) the other party commits any material breach of any of the provisions of this Agreement; (v) Vendor's non-payment of revenues to City as required by this Agreement. In the event of a termination due to this Section, City shall be relieved of any further obligations to Vendor other than as specified herein. Either party shall have the right to remedy the cause for termination within forty-five (45) calendar days (or within such other time period as the City and Vendor shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

After the camera systems have been operational for twelve (12) months, and upon ninety (90) days written notice to the other party, either party may terminate this Agreement if the revenue from the camera systems did not cover the annual BSO costs as provided in the Addendum to this Agreement.

The rights to terminate this Agreement given in Section 7.2 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

7.3 Procedures Upon Termination. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Vendor shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Photo Red Light Enforcement Program, (ii) promptly deliver to the City any and all Proprietary Property of the City provided to Vendor pursuant to this Agreement, (iii) promptly deliver to the City a final report to the City

regarding the collection of data and the issuance of Notices of Violation in such format and for such periods as the City may reasonably request, and which final report Vendor shall update or supplement from time to time when and if additional data or information becomes available, (iv) provide City all data pertaining to outstanding Civil Fee payments due and owing to City and potential payments due to Vendor, (v) provide City with its proposed schedule for the removal of the Vendor's equipment, at no cost to the City, from the City and once such schedule is approved by City Vendor shall remove such pursuant to the schedule; and (vi) provide such assistance as the City may reasonably request from time to time in connection with prosecuting and enforcing Notices of Violation issued prior to the termination of this Agreement.

- 7.3.1 The City, and BSO, when acting on behalf of the City, shall (i), except for pending enforcement cases, immediately cease using the Photo Red Light Enforcement Program, accessing the Vendor System and using any other Intellectual Property of Vendor, and (ii) promptly deliver to Vendor any and all Proprietary Property of Vendor provided to the City pursuant to this Agreement, other than such equipment installed by Vendor along the roadways for the enforcement program.
- 7.3.2 Unless the City and Vendor have agreed to enter into a new agreement relating to the Photo Red Light Enforcement Program or have agreed to extend the Term of this Agreement, Vendor shall remove any and all Equipment or other materials of Vendor installed in connection with Vendor's performance of its obligations under this Agreement, at no cost to City, including but not limited to housings, poles and camera systems, and Vendor shall restore the Designated Intersections to substantially the same condition such Designated Intersections were in immediately prior to this Agreement, except for foundation removal, which shall be left flush with grade and no exposed rebar, steel or other hazards, at no cost to City pursuant to the schedule agreed upon by the parties in section 7.3.1.
- 8.0 Fees to be paid to Vendor and Payment Processing.
- 8.1 Vendor shall receive the compensation set forth on, and pursuant to, Exhibit E attached hereto.
- 8.2 *Revenue Neutrality.* During the term of the contract, payments by the Customer may be made to ATS under a Flexible Payment Plan. Under the Flexible Payment Plan the Customer may defer certain payments to ATS due and owing during a Contract Year as defined below. The total payment to be deferred shall include the amount paid to the Broward Sheriff's Office (BSO) for Red Light Camera enforcement services, which in no event shall exceed the initial quote for said services provided by the BSO to Customer. The initial quote must be provided and agreed to by ATS prior to the installation of any camera systems.

Cost neutrality shall apply from the first Contract Year, which begins four (4) months after the City issues its initial notice to proceed on the mutually agreed to number of camera systems and ending every twelve (12) months thereafter. If at the end of a Contract Year sufficient funds have not been collected by the Customer to pay the accrued balance then due to ATS, ATS agrees to waive its right to recovery with respect to any balance owing to ATS at the end of that fiscal year. For purposes of this clause, the term "funds" shall not mean the gross amount of penalties to be assessed pursuant to Florida Statutes Section 316.0083(1)(b)3 and/or Florida Statutes Section 318.18(15)(a)3. for a violation of Florida Statutes Sections 316.074(1) or 316.075(1)(c) (such amount as of the Effective Date of this Agreement being \$158.00), rather "funds" shall be only such portions of said gross revenues that are either (i) retained by the City after remittances contemplated in Florida Statutes Section 316.0083(1)(b), or (ii) sums distributed to the City pursuant to Florida Statutes Section 318.18(15)(a)3.

- 8.3** From the funds collected from violators under the program, the City shall be entitled to retain its documented costs for program administration pursuant to its contract with the Broward Sheriff's Office ("BSO Administrative Costs"). The BSO Administrative Costs shall be mutually agreed to and memorialized by Addendum to this Agreement prior to the installation of any camera systems. This subsection will be applied as follows: Vendor will maintain an accounting of any net balance owed to Vendor. If the amount of funds collected by City during a monthly billing period equals or exceeds the total amount of Vendor invoices and the monthly BSO Administrative Costs during the same period, City shall pay Vendor the total amount due on the invoices. If the amount of funds collected during a monthly billing period does not equal or exceed the total amount of Vendor invoices and monthly BSO Administrative Costs during the same period, City shall retain the amount of the monthly BSO Administrative Costs and pay Vendor the remaining amount of funds, if any, collected and defer payment of the remaining balance. Should the amount of funds collected during a monthly billing period be less than the BSO monthly Administrative Costs, funds in future monthly billing periods shall be applied first to outstanding balances on the BSO monthly Administrative Costs until such is current. Thereafter, payments due to Vendor shall be reconciled by applying future funds collected, first to the accrued balance owing pursuant to this subsection, and then to the invoice for the current monthly billing period. Accrued balances shall not include any interest charges. At any time that Vendor invoices, including any accrued balance, are fully repaid, City will retain all additional funds collected during that monthly billing period. If, at the end of any Contract Year as defined in Section 8.2, sufficient funds have not been collected by City to pay any balance due to Vendor pursuant to this subsection, Vendor agrees to waive its right to recovery of any outstanding balance.
- 8.4** Vendor shall be responsible for processing payments of the Civil Fees. The Vendor shall provide payment means through mail, telephone and on-line processes on a weekly basis. Vendor shall track all payments and handle all applied payments, unapplied payments, overpayments, refunds, adjustments, dismissals and reversals.
- 8.5** Vendor shall pay City all payments received during a calendar week, no later than the second business day of the next following week.
- 8.6** ATS shall invoice the City for all applicable fees for a month in arrears on the first day of the following month, in the amounts determined by the fee schedule delineated on Exhibit E. Along with the invoice, Vendor shall provide information to the City, in a format acceptable to the City, supporting the invoice amounts forwarded by Vendor to the City. In addition, City shall have access to the financial reporting functions of Vendor's system upon City's request for purposes of verifying invoice amounts.
- 8.7** During the first 90 calendar days, ATS shall carefully track the number of potential violations submitted to the City, versus the number of violations actually pursued by the City. During this trial period, ATS shall make every attempt to insure that potential violations submitted to the City will be submitted in a format and manner that will result in the City's ability to approve the potential violation for processing as a violation. ATS shall carefully observe reasons for rejections by the City of potential violations during this period, and shall make efforts to minimize the number of potential violations rejected by the City. Upon completion of the 90 day trial period, ATS shall demonstrate no net increase beyond 2% in the total percentage of potential violations rejected by the City on a month to month basis. In the event that there is a percentage increase of greater than 2% of the total potential violations submitted to the City, Vendor shall, as soon as possible, schedule a meeting with City to make adjustments to the City's program to ensure rejection rates of potential violations do not increase greater than 2% of the total potential violations submitted to the City.
- 9.0** Survival. Notwithstanding the foregoing, the parties' obligations shall survive the termination to the extent necessary to fulfill the parties' obligations under this Agreement.

10.0 Confidentiality. During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement, subject to the obligations and requirements of Florida's public records laws and public meetings law. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

11.0 Indemnification and Liability.

11.1. Indemnification – Negligence. The Vendor agrees to indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees ("Losses"), sustained by the City or any third party arising out of, or by reason of, or resulting from the Vendor's negligent acts, errors, or omissions, except to the extent such Losses arise from the negligence of the City or its employees or agents.

11.2. Indemnification – Infringements. The Vendor shall indemnify City for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to services furnished pursuant to this Agreement. The Vendor will defend and/or settle at its own expense, with legal counsel reasonably acceptable to the City, any action brought against the City to the extent that it is based on a claim that products or services furnished to City by the Vendor pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service becomes unusable as a result of any such infringement or claim. Any infringement or claim that renders any portion of the services to be performed by this agreement to be unusable, or materially affects the Vendor's Red Light System as functionally described herein, shall be grounds for default of this Agreement.

11.3. The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification by the Vendor and requires a specific consideration be given therefore. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Vendor. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify for events occurring during the term of this Agreement for a period of not less than five (5) years after expiration or termination of the Agreement.

11.4 Notice of Claims. If the City or Vendor receives notice of any claim or circumstances which could give rise to an indemnified loss under this Section 11, the receiving party shall give written notice to the other party within ten (10) calendar days of receipt. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Vendor is prejudiced, suffers loss, or incurs expense because of the delay.

11.5 Defense of All Other Claims

11.5.1 Assumption of Defense. Vendor shall be responsible for defending any and all claims made against it. In the event that City determines not to defend or oppose a legal claim or challenge, Vendor may assume the City's defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Vendor shall then control the defense and any negotiations to settle the claim, subject to Section 11.5.2. Within thirty (30) calendar days after receiving written notice of an indemnification request pursuant to section 11.1 or 11.2 above, Vendor must advise the City as to whether or not it will defend such valid claim.

11.5.2 Continued Participation. If Vendor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Vendor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Vendor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement, (iv) would affect material terms of this Agreement. The City's failure to consent to any settlement to which its consent is required shall have no affect on Vendor's indemnification and defense obligations under the Agreement.

11.5.3 Broward County is requiring the City to enter into a License Agreement in order to install signage and equipment in County rights-of-way within the City as part of the Red Light Enforcement Program. The License Agreement requires the Vendor to comply with specific indemnification requirements for the benefit of the County, and requires the following specific provisions be included in the Agreement between the City and Vendor, to which Vendor agrees to comply:

Vendor shall indemnify and hold harmless COUNTY, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of VENDOR, and other persons employed or utilized by VENDOR in the performance of this Agreement. These indemnifications shall survive the term of this Agreement. To the extent permitted by law, in the event that any action or proceeding is brought against COUNTY by reason of any such claim or demand, VENDOR shall, upon written notice from COUNTY, resist and defend such action or proceeding by counsel satisfactory to COUNTY.

To the extent permitted by law, the indemnification provided above shall obligate VENDOR to defend, at its own expense, to and through appellate, supplemental, or bankruptcy proceeding, or to provide for such defense, at COUNTY's option, any and all claims of liability and all suits and actions of every name and description covered by the above paragraph which may be brought against COUNTY, whether services were performed by VENDOR or persons employed or utilized by VENDOR.

12.0 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the Vendor is an independent contractor under this Agreement and not the City's employee for all purposes, including but not limited to,

the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The Vendor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor, which policies of Vendor shall not conflict with City, or United States policies, rules or regulations relating to the use of Vendor's funds provided for herein. The Vendor agrees that it is a separate and independent enterprise from the City, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor and the City and the City will not be liable for any obligation incurred by Vendor, including but not limited to unpaid minimum wages and/or overtime premiums.

- 13.0 **Assignments; Amendments.** This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by either party, including without limitations purchases of controlling interest in Vendor or merger, without the prior written consent of the other party which consent shall not be unreasonably withheld or delayed. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- 14.0 **No Contingent Fees.** Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee or third-party consultant working solely for the Vendor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee or third-party consultant working solely for Vendor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or Violation of this provision, the City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 15.0 **Notices.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the VENDOR and the CITY designate the following as the respective places for giving of notice:

City: Michael C. Cernech, City Manager
City of Tamarac
7535 NW 88th Avenue
Tamarac, Florida 33321
Phone: (954) 597-3510
Fax: (954) 597-3520

Copies To:
Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Phone: (954) 771-4500
Fax: (954) 771-4923

Vendor:

**American Traffic Solutions, Inc.
1330 West Southern Avenue
Tempe, Arizona 85282
Attention: Legal Department, Contracts Division**

- 16.0 Audit Rights.** Each of parties hereto shall have the right to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.
- 17.0 Dispute Resolution.** Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 17.0, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.
- 18.0 Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 19.0 Headings.** Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.
- 20.0 Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.
- 21.0 Waiver.** Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.
- 22.0 Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.
- 23.0 Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the

application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law, except that this provision shall not be deemed to deprive any party of any legal remedy, including termination.

24.0 Insurance.

24.1 Throughout the term of this Agreement, the Vendor agrees to maintain in force, at its own expense, insurance as follows:

24.1.1 Comprehensive General Liability insurance to cover liability bodily injury and property damage. Exposures to be covered are premises, operations, products\completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

- A. Bodily Injury/Property Damage**
 - 1. Each Occurrence \$1,000,000**
 - 2. Annual Aggregate \$1,000,000**

Including:
Premises/Operations
Contractual Liability
Personal Injury
Products/Completed Operations
Broad Form Property Damage
Cross Liability and Severability of Interest Clause

24.1.2 Worker's Compensation Insurance shall be maintained during the life of this contract to comply with Florida statutory limits for all employees. The following limits must be maintained:

- A. Worker's Compensation Statutory**
- B. Employer's Liability \$100,000 each accident**
 - \$500,000 Disease-policy limit**
 - \$100,000 Disease-employee**

If Vendor claims to be exempt from this requirement, Vendor shall provide City proof of such exemption along with a written request for City to exempt Vendor, written on Vendor letterhead.

24.1.3 Comprehensive Auto Liability – coverage shall include owned, hired and non-owned vehicles.

- A. Bodily Injury and Property Damage combined single limit**
 - 1. Each Occurrence \$1,000,000**
 - 2. Annual Aggregate \$1,000,000**

24.1.4 Professional Liability - \$1,000,000.

24.1.5 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. The City reserves the right to require higher limits depending upon the scope of work under this Agreement.

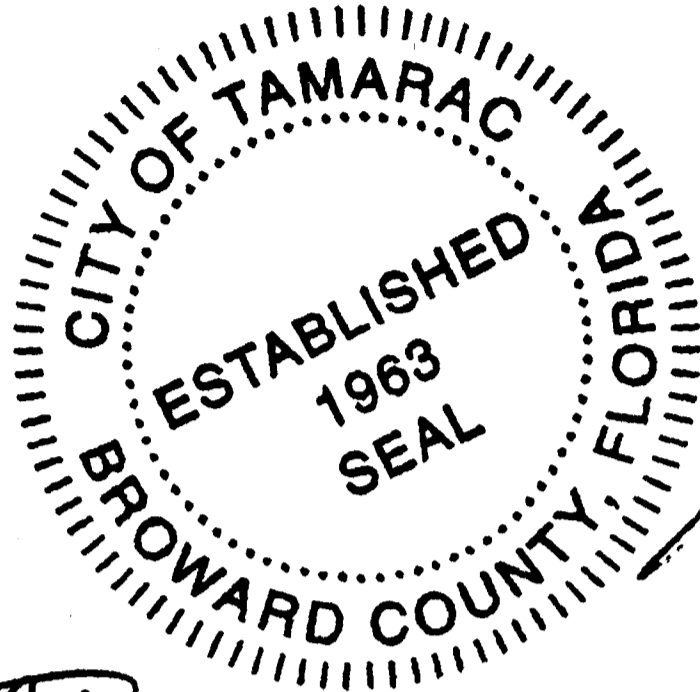
24.1.6 Neither Vendor nor any Sub-Contractor to Vendor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and endorsement. The Vendor will ensure that all Sub-Contractors to

Vendor will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement.

- 24.1.7 All insurance carriers shall be rated at least A-VII per Best's Key Rating Guide and shall be licensed to do business in Florida. Policies shall be "Occurrence" form. Vendor will give the City sixty (60) calendar days notice prior to cancellation.
 - 24.1.8 The Vendor's liability insurance policies shall be endorsed to add the City of Tamarac as an "additional insured". The Vendor's Workers' Compensation carrier will provide a Waiver of Subrogation to the City.
 - 24.1.9 The Vendor shall be responsible for the payment of all deductibles and self-insured retentions. The City may require that the Vendor purchase a bond to cover the full amount of the deductible or self insured retention.
 - 24.1.10 If the Vendor is to provide professional services under this Agreement, the Vendor must provide the City with evidence of Professional Liability insurance with, at a minimum, a limit of \$1,000,000 per occurrence and in the aggregate. "Claims-Made" forms are acceptable only for Professional Liability.
 - 24.1.11 Successful Offer or agrees to perform the work under the Contract as an independent contractor, and not as a subcontractor, agent or employee of City.
 - 24.1.12 Broward County is requiring the City to enter into a License Agreement in order to install signage and equipment in County rights-of-way within the City as part of the Red Light Enforcement Program. The License Agreement requires the Vendor to comply with specific insurance requirements for the benefit of the County. To the extent not already required under this Section 24 of the Agreement, Vendor agrees to comply with Broward County's Insurance Requirements as set forth in this Agreement, including insurance coverage requirements and certificate requirements.
- 25.0 **Governing Law.** This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.
- 26.0 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral.
- 27.0 **Attorney's Fees.** In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs (including paralegal fees) in addition to any other remedy afforded by law.
- 28.0 The Vendor agrees that in the event it enters into an agreement subsequent to the execution date of this Agreement for the same (or substantially similar) scope of services, including the same length of Agreement and installed cameras within twenty percent of the number of installed cameras in the City, with another local government in Broward County, Florida which contains a term or condition, including fees, charges or costs, which the City determines to be more favorable than the terms in this Agreement, Vendor shall agree to an Addendum providing the other local government's agreement in its entirety to City.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF TAMARAC, signing by and through its Mayor and City Manager, and CONTRACTOR, signing by and through its CEO/President duly authorized to execute same.



CITY OF TAMARAC

Beth Talabisco

Beth Talabisco, Mayor

Date

Michael C. Cernech

Michael C. Cernech, City Manager

11-5-12
Date

ATTEST:

Patricia Teufel

Patricia Teufel, CMC
Interim City Clerk

Date

Approved as to form and legal sufficiency:

DATA

11/14/12

ASA City Attorney

Date

AMERICAN TRAFFIC SOLUTIONS, INC.

B. Michael Bolton

B. Michael Bolton,
Chief Operating Officer

Date

ATTEST:

Signature of Corporate Secretary

10/30/12

Signature of Corporate Secretary

Date

(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

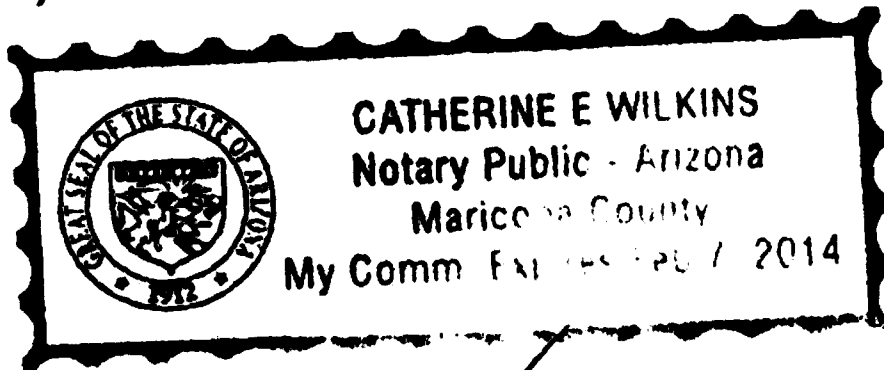
STATE OF:

:SS

COUNTY OF:

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State foresaid and in the County aforesaid to take acknowledgments, personally appeared Michael Bolton, Chief Operating Officer, of American Traffic Solutions, Inc., an Arizona Corporation duly registered as a Florida Foreign for Profit Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

(Seal)



Catherine E Wilkins

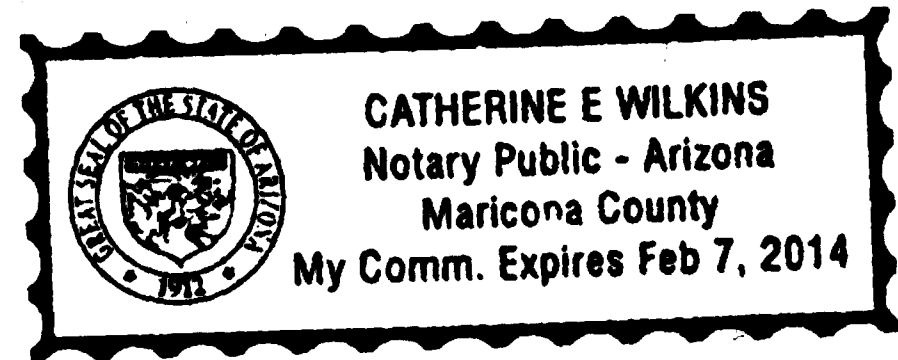
Notary Public, State of Arizona
(Signature of Notary Public - State of
ARIZONA)

CATHERINE E WILKINS

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known OR produced Identification _____

Type of Identification Produced _____



CONTRACT EXHIBITS

EXHIBIT A Designated Intersections

The location of the approaches for placement of photo enforcement equipment shall be determined by the Vendor and the City Administration and the Broward Sheriff's Office – Tamarac District provided that such locations comply with the requirements of the State Act.

The schedule for installations for each camera shall be approved in writing by the City, prior to installation, through individual Notices to Proceed to be issued at the discretion of the City.

ATS will provide the City with video or site selection evaluation of candidate sites using the Axis VIMS or other system to assist the City's Administration and Broward Sheriff's Office –Tamarac District in its recommendations. City Administration and the Broward Sheriff's Office – Tamarac District, and Vendor, will periodically review installed equipment at selected approaches. After the initial twelve (12) months of the Agreement, in the event an installed camera system at an intersection approach is capturing less than an average of 2 violations per day for three (3) consecutive months, through no fault of the City, at the sole discretion of City, the Vendor and City shall upon written notice by either party to the other negotiate in good faith on a fee adjustment for such camera system, or if such negotiation is not successful within thirty (30) days after said written notice, the Vendor shall, at its sole expense, remove the camera system entirely, or relocate the camera system to a new location mutually agreed to by the parties. The City shall not be charged for a camera system subsequent to providing Vendor with such notice, and in the event a camera system is relocated City shall not be responsible for payment for the relocated camera system until such time as the camera system is operational at a new location. Any removal or relocation shall not extend the term of this Agreement.

EXHIBIT B
Construction and Installation Obligations
Timeframe for Installation: Fixed Photo Red Light System

Vendor will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Vendor and City pursuant to Exhibit "A".

Vendor will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

1. Vendor Obligations. Vendor shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Vendor's sole expense):
 - 1.1. Appoint the Vendor Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Vendor Project Manager.
 - 1.2. Request current "as-built" electronic engineering drawings for the Designated Intersections (the "Drawings") from the County traffic engineer.
 - 1.3. Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required.
 - 1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection (collectively, the "Approvals"), which will include compliance with City permit applications. In the event there is a cost associated with acquiring these approvals other than permit or recoding fees (which shall be the responsibility of the Vendor), Vendor, at its sole discretion, shall have the option of paying the cost or rejecting the installation of the System at the site.
 - 1.5. Seek rights from private property owners, as necessary for the placement of System Equipment at designated intersections where Governmental Authorities have jurisdiction over the designated intersection and adjacent rights of right of way, and which such Governmental Authority denies authority to Vendor for the installation of its equipment. In the event there is a cost associated with acquiring these rights other than permit or recoding fees (which shall be the responsibility of the Vendor), Vendor, at its sole discretion, shall have the option of paying the cost or rejecting the installation of the System at the site.
 - 1.6. Finalize the acquisition of the Approvals.
 - 1.7. Submit to the City a public awareness strategy for the City's consideration and approval, which strategy shall include media and educational materials for the City's approval or amendment according to the ATS proposal (the "Awareness Strategy").
 - 1.8. Develop the Red Light Violation Criteria in consultation with the City, and the Broward Sheriff's Office – Tamarac District, consistent with the State Law.
 - 1.9. Develop the Enforcement Documentation for approval by the City, consistent with the requirements of the State Law; provided, however, that the City shall provide Vendor with a form of Traffic Citation, with the understanding that some modifications may be necessary to enable use with Vendor's systems or to comply with the State Law.
 - 1.10. The City, and Vendor acknowledge that, under the State Law, traffic citations will be adjudicated in court and that Vendor may be required to incur costs to develop an interface with the court system. The Vendor shall be responsible for its own development costs for any such interface

- 1.11. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersections (under the supervision of the City).
- 1.12. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersections, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations.
- 1.13. Install and test the functionality of the Designated Intersections with the Vendor System and establish fully operational Violation processing capability with the Vendor System.
- 1.14. Implement the use of the Vendor System at each of the Designated Intersections.
- 1.15. Deliver the Materials to be used in the installation and operation of cameras to be installed in the City. Materials shall include, but not be limited to, all camera units, ancillary hardware and components, posts, electrical components and wiring software required to make the camera units operational.
- 1.16. Within five (5) calendar days of the alleged observed violation, place the alleged violation within the Violation Queue for review by the Broward Sheriff's Office – Tamarac District, Traffic Infraction Enforcement Officer for a determination of whether a Notice of Violation should be issued. Vendor guarantees the processing timeframes in this Section 1.16.
- 1.17. Upon approval by the Broward Sheriff's Office – Tamarac District, Traffic Infraction Enforcement Officer, issue Notices of Violation within five (5) calendar days.
- 1.18. If the Civil Penalty is unpaid or the recipient of the Notice of Violation does not file an affidavit of non-responsibility that does not meet the requirements of the State Law within the time set forth in the State Law, then within) five (5) calendar days after the expiration of time, place the unpaid Notice of Violation into the Traffic Citation Queue, for review by the Broward Sheriff's Office – Tamarac District Traffic Infraction Enforcement Officer to authorize the issuance of a Traffic Citation pursuant to the State Law.
- 1.19. Upon approval by the Broward Sheriff's Office – Tamarac District Traffic Infraction Enforcement Officer, issue Traffic Citations within five (5) calendar days.
- 1.20. Obtain access to the records data of the Department of Motor Vehicles in Vendor's capacity as needed for the program.
- 1.21. Vendor shall provide training for personnel of the City, and the Broward Sheriff's Office – Tamarac District including, but not limited to, the persons who City or the Broward Sheriff's Office – Tamarac District shall appoint as Authorized Employees and other persons involved in the administration of the Red Light Photo Enforcement Program, regarding the operation of the Vendor System and the Red Light Photo Enforcement Program. This shall include training with respect to the Vendor System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation.
- 1.22. Interact with court and judicial personnel regarding the implementation of the Vendor System for hearings on Traffic Citations, the development of a subpoena processing timeline that will permit the offering of Violations Data in hearings and judicial proceedings, and coordination between Vendor, the City or the Broward Sheriff's Office – Tamarac District and the applicable court.
- 1.23. Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch of the State Law Red Light Photo Enforcement Program.
- 1.24. Notice of Violation processing, including receipt of payments, and Traffic Citations.
- 1.25. Notice to Motorists. Not less than fifteen (15) calendar days prior to the issuance of notices of violations from a newly installed camera at an approved intersection, Vendor

will provide temporary sign notification at no cost to the City, approved by the City's Engineer, and the Broward Sheriff's Office – Tamarac District, for the purpose of providing notice to motorists of the activation date. Signs will provide notice of the presence of cameras and the activation date. Additionally, Vendor shall coordinate public relations efforts with the City, including assisting the City with press releases and other public information items, the costs of which shall be Vendor's responsibility, as may be decided to be necessary by the parties for each camera.

- 1.26. Vendor shall provide Broward Sheriff's Office – Tamarac District / Adjudication workstation computer monitors for citation review and approval should provide a resolution of 1280 x 1024, which shall be returned to ATS in the event the Agreement is terminated.
2. **CITY OBLIGATIONS.** The City and the Broward Sheriff's Office – Tamarac District shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's or the Broward Sheriff's Office sole expense):
- 2.1. City shall appoint the Project Manager.
 - 2.2. City shall Assist Vendor in obtaining the Drawings from the relevant Governmental Authorities.
 - 2.3. City shall notify Vendor of any specific requirements relating to the construction and installation of any Intersection or the implementation of the Red Light Photo Enforcement Program.
 - 2.4. City shall cooperate with Vendor in seeking the Approvals, including, but not limited to, executing all documents that may be necessary or desirable in order to obtain the Approvals.
 - 2.5. City shall provide reasonable access to the City's properties and facilities in order to permit Vendor to install and test the functionality of the Designated Intersections and the Red Light Photo Enforcement Program.
 - 2.6. City and the Broward Sheriff's Office – Tamarac District shall provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training.
 - 2.7. City shall seek approval or amendment of Awareness Strategy and provide written notice to Vendor with respect to the content for the media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy.
 - 2.8. City and the Broward Sheriff's Office – Tamarac District shall assist Vendor in developing the Red Light Violation Criteria consistent with the State Law.
 - 2.9. City shall seek approval of the Enforcement Documentation.
 - 2.10. The City, through BSO, shall, on a form provided by Vendor, provide verification to the State Department of Motor Vehicles, National Law enforcement Telecommunications System, or appropriate authority indicating that Vendor is acting as an Agent of the Customer for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. § 2721, Section (b) (1) and as may otherwise be provided or required by any provision of applicable state law.
 - 2.11. If feasible, and only after all necessary approvals have been obtained from utilities and other governmental entities with jurisdiction, City shall allow Vendor to access power from existing power sources at no cost to City and shall allow or facilitate access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each camera system within the City's jurisdiction. Vendor acknowledges that access to power and signal cabinets may require approval from Florida Power and Light, Florida

Department of Transportation or Broward County Traffic Engineering Division, as necessary.

- 2.12. The Broward Sheriff's Office – Tamarac District Traffic Infraction Enforcement Officer shall process each potential violation in accordance with State Laws and/or City Ordinances and notify Vendor within five (5) calendar days of its appearance in the Notice of Violation Review Queue, using Axis™ to determine which violations will be issued as Notices of Violation or as soon as reasonably practical in the event of technical difficulties, power outages, or other circumstances beyond the City's control, or with the consent or approval of Vendor for extension.
- 2.13. Within five (5) calendar days of its appearance in the Traffic Citation Review Queue, using Axis™, for unpaid Notices of Violation, the Broward Sheriff's Office – Tamarac District Traffic Infraction Enforcement Officer shall process the violation and advise Vendor whether to issue a Traffic Citation, or as soon as reasonably practical in the event of technical difficulties, power outages, or other circumstances beyond the Sheriff's control, or with the consent or approval of Vendor for extension.
- 2.14. City and the Broward Sheriff's Office – Tamarac District shall provide, where appropriate, access to the internet for the purpose of processing violations and adjudications.
- 2.15. For optimal data throughput, Broward Sheriff's Office – Tamarac District / Adjudication workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater. Vendor will coordinate directly with the City's Information Technology (IT) Department and the Broward Sheriff's Office – Tamarac District Information Technology (IT) Department, if required, on installation and implementation of the computerized aspects of the program.
- 2.16. Broward Sheriff's Office – Tamarac District shall provide signatures of all authorized police users who will review events and approve citations on forms provided by ATS.
- 2.17. In the event that remote access to the ATS Axis VPS System is blocked by City's or the Broward Sheriff's Office network security infrastructure, the City's IT Department, the Broward Sheriff's Office IT Department, when applicable, and the counterparts at ATS shall coordinate to facilitate appropriate communications access while maintaining required security measures.
- 2.18. City shall provide a computer terminal at a public location where persons receiving Notices of Violation or Uniform Traffic Citations may review the recorded images of the violation.

EXHIBIT C
Maintenance

1. All repair and maintenance of Photo Red Light Enforcement systems and related equipment will be the sole responsibility of Vendor, including but not limited to maintaining the casings of the cameras included in the Vendor System and all other Equipment in reasonably clean and graffiti-free condition. Vendor at all times, shall comply with the requirements of Chapter 13, "Miscellaneous Offenses", Sec. 13.5, "Graffiti" of the Code of Ordinances of the City of Tamarac, which states the following:

Sec. 13-5. Graffiti. (c)(5) Any individual or entity owning, occupying, controlling or possessing any real or personal property which has been damaged, defaced or subject to graffiti shall be responsible for ensuring the necessary repairs or graffiti has been removed, painted over or obliterated within one hundred twenty (120) hours after receipt of written notice. In the event the damage, defacing or graffiti has not been removed, repaired or painted over using a color of paint that is substantially similar to the color of the existing structure within one hundred twenty (120) hours after its occurrence, then the City of Tamarac shall have the right to remove, paint over or obliterate the graffiti. In the event that the City of Tamarac has to remove or paint over the graffiti, then the owner of the real or personal property on which the graffiti existed shall be responsible for all costs incurred and failing payment by the owner, the city may impose a lien to recover all costs and expenses incurred.

2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Broward County Traffic Engineering present.
3. The provision of all necessary communication, broadband and telephone services to the Designated Intersections will be the sole responsibility of the Vendor
4. The provision of all necessary electrical services to the Designated Intersections will be the sole responsibility of the Vendor.
5. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Vendor shall provide and install such flash units.
6. The Vendor Project Manager (or a reasonable alternate) shall be available to the City's Project Manager each day.
7. Vendor shall ensure that all equipment that it provides pursuant to this Agreement meets the specifications, if any, adopted by the Florida Department of Transportation pursuant to Section 316.07456, by July 1, 2011.
8. Should Vendor determine that a camera is malfunctioning or inoperable for any reason, it shall immediately advise the City of such in writing, but in no case shall such notice exceed twenty four (24) hours from the Vendor's determination. City will have access to review daily reports indicating daily performance of each camera system and Vendor shall provide City with any operational status reports developed in the future.
9. In the event that a camera is inoperable for three (3) or more days in any one calendar month, the City shall pay a reduced fee, with a reduction of 1/30 of the monthly program fee for the inoperable camera per day for each day the camera is inoperable. If a camera is inoperable for more than fifteen (15) days in a month due to road construction or any other cause not caused by ATS, the City shall pay a reduced fee of two thousand five hundred dollars (\$2,500.00) per camera per month until the camera system is operational. Alternatively to paying a reduced monthly fee, if the camera is inoperable for three (3) or more calendar days the City, at its sole discretion, may opt not to pay the reduced fee and extend the current term of the Agreement by the length of time the camera is inoperable.

In the event the Vendor Photo Red Light System is inoperable for fifteen (15) or more days in any one calendar month due to an occurrence of force majeure, the City shall pay ATS a reduced fee

of two thousand five hundred dollars (\$2,500.00) per camera per month until the Vendor Photo Red Light System is operational, however after ninety (90) consecutive calendar days of such inoperability the City shall no longer be responsible for subsequent payments to ATS until the Vendor Photo Red Light System becomes operable. Alternatively to paying a reduced monthly fee, if the Vendor Photo Red Light System is inoperable for three (3) or more calendar days the City, at its sole discretion, may opt not to pay the reduced fee and extend the current term of the Agreement by the length of time the Vendor Photo Red Light System is inoperable.

EXHIBIT D
Violation Processing

1. All Violations Data shall be stored on the Vendor System.
2. The Vendor System shall process Violations Data gathered from the Designated Intersection into a format capable of review by the Authorized Employee via the Vendor System.
3. The Vendor shall make the initial determination that the image meets the requirements of the Ordinance and this Agreement, and is otherwise sufficient to enable the City to meet its burden of demonstrating a violation of the Ordinance. If the Vendor determines that the standards are not met, the image shall not be processed any further.
4. The Vendor System shall be accessible by the Authorized Employee through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser.
5. Vendor shall provide storage capabilities for the City and the Broward Sheriff's Office – Tamarac District, to store Violations identified for prosecution for a period of time of not less than four (4) years after final disposition of a case.
6. Vendor shall provide the Authorized Employee with access to the Vendor System for the purposes of reviewing the pre-processed Violations Data within five (5) calendar days of the gathering of the Violation Data from the applicable Designated Intersections, and as to the issuance of Traffic Citations, within five (5) calendar days of the expiration of the time frame under the State Law when a recipient of a Notice of Violation fails to pay the penalty or submit an affidavit of non-responsibility that satisfied the requirements of the State Law.
7. The Broward Sheriff's Office – Tamarac District shall cause the Authorized Employee to review the Violations Data and to determine whether a Notice of Violation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination to Vendor using the software or other applications or procedures provided by Vendor on the Vendor System for such purpose within five (5) calendar days of the Violation Data being placed by Vendor in the Notice of Violation Review Queue. As to the issuance of Traffic Citations, the Broward Sheriff's Office – Tamarac District shall cause the Authorized Employee to review the Violations Data and to determine whether a Traffic Citation shall be issued with respect to previously issued Notice of Violation, and transmit each such determination to Vendor using the software or other applications or procedures provided by Vendor on the Vendor System for such purpose within five (5) calendar days of the Violation Data being placed by Vendor in the Traffic Citation Review Queue. NOTWITHSTANDING EXHIBIT D, SECTION 3 HEREIN, VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE NOTICES OF VIOLATION AND TRAFFIC CITATIONS SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION CONSISTENT WITH STATE LAW (AN "ISSUANCE DECISION"), AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE AN ISSUANCE DECISION.
8. With respect to each Authorized Violation, Vendor shall print and mail a Notice of Violation within five (5) calendar days after Vendor's receipt of such authorization from the City's Authorized Employee. As to the issuance of Traffic Citations, Vendor shall print and mail a Traffic Citation within five (5) calendar days after Vendor's receipt of such authorization from the City's Authorized Employee.
9. Vendor shall provide a toll-free telephone number, which will be staffed by employees of the vendor, at its sole expense, for the purposes of answering citizen inquiries.
10. Vendor shall permit the Authorized Employee to generate monthly reports using the Vendor Standard Report System.
11. Upon Vendor's receipt of a written request from the City and in addition to the Standard Reports, Vendor shall provide, without cost to the City, reports regarding the processing and issuance of

Notices of Violation, the maintenance and downtime records of the Designated Intersections and the functionality of the Vendor System with respect thereto to the City in such format and for such periods as the City may reasonably request, without cost to the City.

Upon Vendor's receipt of a written request from the City at least fourteen (14) calendar days in advance of a hearing, Vendor shall provide expert witnesses for use by the City in prosecuting Uniform Traffic Citations in court, at no cost to the City.

12. Vendor shall provide such training to City and Broward Sheriff's Office – Tamarac District personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Red Light Enforcement Program. However, if a specific case requires testimony on the technical aspects of the equipment, upon City's request Vendor shall provide the City with an expert in the hearing in that case at no cost to the City.
13. Vendor shall prepare and provide to City and to the Broward Sheriff's Office – Tamarac District, a Notice of Violation form that complies with the requirements of the State Law. Vendor shall also provide to City a form of affidavit for use by owners of motor vehicles who claim an exemption under Section 316.083 and shall make that affidavit available to owners through an internet location or upon telephone or written request by an owner who has received a Notice of Violation or Traffic Citation. Vendor agrees that the City and the Broward Sheriff's Office – Tamarac District shall have the right to review and approve the form Notice of Violation and affidavit prior to their use, and that in the event City determines additional information should be included in the forms prior to their use or after implementation, Vendor shall modify the forms, at its sole expense, to comply with those requirements, subject only to space limitations on the notice paper. City through the Broward Sheriff's Office – Tamarac District, shall provide a Traffic Citation form to Vendor with the understanding that some modifications may be necessary to enable use with Vendor's systems and to comply with the State Law.
14. ATS will establish a demand deposit account bearing the title, "American Traffic Solutions, Inc. as agent for Customer" at a bank to be designated by the City. All funds collected by Vendor on behalf of the Customer will be deposited in this account and transferred by wire the second business day of each week to the Customer's primary deposit bank. The Customer will identify the account to receive funds wired from the Bank. If desired, Customer will sign a W-9 and blocked account agreement, to be completed by the Customer, to ensure the Customer's financial interest in said Bank account is preserved.
15. Vendor is authorized to charge, collect and retain a convenience fee of \$4.00 for electronic payments processed. Such fee is paid for by the violator.

**EXHIBIT E
COMPENSATION AND PRICING**

1.0 Description of Pricing

Fees are based on per approach, per month and are as follows:

Lane-based Pricing:

	<u>FEE</u>
For 1 or 2 Lanes	\$3,750
For 3 or 4 Lanes	\$4,750
For 5+ Lanes	\$5,750

A \$500 per month discount will be applied per camera on the pricing of "For 3 or 4 Lanes" and "For 5+ Lanes" fee for each month during the first 12 months after installation, provided that the camera is installed during the first 12 months after the Date on the Agreement.

Lane-Based Pricing Include: The Lane-based Pricing includes all costs required and associated with camera system installation, maintenance and on-going field and back-office operations. Includes red-light camera equipment with up to two (2) signal phases, installation, maintenance, violation processing services, DMV records access, mailing of Notice of Violation in color with return envelope, certified mail processing (no return receipt) of Traffic Citation, lockbox and e-payment processing services, call center support for general program questions and public awareness program support.

Lane-Based Pricing does not include the certified mail costs associated with the issuance of Uniform Traffic Citations. The City shall pay Vendor a certified mail processing surcharge of \$4 per piece metered (no return receipt).

**Exhibit F
Additional Rights and Obligations**

Vendor and the City shall respectively have the additional rights and obligations set forth below:

1. Vendor shall assist the City in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Red Light Photo Enforcement Program, as offered in the ATS proposal.
2. Vendor shall be solely responsible for installing such Signage. The Vendor shall be solely 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 State Law, the City and County Ordinances, State Statutes, and Florida Department of Transportation (FDOT) Regulations and shall assist in determining the placement of such Signage. Vendor shall be responsible for obtaining all necessary approvals from Governmental Authorities.
3. The Vendor Project Manager and the Project Manager shall confer on a weekly basis for the initial three (3) months of the Term of this Agreement, and on a monthly basis for the remainder of the Term, at such times and places as the Vendor Project Manager and the City Project Manager shall mutually agree.
4. The City shall not access the Vendor System or use the Red Light Photo Enforcement Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Vendor System or the Vendor Photo Enforcement Program with respect to any Intersection constructed or maintained by Vendor for such Person, or which could damage, disable, impair or overburden the Vendor System or the Vendor Photo Enforcement Program, and the City shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Vendor System, or (iii) any materials or information not intentionally made available by Vendor to the City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other Person to do any of the foregoing. The vendor shall, however, make available within a period of forty-eight (48) hours, footage from photo enforcement activities, when specifically requested by the Broward Sheriff's Office – Tamarac Division, as may be requested for an investigation of a criminal act for which it may be reasonably anticipated was captured by Vendor's photo enforcement camera system.
5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Vendor System or using the Red Light Photo Enforcement Program.
6. Each of Vendor and the City shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, each of Vendor and the City shall obey any and all such rules and regulations.
7. The City shall promptly reimburse Vendor for the cost of repairing or replacing any portion of the Vendor System, or any property or equipment related thereto, damaged solely and directly by the City, or any of its employees, contractors or agents. In all other instances, such costs shall be solely the Vendor's costs.
8. Vendor acknowledges that it is aware of the retention responsibilities for the records created by the services it provides to the City pursuant to this Agreement, and will maintain the public records of the program consistent with the requirements of Florida's public records law.

EXHIBIT G
DESIGNATED INTERSECTIONS

Customer will designate first phase implementation of cameras at designated intersections. ATS shall make its best efforts to install a Camera System within thirty (30) calendar days of permits being granted and power delivered for each agreed-upon Approach, providing that Customer has received permission for all implementations in writing from any third-party sources. ATS shall apply for all necessary permits for the initial camera within thirty (30) days of the execution of this Agreement by the parties.

Execution of this Agreement shall serve as written Notice to Proceed by Customer for the installation of Camera Systems for all intersection Approaches designated as follows:

SB	N University Dr	Southgate Blvd	4
WB	W McNab Rd	N University Dr	5
NB	N University Dr	NW 82 Street	4
SB	N University Dr	NW 82 Street	4
EB	W Commercial Blvd	Rock Island Rd	5
EB	W Commercial Blvd	W Prospect Rd/NW 44th St	4
NB	Rock Island Rd/NW 71st Ave	Bailey Rd/NW 62nd St	4
WB	W McNab Rd	N Pine Island Rd	5
NB	NW 31st Ave	W Commercial Blvd/NW 50th St	4
NB	N University Dr	W McNab Rd	5
SB	Rock Island Rd	W Commercial Blvd	4
SB	N Nob Hill	W McNab Rd	3
NB	Rock Island Rd	W Commercial Blvd	4
NB	N University Dr	NW 58 Street	4
SB	N University Dr	NW 58 Street	4
NB	N University Dr	NW 72 Street	4
WB	W Commercial Blvd/NW 50th St	NW 31st Ave	4
NB	US 441	W Commercial Blvd	4
SB	US 441	W Commercial Blvd	4
WB	W Commercial Blvd	Florida Turnpike	4

Implementation and installation of any Approach is subject to Site Selection Analysis and engineering results and must be mutually agreed to by the parties.

If for any reason outside the control of the City or ATS there is a significant delay in installing any of the intersection Approaches listed above, the City and ATS agree to find mutually agreeable alternative intersection Approaches within ten calendar days. This program may be implemented at additional intersection Approaches. Additional Approaches may be selected in addition to first phase implementation and may be selected based on Site Selection analysis, collision history, input, community safety, recommendations from Customer and engineering feasibility assessment. The intersections will be designated by the Customer, which designation will be based upon Police Department Staff review and an engineering analysis. All Camera installations will be based on a mutual agreement by Customer and ATS. Additional installations must be approved in advance by City through Notices to Proceed.

**ADDENDUM TO Nov 14, 2012 PROFESSIONAL SERVICES AGREEMENT
BETWEEN ATS AND CITY OF TAMARAC, FLORIDA**

This Addendum is dated effective this 14 day of Nov, 2012 and is mutually agreed to by American Traffic Solutions, Inc. ("ATS" or "Vendor"), a corporation duly registered under the laws of the State of Kansas with its principal place of business at 1330 West Southern Avenue, Tempe, Arizona 85282 and the City of Tamarac, a Florida municipal corporation, with an address at 7525 NW 88th Avenue, Tamarac, Florida 33321 (the "City"; with ATS and City each individually, a "party", and collectively, the "parties").

Pursuant to subsection 8.3 of the Agreement between the parties dated Nov 14, 2012 (the, "Agreement"), the parties agree the following Addendum shall be added to the Agreement as documentation on the BSO Administrative Costs to be paid out of program revenues as described in subsection 8.3 of the Agreement.

ADDENDUM

The City of Tamarac has provided ATS with documentation of its contract with the Broward County Sheriff's Office indicating an annual cost of \$214,133 to perform duties related to City's Photo Red Light Enforcement Program. Pursuant to the procedures described in section 8.3 of the Agreement the Vendor will maintain an accounting of any net balance owed to Vendor. If the amount of funds collected by City during a monthly billing period exceeds the amount of Vendor invoices during the same period by \$17,844.42, City shall pay Vendor the total amount due as calculated by section 8.0 of the Agreement. If the amount of funds collected during a monthly billing period does not exceed the amount of Vendor invoices during the same period by \$17,844.42, City shall retain the first \$17,844.42 of revenue and pay Vendor the remaining amount of funds collected and defer payment of the remaining balance. Payments due to Vendor shall be reconciled by applying future funds collected, first to the accrued balance owing pursuant to this subsection, and then to the invoice for the current monthly billing period. Accrued balances shall not include any interest charges. At any time that Vendor invoices, including any accrued balance, are fully repaid, City will retain all additional funds collected during that monthly billing period. If at the end of any fiscal year of the contract, sufficient funds have not been collected by City to pay any balance due to Vendor pursuant to this subsection, Vendor agrees to waive its right to recovery of any outstanding balance. The parties agree the effect of this Addendum is contingent upon the installation of at least twenty (20) operational Camera Systems.

CITY OF TAMARAC, FLORIDA
By: [Signature] 11-15-12
Michael C. Cernech, City Manager 11/30/12 Date

AMERICAN TRAFFIC SOLUTIONS, INC.
By: [Signature] 10/29/12
Michael Bolton, Chief Operating Officer Date

**SECOND ADDENDUM
TO PROFESSIONAL SERVICES AGREEMENT**

This First Amendment (this "Amendment") is dated effective this 10 day of July, 2013 and is entered into between American Traffic Solutions, Inc. ("ATS"), a Kansas corporation and the City of Tamarac ("Customer"), a municipal corporation of the State of Florida.

RECITALS

WHEREAS, on November 14, 2012, Customer and ATS entered into a Professional Services Agreement (the "Agreement"); and

WHEREAS, the Florida Legislature passed and the Governor of the State of Florida signed into law CS/CS/HB7125, authorizing local hearings for notices of violations connected with the use of red light cameras as traffic infraction detectors to enforce Chapter 316, the State of Florida Uniform Traffic Code and taking effect on July 1, 2013; and

WHEREAS, Customer and ATS mutually desire to amend certain terms and conditions of the Agreement to align the provision of services by ATS with the provisions and requirements of Law of Florida 2013-160.

TERMS AND CONDITIONS

NOW THEREFORE, Customer and ATS hereby agree as set forth below:

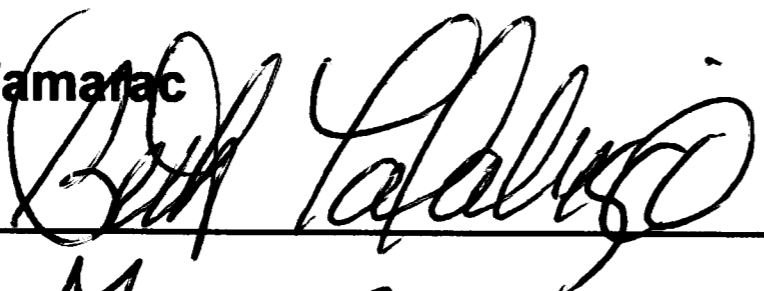
1. Section 1.9 of the Agreement is amended to include Notice of Violation hearings authorized by Laws of Florida 2013-160. This section shall read in pertinent part: "... and technical support documentation for a hearing in traffic court, and before the City's special magistrate, if necessary."
2. Section 2 of Exhibit B is hereby amended to add the following subsections:
 - a. 1.17a If an affidavit of non-responsibility is received within the time period set by State Law, a Notice of Violation shall be issued to the individual identified in the affidavit within five (5) calendar days of Vendor's receipt of such.
 - b. 1.17b. If a request for a hearing on a Notice of Violation is received, the City shall be provided a copy of such within five (5) calendar days of Vendor's receipt.
3. Exhibit D is hereby amended to add a new subsection 16 as follows: "Subsequent notices, other than those specified in this Exhibit D, may be delivered by First Class mail for additional compensation as set forth in Exhibit E."
4. Exhibit E is hereby amended to add the follow: "Subsequent notices mailings fee: \$2.00 per piece."
5. The City shall not be charged for any additional mailings of Notices of Violations to be sent out upon receipt of affidavits of non-responsibility.
6. Section 1 of Exhibit B is amended to revise subsection 1.22 to provide that Vendor shall also interact with City personnel regarding the implementation of hearings before the City's Special Magistrate. This shall include the ability to review evidence packets via internet connection during hearings, as well as the ability to print and finalize orders resulting from such hearings.
7. Section 2 of Exhibit B is hereby amended to add the following: "Customer shall provide, either for itself or through an inter-local agreement with another jurisdiction, a local hearing officer, clerk, and hearing facilities to schedule and hear disputed Notices of Violation."
8. Exhibit D is amended to add the following to Section 7: "Vendor shall provide the City with copies of requests for hearings on Notices of Violation within five (5) calendar days of receipt. If an affidavit of non-responsibility is received within the time period set by State Law, a Notice of Violation shall be

issued to the individual identified in the affidavit within five (5) calendar days of Vendor's receipt of such.


9. Exhibit D, Section 15 is hereby amended as follows: "ATS is authorized to charge, collect and retain a convenience fee of up to 5% for each electronic payment processed. Such fees are paid by the violator.
10. The provisions of the Agreement, as amended by this Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof. Except as expressly amended or modified by the terms of this Amendment, all terms of the Agreement shall remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall prevail and control.
11. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Each party represents and warrants that the representative signing this Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment.

City of Tamalac

By: 
Title: Mayor
Date: 7/10/13

American Traffic Solutions, Inc.

By: 
Title: Adam E. Tuton, Executive Vice President / President-Public Safety
Date: July 1, 2013

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Approved as to legal form
Julie Klahr
7/8/13