

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

STEVEN J. PINCUS, an individual, on
behalf of himself and all others similarly situated,

Plaintiff,

v.

COMPLAINT - CLASS ACTION

AMERICAN TRAFFIC SOLUTIONS, INC.,
a Kansas corporation,

JURY TRIAL DEMANDED

Defendant.

CLASS ACTION COMPLAINT

1. Plaintiff STEVEN J. PINCUS sues Defendant AMERICAN TRAFFIC SOLUTIONS, INC. (hereinafter “ATS”), and alleges that ATS, in conjunction with numerous municipalities and counties throughout Florida, has illegally appropriated millions of dollars from Floridians in violation of Florida law. As explained herein, Plaintiff asserts that ATS’s actions are unconscionable, fraudulent, and criminal, to such an extent that a significant proportion of Florida’s citizenry have been directly damaged by ATS’s conduct. Accordingly, on behalf of the putative class, Plaintiff seeks to recover all funds unlawfully collected by ATS.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because (i) at least one member of the putative class is a citizen of a state different from Defendant, (ii) the amount in controversy exceeds \$5,000,000, exclusive of costs and interest, and (iii) none of the exceptions under that section apply to this action.

3. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the complained of acts or omissions giving rise to the claim occurred here.

PARTIES

4. Plaintiff Steven J. Pincus (“Plaintiff”) is a natural person who at all times relevant to this action is and was a resident of Palm Beach County, FL.
5. Defendant ATS is a Kansas corporation whose principal place of business is 1150 N. Alma School Rd., Mesa, AZ 85201, and whose registered agent for service of process in the State of Florida is CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324.
6. ATS claims to be the market leader in road safety camera installations in North America, processing more than 1 million violations every year. Nationally, Defendant claims to have more than 3,200 installed red-light, speed and school bus stop arm safety cameras serving more than 30 million people.
7. In addition to its red-light camera business, ATS is a “money services business” as defined by Fla. Stat. § 560.103(22) and is a “money transmitter” as defined by Fla. Stat. § 560.103(23).

BACKGROUND OF THE MARK WANDALL TRAFFIC SAFETY ACT

8. In Florida, the rules of the road are codified in a series of statutes collectively referred to as the Florida Motor Vehicle Code. The Florida Motor Vehicle Code is located at Title 23 of the Florida Statutes, encompassing Florida Statutes Chapters 316 through 324.
9. The Florida Motor Vehicle Code is intended to be a uniform law: “It is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout

the state and its several counties and uniform traffic ordinances to apply in all municipalities. . . . It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter.” Fla. Stat. § 316.002.

10. In light of this, prior to 2010, it was unlawful for local governments in Florida to enact their own traffic laws, subject to very limited exceptions.
11. In 2010, the Florida legislature passed the Mark Wandall Traffic Safety Act (the “Act”). The Act amended the Florida Motor Vehicle Code to enable municipalities and counties to operate their own so-called “photo-enforced” red light programs on their roadways. *See* Fla. Stat. § 316.0083.
12. The Act incorporated a full framework for photo-enforced red light programs into the Motor Vehicle Code, establishing rules for the issuance of citations, review of disputed violations, payment of civil penalties, and other rules that must be observed by local governments availing themselves of such a program. *Id.*
13. The Act also established the civil penalty for drivers photographed “running” a red light:

Within 30 days after a violation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying the remedies available under s. 318.14 and that the violator must pay the penalty of \$158 to the department, county, or municipality, or furnish an affidavit in accordance with paragraph (d), or request a hearing within 60 days following the date of the notification in order to avoid the issuance of a traffic citation. The notification must be sent by first-class mail. The mailing of the notice of violation constitutes notification.

Fla. Stat. § 316.0083(b)1.a.

14. Notably, the Act specifically prohibits the payment of commissions to vendors who implement such programs for municipalities:

An individual may not receive a commission from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.

§ 316.0083(b)4

15. Following the Florida legislature's passage of the Act, many Florida municipalities decided to implement their own photo-enforced red light programs, and most selected Defendant ATS to be their exclusive vendor.

NORTH MIAMI BEACH'S PHOTO-ENFORCED RED LIGHT PROGRAM

16. One such municipality was the City of North Miami Beach. In 2010, in view of the Act, the City of North Miami Beach executed an agreement with ATS to implement a photo-enforced red light program. This agreement, along with four (4) amendments thereto, is attached hereto and incorporated herein as *Composite Exhibit A*. (hereinafter the "Agreement").¹
17. The Agreement selected ATS as the exclusive vendor for the City of North Miami Beach's photo-enforced red light program, responsible for all aspects of operating the program, including installing and maintaining equipment, monitoring intersections, issuing and mailing citations, processing payments, and more. Operating the program is almost entirely "hands-off" for the city, with the lion's share of work shifted to ATS.

¹ The original version of the Agreement was executed in 2008, despite the flagrant illegality of the program at the time. *See, e.g., Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014). Following the legislature's passage of the Act in 2010, the Agreement was substantially amended in March 2013 to conform to the provisions of the Act.

18. In August 2013, the City of North Miami Beach and ATS executed their “Second Amendment to Professional Services Agreement,” amending the Agreement to change certain provisions of the photo-enforced red light program within the city.
19. This second amendment to the Agreement specifies, in pertinent part, that “ATS is authorized to charge, collect and retain a convenience fee of up to 5% of the total dollar amount of each electronic payment processed. Such convenience fees are paid by the violator.” *See Composite Exhibit A-3*, Second Amendment to Professional Services Agreement.
20. This so-called “convenience fee” is both a commission and an unlawful surcharge, both of which are expressly prohibited by the Florida Motor Vehicle Code, and the Act itself.
21. ATS has illegally imposed and collected this 5% surcharge from Florida drivers on almost every single photo-enforced red light violation serviced by the company, amounting to millions upon millions of ill-gotten gains, notwithstanding the fact that ATS is paid for its services by the City of North Miami Beach in the amount of \$4,750 per camera, per month.

FACTUAL ALLEGATIONS AS TO PLAINTIFF STEVEN J. PINCUS

22. On or about February 17, 2018, images of Plaintiff’s automobile were captured by one of ATS’s red-light cameras. Shortly thereafter, Plaintiff received in the United States mail a Notice of Violation allegedly issued by North Miami Beach. A true and correct copy of this Notice of Violation is incorporated herein and attached hereto as *Exhibit B*.

23. The Notice of Violation alleged that Plaintiff had run a red light, and demanded payment of a civil penalty in the amount of \$158.00.
24. The Notice of Violation encouraged online payment of the fine to one of ATS's websites, www.violationinfo.com, and required an additional "convenience fee" of \$7.90 for the privilege of paying the fine online or by way of a toll-free number; a fee that is retained by Defendant.
25. The Notice of Violation also included a form to mail in payment of the fee—again, not to an address in North Miami Beach or even in Florida— but to a post office box in Cincinnati, Ohio, leased to ATS.
26. Even though the Notice of Violation was purportedly issued by the City of North Miami Beach, he was instructed **not** to send payment to the Clerk of the Court.
27. The only option to pay the fine is to pay Defendant via online payment, payment by phone, or payment by mail. No payments directly to the City of North Miami Beach are allowed, and cash is not accepted.
28. On April 23, 2018, Plaintiff, using his personal Discover card, paid the civil penalty and \$7.90 "convenience fee," which appeared on Plaintiff's credit card activity log as two separate transactions, bringing the total penalty to \$165.90.

CLASS ACTION ALLEGATIONS

29. This action is brought on behalf of the following class:
 - (i) all persons
 - (ii) who were issued a Notice of Violation by American Traffic Solutions, Inc.
 - (iii) for an alleged photo-enforced red light violation in Florida
 - (iv) who subsequently paid the \$158 civil penalty along with an additional sum to American Traffic Solutions, Inc.
 - (v) during the four-year period prior to the filing of the complaint in this action through the date of certification.

30. Plaintiff alleges on information and belief that the class is so numerous that joinder of all members of the class is impractical. Defendant operates in numerous jurisdictions across the State of Florida and, upon information and belief is responsible for approximately 75% of the nearly 5.4 million red-light camera violations issued in the last five years, approximately 3.7 million of which are believed to have paid a “convenience fee” along with their fine.²
31. Plaintiff and the putative class are not asserting a private cause of action under either Fla. Stat. §§ 316.0083, 318.121, or 560.204; instead he is asserting a common law cause of action on behalf of said class for unjust enrichment and/or money had and received, an element of which is a violation(s) of the statute itself.³
32. There are questions of law or fact common to the class, which common issues predominate over any issues involving only individual class members. The common factual and/or legal issues common to each class member are as follows:
- (a) whether Defendant has received a commission from revenue collected from violations detected through the use of a traffic infraction detector, per Fla. Stat. § 316.0083(b)4;

² Source: <http://www.flhsmv.gov/pdf/cabinetreports/redlightcameraanalysis2017.pdf> (Last visited May 2, 2018).

³ Under Florida law, “[w]hether a statutory remedy is exclusive or merely cumulative depends upon the legislative intent as manifested in the language of the statute.” *Thornber v. City of Ft. Walton Beach*, 568 So.2d 914, 918 (Fla. 1990). “Even where the legislature acts in a particular area, the common law remains in effect in that area unless the statute specifically says otherwise.” *State v. Ashley*, 701 So.2d 338, 341 (Fla.1997); *see also Essex Ins. Co. v. Zota*, 985 So.2d 1036, 1048 (Fla. 2008) (“A statute....designed to change the common law rule must speak in clear, unequivocal terms, for the presumption is that no change in the common law is intended unless the statute is explicit in this regard.” (quoting *Carlile v. Game & Fresh Water Fish Comm'n*, 354 So.2d 362, 364 (Fla. 1977))).

State Farm Mut. Auto. Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC, 278 F. Supp. 3d 1307, 1323 (S.D. Fla. 2017)

- (b) whether Defendant has collected unlawful additional fees, fines, surcharges, or costs other than the court costs and surcharges assessed under Fla. Stat § 318.18(11), (13), (18), (19), and (22), per Fla. Stat. § 318.121.
 - (c) whether Defendant is operating as an unlicensed money transmitting business in contravention of Fla. Stat. § 560.204;
 - (d) whether Defendant should be enjoined from engaging in such conduct in the future;
 - (e) whether Defendant should be required to return all “convenience fees” collected while operating as an unlicensed money transmitting business in contravention of Fla. Stat. § 560.204.
33. Plaintiff’s claim is typical of those of the class members. All claims are based on the same facts and legal theories.
34. Plaintiff will fairly and adequately protect the interests of the class. He has retained counsel experienced in handling actions involving unlawful anti-consumer practices.
35. Neither Plaintiff nor his counsel has any interests that might cause them not to vigorously pursue this action.
36. Certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that:
- a. The questions of law or fact common to the members of the class predominate over any questions affecting an individual member;
 - b. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.
37. Certification of a class under Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate in that Defendant has acted on grounds generally applicable to the class thereby making appropriate relief with respect to the class as a whole. Injunctive relief is appropriate and necessary to cause the illegal surcharges to stop.

38. Plaintiff requests certification of a hybrid class pursuant to both Rule 23(b)(3), for monetary damages and Rule 23(b)(2) for injunctive relief.

COUNT I
UNJUST ENRICHMENT
FOR VIOLATION OF FLA. STAT. § 316.0083(b)4

39. Plaintiff incorporates paragraphs 1 through 38 as if set forth herein.
40. Fla. Stat. § 316.0083(b)4 states that “[a]n individual may not receive a commission from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.”
41. The 5% “convenience fee” extracted by ATS from Plaintiff and the putative class is an illegal “commission.”
42. The 5% “convenience fee” extracted by ATS from Plaintiff and the putative class is also an illegal “fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.”
43. Under Florida law, a claim for unjust enrichment has three elements: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof. *Virgilio v. Ryland Grp., Inc.*, 680 F.3d 1329, 1337 (11th Cir. 2012) (citations and quotations omitted).
44. The Plaintiff conferred a monetary benefit on the Defendant, some or all of which was voluntarily retained by Defendant.

45. Because Defendant collected the money in violation of law, it would be unequitable for Defendant to retain it.
46. At least one other Court in this District has already concluded that ATS's activities can support an unjust enrichment claim:

The enrichment and the equitable components of the Plaintiffs' claim are deeply intertwined: the Vendors were enriched both by the Plaintiffs who paid a convenience fee to satisfy their fines and by the Local Governments that contracted with the Vendors to implement and administer red light ticketing programs.

Parker v. American Traffic Solutions, Inc., No. 14-CIV-24010-MORENO
(S.D. Fla. Aug. 10, 2015).

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor and in favor of the class, and against Defendant American Traffic Solutions, Inc. for:

- (a) An order certifying this case to proceed as a class action;
- (b) An order directing Defendant to disgorge their ill-gotten monies obtained from the putative class;
- (c) Reasonable attorney's fees and costs; and
- (d) Such further relief as this Court may deem appropriate.

COUNT II
UNJUST ENRICHMENT
FOR VIOLATION OF FLA. STAT. § 318.121

47. Plaintiff incorporates paragraphs 1 through 38 as if set forth herein.
48. Fla. Stat. § 318.121 of the Motor Vehicle Code states that "Notwithstanding any general or special law, or municipal or county ordinance, additional fees, fines, surcharges, or costs other than the court costs and surcharges assessed under

s. 318.18(11), (13), (18), (19), and (22) may not be added to the civil traffic penalties assessed under this chapter.”

49. The 5% “convenience fee” extracted by ATS from Plaintiff and the putative class is an illegal additional fee, fine, surcharge, or cost, as prohibited by § 318.121 of the Florida Motor Vehicle Code.
50. Under Florida law, a claim for unjust enrichment has three elements: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof. *Virgilio v. Ryland Grp., Inc.*, 680 F.3d 1329, 1337 (11th Cir. 2012) (citations and quotations omitted).
51. The Plaintiff conferred a monetary benefit on the Defendant, some or all of which was voluntarily retained by Defendant.
52. Because Defendant collected the money in violation of law, it would be unequitable for Defendant to retain it.
53. At least one other Court in this District has already concluded that ATS’s activities can support an unjust enrichment claim:

The enrichment and the equitable components of the Plaintiffs’ claim are deeply intertwined: the Vendors were enriched both by the Plaintiffs who paid a convenience fee to satisfy their fines and by the Local Governments that contracted with the Vendors to implement and administer red light ticketing programs.

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- (a) An order certifying this case to proceed as a class action;
- (b) An order directing Defendant to disgorge their ill-gotten monies obtained from the putative class;
- (c) Reasonable attorney's fees and costs; and
- (d) Such further relief as this Court may deem appropriate.

COUNT III
UNJUST ENRICHMENT
FOR VIOLATION OF FLA. STAT. § 560.204

- 54. Plaintiff incorporates paragraphs 1 through 38 as if set forth herein.
- 55. Fla. Stat. Ch. 560 regulates the activity of "Money Services Businesses" in the State of Florida, including "Money Transmitters" such as the Defendant.
- 56. A "Money Transmitter" is "a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country." Fla. Stat. § 560.103(23).
- 57. Fla. Stat. § 560.204(1) states that, unless exempted, "a person may not engage in, or in any manner advertise that they engage in, the selling or issuing of payment instruments or in the activity of a money transmitter, for compensation, without first obtaining a license under this part. For purposes of this section, 'compensation' includes profit or loss on the exchange of currency."

58. Florida imposes considerable requirements on money transmitters seeking a license, including proof of minimum net worth of up to \$2 million, a surety bond of up to \$2 million, annual financial audit reports, significant record keeping requirements, and other conditions. Fla. Stat. § 560.203 *et seq.*
59. Despite these requirements, Defendant ATS conducts a large-scale money transmitter business without a Florida license.
60. Members of the putative class conferred a benefit on Defendant, to wit: payment of compensation to Defendant in exchange for money transmission services.
61. Defendant had knowledge of the benefit, in that the Defendant itself collected its fee from the putative class members.
62. Defendant accepted and retained the benefit conferred.
63. The circumstances are such that it would be inequitable for the Defendant to retain its compensation, as Defendant was not a licensed money transmitter as required by Fla. Stat. § 560.203.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor and in favor of the class, and against Defendant American Traffic Solutions, Inc. for:

- (a) An order certifying this case to proceed as a class action;
- (b) An order directing Defendant to disgorge their ill-gotten monies obtained from the putative class;
- (c) Reasonable attorney's fees and costs; and
- (d) Such further relief as this Court may deem appropriate.

JURY DEMAND

64. Plaintiff demands trial by jury.

Dated: June 29, 2018.

BRET L. LUSSKIN, Esq.
Attorney for Plaintiff
20803 Biscayne Blvd., Ste 302
Aventura, FL 33180
Telephone: (954) 454-5841
Facsimile: (954) 454-5844
blusskin@lusskinlaw.com

By: /s/ Bret L. Lusskin, Esq.
Bret L. Lusskin, Esq.
Florida Bar No. 28069

SCOTT D. OWENS, ESQ.
Attorney for Plaintiff
3800 S. Ocean Dr., Suite 235
Hollywood, Florida 33019
Telephone: 954-589-0588
Facsimile: 954-337-0666
scott@scottdowens.com

By: /s/ Scott D. Owens, Esq.
Scott D. Owens, Esq.
Florida Bar No. 0597651

KEITH J. KEOGH, Esq.
Attorney for Plaintiff
Keogh Law, LTD.
55 W. Monroe St., Ste. 3390
Chicago, IL 60603
Keoghlaw.com
Telephone: (312) 726-1092
Facsimile: (312) 726-1093
Keith@Keoghlaw.com

By: /s/ Keith J. Keogh, Esq.
Keith J. Keogh, Esq.
Florida Bar No. 126335

COMPOSITE EXHIBIT A

AGREEMENT BETWEEN CITY OF NORTH MIAMI BEACH AND AMERICAN TRAFFIC SOLUTIONS



American Traffic Solutions

480.443.7000 ■ Fax: 480.596.4501 ■ www.atsol.com ■ 7681 East Gray Road ■ Scottsdale, AZ 85260

RECEIVED
2008 NOV -4 PM 2:28
CITY ATTORNEY'S OFFICE
CITY OF NORTH MIAMI BEACH

October 8, 2008

Howard B. Lenard, Esq.
City Attorney
City of North Miami Beach
17011 Northeast 19th Avenue
North Miami Beach, Florida 33162

RE: Agreement Between the City of North Miami Beach and American Traffic Solutions, Inc. for Traffic Safety Camera Program dated October 30, 2008

Dear Mr. Lenard:

Enclosed is a copy of the fully-executed above-referenced Agreement signed by Adam Tuton, Chief Operating Officer on behalf of ATS.

Please let me know if you have any questions or if I may be of further assistance.

Very truly yours,

American Traffic Solutions, Inc.

A handwritten signature in cursive script that reads "Linda Welsch".

Linda Welsch
Executive/Legal Assistant to
Adam Tuton, Executive Vice President, COO

Enclosure

cc: Major Prescott, North Miami Beach Police Department

AGREEMENT BETWEEN THE CITY OF NORTH MIAMI BEACH
AND AMERICAN TRAFFIC SOLUTIONS FOR
TRAFFIC SAFETY CAMERA PROGRAM

This Agreement (this "Agreement") is made as of this 30th day of October, 2008 by and between American Traffic Solutions, INC., a Kansas Corporation, licensed to do business in Florida, with offices at 7681 E. Gray Road, Scottsdale, Arizona 85260 ("Vendor"), and The City of North Miami Beach, a Florida municipal corporation, with an address at 17011 NE 19th Avenue, North Miami Beach, FL 33162 (the "City").

RECITALS

WHEREAS, Vendor has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and Notice of Infraction processes related to the digital photo red light enforcement systems provided by Vendor pursuant to this Agreement; and

WHEREAS, the City Council of the City adopted Ordinance 2007-13, which authorizes the City's Traffic Safety Camera Program (TSCP) and provides for the implementation and operation of such; and,

WHEREAS, the City selected Vendor to provide services to implement and carry on the City's TSCP, 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 Infractions;

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 Ordinance 2007-13 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 Control Infraction Review Officer, whose duties and qualifications are set forth in the City Ordinance.
 - 1.2. "Authorized Infraction" means each Potential Infraction in the Infraction Data for which authorization to issue a Notice of Infraction in the form of an Electronic Signature is given by the Authorized Employee by using the Vendor System.
 - 1.3. "City Ordinance" means Ordinance 2007-13.
 - 1.4. "Civil Fee" means the fee assessed for violations of the City Ordinance, as set forth in the Ordinance.

- 1.5. “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:
 - 1.5.1. 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
 - 1.5.2. 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.
 - 1.5.3. 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, or (vi) was required by applicable state law to be described.
- 1.6. “Designated Intersection.” means the Intersections, as that term is defined in the City Ordinance, set forth on **Exhibit “A”** attached hereto, and such additional Intersections, as Vendor and the City shall mutually agree from time to time through the parties’ Project Managers.
- 1.7. “Electronic Signature” means the method through which the Authorized Employee indicates his or her approval of the issuance of a Notice of Infraction in respect of a potential Infraction using the Vendor System.
- 1.8. “Enforcement Documentation” means the necessary and appropriate documentation related to the enforcement of Red Zone Infractions, as defined in the City Ordinance, including but not limited to warning letters, Notices of Infraction (using the specifications of the hearing officer (also known as code enforcement Special Master) and the City, a

numbering sequence for use on all notices (in accordance with applicable state statutes and the City's Ordinance), instructions to accompany each issued Notice of Infraction (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), chain of custody records, criteria regarding operational policies for processing Notices of Infraction (including with respect to coordinating with the applicable vehicle registry), and technical support documentation for applicable hearing officers .

- 1.9. "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, servers and poles. Vendor agrees to keep all equipment current in technology and to provide City all current upgrades in a timely manner.
- 1.10. "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.
- 1.11. "Infraction" means any Infraction of the City's Ordinance.
- 1.12. "Infractions Data" means the images and other Infractions data gathered by the Vendor System at the Designated Intersection .
- 1.13. "Installation Date of the TSCP" means the date on which Vendor completes the construction and installation of at least one (1) Intersection in accordance with the terms of this Agreement so that such Intersection is operational for the purposes of functioning with the TSCP.
- 1.14. "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.
- 1.15. "Notice of Infraction" shall mean the Notice of an Infraction, which is mailed or otherwise delivered by Vendor to the alleged violator on the appropriate Enforcement Documentation in respect of each Authorized Infraction pursuant to the requirements of the City Ordinance.
- 1.16. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the TSCP is functional in order to permit the

identification and the issuance of Notices of Infraction for approved Infractions using the Vendor System.

- 1.17. "Ordinance" shall mean City of North Miami Beach Ordinance , 2007-13
- 1.18. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.19. "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, on behalf of City, for overseeing the installation at the Designated Intersections and the implementation of the TSCP, 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 Council.
- 1.20. "Potential Infraction" 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 Red Zone Infraction has occurred.
- 1.21. "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.
- 1.22. "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 TSCP 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.
- 1.23. "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 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 TSCP, 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.

- 1.24. "Traffic Safety Camera Program" means, collectively, the TSCP 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.
- 1.25. "Traffic Safety Camera Program" means the process by which the monitoring, identification and enforcement of Infractions of the Red Zone Infractions 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 Infractions and recording such Infraction data in the form of photographic images of motor vehicles.
- 1.26. "Photo Red Light Infraction Criteria" means the standards and criteria by which Potential Infractions will be evaluated by Authorized Employees of the City, which standards and criteria shall include, but are not limited to, the definition of a Red Zone Infraction set forth in the City Ordinance, relying upon the duration of time that a traffic light must remain red prior to a Infraction 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 Infraction, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.
- 1.27. "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.
- 1.28. "Warning Period" means the period of 90 days after the Installation Date of the first intersection approach, as set by the Ordinance.
- 2.0 Term. The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years after the date of the first paid notice from the first installed System (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, five (5) 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) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
- 3.0 Services. Vendor shall provide the TSCP to the City, in each case in accordance with the terms and provisions of the Ordinance.
- 3.1. 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.

- 3.2. 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.
- 3.3. Infraction Processing. During the Operational Period, Infractions shall be processed as set forth on **Exhibit "D"**, attached hereto.
- 3.4. Prosecution. The City shall prosecute Ordinance violations in respect thereof pursuant to the terms, procedures and requirements of the City Ordinance, subject to City's routine law enforcement discretion.
- 3.5. 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 "E"** attached hereto.
- 3.6. 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, including new or additional automated photo enforcement programs, including upgrading system for speed enforcement, 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 " E " (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 16.0.
- 4.0 License; Reservation of Rights.
- 4.1. License. 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 Infractions and authorizing the issuance of Notices of Infraction 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 TSCP 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 TSCP, so long as any and all such publications or materials are approved in advance by Vendor.

- 4.2. 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.
- 4.3. 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.
- 4.4. 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 protective 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.
- 4.5. 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.
- 4.6. 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 attorneys 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 6.1.

5.0 Representations and Warranties.

5.1. Vendor Representations and Warranties.

5.1.1. Authority. Vendor hereby warrants and represents that:

5.1.1.1. it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; and,

5.1.1.2. 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.

5.1.2. 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.

5.2. City Representations and Warranties.

5.2.1. 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 and does not warrant the outcome of any judicial or legislative action that may be taken affecting these authorities subsequent to the execution of this Agreement.

5.3. 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 in City's governmental capacity .

6.0 Termination.

6.1. Termination for Cause: 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 or policies are adopted by agencies with jurisdiction, to prohibit or materially change the operation of TSCP so as to make it reasonably impractical to operate the red light enforcement program, including without limitation changes that would prohibit the red light enforcement program, or which would impose restrictions on revenues and uses that are contrary to the terms of this Agreement; (ii) any court having jurisdiction over City rules, or declares, that the City's red light enforcement program is invalid or results from the Vendor System of photo red light enforcement are inadmissible in evidence, or otherwise renders a decision that makes it reasonably impractical 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.

The rights to terminate this Agreement given in Section 6.1 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.

- 6.2 Warning Period. The Ordinance provides for a one time 90 day Warning Period, during which time courtesy notices of infractions, with no civil fees, are used. The parties hereto acknowledge that this Warning Period will be used to verify the reliability of the program and the detection of infractions, as well as to monitor anticipated changes in state law on the subject of camera enforcement of red light infractions. The Warning Period shall commence on the date the initial camera and the Infraction Processing procedures become operational, with the exact date to be confirmed in writing by the parties' Project Managers. At any time up to the conclusion of the initial Warning Period, the City, through a motion adopted by the City Council, may terminate the TSCP, for any or no cause. The City shall not be liable for any costs or expenses incurred by Vendor during this Warning Period. If the City Council determines to terminate the program pursuant to this paragraph, this Agreement shall be deemed terminated and the parties shall proceed pursuant to Section 6.3 below. In addition to the City's right to terminate during the Warning Period, for a period of 90 calendar days after the expiration of the Warning Period, either party shall have the right to terminate the agreement.
- 6.3 Procedures Upon Termination. This section 6.3 shall apply to the expiration of this Agreement and to the early termination of the Agreement. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in this Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

- 6.3.1 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 TSCP, (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 Infraction 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 Infraction issued prior to the termination of this Agreement.
- 6.3.2 The City shall (i), except for pending enforcement cases, immediately cease using the TSCP, 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.
- 6.3.3 Unless the City and Vendor have agreed to enter into a new agreement relating to the TSCP 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 approximately 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 6.3.1.

After the first three (3) years of this Agreement, City may provide for the early termination of this Agreement for City's convenience in the event that the City Council determines to discontinue having a TSCP. In such event, the remaining provisions of section 6.3 shall apply. City shall have no further liability for any such early termination. The parties recognize that other provisions of this Agreement serve as consideration for this provision.

7.0 Fees to be Paid to Vendor and Payment Processing.

- 7.1. Vendor shall have the right to receive the compensation set forth on, and pursuant to, **Exhibit F** attached hereto.
- 7.2. Vendor shall be responsible for processing payments of the Civil Fees. The Vendor shall provide payment means through mail, telephone and on-line processes. Vendor shall track all payments and handle all applied payments, unapplied payments, overpayments, refunds, adjustments, dismissals and reversals.

- 7.3. Vendor shall pay City all payments received during a calendar month, no later than the 7th day of the next following month.
- 7.4. Vendor shall invoice the City for all applicable fees according to the fee schedule delineated on **Exhibit “ F”**. 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.
- 8.0 Survival. Notwithstanding the foregoing, the parties’ obligations shall survive the termination of the Agreement to the extent necessary to fulfill the parties’ accrued monetary obligations under this Agreement.
- 9.0 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.
- 10.0 Indemnification and Liability.

Indemnification.

ATS shall comply with all laws, ordinances and regulations governing the use of photo enforcement systems applicable to this Agreement and shall comply with the maintenance procedures and manufacturer recommendations for operation of the Axxis™ equipment which affect this Agreement, and shall indemnify and save harmless the Customer against claims arising from the violations of the maintenance procedures and manufacturer recommendations for operation of the equipment as a result of the negligence or willful misconduct of ATS, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of Customer.

- 10.1. Indemnification – Negligence. The Vendor agrees to defend, 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 City's employees, officers or agents. In the event that a court of competent jurisdiction determines that the provisions of Sec. 725.06, F.S., and / or Sec. 725.08 , F.S., apply to this Agreement, then , in such event, Vendor shall defend, indemnify and hold harmless City and City's officers, employees and agents only to the fullest extent authorized by said cited statutes .

- 10.2. 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 a default of this Agreement.
- 10.3. The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification to be provided by the Vendor and agree that in the event that the law is construed to require a specific consideration to 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 Vendor'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.
- 10.4. Legal Challenges. The parties recognize and acknowledge that the TSCP contemplated herein may be subject to legal challenge and/or judicial review as a new or innovative program. It is understood and acknowledged that various aspects of the program may be challenged. In the event of a legal challenge to the Program, City and Vendor shall share in the cost of the defense and any court ordered reimbursements to violators on a pro-rata basis.
- 10.5. In the event that a court of competent jurisdiction or the State of Florida, including any of its agencies, orders or requires the City to return any payments made for infractions of the City Ordinance , Vendor shall, at no additional charge, assist City to perform all relevant portions of any such order, decree, judgment, etc.,

required to be performed by the City including, but not limited to, assisting the City to locate each violator so that any ordered reimbursement may be made by both the City and the vendor.

10.6. Change in State Law. The parties recognize and acknowledge that it has been reported that the Florida Legislature is considering various revisions to State Uniform Traffic Laws which, if enacted, would expressly authorize municipalities to issue traffic infractions through the use of Red Light Cameras without the necessity of using the code enforcement system. Should the Florida Legislature enact any law modifying the Uniform Traffic Laws so as to expressly permit the TSCP, sections 10.4 and 10.5 shall automatically become void.

10.7. Notice of Claims. If the City or Vendor receives notice of any claim or circumstances which may give rise to an indemnified loss under this Section 10, the receiving party shall give written notice to the other party within ten (10) 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 directly prejudiced, suffers loss, or incurs expense because of the delay.

10.8. Review of Indemnification Provisions. At the conclusion of the Warning Period, and the 2008 session of the Florida Legislature, the City and Vendor will review the indemnification provisions in this Section 10.

11.0 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.

- 12.0 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.

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.

- 13.0 No Contingent Fees. Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee 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 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 Infraction 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.

- 14.0 Notices. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, 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:

City of North Miami Beach
17011 NE 19th Avenue
North Miami Beach, FL 33162
Phone: (305) 948-2900
Fax: (305) 957-3602
Attn: City Manager

Vendor:

American Traffic Solutions, Inc.
7681 E Gray Rd
Scottsdale, AZ 85260
Attention: Chief Operating Officer

- 15.0 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 ten percent (10%) of the amount 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.
- 16.0 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.
- 17.0 Headings. Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.
- 18.0 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits shall be treated as part of this Agreement and are incorporated herein by reference.
- 19.0 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.
- 20.0 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.
- 21.0 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.
- 22.0 Insurance.

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

22.1.1. Comprehensive General Liability insurance to cover liability for bodily injury and property damage. Exposures to be covered are premises, operations, products/completed operations, and contractual liability. 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
- B. Personal Injury
 - 1. Annual Aggregate \$1,000,000

22.1.2. 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.

22.1.3. 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

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

22.1.5. Vendor shall name the City as an additional insured on each of the policies required herein, with the exception of the Vendor's Worker's Compensation policy and Professional Liability.

- 22.1.6. 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. These Certificates shall contain a provision that coverage's afforded under these policies will not be canceled or impaired until at least forty five (45) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must not be less than "A-VI." Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the Vendor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect.
- 22.1.7. Any insurance required of Vendor pursuant to this Agreement must also be required by any sub-contractor of Vendor in the same limits and with all requirements as provided herein, including naming the City as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Vendor and provided proof of such coverage is provided to City. The Vendor and any sub-contractor of Vendor shall maintain such policies during the term of this Agreement.
- 23.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Miami-Dade County, Florida.
- 24.0 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.
- 25.0 Waiver of Jury Trial . In the event of any litigation between the parties which in any way arises out of this Agreement, the parties hereby agree to waive any right to trial by jury.
- 26.0 RFP. Vendor agrees to comply with any provisions of the RFP which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Vendor during the RFP process.
- 27.0 Compliance with Law. Vendor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.
- 28.0 Most Favored Customer. The Vendor represents that the fees, charges, and/or costs paid to Vendor under this Agreement do not exceed the current fees, charges or costs paid to Vendor by other Florida cities, counties and/or municipalities for the same (or substantially similar) services described in this Agreement. In the event the stated fees, charges and/or costs charged to the City under this Agreement are determined to be higher, then said fees, charges and/or costs shall be reduced accordingly. In such an

event, the Vendor agrees to offer the same (or lower) fees, charges and/or costs to the City as those charged to other Florida cities, counties and/or municipalities for the same (or substantially similar) services described in this Agreement.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY OF NORTH MIAMI BEACH

ATTEST:

BY:

APPROVED AS TO FORM:

CITY ATTORNEY

Howard B. Lenard, Esq.
City Attorney
City of North Miami Beach
17011 Northeast 15th Avenue
North Miami Beach, Florida 33162

WITNESSES:

ATTEST:

SECRETARY

STATE OF Arizona :
COUNTY OF Maricopa : SS:

ON THIS 30th day of October, 2008, before me, the undersigned notary public, personally appeared Adam Tuton, personally known to me, or who has produced _____ as identification, and is the person who subscribed to the foregoing instrument and who acknowledged that he executed the same on behalf of said Corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Linda M. Welsh
NOTARY PUBLIC
Linda M. Welsh
Print or Type Name

My Commission Expires:



EXHIBIT "A"
Designated Intersection

The contract provides for the implementation of cameras at no less than ____ intersections, at least 1 of which shall be installed within forty five days (45) days of receipt of permits for each agreed upon approach.

The proposed ____ intersections are as follows:

Vendor agrees to perform a feasibility study at no charge to City to determine the best locations for camera placement.

Installation of any approach is subject to engineering and video analysis results.

Additional approaches will be selected based on collision history, input and recommendations from the City's Police Department, and an engineering feasibility assessment. Vendor shall apply for a permit within sixty (60) days of the approval of this Agreement by the City Council.

Vendor will provide the City with video evaluation of candidate sites using the Axis VIMS system to assist the City's Police Department in its recommendations.

The program may be implemented at additional intersections after the conclusion of the Warning Period. The intersections will be designated by the Police Department, which designation will be based upon Police Department staff review and an engineering analysis.

EXHIBIT "B"
Construction and Installation Obligations

Timeframe for Installation: Traffic Safety Camera Program

Vendor will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Vendor Traffic Systems and the City Manager.

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.

Vendor will use reasonable commercial efforts to install and activate all specified intersection within forty-five (45) days subsequent to receipt of all permits required by section 1.4 of this Exhibit B.

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; and
 - 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.
 - 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 such governmental Entity denies authority to Vendor for the installation of its equipment.
 - 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 Infraction Criteria in consultation with the City;
- 1.9. Develop the Enforcement Documentation for approval by the City, consistent with the requirements of the City Ordinance;
- 1.10. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersections (under the supervision of the City);
- 1.11. 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;
- 1.12. Install and test the functionality of the Designated Intersections with the Vendor System and establish fully operational Infraction processing capability with the Vendor System;
- 1.13. Implement the use of the Vendor System at each of the Designated Intersections;
- 1.14. Deliver the Materials to the City;
- 1.15. Issue Notices of Infraction, and if the civil penalty is unpaid or the alleged violator requests a hearing, issue Notices of Hearing for Authorized Infractions pursuant to City Ordinance;
- 1.16. Obtain access to the records data of the Department of Motor Vehicles in Vendor's capacity as needed for the program; and,
- 1.17. Vendor shall provide training for personnel of the City, including, but not limited to, the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the TSCP, regarding the operation of the Vendor System and the TSCP. This shall include training with respect to the Vendor System and its operations, strategies for presenting Infractions Data in court and judicial proceedings and a review of the Enforcement Documentation;
- 1.18. Interact with court and judicial personnel, including the City's hearing officer to address issues regarding the implementation of the Vendor System, the development of a subpoena processing timeline that will permit the offering of Infractions Data in hearings and judicial proceedings, and coordination between Vendor, the City and the City's Hearing officer; and
- 1.19. 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 TSCP.
- 1.20. Notice of Infraction processing and Notice of Infraction re-issuance, as well as notice of hearing.

2. CITY OBLIGATIONS. The City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):
 - 2.1.1. Appoint the Project Manager;
 - 2.1.2. Assist Vendor in obtaining the Drawings from the relevant Governmental Authorities;
 - 2.1.3. Notify Vendor of any specific requirements relating to the construction and installation of any Intersection or the implementation of the TSCP;
 - 2.1.4. Assist Vendor in seeking the Approvals
 - 2.1.5. 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 TSCP;
 - 2.1.6. 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;
 - 2.1.7. Seek approval or amendment of Awareness Strategy and provide written notice to Vendor with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Vendor begins the installation of any of the Designated Intersection and ending six (6) months after the Installation Date;
 - 2.1.8. Assist Vendor in developing the Red Light Infraction Criteria; and
 - 2.1.9. Seek approval of the Enforcement Documentation.
 - 2.1.10. The City 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.
 - 2.1.11. 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.
 - 2.1.12. The Police Department shall process each potential violation in accordance with State Laws and/or City Ordinances within seven (7) business days of its

appearance in the Police Review Queue, using AxisTM to determine which violations will be issued as Citations or 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.

- 2.1.13. City shall provide access to the internet for the purpose of processing violations and adjudications.
- 2.1.14. Vendor shall, at no additional cost to the City , provide Police Department / Adjudication workstation computer monitors for citation review and approval which should provide a resolution of 1280 x 1024, which shall be returned to Vendor in the event the Agreement is terminated.
- 2.1.15. For optimal data throughput, Police Department / 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 on installation and implementation of the computerized aspects of the program.
- 2.1.16. Police Department shall provide signatures of all authorized police users who will review events and approve citations on forms provided by Vendor .
- 2.1.17. In the event that remote access to the ATS Axis VPS System is blocked by City's network security infrastructure, the City's IT Department and the counterparts at ATS shall coordinate to facilitate appropriate communications access while maintaining required security measures.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of Traffic Safety Camera Program 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.
2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade 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 Infractions 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.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of Traffic Safety Camera Program 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.
2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade 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 Infractions 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.

EXHIBIT "D"
Infraction Processing

1. All Infractions Data shall be stored on the Vendor System;
2. The Vendor System shall process Infractions 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 supply one PC to City at no charge to be used for Police Review in violation processing. City shall be responsible for maintenance of PC. Any additional equipment needed shall be procured by the City or if provided by Vendor, Vendor shall be reimbursed
6. Vendor shall provide storage capabilities for the City to store infractions identified for prosecution for a period of time of not less than four (4) years after final disposition of a case.
7. Vendor shall provide the Authorized Employee with access to the Vendor System for the purposes of reviewing the pre-processed Infractions Data within seven (7) days of the gathering of the Infraction Data from the applicable Designated Intersections.
8. The City shall cause the Authorized Employee to review the Infractions Data and to determine whether a Notice of Infraction shall be issued with respect to each Potential Infraction captured within such Infraction 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. VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A NOTICE OF INFRACTION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "NOTICE OF INFRACTION DECISION"), AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF INFRACTION DECISION;
9. With respect to each Authorized Infraction, Vendor shall print and mail a Notice of Infraction within seven (7) days after Vendor's receipt of such authorization from the City's Authorized Employee; provided, however, during the Warning Period, warning Infraction notices shall be issued in respect of all Authorized Infractions;
10. Vendor shall provide a toll-free telephone number, at its sole expense, for the purposes of answering citizen inquiries.

11. Vendor shall permit the Authorized Employee to generate monthly reports using the Vendor Standard Report System.
12. 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 Infraction, 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;
13. 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 Infractions, before the City's hearing officer, at no cost to the City;
14. Vendor shall provide such training to City 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.
15. During the Warning Period, Vendor shall implement a public relations program, in coordination with the City and upon City's approval.
16. Notice of Infraction Form. Vendor shall prepare and provide to City a Notice of Infraction Form that provides, at a minimum, the following information:
 - a. name and address of the owner of the vehicle involved in the infraction;
 - b. the registration number of the vehicle involved in the infraction;
 - c. a citation to the City's Ordinance violated;
 - d. the location of the intersection where the infraction occurred;
 - e. the date and time of the infraction;
 - f. a copy of the recorded image of the infraction;
 - g. the amount of fee and charges imposed and the date by which the fee and charges must be paid or appealed;
 - h. instructions on all methods of payment for the fee;
 - i. a clear statement of the time limit to file an appeal and describing the procedure for appealing the infraction;
 - j. a statement that the City's traffic infraction officer has reviewed and observed the recorded images evidencing the violation of the Ordinance and has found reasonable

- and probable grounds to believe that an infraction has occurred and can identify the license tag number of the violating vehicle; and,
- k. a conspicuous statement, printed on larger font than the remaining statements on the Notice of Infraction, and bolded, stating that if the owner of the vehicle fails to pay the civil fee within the time allotted, or fails to timely appeal the infraction, the owner shall be deemed to have waived his or her right to contest the infraction, and has admitted to the infraction reflected in the Notice of Infraction.
17. Vendor agrees that the City shall have the right to review and approve the form Notice of Infraction prior to its use, and that in the event City determines additional information should be included in the Notice of Infraction, Vendor shall modify the Notice of Infraction form, at its sole expense, to comply with those requirements.
18. For any city using ATS lockbox or epayment services, Vendor will establish a demand deposit account bearing the title, "American Traffic Solutions, Inc. as agent for Customer" at U.S. Bank. All funds collected on behalf of the Customer will be deposited in this account and transferred by wire the first business day of each week to the Customer's primary deposit bank. The Customer will identify the account to receive funds wired from U.S. 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 U.S. Bank account is preserved.
19. Vendor is authorized to charge, collect and retain a convenience fee of \$4.00 each for electronic payments processed. Such fee is paid for by the violator.

Exhibit "E"

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 TSCP, as offered in the Vendor's proposal.
2. Vendor shall be solely responsible for installing such Signage as required by City Ordinance. 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 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 meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the termination of the Warning Period Date, 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 TSCP 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.
5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Vendor System or using the TSCP.
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 reasonably follow 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.

EXHIBIT "F"
COMPENSATION & PRICING

Per Paid Fee

There will be no charge to City during the Warning Period, and Vendor shall not receive any compensation for any notices sent during the Warning Period.

Vendor agrees to conduct VIMS study at no cost to the City of North Miami Beach. Post VIMS study, vendor agrees to meet to establish a fee structure once the intersections are agreed upon. Below is proposed pricing. Fixed fee pricing of \$4750 per month per camera may be elected in lieu of fee per paid. This option must be selected by City within 7 days of VIMS results

At the conclusion of the Warning Period, and once Notices of Infractions are issued, Vendor shall be compensated as follows:

Per Camera Paid Notices

1 st Tier Fee:	First 2 paid notices per day in a month, per camera	\$47.50
2 nd Tier Fee:	Next 2 paid notices per day in a month, per camera	\$27.50
3 rd Tier Fee	All other paid notices in a month, per camera	\$17.50

Pricing is average of all cameras per day per month in program.

If the average number of paid notices is 2 or fewer per day in a month, per camera the Vendor shall receive all revenues collected for the billing period.

Vendor shall have the right of first refusal to provide collections services for this program, the collection methods and compensation for which shall be determined by the parties in an addendum to this Agreement.

AMENDMENT TO OCTOBER 30, 2008 AGREEMENT
BETWEEN THE CITY OF NORTH MIAMI BEACH
AND AMERICAN TRAFFIC SOLUTIONS FOR
TRAFFIC SAFETY CAMERA PROGRAM

This Agreement (this "Agreement") is made as of this 12th day of March, 2013 by and between American Traffic Solutions, INC., a Kansas Corporation, licensed to do business in Florida, with offices at 7681 E. Gray Road, Scottsdale, Arizona 85260 ("Vendor"), and The City of North Miami Beach, a Florida municipal corporation, with an address at 17011 NE 19th Avenue, North Miami Beach, FL 33162 (the "City").

RECITALS

WHEREAS, on October 30, 2008, the City and Vendor entered into an Agreement, whereby the City and Vendor agreed to the provision by Vendor of services to the City in connection with the City's Traffic Safety Camera Program ("TSCP"); and

WHEREAS, Vendor has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and Notice of Infraction processes related to the digital photo red light enforcement systems provided by Vendor pursuant to this Agreement; and

WHEREAS, the City selected Vendor to provide services to implement and carry on the City's TSCP, 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 Infractions;

WHEREAS, the City Council of the City adopted Ordinance 2010-14, which authorizes the City's Traffic Safety Camera Program (TSCP) and provides for the implementation and operation of such; and

WHEREAS, on or about May 13, 2010, the Governor of the State of Florida signed CS/CS/HB325 into law, resulting in the Law of Florida 2010-80 taking effect on July 1, 2010; and

WHEREAS, Law of Florida 2010-80 expressly authorizes municipalities to use traffic infraction detectors to enforce certain provisions of Chapter 316 of the Florida Statutes, subject to certain requirements; and

WHEREAS, the City has amended Ordinance 2007-13 to enforce red light violations using traffic infraction detectors in accord with the provisions of Law of Florida 2010-80; and

WHEREAS, the City and Vendor wish to enter into a Second Agreement (hereinafter "Agreement") to align the provision of services by Vendor with the provisions and requirements of Law of Florida 2010-80;

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 Ordinance 2010-14 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 Control Infraction Review Officer, whose duties and qualifications are set forth in the City Ordinance.
 - 1.2. "Authorized Infraction" means each Potential Infraction in the Infraction Data for which authorization to issue a Notice of Infraction in the form of an Electronic Signature is given by the Authorized Employee by using the Vendor System.
 - 1.3. "City Ordinance" means Ordinance 2010-14, as may be amended from time to time.
 - 1.4. "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:
 - 1.4.1. 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
 - 1.4.2. 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.
 - 1.4.3. 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, or (vi) was required by applicable state law to be described.

- 1.5. “Designated Intersection” means the Intersections, as that term is defined in the City Ordinance, set forth on **Exhibit “A”** attached hereto, and such additional Intersections, as Vendor and the City shall mutually agree from time to time through the parties’ Project Managers.
- 1.6. “Electronic Signature” means the method through which the Authorized Employee indicates his or her approval of the issuance of a Notice of Infraction in respect of a potential Infraction using the Vendor System.
- 1.7. “Enforcement Documentation” means the necessary and appropriate documentation related to the enforcement of Red Zone Infractions, as defined in the City Ordinance, including but not limited to warning letters, Notices of Infraction (using the specifications of the hearing officer (also known as code enforcement Special Master) and the City, a numbering sequence for use on all notices (in accordance with applicable state statutes and the City’s Ordinance), instructions to accompany each issued Notice of Infraction (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), chain of custody records, criteria regarding operational policies for processing Notices of Infraction (including with respect to coordinating with the applicable vehicle registry), and technical support documentation for applicable hearing officers .
- 1.8. “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, servers and poles. Vendor agrees to keep all equipment current in technology and to provide City all current upgrades in a timely manner.
- 1.9. “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.
- 1.10. “Infraction” means a “violation” of the applicable traffic laws—including violations based on the Florida Statutes, the City Code of Ordinances, and the Miami-Dade County Code of Ordinances and Resolutions, as may be amended or re-codified from time to time—as specified by the City.
- 1.11. “Infractions Data” means the images and other Infractions data gathered by the Vendor System at the Designated Intersection.

- 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 Infraction" shall mean the Notice of an Infraction, which is mailed or otherwise delivered by Vendor to the alleged violator on the appropriate Enforcement Documentation in respect of each Authorized Infraction pursuant to the requirements of the City Ordinance.
- 1.14. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the TSCP is functional in order to permit the identification and the issuance of Notices of Infraction for approved Infractions using the Vendor System.
- 1.15. "Ordinance" shall mean City of North Miami Beach Ordinance, 2010-14.
- 1.16. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.17. "Photo Red Light Infraction Criteria" means the standards and criteria by which Potential Infractions will be evaluated by Authorized Employees of the City, which standards and criteria shall include, but are not limited to, the definition of a Red Zone Infraction set forth in the City Ordinance, relying upon the duration of time that a traffic light must remain red prior to a Infraction 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 Infraction, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.
- 1.18. "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, on behalf of City, for overseeing the installation at the Designated Intersections and the implementation of the TSCP, 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 Council.

- 1.19. "Potential Infraction" 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 Red Zone Infraction has occurred.
- 1.20. "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.
- 1.21. "Traffic Infraction Enforcement Officer" means an employee of City's police or sheriff's department who meets the qualifications of Section 316.640(5)(a) of the Florida Statutes.
- 1.22. "Traffic Infraction Detector" means a vehicle sensor(s) installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light.
- 1.23. "Traffic Safety Camera Program," or TSCP, means the process by which the monitoring, identification and enforcement of Infractions of the Red Zone Infractions 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 Infractions and recording such Infraction data in the form of photographic images of motor vehicles.
- 1.24. "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.
- 1.25. "Uniform Traffic Citation" means a uniform traffic citation as described in Section 316.650 of the Florida Statutes
- 1.26. "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 TSCP 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.

- 1.27. "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 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 TSCP, 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.
- 1.28. "Warning Period" means the period of thirty (30) days after the Installation Date of each camera.
- 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 after the date of the first paid notice from the first installed System pursuant to this Second Agreement. The City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional three (3) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City's failure to exercise the right to extend the Agreement in writing will automatically cause the Agreement to lapse.
- 3.0 Services. Vendor shall provide the TSCP to the City, in each case in accordance with the terms and provisions of the Ordinance.
- 3.1. 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.
- 3.2. 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 "B"** attached hereto.
- 3.3. Infraction Processing. During the Operational Period, Infractions shall be processed as set forth on **Exhibit "B"** attached hereto.
- 3.4. Prosecution. The City shall prosecute Ordinance violations in respect thereof pursuant to the terms, procedures and requirements of the City Ordinance, subject to City's routine law enforcement discretion.
- 3.5. 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 "B"** attached hereto.
- 3.6. 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, including new or additional automated photo enforcement programs, including upgrading system for speed enforcement ,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 " E " (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 16.0.

4.0 License; Reservation of Rights.

- 4.1. License. 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 Infractions and authorizing the issuance of Notices of Infraction 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 TSCP 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 TSCP, so long as any and all such publications or materials are approved in advance by Vendor.
- 4.2. 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.
- 4.3. 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. This covenant in no way limits the City's obligations to comply with any Order issued by a Court of competent jurisdiction, or to address an emergency situation (e.g. to preserve life).

- 4.4. 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 protective 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.
- 4.5. 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.
- 4.6. 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 attorneys 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 6.1.

5.0 Representations and Warranties.

5.1. Vendor Representations and Warranties.

5.1.1. Authority. Vendor hereby warrants and represents that:

5.1.1.1. it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; and,

5.1.1.2. 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.

5.1.2. 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.

5.2. City Representations and Warranties.

5.2.1. 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 and does not warrant the outcome of any judicial or legislative action that may be taken affecting these authorities subsequent to the execution of this Agreement.

5.3. 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 in City's governmental capacity.

6.0 Termination.

6.1. Termination for Cause: 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 or policies are adopted by agencies with jurisdiction, to prohibit or materially change the operation of TSCP so as to make it reasonably impractical to operate the red light enforcement program, including without limitation changes that would prohibit the red light enforcement program, or which would impose restrictions on revenues and uses that are contrary to the terms of this Agreement; (ii) any court having jurisdiction over City rules, or declares, that the City's red light enforcement program is invalid or results from the Vendor System of photo red light enforcement are inadmissible in evidence, or otherwise renders a decision that makes it reasonably impractical 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.

The rights to terminate this Agreement given in Section 6.1 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.

6.3 Procedures Upon Termination. This section 6.3 shall apply to the expiration of this Agreement and to the early termination of the Agreement. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in this Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

6.3.1 Vendor Responsibilities Upon 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 TSCP, (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 Infraction 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 Infraction issued prior to the termination of this Agreement.

6.3.2 City Responsibilities Upon Termination. The City shall (i), except for pending enforcement cases, immediately cease using the TSCP, 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.

6.3.3 Equipment Removal. Unless the City and Vendor have agreed to enter into a new agreement relating to the TSCP 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 approximately 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 6.3.1.

6.4 Termination for Legal Reasons and Suspension of Work:

6.4.1 The City may terminate the Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the City through fraud, misrepresentation or material misstatement.

6.4.2 The City may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the City. Such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

6.4.3 The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement may be debarred from City contracting in accordance with the City debarment procedures. The Vendor may be subject to debarment for failure to perform and all other reasons set forth in Chapter 3 of the City's Purchasing Policies and Procedures Manual.

6.4.4 This Agreement may be terminated by either Party in the event the City's use of red light safety Camera Systems is rendered unlawful pursuant to applicable state or federal law. The City shall have no obligation to pay ATS a fee for any period when it is unlawful to issue Citations, 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 City is not obligated to pay ATS and such time period shall be added to the term of the Agreement once it again becomes lawful for the City to issue Citations. In such event, in addition to the procedure delineated in section 6.3 above, the following provisions shall apply:

6.4.4.1 The Vendor shall, upon receipt of such notice, unless otherwise directed by the City:

- a. Stop work on the date specified in the notice ("the Effective Termination Date");

- b. Take such action as may be necessary for the protection and preservation of the City's materials and property;
- c. Cancel any pending orders;
- d. Assign to the City and deliver to any location designated by the City any non-cancelable orders for Deliverables that are not capable of use except in the performance of the Agreement and which have been specifically developed for the sole purpose of the Agreement and not incorporated in the Services; and
- e. Take no action which will increase the amounts payable by the City under the Agreement.

6.4.4.2 In the event that the City exercises its right to terminate the Agreement pursuant to this Section the Vendor will be compensated in accordance with the Exhibit D, for the:

- a. Portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- b. Non-cancelable Deliverables that are not capable of use except in the performance of the Agreement and which have been specifically developed for the sole purpose of the Agreement but not incorporated in the Services.

6.4.4.3 All compensation pursuant to this Section is subject to audit.

6.5 City shall have no further liability for any such early termination. The parties recognize that other provisions of this Agreement serve as consideration for this provision.

7.0 Fees to be Paid to Vendor and Payment Processing.

- 7.1. Vendor shall have the right to receive the compensation set forth on, and pursuant to, **Exhibit D** attached hereto.
- 7.2. Vendor shall be responsible for processing payments of the Civil Fees. The Vendor shall provide payment means through mail, telephone and on-line processes. Vendor shall track all payments and handle all applied payments, unapplied payments, overpayments, refunds, adjustments, dismissals and reversals.
- 7.3. Vendor shall pay City all payments received during a calendar month, no later than the 7th day of the next following month.
- 7.4. Vendor shall invoice the City for all applicable fees according to the fee schedule delineated on **Exhibit D**. 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.

8.0 Survival. Notwithstanding the foregoing, the parties' obligations shall survive the termination of the Agreement to the extent necessary to fulfill the parties' accrued monetary obligations under this Agreement.

9.0 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.

10.0 Indemnification and Liability.

ATS shall comply with all laws, ordinances and regulations governing the use of photo enforcement systems applicable to this Agreement and shall comply with the maintenance procedures and manufacturer recommendations for operation of the Axxis™ equipment which affect this Agreement, and shall indemnify and save harmless the Customer against claims arising from the violations of the maintenance procedures and manufacturer recommendations for operation of the equipment as a result of the negligence or willful misconduct of ATS, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of Customer.

10.1. Indemnification – Negligence. The Vendor agrees to defend, 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 City's employees, officers or agents.

10.2. 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 a default of this Agreement.

10.3. The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification to be provided by the Vendor and agree that in the event that the law is construed to require a specific consideration to 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 Vendor'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.

10.4. Change in State Law. The parties recognize and acknowledge that the Florida Supreme Court will be reviewing legal challenges to the use of Red Light Cameras. Furthermore, the parties acknowledge that the Florida Legislature is considering revisions/repeal of the Mark Wandall Traffic Safety Act; and as such, any change in the current may allow for further amendments to this Agreement.

10.5. Notice of Claims. If the City or Vendor receives notice of any claim or circumstances which may give rise to an indemnified loss under this Section 10, the receiving party shall give written notice to the other party within ten (10) 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 directly prejudiced, suffers loss, or incurs expense because of the delay.

11.0 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.

- 12.0 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.

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.

- 13.0 No Contingent Fees. Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee 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 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 Infraction 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.

- 14.0 Notices. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, 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:	City of North Miami Beach 17011 NE 19 th Avenue North Miami Beach, FL 33162 Phone: (305) 948-2900 Fax: (305) 957-3602
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ATTN: City Manager
CC: Police Department, ATS Project Manager
CC: Office of the City Attorney

Vendor: American Traffic Solutions, Inc.
1330 West Southern Avenue
Tempe, AZ 85282
ATTN: Chief Operating Officer

- 15.0 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 ten percent (10%) of the amount 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.
- 16.0 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.
- 17.0 Headings. Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.
- 18.0 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits shall be treated as part of this Agreement and are incorporated herein by reference.
- 19.0 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.
- 20.0 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.

21.0 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.

22.0 Insurance.

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

22.1.1. Comprehensive General Liability insurance to cover liability for bodily injury and property damage. Exposures to be covered are premises, operations, products\completed operations, and contractual liability. 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 |

B. Personal Injury

- | | | |
|----|------------------|-------------|
| 1. | Annual Aggregate | \$1,000,000 |
|----|------------------|-------------|

22.1.2. 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.

22.1.3. 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 |

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

22.1.5. Vendor shall name the City as an additional insured on each of the policies required herein, with the exception of the Vendor's Worker's Compensation policy and Professional Liability.

22.1.6. 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. These Certificates shall contain a provision that coverage's afforded under these policies will not be canceled or impaired until at least forty five (45) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must not be less than "A-VI." Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the Vendor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect.

22.1.7. Any insurance required of Vendor pursuant to this Agreement must also be required by any sub-contractor of Vendor in the same limits and with all requirements as provided herein, including naming the City as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Vendor and provided proof of such coverage is provided to City. The Vendor and any sub-contractor of Vendor shall maintain such policies during the term of this Agreement.

23.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Miami-Dade County, Florida.

24.0 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.

25.0 RFP. Vendor agrees to comply with any provisions of the RFP which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Vendor during the RFP process.

26.0 Compliance with Law. Vendor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.

ENDORSEMENTS FOLLOW ON PAGES 19 AND 20 OF THIS AGREEMENT.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY OF NORTH MIAMI BEACH

ATTEST:

BY: Pamela L. Latimore

Print Name: Pamela L. Latimore

Title: City Clerk

BY: Roslyn B. Weisblum

Print Name: Roslyn B. Weisblum

Title: City Manager

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

WITNESSES:

Catherine Williams
Rodriguez

VENDOR

BY: B. Michael Bolton

Print Name: B. Michael Bolton

Title: COO

ATTEST:

SECRETARY

STATE OF Arizona :

: SS:

COUNTY OF Maricopa :

ON THIS 4th day of March, 2013, before me, the undersigned notary public, personally appeared Burton Michael Bolton, personally known to me, ~~of~~ who has produced _____ as identification, and is the person who subscribed to the foregoing instrument and who acknowledged that he executed the same on behalf of said Corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Matthew Alexander

NOTARY PUBLIC

Matthew Alexander

Print or Type Name

My Commission Expires: 11/29/2016

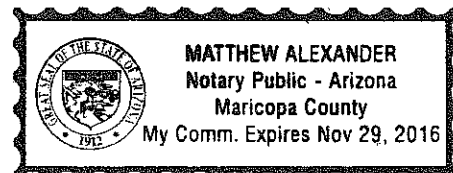


EXHIBIT "A"
Designated Intersection

City will designate intersections for Vendor to install cameras. Vendor shall make its best efforts to install a Camera System within thirty (30) days of permits being granted and power delivered for each agreed-upon Approach, providing that City has received permission for all implementations in writing from any third-party sources.

Execution of the required Florida Department of Transportation letters by the City Manager and Chief of Police Agreement shall serve as written Notice to Proceed by City for the installation of Camera Systems.

DIR	STREET	CROSS STREET
east	NE 163 Street	NE 18 th Avenue
west	NE 10 th Avenue	North Miami Beach Boulevard
south	Biscayne Boulevard	NE 163 rd Street
north	Biscayne Boulevard	NE 172 nd Street
south	NE 6 th Avenue	NE 167 th Street

This program may be implemented at additional intersections. Additional Approaches may be selected as the City deems necessary and feasible based on, but not limited to, a Site Selection analysis, collision history, community safety, recommendations from the City Manager, recommendations from the Police Department, and an engineering analysis. Camera installations will be based on mutual agreement by City and Vendor.

Vendor agrees to perform a feasibility study at no charge to City to determine the best locations for camera placement.

Installation of any approach is subject to engineering and video analysis results.

The program may be implemented at additional intersections after the conclusion of the Warning Period. The intersections will be designated by the City Manager following a recommendation by the Police Department. Vendor shall apply for a permit within sixty (60) days of the approval of this Agreement by the City Council.

Vendor will provide the City with video evaluation of candidate sites using the Axis VIMS system to assist the City's Police Department in its recommendations.

EXHIBIT "B"

PARTY OBLIGATIONS AND SCOPE OF WORK

1. VENDOR OBLIGATIONS AND SCOPE OF WORK

1.1 VENDOR IMPLEMENTATION

- 1.1.1 Vendor agrees to provide Camera System(s) and services to the City as outlined in this Agreement, excluding those items identified in Section 2 titled "City Scope of Work". Vendor and the City understand and agree that new or previously unforeseen requirements may, from time to time, be identified and that the Parties shall negotiate in good faith to assign the proper Party the responsibility and cost for such items. In general, if work is to be performed by the City, unless otherwise specified, the City shall not charge Vendor for the cost.
- 1.1.2 The City and Vendor will complete the Project Time Line within thirty (30) days of Agreement execution date, unless mutually agreed to otherwise by the Parties. Vendor agrees to make every effort to adhere to the Project Time Line.
- 1.1.3 Vendor will assist the City with Site Selection Analysis of candidate sites.
- 1.1.4 Vendor will install Camera System(s) at a number of intersections or other locations to be mutually agreed upon between Vendor and the City after completion of Site Selection Analysis. In addition to any initial locations, the Parties may agree to add to the quantities and locations where Camera System(s) are installed and maintained.
- 1.1.5 Vendor will operate each Camera System on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (i.e., acts of God, etc.).
- 1.1.6 Vendor' in-house Communications Department will assist the City with public information content and outreach campaign strategies. Depending upon the mutually agreed-upon strategy, Vendor may provide public relations consultants, advertising, or media relations for an additional fee as described in Exhibit C, Service Fee Schedule.
- 1.1.7 Vendor agrees to provide a secure website (www.violationinfo.com) accessible to Owners who have received Notices of Violation by means of a Notice # and PIN, which will allow Violation image and video viewing. As part of the secure website, Vendor will provide a Frequently Asked Questions (F.A.Q.) page. Vendor will operate this secure website on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (i.e., acts of God, etc.).

- 1.1.8 Vendor will provide technician site visits to each Camera System, as needed to perform preventive maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and, general system inspections and maintenance. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade County Traffic Engineering present.
- 1.1.9 Vendor shall take reasonable best efforts to repair a non-functional Camera System within seventy-two (72) business hours of determination of a malfunction, except for those causes of Force Majeure as outlined in Section 18 in the General Terms and Conditions of this Agreement.
- 1.1.10 For any customer using Vendor lockbox or e-payment services, Vendor will establish a dedicated demand deposit account. If City is more than sixty (60) days past due on payments to Vendor, Vendor may withhold all transfers/sweeps of violation payments to City until City becomes current on its payments. One time setup, monthly merchant account servicing costs and nonsufficient funds fees shall be billed through to the City monthly.
- 1.1.11 Vendor is authorized to charge, collect and retain a convenience fee of \$4.00 for each electronic payment processed. Such fee is paid by the violator.

1.2 VENDOR OPERATIONS

- 1.2.1 There will be a one-time Warning Period of thirty (30) days, during which time courtesy notices of infractions will be issued without any civil fees. The parties hereto acknowledge that this Warning Period will be used to verify the reliability of the program and the detection of infractions, as well notify the public as to the existence of the cameras. The Warning Period shall commence on the date the initial camera and the Infraction Processing procedures become operational, or re-activated to become operational, with the exact date to be confirmed in writing by the parties' Project Managers. The City shall not be liable for any costs or expenses incurred by Vendor during this Warning Period. City shall not be charged a fee for the warning period; however for any warning period exceeding thirty (30) days the City shall be responsible for the normal monthly Service Fee.
- 1.2.2 Vendor shall provide the City with an automated web-based Citation processing system (Axsis) including image processing, first notice printing and mailing of Citation or notice of violation per chargeable event and a mailing of a text only reminder notice, a hearing scheduled letter, a hearing denied letter, an insufficient information letter, and a dismiss letter. Each Citation or notice of violation shall be delivered by First Class mail to the Owner within the statutory period. In the case of a transfer of liability by the Owner, Vendor may also mail a Citation or notice of violation to the driver identified in the affidavit of non-liability or by rental car companies. Costs of certified mailings are priced separately and paid by the City for additional compensation to Vendor as indicated in Exhibit C.

- 1.2.3 Subsequent notices, other than those specified in subsection 1.2.2 may be delivered by First Class or other mail means for additional compensation to Vendor as agreed upon by the Parties.
- 1.2.4 Vendor shall apply an electronic signature to the Citation when authorized to do so by an approving law enforcement officer.
- 1.2.5 Vendor shall seek records from out-of-state vehicle registration databases and use such records to issue Notices of Violation for the City according to each pricing option. Vendor assumes this responsibility as a named City's agent by signing of DMV Services Subscriber Authorization. Vendor reserves the right to mail Notices of Violation to the address of the Owner obtained through the DMV, obtained through the National Change of Address (NCOA) database provided by the United States Postal Service, or obtained through other means including but not limited to skip tracing.
- 1.2.6 If City is unable to or does not desire to integrate Vendor data to its adjudication system, Vendor shall provide one on-line adjudication processing module, which will enable the adjudication function to review cases, related images, up to six (6) correspondences, and other related information required to adjudicate the disputed Violation. The system will also enable the Court staff to accept and account for payments.
- 1.2.7 The provision of all necessary communication, broadband and telephone services to the Designated Intersections will be the sole responsibility of the Vendor.
- 1.2.8 The Axis System shall provide the City with the ability to run and print standard system reports. For any reports not readily available from the Axis System, Vendor shall provide a cost estimate to the City for providing such services.
- 1.2.9 During the twelve (12) month period following the installation of the first camera, upon Vendor' receipt of a written request from the City at least fourteen (14) calendar days in advance of a court proceeding, and if required by the Court or prosecutor, Vendor shall provide the City with or train a local expert witness to testify in Court on matters relating to the accuracy, technical operations, and effectiveness of the Axis System until judicial notice is taken. City shall use its best efforts to obtain judicial notice as soon as possible.
- 1.2.10 The Vendor Project Manager (or a reasonable alternate) shall be available to the City's Project Manager each day.
- 1.2.11 All repair and maintenance of Traffic Safety Camera Program 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; provided,

however, that if damage to Traffic Safety Camera Program systems or related equipment is due to the direct negligence of the City or its employees, City shall reimburse ATS for the cost of repair.

- 1.2.12 Vendor shall provide a help-line to assist the City with resolving any problems encountered regarding its Camera System and/or Citation processing. The help-line shall function during normal business hours.
- 1.2.13 As part of its Camera System, Vendor shall provide violators with the ability to view Violations online. This online viewing system shall include a link to the Vendor payment website(s) and may offer the opportunity to download an affidavit of non-liability online. Online obtained affidavits, if approved by the Court, may be directed to and processed by Vendor and communicated to the Court via the Axis transfer described above.
- 1.2.14 In the event that images of a quality suitable for the Authorized Employee to identify Infractions cannot be reasonably obtained without the use of flash units, Vendor shall provide and install such flash units.
- 1.2.15 For video retrievals requested by Customer unrelated to enforcement of a Violation, including but not limited to investigation of a criminal matter, ATS will provide up to one (1) video retrieval per week at no cost to Customer.
- 1.2.16 Vendor is authorized to charge, collect and retain a convenience fee of \$4.00 each for electronic payments processed. Such fee is paid for by the violator.
- 1.2.17 All Infractions Data shall be stored on the Vendor System.
- 1.2.18 The Vendor System shall process Infractions Data gathered from the Designated Intersection into a format capable of review by the Authorized Employee via the Vendor System.
- 1.2.19 The Vendor shall make the initial determination that the image meets the requirements of this Agreement, and is otherwise sufficient to enable the City to meet its burden of demonstrating a violation of the law. If the Vendor determines that the standards are not met, the image shall not be processed any further.
- 1.2.20 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. Vendor shall permit the Authorized Employee to generate monthly reports using the Vendor Standard Report System.

- 1.2.21 Vendor shall provide storage capabilities for the City to store infractions identified for prosecution for a period of time of not less than four (4) years after final disposition of a case.
- 1.2.22 Vendor shall provide a toll-free telephone number, at its sole expense, for the purposes of answering citizen inquiries.
- 1.2.23 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 Infractions, before the Miami-Dade County examiner, at no cost to the City.
- 1.2.24 Vendor shall provide such training to City 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.

2. CUSTOMER SCOPE OF WORK

2.2 GENERAL IMPLEMENTATION REQUIREMENTS

- 2.2.1 Within ten (10) business days of the Effective Date of this Agreement the City shall provide Vendor with the name, title, mailing address, email address and phone number of:
 - a project manager with authority to coordinate City responsibilities under this Agreement
 - Municipal Court manager responsible for oversight of all Court-related program requirements
 - The Police contact
 - The Court contact
 - The person responsible for overseeing payments by violators (might be court)
 - The Prosecuting Attorney
 - The City Attorney
 - The Finance contact (who gets the invoices and will be in charge of reconciliation)
 - The IT person for the police
 - The IT person for the courts
 - The Public Works and/or Engineering contact responsible for issuing any/all permits for construction

- 2.2.2 Within ten (10) business days of the Effective Date of this Agreement, the City shall provide Vendor with the name and contact information for a Municipal Court manager responsible for oversight of all Court-related program requirements.
- 2.2.3 The City and Vendor shall complete the Project Time Line within thirty (30) calendar days of the Effective Date of this Agreement, unless mutually agreed to otherwise by the Parties. The City shall make every effort to adhere to the Project Time Line.
- 2.2.4 The City shall direct the Chief of Police or approved alternate to execute the Vendor DMV Services Subscriber Authorization to provide verification to the State Department of Motor Vehicles, National Law Enforcement Telecommunications System, or appropriate authority indicating that Vendor is acting on behalf of the City 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.
- 2.2.5 The City is responsible for notifying Vendor of any ordinance changes in writing within three (3) business days of the first read of the proposed legislation. Vendor will not be responsible for any damages if not notified within the required time.
- 2.2.6 Once a Notice to Proceed is granted to Vendor in writing or by email, the City shall not issue a stop work order to suspend activity on the implementation process, unless City reimburses Vendor for costs incurred up to the date the stop work order is issued.
- 2.2.7 Once a camera system is installed and certified by Vendor as operational, it shall be immediately put into service. If a Camera is inactive for more than seven (7) days for any reason not caused by Vendor, other than Force Majeure as provided in Section 18, the fee per camera to be paid by the City shall be reduced in proportion to the duration of the inactivity on a pro rata basis. City may elect to deduct this amount from any amounts payable to Vendor, or Vendor may issue a separate payment directly to the City within seven (7) business days.

2.3 STREETS AND TRAFFIC DEPARTMENT OPERATIONS

- 2.3.1 If the City requests that Vendor move a Camera System to a new Approach after initial installation, the City shall pay for the costs to relocate the Camera System.
- 2.3.2 If a construction or improvement project requires an installed Camera System to be deactivated or requires a Camera System, including imbedded sensors, to be moved or removed, City shall reimburse Vendor for its any costs for moving or removing the Camera System, not including lost revenue. City may elect to reimburse Vendor directly or Vendor may recover its costs from program funds in addition to its normal fee.

- 2.3.3 Prior to the installation of any Camera System, City shall provide Vendor information regarding any and all road construction or improvement projects scheduled during the term of this Agreement for any intersection Approach designated for Camera System installation.
- 2.3.4 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 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. City will work with Vendor to ensure that such Signage is compliant with any City Ordinance.
- 2.3.5 City understands that proper operation of the system requires access to traffic signal phase connections. City, therefore, shall provide free access to traffic signal phase connections according to approved design. When traffic signal phase connections are not under the jurisdiction of the City, it shall be the City's responsibility to negotiate agreements with the owner or maintaining agency of the traffic signal controller and infrastructure in order to provide the required access to said phase connections and infrastructure and any costs associated with needed agreements shall be funded by the City.
- 2.3.6 City understands that proper operation of the system sometimes requires attachment of certain items of detection equipment to existing signal masts, mast arms and / or other street furniture. City, therefore, shall provide free access to Vendor to attach of certain items of detection equipment to existing signal masts, mast arms and / or other street furniture for the proper operation of the system.
- 2.3.7 City shall allow Vendor to access power from existing power sources at no cost 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. If these items are not made available, the costs of any additional conduit or power infrastructure needed to support installation of the Camera System shall be funded by City. Vendor may agree to cover these upfront costs and recover the costs from the collected revenue in addition to its normal fees. If existing power sources are not immediately available, City will allow Vendor to use temporary power until the existing power is established.
- 2.3.8 City shall not require Vendor to provide installation drawings stamped by a licensed civil engineer. However, Vendor work product and drawings shall be overseen and approved by a Vendor PE and such deliverables shall conform to applicable engineering norms and reflect the details of installation work to be completed.

- 2.3.9 City shall approve or reject Vendor submitted plans within seven (7) business days of receipt and shall limit iterations to a total of one revision beyond the initially submitted plans. Total plan approval duration shall not exceed ten (10) business days. The City shall provide its best efforts in providing aid in achieving these timeframes for plan approvals when plans are being reviewed and permitted by any State and/or County agencies.
- 2.3.10 City, or any department of City, shall not charge Vendor or its subcontractor(s) for building, construction, electrical, street use and/or pole attachment permits, including any fee for traffic control services during installation or maintenance of a Camera System. City shall also fund any and all needed State and/or County permits.
- 2.3.11 City understands and agrees that time is of the essence and that public safety is at issue and shall issue all needed permits to Vendor and its subcontractor(s) within five (5) business days of plan approval. The City shall provide its best efforts to aid in achieving these timeframes for permit issuance when permitted by any State and/or County agency.
- 2.3.12 If required by the submitted design for proper operation, City shall allow Vendor to install vehicle detection sensors in the pavement of roadways within the City's jurisdiction, as permitted. The City is not responsible for acquiring permits not within its jurisdiction, but shall provide its best efforts to aid in acquiring any and all required permission and permits when the roadway is under the jurisdiction of the State or County.
- 2.3.13 City shall allow Vendor to build reasonably necessary infrastructure into any existing City-owned easement upon written request and approved by the City.
- 2.3.14 If use of private property right-of-way is needed, City shall assist Vendor in acquiring permission to build in existing utility easements as necessary. Any costs for private property right-of-way lease/rental costs shall be borne by the City as it is expressly excluded from the base fee structure identified in the fee schedule.

2.4 LAW ENFORCEMENT DEPARTMENT OPERATIONS

- 2.4.1 City shall process each potential Violation in accordance with State Law and/or Municipality Ordinances within three (3) business days of its appearance in the Law Enforcement Review Queue, using Aaxis to determine which Violations will be issued as Citations or notices of violation. In the event that City fails to process potential Violations within this timeframe, Vendor shall not be liable for failure to issue a notice or citation within statutory timeframes. **VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A NOTICE OF VIOLATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE**

DISCRETION (A "NOTICE OF VIOLATION DECISION"), AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF VIOLATION DECISION.

- 2.4.2 For optimal utilization, City workstation computer monitors for Violation review and approval should provide a resolution of 1280 x 1024.
- 2.4.3 For optimal data throughput, the City workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater.
- 2.4.4 City shall provide signatures of all authorized Law Enforcement users who will review events and approve Citations on forms provided by Vendor.

2.5 COURTS OPERATIONS

- 2.5.1 If City does not provide payment processing services, City shall use Vendor payment processing services.
- 2.5.2 City shall provide a monthly report within ten days of the end of the prior month to Vendor showing Uniform Traffic Citation payments and the total revenue collected from those payments received during that period.

2.6 INFORMATION TECHNOLOGY DEPARTMENT OPERATIONS

- 2.6.1 In the event that remote access to the Vendor Axis System is blocked by City network security infrastructure, the City's Department of Information Technology shall coordinate with Vendor to facilitate appropriate communications while maintaining required security measures.

EXHIBIT "D"
COMPENSATION & PRICING

SERVICE FEE SCHEDULE

1.0 **Description of Pricing**

Fees are based on per camera and are as follows: **Fee: \$4,750 per camera/per month**

Service Fees: Service Fee includes all costs required and associated with one rear-only Camera System installation, maintenance, and on-going field and back-office operations. Includes red-light camera equipment for a 4-lane approach with up to two (2) signal phases, installation, maintenance, violation processing services, DMV records access, First Class mailing of notice of violation with return envelope, mailing of second notice (as needed), lockbox and e-payment processing services, excluding user convenience fee, IVR call center support for general program questions and public awareness program support. This pricing applies to all cameras installed within the first twelve (12) months of the term of this Agreement.

Vendor's monthly fee includes postage for the first class mailing of the 1st notice. Certified mail is extra and will be billed per unit as published by the US Postal Service at <http://www.usps.com/prices/extra-services-prices.htm>.

Flexible Payment Plan. During the term of the Agreement, payments by the Customer may be made to ATS under a Flexible Payment Plan if the total funds collected by all Eligible Cameras are insufficient to cover the Fees due ATS for the Eligible Cameras. Eligible Cameras are defined as any Camera System that is installed and has been operational for a minimum of twelve (12) months. Under the Flexible Payment Plan, the Customer may defer certain payments due and owing to ATS during each twelve (12) month period (the "Billing Period"). If at the end of the Billing Period, sufficient funds have not been collected by the Customer to pay the accrued balance then due to ATS for the Eligible Cameras, ATS agrees to waive its right to recovery with respect to any balance owing to ATS for the Eligible Cameras at the end of that Billing Period.

This Flexible Payment Plan will be applied as follows: ATS will maintain an accounting of any net balances owed ATS each month during the Billing Period. If the total amount of funds collected for all Eligible Cameras during a month exceeds the amount of the ATS invoice for the Eligible Cameras for the same month, the Customer shall pay ATS the total amount due on the invoice for the Eligible Cameras. If the amount of funds collected for all Eligible Cameras during a month is less than the amount of the ATS invoice for the Eligible Cameras for the same month, the Customer shall pay ATS only the amount collected for the Eligible Cameras during the same month and Customer may defer payment of the remaining balance for the Eligible Cameras. If opting to use a Flexible Payment Plan, Customer will provide ATS with sufficient information about payments received directly by the Customer or by the Courts to accurately determine the total amount of funds collected for the Eligible Cameras. Payments due ATS shall be reconciled by applying future funds collected in subsequent months during the same Billing Period, first to the accrued balance and

then to the subsequent monthly invoice during the same Billing Period. If at any time the ATS invoices including any accrued balance are fully repaid, the Customer will retain all additional funds collected during the Billing Period. Such additional funds (whether or not reserved in cash by the Customer) will be available to offset future ATS invoices during the same Billing Period. Customer agrees and understands the Flexible Payment Plan shall be applied in the aggregate across all Eligible Cameras and will not be applied on a per camera basis and that any Camera System which has not been billed for a minimum period of twelve (12) months is not an Eligible Camera.

Flexible Payment Plan – Limitations. This provision shall not apply if: (1) the Customer elects not to enforce Violations consistent with the business rules provided by the Customer to ATS; (2) the Customer elects not to pursue collections on unpaid Violations when contractually obligated to do so; (3) the Customer directs ATS to install a camera at a site where violation rates are projected by ATS to be below the rate required by ATS for an acceptable installation; or (4) the Customer waives and/or fails to timely process more than ten percent (10%) of valid Violations forwarded to the Police for acceptance according to the business rules defined by the Customer prior to the start of the program.

- 2.0 **Optional Annual Training Conference:** Vendor provides a comprehensive user training conference (the “Conference”) for active photo traffic safety and enforcement clients. The Conference’s main focus is training of the system. Core elements include training on implementation methods and improvements, operational monitoring and improvements, statistical analysis, public relations and technology assessment. The sessions include participation by industry members, industry speakers and panel discussions. The Conference will be held in the Phoenix Metropolitan area. If City opts to attend the Conference, City shall be invoiced \$100 per month per attendee and can assign up to three (3) project team members to attend the Conference each year. The \$1,200 fee per attendee will cover travel, accommodations and all related Conference fees.
- 3.0 **Optional Public Relations Services:** Vendor may provide additional public relations services upon written request by City. These services may include advertising, media relations, and public relations consultants. The fee for such services shall be mutually agreed upon based on the scope of the public relations services to be provided.
- 4.0 **Warning Period:** There will be no charge to City during the thirty (30) day Warning Period, and Vendor shall not receive any compensation for any notices sent during the Warning Period.
- 4.1 **Evaluation:** Vendor agrees to conduct SLS study at no cost to the City of North Miami Beach, upon which City may rely upon to evaluate this program.



American Traffic Solutions

480.443.7000 ■ Fax: 480.596.4501 ■ www.atsol.com ■ 7681 East Gray Road ■ Scottsdale, AZ 85260

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CITY ATTORNEY'S OFFICE
CITY OF NORTH MIAMI BEACH

October 8, 2008

Howard B. Lenard, Esq.
City Attorney
City of North Miami Beach
17011 Northeast 19th Avenue
North Miami Beach, Florida 33162

RE: Agreement Between the City of North Miami Beach and American Traffic Solutions, Inc. for Traffic Safety Camera Program dated October 30, 2008

Dear Mr. Lenard:

Enclosed is a copy of the fully-executed above-referenced Agreement signed by Adam Tuton, Chief Operating Officer on behalf of ATS.

Please let me know if you have any questions or if I may be of further assistance.

Very truly yours,

American Traffic Solutions, Inc.

Linda Welsch
Executive/Legal Assistant to
Adam Tuton, Executive Vice President, COO

Enclosure

cc: Major Prescott, North Miami Beach Police Department

AGREEMENT BETWEEN THE CITY OF NORTH MIAMI BEACH
AND AMERICAN TRAFFIC SOLUTIONS FOR
TRAFFIC SAFETY CAMERA PROGRAM

This Agreement (this "Agreement") is made as of this 30th day of October, 2008 by and between American Traffic Solutions, INC., a Kansas Corporation, licensed to do business in Florida, with offices at 7681 E. Gray Road, Scottsdale, Arizona 85260 ("Vendor"), and The City of North Miami Beach, a Florida municipal corporation, with an address at 17011 NE 19th Avenue, North Miami Beach, FL 33162 (the "City").

RECITALS

WHEREAS, Vendor has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and Notice of Infraction processes related to the digital photo red light enforcement systems provided by Vendor pursuant to this Agreement; and

WHEREAS, the City Council of the City adopted Ordinance 2007-13, which authorizes the City's Traffic Safety Camera Program (TSCP) and provides for the implementation and operation of such; and,

WHEREAS, the City selected Vendor to provide services to implement and carry on the City's TSCP, 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 Infractions;

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 Ordinance 2007-13 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 Control Infraction Review Officer, whose duties and qualifications are set forth in the City Ordinance.
 - 1.2. "Authorized Infraction" means each Potential Infraction in the Infraction Data for which authorization to issue a Notice of Infraction in the form of an Electronic Signature is given by the Authorized Employee by using the Vendor System.
 - 1.3. "City Ordinance" means Ordinance 2007-13.
 - 1.4. "Civil Fee" means the fee assessed for violations of the City Ordinance, as set forth in the Ordinance.

- 1.5. “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:
- 1.5.1. 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
 - 1.5.2. 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.
 - 1.5.3. 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, or (vi) was required by applicable state law to be described.
- 1.6. “Designated Intersection” means the Intersections, as that term is defined in the City Ordinance, set forth on **Exhibit “A”** attached hereto, and such additional Intersections, as Vendor and the City shall mutually agree from time to time through the parties’ Project Managers.
- 1.7. “Electronic Signature” means the method through which the Authorized Employee indicates his or her approval of the issuance of a Notice of Infraction in respect of a potential Infraction using the Vendor System.
- 1.8. “Enforcement Documentation” means the necessary and appropriate documentation related to the enforcement of Red Zone Infractions, as defined in the City Ordinance, including but not limited to warning letters, Notices of Infraction (using the specifications of the hearing officer (also known as code enforcement Special Master) and the City, a

numbering sequence for use on all notices (in accordance with applicable state statutes and the City's Ordinance), instructions to accompany each issued Notice of Infraction (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), chain of custody records, criteria regarding operational policies for processing Notices of Infraction (including with respect to coordinating with the applicable vehicle registry), and technical support documentation for applicable hearing officers .

- 1.9. "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, servers and poles. Vendor agrees to keep all equipment current in technology and to provide City all current upgrades in a timely manner.
- 1.10. "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.
- 1.11. "Infraction" means any Infraction of the City's Ordinance.
- 1.12. "Infractions Data" means the images and other Infractions data gathered by the Vendor System at the Designated Intersection .
- 1.13. "Installation Date of the TSCP" means the date on which Vendor completes the construction and installation of at least one (1) Intersection in accordance with the terms of this Agreement so that such Intersection is operational for the purposes of functioning with the TSCP.
- 1.14. "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.
- 1.15. "Notice of Infraction" shall mean the Notice of an Infraction, which is mailed or otherwise delivered by Vendor to the alleged violator on the appropriate Enforcement Documentation in respect of each Authorized Infraction pursuant to the requirements of the City Ordinance.
- 1.16. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the TSCP is functional in order to permit the

identification and the issuance of Notices of Infraction for approved Infractions using the Vendor System.

- 1.17. "Ordinance" shall mean City of North Miami Beach Ordinance , 2007-13
- 1.18. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.19. "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, on behalf of City, for overseeing the installation at the Designated Intersections and the implementation of the TSCP, 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 Council.
- 1.20. "Potential Infraction" 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 Red Zone Infraction has occurred.
- 1.21. "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.
- 1.22. "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 TSCP 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.
- 1.23. "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 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 TSCP, 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.

- 1.24. "Traffic Safety Camera Program" means, collectively, the TSCP 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.
- 1.25. "Traffic Safety Camera Program" means the process by which the monitoring, identification and enforcement of Infractions of the Red Zone Infractions 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 Infractions and recording such Infraction data in the form of photographic images of motor vehicles.
- 1.26. "Photo Red Light Infraction Criteria" means the standards and criteria by which Potential Infractions will be evaluated by Authorized Employees of the City, which standards and criteria shall include, but are not limited to, the definition of a Red Zone Infraction set forth in the City Ordinance, relying upon the duration of time that a traffic light must remain red prior to a Infraction 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 Infraction, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.
- 1.27. "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.
- 1.28. "Warning Period" means the period of 90 days after the Installation Date of the first intersection approach, as set by the Ordinance.
- 2.0 Term. The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years after the date of the first paid notice from the first installed System (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, five (5) 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) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
- 3.0 Services. Vendor shall provide the TSCP to the City, in each case in accordance with the terms and provisions of the Ordinance.
- 3.1. 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.

- 3.2. 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.
- 3.3. Infraction Processing. During the Operational Period, Infractions shall be processed as set forth on **Exhibit "D"**, attached hereto.
- 3.4. Prosecution. The City shall prosecute Ordinance violations in respect thereof pursuant to the terms, procedures and requirements of the City Ordinance, subject to City's routine law enforcement discretion.
- 3.5. 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 "E"** attached hereto.
- 3.6. 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, including new or additional automated photo enforcement programs, including upgrading system for speed enforcement, 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 " E " (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 16.0.
- 4.0 License; Reservation of Rights.
- 4.1. License. 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 Infractions and authorizing the issuance of Notices of Infraction 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 TSCP 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 TSCP, so long as any and all such publications or materials are approved in advance by Vendor.

- 4.2. 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.
- 4.3. 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.
- 4.4. 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 protective 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.
- 4.5. 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.
- 4.6. 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 attorneys 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 6.1.

5.0 Representations and Warranties.

5.1. Vendor Representations and Warranties.

5.1.1. Authority. Vendor hereby warrants and represents that:

5.1.1.1. it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; and,

5.1.1.2. 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.

5.1.2. 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.

5.2. City Representations and Warranties.

5.2.1. 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 and does not warrant the outcome of any judicial or legislative action that may be taken affecting these authorities subsequent to the execution of this Agreement.

5.3. 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 in City's governmental capacity .

6.0 Termination.

6.1. Termination for Cause: 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 or policies are adopted by agencies with jurisdiction, to prohibit or materially change the operation of TSCP so as to make it reasonably impractical to operate the red light enforcement program, including without limitation changes that would prohibit the red light enforcement program, or which would impose restrictions on revenues and uses that are contrary to the terms of this Agreement; (ii) any court having jurisdiction over City rules, or declares, that the City's red light enforcement program is invalid or results from the Vendor System of photo red light enforcement are inadmissible in evidence, or otherwise renders a decision that makes it reasonably impractical 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.

The rights to terminate this Agreement given in Section 6.1 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.

- 6.2 Warning Period. The Ordinance provides for a one time 90 day Warning Period, during which time courtesy notices of infractions, with no civil fees, are used. The parties hereto acknowledge that this Warning Period will be used to verify the reliability of the program and the detection of infractions, as well as to monitor anticipated changes in state law on the subject of camera enforcement of red light infractions. The Warning Period shall commence on the date the initial camera and the Infraction Processing procedures become operational, with the exact date to be confirmed in writing by the parties' Project Managers. At any time up to the conclusion of the initial Warning Period, the City, through a motion adopted by the City Council, may terminate the TSCP, for any or no cause. The City shall not be liable for any costs or expenses incurred by Vendor during this Warning Period. If the City Council determines to terminate the program pursuant to this paragraph, this Agreement shall be deemed terminated and the parties shall proceed pursuant to Section 6.3 below. In addition to the City's right to terminate during the Warning Period, for a period of 90 calendar days after the expiration of the Warning Period, either party shall have the right to terminate the agreement.
- 6.3 Procedures Upon Termination. This section 6.3 shall apply to the expiration of this Agreement and to the early termination of the Agreement. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in this Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

- 6.3.1 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 TSCP, (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 Infraction 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 Infraction issued prior to the termination of this Agreement.
- 6.3.2 The City shall (i), except for pending enforcement cases, immediately cease using the TSCP, 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.
- 6.3.3 Unless the City and Vendor have agreed to enter into a new agreement relating to the TSCP 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 approximately 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 6.3.1.

After the first three (3) years of this Agreement, City may provide for the early termination of this Agreement for City's convenience in the event that the City Council determines to discontinue having a TSCP. In such event, the remaining provisions of section 6.3 shall apply. City shall have no further liability for any such early termination. The parties recognize that other provisions of this Agreement serve as consideration for this provision.

7.0 Fees to be Paid to Vendor and Payment Processing.

- 7.1. Vendor shall have the right to receive the compensation set forth on, and pursuant to, **Exhibit F** attached hereto.
- 7.2. Vendor shall be responsible for processing payments of the Civil Fees. The Vendor shall provide payment means through mail, telephone and on-line processes. Vendor shall track all payments and handle all applied payments, unapplied payments, overpayments, refunds, adjustments, dismissals and reversals.

- 7.3. Vendor shall pay City all payments received during a calendar month, no later than the 7th day of the next following month.
- 7.4. Vendor shall invoice the City for all applicable fees according to the fee schedule delineated on **Exhibit “ F”**. 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.
- 8.0 Survival. Notwithstanding the foregoing, the parties’ obligations shall survive the termination of the Agreement to the extent necessary to fulfill the parties’ accrued monetary obligations under this Agreement.
- 9.0 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.
- 10.0 Indemnification and Liability.

Indemnification.

ATS shall comply with all laws, ordinances and regulations governing the use of photo enforcement systems applicable to this Agreement and shall comply with the maintenance procedures and manufacturer recommendations for operation of the Axis™ equipment which affect this Agreement, and shall indemnify and save harmless the Customer against claims arising from the violations of the maintenance procedures and manufacturer recommendations for operation of the equipment as a result of the negligence or willful misconduct of ATS, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of Customer.

- 10.1. Indemnification – Negligence. The Vendor agrees to defend, 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 City's employees, officers or agents. In the event that a court of competent jurisdiction determines that the provisions of Sec. 725.06, F.S., and / or Sec. 725.08 , F.S., apply to this Agreement, then , in such event, Vendor shall defend, indemnify and hold harmless City and City's officers, employees and agents only to the fullest extent authorized by said cited statutes .

- 10.2. 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 a default of this Agreement.
- 10.3. The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification to be provided by the Vendor and agree that in the event that the law is construed to require a specific consideration to 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 Vendor'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.
- 10.4. Legal Challenges. The parties recognize and acknowledge that the TSCP contemplated herein may be subject to legal challenge and/or judicial review as a new or innovative program. It is understood and acknowledged that various aspects of the program may be challenged. In the event of a legal challenge to the Program, City and Vendor shall share in the cost of the defense and any court ordered reimbursements to violators on a pro-rata basis.
- 10.5. In the event that a court of competent jurisdiction or the State of Florida, including any of its agencies, orders or requires the City to return any payments made for infractions of the City Ordinance , Vendor shall, at no additional charge, assist City to perform all relevant portions of any such order, decree, judgment, etc.,

required to be performed by the City including, but not limited to, assisting the City to locate each violator so that any ordered reimbursement may be made by both the City and the vendor.

10.6. Change in State Law. The parties recognize and acknowledge that it has been reported that the Florida Legislature is considering various revisions to State Uniform Traffic Laws which, if enacted, would expressly authorize municipalities to issue traffic infractions through the use of Red Light Cameras without the necessity of using the code enforcement system. Should the Florida Legislature enact any law modifying the Uniform Traffic Laws so as to expressly permit the TSCP, sections 10.4 and 10.5 shall automatically become void.

10.7. Notice of Claims. If the City or Vendor receives notice of any claim or circumstances which may give rise to an indemnified loss under this Section 10, the receiving party shall give written notice to the other party within ten (10) 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 directly prejudiced, suffers loss, or incurs expense because of the delay.

10.8. Review of Indemnification Provisions. At the conclusion of the Warning Period, and the 2008 session of the Florida Legislature, the City and Vendor will review the indemnification provisions in this Section 10.

11.0 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.

- 12.0 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.

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.

- 13.0 No Contingent Fees. Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee 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 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 Infraction 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.

- 14.0 Notices. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, 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:

City of North Miami Beach
17011 NE 19th Avenue
North Miami Beach, FL 33162
Phone: (305) 948-2900
Fax: (305) 957-3602
Attn: City Manager

Vendor:

American Traffic Solutions, Inc.
7681 E Gray Rd
Scottsdale, AZ 85260
Attention: Chief Operating Officer

- 15.0 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 ten percent (10%) of the amount 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.
- 16.0 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.
- 17.0 Headings. Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.
- 18.0 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits shall be treated as part of this Agreement and are incorporated herein by reference.
- 19.0 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.
- 20.0 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.
- 21.0 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.
- 22.0 Insurance.

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

22.1.1. Comprehensive General Liability insurance to cover liability for bodily injury and property damage. Exposures to be covered are premises, operations, products\completed operations, and contractual liability. 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 |

B. Personal Injury

- | | | |
|----|------------------|-------------|
| 1. | Annual Aggregate | \$1,000,000 |
|----|------------------|-------------|

22.1.2. 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.

22.1.3. 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 |

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

22.1.5. Vendor shall name the City as an additional insured on each of the policies required herein, with the exception of the Vendor's Worker's Compensation policy and Professional Liability.

22.1.6. 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. These Certificates shall contain a provision that coverage's afforded under these policies will not be canceled or impaired until at least forty five (45) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must not be less than "A-VI." Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the Vendor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect.

22.1.7. Any insurance required of Vendor pursuant to this Agreement must also be required by any sub-contractor of Vendor in the same limits and with all requirements as provided herein, including naming the City as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Vendor and provided proof of such coverage is provided to City. The Vendor and any sub-contractor of Vendor shall maintain such policies during the term of this Agreement.

23.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Miami-Dade County, Florida.

24.0 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.

25.0 Waiver of Jury Trial . In the event of any litigation between the parties which in any way arises out of this Agreement, the parties hereby agree to waive any right to trial by jury.

26.0 RFP. Vendor agrees to comply with any provisions of the RFP which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Vendor during the RFP process.

27.0 Compliance with Law. Vendor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.

28.0 Most Favored Customer. The Vendor represents that the fees, charges, and/or costs paid to Vendor under this Agreement do not exceed the current fees, charges or costs paid to Vendor by other Florida cities, counties and/or municipalities for the same (or substantially similar) services described in this Agreement. In the event the stated fees, charges and/or costs charged to the City under this Agreement are determined to be higher, then said fees, charges and/or costs shall be reduced accordingly. In such an

event, the Vendor agrees to offer the same (or lower) fees, charges and/or costs to the City as those charged to other Florida cities, counties and/or municipalities for the same (or substantially similar) services described in this Agreement.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

ATTEST:

CITY OF NORTH MIAMI BEACH

BY:

APPROVED AS TO FORM:

CITY ATTORNEY

Howard B. Lenard, Esq.
City of North Miami Beach
17011 North Beach 19th Avenue
North Miami Beach, Florida 33162

WITNESSES:

ATTEST:

SECRETARY

STATE OF Arizona :
: ss:
COUNTY OF Maricopa

ON THIS 30th day of October, 2008, before me, the undersigned notary public, personally appeared Adam Tutton, personally known to me, or who has produced _____ as identification, and is the person who subscribed to the foregoing instrument and who acknowledged that he executed the same on behalf of said Corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Linda M. Welsh
NOTARY PUBLIC
Linda M. Welsh
Print or Type Name

My Commission Expires:



EXHIBIT "A"
Designated Intersection

The contract provides for the implementation of cameras at no less than _____ intersections, at least 1 of which shall be installed within forty five days (45) days of receipt of permits for each agreed upon approach.

The proposed _____ intersections are as follows:

Vendor agrees to perform a feasibility study at no charge to City to determine the best locations for camera placement.

Installation of any approach is subject to engineering and video analysis results.

Additional approaches will be selected based on collision history, input and recommendations from the City's Police Department, and an engineering feasibility assessment. Vendor shall apply for a permit within sixty (60) days of the approval of this Agreement by the City Council.

Vendor will provide the City with video evaluation of candidate sites using the Axis VIMS system to assist the City's Police Department in its recommendations.

The program may be implemented at additional intersections after the conclusion of the Warning Period. The intersections will be designated by the Police Department, which designation will be based upon Police Department staff review and an engineering analysis.

EXHIBIT "B"
Construction and Installation Obligations

Timeframe for Installation: Traffic Safety Camera Program

Vendor will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Vendor Traffic Systems and the City Manager.

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.

Vendor will use reasonable commercial efforts to install and activate all specified intersection within forty-five (45) days subsequent to receipt of all permits required by section 1.4 of this Exhibit B.

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; and
 - 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.
 - 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 such governmental Entity denies authority to Vendor for the installation of its equipment.
 - 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 Infraction Criteria in consultation with the City;
- 1.9. Develop the Enforcement Documentation for approval by the City, consistent with the requirements of the City Ordinance;
- 1.10. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersections (under the supervision of the City);
- 1.11. 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;
- 1.12. Install and test the functionality of the Designated Intersections with the Vendor System and establish fully operational Infraction processing capability with the Vendor System;
- 1.13. Implement the use of the Vendor System at each of the Designated Intersections;
- 1.14. Deliver the Materials to the City;
- 1.15. Issue Notices of Infraction, and if the civil penalty is unpaid or the alleged violator requests a hearing, issue Notices of Hearing for Authorized Infractions pursuant to City Ordinance;
- 1.16. Obtain access to the records data of the Department of Motor Vehicles in Vendor's capacity as needed for the program; and,
- 1.17. Vendor shall provide training for personnel of the City, including, but not limited to, the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the TSCP, regarding the operation of the Vendor System and the TSCP. This shall include training with respect to the Vendor System and its operations, strategies for presenting Infractions Data in court and judicial proceedings and a review of the Enforcement Documentation;
- 1.18. Interact with court and judicial personnel, including the City's hearing officer to address issues regarding the implementation of the Vendor System, the development of a subpoena processing timeline that will permit the offering of Infractions Data in hearings and judicial proceedings, and coordination between Vendor, the City and the City's Hearing officer; and
- 1.19. 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 TSCP.
- 1.20. Notice of Infraction processing and Notice of Infraction re-issuance, as well as notice of hearing.

2. CITY OBLIGATIONS. The City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):
 - 2.1.1. Appoint the Project Manager;
 - 2.1.2. Assist Vendor in obtaining the Drawings from the relevant Governmental Authorities;
 - 2.1.3. Notify Vendor of any specific requirements relating to the construction and installation of any Intersection or the implementation of the TSCP;
 - 2.1.4. Assist Vendor in seeking the Approvals
 - 2.1.5. 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 TSCP;
 - 2.1.6. 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;
 - 2.1.7. Seek approval or amendment of Awareness Strategy and provide written notice to Vendor with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Vendor begins the installation of any of the Designated Intersection and ending six (6) months after the Installation Date;
 - 2.1.8. Assist Vendor in developing the Red Light Infraction Criteria; and
 - 2.1.9. Seek approval of the Enforcement Documentation.
 - 2.1.10. The City 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.
 - 2.1.11. 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.
 - 2.1.12. The Police Department shall process each potential violation in accordance with State Laws and/or City Ordinances within seven (7) business days of its

appearance in the Police Review Queue, using AxisTM to determine which violations will be issued as Citations or 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.

- 2.1.13. City shall provide access to the internet for the purpose of processing violations and adjudications.
- 2.1.14. Vendor shall, at no additional cost to the City , provide Police Department / Adjudication workstation computer monitors for citation review and approval which should provide a resolution of 1280 x 1024, which shall be returned to Vendor in the event the Agreement is terminated.
- 2.1.15. For optimal data throughput, Police Department / 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 on installation and implementation of the computerized aspects of the program.
- 2.1.16. Police Department shall provide signatures of all authorized police users who will review events and approve citations on forms provided by Vendor .
- 2.1.17. In the event that remote access to the ATS Axis VPS System is blocked by City's network security infrastructure, the City's IT Department and the counterparts at ATS shall coordinate to facilitate appropriate communications access while maintaining required security measures.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of Traffic Safety Camera Program 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.
2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade 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 Infractions 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.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of Traffic Safety Camera Program 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.
2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade 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 Infractions 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.

EXHIBIT "D"
Infraction Processing

1. All Infractions Data shall be stored on the Vendor System;
2. The Vendor System shall process Infractions 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 supply one PC to City at no charge to be used for Police Review in violation processing. City shall be responsible for maintenance of PC. Any additional equipment needed shall be procured by the City or if provided by Vendor, Vendor shall be reimbursed
6. Vendor shall provide storage capabilities for the City to store infractions identified for prosecution for a period of time of not less than four (4) years after final disposition of a case.
7. Vendor shall provide the Authorized Employee with access to the Vendor System for the purposes of reviewing the pre-processed Infractions Data within seven (7) days of the gathering of the Infraction Data from the applicable Designated Intersections.
8. The City shall cause the Authorized Employee to review the Infractions Data and to determine whether a Notice of Infraction shall be issued with respect to each Potential Infraction captured within such Infraction 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. VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A NOTICE OF INFRACTION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "NOTICE OF INFRACTION DECISION"), AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF INFRACTION DECISION;
9. With respect to each Authorized Infraction, Vendor shall print and mail a Notice of Infraction within seven (7) days after Vendor's receipt of such authorization from the City's Authorized Employee; provided, however, during the Warning Period, warning Infraction notices shall be issued in respect of all Authorized Infractions;
10. Vendor shall provide a toll-free telephone number, at its sole expense, for the purposes of answering citizen inquiries.

11. Vendor shall permit the Authorized Employee to generate monthly reports using the Vendor Standard Report System.
12. 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 Infraction, 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;
13. 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 Infractions, before the City's hearing officer, at no cost to the City;
14. Vendor shall provide such training to City 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.
15. During the Warning Period, Vendor shall implement a public relations program, in coordination with the City and upon City's approval.
16. Notice of Infraction Form. Vendor shall prepare and provide to City a Notice of Infraction Form that provides, at a minimum, the following information:
 - a. name and address of the owner of the vehicle involved in the infraction;
 - b. the registration number of the vehicle involved in the infraction;
 - c. a citation to the City's Ordinance violated;
 - d. the location of the intersection where the infraction occurred;
 - e. the date and time of the infraction;
 - f. a copy of the recorded image of the infraction;
 - g. the amount of fee and charges imposed and the date by which the fee and charges must be paid or appealed;
 - h. instructions on all methods of payment for the fee;
 - i. a clear statement of the time limit to file an appeal and describing the procedure for appealing the infraction;
 - j. a statement that the City's traffic infraction officer has reviewed and observed the recorded images evidencing the violation of the Ordinance and has found reasonable

and probable grounds to believe that an infraction has occurred and can identify the license tag number of the violating vehicle; and,

- k. a conspicuous statement, printed on larger font than the remaining statements on the Notice of Infraction, and bolded, stating that if the owner of the vehicle fails to pay the civil fee within the time allotted, or fails to timely appeal the infraction, the owner shall be deemed to have waived his or her right to contest the infraction, and has admitted to the infraction reflected in the Notice of Infraction.
17. Vendor agrees that the City shall have the right to review and approve the form Notice of Infraction prior to its use, and that in the event City determines additional information should be included in the Notice of Infraction, Vendor shall modify the Notice of Infraction form, at its sole expense, to comply with those requirements.
 18. For any city using ATS lockbox or epayment services, Vendor will establish a demand deposit account bearing the title, "American Traffic Solutions, Inc. as agent for Customer" at U.S. Bank. All funds collected on behalf of the Customer will be deposited in this account and transferred by wire the first business day of each week to the Customer's primary deposit bank. The Customer will identify the account to receive funds wired from U.S. 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 U.S. Bank account is preserved.
 19. Vendor is authorized to charge, collect and retain a convenience fee of \$4.00 each for electronic payments processed. Such fee is paid for by the violator.

Exhibit "E"

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 TSCP, as offered in the Vendor's proposal.
2. Vendor shall be solely responsible for installing such Signage as required by City Ordinance. 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 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 meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the termination of the Warning Period Date, 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 TSCP 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.
5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Vendor System or using the TSCP.
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 reasonably follow 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.

EXHIBIT "F"
COMPENSATION & PRICING

Per Paid Fee

There will be no charge to City during the Warning Period, and Vendor shall not receive any compensation for any notices sent during the Warning Period.

Vendor agrees to conduct VIMS study at no cost to the City of North Miami Beach. Post VIMS study, vendor agrees to meet to establish a fee structure once the intersections are agreed upon. Below is proposed pricing. Fixed fee pricing of \$4750 per month per camera may be elected in lieu of fee per paid. This option must be selected by City within 7 days of VIMS results

At the conclusion of the Warning Period, and once Notices of Infractions are issued, Vendor shall be compensated as follows:

Per Camera Paid Notices

1 st Tier Fee:	First 2 paid notices per day in a month, per camera	\$47.50
2 nd Tier Fee:	Next 2 paid notices per day in a month, per camera	\$27.50
3 rd Tier Fee	All other paid notices in a month, per camera	\$17.50

Pricing is average of all cameras per day per month in program.

If the average number of paid notices is 2 or fewer per day in a month, per camera the Vendor shall receive all revenues collected for the billing period.

Vendor shall have the right of first refusal to provide collections services for this program, the collection methods and compensation for which shall be determined by the parties in an addendum to this Agreement.



City of North Miami Beach

CITY ATTORNEY'S OFFICE

Phone: (305) 948-2939

Fax: (305) 787-6004

TO: Pamela Latimore, City Clerk

FROM: Darcee S. Siegel, City Attorney

DATE: August 5, 2013

Re: Second Amendment Agreement between American Traffic Solutions, Inc. (ATS) and City of North Miami Beach

Attached please find the original Second Amendment Agreement between American Traffic Solutions, Inc. ("ATS") and City of North Miami Beach.

If you have any questions, please do not hesitate to contact me.

DSS/ep
Enclosure

**SECOND AMENDMENT
TO PROFESSIONAL SERVICES AGREEMENT**

This Second Amendment (this "Amendment") is dated effective this 15th day of August, 2013 and is entered into between American Traffic Solutions, Inc. ("ATS"), a Kansas corporation and the City of North Miami Beach, Florida ("Customer"), a municipal corporation of the State of Florida.

RECITALS

WHEREAS, on October 30, 2008, 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. Subsection 3.6 in Section 3.0 of the Agreement is hereby modified by deleting the reference to an Exhibit E and replacing it as follows: "on the terms set forth in Exhibit "E" this Agreement"
2. Section 1.1.11 of Exhibit B is hereby deleted in its entirety and replaced as follows: "ATS is authorized to charge, collect and retain a convenience fee of up to 5% of the total dollar amount of each electronic payment processed. Such convenience fees are paid by the violator."
3. Section 1.2.3 of Exhibit B is hereby deleted in its entirety and replaced as follows: "Subsequent notices, other than the initial Notice of Violation specified in section 1.2.2, may be delivered by First Class mail for additional compensation as set forth in Exhibit A."
4. Exhibit A is hereby amended to add the following: "Subsequent notices mailings fee: \$2.00 per piece"
5. The title of Section 2.5 of Exhibit B is hereby amended to read "LOCAL HEARINGS AND COURTS OPERATIONS" and a subsection 2.5.2 is added as follows: "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."
6. 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.
7. 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.

AMERICAN TRAFFIC SOLUTIONS, INC.

Signature: 

Name/Title: GEORGE J. HITTNER
GENERAL COUNSEL

Date: 8/1/13

NORTH MIAMI BEACH, FLORIDA

Signature: 

Name/Title: ROSLYN WEISBLUM, City Manager

Date: 8/5/13

THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This Third Amendment (this "Amendment") is dated effective this 19th day of DECEMBER, 2016 and is entered into between American Traffic Solutions, Inc. ("ATS"), a Kansas corporation, with its principal place of business at and the City of North Miami Beach, Florida ("Customer"), a municipal corporation of the State of Florida.

RECITALS

WHEREAS, on October 30, 2008, Customer and ATS entered into a Professional Services Agreement, which was amended on or about March 12, 2013 and August 1, 2013 (Professional Service Agreement with amendments herein the "Agreement"); and

WHEREAS, Customer and ATS mutually desire to amend certain terms and conditions of the Agreement.

TERMS AND CONDITIONS

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

1. Section 2.0 of the Agreement is hereby amended to extend the term of the Agreement for an additional three (3) years. The Customer may extend the Agreement for additional three (3) year terms by providing ATS with written notice of the Customer's desire to extend the term and the written acceptance of ATS to the extension.
2. Upon the written mutual agreement of the parties, as indicated by a written notice to proceed signed by both parties, ATS shall reinstall the Camera System for north bound Biscayne Blvd. at NE 172nd St. (camera site ID: "NB08"). If NB08 is reinstalled the expiration date of the Agreement shall be three (3) years from the date of the first paid notice issued using NB08 and if NB08 is not reinstalled the expiration date shall remain November 17, 2019.
3. Section 1.0 of Exhibit "D" Compensation & Pricing, Service Fee Schedule, is hereby modified as follows:

"Fees are based on per camera and are as follows: **Fee: \$4,750 \$4,250 per camera/per month**"
4. The Agreement shall be modified to include the following provision:
 - i. Keep and maintain public records that ordinarily and necessarily would be required by City in order to perform the project scope of services.
 - ii. Upon request from City's custodian of public records, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if ATS does not transfer the records to City.
 - iv. Upon completion of the Agreement, transfer, at no cost, to City all public records in possession of ATS or keep and maintain public records required by City to perform the project scope of services. If ATS transfers all public records to City upon completion of the Agreement, ATS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ATS keeps and maintains public records upon completion of the Agreement, ATS shall meet all applicable requirements for maintaining public records. All records stored electronically must be provided to City upon request from City's custodian of public records in a format that is compatible with the information technology systems of City.
 - v. In the event ATS fails to comply with a public records request, City shall be authorized to enforce this contractual provision.

City of North Miami Beach City Clerk, Pamela L. Latimore, Pamela.latimore@citynmb.com, (305) 787-6001, Office of the City Clerk, 17011 NE 19th Ave, 1st Floor, North Miami Beach, FL 33162"

5. 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.
6. 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.

AMERICAN TRAFFIC SOLUTIONS, INC.

Signature: 

Name/Title: Elizabeth Caracciolo
SVP/EM - Safety Solutions

Date: 12/9/16

NORTH MIAMI BEACH, FLORIDA

Signature: 

Name/Title: Ana M. Garcia, City Manager

Date: 12/19/16

**APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION**


**JOSE SMITH
CITY ATTORNEY**

12/15/16
DATE TBS

RESOLUTION NO. R2016-103

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE THIRD AMENDMENT TO THE AGREEMENT WITH AMERICAN TRAFFIC SOLUTIONS, INC. FOR THE TRAFFIC SAFETY CAMERA PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT.

WHEREAS, the City of North Miami Beach ("City") enacted Chapter XA, entitled "North Miami Beach Dangerous Intersection Safety Ordinance," to utilize red light camera infraction detectors at certain street intersections to reduce exposure to injury, harm, damage, and loss caused by traffic incidents related to the failure of motorists to obey duly-erected traffic control devices; and

WHEREAS, On October 30, 2008, the City and American Traffic Solutions, Inc. ("ATS") entered into an agreement for a traffic safety camera program ("Agreement"); and

WHEREAS, On March 12, 2013, the City and ATS renewed the October 30, 2008 Agreement and amended certain terms to comply with the requirements of Law of Florida 2010-80; and

WHEREAS, On August 1, 2013, the City and ATS executed a second amendment to the Agreement to comply with the requirements of Law of Florida 2013-160; and

WHEREAS, the Agreement term ended on November 17, 2016, and was extended until January 4, 2017, providing for the option of a three-year renewal term; and

WHEREAS, the City and ATS negotiated a monthly, per camera fee of \$4,250.00, which is a \$500.00 per camera/per month reduction in cost, for a three-year term (Exhibit "A"); and

WHEREAS, the Mayor and City Commission believe it is in the best interest of the City to continue the traffic safety camera program which promotes, protects, and improves the safety and welfare of the residents and authorizes and approves the renewal of the Agreement between the City and ATS for three years for a \$4,250.00 per camera/per month fee.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Commission of the City of North Miami Beach, Florida

Section 1. The aforementioned recitals are true and correct.

RESOLUTION R2016-103

Section 2. The Mayor and City Commission hereby authorize and approve the City Manager or designee to execute the Third Amendment to the Agreement, in a form acceptable to the City Attorney, in substantially the attached form (Exhibit "A").

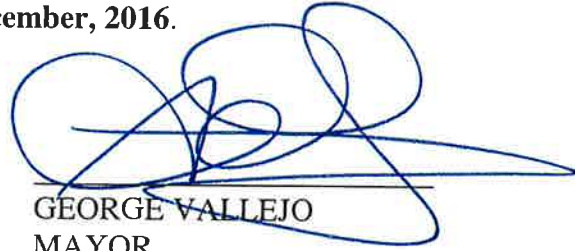
APPROVED AND ADOPTED by the City of North Miami Beach City Commission at the regular meeting assembled this **6th day of December, 2016.**

ATTEST:



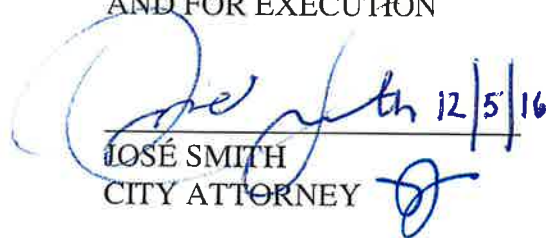
PAMELA L. LATIMORE
CITY CLERK

(CITY SEAL)



GEORGE VALLEJO
MAYOR

APPROVED AS TO FORM, LANGUAGE
AND FOR EXECUTION



JOSÉ SMITH
CITY ATTORNEY

Sponsored by: Mayor and Commission

RESOLUTION R2016-103

This Fourth Amendment (this "Amendment") is dated effective this 15th day of November, 2017 and is entered into between American Traffic Solutions, Inc. ("ATS"), a Kansas corporation, with its principal place of business at and the City of North Miami Beach, Florida ("Customer"), a municipal corporation of the State of Florida.

RECITALS

WHEREAS, on October 30, 2008, Customer and ATS entered into a Professional Services Agreement, which was amended on or about March 12, 2013, August 1, 2013 and December 19, 2016 (Professional Service Agreement with amendments herein the "Agreement"); and

WHEREAS, Customer and ATS mutually desire to amend certain terms and conditions of the Agreement.

TERMS AND CONDITIONS

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

1. Subsection 1.2.19 of Exhibit B of the Agreement is hereby deleted in its entirety and replaced with the following:
"Vendor and the City clarify the event categorization process, which has so far been used and will be used by City and Vendor, as follows: Pursuant to the express written directives or business rules issued by the City to Vendor, Vendor shall act as City's agent for the limited purpose of categorizing events captured by the Camera System and uploaded to the Axis System. Unless otherwise changed by written directives or business rules of the City, City directs ATS to make all uploaded camera information accessible for City review. As confirmed elsewhere in this Agreement, as part of this event categorization process, Vendor has no authority to and does not decide whether a law violation exists or whether a notice of violation or citation should be issued as a result of an event."
2. 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.
3. 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.

AMERICAN TRAFFIC SOLUTIONS, INC.

Signature: [Signature]

Name/Title: Liz Caracciolo

Date: 11/15/17

NORTH MIAMI BEACH, FLORIDA

Signature: [Signature]

Name/Title: City Manager

Date: 11/27/17

APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION
[Signature] 11/21/17
JOSE SMITH DATE
CITY ATTORNEY

May 17, 2017

VIA CERTIFIED MAIL WITH RETURN RECEIPT

ANA M. GARCIA
CITY MANAGER
CITY OF NORTH MIAMI BEACH
17011 NE 19TH AVENUE,
NORTH MIAMI BEACH, FLORIDA 33162

Re: American Traffic Solutions, Inc. Notice and Approval

Dear Sir/Madam:

Reference is hereby made to that certain Professional Services Agreement by and between American Traffic Solutions, Inc. ("ATS"), an affiliate of ATS Consolidated, Inc. ("ATS Consolidated") and The City of North Miami Beach ("you"), dated as of October 30, 2008, as amended (the "Agreement").

The information contained in this letter is strictly private and confidential and is not to be shared with any third party.

Section 12 of the Agreement provides that ATS will not assign, transfer or otherwise encumber the Agreement, including purchases of controlling interest in ATS or a merger, without your prior written consent. I am writing to inform you that ATS Consolidated is in the process of completing a transaction (the "**Transaction**") with Greenlight Acquisition Corporation ("**Parent**") and Greenlight Merger Corporation (a wholly-owned subsidiary of Parent) pursuant to which Greenlight Merger Corporation will merge with and into ATS Consolidated, with ATS Consolidated surviving the Transaction and becoming a wholly-owned subsidiary of Parent (and ATS becoming a wholly-owned subsidiary of Parent). We expect that the Transaction will close within the next few weeks (the "**Closing**"). Notwithstanding the foregoing, ATS will remain the "Vendor" under the Agreement after giving effect to the Transaction. We believe the actions outlined above singularly or collectively do not require advanced notice to you or require your consent by the terms of the Agreement. As a precaution, we are hereby providing you this notice and request in anticipation of the Closing and are asking that you provide your approval to the Transaction and waive any rights you may have should the Transaction be deemed to be subject to Section 12 of the Agreement.

As evidence of receipt of this notice and your approval of the foregoing, please execute the signature page below and send an executed copy to my attention as soon as possible, by e-mail at Kristen.Young@atsol.com or returning it in the enclosed self-addressed stamped envelope. If you have any questions regarding this letter or the Transaction, please do not hesitate to call me at 480-596-4627. Thank you for your prompt attention to this matter.

[Remainder of Page Intentionally Left Blank]



Sincerely,

AMERICAN TRAFFIC SOLUTIONS, INC.

By: 

Name: Kristen Young

Title: Deputy General Counsel

Acknowledged and agreed:

CITY OF NORTH MIAMI BEACH

By: 

Name: Ana Garcia

Title: City Manager

Date: 11/26/17

[Notice and Approval]

RESOLUTION NO. R2017-74

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE FOURTH AMENDMENT TO THE AGREEMENT WITH AMERICAN TRAFFIC SOLUTIONS, INC. FOR THE TRAFFIC SAFETY CAMERA PROGRAM, AND CONSENTING TO MERGER BETWEEN AMERICAN TRAFFIC SOLUTIONS AND GREENLIGHT ACQUISITION COMPANY, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND MERGER APPROVAL.

WHEREAS, the City of North Miami Beach ("City") enacted Chapter XA, entitled "North Miami Beach Dangerous Intersection Safety Ordinance," to utilize red light camera infraction detectors at certain street intersections to reduce exposure to injury, harm, damage, and loss caused by traffic incidents related to the failure of motorists to obey duly-erected traffic control devices; and

WHEREAS, On October 30, 2008, the City and American Traffic Solutions, Inc. ("ATS") entered into an agreement for a traffic safety camera program ("Agreement"); and

WHEREAS, On March 12, 2013, the City and ATS renewed the October 30, 2008 Agreement and amended certain terms to comply with the requirements of Law of Florida 2010-80 (Exhibit "A"); and

WHEREAS, On August 1, 2013, the City and ATS executed a second amendment to the Agreement to comply with the requirements of Law of Florida 2013-160 (Exhibit "B"); and

WHEREAS, On December 19, 2016, the City and ATS executed a third amendment to the Agreement to extend the Agreement for an additional three (3) year term, and providing for the option of a three-year renewal term (Exhibit "C"); and

WHEREAS, the City's traffic safety camera program, as with many other municipalities, has been involved in litigation wherein the procedures used by the City in operating its program were challenged;

WHEREAS, as a result of litigation, a County Court judge reviewed the City's practices in administering the program and found that the City's practices were in compliance with Florida law, but recommended that the Agreement language be amended to accurately reflect the approved practices of the City (Exhibit "D"); and

WHEREAS, the proposed Fourth Amendment to the Agreement revises the language of the Agreement so that it is consistent with the City's actual practice of having a police officer solely responsible for reviewing the events and deciding whether a violation of law exists, or

RESOLUTION R2017-74

whether a notice of violation or citation should be issued, and prohibiting ATS from making such determinations (Exhibit "E"); and

WHEREAS, ATS has provided the City notice that Greenlight Acquisition Corporation ("Greenlight") and its subsidiary, Greenlight Merger Corporation, will merge with and into ATS Consolidated, with ATS Consolidated surviving the transaction and becoming a wholly-owned subsidiary of Greenlight, and that notwithstanding the above merger, ATS will remain the "Vendor" under the Agreement; and

WHEREAS, the transaction between ATS and Greenlight will not alter the terms of the Agreement between ATS and the City; and

WHEREAS, ATS has requested that the City provide its approval to the merger transaction by executing the attached Notice and Approval correspondence (Exhibit "F");

WHEREAS, the Mayor and City Commission believe it is in the best interest of the City to preserve the integrity of the traffic safety camera program which promotes, protects, and improves the safety and welfare of the residents and authorizes and approves the Fourth Amendment so that the Agreement language reflects the actual practices of the City in administering the program; and

WHEREAS, the Mayor and City Commission believe it is in the best interest of the City to approve of the transaction between Greenlight and ATS.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Commission of the City of North Miami Beach, Florida.

Section 1. The aforementioned recitals are true and correct.

Section 2. The Mayor and City Commission hereby authorize and approve the City Manager or designee to execute the Fourth Amendment to the Agreement, in a form acceptable to the City Attorney, in substantially the attached form (Exhibit "E").

Section 3. The Mayor and City Commission hereby authorize and approve the City Manager or designee to execute the ATS Notice and Approval, in substantially the attached form (Exhibit "F").

APPROVED AND ADOPTED by the City of North Miami Beach City Commission at the regular meeting assembled this **15th day of August, 2017**.

RESOLUTION R2017-74

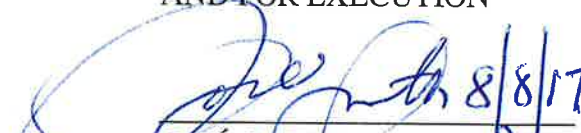
ATTEST:


PAMELA L. LATIMORE
CITY CLERK


GEORGE VALLEJO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM, LANGUAGE
AND FOR EXECUTION


JOSÉ SMITH
CITY ATTORNEY

Sponsored by: Mayor and City Commission

RESOLUTION R2017-74

EXHIBIT B

NOTICE OF VIOLATION



City of North Miami Beach
Intersection Safety Program
PO Box 22091
Tempe, AZ 85285-2091

CITY OF NORTH MIAMI BEACH NOTICE OF VIOLATION



NOTICE #: 1231800033979

PIN: 6106

View your video and pay with your Visa or
MasterCard at www.ViolationInfo.com

Amount Due: \$158.00

Due Date: 04/23/2018



02-01-7-82

09755 1 AB 0.405 T 38 00-ATPSCR2D-1

STEVEN JON PINCUS

4277 NW 27TH AVE

BOCA RATON FL 33434-5826



D805319



158.
7.90 Conv.
fee
165.90
Pd 4/23
Disc - 40

CONF
GD-869

ON/ (Date)	AT TIME	AT LOCATION		COUNTY	
02/17/2018	08:47 AM	SB NE 6TH AVE @ N MIAMI BEACH BLVD / NE 167TH ST		MIAMI-DADE	
NAME STEVEN JON PINCUS					
STREET ADDRESS 4277 NW 27TH AVE					
CITY BOCA RATON			STATE FL	ZIP CODE 33434	
DID UNLAWFULLY <input checked="" type="checkbox"/> OPERATE/DRIVE <input type="checkbox"/> PARK					
VEHICLE	YEAR 2006	MAKE MAZD	MODEL	STYLE 4D	COLOR GRY
	LIC	NUMBER Y23MYA	STATE FL	REGISTRATION NUMBER 11798719	
Did then and there commit the following offense: FAILURE TO COMPLY WITH A STEADY RED SIGNAL The recorded images relating to the vehicle stated above are evidence of this violation.					
IN VIOLATION OF: Florida Statutes §§316.0083, 316.074(1) and 316.075(1)(c)1					
POLICE DEPARTMENT Miami Beach ID# 2035					
The traffic infraction enforcement officer or law enforcement officer named above has reviewed the recorded images evidencing the red light signal violation, has identified the license tag number of the violating vehicle and has found reasonable and probable grounds that an offense has been committed.				ISSUE DATE 02/22/2018	
STATUTORY PENALTY OF \$158.00					



IF YOU HAVE QUESTIONS ABOUT THIS NOTICE, PLEASE GO TO WWW.VIOLATIONINFO.COM

Pay with your Visa or MasterCard at www.ViolationInfo.com or mail your check or money order with this coupon to the address below.



NAME: STEVEN JON PINCUS		DUE: 04/23/2018	
NOTICE #: 1231800033979	VERSION: 1	ISSUED: 02/22/2018	
PLATE: Y23MYA	STATE: FL	TYPE: Regular Passeng	

No points will be assessed for this Notice of Violation nor will it affect vehicle insurance rates.

City of North Miami Beach
Payment Processing Center
PO Box 742527
Cincinnati, OH 45274-2527



- Si necesita ayuda en Español, favor llame al 1.866.225.8875.
- PLEASE RESPOND WITH PAYMENT, REQUEST A HEARING, OR SUBMIT AN AFFIDAVIT POSTMARKED ON OR BEFORE THE DUE DATE TO AVOID ISSUANCE OF A UNIFORM TRAFFIC CITATION ("UTC"). SEE INSTRUCTIONS ON REVERSE SIDE.
- Pay with your Visa or MasterCard at www.ViolationInfo.com or mail your check or money order with this coupon to the address to the right.
- Make your check or money order payable to City of North Miami Beach.
- DO NOT MAIL CASH.
- Write the Notice # located above on the front of your payment.
- Insert this tear-off coupon in the enclosed envelope with the address

AMOUNT DUE: \$158.00

1 1231800033979 000019899299 158009

Your vehicle was observed by a traffic infraction detector failing to comply with a steady red light signal, in violation of Florida Statutes §§ 316.0083, 316.074(1) and 316.075(1)(c)1, at the intersection, date, and time stated on the front page of this Notice of Violation ("Notice"). This is a non-criminal infraction of state law. No points will be assessed and this infraction may not be used to set motor vehicle insurance rates.

This Notice has been issued by the City of North Miami Beach.

You have the following three options:

- Pay this violation in the amount of \$158.00 on or before the due date specified on the front of this Notice; or
- Submit an affidavit by following the instructions below; or
- Request a hearing by signing and mailing the form below. You will be notified by letter of the time, location and date of the hearing. If you request a hearing and the Local Hearing Officer concludes that no infraction has been committed, this Notice will be dismissed and no costs or penalties shall be imposed. If the Local Hearing Officer concludes that an infraction has been committed, the Local Hearing Officer will uphold the infraction, and you will be responsible for payment of a \$158.00 fine as well as additional administrative fees and costs not to exceed \$250.00 as imposed by the Local Hearing Officer.

SUBMISSION OF AFFIDAVIT: You may download an affidavit at www.ViolationInfo.com. As the registered owner of the vehicle, you are deemed responsible for the violation and the payment of a \$158.00 penalty unless, in compliance with Florida Statute § 316.0083(1)(d)1.a-d, you establish by a sworn affidavit that a statutory exemption applies. The exemptions are that the motor vehicle: (a) passed through the intersection in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession; (b) passed through the intersection at the direction of a law enforcement officer; (c) was, at the time of the violation, in the care, custody, or control of another person; or (d) a Uniform Traffic Citation ("UTC") was issued by a law enforcement officer to the driver of the motor vehicle for the violation of Florida Statutes §§ 316.074(1) and 316.075(1)(c)1 stated in this Notice. **The affidavit must be sworn before a notary public or other person authorized to administer oaths.** If you assert that the vehicle was in the care, custody, or control of another person, you must provide the name, address, date of birth, and, if known, the driver's license number of the person who leased, rented, or otherwise had care, custody, or control of the vehicle at the time of the violation. If the vehicle was stolen, then the affidavit must include a copy of a police report showing the vehicle to have been stolen. If you assert that a UTC was issued by a law enforcement officer for the violation of Florida Statutes §§ 316.074(1) and 316.075(1)(c)1 stated in this Notice, then you must include the serial number of the UTC. For faster processing, you may, but are not required to, include a copy of the UTC. If your affidavit complies with the requirements of Florida Statute § 316.0083, then no further action will be taken against you. **The submission of a false affidavit is a misdemeanor of the second degree, punishable under Florida Statute § 775.082 or § 775.083 by a term of imprisonment not to exceed sixty (60) days and/or a fine not to exceed \$500.00.** If submitting an affidavit, it must be postmarked on or before the due date specified on the front page of this Notice in order to be appropriately processed. The affidavit should be mailed to City of North Miami Beach, c/o Intersection Safety Program, PO Box 22091, Tempe, AZ 85285-2091.

Do not send payment or affidavit to the Clerk of the Court.

If you fail to respond as outlined above, postmarked by the due date, a UTC will be issued to you. Upon issuance of a UTC, you shall have the remedies specified in Florida Statutes §§ 316.0083 and 318.14, which include (a) the right to pay the civil penalty in the amount of \$277.00; (b) the right to submit an affidavit; or (c) the right to have a hearing before a designated official, who shall determine whether an infraction has been committed. If the official concludes that no infraction has been committed, the UTC will be dismissed and no costs or penalties shall be imposed. If the official concludes an infraction has been committed, the official will uphold the UTC and may impose an additional civil penalty not to exceed \$500.00 and court fees and costs. Failure to pay, submit an affidavit, or request a hearing on the UTC could result in your driving privileges being suspended.

VIEW YOUR IMAGES AND VIDEO EVIDENCE FOR THIS INFRACTION: The recorded images and video of your violation will be submitted as evidence for the disposition of this violation. You may view your images and video online at www.ViolationInfo.com. You will need your Notice # and PIN printed on the front of this Notice inside the red box. If you do not have internet access, you may view your video and images at any public library.

QUESTIONS: If you have any questions, please contact Customer Service toll free at 1-866-225-8875.
(You must be the registered owner of the vehicle to discuss this violation with Customer Service.)

PAYMENT INSTRUCTIONS

ONLINE PAYMENT: The fastest and easiest way to pay your \$158.00 penalty is online. Go to www.ViolationInfo.com and log on with your Notice # and PIN shown in the red box on the front of this notice. Click the Pay button. There is a convenience / service fee for this service.

PAYMENT BY PHONE: Call toll free 1-866-225-8875 available 24 hours a day, 7 days a week. There is a convenience / service fee for this service.

PAYMENT BY MAIL: Mail your check or money order (payable to City of North Miami Beach) in the enclosed envelope with the coupon printed at the bottom of the reverse side of this Notice. PLEASE DO NOT MAIL CASH. Be sure to put the Notice # (see reverse) on the face of your payment. Payment must be postmarked on or before the due date.

PAYMENT IN PERSON: No walk-in payments will be accepted.

HEARING REQUEST FORM

To request a hearing on the above referenced Notice pursuant to Florida Statute § 316.0083, please submit the signed and dated coupon below in the envelope provided. The petitioner understands they will be notified of the date, time and location of the hearing. The Local Hearing Officer shall issue a final administrative order. **If the Notice of Violation is upheld, the petitioner will be required to pay \$158.00 and may also be required to pay county or municipal costs, not to exceed \$250.00.** NOTE: Per Florida Statute, you may cancel your appearance before the local hearing officer by paying the \$158.00 penalty assessed, plus \$50 in administrative costs, before the start of the hearing. The amount due will be \$208.00.

Detach here and return bottom portion as a request for an Administrative Hearing before a Local Hearing Officer.

1231800033979



I submit this form as a request to contest this Notice of Violation and acknowledge that it must be postmarked by the due date of this Notice to be a valid request. I understand that I must attend this hearing in person, unless represented by counsel appearing in person on my behalf.

Please sign and print name using blue or black ink.

Signature: _____

Printed Name: _____

Phone Number: _____

Southern District of Florida

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

STEVEN J. PINCUS, an individual, on
behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff **Palm Beach, Florida**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Bret Lusskin, P.A., 20803 Biscayne Blvd., Ste 302, Aventura, FL
33180, 954-454-5841

DEFENDANTS

AMERICAN TRAFFIC SOLUTIONS, INC., a Kansas corporation,

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown at thistime.

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☐ BROWARD ☒ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff

and One Box for Defendant)

- | PTF | DEF | PTF | DEF |
|---------------------------------------|----------------------------|---|--|
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions):

a) Re-filed Case ☐ YES ☒ NO

b) Related Cases ☐ YES ☒ NO

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Unlawful Imposition of Additional Sums on Red Light Camera Defendants

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 29, 2018

Bret L. Lusskin, Esq.

FOR OFFICE USE ONLY

RECEIPT # aaaaaaaaaa

AMOUNT aaaaaaaaaa

IFP aaaaaaaaaa

JUDGE aaaaaaaaaa*****MAG JUDGE aaaaaaaaaa

Save As...

Print

Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [American Traffic Solutions Has Stolen Millions in 'Convenience Fees' from FL Drivers, Class Action Suit Alleges](#)
