



Staff Report

DATE: March 12, 2014

TO: Mayor and City Council

FROM: Michael Massoni, Public Safety Chief

SUBJECT: RESOLUTION AUTHORIZING THE RENEWAL OF THE AMENDED PROFESSIONAL SERVICES AGREEMENT WITH AMERICAN TRAFFIC SOLUTIONS FOR RED LIGHT ENFORCEMENT

RECOMMENDATION:

It is recommended that City Council adopt the attached Resolution authorizing the renewal of the amended agreement with American Traffic Solutions and approve Amendment Two for the automated Red Light Enforcement Program in South San Francisco.

BACKGROUND/DISCUSSION:

As Council is aware, the City of South San Francisco has had a Red Light Enforcement Program in place since August of 2009. The City of South San Francisco entered into a contract with American Traffic Solutions ("ATS") to provide the equipment and technology for this program. Currently, this program is in two locations within the City, with one (1) location at the intersection of Chestnut Avenue/Westborough Boulevard and El Camino Real, as well as the intersection of Hickey Boulevard and El Camino Real.

The contract with ATS is for five (5) years, beginning from the first revenue-generating citation, which was August 13, 2009. Per the contract agreement terms, the contract will automatically renew on August 13, 2014 for an additional five (5) years unless the City of South San Francisco notifies ATS by April 14, 2014.

ACCIDENT DATA

Since 2005, with the integration of improved and more accurate records management systems and procedures, the City of South San Francisco has recorded a total of two hundred fifteen (215) collisions from both intersections where red light cameras now operate. At those intersections, a total of twenty two (22) of those collisions (approximately 10% of all collisions) have been attributed to red light violations. Those collisions resulted in minor injuries to twenty seven (27) people and major injuries to three (3) people. The remaining ninety percent (90%) of collisions at those intersections have been attributed to unsafe speeds, following too closely, unsafe lane changes, and failure to yield violations.

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Accident Data				
Date Range	El Camino Real @ Hickey Blvd.		El Camino Real @ Westborough Blvd.	
	Collisions	Collisions due to red light violations	Collisions	Collisions due to red light violations
2005-2009	41	9*	55	7#
2010-2013	43	2**	76	4##
Totals per Intersection	84	11	131	11
Grand Totals	215 total collisions/22 Red Light Collisions			

* From 2005-2009, those 9 collisions resulted in 10 minor and 1 major injury.

** From 2010-2013, those 2 collisions resulted in 4 minor injuries and no major injuries.

From 2005-2009, those 7 collisions resulted in 9 minor injuries and no major injuries.

From 2010-2013, those 4 collisions resulted in 4 minor injuries and 2 major injuries.

The table below shows the number of citations issued each calendar year that the program has been in effect. As indicated, the number of citations issued has decreased other than a spike in 2012.

Citations Issued	
YEAR	NUMBER ISSUED
2009	5,528
2010	4,631
2011	4,465
2012	5,971
2013	4,761
TOTAL	25,356

In the table below, the "Amount Received" column lists the amount that is received by the City of South San Francisco from these citations. The "Cost" column lists the fees paid to ATS to maintain and monitor the equipment and for a first level of review of the violations. Additional costs include Police Department staff time to evaluate the violations and to testify in court if necessary.

Fiscal Year Citation Revenue Generated and Expenses			
FISCAL YEAR	AMOUNT RECEIVED	COST	DIFFERENCE
2010/11	\$ 414,439	\$ 486,400	(\$ 71,961)
2011/12	\$ 565,754	\$ 461,450	\$ 104,304
2012/13	\$ 691,413	\$ 466,835	\$ 224,578
2013/14 TO DATE	\$ 254,850*	\$ 196,100**	\$ 58,750
TOTAL	\$ 1,926,456	\$1,610,785	\$ 315,671

* Figure only includes the first 6 months of fiscal year

** Cost estimate for the first 6 months of fiscal year

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The table below shows the compensation to ATS for the first five (5) years of the contract and compensation for the subsequent five (5) years. Currently, the red light cameras monitor six (6) approaches at the intersections being monitored, five (5) at Westborough Blvd. and El Camino Real and one (1) at Hickey Blvd. and El Camino Real. The table below also lists the price for each leg of the intersections and the total paid to ATS monthly.

Intersection	Existing Price	New Price
Westborough Blvd. and ECR	\$ 5,395	\$ 4,500
Westborough Blvd. and ECR	\$ 5,395	\$ 4,500
Westborough Blvd. and ECR	\$ 5,395	\$ 4,500
Hickey Blvd. and ECR	\$ 5,395	\$ 4,500
Westborough Blvd. and ECR	\$ 4,995	\$ 4,000
Westborough Blvd. and ECR	\$ 4,995	\$ 4,000
Grand Total	\$ 31,750	\$ 26,000

Should the City of South San Francisco choose to continue the program, the table below will show the average number of citations based on current figures.

Years	Number of Citations Yearly
2015-2019	5,071

Based on the average revenue generated and the average cost to the City of South San Francisco, this table illustrates the projected financial impact on a yearly basis. Cost is based on the new negotiated fee with ATS and current employee costs.

Fiscal Years	Amount Received	Cost	Difference
2014/15 to 2018/19	\$ 557,202	\$ 402,595	\$ 154,607

Statistics provided to the City of South San Francisco by ATS regarding red light violations in South San Francisco indicate the following:

1. Most red light violations occur between the hours of 12:00 PM and 1:00 PM.
2. Saturday is the day of the week with the most red light violations.
3. Vehicles registered in South San Francisco are receiving approximately twenty percent (20%) of the citations issued.
4. Most red light violators in South San Francisco do not get a second ticket. Ninety eight percent (98%) of those South San Francisco residents who receive and pay for a citation do not get a second citation.
5. The South San Francisco Police Department has utilized the videos footage captured at these intersections twenty two (22) times for non-red light related incidents. These include accidents, hit and run accidents, and one (1) homicide investigation.

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Staff from the South San Francisco Police Department and the City Attorney's office have negotiated with staff from ATS regarding the compensation paid for this service and the options for the City of South San Francisco to opt out of this extension without cause with a six (6) month notice by either party.

Currently, the South San Francisco Police Department utilizes the assets from the Red Light Camera Program to fund the "Every 15 Minute Program", a drunk driving prevention project which is presented annually at one of the South San Francisco high schools. This cost is approximately twenty thousand dollars (\$20,000.00).

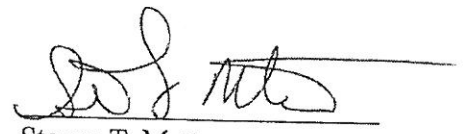
CONCLUSION:

Information gathered by Police Department staff indicates that the accident rate for the Hickey Blvd. intersection has remained relatively the same, while the accident rate at the Westborough Blvd. intersection has gone up. Both intersections have shown a reduction in the number of accidents attributed to red light violations, and the number of injuries has gone down at both intersections. Citizens have contacted Police Department staff regarding these cameras, stating that since the City of South San Francisco has installed the cameras, they find themselves paying more attention when driving in all areas and not just in the area that the cameras are installed. It is recommended that City Council adopt the resolution authorizing the renewal of the contract with American Traffic Solutions and approve Amendment Two for the automated Red Light Enforcement Program in South San Francisco.

By:


Michael Massoni
Public Safety Chief

Approved:


Steven T. Mattas
Interim City Manager

Attachments: Resolution
Agreement Amendment
ATS Agreement

RESOLUTION NO.

CITY COUNCIL, CITY OF SOUTH SAN FRANCISCO, STATE OF CALIFORNIA

A RESOLUTION APPROVING AMENDMENT TWO TO THE
PROFESSIONAL SERVICES AGREEMENT WITH AMERICAN
TRAFFIC SOLUTIONS, INC. (ATS) FOR THE AUTOMATED
RED LIGHT ENFORCEMENT PROGRAM

WHEREAS, City and ATS entered into a Professional Services Agreement for the City's use of the Axis™ System to enforce traffic violations (the "Agreement"); and

WHEREAS, section 17 of the Agreement requires any amendments, modifications, or alterations of the Agreement to be in writing and duly executed by the parties; and

WHEREAS, the City and ATS first amended the Agreement on November 10, 2009; and

WHEREAS, the City and ATS desire to amend, modify or alter certain terms and conditions of the Agreement; and

WHEREAS, City staff recommends approving Amendment Two to the Agreement ("Amendment") in order to modify the pricing schedule and extend the term of the Agreement with ATS for red light photo enforcement program services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of South San Francisco that the City Council hereby approves Amendment Two to the Professional Services Agreement with American Traffic Solutions, Inc. for the Automated Red Light Enforcement Program, attached hereto as Exhibit A, and incorporated herein.

BE IT FURTHER RESOLVED that the City Manager of the City of South San Francisco is hereby authorized and directed to execute the Amendment on behalf of the City of South San Francisco, subject to approval as to form by the City Attorney, and to take any other action consistent with the intent of this Resolution.

* * * * *

I hereby certify that the foregoing Resolution was regularly introduced and adopted by the City Council of the City of South San Francisco at a regular meeting held on the 12th day of March, 2014 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST: _____
City Clerk

2249150.1

**AMENDMENT TWO
TO PROFESSIONAL SERVICES AGREEMENT**

This Amendment Two ("Amendment") is dated effective this _____ day of _____, 2014 and is entered into between American Traffic Solutions, Inc. ("ATS"), a corporation duly registered under the laws of the State of Kansas with its principal place of business at 1330 West Southern Avenue, Tempe, Arizona 85282 and the City of South San Francisco ("City"), a municipal corporation of the State of California.

RECITALS

WHEREAS, on October 6, 2006, the City and ATS entered into a Professional Services Agreement for the City's use of the Axis™ System to enforce traffic violations (the "Agreement"), amended on November 10, 2009; and

WHEREAS, section 17 of the Agreement requires any amendments, modifications, or alterations of the Agreement to be in writing and duly executed by the parties; and

WHEREAS, the City and ATS mutually desire to amend, modify or alter certain terms and conditions of the Agreement.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Amendment, the City and ATS do hereby agree as set forth below:

1. The above recitals are true and correct and are incorporated herein.
2. In accordance with Section 4(b) of the Agreement, the parties hereby agree to renew the term of the Agreement for one additional five-year term, to expire on August 13, 2019.
3. Section 4(c) is hereby amended to add a new subsection as follows:
 - iii) By either party without cause, with at least six (6) months prior written notice to the other party.
4. Schedule 1 is hereby amended to modify pricing for the existing sites as follows:

Site	Monthly Fee
SS01	\$4,500
SS02	\$4,500
SS03	\$4,500
SS04	\$4,500
SS05	\$4,000
SS06	\$4,000

5. 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.

By: _____
Name: Adam E. Tuton
Title: Executive Vice President, COO
Date: _____

**CITY OF SOUTH SAN FRANCISCO,
CALIFORNIA**

By: _____
Name: _____
Title: City Manager
Date: _____

ACCEPTED AS TO FORM:

ATTEST:

By: _____
Name: _____
Title: City Attorney
Date: _____

By: _____
Name: _____
Title: City Clerk
Date: _____

2247727.2

**PROFESSIONAL SERVICES AGREEMENT
"AGREEMENT"**

THIS AGREEMENT made this 6th day of October, 2006 between American Traffic Solutions, Inc. (herein "ATS"), a corporation duly registered under the laws of the State of Kansas with its principal place of business at 14861 North Scottsdale Road, Suite 109, Arizona, County of Maricopa, State of Arizona, and the City of South San Francisco, herein "Customer", a municipal corporation of the State of California with principal offices at 33 Arroyo Drive Ste C, South San Francisco, CA 94080.

WITNESSETH:

WHEREAS, ATS has the exclusive knowledge, possession and ownership of certain equipment, licenses, and processes, referred to collectively as the "Axisis™ System" (herein "Axisis"), and

WHEREAS, Customer desires to use the Axisis™ System to monitor red light violations, traffic speed or other traffic movements and to issue citations for traffic violations.

NOW THEREFORE, the parties agree:

1. DEFINITIONS:

As used in this Agreement, the following words and terms shall, unless the context otherwise requires, have the respective meanings provided below:

"Citation" means a citation issued by a competent state or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a violation documented or evidenced by Axisis.

"Person" or "persons" means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.

"Twin Camera System" means a photo-traffic monitoring device consisting of one (1) front and one (1) rear camera and a traffic monitoring device capable of accurately detecting a traffic infraction on up to four lanes controlled by up to one (1) signal phase and which records such data with one or more images of such vehicle. "Twin Camera System" shall, where the sense requires, also include any enclosure or cabinet and related appurtenances in which the Axisis™ is stationed.

"Approach" is defined as one direction of travel of one or more lane on a road or a traffic intersection up to 4 lanes controlled by up to two (2) signal phases.

"Violation" means failure to obey an applicable traffic law or regulations, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, and operating a motor vehicle without displaying a valid license plate.

"Operational Time" means the actual time that a Camera System is monitoring traffic.

"VIMS Analysis" is a statistical assessment of violations rates at suspected problem intersections and approaches to determine the need for a red light system.

2. ATS AGREES TO PROVIDE:

The scope of work identified in Exhibit "A, Section 1"

3. CUSTOMER AGREES TO PROVIDE:

The scope of work identified in Exhibit "A, Section 2."

4. TERM AND TERMINATION:

a. This contract shall be effective on the signature date above.

b. The term of this Agreement shall be for five (5) years beginning on the date of first issued and payable notice of a violation (the "Start Date") and may be automatically be extended for one additional five (5) year period. However, Customer may terminate this Agreement at the expiration of any term by providing

written notice of its intent not to extend the Agreement 120 days prior to the expiration of the current term.

c. The Contractor's services may be terminated:

- i) By mutual written consent of the parties;
- ii) For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within forty-five (45) days after receiving notice.

d. Upon termination of this Agreement, either for breach or because it has reached the end of its term, the parties recognize that the Customer will have to process traffic law violations in the "pipeline," and that ATS accordingly must assist the Customer in this regard. Accordingly, the parties shall take the following actions, and shall have the following obligations, which survive termination during the wind-down period: The Customer shall cease using the Axis™ System, shall return or allow ATS to recover all provided equipment within a reasonable time not to exceed 60 days, and shall not generate further images to be processed. Unless directed by the Customer not to do so, ATS shall continue to process all images taken by the Customer before termination and provide all services associated with processing in accordance with this Agreement, and shall be entitled to all Fees specified in the Agreement as if the Agreement were still in effect.

f. First year ("pilot year") terms: With 60 day written notice, on the first anniversary of the Start Date, either party shall have the option to terminate this Agreement. The option to terminate shall expire except as otherwise provided herein.

5. ASSIGNMENT

Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, the Customer hereby acknowledges and agrees that the execution (as outlined in Schedule 6), delivery and performance of ATS's rights pursuant to this Agreement shall require a significant investment by ATS, and that, in order to finance such investment, ATS may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). The Customer hereby agrees that ATS shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between ATS and any such Financial Institution subject to the Customer's prior written approval, which approval shall not be unreasonably withheld or delayed. The Customer further acknowledges and agrees that in the event that ATS provides written notice to the Customer that it intends to Transfer all or any of ATS's rights pursuant to this Agreement, and in the event that the Customer fails to provide such approval or fails to object to such Transfer within forty-five (45) business days after its receipt of such notice from ATS, ATS shall be free to effect said Transfer.

6. FEES AND PAYMENT:

Customer shall pay for all equipment, services and maintenance based on the fee schedule indicated in Exhibit A, Schedule 1, ("Fees").

On or before the 10th day of each month, the Customer shall pay all fees due ATS based upon invoices from the proceeding month. Late payments are subject to interest calculated at 1.5% per month on open balances.

Revenue Neutrality Clause

During the term of the contract, Customer shall not be required to pay ATS more than Customer (or ATS on Customer's behalf) has collected/received in fines payments through the use of the Axis System cumulatively throughout the term of the contract. For the purposes of this clause, the term "fines" applies

to that portion of fines actually retained by the Customer according to the distribution method applicable under California law.

This clause will be applied as follows:

If collections for the program during any month are less than the full amount of ATS invoices, ATS shall be entitled the full amount of fines actually collected. ATS will maintain an accounting of any net balances owed to ATS and shall apply future collections first to the accrued balance and then to the current months invoice. At any time that ATS fees and any accrued balances are fully repaid, additional collections will be retained by the Customer. Any positive revenue balances generated from this program (whether reserved in cash or not by the Customer) will be used to offset future ATS invoices in the event of monthly deficits.

Example: If during Year 1 of the program, revenues minus ATS fees yield a net surplus of \$100,000, this amount would be available to pay ATS invoices for any future periods in the event that lesser or no revenue were to be generated in future periods. However, at the point where the (actual or paper) surplus is exhausted, then no additional payments would be due until additional collected fines were available to cover the cumulative deficit. For the purposes of this clause, the accrued surplus is a calculated figure determined by subtracting ATS fees from program fines collected. The obligation to pay is not subject to the existence of cash reserves from the program, for example, if the Customer chooses to use or has used these surplus funds for any other uses.

7. INTERSECTION AND VIOLATION RATE ANALYSIS

Prior to implementing the Axis System, ATS will conduct an analysis of each Approach being considered for a Camera System. If ATS deems necessary, ATS will use the Axis™ VIMS (Violation Incident Monitoring System) or other tool or means to complete the analysis over a 4 to 24 hour period. The Customer will be provided a report on violations recorded at each monitored approach, including the time of day and lanes on which the violations occurred. For any Approach recommended by the Customer, ATS may install a Camera System. However, ATS may elect not to install a Camera System where traffic violation data does not support installation of the Axis System.

8. COMMUNICATION OF INFORMATION:

ATS agrees that all information obtained by ATS through operation of the Axis System shall be made available to the Customer at any time during ATS's normal working hours, excluding trade secrets and other confidential or proprietary information not reasonably necessary for the prosecution of citations or the fulfillment of Customer's obligation under this Agreement.

9. CONFIDENTIAL INFORMATION:

No information given by ATS to Customer will be of a confidential nature, unless specifically designated in writing as proprietary and confidential by ATS. Provided, however, nothing in this paragraph shall be construed contrary to the terms and provisions of any "Open Records Act" or similar laws, insofar as they may be applicable. ATS shall not use any information acquired by this program with respect to any violations or the Customer's law enforcement activities for any purpose other than the program.

10. OWNERSHIP OF SYSTEM

It is understood by the Customer that the System being installed by ATS is, and shall remain, the sole property of ATS, unless separately procured from ATS. The System is being provided to Customer only under the terms and for the term of this Agreement.

11. INDEMNIFICATION AND INSURANCE:

ATS shall at all times comply with all federal, state and local laws, ordinances and regulations and shall comply with the maintenance procedures and manufacturer recommendations for operation of the Axis™ equipment which affect this Agreement. ATS shall defend Customer, using counsel acceptable to Customer (in the exercise of reasonable judgment by Customer), and shall indemnify and save harmless Customer, against any claims against Customer to the extent, and only to the extent, that such claims arise from any violation by ATS of any of the above-described laws, ordinances, or regulations, or from ATS's breach of this Agreement, negligence, or tort, or from ATS's violation of the maintenance

procedures and manufacturer recommendations for operation of the equipment. For purposes of this paragraph only, "Customer" shall include Customer's officers, officials, employees, agents, and volunteers when acting on behalf of Customer; and "ATS" shall include ATS's officers, directors, agents, attorneys, and employees when acting on behalf of ATS (but shall exclude any officers, officials, employees, agents, or volunteers of Customer). ATS's obligation to indemnify, when it exists, shall extend to any and all liability, loss, damage, claims, expenses, and costs, including, without limitation, reasonable attorneys' fees and reasonable costs and fees of litigation (provided however that ATS shall have the right to retain defense counsel and otherwise control such defense and that Customer shall have no right to indemnify for any attorney's fees, costs or fees of litigation, or any other expense or liability whatsoever, unless, before such expense or liability is incurred, Customer gives ATS detailed written notice of the claim, tendering the defense thereof to ATS, and ATS fails to provide Customer, within a reasonable time thereafter, with a defense that complies with the terms of this Agreement). Notwithstanding any of the above, ATS shall have no indemnity obligation with respect to any claim or liability to the extent such claim or liability arises out of the breach of this Agreement, negligence, or fault or tort (of any kind or nature) of Customer or its officers, officials, employees, agents, or volunteers (including, without limitation, any failure by Customer to comply with the terms of this paragraph). ATS shall also have no indemnity obligation whatsoever with respect to any claim or liability arising by reason of any contention that the program under which ATS is providing services under this Agreement is wholly or partly unlawful, even if such contention should prove successful in any forum or tribunal, whether in whole or in part.

ATS shall maintain the following minimum scope and limits of insurance:

- (a) Commercial General Liability Insurance including coverage for bodily injury, property damage, premises and operations, products/completed operations, personal and advertising injury, and contractual liability with a combined single limit of \$1,000,000 per occurrence. Such insurance shall include the Customer, its officers, directors, employees, and elected officials as additional insured's for liability arising from ATS's operation.
- (b) Workers Compensation as required by applicable state law, and Employers' Liability insurance with limits of not less than \$500,000 each accident; ATS shall at all times maintain worker's compensation insurance coverage in the amounts required by law, but shall not be required to provide such coverage for any actual or statutory employee of Customer.
- (c) Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by ATS with a minimum \$1,000,000 per occurrence combined single limit bodily injury and property damage.

The Customer and its officers and employees, shall be named as additional insured on the comprehensive general liability policies provided by ATS under this Agreement. ATS shall require any subcontractors doing work under this Agreement to provide and maintain the same insurance, which insurance shall also name the Customer and its officers, employees, and authorized volunteers as additional insureds.

Certificates showing ATS is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to the Customer within thirty calendar days after the date on which this Agreement is made. Such certificates shall show that the Customer shall be notified of all cancellations of such insurance policies. ATS shall forthwith obtain substitute insurance in the event of a cancellation.

Inasmuch as the Customer is a body politic and corporate, the laws from which Customer derives its powers, insofar as the same law regulates the objects for which, or manner in which, or the concerns under which, the Customer may enter into this Agreement, shall be controlling and shall be incorporated by reference into this Agreement. The Customer shall be responsible for vehicle insurance coverage on any vehicles driven by Customer employees. Coverage will include liability and collision damage.

12. STATE LAW TO APPLY:

This Agreement, and all sections contained herein, including Section 13, "Dispute Resolution," shall be construed under and in accordance with the laws of the State of California.

13. DISPUTE RESOLUTION

All disputes arising out of or in connection with the Agreement shall be attempted to be settled through good-faith negotiation between senior management of both parties, followed if necessary within thirty (30) days by

professionally-assisted mediation. Any mediator so designated must be acceptable to each party. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

- (a) Failing resolution through negotiation or mediation, any remaining dispute shall be submitted to binding arbitration in accordance with the Arbitration Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association ("AAA Rules") before a single arbitrator. The place of arbitration will be mutually agreed upon within 14 days of a decision to seek arbitration. Limited discovery will be permitted in connection with the arbitration upon agreement of the parties or upon a showing of substantial need by the party seeking discovery. The arbitrator's decision shall follow the plain and natural meaning of the relevant documents, and shall be final and binding. The arbitrator will have no power to award (i) damages inconsistent with the Agreement or (ii) punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. All aspects of the arbitration will be confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Each party will promptly pay its share of all arbitration fees and costs, provided that such fees and costs shall be recoverable by the prevailing party as determined by the arbitrator. If a party fails to pay such share promptly upon demand, the arbitrator shall, upon written request by the other party, enter a final and binding decision against the nonpaying party for the full amount of such share, together with an award of attorney's fees and costs incurred by the other party in obtaining such decision, which decision may be entered in any court of competent jurisdiction. Except for the failure of a party to pay arbitration fees and costs that requires resort to the arbitrator to order such payment, the parties will bear their own attorneys' fees in any matter or dispute under this Agreement.

14. ADDITIONAL SERVICES:

Additional systems and services may be added to this agreement by mutual consent of the parties in writing as an addendum to this Agreement. All other terms and conditions shall remain the same.

15. LEGAL CONSTRUCTION:

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as of such invalid, illegal, or unenforceable provision had not been contained herein.

16. PRIOR AGREEMENT SUSPENDED:

This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understanding, written or oral, between the parties respecting the written subject matter.

17. AMENDMENT:

No amendments, modifications, or alterations of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date of this Agreement and duly executed by the parties.

18. NO AGENCY:

ATS is an independent contractor providing services to the Customer and the employees, agents and servants of ATS shall in no event be considered to be the employees, agents, or servants of the Customer. This contract is not intended to create an agency relationship between ATS and the Customer.

19. TAXES:

In the event that any excise, sales or other taxes are due relating to this service contract, the Customer will be responsible for the payment of such taxes.

20. NOTICES:

Any notices or demand which under the terms of this Agreement or under any statute must or may be given

or made by ATS or Customer shall be in writing and shall be given or made by personal service, telegram, first class mail, FedEx, or by certified or registered mail to the parties at the following address:

The City of South San Francisco
33 Arroyo Drive Ste C
South San Francisco, CA 94080
Attn: Chief Mark Raffaelli

American Traffic Solutions, Inc.
14861 N. Scottsdale Rd, Suite 109
Scottsdale, AZ 85254
Attn: Chief Operating Officer


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date accepted by the Customer.

AMERICAN TRAFFIC SOLUTIONS, INC.


Adam E. Tuton, Executive Vice President


City Manager

ATTEST:


City Clerk

ACCEPTED AS TO FORM:

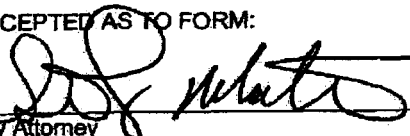

City Attorney

Exhibit A
ATS SCOPE OF WORK

1 AMERICAN TRAFFIC SOLUTIONS (ATS) SCOPE OF WORK

1.2 ATS IMPLEMENTATION

- 1.2.13 ATS agrees to provide a turnkey solution for Camera Systems to the Customer wherein all reasonably necessary elements required to implement and operate the solution are the responsibility of ATS, except for those items identified in Section 2 titled "Customer Scope of Work". ATS and the Customer 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 to the proper party the responsibility and cost for such items. In general, if work is to be performed by the Customer, unless otherwise specified, the Customer shall not charge ATS for the cost. All other in-scope work, external to the Customer, is the responsibility of ATS.
- 1.2.14 ATS agrees to make every effort to adhere to the Project Time Line outlined in Schedule 4.
- 1.2.15 ATS will assist the Customer with video evaluation of candidate sites using the Axis VIMS system.
- 1.2.16 ATS will install Camera Systems at a number of intersection or grade crossing approaches to be agreed upon between ATS and the Customer after completion of site analyses to be entered into Schedule 5. In addition to the initial locations, the parties may agree from time to time, by additional Work Order(s), to add to the quantities and locations where Camera Systems are installed and maintained.
- 1.2.17 ATS will operate each Camera System on a 24-hour basis, barring downtime for maintenance and normal servicing activities.
- 1.2.18 ATS' in-house marketing department will assist the Customer with public information and outreach campaign strategies. In addition, depending upon the agreed-upon strategy, ATS may pay for agreed upon extra scope expenditures for public relations consultants, advertising, or media relations provided that such extra scope expenditures will be reimbursed to ATS from collected revenues.
- 1.2.19 ATS agrees to provide a secure web site (www.violationinfo.com) accessible to citation recipients (defendants) by means of a Notice # and a PIN, which will allow violation image and video viewing.
- 1.2.20 The Customer and ATS will complete the Project Business Process Work Flow design within 30 calendar days of contract signature; the parties to this agreement will use the drafts included on Schedules 2 and 3 as the basis for the final workflow design.
- 1.2.21 ATS normally shall provide technician site visits to each Camera System once per month to perform preventive maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and general system inspection and maintenance.
- 1.2.22 ATS shall repair a non-functional Camera System within 72 business hours of determination of a malfunction.
- 1.2.23 ATS shall repair the Axis VPS system within 1 business day from the time of the outage. Outages of Customer internet connections or infrastructure are excluded from this service level.

1.3 ATS OPERATIONS

- 1.3.13 ATS shall provide the Customer with an optional one-time warning period up to 30 days in length at the outset of the program.
- 1.3.14 As the party responsible for initial contact with the red light violator, ATS shall provide the Customer with an automated web-based citation processing system (Axis™ VPS) including image processing, 1st notice color printing, 2nd notice b+w printing and mailing of at Citation or Notice of Violation per chargeable event. Each citation shall be delivered by First Class mail to the registered owner within the statutory period. Subsequent mailings to drivers identified in affidavits of non-liability or by rental car companies are also included according to each pricing option.
- 1.3.15 Subsequent notices may be delivered by First Class or other mail means for additional compensation to ATS as agreed by the parties.
- 1.3.16 ATS shall apply an electronic signature to the citation when authorized to do so by an approving law enforcement officer.
- 1.3.17 ATS shall obtain in-state vehicle registration information necessary to issue citations assuming that it is named as the Customer's agent and the State provides the registration data at no cost.
- 1.3.18 ATS shall seek records from out-of-state vehicle registration databases and apply records found to Axis to issue citations for the Customer according to each pricing option.
- 1.3.19 If Customer is unable to or does not desire to integrate ATS data to its court system, ATS shall provide an on-line court processing module, which will enable the court review cases, related images, correspondence and other related information required to adjudicate the disputed citation. The system will also enable the Court staff to accept and account for payments. Any costs to integrate ATS system to a court computer system shall be borne by the Customer. ATS may agree to cover these up front costs and recover the costs from collected revenue.
- 1.3.20 The Axis™ VPS system, which provides the Customer with ability to run and print a reports, shall include the following:
- Program Statistics Report
 - Location Performance Summary Report
 - Location Performance Detail Report
 - Violation Reject Report
 - Document Aging Report
- 1.3.21 If required by the court or prosecutor, ATS shall provide the Customer with, or train a local expert witness able to testify in Court on matters relating to the accuracy, technical operations, and effectiveness of the Axis™ System until judicial notice is taken.
- 1.3.22 In those instances where damage to a Camera System or sensors is caused by negligence on the part of the Customer or its authorized agent(s), ATS will provide an estimate of the cost of repair. Upon authorization to proceed with the repairs or replacement, ATS shall replace or repair any damaged equipment and invoice for the pre-approved repair cost. ATS shall bear the cost to replace or repair equipment damaged in all other circumstances.
- 1.3.23 ATS shall provide a help line to help the Customer resolve any problems encountered regarding its Red Light Camera System and/or citation processing. The help line shall function during normal business hours.

2 CUSTOMER SCOPE OF WORK

2.2 GENERAL IMPLEMENTATION REQUIREMENTS

- 2.2.13 Within 7 business days of contract execution, the Customer shall provide ATS with the name and contact information for a project manager with authority to coordinate Customer responsibilities under the Agreement.
- 2.2.14 Within 7 business days of contract execution, the Customer shall provide ATS with the name and contact information for a Municipal Court manager responsible for oversight of all Court-related program requirements
- 2.2.15 The Customer shall make every effort to adhere to the Project Time Line outlined in Schedule 4.
- 2.2.16 The Customer shall, on a form provided by ATS, provide verification to the State Department of Motor Vehicles, National Law enforcement Telecommunications System, or appropriate authority indicating that ATS 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.
- 2.2.17 The Customer and ATS shall complete the Project Business Process Work Flow design within 30 calendar days of contract signature, using the drafts included on Schedules 2 and 3 as the basis for the final workflow design.

2.3 STREETS AND TRAFFIC DEPARTMENT OPERATIONS

- 2.3.13 If the Customer chooses to move a Camera System to a new approach after initial installation, it shall pay the costs to relocate the System.
- 2.3.14 Customer will design, fabricate, install and maintain red light camera warning signs. If Customer cannot provide such signage, ATS will do so and charge the costs to the client.
- 2.3.15 The Customer shall provide access to traffic signal phase connections according to approved design.
- 2.3.16 Customer shall allow ATS 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 Customer's jurisdiction. The costs of any additional conduit or power infrastructure needed to support installation of the Camera shall be funded by ATS and ATS shall recover such added costs out of collected revenue in addition to its normal fees.
- 2.3.17 The Customer shall not require ATS to provide installation drawings stamped by a licensed civil engineer. However, ATS work product and drawings shall be overseen and approved by and ATS PE and such deliverable shall conform to applicable engineering norms and reflect the details of installation work to be completed.
- 2.3.18 The Customer shall approve or reject ATS submitted plans within 7 business days of receipt.
- 2.3.19 The Customer shall not charge ATS or its subcontractor for building, constructions, street use and/or pole attachment permits.

2.4 POLICE DEPARTMENT OPERATIONS

- 2.4.13 The Police Department shall process each potential violation in accordance with State Laws and/or City Ordinances within 3 business days of its appearance in the Police

Review Queue, using Axis™ to determine which violations will be issued as Citations or Notices of Violation.

- 2.4.14 Police Department workstation computer monitors for citation review and approval should provide a resolution of 1280 x 1024.
- 2.4.15 For optimal data throughput, Police Department workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater.
- 2.4.16 Police Department shall provide signatures of all authorized police users who will review events and approve citations on forms provided by ATS.

2.5 COURT OPERATIONS

- 2.5.13 Customer shall use ATS payment processing services.
- 2.5.14 Court shall provide a judge or hearing officer and court facilities to schedule and hear disputed citations.
- 2.5.15 Court shall provide the specific text required to be placed on the Citation notice to be issued by ATS within 30 calendar days of contract signature.
- 2.5.16 The Court shall approve the Citation form within 15 days receipt from ATS.
- 2.5.17 Municipal Court shall handle inbound and outbound phone calls and correspondence from defendants who have questions about disputes, and other issues relating to citation adjudication. Court may refer citizens with questions regarding ATS or Axis technology and processes to websites and/or toll-free telephone numbers provided by ATS for that purpose.
- 2.5.18 Within 10 days after expiration of a second notice, Municipal court shall pursue delinquent collections of unpaid notices with an existing contractor or ATS.
- 2.5.19 Any potential one time, direct costs to ATS (including ATS' costs) to develop an interface between the Court system will be initially paid by ATS will be reimbursed to ATS from collected revenues from the program once available.

2.6 INFORMATION TECHNOLOGY DEPARTMENT OPERATIONS

- 2.6.13 In the event that remote access to the ATS Axis VPS System is blocked by Customer network security infrastructure, the Customer's Department of Information Technology shall coordinate with ATS to facilitate appropriate communications while maintaining required security measures.
- 2.6.14 If Customer-owned telecommunications lines or WIFI networks are present at or near the site, and if feasible to share such existing bandwidth, ATS shall be allowed to use such infrastructure for data transmission. ATS shall work with the City's IT department to ensure City security protocols are maintained.

Schedule 1

Service Fee Schedule

The Customer agrees to pay ATS the Fee(s) as itemized below:

Monthly Service Fee per Intersection Approach

Cost Element	Monthly fee
Axis RLC-300 Red Light Camera System monitoring front and rear images up to 4 lanes, Axis LIVE digital video system for monitoring 1 direction of travel, data entry, In State registered owner acquisition, final quality control review, access to web-based Axis VPS for Police Review, 1 st notice printing in color, postage and mailing, electronic notice file transmission to court system, evidence packages for scheduled hearings.	2 lanes: \$4,995 4 lanes: \$5,395
Other Optional Services	
Axis E-Payment Portal for Web-based payments – online access convenience fee charged to user.	\$0
Identifying out-of-state registered owners and mailing violation notices: \$2.50 per mailed citation.	On use only

Schedule 2 and 3
Workflow Diagrams

[to be added after consultation with Police and Court]

Schedule 4
Project Timeline

[TBD]

Schedule 5
Initial Camera Locations

The intersections that will be studied will be chosen by the Police Department based on the amount of traffic at the intersections, accident statistics, complaints we had received from the community and the ability of our officers to effectively enforce violations. Studies of the number of red light violations at these intersections will be conducted. Once the studies are completed, the Police Department, in consultation with ATS, will evaluate to determine where the system will prove to be the most effective.

Based on the completed studies and evaluations, the following intersections were selected for red light camera installation based on the number of violations recorded at these intersections and the greatest potential impact on reducing the number of red light violations by stricter enforcement.

- 1. Westborough Boulevard/Chestnut and El Camino Real**
- 2. Hickey Boulevard and El Camino Real**

**Schedule 6
Acknowledgement and Consent**

This Acknowledgement and Consent, dated as of October 6, 2006, is entered into by and between the City of South San Francisco (the "*Customer*") and American Traffic Solutions, Inc., a Kansas corporation ("*ATS*"), with reference to the Professional Services Agreement dated as of October 6, 2006, by and between the Customer and ATS (the "*Agreement*").

1. ATS has entered into a Credit Agreement, dated as of September 22, 2005 (the "*Harris-ATS Credit Agreement*"), with Harris N.A. (the "*Bank*"), pursuant to which the Bank has provided certain working capital credit facilities to ATS. Such credit facilities will provide ATS the working capital that it needs to perform its obligations to the Customer under the Agreement.
2. Pursuant to the Harris-ATS Credit Agreement, ATS has granted Harris a security interest in all of ATS's personal property as collateral for the payment and performance of ATS's obligations to the Bank under the Harris-ATS Credit Agreement. Such security interest applies to and covers all of ATS's contract rights, including, without limitation, all of ATS's rights and interests under the Agreement.
3. ATS will not, by virtue of the Harris-ATS Credit Agreement, be relieved of any liability or obligation under the Agreement, and the Bank has not assumed any liability or obligation of ATS under the Agreement.
4. The Customer hereby acknowledges notice of, and consents to, ATS's grant of such security interest in favor of the Bank in all of ATS's rights and interests under the Agreement pursuant to the Harris-ATS Credit Agreement.
5. All payments due and to become due to ATS pursuant to the Agreement shall continue to be paid directly to ATS, unless and until the Bank notifies the Customer in writing to do otherwise. If the Bank so notifies the Customer, the Customer will immediately cease making such payments and distributions to ATS and will as soon as possible, but in any event within 5 days after receiving such notice, remit all such payments direct to the Bank at 111 West Monroe Street, Chicago, IL 60603. ATS agrees that any such payment to the Bank shall be a good receipt and acquittance as against it — that is to say, the Customer should make the payment directly to the Bank and in so doing, the Customer discharges any liability to ATS for that payment, and the Customer shall have no Obligation to ATS to investigate whether the Bank has any right to make such a direction.
6. The Customer further acknowledges and agrees that this Acknowledgement and Consent shall be binding upon the Customer and shall inure to the benefit of the successors and assigns of the Bank and to any replacement lender which refinances ATS's obligations to the Bank under the Harris-ATS Credit Agreement.

In Witness Whereof, the Customer and ATS have caused this Acknowledgement and Consent to be executed by their respective duly authorized and elected officers as of the date first above written.

The City of South San Francisco
By: [Signature]
Name: BARRY NAGEL
Title: CITY MANAGER

American Traffic Solutions, Inc., a Kansas corporation
By: [Signature]
Name: Adam E. Tuton
Title: Executive Vice President

Approved as to form
Date: 9/29/2006
By: [Signature]

ATTEST:
[Signature]
City Clerk 09/29/06