



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 24, 2017

FROM: Capitola Police Department

SUBJECT: Consider Extending Red-Light Photo Enforcement Contract

RECOMMENDED ACTION: Extend the existing contract with American Traffic Solutions (ATS) for red-light photo enforcement services for a period of two years and authorize the city manager or his designee to sign the agreement.

BACKGROUND: Since 2005, the City of Capitola has been utilizing a red-light photo enforcement system on 41st Avenue through American Traffic Solutions (ATS). In May of 2012, the Capitola City Council authorized the City Manager to enter a new contract with ATS to continue the photo enforcement program. That 2012 agreement includes a base five-year term, through December 6, 2017, and a two-year automatic extension option (2018-2019) unless the City opts out of the contract. The program monitors the southbound approaches of the intersections at 41st Avenue and Clares Street and 41st Avenue at the Capitola Mall entrance.

DISCUSSION: Traffic safety has clearly been identified as one of the top City priorities. The photo enforcement program was implemented to enhance traffic safety, reduce traffic collisions related to red light violations, and increase driver awareness. The program has operated for the past 12 years, which provides historical perspective on the functionality and success of the system.

Based upon the citation and collision data, staff believes that photo enforcement has changed driving behavior, resulting in a large percentage of the driving population complying with the law, and creating safer intersections at 41st Avenue and Clares Street and at the main entrance to the mall.

Since red-light photo enforcement began at 41st Avenue and Clares Street and 41st Avenue at the mall entrance, traffic accidents have dropped by 74 percent and 94 percent at each intersection respectively. Overall, the accident rate on 41st Avenue in the City has decreased by 43 percent since the program was initiated in 2005. Attachment 4 shows the accident data from the two photo enforcement intersections using pre-installment (2005) and post-installment data.

The installation of the photo enforcement, combined with other efforts have collectively contributed to the reduction in collisions and the enhancement of safety at the busiest corridor in the City of Capitola. This reduction in accident rates is consistent with national data regarding the effectiveness of red-light cameras.

A total of 6,600 red-light camera "events" were viewed in 2016, with 820 photo enforcement

Red-Light Photo Enforcement
August 24, 2017

violations (12 percent) issued. This equates to approximately 68 photo-enforcement-issued citations each month.

Since the inception of the program, Capitola police officers who review photo enforcement violations have incorporated a “spirit of the law” approach when considering the issuance of a citation. Considerations such as prosecutorial issues, photographic evidence, driver intent (if known), and others are assessed prior to the officer issuing a citation to the identified driver.

The overall recidivism rate is only 3 percent, which means 97 percent of all violators who receive a citation do not commit a second violation. The low rate of repeat behavior since the inception of the program is another signal of the positive change in driver behavior, and a strong indicator of the success of the program.

Although the contract remains “cost neutral” to the City, the monthly cost for the system is approximately \$5,100 per approach, or \$10,200 for both intersections. An additional cost of \$295 per month is incurred for four-way video surveillance of the intersections. The current contract between the City and ATS stipulates that if the City does not collect \$10,495 per month for red-light violations, the City need only pay the vendor the amount collected. Monthly photo enforcement citation revenues over \$10,495 are retained by the City, however revenues from the program have never exceeded that amount since program inception.

The State Legislature and the County of Santa Cruz Superior Court establish the fine amount for a red-light violation, currently \$489 or \$541 with traffic school. The fine is the same regardless of whether the enforcement is conducted by a photo enforcement system or not. Revenues from photo enforcement citations are distributed between the State of California, the County of Santa Cruz, and the City of Capitola. The City receives 30 percent of the fine amount, or approximately \$147 per maximum fine.

Overall the partnership between the City and ATS has been successful, with ATS providing high-level professional support and system integrity. In addition, ATS’s ongoing training and customer support have kept the photo enforcement program operating with efficiency and effectiveness.

Staff recommends the City Council approve extending the current contract with ATS for a period of two years and authorize the city manager or his designee to execute this agreement.

FISCAL IMPACT: The red-light photo enforcement system continues to be cost neutral to the City. Payments to ATS come from the revenues generated by red light violations, which are collected by the court and forwarded to the City. Staff overtime costs associated with the program are deducted prior to final reconciliation of payment to ATS. The FY 2017/18 budget reflects contract costs and revenue of \$75,000 for the year.

ATTACHMENTS:

1. 2007 ATS Contract
2. 2012 ATS Contract - 1st Amendment
3. Citations Issued
4. Collision Data

Report Prepared By: Denice Pearson

Red-Light Photo Enforcement
August 24, 2017

Administrative Records Analyst

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

8/17/2017

PROFESSIONAL SERVICES AGREEMENT

“AGREEMENT”

THIS AGREEMENT made this December 7, 2007 between AMERICAN TRAFFIC SOLUTIONS, LLC. (herein "ATS"), a limited liability company duly registered under the laws of the State of Delaware with its principal place of business at 14861 North Scottsdale Road, Suite 109, Arizona, County of Maricopa, State of Arizona, and the City of Capitola, herein "City", a municipal corporation of the State of California with principal offices at 420 Capitola Avenue, Capitola, California 95010.

WITNESSETH:

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

WHEREAS, City desires to explore the use of the Axis™ 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 Axis™.

Attachment: 2007 ATS Contract (Red-Light Photo Enforcement)

"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.

"Dual Stationary Camera System" means a photo-traffic monitoring device consisting of frontal and rear camera(s), where needed, and a traffic monitoring device capable of accurately detecting a traffic infraction and which records such data on at least two images of such vehicle and a single image of the driver of the vehicle. Dual Stationary Camera System shall, where the sense requires, also include any enclosure or cabinet in which the Axis™ is stationed.

"Approach" is defined as one direction of travel of one or more lane on a road or a traffic intersection.

"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 Dual Stationary Camera System is monitoring traffic.

2. ATS AGREES TO PROVIDE:

The scope of work identified in Exhibit A.

3. CITY AGREES TO PROVIDE:

The scope of work identified in Exhibit B.

4. TERM AND TERMINATION:

a. The term of this Agreement shall be for three (3) years beginning on the execution date and shall automatically be extended for an additional two

(2) year period on the anniversary, unless the City shall notify ATS in writing, at least sixty (60) days prior to the anniversary of its intention to terminate this Agreement.

The Contractor's services may be terminated:

By mutual consent of the parties; or

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 provides written notification to the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within forty-five (45) days after receiving notice.

b. Upon termination of this Agreement, either for breach or because it has reached the end of its term, the parties recognize that the City will have to process traffic law violations in the "pipeline," and that ATS accordingly must assist the City 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 City shall cease using Axis™, shall assist ATS to reacquire all equipment within a reasonable time not to exceed 30 days, and shall not generate further images to be processed. Unless directed by the City not to do so, ATS shall continue to process all images taken by the City 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.

5. FEES AND PAYMENT:

City shall pay for all equipment, services and maintenance based on the pricing indicated in Exhibit C, ("Fees").

The City shall pay all fees due ATS based upon invoices received from ATS, which will be reconciled by Police Department staff, working with ATS accounting staff and verified by the City's Finance Department. Staff will utilize Santa Cruz County Red Light Photo Enforcement Fine Collection data and distribution reports provided to the city by the county for each billing period.

During the duration of this agreement, ATS will warrant that the City will have no financial loss with respect to fees paid to ATS. The fixed service fee will be adjusted monthly if project revenues (collected) do not cover the ATS fixed service fee. Additionally, ATS agrees to allow the City to recover the following administrative costs associated with the photo red light enforcement system: Police Department staff overtime associated with processing citations, conducting appeal hearings, attending traffic court and Finance staff's time needed to review the pertinent reports by the city, county and courts, not to exceed \$800 per/month, unless mutually agreed to by both parties. These costs shall be recovered as a reduction from the amount due to ATS per ATS invoice(s). "In the event that the Courts provide a true up of revenues to the City, ATS is entitled to receive the sum of actual earnings up to the applicable amount of service fees for the Dual Stationary Camera System(s) less reimbursable City expenses."

6. MATERIALMAN LIENS:

In the event ATS fails or neglects to pay for any product installation, maintenance or other obligations incurred under this Agreement and a demand or request is made on the City for payment, the City shall have the right to make such payments and deduct the sum from any amount that may be due to ATS, following written notification to ATS, with a reasonable opportunity for ATS to correct or defend the alleged failure to pay. The City's decision to take such action in one situation shall not create an obligation on the part of the City to take similar action in another situation,

nor shall it constitute a waiver of the City's right to prosecute any other legal remedy it may have against ATS.

7. COMMUNICATION OF INFORMATION:

ATS agrees that all information obtained by ATS through operation of the Axisis™ shall be made available to the City 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 City's obligation under this Agreement.

8. CONFIDENTIAL INFORMATION:

No information given by ATS to City 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 "Public 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 City's law enforcement activities for any purpose other than this program.

9. OWNERSHIP OF SYSTEM:

It is understood by the City that the Dual Stationary Camera 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 City only under the terms and for the term of this Agreement.

10. 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 Axisis™ equipment which affect this Agreement, and shall indemnify and save

harmless the City against any claims arising from the violation of any such laws, ordinances and regulations or any claims arising from the violations of the maintenance procedures and manufacturer recommendations for operation of the equipment as a result of the negligence of willful misconduct of ATS, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of City.

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

- 1) 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 City, its officers, directors, employees, and elected officials as additional insured's for liability arising from ATS's operation.
- 2) Workers Compensation as required by applicable state law, and Employers' Liability insurance with limits of not less than \$1,000,000 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 City.
- 3) 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 City 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 City and its officers, employees, and authorized volunteers.

Certificates showing ATS is carrying the above described insurance, and evidencing the additional insured status specified above, should be furnished to the City within thirty calendar days after the date on which this Agreement is made. Such certificates shall show that the City 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 City is a body politic and corporate, the laws from which City derives its powers, insofar as the same law regulates the objects for which, or manner in which, or the concerns under which, the City may enter into this Agreement, shall be controlling and shall be incorporated by reference into this Agreement. The City shall be responsible for vehicle insurance coverage on any vehicles driven by City employees. (The city does not have "vehicle insurance coverage." Instead, the City has a general liability insurance policy.) Coverage will include liability and collision damage.

11. CORRESPONDENCE BETWEEN PARTIES:

All notices required to be given under this Agreement shall be deemed given when mailed by first class mail, addressed to the proper party to the address set forth on the first page of this Agreement.

12. STATE LAW TO APPLY:

This Agreement 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 parties will share the fees and expenses of the mediator equally.

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 Phoenix, Arizona. The party seeking discovery will permit limited discovery in connection with the arbitration upon agreement of the parties or upon a showing of substantial need. 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 made 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 City and the employees, agents and servants of ATS shall in no event be considered to be the employees, agents, or servants of the City. This contract is not intended to create an agency relationship between ATS and the City.

19. TAXES:

In the event that any excise, sales or other taxes are due relating to this service contract, the City 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 City 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:

City of Capitola
420 Capitola Avenue
Capitola, CA 95010

American Traffic Solutions, LLC.
14861 N. Scottsdale Rd, Suite 109
Scottsdale, AZ 85254

Attention: Police Chief

21. DRUG-FREE WORKPLACE:

ATS hereby certifies that:

A drug-free workplace will be provided for ATS employees during the performance of this Agreement; and

This Agreement may be suspended, terminated, or debarred if it is determined that ATS has made false certification herein above; or ATS has violated such certification by failure to carry out any requirements as outlined within this Article.

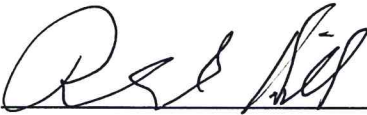
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date accepted by the City.

AMERICAN TRAFFIC SOLUTIONS, LLC.



Adam E. Tuton, Manager

CITY OF CAPITOLA



City Manager

ATTEST:

n/a 
Recorder 12-7-07

Attachment: 2007 ATS Contract (Red-Light Photo Enforcement)

Exhibit A
ATS SCOPE OF WORK

- a) Axisis™ RLC-300 Red Light Stationary Camera Systems in the quantities indicated on Exhibit D;
- i) ATS shall install the Dual Stationary Camera System at south bound 41st Avenue at Clares Street and on 41st Avenue at the southbound entrance to the main Capitola Mall entrance, the parties may agree from time to time to add, subtract or modify locations where the System shall be installed and maintained. A Dual Stationary Camera System installed at a location shall be in operation for a minimum of one year at that location, unless the parties agree otherwise in writing.
 - ii) Each Stationary Camera System shall operate on a 24-hour basis, barring downtime for maintenance
 - iii) An automated web-based citation processing program (Axisis™ VPS) including image processing, mailing of a citation with color images, printing and mailing costs. The program shall be conducted in a timely manner to comply with any applicable statute of limitation for filing citations. Each citation shall be delivered by First Class mail to the registered owner within the statutory period. Subsequent notices may be delivered by First Class or Certified Mail (return receipt requested) or by process servers for additional compensation to ATS as agreed by the parties.
 - iv) ATS will transmit an electronic file to the City with periodic updates of all citation notices issued, and will update the status of all accounts based on disposition information provided by the City, indicating payments received or cases otherwise closed, dismissed or resolved.
 - v) In-state vehicle registration information necessary to issue citations resulting from the Axisis™ assuming ATS is named as an agent and the State provides registration data at no cost to the City for ATS.
 - vi) To the City prosecutor/hearing officer, one Evidence Package, typically including a set of images with related documentation for each citation issued;
 - vii) Necessary training for persons person designated by the City;

- viii) Expert witness as reasonably necessary to establish judicial notice, i.e. the accuracy, technical operations, and effectiveness of the Axisis™ for contested citations. After establishment of judicial notice, the City may request the presence of expert witnesses. Expert witness fees will be billed to the City on a time and expense basis;
- ix) ATS shall submit to City a monthly report of Axisis™ results within fifteen business days of the end of each calendar month. The report shall include the following information:
 - x) Total number of violation events.
 - xi) Total number of actionable violation events.
 - xii) Total number of citations sent.
 - xiii) Total citations paid.
 - xix) Performance Statistics by Location.
 - xv) Such reports of ongoing operations as are required pursuant to Subparagraph h, above, or such other reports and documents as are mutually agreed upon between ATS and the City.
 - xvi) Routine maintenance and cleaning of Dual Stationary Camera Systems.
 - xvii) ATS agrees to commence the installation of the Systems within 14 days after all aforementioned permits have been approved (the date all permits are approved shall hereinafter be referred to as the "Approval Date"). The Approval Date shall be marked by the issuance of a signed writing from ATS to City, stating that all permits have been approved.
 - xviii) ATS agrees to have all installation work completed and have the Systems fully operational no later than 120 days from the Approval Date.
 - xix) Where and when possible, ATS agrees to use existing street furniture, poles, available conduit and existing power for the purposes of installing and operating the Systems.
 - xx) The time schedule may be extended by reason of delay, changes, additions, deletions, or other reasons if approved by the City in writing, or without written approval by the City if the delay is caused by an event of Force Majeure.

**Exhibit B
City Scope of Work**

- a) The City agrees to make standard court appearances regarding general violation court challenges.
- b) The City will carefully review each potential violation to determine in its sole Authority which violations will be issued as citations. Axisis™ will apply an electronic signature to each approved citation.
- c) The City or County will provide a judge or hearing officer and court facilities to schedule and hear disputed citations;
- d) The City agrees to make reasonable efforts to prosecute each citation filed, and provide customary fine collection services for all final dispositions.
- e) The City will assist in working with the Court in setting up the transmission of an electronic file to ATS with daily updates of all citation disposition information provided by the City indicating payments received or cases otherwise closed, dismissed or resolved.
- f) City will provide a project manager with authority to execute City responsibilities under the Agreement.
- g) City shall direct its departments to cooperate with ATS with respect to required systems integration and program implementation.
- h) The City agrees to use due diligence in working with ATS to acquire in a timely manner the necessary permits (e.g., but not limited to, an encroachment permit), approvals and other necessary documentation, from the City (and the State, if necessary) to enable the Axisis™ installation after the submission of the plans.
- i) City shall provide permits at no cost to ATS.
- j) City shall provide power and access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each Dual Stationary Camera System.
- k) In those instances where damage to the Dual Stationary Camera Systems or sensors is caused by a third party working for the City or by the City or authorized agent due to scheduled or unscheduled road construction or repair, 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 pre-approved repair cost.

- I) The City shall provide a letter for the Violation Processing subcontractor to use with the Department of Motor Vehicles indicating that the ATS is acting as an Agent 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).

Exhibit C
Service Fees

The City agrees to pay ATS a monthly Service Fee for those selected services itemized below:

Monthly Service Fee per Approach

Cost Element	Monthly fee
<input type="checkbox"/> Axis RLC-300 Red Light Camera System monitoring front and rear images up to 4 lanes, image processing, data entry, California 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.	\$5,100
<input type="checkbox"/> Option A – Axis LIVE digital video system for monitoring up to 4 directions of travel at one intersection. Digital video will be internet accessible for remote police and court viewing.	\$ 295
Sub total	\$5,395
Other Services	
<input type="checkbox"/> Option C – Axis E-Payment Portal for Electronic and Phone-based IVR payments – online access convenience fee charged to user.	\$0
<input type="checkbox"/> Option D – Identifying out-of-state registered owners and mailing violation notices: \$3.00 per mailed citation except for AZ and NJ, which is \$7.00 (State access charges billed monthly).	
TOTAL MONTHLY SERVICE FEE	\$5,395

If a camera system is no longer generating adequate violations to cover the service fee, the ATS will consult with the City to determine an alternative location. The fee to move a camera from one location to another without mutual agreement is \$25,000.

The above Service Fees are maximum fees. In no case shall monthly fees exceed fines collected by the City.

**Exhibit D
Initial Camera Locations
Stationary Camera Systems**

An Approach is defined as one direction of travel of one or more lane on a road or a traffic intersection.

The sites where the Dual Stationary Camera Systems will be installed were selected after a careful analysis by the City Police, or the Traffic Engineering Department, or both, and ATS engineers. Based on that analysis, the City and ATS has determined that each of these intersections have a high incidence of intersection collisions, there is an extreme difficulty in identifying violators, and that other traffic light changes/modifications would be ineffective in resolving these problems. Accordingly, the City determined that photo enforcement was the best solution to the dangers posed by these intersections.

The City approves that ATS install Dual Stationary Camera Systems at the following intersection(s) and to monitor the identified lanes:

Camera Location or Intersection Approach	Straight Through Lane	Left Turn Lane	Right Turn Lane
41 st Avenue at Capitola Mall Entrance Southbound	X	X	X
41 st Avenue at Clares Street, Southbound	X	X	X

**FIRST AMENDMENT
TO PROFESSIONAL SERVICES AGREEMENT**

This First Amendment ("First Amendment") 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 Capitola ("City"), a municipal corporation of the State of California with principal offices at 420 Capitola Avenue, Capitola, California 95010.

RECITALS

WHEREAS, on December 7, 2007, the City and ATS entered into a Professional Services Agreement for the City's use of the Axisis™ System to enforce traffic violations (the "Agreement"); and

WHEREAS, the current term of the Agreement will expire on December 6, 2012; 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 First 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. Subsection 4.a. is hereby deleted in its entirety and replaced with the following:
 - a. The term of this Agreement shall be extended by five (5) years, expiring on December 6, 2017, and shall automatically be extended for an additional two (2) year period, unless either party notifies the other party in writing, at least sixty (60) days prior to expiration of the then-current term, of its intention to terminate this Agreement.

The Contractor's services may be terminated:

- (i) By mutual consent of the parties; or
 - (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 provides written notification to the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within forty-five (45) days after receiving notice.
3. Section 5 is hereby deleted in its entirety and replaced with the following:

City shall pay for all equipment, services and maintenance based on the pricing indicated in Exhibit C, ("Fees").

The City shall pay all fees due ATS based upon invoices received from ATS, which will be reconciled by Police Department staff, working with ATS accounting staff and verified by the City's Finance Department. Staff will utilize Santa Cruz County Red Light Photo Enforcement Fine Collection data and distribution reports provided to the city by the county for each billing period.

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 the Program are insufficient to cover the Fees due ATS. Under the Flexible Payment Plan, the Customer may defer certain payments due and owing to ATS during the term of the Agreement. If at the end of the term sufficient funds have not been collected by the Customer to pay the accrued balance then due to ATS, ATS agrees to waive its right to recovery with respect to any balance owing to ATS at the end of that term.

This Flexible Payment Plan will be applied as follows: ATS will maintain an accounting of any net balances owed ATS each month during the term. If the total amount of funds collected from all Camera Systems combined during a month exceeds the amount of the ATS invoice for the same month, the Customer shall pay ATS the total amount due on the invoice. If the total amount of funds collected from all Camera Systems combined during a month is less than the amount of the ATS invoice for the same month, the Customer shall pay ATS only the amount collected during the same month and Customer may defer payment of the remaining balance. 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 amount of funds collected. Payments due ATS shall be reconciled by applying funds collected in subsequent months, first to the accrued balance and then to the subsequent monthly invoice. If at any time the ATS invoices, including any accrued balance, are fully repaid, the Customer will retain all additional funds collected. Such additional funds (whether reserved in cash or not by the Customer) will be available to offset future ATS invoices during the term of the Agreement. Customer agrees and understands the Flexible Payment Plan shall be applied in the aggregate across all installed Camera Systems and will not be applied on a per camera basis or on a per month basis.

Example: Fee of \$4,750 per Camera System per month and four (4) cameras installed. If during Month 1 camera #1 revenue is \$5,000, camera #2 revenue is \$3,500, camera #3 revenue is \$6,000 and camera #4 revenue is \$3,500, the total revenue from the cameras for the month is \$18,000. ATS would invoice Customer for \$19,000 (\$4,750 x 4 Camera Systems). However, Customer would only be required to pay \$18,000 in Month 1 and the \$1,000 deficit would carry over to subsequent months. If in Month 2 the combined revenue from the 4 cameras was \$28,000, ATS would invoice the Customer \$20,000 (i.e., the \$1,000 deficit from the prior month plus the \$19,000 monthly fee for the 4 Camera Systems). The Customer is not responsible for any deficit balance fee at the end of the term of the Agreement.

4. 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.
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.
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.
7. 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 First Amendment, effective on the date of execution by the last signatory below.

CITY OF CAPITOLA

By: [Signature] 5/10/12
Mayor or City Manager Date

ATTEST:

By: [Signature] 5-21-12
City Clerk Date

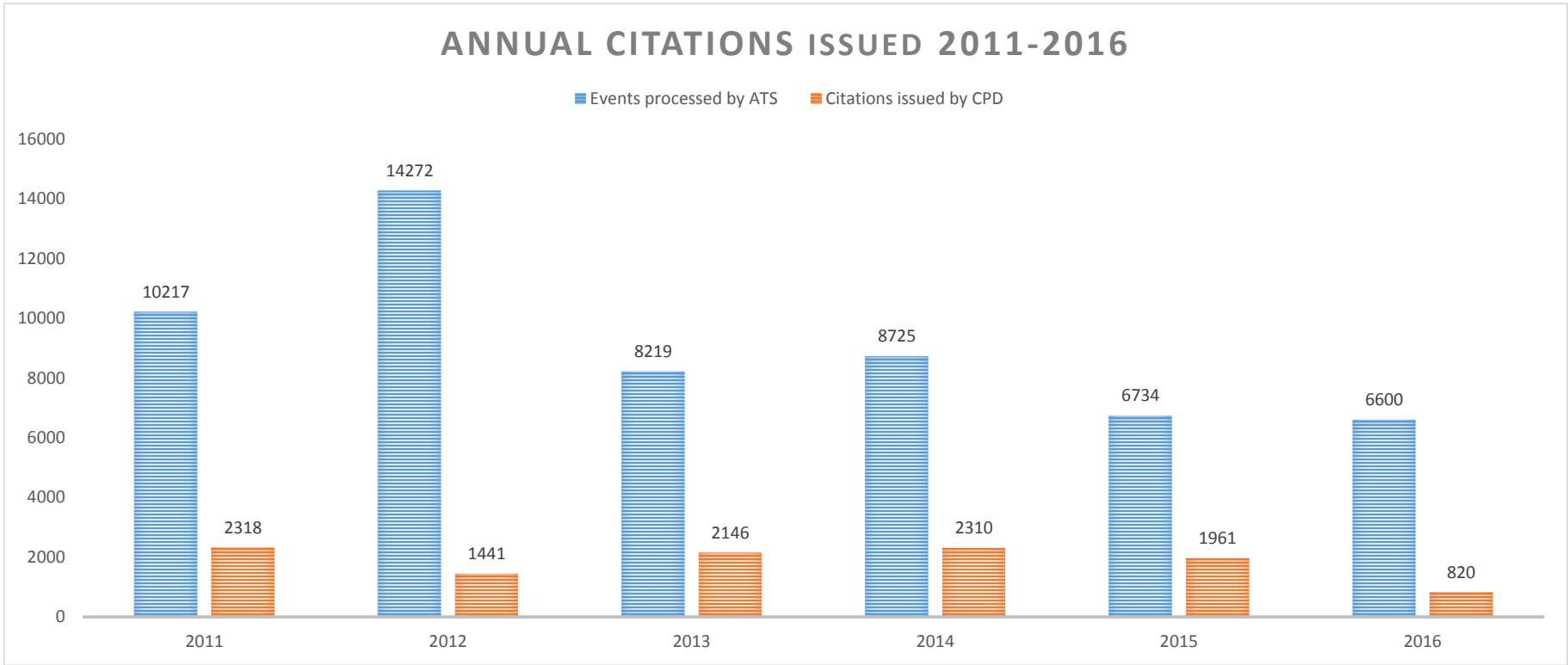
AMERICAN TRAFFIC SOLUTIONS, INC.

By: [Signature] 5/14/12
Michael Bolton, Date
Chief Operating Officer

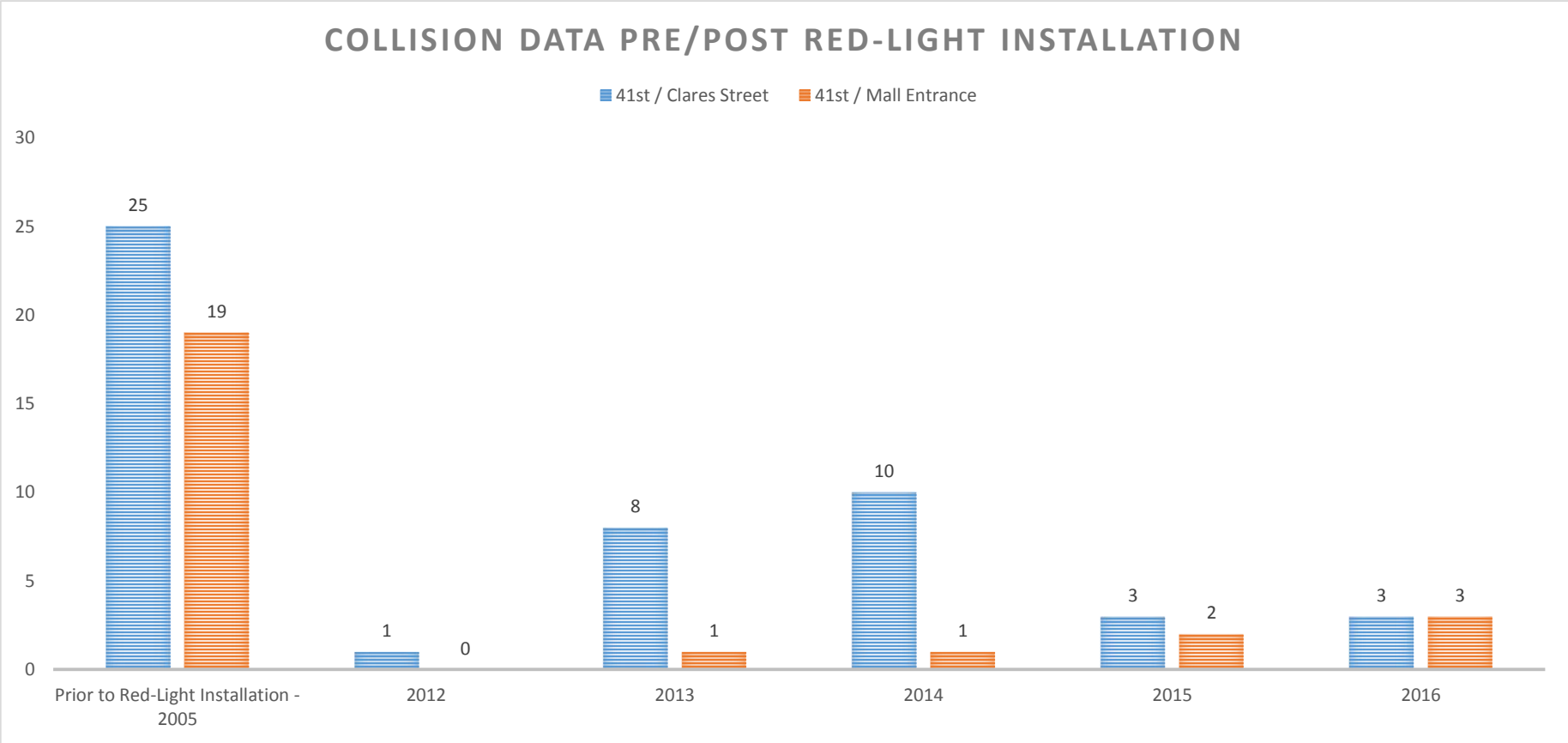
APPROVED AS TO FORM

By: [Signature] 5-10-12
City Attorney Date

Attachment: 2012 ATS Contract - 1st Amendment (Red-Light Photo Enforcement)



Attachment: Citations Issued (Red-Light Photo Enforcement)



Attachment: Collision Data (Red-Light Photo Enforcement)