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August 19, 2011

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VIA U.S. MAIL

Christine Baker, Acting Director
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

**Re: REQUEST FOR PUBLIC WORKS COVERAGE DETERMINATION
Professional Services Agreement Between American Traffic Solutions, Inc.
and City of South San Francisco**

Dear Ms. Baker:

We represent American Traffic Solutions, Inc. ("ATS"), which operates a red light violation enforcement program for the City of South San Francisco ("City"). In 2006, ATS entered into a Professional Services Agreement ("Agreement" or "ATS Agreement") with the City to provide services related to monitoring red light traffic violations. On behalf of ATS, we respectfully request a coverage determination with respect to the work performed by ATS pursuant to the Agreement. As we describe below, this is not a public works project because the Agreement is for the provision of services, and the installation of the equipment necessary to monitor traffic violations is incidental to those services.

This request for a coverage determination was triggered by the Division of Labor Standards Enforcement's ("DLSE") recent commencement of an investigation of the wages paid by ATS to its workers for work under the Agreement. The DLSE has informed us that in its view, the project is a public work subject to prevailing wages. The DLSE's position is based on a coverage determination letter issued in 2010 analyzing an agreement for a red light violation enforcement program between Redflex Traffic System, Inc. ("Redflex") and the City of Hayward. (PW 2010-010 Photo Red Light Enforcement Program, City of Hayward (Aug. 12, 2010).) The *Redflex* decision should not be regarded as dispositive in this matter, as the ATS Agreement is distinguishable from the Redflex agreement in a number of important respects.



1. The ATS Agreement

The Agreement¹, a copy of which is enclosed, succinctly describes the purpose of the Agreement by providing that the City is engaging ATS because it desires to use ATS's Axxis™ System to monitor red light violations, traffic speed or other traffic movements and to issue citations for traffic violations. (Agreement at 1.)

ATS's scope of services is set forth in Exhibit A, Section 1, which describes ATS's implementation and operations responsibilities. (Agreement at 7-8.) The City and ATS agree to work together to make site selections for the camera systems. (Agreement at 7, 14.) ATS then installs the cameras at these sites, provides regular technician site visits to perform routine maintenance, and repairs non-functioning systems as needed. (Agreement at 7.)

The specific services to be provided by ATS include:

- Assisting the City with public information and outreach campaign strategies;
- Providing a secure website accessible to citation recipients for purposes of allowing violation image and video viewing;
- Providing the City with an automated web-based citation processing system;
- Sending warnings and notices to violators;
- Providing an online court processing module (if the City does not integrate ATS data into its court system);
- Providing a system allowing the City to run and print reports which include specifically identified categories of information;
- Seeking records from out of state vehicle registration databases;

¹ The Agreement consists of the Professional Services Agreement dated October 6, 2006, and Amendment One to Professional Services Agreement dated November 10, 2009.



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- Providing a helpline to help the City resolve any problems encountered regarding the camera system and/or citation processing; and
- Providing the City with a local expert witness to testify to the accuracy, technical operations, and effectiveness of the Axisis™ System. (Agreement at 7-8.)

The Agreement provides that the City will appoint a project manager to coordinate customer responsibilities under the Agreement. (Agreement at 9.) Additionally, the City must designate a municipal court manager responsible for oversight of all court-related program requirements. (Agreement at 9.)

The Agreement's Service Fee Schedule obligates the City to pay ATS a monthly Service Fee per intersection in the amounts of \$4,995 for two lanes and \$5,395 for four lanes. The Agreement specifies that these public funds pay for the following services:

Axisis™ RLC-300 Red Light Camera System monitoring front and rear images up to 4 lanes, Axisis™ 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 Axisis™ VPS for Police Review, 1st notice printing in color, postage and mailing, electronic notice file transmission to court system, evidence packages for scheduled hearings.

(Agreement at 11.)

2. The Installation of the Camera Systems Under the Agreement is Incidental to the Provision of Services

For public work status to attach to this project, Labor Code section 1720(a)(1) requires that the installation of the camera systems be paid for in whole or in part out of public funds. Therefore, the DIR must determine whether payments made by the City under the terms of the Agreement are payments *for* installation. As articulated in the fee schedule to the Agreement, the payments made by the City are explicitly for the services provided by ATS in connection with the operation of the red light traffic program, and not for the installation of the camera systems.

It is well settled that where a contractor performs construction work that is incidental to the contractor's provision of services under a contract, the project is not a public work. (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576.) In *McIntosh*, public funds were used to pay



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for services under an agreement between Helicon, Inc., a provider of residential care services for emotionally disturbed minors, and the County of Riverside. (*McIntosh, supra*, 14 Cal.App.4th at 1586.) The agreement required Helicon to construct and operate the facility. (*Ibid.*) The key consideration for the court was whether the agreement specified that public funds were to be used to pay for operation and/or construction work. (*Ibid.*) Despite the fact that the contract required Helicon to construct the residential care facility, the court held the construction to be *incidental* to the provision of services. (*Ibid.*)

In PW 2008-025, the DIR reviewed an agreement in which the Humane Society Silicon Valley agreed to construct and operate an animal community center for the City of Sunnyvale. The city paid an initial “capital payment” and an annual “host fee and live animal cost.” (PW 2008-025, *Construction of Animal Community Center, Humane Society Silicon Valley* (Aug. 5, 2009).) The DIR determined that despite the fact that the agreement entailed construction work, it *specifically stated* that the host fee and live animal cost payments were for the provision of ongoing services for animals. (*Ibid.*) Because the construction was merely incidental to the ongoing services that were the basis of the agreement, the DIR concluded the project was not a public work.

As in *McIntosh* and *Humane Society Silicon Valley*, the ATS Agreement details ATS’s implementation and operation services, and specifically limits the use of public funds to payments for services. That ATS’s installation work is ancillary to the intent and purpose of the Agreement is evidenced by the Service Fee Schedule, where each cost element relates to the operation of the Axis™ System, such as monitoring images, data entry, quality control, giving access to the City’s police for the web program and creating evidence packages and sending citations to the violators. The basis and intent of the Agreement are also clear from the recitals in the Agreement, which state that the City “desires to use the Axis™ System to monitor red light violations, traffic speed or other traffic movements and to issue citations for traffic violations.” (Agreement at 1.) Indeed, the term of the Agreement does not even begin until the date of the first issued and payable notice of a violation (Agreement at 1), which obviously cannot occur until after the camera systems are installed. Under the *McIntosh* court’s analysis, the Agreement is for services related to red light enforcement, not for installation, and therefore should not be determined to be a “public work.”

3. The ATS Agreement is Distinguishable from the Redflex Agreement

Because the DLSE has taken the position that the coverage determination in *Redflex* is dispositive over the ATS Agreement, it is necessary to describe the important ways in which the ATS Agreement differs from the Redflex agreement. In *Redflex*, the agreement stated that the public funds were to compensate “for *all* services” (emphasis added). The DIR, reading this



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provision literally, concluded from this language that the public funds paid to compensate Redflex were for all services, without distinction, including construction and installation of the camera system. (PW 2010-010 at 4.) In contrast, the ATS Agreement does not provide that the monthly payments from the City are for “all services” under the Agreement. The fee schedule in the ATS Agreement clearly describes what the public funds are paying for, and is limited to the provision of various services.

In addition, the ATS Agreement does not grant the City the same amount of control over the installation work as the Redflex agreement. The Redflex agreement gave the City of Hayward the responsibility to designate the intersections, approve the construction and installation specifications for each intersection, and appoint a project manager to oversee the work. (PW 2010-010 at 4.) The DIR construed these provisions to mean that the city’s primary interest was to contract for all of Redflex’s services because “the Fixed Photo Red Light Enforcement Program would not exist nor could it function” without the city. (*Ibid.*) Therefore, the DIR conducted that construction and installation work could not be considered to be merely incidental to the city’s interest in reducing red light violations.

The ATS Agreement grants the City substantially less control over the program than was present in the Redflex agreement. Unlike the Redflex agreement, the ATS Agreement does not give the City exclusive authority to designate the intersections at which cameras are placed. Rather, the locations are selected after a careful analysis by the City’s Police and Traffic Engineering Departments and ATS engineers. (Agreement at 14.) Nor does the ATS Agreement require oversight of the installation by any City employee, as the Redflex agreement did. The only oversight referenced in the ATS Agreement is for a project manager who coordinates the City’s responsibilities and a Municipal Court manager who oversees Court-related program requirements. Clearly, the City is not nearly as involved in the installation of the camera systems as was the City of Hayward in the *Redflex* matter.

Another basis for the DIR’s determination in *Redflex* was the cancellation fee. Under the Redflex agreement, if the City of Hayward terminated the agreement without cause, it would have had to pay a cancellation fee measured by a pro rata share of the direct labor and material costs incurred in installing the system. (PW 2010-010 at 5.) This provision reinforced the DIR’s conclusion that installation costs were paid for by public funds and that the City of Hayward’s monthly payments were apportioned to the cost for installation of the system. However, the ATS Agreement does not have such a cancellation provision and there is no indication in the Agreement that any of the installation costs are encompassed by any of the payments.

For the foregoing reasons, the subject project is not a public work.



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Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,

Anthony J. DeCristoforo

AJD:jhc
Enclosure

cc: City of South San Francisco (Attn. City Manager),
400 Grand Avenue, South San Francisco, CA 94083

Amie Bergin, Deputy Labor Commissioner
Division of Labor Standards Enforcement
2031 Howe Avenue, Suite 100, Sacramento, CA 95825

**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 if 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

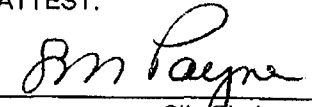
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date accepted by the Customer.

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 an 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, construction, 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 sites where the Camera Systems will be initially installed were selected after a careful analysis by the Customer Police, the Traffic Engineering Department and ATS engineers. Based on that analysis, the Customer 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 Customer determined that photo enforcement was the best solution to the dangers posed by these intersections.

[List Initial Camera Locations Here When Final Intersection Analysis is Completed]

**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 NAGEU
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: 9/28/2006
By: [Signature]

ATTEST:
[Signature]
City Clerk 04/29/06

**AMENDMENT ONE
TO
PROFESSIONAL SERVICES AGREEMENT**

THIS AMENDMENT ONE TO PROFESSIONAL SERVICES AGREEMENT (the "Amendment") made and entered this 10th day of November, 2009 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 7681 East Grey Road, Scottsdale, Arizona 85260, and The CITY OF SOUTH SAN FRANCISCO, CALIFORNIA (herein "City"), a municipal corporation of the State of California with principal offices at 33 Arroyo Drive, Suite C, South San Francisco, CA 94080 (collectively the "Parties").

WITNESSETH:

WHEREAS, on October 6, 2006 ATS and the City entered into a Professional Services Agreement (the "Agreement") whereby the City contracted with ATS to provide a Photo Safety Enforcement Program to the City;

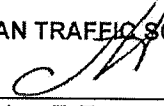
WHEREAS, the City and ATS wish to modify and amend the Agreement;

NOW THEREFORE, in consideration of the promises and other good and valuable consideration specified in this Amendment, the Parties hereby agree to amend the Agreement as follows:

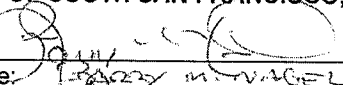
1. **Section 6. Fees and Payments** shall be amended by deleting the section entitled "Revenue Neutrality Clause" in its entirety.
2. All other terms and conditions of the Agreement shall remain in full force and effect unless specifically changed by the terms and conditions of this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment One to Professional Services Agreement as of the date accepted by the City.

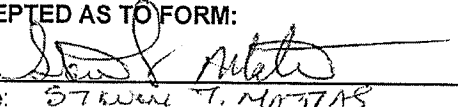
AMERICAN TRAFFIC SOLUTIONS, INC.

By: 
Name: Adam E. Tuton
Title: Executive Vice President, COO
Date: 11-10-09

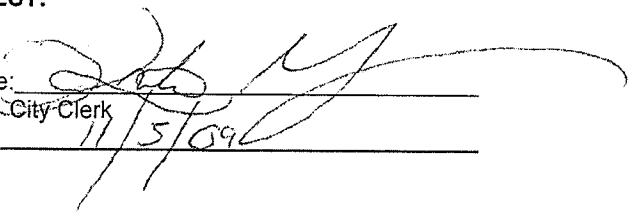
CITY OF SOUTH SAN FRANCISCO, CA

By: 
Name: Larry M. Vogel
Title: City Manager
Date: 11-5-09

ACCEPTED AS TO FORM:

By: 
Name: STEVEN T. MIRTRAS
Title: City Attorney
Date: 11/4/09

ATTEST:

By: 
Name: _____
Title: City Clerk
Date: 11/5/09