

Purchasing & Contract Management Division (PCMD)

Brian Rothwell Purchasing Manager Phone: 386-986-3731 brothwell@palmcoastgov.com	Dianne Torino Contract Manager Phone: 386-986-2339 dtorino@palmcoastgov.com	Nicole DiMattina Purchasing Technician I Phone: 386-986-3754 ndimattina@palmcoastgov.com	David Klages Purchasing Technician I Phone: 386-986-2337 dklages@palmcoastgov.com
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NOTICE TO PROCEED

DATE: September 19, 2012

TO: Mr. Michael Bolton
American Traffic Solutions, Inc.
1330 West Southern Avenue
Tempe, Arizona 85282

PROJECT: Red Light Camera Program

American Traffic Solutions, Inc. hereby notified to commence work in accordance with Amendment No. 1 to the City of Palm Coast Services Two Phase Agreement with American Traffic Solutions, Inc. and the approved list of 9 of 16 new additional camera locations approved by the Palm Coast City Council on August 21, 2012 and by American Traffic Solutions on September 2, 2012 (attached).

The new additional cameras as approved in the list referenced above shall be installed and active by December 15, 2012.

THE CITY OF PALM COAST

BY: 
Jim Landon, City Manager


DATE: 10/3/12

You are required to return an acknowledged copy of the Notice to Proceed to The City of Palm Coast, Florida, Attn: Dianne Torino, Manager, Contract Administration, 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164.

ACCEPTANCE OF NOTICE

Receipt of the above Notice To Proceed is hereby acknowledged

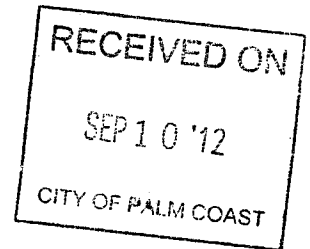
this the 25th day of September, 2012.

BY: 

TITLE: COO

The following 9 approaches have been approved by ATS.

No.	Status	Dir	Street	Cross Street
1	Study	NB	Belle Terre Pkwy	Palm Coast Pkwy NW (Westbound)
2	Study	NB	Belle Terre Pkwy	Palm Coast Pkwy SW (Eastbound)
3	Study	SB	Belle Terre Pkwy	Palm Coast Pkwy SW (Eastbound)
4	Study	NB	Belle Terre Pkwy	Pine Lakes Pkwy (south of Palm Coast Parkway)
5	Study	SB	Belle Terre Pkwy	Pine Lakes Pkwy N @ Pine Lakes Drive (north of Palm Coast Parkway)
6	Study	SB	Belle Terre Pkwy	Royal Palms Pkwy
7	Study	NB	Belle Terre Pkwy	Rymfire Dr
8	Study	SB	Belle Terre Pkwy	Rymfire Dr
9	Study	SB	Belle Terre Pkwy	White View Pkwy



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NOTICE TO PROCEED

DATE: August 28, 2012

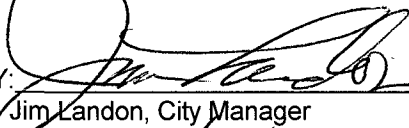
TO: Mr. Michael Bolton
American Traffic Solutions, Inc.
1330 West Southern Avenue
Tempe, Arizona 85282

PROJECT: Red Light Camera Program

American Traffic Solutions, Inc. hereby notified to commence work in accordance with Amendment No. 1 to the City of Palm Coast Services Two Phase Agreement with American Traffic Solutions, Inc. and the approved list of new additional camera locations approved on August 21, 2012 (attached).

The new additional cameras as approved in the list referenced above shall be installed and active by November 19, 2012.

THE CITY OF PALM COAST

BY: 
Jim Landon, City Manager

DATE: 9/11/12

You are required to return an acknowledged copy of the Notice to Proceed to The City of Palm Coast, Florida, Attn: Dianne Torino, Manager, Contract Administration, 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164.

ACCEPTANCE OF NOTICE

Receipt of the above Notice To Proceed is hereby acknowledged

this the 4th day of AUGUST, 2012.

BY: 

TITLE: COO

The following 15 approaches have been approved by ATS and will be placed on City Council Agenda for approval.

No.	Status	Dir	Street	Cross Street
1	SLS Approved	NB	Belle Terre Pkwy	Central Ave
2	SLS Approved	WB	SR 100/ E Moody Blvd	Belle Terre Pkwy
3	SLS Approved	WB	Palm Coast Pkwy NE	Florida Park Dr N
4	SLS Approved	EB	Palm Coast Pkwy SE	Florida Park Dr S
5	SLS Approved	WB	Palm Coast Pkwy NE	Harbor Center Way
6	SLS Approved	EB	Palm Coast Pkwy	I-95 NB Offramp
7	SLS Approved	WB	Palm Coast Pkwy	I-95 NB Offramp
8	SLS Approved	NB	Old Kings Rd N	Kings Way
9	SLS Approved	SB	Old Kings Rd N	Kings Way
10	SLS Approved	SB	Old Kings Rd	Palm Coast Pkwy
11	SLS Approved	EB	SR 100/ E Moody Blvd	Old Kings Rd S
12	SLS Approved	WB	Palm Coast Pkwy NW	Pine Lakes Pkwy
13	SLS Approved	EB	Palm Coast Pkwy SW	Pine Lakes Pkwy
14	SLS Approved	EB	SR 100/ E Moody Blvd	Seminole Woods Blvd
15	SLS Approved	WB	SR 100/ E Moody Blvd	Old Kings Rd S

**CITY OF PALM COAST SERVICES TWO PHASE AGREEMENT WITH
AMERICAN TRAFFIC SOLUTIONS, INC. REGARDING REQUEST FOR
PROPOSALS (RFP) CM-07-02 PERTAINING TO RED LIGHT RUNNING
CAMERA ENFORCEMENT SYSTEM**

THIS AGREEMENT made and entered into this 6th day of November, 2007 by and between the:

**City of Palm Coast, Florida
City Hall
2 Commerce Boulevard
Palm Coast, Florida 32164**

a municipal corporation of the State of Florida, holding tax exempt status, hereinafter referred to as the "City," and:

**American Traffic Solutions, Inc.
14861 N. Scottsdale Road, Suite 109
Scottsdale, Arizona 85254**

corporation, authorized to do business in the State of Florida, hereinafter referred to as the "Contractor".

The City and the Contractor are collectively referred to herein as the "parties".

WITNESSETH:

WHEREAS, the City desires to retain the Contractor for the services identified in the Request For Proposal (RFP) and description of services outlined in Exhibit A which outlines two phases of the work (the terms "services" and "work" being synonymous in this Agreement on occasion); and

WHEREAS, the City desires to employ the Contractor for the performance to support the public safety activities, programs and projects of the City upon the terms and conditions hereinafter set forth, and the Contractor is desirous of performing and providing such services upon said terms and conditions; and

WHEREAS, the Contractor hereby warrants and represents to the City that it is competent and otherwise able to provide professional and high quality services to the City; and

WHEREAS, all submissions submitted by the Contractor in the documents submitted to the City by the Contractor in order to induce or encourage the City to retain the services of the Contractor are hereby incorporated to the extent not inconsistent with the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the parties hereto as follows:

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SECTION 1: DEFINITIONS.

Ad valorem - In proportion to the estimated value of the goods taxed.

Agreement – This document between the City and Contractor. Each exhibit, as identified below, even if not physically attached, shall be treated as if they were part of this Agreement. The effective date of this Agreement is the date City Council of the City approves the selection of the Contractor.

Billing Period – The period of time between project commencement to the close of the current period, (inclusive); or from the close of the previous billing period, (exclusive), to the close of the current period, usually concurrent with the month. In no case shall this period be less than one (1) calendar month except for the final billing period.

Bona Fide - Made or carried out in good faith; sincere.

City – The City of Palm Coast, a municipal corporation of the State of Florida holding tax exempt status.

Contractor - To include all principals of the Contractor including, but not limited to, full and part time employees, professional or otherwise, and all other agents employed by or for Contractor to perform its obligations hereunder.

Description of Services - Shall be written in paragraph form reasonably describing those services/work the City can expect the Contractor to provide. The description shall be written in such a manner that the type of service is clearly provided, but broad enough that all services reasonably expected of the Contractor, including services provided by partners, subcontractors, and other supporting professionals, can be provided to the City.

Designated Representative – A person who administers, reviews, and coordinates the provision of services. This definition applies equally to the City and to the Contractor.

Exhibit A – Description of Services.

Exhibit B – Pricing and Rate Schedule.

Exhibit C – Certificate of Liability Insurance.

Force Majeure - *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, terrorism, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Agreement is beyond the control and without the fault or negligence of the party seeking relief under this Agreement.

Law - Said phrase shall include statutes, codes, rules, and regulations of whatsoever type or nature enacted or adopted by a governmental entity of competent jurisdiction.

Pari Materia – Of the same matter; on the same subject. Provisions in *pari materia* must be construed with reference to each other/together when related to the same matter or subject. The provisions of a contract/agreement are to be construed together with no isolated construction of a particular provision such that it would defeat the overall intent of the contract/agreement.

Submittals – Any item required by this agreement that the Contractor must provide the City either for inclusion as part of this agreement or not.

Type of Services – A red light enforcement system using cameras for the benefit of the public safety and interests said services being provided in accordance with the controlling provisions of law. The services shall be provided in two (2) phases with the first phase being an evaluative and analytical phase which is non-compensated and the second phase, if the evaluation and analysis results in the conclusion that services should proceed forward, the second phase shall be an operational and compensated red light enforcement system.

SECTION 2: CAPTIONS.

The Section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any provision of this Agreement.

SECTION 3: EXTENT OF AGREEMENT/INTEGRATION/AMENDMENT.

(a). This Agreement, together with the exhibits, constitute the entire integrated Agreement between the City and the Contractor and supersedes all prior written or oral understandings in connection therewith. This Agreement, and all the terms and provisions contained herein, including without limitation the exhibits attached, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence, and statements, whether written or oral.

(b). This Agreement may only be amended, supplemented, or modified by a formal written amendment and the Contractor may not rely upon non-written assignments of work or services that are not consistent with the provisions of this Agreement..

(c). Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

(d). The exhibits made part of this Agreement are as follows:

- Exhibit A - Description of Services.
- Exhibit B - Pricing and Rate Schedule.
- Exhibit C - Certificate of Liability Insurance.

(e). This is an Agreement relating to the provision of services to the City, in two (2) phases, by the Contractor such that the Contractor shall not proceed to the second compensated phase absent a review and analysis by the City of the results of the first, non-compensated, phase of services.

SECTION 4: NO GENERAL CITY OBLIGATION.

(a). In no event shall any obligation of the City under this Agreement be or constitute a general obligation or indebtedness of the City, a pledge of the *ad valorem* taxing power of the City or a general obligation or indebtedness of the City within the meaning of the *Constitution of the State of Florida* or any other applicable laws, but shall be payable solely from legally available revenues and funds.

(b). The Contractor shall not have the right to compel the exercise of the *ad valorem* taxing power of the City.

SECTION 5: CONTRACTOR UNDERSTANDING OF SERVICES REQUIRED.

(a). Execution of this Agreement by the Contractor is a representation that the Contractor is familiar with local conditions and with the services to be performed. The Contractor shall make no claim for additional time or money based upon its failure to comply with this Agreement. The Contractor has informed the City, and hereby represents to the City, that it has extensive experience in performing and providing the services described in this Agreement, and that it is well acquainted with the components that are properly and customarily included within such projects and the requirements of laws, ordinances, rules, regulations, or orders of any public authority or licensing entity having jurisdiction over City projects. Execution of this Agreement shall be an affirmative and irrefutable representation by the Contractor to the City that the Contractor is fully familiar with any and all requisite work conditions of the provisions of the services and that no work conditions will be unanticipated.

(b). The recitals herein are true and correct and form and constitute a material part of this Agreement upon which the parties have relied.

(c). It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the Contractor (including, but not limited to, its officers, employees, and agents) the agent, representative, or employee of the City for any purpose, or in any manner, whatsoever. The Contractor is to be and shall remain forever an independent

Contractor with respect to all services performed under this Agreement.

(d). Persons employed by the Contractor in the provision and performance of the services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the City's officers and employees either by operation of law or by the City.

SECTION 6: GENERAL PROVISIONS.

(a). Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement, and to undertake all obligations imposed on it. The person(s) executing this Agreement for the Contractor certifies/certify that he/she/they is/are authorized to bind the Contractor fully to the terms of this Agreement and so execute this Agreement under penalty of perjury.

(b). This Agreement is for services pertaining to a governmental red light enforcement system using cameras for the benefit of the public safety and interests said services being provided in accordance with the controlling provisions of law. The services shall be provided in two (2) phases with the first phase being an evaluative and analytical phase which is non-compensated and the second phase, if the evaluation and analysis results in the conclusion that services should proceed forward, the second phase shall be an operational and compensated red light enforcement system. Related services, as needed by the City for the City's operations as set forth herein and as otherwise directed by the City to include all labor and materials that may be required, shall be provided by the Contractor to the City in accordance with the hourly rate schedule set forth herein. At no time will the Contractor have or use governmental law enforcement or public safety powers and all services provided by the Contractor to the City shall be in aid of the City in the City's exercise of such powers.

(c). The Contractor acknowledges that the City may retain other contractors to provide the services for City projects. The City reserves the right to select which contractor shall provide services for City projects.

(d). The Contractor agrees to provide and ensure coordination between service providers.

(e). Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

(f). Contractor shall maintain an adequate and competent staff or professionally qualified persons throughout the performance of this Agreement to ensure acceptable and timely completion of the services. Should the City determine that a particular staff member or particular staff members cannot adequately provide the services due to the City or that

the use of such Contractor employee(s) is not in the public interest, as determined by action of the City Manager of the City, the Contractor shall immediately cause such employee(s) to cease work under this Agreement and such action shall not be deemed a suspension or termination of this Agreement.

(g). Requirements for signing and sealing plans, reports, and documents prepared by the Contractor shall be governed by the laws and regulations of Flagler County, the City and Federal and State regulatory agencies.

(h). No claim for services furnished by the Contractor not specifically provided for herein shall be honored by the City. Should the Contractor proceed to accomplish work without written authorization by the City, such work shall not be deemed compensable work. It is the responsibility of the Contractor to ensure that the Contractor takes direction from the appropriate person, with requisite authority, of the City.

SECTION 7: CODES AND DESIGN STANDARDS.

(a). All the services to be provided or performed by the Contractor shall, at a minimum, be in conformance with commonly accepted industry and professional codes and standards, standards of the City, and the laws of any Federal, State, or local regulatory agencies.

(b). The Contractor shall be responsible for keeping apprised of any changing laws applicable to the services to be performed under this Agreement.

SECTION 8: SUBCONTRACTORS.

(a). Any Contractor proposed subcontractor shall be submitted to the City for written approval prior to the Contractor entering into a subcontract. Subcontractor information shall include, but not be limited to, State registrations, business address, local business tax proof of payment, and insurance certifications.

(b). The Contractor shall coordinate the provision of services and work product of any City approved subcontractor and remain fully responsible for such services and work under the terms of this Agreement. The Contractor is prohibited from executing any document that would purport to assign the Contractor's duties to the City to a subcontractor.

(c). All subcontracts shall be in writing and shall fully incorporate the terms and conditions of this Agreement and require the subcontractors to assume performance of the Contractor duties commensurately with the Contractor's duties to the City under this Agreement, it being understood that nothing herein shall in any way relieve the Contractor from any of its duties under this Agreement. The Contractor shall provide the City with executed copies of all subcontracts within one (1) business day of the execution.

SECTION 9: ASSIGNABILITY.

The Contractor shall not sublet, assign, or transfer any interest in this Agreement, or claims for the money due or to become due out of this Agreement to a bank, trust company, or other financial institution without written City approval. When approved by the City, written notice of such assignment or transfer shall be furnished promptly to the City and, in such cases, the Contractor's successors and assigns shall be bound to the City by the terms and conditions of this Agreement.

SECTION 10: COMMENCEMENT / IMPLEMENTATION SCHEDULE OF AGREEMENT.

(a). The Contractor shall commence the provision of services for the first phase of services as described in this Agreement immediately upon execution of this Agreement and the issuance of a written notice to proceed by the City. The Contractor shall, within five (5) days of receipt of the notice to proceed provide the City with written verification of the receipt and state a plan of action relative to the commencement of the work.

(b). The Contractor shall commence the provision of services for the second phase of services as described in this Agreement immediately upon the issuance of a written notice to proceed by the City. The Contractor shall, within five (5) days of receipt of the notice to proceed provide the City with written verification of the receipt and state a plan of action relative to the commencement of the work.

(c). The Contractor and the City agree to make every effort to adhere to the schedules established by the City. However, if the Contractor is materially and substantially delayed at any time in the provision of services by any act or omission of the City, or of any employee of the City, or by any other contractor employed by the City, or by changes ordered by the City, or by strikes, lock outs, fire, unusual delay in transportation, unavoidable casualties, or any other causes of *force majeure* not resulting from the inactions or actions of the Contractor and beyond the Contractor's control which would not reasonably be expected to occur in connection with or during performance or provision of the services, or by delay authorized by the City pending a decision, or by any cause which the City shall decide to justify the delay, the time of completion shall be extended for such reasonable time as the City may decide in its sole and absolute discretion. It is further expressly understood and agreed that the Contractor shall not be entitled to any damages or compensation, or be reimbursed for any losses on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

SECTION 11: LENGTH OF AGREEMENT.

(a). The term of this Agreement is three (3) years commencing on the date of full execution of this Agreement by the parties.

(b). The Contractor services shall begin upon written notification to proceed by the City by means of a notice to proceed.

(c). Contractor services shall be provided to the City solely as directed in the two phases of the provision of services.

(d). Subsequent to the conclusion of the initial term, this Agreement may be renewed by the parties for maximum total of an additional five (5) years.

(e). The Contractor shall serve as an expert witness, as needed, in judicial proceedings relating to the services that are the subject of this Agreement at a rate of compensation as set forth in the Notice To Proceed for the second phase of the services set forth herein.

(f). All provisions of this Agreement which contain continuing obligations shall survive the expiration or termination of this Agreement.

SECTION 12: DESCRIPTION OF SERVICES.

(a). The Contractor agrees to perform diverse services relating to the full array of needs of the City pertaining to a red light enforcement system using cameras to advance the public interest and public safety in accordance with the controlling provisions of law. The Description of Services is further and more specifically outlined in Exhibit A.

(b). The Contractor shall diligently and in a professional and timely manner perform and provide the services outlined herein. Unless modified in writing by the parties hereto, the duties of the Contractor shall not be construed to exceed the provision of the services pertaining to this Agreement.

(c). The City and Contractor agree that there may be certain additional services required to be performed by the Contractor during the performance of this Agreement that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing by the City. The written authorization of work may contain additional instructions or provide specifications upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 13: CONTRACTOR RESPONSIBILITIES.

(a). The Contractor shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by the Contractor under this Agreement as well as the conduct of its staff, personnel, employees, and agents. The Contractor shall work closely with the City on all aspects of the provision of the services. With respect to services, the Contractor shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by the Contractor under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or

deficiencies in its plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

(b). The Contractor shall furnish a Contractor designated representative to administer, review, and coordinate the provision of services under this Agreement.

(c). Neither City review, approval, or acceptance of, nor payment for, any of the services required under this Agreement or failure to insist upon strict compliance by the Contractor with regard to any provision of this Agreement shall be construed to operate as a waiver, release, discharge, modification or change of any rights of the City or of any cause of action arising out of the performance of this Agreement to the benefit of the City. The Contractor shall be and shall remain liable to the City in accordance with applicable law for all damages to the City caused by the Contractor's negligent or improper performance or failure to perform any of the services furnished under this Agreement.

(d). In the event the Contractor fails to comply with the terms and conditions of this Agreement, the City shall notify the Contractor's designated representative in writing so that the Contractor may take remedial action.

(e). Time is of the essence in the performance of all services provided by the Contractor under the terms of this Agreement.

SECTION 14: CITY RIGHTS AND RESPONSIBILITIES.

(a). The City shall reasonably cooperate with the Contractor in a timely fashion at no cost to the Contractor as set forth in this Section.

(b). The City shall furnish a City designated representative to administer, review, and coordinate the provision of services under this Agreement.

(c). The City shall make City personnel reasonably available where, in the City's opinion, they are required and necessary to assist the Contractor. The availability and necessity of said personnel to assist the Contractor shall be determined solely at the discretion of the City.

(d). Upon the written request of the Contractor, the City shall furnish the Contractor with existing data, records, maps, plans, specifications, reports, fiscal data, and other information that is available in the City's files that is necessary or useful to the Contractor for the performance of the work. All such documents conveyed by the City shall be, and remain the property of, the City and shall be returned to the City upon completion of the services to be performed by the Contractor.

(e). The City shall, upon request of the Contractor, reasonably examine all Contractor reports, sketches, drawing, estimates, proposals, and other documents presented to the City and indicate the City's approval or disapproval within a reasonable time so as not to materially delay the provisions of the services of the Contractor; provided, however, that

the City's examination(s) shall not, in any way, relieve the Contractor of its duties and obligations under the provisions of this Agreement.

(f). The City shall, upon request of the Contractor (unless the procurement documents otherwise provide), provide access to and make provisions for the Contractor to enter upon public and private lands as required for the Contractor within a reasonable time to perform work as necessary to complete services.

(g). The City shall transmit instructions, relevant information, and provide interpretation and definition of City policies and decisions with respect to any and all materials and other matters pertinent to the services covered by this Agreement; provided, however, that the City's examination(s) shall not, in any way, relieve the Contractor of its duties and obligations under the provisions of this Agreement.

(h). The City shall give written notice to the Contractor whenever the City designated representative knows of a development that affects the services provided and performed under this Agreement, timing of the Contractor's provision of services, or a defect or change necessary in the services of the Contractor.

(i). The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law; the City may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, withholding, recoupment, or counterclaim, either during or after performance of this Agreement.

(j). The City shall be entitled to recover any and all legal costs including, but not limited to, attorney fees and other legal costs that it may incur in any legal actions it may pursue in the enforcement of the terms and conditions of this Agreement or the responsibilities of the Contractor in carrying out the duties and responsibilities deriving from this Agreement.

(k). The failure of the City to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

(l). Neither the City's review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor or any cause of action arising out of the performance of this Agreement and the Contractor shall be and always remain liable to the City in accordance with applicable law for any and all damages to the City caused by the Contractor's negligent or wrongful provision or performance of any of the services furnished under this Agreement.

(m). All deliverable analysis, reference data, survey data, plans and reports, or any other form of written instrument or document that may result from the Contractor's services or have been created during the course of the Contractor's performance under this Agreement shall become the property of the City after final payment is made to the Contractor.

(n). In the event the City fails to comply with the terms and conditions of this Agreement, the Contractor shall notify the City's designated representative in writing in order that the City may take remedial action.

SECTION 15: WAIVER.

The failure of the City to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to the City hereunder, shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

SECTION 16: *FORCE MAJEURE*.

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by *force majeure*.

SECTION 17: STANDARDS OF CONDUCT.

(a). The Contractor warrants that it has not employed or retained any company or person, other than a *bona fide* employee working solely for the Contractor, to solicit or secure this Agreement and that the Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making this Agreement.

(b). If the City determines that any employee or representative of the Contractor is not satisfactorily performing his or her assigned duties or is demonstrating improper conduct pursuant to any assignment or work performed under this Agreement, the City shall so notify the Contractor, in writing. The Contractor shall immediately remove such employee or representative of the Contractor from such assignment.

(c). By execution of this Agreement, the Contractor hereby certifies that no undisclosed conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of the Contractor, or any interest in property that the Contractor may have. The Contractor further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to the City. Violation of this Section shall be considered as justification for immediate termination of this Agreement.

(d). The Contractor shall not engage in any action that would create a conflict of interest for any City employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions

of Part III, Chapter 112, *Florida Statutes*, as amended from time-to-time, relating to ethics in government.

(e). The City shall not intentionally award publicly-funded contracts to any Contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) Section 274A(e) of the *Immigration and Nationality Act (INA)* as the *INA* may be amended from time-to-time. The City shall consider the employment by the Contractor of unauthorized aliens, a violation of Section 274A (e) of the *INA*. Such violation by the Contractor of the employment provisions contained in Section 274A (e) of the *INA* is a *per se* breach of this Agreement and shall be grounds for immediate termination of this Agreement by the City.

(f). The Contractor shall comply with and adhere to the equal employment and non-discrimination provisions of this Agreement.

(g). If the Contractor or an affiliate is placed on a discriminatory vendor list, such action may result in termination by the City. The Contractor shall certify, upon request by the City that it is qualified to submit a bid under Section 287.134, *Florida Statutes*, or its successor provision(s).

(h). If the Contractor or an affiliate is placed on the convicted vendor list following a conviction for a public entity crime, such action may result in termination by the City. The Contractor shall certify, upon request by the City, that is qualified to submit a bid under Section 287.133, *Florida Statutes*, or its successor provision(s).

(i). The Contractor shall certify, upon request by the City, that the Contractor maintains a drug free workplace policy in accordance with Section 287.0878, *Florida Statutes*, as amended from time-to-time. Failure to submit this certification may result in termination.

(j). The Contractor agrees to comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the services provided to the City. The Contractor agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment shall ensure compliance with any and all employment safety, environmental and health laws.

(k). If applicable, in accordance with Section 216.347, *Florida Statutes*, or its successor provision(s), the Contractor shall not use funds provided by this Agreement for the purpose of lobbying the Legislature, the Judicial Branch, or any State Agency.

(l). The Contractor shall not publish any documents or release information regarding this Agreement to the media without prior approval of the City. The Contractor may not use its relationship with the City for publicity purposes, in any manner or means, without the expressed written consent of the City.

(m). The Contractor shall ensure that all services are provided to the City after the Contractor has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents.

(n). The Contractor shall ensure that all taxes due from the Contractor are paid in a timely and complete manner including, but not limited to, the local business tax.

SECTION 18: NOTICES.

(a). Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section.

(b). For the present, the parties designate the following as the representative places for giving of notice, to-wit:

(1). **For the City:**

Mr. James Landon
City Manager
City of Palm Coast
2 Commerce Boulevard
Palm Coast, Florida 32135

(2). **For the Contractor:**

Mr. Adam E. Tuton
American Traffic Solutions, Inc.
14861 N. Scottsdale Road, Suite 109
Scottsdale, Arizona 85254

(c). Written notice requirements of this Agreement shall be strictly construed and such requirements are a condition precedent to pursuing any rights or remedies hereunder. The Contractor agrees not to claim any waiver by City of such notice requirements based upon City having actual knowledge, implied, verbal or constructive notice, lack of prejudice, or any other grounds as a substitute for the failure of the Contractor to comply with the express written notice requirements herein. Computer notification (e-mails and message boards) shall not constitute proper written notice under the terms of the Agreement.

SECTION 19: DESIGNATED REPRESENTATIVES.

(a). The City Manager, or designated representative, represents the City in all matters pertaining to and arising from the work and the performance of this Agreement.

(b). The City Manager, or designated representative shall have the following responsibilities:

(1). Examination of all work and rendering, in writing, decisions indicating the City's approval or disapproval within a reasonable time so as not to materially delay the work of the Contractor;

(2). Transmission of instructions, receipt of information, and interpretation and definition of City's policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement;

(3). Giving prompt written notice to the Contractor whenever the City knows of a defect or change necessary in the project; and

(c). Until further written notice, the City's designated representative for this Agreement is:

Mark Carman
Law Enforcement Coordinator
City Hall
City of Palm Coast
2 Commerce Boulevard
Palm Coast, Florida 32164
Telephone Number: (386) 986-3700

With a copy to:
Mr. Brian Rothwell
Purchasing Manager
City Hall
City of Palm Coast
2 Commerce Boulevard
Palm Coast, Florida 32164

(d). Prior to start of any work under this Agreement, the Contractor shall, at the written request of the City, submit to the City detailed resumes of key professional personnel that will be involved in performing services described in the work. At any time hereafter that the Contractor desires to change key professional personnel in an active assignment, it shall submit the qualifications of the new professional personnel to the City for prior approval. Key professional personnel shall include the principal-in-charge, project managers, and others interfacing with City personnel.

(e). Until further written notice, the Contractor's designated representative for this Agreement is:

American Traffic Solutions, Inc.
14861 N. Scottsdale Road, Suite 109
Scottsdale, Arizona 85254
Telephone Number: (480) 443-7000

SECTION 20: COMPENSATION.

(a). There shall be no fee charged to the City for the work accomplished in the first phase of performance, while the fee to be charged for the second phase of services, post authorization, shall be as set forth in Exhibit B.

(b). Should the City authorize work under the second phase of the services, compensation to the Contractor for the services performed shall be as set forth the notice to proceed and as set forth in Exhibit B.

(c). The City shall not pay for reimbursable items such as gas, tolls, mileage, meals, etc.

(d). Work performed by the Contractor without written approval by the City's designated representative shall not be compensated. Any work performed by the Contractor without approval by the City is performed at the Contractor's own election.

(e). In the event the City fails to provide compensation under the terms and conditions of this Agreement, the Contractor shall notify the City's designated representative in order that the City may take remedial action.

SECTION 21: INVOICE PROCESS.

(a). Payments shall be made by the City to the Contractor when requested as work progresses for services furnished, but not more than once monthly. The Contractor shall render to the City, at the close of each calendar month, an itemized invoice properly dated, describing all services rendered as Exhibit B, the Project Status Report Form, the cost of the services, the name and address of the Contractor, Contract Number and all other information required by this Agreement.

(b). Invoices which are in an acceptable form to the City and without disputable items will be processed for payment within thirty (30) days of receipt by the City.

(c). The Contractor will be notified of any disputable items contained in invoices submitted by the Contractor within fifteen (15) days of receipt by the City with an explanation of the deficiencies.

(d). The City and the Contractor will make every effort to resolve all disputable items contained in the Contractor's invoices.

(e). The *Florida Prompt Payment Act* shall apply when applicable.

(f). Invoices shall be forwarded by the Contractor directly to:

Finance Director
City Hall
City of Palm Coast
2 Commerce Boulevard
Palm Coast, Florida 32164

SECTION 22: TERMINATION OF AGREEMENT.

(a). The City may terminate this Agreement for convenience at any time for one (1) or more of the reasons as follows:

(1). If, in the City's opinion, adequate progress is not being made by the Contractor; or

(2). If, in the City's opinion, the quality of the services provided by the Contractor is/are not in conformance with commonly accepted professional standards, standards of the City, the requirements of Federal or State regulatory agencies, and the Contractor has not corrected such deficiencies in a timely manner as reasonably determined by the City; or

(3). The Contractor or any employee or agent of the Contractor is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the Contractor; or

(4). The Contractor becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

(5). The Contractor violates the standards of conduct provisions herein or any provision of State or local law or any provision of the City's Code of Conduct which is available to the Contractor; or

(6). The Contractor otherwise violates the terms and conditions of this Agreement.

(b). In the event of any of the causes described in this Section, the City's designated representative may send a certified letter requesting that the Contractor show cause why the Agreement should not be terminated. If assurance satisfactory to the City of corrective measures to be made within a reasonable time is not given to the City within fourteen (14)

calendar days of the receipt of the letter, the City may consider the Contractor to be in default, and may immediately terminate this Agreement.

(c). In the event that this Agreement is terminated for cause and it is later determined that the cause does not exist, then this Agreement shall be deemed terminated for convenience by the City and the City shall have the right to so terminate this Agreement without any recourse by the Contractor.

SECTION 23: TERMINATION BY CONTRACTOR FOR CAUSE.

(a). The Contractor may terminate this Agreement if:

(1). The City substantially and materially fails to meet its obligations and responsibilities as specifically contained in this Agreement; or

(2). The City fails to pay the Contractor in accordance with this Agreement.

(b). In the event of either of the causes described in Subsection (a), the Contractor shall send a certified letter requesting that the City show cause why the Agreement should not be terminated and to otherwise provide the City with a reasonable opportunity to cure or explain the alleged breach.

(c). If adequate assurances are not given to the Contractor within fourteen (14) calendar days of the receipt of said show cause notice that there is no breach or, if a breach exists, it may be reasonably explained or has been cured, the Contractor may consider the City to be in default, and may immediately terminate this Agreement.

(d). No implied obligations of the City arise from the operation of this Agreement.

SECTION 24: TERMINATION BY THE CITY WITHOUT CAUSE.

(a). Notwithstanding any other provision of this Agreement, the City shall have the right at any time to terminate this Agreement in its entirety without cause if such termination is deemed by the City to be in the public interest, provided that thirty (30) calendar days prior written notice is given to the Contractor of the City's intent to terminate.

(b). In the event that this Agreement is terminated, the City shall identify any specific work to be continued to completion pursuant to the provisions of this Agreement.

(c). This Agreement will remain in full force and effect as to all authorized work that is to be continued to completion.

SECTION 25: PAYMENT IN THE EVENT OF TERMINATION.

In the event this Agreement is terminated or canceled prior to final completion payment for the unpaid portion of the services provided by the Contractor to the date of termination and any additional services shall be paid to the Contractor.

SECTION 26: ACTION FOLLOWING TERMINATION.

(a), Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue the provision of all services, unless the notice provides otherwise.

(b), The Contractor recognizes its obligation to mitigate damages in the event of termination by whatever means under whatever circumstances.

SECTION 27: SUSPENSION.

(a). The performance or provision of the Contractor services under this Agreement may be suspended by the City at any time.

(b). In the event the City suspends the performance or provision of the Contractor's services hereunder, the City shall so notify the Contractor in writing. Such suspension becoming effective upon the date stated in the notice. The City shall pay to the Contractor within thirty (30) days all compensation which has become due to and payable to the Contractor to the effective date of such suspension. The City shall thereafter have no further obligation for payment to the Contractor for the suspended provision of services unless and until the City's designated representative notifies the Contractor in writing that the provision of the services of the Contractor called for hereunder are to be resumed by the Contractor.

(c). Upon receipt of written notice from the City that the Contractor's provision of services hereunder are to be resumed, the Contractor shall continue to provide the services to the City.

(d). The Contractor recognizes its duties to mitigate damages in the event of the suspension of services.

SECTION 28: ALTERNATIVE DISPUTE RESOLUTION (ADR).

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree attempt resolution by means of mutual discussion and, if resolution does not result therefrom, to exhaust any alternative dispute resolution procedures reasonably imposed by the City prior to filing suit or otherwise pursuing legal remedies.

(b) The Contractor agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration to the City in alternative dispute resolution procedures or which the Contractor had knowledge and failed to present during the City procedures.

(c) In the event that City procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation. The Contractor recognizes that mediation may be deemed open by the City at its discretion subject to any controlling limitations of State law.

SECTION 29: SEVERABILITY.

(a) If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

(b) All provisions of this Agreement shall be read and applied in *pari materia* with all other provisions hereof.

(c) Violation of this Agreement by the Contractor is recognized by the parties to constitute irreparable harm to the City.

SECTION 30: CONTROLLING LAWS/VENUE/INTERPRETATION.

(a) This Agreement is to be governed by the laws of the State of Florida.

(b) Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

(c) This Agreement is the result of *bona fide* arms length negotiations between the City and the Contractor and all parties have contributed substantially and materially to the preparation of the Contract. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.

(d) The parties hereby affirmatively waive their right to trial by jury relative to any and all litigation commenced in relation to this Agreement.

(e) All alternative dispute resolution and similar negotiations sessions shall occur in Flagler County, Florida absent agreement otherwise by the City.

SECTION 31: INDEMNITY.

- (a). To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and defend the City, its agents, servants, officers, officials, and employees, or any of them, from and against any and all claims, damages, losses, and expenses including, but not limited to, attorneys fees and other legal costs such as those for paralegal, investigative, and legal support services, and the actual costs incurred for expert witness testimony arising out of or resulting from the performance or provision of services required under this Agreement, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of the Contractor, its agents, servants, officers, officials, employees, or subcontractors.
- (b). In accordance with Section 725.06, *Florida Statutes*, or its successor and similar provision(s), adequate consideration has been provided to the Contractor for this obligation, the receipt and sufficiency of which is hereby specifically acknowledged.
- (c). Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, *Florida Statutes*, as amended from time-to-time.
- (d). In claims against any person or entity indemnified under this Section by an employee of the Contractor or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or its agents or subcontractors, under workers compensation acts, disability benefits acts, or other employee benefit acts.
- (e). The execution of this Agreement by the Contractor shall obligate the Contractor to comply with the indemnification provision in this Agreement; however, the Contractor must also comply with the provisions of this Agreement relating to insurance coverages.

SECTION 32: INSURANCE.

- (a). The Contractor shall obtain or possess and continuously maintain the following insurance coverages, from a company or from companies, with a Best Rating of A- or better, or such other qualifications as may be acceptable to the City, in its sole and absolute discretion, which insurance company(ies) must be authorized to do business in the State of Florida and which policies must be in a form acceptable to the City and with only such terms and conditions as may be acceptable to the City:

(1). Workers Compensation/Employer Liability: The Contractor shall provide workers compensation insurance for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. Employers' liability Insurance shall be provided by the Contractor at limits not less than the following:

\$100,000.00 Each Accident
\$100,000.00 Disease Each Employee
\$500,000.00 Disease Aggregate

(2). Comprehensive General Liability: The Contractor shall provide coverage for all operations including, but not limited to, contractual, independent contractor, products and complete operations and personal injury with limits not less than the following:

\$1,000,000.00 Bodily injury and property damage - each occurrence.
\$1,000,000.00 Personal and advertising injury - each occurrence.
\$2,000,000.00 General aggregate.
\$2,000,000.00 Products/completed operations aggregates limit.
\$ 5,000.00 Medical payments.

(3). Comprehensive Business Automobile Liability: The Contractor shall provide complete coverage with a combined single limit of not less than \$1,000,000.00 bodily injury and property damage coverage in accordance with the laws of the State of Florida, as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles.

(4). Professional Liability: The Contractor shall provide professional liability insurance as well as errors and omission insurance in a minimum amount of \$1,000,000.00 combine single limit, or its equivalent, with a combined single limit of not less than \$1,000,000.00, protecting the Contractor against claims of the City for negligence, errors, mistakes, or omissions in the performance of services to be performed and furnished by the Contractor.

(5) Other Required Insurance Coverage: Where unusual operations are necessary to complete the work, such as longshoremen and harbor workers' exposures, use of aircraft or watercraft, use of explosives, and any high risk circumstances. No aircraft, watercraft or explosives shall be used without the express advance written approval of the City which may, thereupon, required additional insurance coverages.

(b). All insurance coverages shall be kept in full force and effect by the Contractor throughout the duration of this Agreement and for one (1) year after the termination of this Agreement. All insurance coverages shall be occurrence basis coverage policies. All insurance other than workers compensation and professional liability that must be maintained by the Contractor shall specifically include the City as an additional insured. All insurance minimum coverages extend to any subcontractor, and the Contractor shall be responsible for all subcontractors.

(c). The Contractor shall provide certificates of insurance to the City evidencing that all such insurance is in effect prior to performance of work under this Agreement. These certificates of insurance shall affirmatively show that the City is a named insured under the policies set forth therein and shall become part of this Agreement. Neither approval by the City nor failure to disapprove the insurance furnished by a Contractor shall relieve the Contractor of the Contractor's full responsibility for performance of any obligation including the Contractor's indemnification of the City under this Agreement. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (1) lose its certificate of authority or right to issue insurance in the State of Florida, or (2) no longer complies with State law, or (3) fails to maintain the requisite Best's rating and financial size category, the Contractor shall, as soon as the Contractor has knowledge of any such circumstance, immediately notify the City and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the Contractor has replaced the unacceptable insurer with an insurer acceptable to the City, the Contractor shall be deemed to be in default of this Agreement.

(d). The insurance coverage shall contain a provision that requires that prior to any changes in the coverage, except increases in aggregate coverage, thirty (30) days prior notice will be given to the City by submission of a new certificate of insurance.

(e). The Contractor shall provide certificates of insurance directly to the City's designated representative. The certificates shall clearly indicate that the Contractor has obtained insurance of the type, amount, and classification required by this Agreement.

(f). Nothing in this Agreement or any action relating to this Agreement shall be construed as the City's waiver of sovereign immunity beyond the limits set forth in Section 768.28, *Florida Statutes*, as amended from time-to-time.

(g). The City shall not be obligated or liable under the terms of this Agreement to any party other than the Contractor. There are no third party beneficiaries to this Agreement. The Contractor hereby releases and discharges the City of and from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation, or otherwise, on account of any loss or damage to the City.

(h). The Contractor is an independent Contractor and not an agent, representative, or employee of the City. The City shall have no liability except as specifically provided in this Agreement.

(i). All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the City.

SECTION 33: EQUAL OPPORTUNITY EMPLOYMENT/NON-DISCRIMINATION.

The Contractor agrees that it will not discriminate against any person, employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The Contractor, moreover, shall comply with all the requirements as imposed by the *Americans with Disability Act*, the rules and regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto and any and all related Federal or State laws which prohibits discrimination by public and private entities on the basis of disability and shall not otherwise discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement or violate any laws pertaining to civil rights, equal protection, or discrimination.

SECTION 34: ACCESS TO RECORDS/AUDIT/PUBLIC RECORDS.

(a). The Contractor shall maintain books, records, documents, time and costs accounts, and other evidence directly related to its provision or performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles.

(b). The City reserves the right to unilaterally terminate this Agreement if the Contractor refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of *Chapter 119, Florida Statutes*, Article I, Section 24 of the *Constitution of the State of Florida*, and other applicable law, as amended from time-to-time, that would, in any way be considered to be a public record in its broadest definition, and made or received by the Contractor in conjunction, in any way, with this Agreement. Without in any way limiting any provision of this Agreement, included in the records that are the subject of this Agreement are field memos, computer code, computer text, shop drawings, and similar documents and data.

(c). The City may perform, or cause to have performed, an audit of the records of the Contractor before or after final payment to support final payment issued hereunder. This audit shall be performed at a time mutually agreeable to the Contractor and the City subsequent to the close of the final fiscal period in which services are provided or performed. Total compensation to the Contractor may be determined subsequent to an audit as provided for in this Section, and the total compensation so determined shall be used to calculate final payment to the Contractor. Conduct of this audit shall not delay final payment as required by this Section.

(d). In addition to the above, if Federal, State, County, or other entity funds are used for any services under this Agreement, the Comptroller General of the United States or the

Chief Financial Officer of the State of Florida, Flagler County, or any representative, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to services provided or performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

(e). In the event of any audit or inspection conducted reveals any overpayment by the City under the terms of the Agreement, the Contractor shall refund such overpayment to the City within thirty (30) days of notice by the City of the request for the refund.

(f). The Contractor agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(g). The City shall own all documents prepared by the Contractor pursuant to the provisions of this Agreement.

(h). The Contractor may not rely upon any general or generic confidentiality provision of any contract to which it may be a party such as, by way of example only, computer licenses and similar documents.

(i). The Contractor shall maintain and allow access to the records required under this Section for a minimum period of five (5) years after the completion of the provision or performance services under this Agreement and date of final payment for said services, or date of termination of this Agreement.

SECTION 35: COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute the singular and the same document.

SECTION 36: EXHIBITS.

Each exhibit referred to and attached to this Agreement is an essential part of this Agreement. The exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: the City through its City Council

taking action on the 6th day of November, 2007 and the Contractor signing by and through its duly authorized corporate officer having the full and complete authority to execute same.

ATTEST:



Authorized Corporate Officer

AMERICAN TRAFFIC SOLUTIONS, INC.

By: 

Authorized Corporate Officer

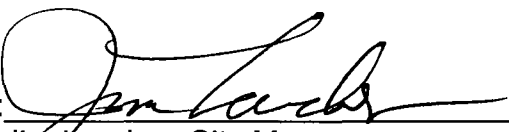
Date: 11/28/07

ATTEST:



Clare M. Hoeni, City Clerk

CITY OF PALM COAST

By: 

Jim Landon, City Manager

Date: 12/3/07

Approved by (Initials and date):

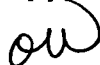
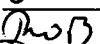
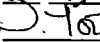

 <u>11/30/07</u>	Responsible Department Director
 <u>11/30/07</u>	City Finance
 <u>11/30/07</u>	Purchasing and Contracts Management Division
 <u>12/3/07</u>	City Attorney



EXHIBIT A
DESCRIPTION/SCOPE OF SERVICES

I. FIRST PHASE OF SERVICES (Uncompensated):

The Contractor shall provide for a comprehensive and fully integrated red light traffic safety management services. The successful Contractor will deploy traffic safety camera equipment at designated arterial intersections, covering one to three (3) approaches at each intersection. At the selected approaches, up to four (4) lanes will require traffic safety camera enforcement, including any turn lanes. The Contractor's services shall include all hardware, software, installation, maintenance, operation, and all back-office processing of violations. All statistical data collected shall be shared with the City for review.

All systems must be non-intrusive to roadway or transportation signal cabinetry.

II. SECOND PHASE OF SERVICES (Compensated):

Red Light Camera System

The Contractor shall provide and install all equipment including, but not limited to, poles, cabinets and related operational equipment at the selected intersection(s). **All systems must be non-intrusive to roadway or transportation signal cabinetry.**

The Contractor shall disclose whether the system, at any time, photographs an image the driver of the vehicle.

The Contractor shall use a high quality digital camera system with an output in excess of 3000 x 2000 pixels per image is required. The Contractor shall detail the image quality specifications and provide real sets of violation image examples captured in daytime, nighttime, during inclement weather, and during times where sunlight is pointing in the direction of the camera.

The Contractor shall provide equipment that is capable of gathering traffic data for statistical analysis. The Contractor shall provide copies of sample reports.

The Contractor shall provide equipment capable of deployment in a wide range of operating conditions; e.g., heavy traffic volumes, adverse weather conditions, road surface configurations, etc., and across five (5) moving lanes of traffic.

The Contractor shall provide equipment shall provide a reliable non-intrusive, non-physical connection to the red phase signal.

The Contractor shall provide a system which must provide at least three (3) digital color still images of each violating event. The images shall be taken to ensure that the rear of the vehicle and license plate are captured. The first image shall capture the vehicle before the front wheels strike the legal violation limit line. The second image shall capture the vehicle after the rear axle has crossed the crosswalk or legal limit line. The third image shall depict a close up of the license plate. The contractor will use a video system that will capture a short duration video of the violation.

The Contractor shall provide a camera system which shall record data pertinent to each violation at the time of capture.

The Contractor shall provide data which shall be recorded in a flexibly configured data bar that is embedded with each scene, license plate and stop bar detection images that may be used to prove the violation. The data bar shall include, at a minimum, the following information for each violation:

- a) Unique violation identifier incorporating the City;
- b) Location of violation;
- c) Date (MM/DD/YYYY);
- d) Time of the violation in 24 hour clock including hours, minutes and seconds;
- e) Elapsed time between images;
- f) Direction of travel;
- g) Traffic signal phase;
- h) Time into the red phase displayed in thousandths of a second;
- g) Duration of the prior amber phase;
- h) Vehicle lane of travel;
- i) Camera ID; and
- j) Frame sequence number.

The Contractor shall explain how the image and violation data is secured and transmitted to the processing center.

The Contractor shall explain how the proposed system can compensate for the effects of license plate covers.

The Contractor shall explain how the proposed system can compensate for the effects of reflective material on license plates.

The Contractor shall provide a system which includes an ancillary video system as supporting information to the violation provided by the still images. The video must be full motion at the rate of thirty (30) frames per second or greater and allow aperture

adjustment.

The Contractor shall ensure that each imaging unit's operation shall be microprocessor controlled and fully automatic.

The Contractor shall include a camera system that shall be capable of on-site or remote activation and maintenance support.

The Contractor shall include a camera system that shall perform a self-test on set-up; simulate a violation being recorded for testing; communicate error messages; record date and time of system shutdown in the event of a malfunction.

The Contractor shall include a camera system that allows a malfunction to be easily identified and debugged on-line.

The Contractor shall include a camera system that records event-specific evidence to substantiate multiple, simultaneous and/or concurrent violations occurring during any red signal phase.

The Contractor shall provide a system which shall provide 24 hours a day/7 days a week "live" intersection monitoring and viewing capabilities.

The Contractor shall include a camera system that which includes component operations which are synchronized to a single, standard, independent, external and verifiable time and date source.

The Contractor must use more than one (1) vehicle detection method (in-ground loops will not be considered). The Contractor must explain the vehicle detection methods which can be used by the system including, but not limited to, the benefits and limitations of each (if more than one (1) is offered).

Red light camera enclosures must be tamper proof and vandal proof.

Red light camera enclosures must be designed in such a fashion that maintenance, and other operations can be accomplished easily and quickly without creating a public safety hazard. The Contractor shall explain typical maintenance procedures.

The Contractor shall state installation and construction times for a generic intersection.

The system shall be able to simultaneously monitor traffic in up to five (5) lanes.

The Contractor shall monitor straight-through violations. The system shall be capable of detecting and recording evidence of left and right turn violations, regardless of vehicle

speed (please reference program). The Contractor must explain how the system captures illegal right-turn-on-red movements.

Violation Processing

There shall be no requirement to install Contractor processing software on City owned or maintained information technology or computing systems.

The violation processing system shall allow the City a detailed view into all of the information related to the program.

All access to the violation processing system for the purpose of preprocessing evidence, police authorization, notice printing, payments tracking, and generation of court evidence packages shall be Internet enabled and shall be available 24 hours a day/7 days a week for authorized users.

The violation processing system shall provide the following functions:

- a) Web-enabled access and operation;
- b) Secure user log-in and access;
- c) Automatic presentation of images and data captured by the camera system onto review PC's;
- d) Easy review of violation evidence against regulations;
- e) Ability to both "play" full motion video and view multiple scene and plate images;
- f) Ability to view each image as a full screen enlargement with a single click;
- g) Ability to view all original images;
- h) Ability to "crop" a license plate image area from the optimal license plate image in the multiple-image license plate set to establish vehicle ID, and subsequently print the cropped plate area image to the notice;
- i) Ability to "accept" or "reject" violation sets and record rejection reasons;
- j) Ability to generate printed warning letters (during the first 30 days of the program at the City's discretion);
- k) Ability to automatically generate printed violation notices;
- l) Ability to store and archive all processed violation evidence into a secured database;
- m) 24 hours a day/7 days a week ability to access any stored violation image from the system's database subject to agreed archive rules;
- n) 24 hours a day/7 days a week ability to request and immediately view Court Evidence Package image sequences displayed as video or as individual high resolution still shots, or send images to print locally;
- o) 24 hours a day/ 7 days week ability to immediately request, view and print both standard and user-defined reports;

- p) Secured Access Control and automatically generated electronic audit trails;
- q) Encryption and decryption management;
- r) The system shall be capable of preparing and mailing one notice letter for all chargeable violations to vehicle owners, issuing and mailing a second notice for any violations that remain unpaid as their due date. All violations for which registered owner data is available shall be issued within seven (7) business days after police review of the incident.

Statistical Analysis and Reporting Systems

The processing system shall produce statistical analysis of camera location and operations will be preferred; including, at minimum:

- a) Hours of use per camera by operational site;
- b) Results achieved by each camera by site;
- c) Offenses recorded by site; and
- d) Traffic counts by lane, date and hour.

The processing system shall be capable of immediately generating operations reports 24 hours a day/7 days a week including:

- a) Number of violations recorded;
- b) Count of violations where notices not prepared;
- c) Notices prepared and mailed; and
- d) Status of notices issued (outstanding, canceled, reissued and so forth).

The processing system shall also supply reports of:

- a) Camera equipment hours of service and hours lost; and
- b) Number and description of camera or other equipment malfunctions.

The processing system shall provide violation and traffic statistics as follows:

- a) Real-time traffic volume and vehicle counts; and
- b) Real-time violation graphs and chart by:
 - I) individual lane;
 - II) time of day; and
 - III) day of week.

The contractor shall provide a monthly report that includes the following:

- a) The number of events detected, notices/violations issued and prosecutable image rate by location and in total;
- b) The total number of violations that occurred and percentage of total vehicle traffic by lane; and the total number of percentage of rejected images by

reason.

Image Transmission Security and Data Storage

The system shall provide for image and data security that shall prevent unauthorized persons from accessing the camera images and databases and tampering with images.

The Contractor shall store all enforceable images produced by cameras for no less than one hundred and eighty (180) days after final disposition.

The Contractor shall provide an evidence package for any contested violations. The package shall consist of:

- a) All issued and disputed notices to the party;
- b) A violation history report;
- c) A correspondence file; and
- d) A payment history.

The Contractor shall maintain a proper chain of evidence that meets the needs of City and court functions.

The Contractor shall provide a qualified expert witness who is knowledgeable on the theory, operation and functional capabilities of the red light camera unit.

Maintenance, Support and Training

All maintenance of camera, video, sensors, computer and related equipment shall be the responsibility of the Contractor.

The Contractor shall repair or replace any inoperable equipment within seventy-two (72) hours of detection by the Contractor or notification by the City.

The Contractor shall describe the proposed standard process for how often the cameras systems will be visited for maintenance and inspection and shall explain what occurs during a maintenance and inspection visit.

The Contractor shall provide ongoing training support as needed by the City.

The Contractor shall provide hands-on training as necessary to personnel as required by the City.

The Contractor shall provide training materials.

Operations and Public Awareness

The Contractor shall describe the Project Management Approach and how it will ensure a successful project for the City.

The Contractor shall provide assistance with the content and design of a public education program and associated materials to be funded by the City.

The Contractor shall support the City by training staff on how to present the Contractor's systems at public seminars or presentations. The Contractor will provide staff for public forums as necessary.

Contractor shall provide a project manager for the project as the single point of contact to the City.

Contractor shall provide intersection design and installation plans for review and approval by the City Traffic Engineering Department and Permitting Department.

Contractor shall install and maintain installed cameras.

Contractor shall be responsible for loading, optimizing, and license plate data entry processing of images for review (final review to be processed by authorized City personnel)

Contractor will prepare one notice letter for all chargeable violations and will mail notice letters to vehicle owners. The Contractor shall include a return envelope for payments.

Contractor will prepare a second and a final notice will be issued for any violations that remain unpaid after their due date. The Contractor shall include a return envelope for payments.

Violations for which registered owner data is available shall be issued within the legally required number of days of the violation event date.

Contractor may be asked to provide all required notice processing supplies including, paper, envelopes, postage, toner, and any and all notice printing supplies.

Notices shall include one set of images and a license plate image.

Contractor shall provide a means for the fines to be paid on-line by credit or debit card.

Contractor shall provide a means for the fines to be paid by phone using a credit or debit card.

Contractor shall provide for a third party collection service for the collection of delinquent accounts.

EXHIBIT B
PRICING AND RATE SCHEDULE

I. FIRST PHASE OF SERVICES (Uncompensated):

No compensation is due from the City to the Contractor.

II. SECOND PHASE OF SERVICES (Compensated):

Fees and Scope of Work for Pricing – Fee Per Paid Citation \$40.00

**AMENDMENT NO. 1 TO THE CITY OF PALM COAST
SERVICES TWO PHASE AGREEMENT WITH
AMERICAN TRAFFIC SOLUTIONS, INC.**

This Amendment No. 1 (the "Amendment") is to the City of Palm Coast Services Two Phase Agreement with American Traffic Solutions, Inc., regarding Request for Proposals (RFP) CM-07-02, pertaining to Red Light Running Camera Enforcement System (the "Agreement"), executed on the 3rd day of December, 2007, by and between the **City of Palm Coast, Florida**, a municipal corporation (hereinafter "City") and **American Traffic Solutions, Inc.** (hereinafter "Contractor").

RECITALS

WHEREAS, on December 19, 2006, the City adopted Ordinance No. 2006-24, codified in Chapter 44, Article V, of the City's Code of Ordinances, which provides for the enforcement of red light violations using traffic infraction detectors (the "Ordinance"); and

WHEREAS, on or about November 6, 2007, the City and Contractor entered into the Agreement, whereby the City and Contractor agreed to the provision by Contractor of services to the City in connection with the enforcement of the Ordinance; and

WHEREAS, the Agreement between City and Contractor expired on November 6, 2010 and provided for an additional five year renewal option; and

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

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

WHEREAS, the City amended Ordinance 2006-24 by Ordinance 2010-09 to provide for the enforcement of red light violations using traffic infraction detectors in accord with the provisions of Law of Florida 2010-80; and

WHEREAS, the City and Contractor wish to amend and modify the Agreement to align the provision of services by Contractor with the provisions and requirements of Law of Florida 2010-80.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and City agree that the Agreement shall be and hereby is amended and modified on the terms provided herein.

1. **Recitals.** The preceding recitals are true and correct and are incorporated into this Amendment by reference.

2. **Definitions.** Except as otherwise specified herein, all capitalized terms used in this Amendment shall have the meanings given to them in the Agreement. Section 1 of the Agreement is amended as follows:

The following definitions are added:

“Net Revenue” means all revenues paid by violators for Uniform Traffic Citations and Notices of Violation captured and/or processed pursuant to this Agreement, less statutory amounts paid to the State of Florida pursuant to Fla. Stat. § 316.0083(1)(b)2.

“Notice of Violation” means a written notice of a Violation or equivalent instrument issued by or on behalf of City relating to a Violation documented or evidenced by a Camera System.

“Recorded Image” means an image digitally recorded by a Traffic Infraction Detector (defined below).

“Traffic Infraction Detector” or ‘camera system’ means a vehicle sensor(s) installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light.

“Traffic Infraction Enforcement Officer” means an employee of the City who meets the qualifications of Section 316.640(5)(a) of the Florida Statutes, as may be amended or recodified from time to time.

“Uniform Traffic Citation” means a uniform traffic citation as described in Section 316.650 of the Florida Statutes, as may be amended or recodified from time to time.

“Violation” means a violation of Section 316.074(1) or 316.075(1)(c)(1) of the Florida Statutes, as may be amended or recodified from time to time.

3. **Extent of Agreement/Integration/Amendment.** Section 3(d) is amended to reflect that all of the exhibits made part of the Agreement have been revised.

4. **Length of the Agreement.** Section 11 of the Agreement is deleted and replaced as follows:

- (a) The term of the Agreement, as revised by this Amendment shall be deemed to have commenced on, and to be retroactively in effect as of, July 1, 2010 (“Term”). This Agreement shall expire on September 30, 2015. In the event that Contractor installs any Camera Systems after the execution of this Amendment, the term shall be extended by four (4) years and shall expire on September 30, 2019.

- (b) All provisions of this Agreement which contain continuing obligations shall survive the expiration or termination of this Agreement.

5. Contractor's Responsibilities. The heading of Section 13 of the Agreement is replaced with "Contractor's Rights and Responsibilities." and the following new paragraphs are added:

- (f) Contractor's rights and remedies provided under this Agreement are in addition to any other rights and remedies provided by law; the Contractor may assert its right of recovery by any appropriate means, including but not limited to set-off, suit, withholding, recoupment or counterclaim, either during or after the performance of this Agreement.
- (g) The failure of Contractor to insist in any instance upon the strict performance of any provision of the Agreement or to exercise any right or privilege granted hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

6. City's Rights and Responsibilities. Section 14 of the Agreement is amended and supplemented with the following:

- (o) The City is required to timely process all valid Violations in accordance with the Business Rules adopted by the City as of August 14, 2012.

7. Notices. In Section 18 of the Agreement, delete the contact information listed for City and Contractor and replace with:

City of Palm Coast
160 Cypress Point Parkway, Ste. B106
Palm Coast, Florida 32137

Mr. Michael Bolton
American Traffic Solutions, Inc.
1330 West Southern Avenue
Tempe, Arizona 85282

8. Designated Representatives. Section 19(c) of the Agreement is amended to read as follows.

- (c) Until further written notice, the City's designated representative for this Agreement is:

City Manager
City of Palm Coast
160 Cypress Point Pkwy., Ste. B-106
Palm Coast, Florida 32164
Telephone Number: (386) 986-3700

With a copy to:

Purchasing Manager
City of Palm Coast
160 Cypress Point Pkwy., Ste. B-106
Palm Coast, Florida 32164

9. Compensation. Section 20 paragraphs (a) and (b) are deleted and replaced with the following new text and (c) (d) and (e) are re-lettered (b) (c) and (d) respectively:

(a) City shall pay fees based on the fee schedule as attached hereto in Exhibit B.

10. Invoice Process. Section 21 is deleted in its entirety and replaced with the following:

Section 21. Invoice Process

At the close of the calendar month, the Contractor shall supply the City a report to include a detailed listing of all payments received during the previous month. By no later than the 15th day of each month, the Contractor will remit to the City all amounts due per this Agreement for the previous month.

The City will notify the Contractor of disputed items within fifteen (15) days of receipt of the monthly report, along with an explanation of the report's deficiencies.

The City and the Contractor will make every effort to resolve all disputed items contained in the Contractor's report.

The *Florida Prompt Payment Act* shall apply.

All correspondence shall be forwarded to:

Finance Director
City of Palm Coast
160 Cypress Point Pkwy., Suite B-106
Palm Coast, FL 32164

11. Termination of Agreement. Section 22(a) of the Agreement is amended and supplemented with the following:

22(a)(6) The Agreement may be terminated in the event that Contractor otherwise violates the terms and conditions of this Agreement; or

22(a)(7) The Agreement shall terminate in the event that state legislation or a decision by a court of competent jurisdiction prohibits the enforcement of Violations using image-

capture technology. In the event of such a termination, Contractor shall cease capturing new violations but shall continue to process any violations already in the pipeline as of the date of termination. Contractor shall be entitled to its fees from the revenue from such violations; be able to recover an amount of revenue collected from the program sufficient to cover Contractor's costs in excess of fees paid to date, but the City shall in no event be responsible for the payment of any of Contractor's fees or costs in excess of net program revenue. Contractor shall remove all equipment consistent with the provisions of Paragraph 13 (iv) entirely at its own expense; or

22(a)(8) The Agreement may be terminated in the event that the Contractor fails to pay the City in accordance with this Agreement.

12. Termination without Cause. Section 24 of the Agreement is deleted in its entirety.

13. Effect of Termination. The heading of Section 25 "Payment in the Event of Termination" is deleted and replaced with Section 25 "Effect of Termination." Section 25 is further modified as follows:

Delete the existing text of Section 25 and replace with the following new text:

Upon termination of this Agreement, either for cause (except for termination by Contractor for non-payment) or because the Agreement has reached the end of its term, the Parties recognize that the City will have to process Violations in the "pipeline", and that Contractor 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:

- (i) The City shall cease using ATS' automated web-based citation processing system ("AxisTM VPS System") to capture Violations.
- (ii) Unless it is unlawful to do so, Contractor shall, for a period of ninety (90) days, 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 receive its monthly fees in accordance with Exhibit B of this Agreement.
- (iii) The City shall return or allow Contractor to recover all provided equipment within a reasonable time not to exceed ninety (90) days.
- (iv) If Contractor recovers the provided equipment, Contractor shall remove any and all equipment or other materials, including but not limited to housings, poles and Camera Systems, Contractor installed in connection with Contractor's performance of its obligations under this Agreement, at no cost to the City. Contractor shall restore the surface of City's property to substantially the same condition as such property was in immediately prior to this Agreement, except for foundation removal, which shall be left approximately flush with grade with no exposed bolts, or other hazards. Installed underground conduit and other equipment shall not be required to be removed.

In the event of termination by Contractor for non-payment of Service Fees by City, Contractor shall cease processing violations as of the date of termination stated in Contractor's notice to City.

14. Action following Termination. Section 26 Paragraphs (a) and (b) are deleted and replaced with a new paragraph: "Both parties recognize their respective obligations to mitigate any damages in the event of termination pursuant to this Agreement."

15. Insurance. Section 32 of the Agreement is amended and supplemented with the following:

32(a)(1) Workers Compensation/Employer Liability: The Contractor shall provide workers compensation insurance for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. Employers' liability insurance shall be provided by the Contractor at limits not less than the following:

\$500,000.00 Each Accident

\$500,000.00 Disease Each Employee

\$500,000.00 Disease Aggregate

16. Effect of Amendment on Agreement. 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, the Agreement, and any other contract documents, the terms of this Amendment shall prevail and control.

17. Entire Agreement. The provisions of this Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof. All representations and promises made by any party to another, whether in writing or orally, concerning the subject matter of this Amendment are merged into this Amendment. Except as amended by this Amendment, the terms of the Agreement shall continue in full force and effect.

18. Counterpart Execution. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Each party represents and warrants that the representative signing this Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Amendment.

[Signatures on the following page]

EXHIBIT A SCOPE OF SERVICES

Exhibit A is hereby replaced with the following:

SCOPE OF

SERVICES I. CONTRACTOR SCOPE OF WORK

1. CONTRACTOR IMPLEMENTATION

a. Contractor agrees to provide a camera system in accordance with State Statutes, as may be amended from time to time, to City wherein all reasonably necessary elements required to implement and operate the solution are the responsibility of Contractor, except for those items identified in Section II of this Exhibit titled "City Scope of Work". Contractor shall provide to the City access to the AxisTM VPS System, which provides the City with the ability to run and print any and all standard system reports. Contractor and City understand and agree that new or previously unforeseen requirements may, from time to time, be identified and that the parties shall negotiate in good faith to assign to the proper party the responsibility and cost for such items. In general, if work is to be performed by the City, unless otherwise specified, City shall not charge Contractor for the cost. All other in-scope work, external to City, is the responsibility of Contractor.

b. Contractor will evaluate candidate sites for additional future camera locations. Contractor will install Camera Systems at a number of intersections or grade crossing approaches to be agreed upon between Contractor and City after completion of site analyses. The City will issue a written Notice to Proceed for the installation of Camera Systems for all such Designated Intersections; subject to any necessary permitting. Contractor shall make its best efforts to install a Camera system within Thirty (30) days of permits being granted and power delivered for each Designated Approach, providing that City has received permission for all implementations in writing from any third-party sources.

c. City may not require Contractor to relocate any Camera Systems. Should Contractor, in its sole discretion, determine that a Camera System needs to be moved to a new approach, Contractor shall pay the costs to relocate the Camera System. Should it be determined new cameras are to be added, Contractor shall pay the cost of the cameras, installation, and maintenance of such additions. Should City insist on specific location all costs for that location(s) shall be borne by the City. The City is not responsible for additional operational costs.

- d. Contractor will operate each Camera System on a 24-hour basis, barring downtime for maintenance and normal servicing activities.
- e. Contractor's in-house marketing department will assist City with public information and outreach campaign strategies. In addition, depending upon the agreed-upon strategy, the parties shall negotiate regarding any extra scope expenditures for public relations consultants, advertising, or media relations.
- f. Contractor agrees to provide a secure web site (www.violationinfo.com) accessible to Owners who have received Notices of Violation or Uniform Traffic Citations by means of a Notice # and PIN, which will allow violation image and video viewing.
- g. Contractor normally shall provide technician site visits to each Camera System once per quarter or as needed to perform preventive maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and general system inspections and maintenance.
- h. Contractor shall repair a non-functional Camera System within seventy-two (72) business hours of determination of a malfunction.
- i. Contractor shall repair the AxisTM VPS System within one (1) business day from the time of the outage. Outages of City internet connections or infrastructure are excluded from this service level.
- j. For any City using Contractor lockbox or epayment services, Contractor will establish a demand deposit account bearing the title, "American Traffic Solutions, Inc. as agent for City" at U.S. Bank. All funds collected on behalf of City will be deposited in this account and the State portion of violations collected will be transferred by wire the first business day of each week to City's primary deposit account. The City's portion of violation revenue will be transferred on a monthly basis pursuant to Section 21 of this Agreement. City will identify the account to receive funds wired from U.S. Bank. City shall sign a W-9 and blocked account agreement, to be completed by City, to ensure City's financial interest in said U.S. Bank account is preserved.

2. CONTRACTOR OPERATIONS

- a. Contractor shall provide City with an automated web-based citation processing system ("AxisTM VPS System") including image processing, color printing and mailing of a Notice of Violation per chargeable event. Each Notice of

Violation shall be delivered by first class mail to the Owner within the statutory period. Contractor shall provide mailings to Owners responding to Notices of Violation identifying drivers in affidavits or non-liability or by rental car companies.

b. Contractor shall act as City's agent for the limited purpose of making an initial determination of whether Recorded Images should be forwarded to the Traffic Infraction Enforcement Officer to determine whether a Violation has occurred and shall not forward for processing those Recorded Images that clearly fail to establish the occurrence of a Violation.

c. Upon expiration of the due date of the Notice of Violation, AxisTM VPS System shall issue a Uniform Traffic Citation, which shall be delivered by certified mail to the Owner within the statutory period. The issuance of the Uniform Traffic Citation shall be based on the Traffic Infraction Enforcement Officer's approval, as provided in Section 3 City's Operations of this Exhibit A, of the Notice of Violation.

d. Contractor shall make available a form of affidavit, approved by City, to be used by an Owner who wishes to establish the existence of an exemption to a Notice of Violation or Uniform Traffic Citation as provided in Section 316.0083(1)(d)1 of the Florida Statutes, as may be amended or recodified from time to time.

e. AxisTM VPS System shall apply an electronic signature to a Notice of Violation or Uniform Traffic Citation, when authorized to do so by an approving Traffic Infraction Enforcement Officer.

f. Contractor shall obtain in-state vehicle registration information necessary to issue citations assuming that it is named as City's agent for these purposes.

g. Contractor shall seek records from out-of-state vehicle registration databases and apply records found to issue Notices of Violation and Uniform Traffic Citations for City according to each pricing option.

h. If City is unable to or does not desire to integrate Contractor data into its adjudication system, Contractor shall provide an on-line adjudication processing module, which will enable the adjudication function to review cases, related images correspondence and other related information required to adjudicate the disputed Uniform Traffic Citation. The system will also enable the adjudication staff to accept and account for payments.

i. Contractor shall provide to the City access to the AxisTM VPS System, which provides the City with the ability to run and print standard system reports.

j. If required by the City, Contractor shall provide the City with, and train a local expert witness able to testify in administrative proceedings and in court on matters relating to the accuracy, technical operations, and effectiveness of the Axis™ VPS System until judicial notice is taken.

k. In those instances where damage to a Camera System or sensors is caused by negligence on the part of City or its authorized agent(s), Contractor will provide City an estimate of the cost of repair. Upon authorization to proceed with the repairs or replacement, Contractor shall replace or repair any damaged equipment and invoice City for the pre-approved repair cost. Contractor shall bear the cost to replace or repair equipment damaged in all other circumstances.

l. Contractor shall provide a help line to help City resolve any problems encountered regarding its Red Light Camera System and/or citation processing. The help line shall function during normal business hours.

m. As part of its system, Contractor shall provide Owners with the ability to view Recorded Images of Violations involving their motor vehicles online. This online viewing system shall include a link to the Contractor payment website(s) and may offer the opportunity to download a form affidavit to establish an exemption under Section 316.0083(1)(d) of the Florida Statutes, as may be amended or recodified from time to time. Online-obtained affidavits submitted in response to a Notice of Violation or Uniform Traffic Citations shall be directed to and processed by CONTRACTOR and communicated to City via the Axis™ VPS System transfer described above.

n. Contractor shall handle inbound and outbound phone calls and correspondence from defendants who have questions about disputes, and other issues relating to citation adjudication.

o. If an owner who receives a Notice of Violation fails to pay the statutory penalty or submit an affidavit that complies with all requirements provided in Section 316.0083(1)(d) of the Florida Statutes within the time period provided in Section 316.0083(1)(b) of the Florida Statutes, the Traffic Infraction Enforcement Officer's prior approval of the Notice of Violation shall serve to authorize the issuance of a Uniform Traffic Citation without the need for further review.

II. CITY'S SCOPE OF WORK

1. GENERAL IMPLEMENTATION REQUIREMENTS

a. Within seven (7) business days of Amendment No. 1 to the Agreement,

City shall provide CONTRACTOR with the name and contact information for a project manager with authority to coordinate City responsibilities under this Agreement.

b. Within seven (7) business days of execution of Amendment No. 1 to the Agreement, City shall provide CONTRACTOR with the name and contact information for a Uniform Traffic Citation manager responsible for oversight of all Uniform Traffic Citation-related program requirements.

c. Within seven (7) business days of execution of Amendment No. 1 to the Agreement, City shall provide CONTRACTOR with the name(s), contact information, and electronic signature(s) of all Traffic Infraction Enforcement Officers authorized by City's police or sheriff's department to approve and issue Notices of Violation and Uniform Traffic Citations.

d. City shall establish a method by which an Owner who has received a Notice of Violation or a Uniform Traffic Citation may review the images and video evidencing the Violation at www.violationinfo.com free of charge. This may be at a publicly available terminal at a City facility or by appointment with the Uniform Traffic Citation manager.

e. City shall make every effort to adhere to the Project Implementation Timeline to be agreed upon between the parties.

f. City shall direct the Flagler County Sheriff's representative, the City's code enforcement representative or approved alternate to execute the Contractor DMV Subscriber Services Agreement (Schedule 2) to provide verification to the State Department of Motor Vehicles, National Law Enforcement Telecommunications System, or appropriate authority indicating that Contractor is acting as an Agent of City for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. 2721, Section (b) (1) and as may otherwise be provided or required by any provision of applicable state law.

g. City and Contractor shall complete the Project Business Process Work Flow design within thirty (30) calendar days of contract signature.

h. City shall issue all needed permits to Contractor and its subcontractors within three (3) days of plan approval.

i. City shall allow Contractor to install vehicle detection sensors in the pavement or roadways within the City's jurisdiction.

j. City shall allow Contractor to build needed infrastructure into any existing

City owned easement as necessary.

2. STREETS AND TRAFFIC DEPARTMENT OPERATIONS

- a. City will design, fabricate, install and maintain red light camera warning signs. If City cannot provide such signage, CONTRACTOR will do so and charge the costs to City.
- b. City shall provide access traffic signal phase connections according to approved design for traffic signals owned and operated by City.
- c. City shall allow Contractor to access power from existing power sources at no cost and shall allow or facilitate access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each Camera System within the City's jurisdiction. Provided, City shall not be responsible for providing access to Florida Department of Transportation equipment or infrastructure or any other jurisdiction's equipment or infrastructure.
- d. City shall require Contractor to provide installation drawings stamped by a licensed engineer and Contractor work product and drawings shall be overseen and approved by a Contractor PE. Such deliverables shall conform to applicable engineering norms and reflect the details of installation work to be completed.
- e. City shall approve or reject Contractor submitted plans within seven (7) business days of receipt and shall limit iterations to a total of one revision beyond the initially submitted plans. Total plan approval duration shall not exceed ten (10) business days.
- f. City shall not charge Contractor or its Subcontractor for building, constructions, street use and/or pole attachment permits.

3. CITY OPERATIONS.

- a. City's Traffic Infraction Enforcement Officer(s) shall process each potential violation in accordance with State Law and/or Municipality Ordinances within five (5) days of its appearance in the Law Enforcement Review Queue, using AxisTM VPS System to determine which violations will be issued as Notices of Violation. In the event that City fails to process potential Violations within this timeframe, Contractor shall not be liable for failure to issue a notice or citation within statutory timeframes, provided the Contractor has placed the Violations in the viewing queue timely.
- b. Within seven (7) days of the execution of Amendment No. 1 to the Agreement, City shall provide Contractor with a form of Uniform Traffic Citation

that complies with the provisions of Chapter 316 of the Florida Statutes, with the understanding that some modifications may be necessary to enable use with Contractor's systems.

c. City shall provide Contractor with instructions or specifications for the treatment of affidavits, with the understanding that some modifications may be necessary to ensure compatibility with Contractor's processes.

d. City workstation computer monitors for citation review and approval provide a resolution of 1280 x 1024.

e. For optimal data throughout, City workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater.

f. City shall provide signatures of all Traffic Infraction Enforcement Officers users who will review events and approve issuance of Notices of Violation and Uniform Traffic Citations on forms as provided by Contractor.

g. City shall handle inbound and outbound phone calls and correspondence from defendants who have questions about disputes, and other issues relating to citation adjudication. City may refer citizens with questions regarding Contractor or AxisTM VPS System technology and processes to websites and/or toll free telephone numbers provided by Contractor for that purpose.

4. INFORMATION TECHNOLOGY DEPARTMENT OPERATIONS

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

EXHIBIT B PRICING AND RATE SCHEDULE

1.0 Description of Pricing. Fee

From July 10, 2010 through May 31, 2012, the total fee paid to Contractor shall be \$205,041.00.

Beginning June 1, 2012, pricing and fees shall be based upon the number of cameras installed and functioning consistent with the terms of the Agreement and Amendment No. 1. The City shall be entitled to the first \$700.00 per camera, per month, on an aggregate basis, from the program's net revenue. If net revenue for a given calendar month is less than \$700.00 per camera, the City will receive the total net revenue for that month and Contractor will not receive any fees.

If the net revenue for a given calendar month exceeds the City's entitlement to the first \$700.00 per camera, then Contractor will be entitled to receive a maximum of \$4,250.00 per camera. All remaining revenue shall be payable to the City once the Contractor has reached its \$4,250.00 per camera maximum.

Example 1:

\$60,000 Net Monthly Revenue (10 functioning Cameras)

City: \$ 7,000 (\$700 x 10)

Contractor: \$42,500 (\$4250 x 10)

Total: \$49,500

City retains balance of \$10,500 (\$60,000 - \$49,500) in addition to the first \$7,000. Contractor has earned its maximum of \$4,250 per camera.

Example 2:

\$40,000 Net Monthly Revenue (10 functioning Cameras)

City: \$ 7,000 (\$700 x 10)

Contractor: \$33,000

Total: \$40,000


Since the per camera amount is less than the Contractor's maximum of \$4,250 per camera, no additional amount is payable to the City. City retains total of \$7,000.


7 3 2012

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

ATTEST:

AMERICAN TRAFFIC SOLUTIONS, LLC.


Authorized Corporate Officer

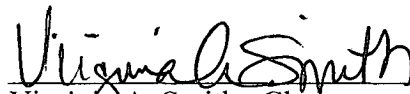
By: 
Authorized Corporate Officer

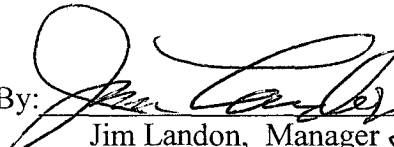
GEORGE J. HITNER
(print name)

B Michael Bolton
(print name)

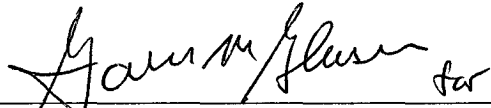
ATTEST:

CITY OF PALM COAST


Virginia A. Smith, Clerk

By: 
Jim Landon, Manager 8/17/12

Approved as to form and legality


William E. Reischmann, Jr., City Attorney

Attachments: Exhibit A Scope of Services
Exhibit B Pricing and Rate Schedule





Purchasing & Contract Management Division (PCMD)

Brian Rothwell Purchasing Manager Phone: 386-986-3731 brothwell@palmcoastgov.com	Dianne Torino Contract Manager Phone: 386-986-2339 dtorino@palmcoastgov.com	Nicole DiMattina Purchasing Technician I Phone: 386-986-3754 ndimattina@palmcoastgov.com	David Klages Purchasing Technician I Phone: 386-986-2337 dklages@palmcoastgov.com
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NOTICE TO PROCEED

DATE: August 8, 2012

TO: Mr. Michael Bolton
American Traffic Solutions, Inc.
1330 West Southern Avenue
Tempe, Arizona 85282

PROJECT: Red Light Camera Program

American Traffic Solutions, Inc., is hereby notified to commence work in accordance with Amendment No. 1 to the City of Palm Coast Services Two-Phase Agreement with American Traffic Solutions, Inc., and the approved list of new additional camera locations dated August 7, 2012.

The new additional cameras as approved in the list referenced above shall be installed and active by November 5, 2012.

THE CITY OF PALM COAST

BY: 

Jim Landon, City Manager

DATE: 8/17/12

You are required to return an acknowledged copy of the Notice to Proceed to The City of Palm Coast, Florida, Attn: Dianne Torino, Manager, Contract Administration, 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164.

ACCEPTANCE OF NOTICE

Receipt of the above Notice To Proceed is hereby acknowledged

this 14th day of August, 2012.

BY: 

TITLE: Cheryl Operating Officer

[illegible]