

June 3, 2014

VIA FEDERAL EXPRESS

Cathedral City Police Department
Charles Robinson, Captain
Operations Division
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234

RE: Professional Services Agreement

Dear Captain Robinson:

Enclosed please find a copy of the fully executed Professional Services Agreement.
Please do not hesitate to contact us with any questions or concerns.

Sincerely,


Karen Zinn
Paralegal

Encl.

STANDARD PROFESSIONAL SERVICES AGREEMENT

This Standard Professional Services Agreement which includes the attached Exhibits ("Agreement") is made by and between American Traffic Solutions, Inc., a Kansas corporation authorized to conduct business in California ("ATS"), with its principal place of business at 1330 West Southern Avenue, Tempe, Arizona, and the City of Cathedral City, a municipal corporation located in the County of Riverside, State of California ("Customer") (ATS and Customer individually, a "Party", and collectively, the "Parties"). This Agreement sets forth the terms, conditions and obligations of the Parties.

RECITALS:

WHEREAS, within the City of Cathedral City there are three (3) existing Axis™ Systems for automated traffic enforcement as described in the California Vehicle Code §21455.5 ("Systems"); and

WHEREAS, California Vehicle Code §21455.5(d) and §21455.6(b) authorize Customer to contract for the operation of the Systems subject to certain exceptions set forth therein, including but not limited to, Customer's overall control and supervision of the Systems; and

WHEREAS, ATS represents that it has the exclusive knowledge, possession and ownership of certain equipment, licenses, and processes pertaining to automated traffic enforcement systems, including the "Axis™ System" ("Axis"), and is specially trained, experienced and competent to perform the professional and technical services required by this Agreement; and

WHEREAS, Customer desires to contract with ATS, on an independent contractor basis, for the operation of the Systems for the purpose of traffic safety in compliance with the provisions of the California Vehicle Code and all other applicable laws and regulations.

The Exhibits attached hereto and incorporated herein by this reference include:

Exhibit A.....SERVICE FEE SCHEDULE

Exhibit B.....SCOPE OF WORK

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By signing below, the Parties agree to the terms and conditions of this Agreement together with the attached Exhibits. This Agreement contains the complete and exclusive statement of the agreement between the Parties regarding the rights and obligations set forth herein and replaces any prior oral or written representations or communications between the Parties regarding same. Each individual signing below represents that s/he has the requisite authority to execute this Agreement on behalf of the entity which s/he represents and that all the necessary formalities have been met.

ACKNOWLEDGED AND AGREED TO BY:

AMERICAN TRAFFIC SOLUTIONS, INC.

CITY OF CATHEDRAL CITY

By: AA
Adam E. Tuton
Executive Vice President

6/2/14
Date

By: Charles P. McLeod
Name/Title
Date

ATTEST:

By: [Signature]
Name/Title
Date

APPROVED AS TO FORM

By: [Signature]
City Attorney
Date

This Agreement is effective on the date of execution by the last signatory to this signature page ("Effective Date").

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I. DEFINITIONS

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

1. **"Approach"**: One (1) direction of travel on a road or a traffic intersection, including up to four (4) contiguous lanes controlled by up to two (2) signal phases.
2. **"Camera System" or "Camera"**: A photo-traffic monitoring device consisting of one (1) camera, strobe, and traffic monitoring device capable of accurately detecting a traffic infraction on up to four (4) contiguous lanes which records such data with one (1) or more images of such vehicle. **"Camera System"** shall, where the context requires, also include any enclosure or cabinet and related appurtenances in which the equipment is stationed.
3. **"Change Order Notice"**: Written notice from Customer requesting changes to the work required to be performed or the addition of products or services to those required to the terms of this Agreement, setting forth in reasonable detail the proposed changes.
4. **"Change Order Proposal"**: A written statement from ATS describing the cost of the changes to the work or addition of products or services requested by Customer in a Change Order Notice.
5. **"Citation"**: A citation or notice of violation or equivalent instrument issued by a competent state, county or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a violation documented or evidenced by Axis.
6. **"Fees"**: The amount payable by Customer to ATS for equipment, services, and maintenance as set forth in Exhibit "A".
7. **"Help-Line Business Hours"**: Eight (8) hours per day, Monday through Friday, excluding weekends and holidays.
8. **"Owner"**: The owner(s) of a motor vehicle as shown by the motor vehicle registration records of the motor vehicle department or the analogous agency of another state or country.
9. **"Person" or "Persons"**: Any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.
10. **"Project Time Line"**: The initial schedule and timelines required to begin the implementation of Customer's project, as mutually agreed upon by the Parties.
11. **"Violation"**: A failure to obey an applicable traffic law or regulation, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, or operating a motor vehicle without valid insurance.

II. GENERAL TERMS AND CONDITIONS

1. RECITALS:

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

2. ATS AGREES TO PROVIDE:

The scope of work identified in Exhibit B, Section 1. At any time during the term of this Agreement, Customer may request that ATS perform Extra Work for mutually agreeable additional compensation. As used herein, "Extra Work" means any work which is determined by the Customer to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be

necessary at the execution of this Agreement. ATS shall not perform, nor be compensated for, Extra Work, without written authorization from the Customer.

3. CUSTOMER AGREES TO PROVIDE:

The scope of work identified in Exhibit B, Section 2.

4. TERM:

This Agreement shall commence upon the Effective Date and shall continue for a term of three (3) years. Customer has the option to extend this Agreement for up to two subsequent one-year renewal terms by providing notice to ATS at least thirty (30) days prior to the expiration of the then-current term.

5. ASSIGNMENT:

Neither Party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. However, for business financing purposes, ATS may sell, assign, transfer or convey any interest in this Agreement in whole or in part without the written consent of the Customer, provided that ATS remains the sole entity responsible for the performance of ATS's obligations, and the sole entity with the right to enforce ATS's rights, as set forth in this Agreement. The Parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

6. SUCCESSORS, HEIRS AND ASSIGNEES:

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

7. FEES AND PAYMENT:

7.1 Customer shall pay for all equipment, services and maintenance based on the fee schedule indicated in the Exhibit "A", Service Fee Schedule 1.

7.2 ATS shall invoice the Customer on a monthly basis. Each invoice shall set forth the amount of Fees due for the performance of this Agreement by ATS during the preceding month. The amount set forth in the invoice shall be in accordance with Exhibit A. ATS shall submit invoices under this Agreement to:

Charles Robinson, Captain
Operations Division
Cathedral City Police Department
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234
Phone: 760-770-0394

7.3 Customer shall pay all Fees due ATS as set forth in each invoice within thirty (30) days of receipt of invoice by Customer, provided that the services reflected in the invoice were in accordance with the terms of this Agreement, and that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement.

7.4 Late payments are subject to interest calculated at 1.5% per month on open balances. If Customer is more than sixty (60) days past due on payments to ATS, ATS may exercise any remedies for non-payment of Service Fees by Customer subject to the terms and conditions of this Agreement.

7.5 ATS' Fees will be fixed for the first two (2) calendar years, or any portion thereof, of the first term; thereafter, ATS' Fees will increase in January of each year by the greater of (a) two percent (2%)

or (b) the percentage change in the Consumer Price Index for All Urban Consumers ("CPI-U"), US City Average over the previous twelve-month period.

8. INFORMATION AND DOCUMENTS:

- 8.1 ATS will comply with reasonable requests for information received by ATS through operation of the Systems. ATS reserves the right to assess a reasonable fee for such services based on the actual cost incurred by ATS to comply with said requests.
- 8.2 All plans, studies, documents and other writings prepared by and for ATS, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except ATS's internal working notes, internal documents, and proprietary information, shall become the property of the Customer upon payment to ATS for such work, and the Customer shall have the sole right to use such materials in its discretion without further compensation to ATS or to any other party. ATS shall provide, at no additional cost to Customer, such reports, plans, studies, documents and other writings to the Customer upon written request.
- 8.3 ATS shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the Customer for a minimum period of three years, or for any longer period required by law, from the date of final payment to ATS pursuant to this Agreement.
- 8.4 With the exception of personal identifying information received in connection with Violations by an Owner or other such Persons, ATS shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- 8.5 Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Customer's City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the Customer for inspection at the Customer's address indicated for receipt of notices in this Agreement when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at ATS's address indicated for receipt of notices in this Agreement. Where the Customer has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ATS's business, the Customer may, by written request of any of the above-named officers, require that custody of the records be given to the Customer and that the records and documents be maintained at the Customer's address indicated for receipt of notices in this Agreement. Access to such records and documents in Customer's custody shall be granted to any party authorized by ATS, ATS's representatives, or ATS's successor-in-interest.

9. CONFIDENTIAL INFORMATION:

- 9.1 No information given by ATS to Customer will be of a confidential nature, unless specifically designated in writing as proprietary and confidential by ATS. However, nothing in this paragraph shall be construed contrary to the terms and provisions of any "Open Records Act" or similar laws, insofar as they may be applicable.
- 9.2 With the exception of ATS's proprietary information, all ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to ATS in connection with the performance of this Agreement shall be held confidential by ATS. Such materials shall not, without prior written consent of the Customer, be used by ATS for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to ATS which is otherwise known to ATS or is generally known, or has become known, to the related industry shall be deemed confidential.

- 9.3 ATS shall not use Customer's insignia, name, trademarks, photographs, or any other identifying representation in any publication, advertisement, or other medium without the prior written consent of the Customer.

10. OWNERSHIP OF SYSTEM:

It is understood by the Parties that the Systems are and shall remain the sole property of ATS, unless separately procured from ATS through a lease or purchase transaction. The software, workflow processes, user interface, designs, know-how, and other technologies provided by ATS as part of the Service are the proprietary property of ATS, and all other right, title and interest in and to such items, including all associated intellectual property rights, remain only with ATS. ATS reserves all rights unless expressly granted in this agreement.

11. INDEMNIFICATION:

- 10.1 Indemnification by ATS. Subject to Section 10.3, ATS agrees to defend, indemnify, and hold harmless the Customer and its managers, officers, directors, employees, representatives and successors, permitted assignees and all Persons acting by, through, under, or in concert with them (individually a "Customer Party" and collectively, the "Customer Parties") against any and all claims, actions, proceedings, demands, liabilities, obligations, losses, damages, penalties and judgments, including reasonable attorneys' fees incurred in connection therewith (collectively, "Claims"), which may be imposed on or incurred by any Customer Party arising out of the negligence or willful misconduct of ATS, its employees, contractors or agents, except to the extent arising out of the sole negligence or willful misconduct of any Customer Party.
- 10.2 Indemnification by Customer. Subject to Section 10.3, the Customer hereby agrees to defend, indemnify, and hold harmless ATS and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, representatives and successors, permitted assignees and all Persons acting by, through, under or in concert with them (individually an "ATS Party" and collectively, the "ATS Parties") against any and all Claims which may be imposed on or incurred by any ATS Party arising out of the negligence or willful misconduct of the Customer, its employees, contractors or agents, except (i) to the extent arising out of the sole negligence or willful misconduct of any ATS Party; (ii) any Claim challenging the Customer's use of the Systems or Axis System, or any portion thereof; (iii) any Claim challenging the validity of the results of the Customer's use of the Systems or Axis System, or any portion thereof; or (iv) any Claim challenging the validity of the Citations issued, prosecuted and collected as a result of the Customer's use of the Systems or Axis System, or any portion thereof.
- 10.3 Indemnification Procedures. In the event of any Claim in respect of which any Party hereto seeks indemnification from the other, the Party seeking indemnification (the "Indemnified Party") shall give the Party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased loss, liability, or other actual prejudice directly caused by such failure. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim and no Party shall have the right to enter into any settlement agreement that materially affects the other Party's material rights or material interests without such Party's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 10.4 Customer does not, and shall not, waive any rights that it may have for indemnity because of the acceptance by the Customer, or the deposit with the Customer, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

11. INSURANCE:

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

11.1.1 Commercial General Liability Insurance including coverage for bodily injury, property damage, premises and operations, products/completed operations, personal and advertising injury, and contractual liability with a combined single limit of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 completed operations aggregate.

11.1.2 Workers' Compensation as required by applicable state law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident. ATS shall at all times maintain Worker's Compensation insurance coverage in the amounts required by law, but shall not be required to provide such coverage for any actual or statutory employee of Customer.

11.1.3 Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by ATS with a minimum \$1,000,000 per occurrence combined single limit bodily injury and property damage.

11.1.4 Professional Liability Coverage to insure against claims alleging negligent acts, errors or omissions which may arise from ATS's operations under this Agreement with a minimum of \$1,000,000 per claim, and \$2,000,000 aggregate.

11.1.5 Customer and its officers and employees, shall be named as additional insured on the comprehensive general liability and auto liability policies provided by ATS under this Agreement.

11.1.6 ATS shall require any subcontractors doing work under this Agreement to provide and maintain the same types of insurance coverage, and the same policy limits, that ATS is required to provide by this Agreement, including endorsements.

11.1.7 The comprehensive general liability, and auto liability, policies shall be primary insurance as respects Customer, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the Customer, including any self-insured retention the Customer may have shall be considered excess insurance only and shall not contribute with it.

11.1.8 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Customer, its elected or appointed officers, officials, employees, agents and volunteers.

11.1.9 ATS shall have a contractual blanket waiver of subrogation on all of its policies which shall effectively waive the insurer's right of subrogation against the Customer, its elected or appointed officials, officers, employees and agents.

11.1.10 Certificates showing ATS is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to the Customer within thirty (30) calendar days after the Effective Date of this Agreement.

11.1.11 Customer will be notified of any cancellation, reduction, or other change in coverage. ATS shall forthwith obtain substitute insurance in the event of a cancellation. It shall be ATS's responsibility to ensure that Customer receives timely written notice of any cancellation, reduction, or other change in coverage of insurance that is required by this Agreement.

11.1.12 The Customer shall be responsible for vehicle insurance coverage on any vehicles driven by Customer employees. Coverage will include liability and collision damage.

12. LAW TO APPLY AND VENUE:

This Agreement shall be construed under and in accordance with the laws of the State of California. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

13. CHANGE ORDERS:

The Customer may request the addition of any products or services that ATS provides or other changes to the scope of work to be performed under this Agreement by providing a Change Order Notice to ATS. Upon ATS' receipt of the Change Order Notice, ATS shall deliver a written statement describing the cost including time and materials, to the Customer (the "Change Order Proposal"). Following the Customer's receipt of the Change Order Proposal, the Parties shall negotiate in good faith regarding a plan and schedule for implementation of the proposed changes; the time, manner and amount of payment or price increases and any other matters relating to the proposed changes. In the event that any proposed change involves only the addition of equipment or services as currently included in Exhibit A of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit A shall govern. Any failure of the Parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and shall not invalidate the procurement process or this Agreement nor relieve or release ATS or the Customer of any of its obligations under this Agreement. Any Change Order Proposal mutually agreed to by the Parties shall be set forth in a writing executed by both Parties.

14. TERMINATION:

14.1 This Agreement may be terminated:

(i) By mutual written consent of the Parties; or

(ii) For Cause, by either Party, where the other Party fails in any material way to perform its obligations under this Agreement. Termination under this subsection for any reason is subject to the condition that the terminating Party notifies the other Party in writing of its intent to terminate, stating with reasonable specificity the grounds therefore, and in the event the reason for termination under this subsection is for default, the other Party fails to cure the default within fourteen (14) calendar days after receiving said written notice.

(iii) Without cause, by Customer, upon sixty (60) calendar days' written notice of termination. Upon termination under this subsection, ATS shall be entitled to compensation for services performed up to the effective date of termination. In the event any Cameras are installed after the date of this Agreement which are made subject to this Agreement ("New Camera(s)"), then the City shall pay ATS an early termination fee based on ATS' unamortized equipment and installation costs for the New Cameras, which shall be calculated at \$2,000 per camera for each month remaining in the then-current term.

14.2 Upon termination of this Agreement, the Parties recognize that the Customer will have to process Violations in the "pipeline", and that ATS accordingly must assist the Customer in this regard. Accordingly, the Parties shall take the following actions and shall have the following obligations, which survive termination during the wind-down period:

(i) The Customer shall cease using any automated traffic enforcement system that Customer has a right to use solely pursuant to this Agreement to capture Violations.

(ii) Unless it is unlawful to do so, ATS shall, for a period of ninety (90) days, continue to process all images taken by the Customer before termination and provide all services associated with processing in accordance with this Agreement.

(iii) The Customer shall return or allow ATS to recover all provided equipment within a reasonable time not to exceed ninety (90) days.

(iv) If ATS recovers the provided equipment, ATS may invoice the Customer for such costs.

15. AMENDMENTS TO THE AGREEMENT:

This Agreement may be modified or amended only by a written instrument signed by both Parties.

16. LEGAL CONSTRUCTION:

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein. This Agreement shall be enforced to the maximum extent possible so as to give effect to the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable herein.

17. PRIOR AGREEMENT SUSPENDED:

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior or contemporaneous understanding, written or oral, between the Parties respecting the rights and obligations of the Parties set forth in this Agreement.

18. NO AGENCY:

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

19. FORCE MAJEURE:

Neither Party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

20. TAXES:

At the time of execution of this Agreement, it is the understanding of the Parties that ATS' services provided hereunder are not subject to federal, state or local taxes including but not limited to excise, sales, use, property or similar taxes or charges. The Customer agrees to reimburse ATS for any such tax or charge if charged against ATS. If incurred, such taxes or charges may be invoiced at any time.

21. NON-LIABILITY OF CUSTOMER OFFICERS AND EMPLOYEES:

No officer or employee of the Customer shall be personally liable to ATS, or any successor in interest, in the event of any default or breach by the Customer or for any amount which may become due to ATS or to its successor, or for any breach of any obligation of the terms of this Agreement.

22. LITIGATION EXPENSES AND ATTORNEYS' FEES:

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

23. CUMULATIVE REMEDIES:

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

24. COMPLIANCE WITH LAWS, LICENSING AND PERMIT REQUIREMENTS:

ATS shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of ATS and/or its employees, officers, or board members. ATS represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City of Cathedral City business license.

25. LABOR LAWS:

All work or services performed within the State of California pursuant to this Agreement by contractor, contractor's employees and independent contractors, or contractor's subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any other person not lawfully permitted to perform said work or services in the State of California or the United States of America. Documentation must be promptly submitted to the Customer at any time, at the request of the Customer, for the purpose of determining whether or not the work or services provided pursuant to this contract are being provided in compliance with this section.

26. WARRANTY:

ATS warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services. The performance of services by ATS shall not relieve ATS from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Customer, when such inaccuracies are due to the fault of ATS.

27. CONFLICTS OF INTEREST:

ATS (including principals, associates and professional employees) covenants and represents that it does not have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source or income, interest in real property or investment which would be affected in any manner or degree by the performance of ATS's services hereunder. ATS further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

28. WAIVER:

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

29. EXECUTION IN COUNTERPARTS:

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the Parties when at least a copy hereof shall have been signed by both Parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

30. NOTICES:

Any notices or demand which, under the terms of this Agreement or under any statute, must or may be given or made by ATS or Customer shall be in writing and shall be given or made by personal service, FedEx, or by United States certified or registered mail to the Parties at the following address. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit with FedEx or in the United States mail.

Charles Robinson, Captain
Operations Division
Cathedral City Police Department
68-700 Avenida Lalo Guerrero
Cathedral City, California 92234

American Traffic Solutions, Inc.
1330 West Southern Avenue
Tempe, Arizona 85282
Attn: Legal

EXHIBIT A
SERVICE FEE SCHEDULE

1.0 Description of Pricing

Fees are based on per camera and are as follows:

Fees:

\$3,500 per camera/per month for any Cameras installed prior to the Effective Date of this Agreement

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

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

- 2.0 Optional Annual Training Conference:** ATS provides a comprehensive user training conference (the "Conference") for active photo traffic safety and enforcement clients. The Conference's main focus is training of the system. Core elements include training on implementation methods and improvements, operational monitoring and improvements, statistical analysis, public relations and technology assessment. The sessions include participation by industry members, industry speakers and panel discussions. The Conference will be held in the Phoenix Metropolitan area. Customer shall be invoiced \$100 per month per attendee and can assign up to three (3) project team members to attend the Conference each year. The \$1,200 fee per attendee will cover travel, accommodations and all related Conference fees.

Check to select the number of Attendees:

- | | |
|--|---|
| <input type="checkbox"/> Three Attendees | <input type="checkbox"/> One Attendee |
| <input type="checkbox"/> Two Attendees | <input type="checkbox"/> None; Customer opts not to attend the Annual Training Conference |

- 3.0 Enhanced Public Relations Services:** ATS may provide additional public relations services upon written request by Customer. These services may include advertising, media relations, and public relations consultants. The fee for such services shall be mutually agreed upon by the Parties in writing based on the scope of the public relations services to be provided.
- 4.0 Video Retrieval Fee:** ATS shall retrieve up to one (1) 15-minute video per week at no cost to Customer. For all additional video retrievals, the fee shall be mutually agreed upon based on the scope of the request.
- 5.0 California Vehicle Code:** Notwithstanding anything to the contrary, ATS shall not receive payment or compensation from any source based on the number of citations generated, or as a percentage of the revenue generated, as a result of operation of any automated traffic enforcement system for Customer, in accordance with the California Vehicle Code §21455.5(h)(1).

EXHIBIT B
SCOPE OF WORK

1. ATS SCOPE OF WORK

1.1 ATS IMPLEMENTATION

- 1.1.1 ATS shall provide the services to the Customer as outlined in this Agreement, excluding those items identified in Section 2 titled "Customer Scope of Work". ATS and the Customer understand and agree that new or previously unforeseen requirements may, from time to time, be identified and that the Parties shall negotiate in good faith to assign the proper Party the responsibility and cost for such items. In general, if work is to be performed by the Customer, unless otherwise specified, the Customer shall not charge ATS for the cost.
- 1.1.2 ATS shall provide consulting assistance to the Customer, if requested, regarding Site Selection Analysis of any new candidate sites.
- 1.1.3 ATS shall operate each Camera System on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (i.e., acts of God, etc.).
- 1.1.4 ATS' in-house Communications Department shall, as requested by Customer, assist Customer with public information content and outreach campaign strategies. Depending upon the mutually agreed-upon strategy, ATS may provide public relations consultants, advertising, or media relations for an additional fee as described in Exhibit A, Service Fee Schedule, if approved by Customer in advance in writing.
- 1.1.5 ATS shall provide a secure website (www.violationinfo.com) accessible to Owners who have received Notices of Violation by means of a Notice # and PIN, which will allow Violation image and video viewing. As part of the secure website, ATS will continue to provide a Frequently Asked Questions (F.A.Q.) page. ATS will operate this secure website on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (i.e., acts of God, etc.).
- 1.1.6 ATS shall provide technician site visits to each Camera System, as needed to perform preventive maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and, general system inspections and maintenance.
- 1.1.7 ATS shall take reasonable best efforts to repair a non-functional Camera System within seventy-two (72) business hours of determination of a malfunction, except for those causes of Force Majeure as outlined in the General Terms and Conditions of this Agreement.
- 1.1.8 For any customer using ATS lockbox or e-payment services, ATS shall establish a dedicated demand deposit account.

1.2 ATS OPERATIONS

- 1.2.1 If a warning period is required, ATS shall provide the Customer with a warning period that confirms to the requirements of applicable law.
- 1.2.2 ATS shall provide the Customer with an automated web-based Citation processing system (Axisis) including image processing, first notice printing and mailing of Citation or notice of violation per chargeable event and a mailing of a text only reminder notice, a hearing scheduled letter, a hearing denied letter, an insufficient information letter, and a dismiss letter. Each Citation or notice of violation shall be delivered by First Class mail to the Owner within the statutory period. In the case of a transfer of liability by the Owner,

ATS may also mail a Citation or notice of violation to the driver identified in the affidavit of non-liability or by rental car companies. Costs of certified mailings are priced separately and paid by the Customer for additional compensation to ATS as indicated in Exhibit A.

- 1.2.3 ATS shall apply an electronic signature to the Citation when authorized to do so by an authorized law enforcement officer.
- 1.2.4 ATS may, subject to Customer's approval, seek records from out-of-state vehicle registration databases to use such records to assist with issuing Notices of Violation. Subject to Customer's approval, Notices of Violation may be mailed to the address of the Owner obtained through the DMV, obtained through the National Change of Address (NCOA) database provided by the United States Postal Service, or obtained through other means approved by Customer. ATS reserves the right to charge Customer for out-of-state DMV look-ups. All information received by ATS shall be held confidential, shall only be provided to authorized government agencies and law enforcement agencies in connection with automated traffic enforcement, shall not be used for any purpose unrelated to automated traffic enforcement, and shall be destroyed in a manner that will preserve the confidentiality of any person included in the record or information within six months from the date the information was first received, or until final disposition of the citation, whichever date is later. Notwithstanding the aforesaid, the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.
- 1.2.5 The Axis System shall provide the Customer with the ability to run and print standard system reports. For any reports not readily available from the Axis System, ATS shall provide a cost estimate to the Customer for providing such services.
- 1.2.6 ATS will repair, as necessary, all Camera Systems. Customer shall reimburse ATS for the cost of repair for any damage, other than normal wear and tear or routine maintenance, to the Camera System(s) except to the extent the damage is caused by the negligence, recklessness or willful misconduct on the part of ATS or its employees, agents, or contractors.
- 1.2.7 ATS shall provide a help-line to assist the Customer with resolving any problems encountered regarding its Camera System and/or Citation processing. The help-line shall function during normal business hours.
- 1.2.8 As part of its Camera System, ATS shall provide violators with the ability to view Violations online. This online viewing system shall include a link to the ATS payment website(s) and may offer the opportunity to download an affidavit of non-liability online. Online obtained affidavits, if approved by the Court, may be directed to and processed by ATS and communicated to the Court via the Axis transfer described above.
- 1.2.9 For video retrievals requested by Customer unrelated to enforcement of a Violation, including but not limited to investigation of a criminal matter, ATS will provide up to one (1) video retrieval per week at no cost to Customer.

1.3 CALIFORNIA VEHICLE CODE

- 1.3.1 Notwithstanding anything to the contrary, and in accordance with California Vehicle Code §21455.5(c)(1), it shall be Customer's duty to develop uniform guidelines for screening and issuing violations and for the processing and storage of confidential information ("Guidelines"), and to establish procedures to ensure compliance therewith. ATS shall not perform this agreement in any manner inconsistent with Customer's Guidelines, and the Parties hereto expressly acknowledge and agree that Customer's Guidelines shall be paramount and superseding.
- 1.3.2 Notwithstanding anything to the contrary, ATS shall not install any automated traffic enforcement system unless the Customer's City Council has made and adopted a finding

of fact establishing that the system is needed at the specific location for reasons related to safety as required by the California Vehicle Code §21455.5(c)(2)(A). Furthermore, ATS shall not install any automated traffic enforcement systems unless Customer and ATS agree in a writing signed by both Parties.

- 1.3.3 Notwithstanding anything to the contrary, and in accordance with the California Vehicle Code §21455.5(c)(2)(D), ATS shall not regularly inspect, nor maintain the automated traffic enforcement warning signs which are required to be posted by the California Vehicle Code.
- 1.3.4 Notwithstanding anything to the contrary, and in accordance with the California Vehicle Code §21455.5(c)(2)(E), ATS shall not oversee the establishment or change of signal phases and the timing thereof.
- 1.3.5 Notwithstanding anything to the contrary, and in accordance with the California Vehicle Code §21455.5(c)(2)(F), ATS shall not maintain the controls necessary to ensure that only those citations that have been reviewed and approved by law enforcement are delivered to violators. Furthermore, ATS shall not deliver any citation to a violator that has not been reviewed and approved by authorized law enforcement personnel.

2. CUSTOMER SCOPE OF WORK

2.1 GENERAL IMPLEMENTATION REQUIREMENTS

- 2.1.1 The Customer shall be responsible for notifying ATS of any proposed legislative and/or ordinance changes in writing within a reasonable time after passage of any such proposed legislation. ATS will not be responsible for any damages if not notified within the required time.
- 2.1.2 The Customer is responsible for all final jurisdictional issues.

2.2 STREETS AND TRAFFIC DEPARTMENT OPERATIONS

- 2.2.1 Customer understands that during the term of this Agreement ATS is not required to move or remove an installed Camera System, including imbedded sensors, that is subject to this Agreement without a separately executed written agreement between Customer and ATS, regardless of whether such action is necessary for road construction, improvements, or other such projects.
- 2.2.2 Customer will design, fabricate, install and maintain new and existing red light camera warning signs.
- 2.2.3 Customer understands that proper operation of a Camera System requires access to traffic signal phase connections. Customer, therefore, shall provide ATS reasonable access to traffic signal phase connections according to approved design. When traffic signal phase connections are not under the jurisdiction of the Customer, it shall be the Customer's responsibility to negotiate agreements with the owner or maintaining agency of the traffic signal controller and infrastructure in order to provide the required access to said phase connections and infrastructure and any reasonable costs associated with needed agreements shall be funded by the Customer.
- 2.2.4 Customer understands that proper operation of a Camera System sometimes requires attachment of certain items of detection equipment to existing signal masts, mast arms and / or other street furniture. Customer, therefore, shall provide ATS access to attach certain items of detection equipment to existing signal masts, mast arms and / or other street furniture for the proper operation of a Camera System.
- 2.2.5 Customer shall allow ATS to access power from existing power sources at no cost and shall allow or facilitate access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each Camera System within the Customer's jurisdiction. If

these items are not made available, the costs of any additional conduit or power infrastructure needed to support installation of the Camera System shall be funded by Customer. If existing power sources are not immediately available, Customer will allow ATS to use temporary power until the existing power is established. In situations where it is not possible to obtain electrical power from a pre-existing source, Customer shall bear the reasonable costs (or reimburse ATS) for obtaining/routing power. When access to power facilities is not under the jurisdiction of the Customer, it shall be the Customer's responsibility to negotiate any necessary agreements with the owner or maintaining agency of the power facility and infrastructure in order to provide required access to said power facilities and infrastructure. Any reasonable costs associated with the needed agreements shall be funded by the Customer

2.3 LAW ENFORCEMENT DEPARTMENT OPERATIONS

Customer shall continue to process each potential Violation in accordance with State Law and/or Municipality Ordinances within three (3) business days of its appearance in the Law Enforcement Review Queue, using Axis to determine which Violations will be issued as Citations or notices of violation. In the event that Customer fails to process potential Violations within this timeframe, ATS shall not be liable for failure to issue a notice or citation within statutory timeframes.

2.4 COURT OPERATIONS

- 2.4.1 Customer shall continue to provide a judge or hearing officer and court facilities to schedule and hear disputed Citations.
- 2.4.2 Customer shall approve or reject any changes to the Citation or notice of violation form within fifteen (15) days of receipt from ATS. Subject to Customer's approval, ATS reserves the right to make non-substantive formatting or incidental changes to the Citation or notice of violation without approval by Customer.
- 2.4.3 Customer shall continue to handle inbound and outbound phone calls and correspondence from defendants who have questions about disputes and other issues relating to Citation adjudication. Customer may refer citizens with questions regarding ATS or Axis technology and processes to websites and/or toll free telephone numbers provided by ATS for that purpose.
- 2.4.4 Any potential, one time, direct costs to ATS to develop an interface between the Court system will be initially paid by ATS and any such cost will be reimbursed to ATS by Customer in addition to the Fees in Exhibit A, Service Fee Schedule 1.

2.5 INFORMATION TECHNOLOGY DEPARTMENT OPERATIONS

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