

RESOLUTION No. 10-1950

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT PIGGYBACKING OFF A COMPETITELY BID CONTRACT BY AND BETWEEN AMERICAN TRAFFIC SOLUTIONS, INC., AND THE TOWN OF SURFSIDE ATTACHED AS EXHIBIT "A" AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO DO ALL THINGS NECESSARY TO IMPLEMENT THE TERMS OF THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town Commission of the Town of Surfside, Florida wishes to enter into an Agreement with American Traffic Solutions, Inc. by piggybacking off a competitively bid contract awarded by the City of Aventura, Florida to implement and operate a red light camera program.

WHEREAS, the State of Florida created the Mark Wandall Traffic Safety Program authorizing municipalities to use traffic infraction detectors to identify a motor vehicle that fails to stop at a traffic control signal steady red light; authorizing issuance of a citation for the violation and notification to registered owner; and providing for collection and distribution of penalties.

WHEREAS, the Town has reviewed crash report analysis and results of temporary camera installations at intersections throughout the Town of Surfside. The analysis has shown that cameras are warranted at five or six locations and now wishes to enter into an agreement with ATS (American Traffic Solutions) based on similar terms and conditions negotiated with the City of Aventura and the Village of Bal Harbor.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION  
OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:**

**Section 1. Recitals.** That the above and foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. Authorization to enter into an agreement.** The Town Commission hereby authorizes the Town Manager to enter into the Agreement by and between American Traffic Solutions, Inc and the Town of Surfside attached as Exhibit "A".

**Section 3. Implementation.** The Town Manager and the Town Attorney are hereby authorized to take any and all action necessary to implement this Resolution and Agreement in accordance with the terms, conditions and purposes of this Resolution and Agreement.

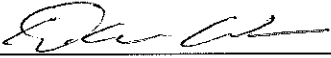
**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 10 day of August, 2010.

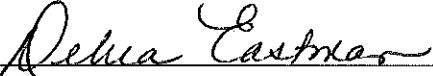
Motion by Commissioner Kopelman, second by Commissioner Olichyk.

FINAL VOTE ON ADOPTION

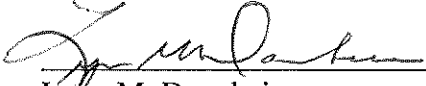
Commissioner Michael Karukin	<u>no</u>
Commissioner Edward Kopelman	<u>yes</u>
Commissioner Marta Olchyk	<u>yes</u>
Vice Mayor Joseph Graubart	<u>yes</u>
Mayor Daniel Dietch	<u>yes</u>

  
\_\_\_\_\_  
Daniel Dietch, Mayor

ATTEST:

  
\_\_\_\_\_  
Debra E. Eastman, MMC  
Town Clerk

APPROVED AND TO FORM AND  
LEGAL SUFFICIENCY FOR  
THE TOWN OF SURFSIDE ONLY:

  
\_\_\_\_\_  
Lynn M. Dannheisser  
Town Attorney



## I. DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings provided below:

1. "**Approach**" means one (1) direction of travel or one (1) or more lanes on a road or a traffic intersection up to four (4) contiguous lanes controlled by up to two (2) signal phases.
2. "**Camera System**" means a photo-traffic monitoring device consisting of one (1) rear camera, strobe, and traffic monitoring device capable of accurately detecting a Violation on up to four (4) contiguous lanes which records such data with one (1) or more images of the rear of the vehicle involved in the Violation, the vehicle's license tag, and the traffic signal being violated, together with streaming video of the Violation. "**Camera System**" shall also, where the sense requires, include any enclosure or cabinet and related appurtenances in which the Axis System is stationed.
3. "**Notice of Violation**" means a written notice of a *Violation* or equivalent instrument issued by or on behalf of *Customer* relating to a *Violation* documented or evidenced by the Axis System.
4. "**Owner**" means 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.
5. "**Person**" or "**Persons**" means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.
6. "**Project Time Line**" means initial schedule and timelines required to begin the implementation of *Customer's* project.
7. "**Project Business Process Work Flow**" means initial schedules and timelines required to begin the implementation of *Customer's* project.
8. "**Recorded Image**" means an image digitally recorded by a "**Camera System**".
9. "**Traffic Control Signal**" means a traffic control device that displays alternating red, yellow and green lights intended to direct traffic when to stop at or proceed through an intersection.
10. "**Traffic Infraction Enforcement Officer**" means an employee of *Customer's* police or sheriff's department who meets the qualifications of Section 316.640(5)(a) of the Florida Statutes.
11. "**Uniform Traffic Citation**" means a uniform traffic citation as described in Section 316.650 of the Florida Statutes.
12. "**Violation**": Means a violation of Section 316.074(1) or Section 316.075(1)(c)1 of the Florida Statutes involving a motor vehicle.
13. "**VIMS (Violation Incident Monitoring System) Analysis**": A statistical assessment of violations rates at suspected problem intersections and approaches to determine the need for an intersection safety camera system.

## II. GENERAL TERMS AND CONDITIONS

1. **ATS AGREES TO PROVIDE:** The scope of work identified in Exhibit "B," Section 1.
2. **CUSTOMER AGREES TO PROVIDE:** The scope of work identified in Exhibit "B," Section 2.
3. **TERM AND TERMINATION:**
  - 3.1 The term of this Agreement shall be for three (3) years beginning on the date of first issued **Notice of Violation** from the last installed Camera System in the first authorized phase of Camera Systems (the "Start Date") and may be automatically extended for

successive three (3) year periods. However, **Customer** may terminate this **Agreement** at the expiration of any term by providing written notice of its intent not to extend the **Agreement** ninety (90) days prior to the expiration of the current term.

- 3.2 **Termination for Cause:** Either party shall have the right to terminate this **Agreement** immediately by written notice to the other if: (i) state or federal statutes are amended so as to prohibit the operation of a TCSP by the Customer; or (ii) a court having jurisdiction over the Customer rules or declares that the Act is invalid, in whole or material part; or (iii) a determination by a court of competent jurisdiction or other applicable dispute resolution forum that Vendor has infringed upon a third party's patent, trademark, trade secret or other intellectual property; or (iv) the other party commits a material breach of any of the provisions of this **Agreement**; or (v) Vendor's non-payment of revenues to Customer as required by this **Agreement**. In the event of a termination due to this Section, Customer shall be relieved of any further obligations to Vendor other than as specified herein. Each party shall have the right to remedy the cause for termination within forty-five (45) calendar days (or within such other time period as Customer and Vendor shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

The right to terminate this **Agreement** given in Section 3.2 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this **Agreement**.

- 3.3 Procedures Upon Termination. This section 3.3 shall apply to the expiration of this **Agreement** and to the early termination of the **Agreement**. The termination of this **Agreement** shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in this Section 3.3, upon the termination of this **Agreement**, all of the provisions of this **Agreement** shall terminate and:
- 3.4 Vendor shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the TSCP, (ii) promptly deliver to the Customer any and all Proprietary Property of the Customer provided to Vendor pursuant to this **Agreement**, (iii) promptly deliver to the Customer a final report to the Customer regarding the collection of data and the issuance of Notices of Infraction in such format and for such periods as the Customer may reasonably request, and which final report Vendor shall update or supplement from time to time when and if additional data or information becomes available, (iv) provide Customer all data pertaining to outstanding Civil Fee payments due and owing to Customer and potential payments due to Vendor, (v) provide Customer with its proposed schedule for the removal of the Vendor's equipment, at no cost to the Customer, from the Customer and once such schedule is approved by Customer Vendor shall remove such pursuant to the schedule; and (vi) provide such assistance as the Customer may reasonably request from time to time in connection with prosecuting and enforcing Notices of Infraction issued prior to the termination of this **Agreement**.
- 3.5 The Customer shall (i), except for pending enforcement cases, immediately cease using the TSCP, accessing the Vendor System and using any other Intellectual Property of Vendor, and (ii) promptly deliver to Vendor any and all Proprietary Property of Vendor provided to the Customer pursuant to this **Agreement**, other than such equipment installed by Vendor along the roadways for the enforcement program.
- 3.6 Unless the Customer and Vendor have agreed to enter into a new agreement relating to the TSCP or have agreed to extend the Term of this **Agreement**, Vendor shall remove any and all Equipment or other materials of Vendor installed in connection with Vendor's performance of its obligations under this **Agreement**, at no cost to Customer, including but not limited to housings, poles and camera systems, and Vendor shall restore the Designated Intersections to substantially the same condition such Designated Intersections were in immediately prior to this **Agreement**, except for foundation removal, which shall be left approximately flush with grade and no exposed rebar, steel or other

hazards, at no cost to Customer pursuant to the schedule agreed upon by the parties in section 3.4.

**4. ASSIGNMENT:**

Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, the Customer hereby acknowledges and agrees that the execution (as outlined in Exhibit "E"), delivery and performance of ATS's rights pursuant to this Agreement shall require a significant investment by ATS, and that, in order to finance such investment, ATS may be required to enter into certain agreements or arrangements ("Financing Transactions") with equipment lessors, banks, financial institutions or other similar persons or entities (each, a "Financial Institution" and collectively, "Financial Institutions"). The Customer hereby agrees that ATS shall have the right to assign, pledge, hypothecate or otherwise transfer ("Transfer") its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financing Transaction between ATS and any such Financial Institution subject to the Customer's prior written approval, which approval shall not be unreasonably withheld or delayed

**5. REPRESENTATIONS AND WARRANTIES:**

Vendor hereby warrants and represents that:

- 5.1 It has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; and,
- 5.2 To the extent legally required, Vendor has all ownership rights, licenses, or other required authority to use the software and hardware it installs to perform the services under this Agreement.
- 5.3 Professional Services. Vendor hereby warrants and represents that any and all services provided by Vendor pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Vendor System, subject to applicable law, in compliance with all specifications provided to Vendor by the City.

City hereby warrants and represents that:

- 5.4 The City hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; provided that Vendor acknowledges that the initial program is premised on being consistent with the requirements and authority of state law, applicable attorney general opinions, and the City's Ordinance, and City cannot and does not warrant the outcome of any judicial or legislative action that may be taken affecting these authorities subsequent to the execution of this Agreement.
- 5.5 Professional Services. The City hereby warrants and represents that any and all services provided by the City pursuant to this Agreement shall be performed in a professional and workmanlike manner in City's governmental capacity.

**6. FEES AND PAYMENT:**

- 6.1 Customer shall pay for all equipment, services and maintenance based on the fee schedule indicated in the Exhibit "A", Schedule 1 ("Fees").
- 6.2 Customer shall pay all Fees due ATS based upon invoices from the proceeding month within thirty (30) days of submission. Late payments are subject to interest calculated at 1.5% per month on open balances.
- 6.3 Unit prices will be fixed for the first three (3) years of the first term and on the anniversary date of the term unit prices may increase by Consumer Price Index (CPI), according to the average change during the prior twelve (12) months in the CPI for All Urban Consumers (CPI-U) for U.S. Customer average as published by the Bureau of Labor Statistics, U.S. Department of Labor. The City and ATS will

review the CPI at end of term, and will negotiate in good faith on any increase that may occur.

- 6.4 During the term of the contract, payments by the Customer may be made to ATS under a Flexible Payment Plan. Under the Flexible Payment Plan, the Customer may defer certain payments to ATS until the Customer has collected sufficient funds pursuant to the terms of the contract. If, at the end of the term of the contract, sufficient funds have not been collected by the Customer to pay the balance then due to ATS, ATS agrees to waive its right to recovery of any outstanding balance. For purposes of this clause, the term "funds" means the revenue retained by the Customer according to the distribution methods applicable under this contract and applicable state law. This clause will be applied as follows: ATS will maintain an accounting of any net balances owed to ATS. If the amount collected during a billing period exceeds the amount of ATS invoices during the same period, the Customer shall pay ATS the total amount due. If the amount collected during a billing period is less than the amount of ATS invoices during the same period, the Customer shall pay ATS the amount collected, and may defer payment of the remaining balance. Payments due to ATS shall be reconciled by applying future funds collected, first to the accrued balance, and then to the invoice for the current billing period. At any time that ATS invoices, including any accrued balance, are fully repaid, the Customer will retain all additional funds collected during that billing period. Such additional funds (whether reserved in cash or not by the Customer) will be available to offset future ATS invoices.
- 6.5 Vendor shall be responsible for processing payments of Civil Penalties paid pursuant to Notices of Violation and (only if authorized by the County Court) for Uniform Traffic Citations. Vendor shall provide payment means through mail, telephone and on-line processes. Vendor shall track all payments and handle, if feasible, all applied payments, unapplied payments, overpayments, refunds, adjustments, dismissals and reversals. Any payments made in person to the City will be taken by the City and applied through Axis System.
- 6.6 Vendor's lockbox shall remit to the designated City account all payments received during a week no later than 5:00 p.m. Eastern Time on Tuesday of the following week. If such Tuesday is a legal holiday or a day upon which banking services are not available, Vendor's lockbox shall remit such payments on the next day that is not a legal holiday and that banking services are available.
- 6.7 Vendor shall invoice the City for all applicable fees for services rendered by Vendor pursuant to this Agreement according to the fee schedule delineated on Exhibit A. Along with the invoice, Vendor shall provide information to the City, in a format acceptable to the City, supporting the invoice amounts forwarded by Vendor to the City. In addition, City shall have access to Vendor's financial records evidencing payments for all paid Notices of Violation and for Uniform Traffic Citations (the "UTC") for red zone infractions at City's Designated Intersections upon City's reasonable request.

#### **7. INTERSECTION AND VIOLATION RATE ANALYSIS:**

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



**8. COMMUNICATION OF INFORMATION:**

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

**9. CONFIDENTIAL INFORMATION:**

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

**10. OWNERSHIP OF SYSTEM:**

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

**11. INDEMNIFICATION AND INSURANCE:**

11.1 Indemnification – Negligence. The Vendor agrees to defend, indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees ("Losses"), sustained by the City or any third party arising out of, or by reason of, or resulting from the Vendor's negligent acts, errors, or omissions, except to the extent such Losses arise from the negligence of the City or City's employees, officers or agents. In the event that a court of competent jurisdiction determines that the provisions of Sec. 725.06, F.S., and / or Sec. 725.08, F.S., apply to this Agreement, then, in such event, Vendor shall defend, indemnify and hold harmless City and City's officers, employees and agents only to the fullest extent authorized by said cited statutes.

11.2 Indemnification – Infringements. The Vendor shall indemnify City for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to services furnished pursuant to this Agreement. The Vendor will defend and/or settle at its own expense, with legal counsel reasonably acceptable to the City, any action brought against the City to the extent that it is based on a claim that products or services furnished to City by the Vendor pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service becomes unusable as a result of any such infringement or claim. Any infringement or claim that renders any portion of the services to be performed by this agreement to be unusable, or materially affects the Vendor's Red Light System as functionally described herein, shall be grounds for a default of this Agreement.

11.3 The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification to be provided by the Vendor and agree that in the event that the law is construed to require a specific consideration to be given therefore, the parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Vendor. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the Vendor's responsibility to indemnify for events occurring during the term of this Agreement for a period of not less than five (5) years after expiration or termination of the Agreement.

11.4 Notice of Claims. If the City or Vendor receives notice of any claim or circumstances which may give rise to an indemnified loss under this Section 10, the receiving party shall give written notice to the other party within ten (10) days of receipt. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Vendor is directly prejudiced, suffers loss, or incurs expense because of the delay.

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

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

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

Certificates showing **ATS** is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to **Customer** within thirty (30) calendar days after the date on which this **Agreement** is made. Such certificates shall show that **Customer** shall be notified of all cancellations of such insurance policies. **ATS** shall forthwith obtain substitute insurance in the event of a cancellation.

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

## 12. STATE LAW TO APPLY:

This **Agreement** shall be construed under and in accordance with the laws of the State of Florida.

## 13. DISPUTE RESOLUTION:

Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this **Agreement**, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice

of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 16.0, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

**14. AUDIT RIGHTS:**

Each of parties hereto shall have the right to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than ten percent (10%) of the amount actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.

**15. AMENDMENTS TO THE AGREEMENT:**

Customer may from time to time consider it in its best interest to change, modify or extend the terms, conditions or covenants of this Agreement or require changes in the scope of services to be performed by ATS, or request ATS to perform additional services regardless of and without invalidating the process that was used to procure the services enumerated under this Agreement. Any such change, addition, deletion, extension or modification, including any increase or decrease in the amount of ATS' compensation, must be agreed upon by and between Customer and ATS incorporated in written amendments (herein "Amendments") to this Agreement. Such Amendments shall not invalidate the procurement process or this Agreement nor relieve or release ATS or Customer of any of its obligations under this Agreement unless stated therein. No oral amendments, changes, or modifications to this Agreement are permitted.

**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.

**17. PRIOR AGREEMENT SUSPENDED:**

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

**18. NO AGENCY:**

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

**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, unusually severe weather, or governmental authorities approval delays which are not caused by any act or omission by ATS. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

**20. TAXES:**

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

**21. HEADINGS:**

Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.

**22. EXHIBITS:**

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits shall be treated as part of this Agreement and are incorporated herein by reference.

**23. WAIVER:**

Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

**24. LEGAL REPRESENTATION:**

It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

**25. SEVERABILITY:**

If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law, except that this provision shall not be deemed to deprive any party of any legal remedy, including termination.

**26. EXTENT OF AGREEMENT:**

This Agreement represents the entire and integrated agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral.

**27. WAIVER OF JURY TRIAL:**

In the event of any litigation between the parties which in any way arises out of this Agreement, the parties hereby agree to waive any right to trial by jury.

**28. MOST FAVORED NATION:**

The Vendor agrees that if, after the Effective Date of this Agreement, it enters into an agreement for the same or substantially similar scope of services with another local government in Florida which contains a term or condition, including fees, charges or costs, that are more favorable than the terms in the Agreement, the City may provide Vendor with written notice explaining how the new agreement is for the same or substantially similar services and how the new agreement contains terms or conditions that are more favorable than the terms in the Agreement, and requesting to negotiate an amendment to the Agreement (a "New Agreement Notice"). The parties shall act in good faith to negotiate an amendment to the Agreement that addresses, in a manner that is fair and equitable to both parties, the matters raised by the City in the New Agreement Notice. If the parties fail to reach agreement upon an amendment within 90 days of the New Agreement Notice, then the City shall have the right to terminate this Agreement without penalty or early termination fee, subject to the terms and conditions of Section 3.3 of the Agreement, by providing 30 days advance written notice to the Vendor, such notice to be given no later than 100 days from the New Agreement Notice.

**29. NOTICES:**

Any notices or demand which, under the terms of this Agreement or under any statute, must or may be given or made by ATS or Customer shall be in writing and shall be given or made by personal service, telegram, first class mail, FedEx, or by certified or registered mail to the parties at the following address:

**TO THE CUSTOMER:**  
Town of Surfside, Florida  
9293 Harding Avenue  
Surfside, FL 33154  
Attention: Gary L. Word  
Town Manager

**TO ATS:**  
American Traffic Solutions, Inc.  
7681 East Gray Road  
Scottsdale, Arizona 85260  
Attention: Adam E. Tuton  
Chief Operating Officer

**EXHIBIT A**  
**SERVICE FEE SCHEDULE**

1.0 **Description of Pricing** **Monthly  
Fee**  
Fees are based on per Camera and are as follows:

Lane based pricing  
(Plus certified mail processing surcharge of \$4 per piece metered for mailing  
Uniform Traffic Citations no return receipt)

- For 1 or 2 lanes \$3,750
- For 3 or 4 lanes \$4,750
- For 5 or 6 lanes \$5,750

**Service Fees Include:** Fee includes all costs required and associated with camera system installation, maintenance and on-going field and back-office operations. Includes red-light camera equipment for the desired lane approach with up to two (2) signal phases, installation, maintenance, violation processing services, DMV records access, mailing of Notice of Violation in color with return envelope, lockbox and epayment processing services, call center support for general program questions and public awareness program support.

2.0 **Collection Services (Optional):** ATS may initiate collection efforts of delinquent notices upon written request by Customer, provided that such collection efforts are permitted by the County Court and are consistent with law. ATS will be entitled to receive portions of the collected revenue as noted below. The maximum is 30% total for both pre-suit collection and collection via litigation. For those accounts in default that go to collection, this is in addition to our Fees noted above.

Pre-suit Collection Letters 10% of Recovered Revenue  
Delinquent Collections Services (including filing and maintenance of litigation) 30%  
of Recovered Revenue

**EXHIBIT B**  
**Construction and Installation Obligations**

**Timeframe for Installation: Traffic Safety Camera Program**

Vendor will have each specified Intersection installed and activated in phases in accord with an implementation plan to be mutually agreed to by Vendor and the City Manager.

Vendor will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Vendor will use reasonable commercial efforts to install and activate all specified intersections within forty-five (45) days subsequent to receipt of all permits required by Section 1.4 of this Exhibit "B".

I. **Vendor Obligations.** Vendor shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Vendor's sole cost and expense):

- 1.1 Appoint the Vendor Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Vendor Project Manager;
- 1.2 Request current "as-built" electronic engineering drawings for the Designated Intersections (the "Drawings") from the County traffic engineer;
- 1.3 Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection, including but not limited to specifications for all sensors, pavement loops, electrical connections, and traffic controller connections, as required;
- 1.4 Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersections (collectively, the "Approvals"), which will include compliance with City permit applications;
- 1.5 Seek rights from private property owners, as necessary for the placement of System Equipment at designated intersections where Governmental Authorities have jurisdiction over the designated intersection and adjacent rights of right of way, and which such Governmental Entity denies authority to Vendor for the installation of its equipment ;
- 1.6 Finalize the acquisition of the Approvals;
- 1.7 Submit to the City a public awareness strategy for the City's consideration and approval, which strategy shall include media and educational materials for the City's approval or amendment according to the Vendor proposal (the "Awareness Strategy");
- 1.8 Develop the Red Light Infraction Criteria in consultation with the City;
- 1.9 Develop the Enforcement Documentation for approval by the City, consistent with the requirements of the City Ordinance and the Act , as may be amended or recodified from time to time.;
- 1.10 Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersections (under the supervision of the City);
- 1.11 Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersections, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
- 1.12 Install and test the functionality of the Designated Intersections with the Vendor System and establish fully operational Infraction processing capability with the Vendor System;

- 1.13 Implement the use of the Vendor System at each of the Designated Intersections;
- 1.14 Deliver the Materials (as defined in 2.7 below) to the City;
- 1.15 Upon approval by an Authorized Employee, issue Notices of Violation and, as applicable, Uniform Traffic Citations and deliver such Notice of Violation and/or Uniform Traffic Citation by the mailing method prescribed by the Act;
- 1.16 Obtain access to the records data of the Department of Motor Vehicles in Vendor's capacity as needed for the program;
- 1.17 As needed, Vendor shall provide training for personnel of the City, including, but not limited to, the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the TCSP, regarding the operation of the Vendor System and the TCSP. This shall include training with respect to the Vendor System and its operations, strategies for presenting Infractions Data in court and judicial proceedings and a review of the Enforcement Documentation;
- 1.18 Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch or re-launch of the TCSP;
- 1.19 Provide Notice of Violation processing and Notice of Violation re-issuance, as needed;
- 1.20 Vendor shall, at no additional cost to the City, provide Police Department one (1) workstation computer monitor for use by City during the term of the Agreement for potential Infraction review and approval which provide a resolution of 1280 x 1024, which will then be owned and maintained by the Customer.
- 1.21 For optimal data throughput, Police Department/Adjudication workstations should be connected to a high-speed Internet connection with bandwidth of T-1 or greater. Vendor will coordinate directly with the City's Information Technology (IT) Department on installation and implementation of the computerized aspects of the program.
- 1.22 In order to assist in a smooth transition for the County Court jurisdiction of Uniform Traffic Citations for the TCSP, Vendor may provide, at dates and times mutually agreed to by the parties, a representative that will assist the City's Police Department in meeting with Court personnel concerning the TCSP.

II. CITY OBLIGATIONS. The City shall do or cause to be done each of the following (In each case, unless otherwise stated below, at the City's sole expense):

- 2.1. Appoint the Project Manager;
- 2.2 Assist Vendor in obtaining the Drawings from the relevant Governmental Authorities;
- 2.3 Notify Vendor of any specific requirements relating to the construction and installation of any Intersection or the Implementation of the TCSP;
- 2.4 Assist and cooperate fully with Vendor in seeking Approvals, including, but not limited to, executing all such documents as may be necessary or desirable to obtain the Approvals;
- 2.5 Provide reasonable access to the City's properties and facilities in order to permit Vendor to install and test the functionality of the Designated Intersections and the TCSP;
- 2.6 Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;



- 2.7 Seek approval or amendment of Awareness Strategy and provide written notice to Vendor with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Vendor begins the installation of any of the Designated Intersections and ending six (6) months after the Installation Date;
- 2.8 Assist Vendor in developing the Red Light Infraction Criteria;
- 2.9 Seek approval of the Enforcement Documentation;
- 2.10 On a form provided by Vendor, provide verification to the State Department of Motor Vehicles, National Law Enforcement Telecommunications System, or appropriate authority indicating that Vendor is acting as an Agent of the Customer for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. § 2721, Section (b) (1) and as may otherwise be provided or required by any provision of applicable state law ;
- 2.11 If feasible, and only after all necessary approvals have been obtained from utilities and other governmental entities with jurisdiction, City shall allow Vendor to access power from existing power sources at no cost to City 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;
- 2.12 City shall provide one or more Authorized Employees for the purposes of reviewing potential infractions and approving the issuance of Notices of Violations and Uniform Traffic Citations;
- 2.13 The Authorized Employee shall process each potential infraction in accordance with State Laws and City Ordinances and notify Vendor of whether a Notice of Violation shall issue within seven (7) days of the appearance of the potential infraction in the Police Review Queue, using Axis<sup>TM</sup> to determine which potential infractions will be issued as Notices of Violation. In the event of a system failure or power outage, the Authorized Employee shall process each potential infraction as soon as possible, or with the consent or approval of Vendor for extension;
- 2.14 City shall provide access to the Internet for the purpose of processing potential infractions;
- 2.15 City shall provide, on forms provided by Vendor, signatures of all Authorized Employees who will review events and approve the issuance of Notices of Violations and Uniform Traffic Citations;
- 2.16 In the event that remote access to the ATS Axis VPS System is blocked by City's network security infrastructure, the City's IT Department and the counterparts at ATS shall coordinate to facilitate appropriate communications access while maintaining required security measures;
- 2.17 City shall provide a computer terminal at a public location within the City (ie: library or other location meeting the requirements of the Act) where persons receiving Notices of Violation may review the recorded images of the violation.

**EXHIBIT C**  
**Maintenance**

1. All repair and maintenance of the Traffic Camera Safety Program (the "TCSP") systems and related equipment will be the sole responsibility of Vendor, including but not limited to maintaining the casings of the cameras included in the Vendor System and all other equipment in reasonably clean and graffiti-free condition.
2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade County Traffic Engineering present.
3. The provision of all necessary communication, broadband and telephone services to the Designated Intersections will be the sole responsibility of the Vendor.
4. The provision of all necessary electrical services to the Designated Intersections will be the sole responsibility of the Vendor.
5. In the event that images of a quality suitable for the Authorized Employee to identify infractions cannot be reasonably obtained without the use of flash units, Vendor shall provide and install such flash units.
6. The Vendor Project Manager (or a reasonable alternate) shall be available to the City's Project Manager each day.
7. Vendor shall ensure that all equipment that it provides pursuant to this Agreement meets the specifications, if any, adopted by the Florida Department of Transportation pursuant to Florida Statute, Section 316.07456, by July 1, 2011.

**EXHIBIT D**  
**Infraction Processing**

1. All Infractions Data shall be stored on the Vendor System.
2. The Vendor System shall process Infractions Data gathered from the Designated Intersections into a format capable of review by the Authorized Employee via the Vendor System.
3. Vendor shall act as City's agent for the limited purpose of making an initial determination of whether the recorded images should be forwarded to an Authorized Employee to determine whether an Infraction has occurred and shall not forward for processing those recorded images that clearly fail to establish the occurrence of an Infraction.
4. The Vendor System shall be accessible by the Authorized Employee through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed Internet connection and a web browser.
5. Vendor shall provide storage capabilities for the City to store Infractions identified for prosecution for a period of time of not less than four (4) years after final disposition of a case or such time as required by general law.
6. Vendor shall provide the Authorized Employee with access to the Vendor System for the purposes of reviewing the pre-processed Infractions Data within five (5) days of the gathering of the Infraction Data from the applicable Designated Intersections.
7. Within seven (7) days of receipt, the City shall cause the Authorized Employee to review the Infractions Data and to determine whether a Notice of Violation shall be issued with respect to each potential Infraction captured within such Infraction Data, and transmit each such determination to Vendor using the software or other applications or procedures provided by Vendor on the Vendor System for such purpose. VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A NOTICE OF VIOLATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "NOTICE OF VIOLATION DECISION"), AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF VIOLATION DECISION.
8. With respect to each authorized Infraction, Vendor shall print and mail by first class mail a Notice of Violation within the statutorily required timeframe. Further, Vendor shall prepare, and serve by certified mail, the Uniform Traffic Citation if the civil penalty is not timely paid and/or the affidavit meeting the requirements of Sec. 316.0083, Florida Statutes, is not timely filed, as further described in paragraph (17) below.
9. Vendor shall provide a toll-free telephone number, at its sole expense, for the purposes of answering citizen inquiries.
10. Vendor shall permit the Authorized Employee to generate monthly reports using the Vendor Standard Report System.
11. Upon Vendor's receipt of a written request from the City at least fourteen (14) calendar days in advance of a hearing, Vendor may provide expert witnesses for use by the City in prosecuting Infractions at no cost to the City.
12. Vendor shall provide such training to City personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Red Light Enforcement Program. The parties shall jointly develop the expert witness training protocol. However, if a specific case requires testimony on the technical aspects of the equipment, upon City's request Vendor shall provide the City with an expert in the hearing in that case at no cost to the City.
13. Vendor shall provide to City a Notice of Violation form that complies with all requirements of the Ordinance and the Act. Vendor shall also provide to City a form of affidavit for use by owners of motor vehicles who claim an exemption under Florida Statutes § 316.0083 and shall make that

affidavit available to owners through an Internet location or upon telephone request by an owner who has received a Notice of Violation or Uniform Traffic Citation.

14. Vendor agrees that the City shall have the right to review and approve the form Notice of Violation prior to its use, and that in the event City determines additional information should be included in the Notice of Violation, Vendor shall modify the Notice of Violation form, at its sole expense, to comply with those requirements.
15. With expert assistance from Vendor, City shall provide Vendor with a form of Uniform Traffic Citation that City finds complies with the provisions of Chapter 316 of the Florida Statutes, with the understanding that some modifications of the form may be necessary to enable use with the Vendor's systems.
16. If a motor vehicle owner who receives a Notice of Violation fails to pay the statutory penalty or submit an affidavit that complies with all of the requirements of Florida Statutes Section 316.0083 (1) (d) within the time period provided in Florida Statutes Section 316.0083 (1) (b), the issuance of a Uniform Traffic Citation shall automatically occur based upon the prior Authorized Employee approval of the Notice of Violation.
17. For any city using ATS lockbox or epayment services, Vendor will establish a demand deposit account bearing the title, "American Traffic Solutions, Inc., as agent for Customer" at U.S. Bank. All funds collected on behalf of the Customer will be deposited in this account and transferred by wire on Tuesday of each week to the Customer's primary deposit bank. If such Tuesday is a legal holiday or a day upon which banking services are not available, Vendor's lockbox shall remit such payments on the next day that is not a legal holiday and that banking services are available. The Customer will identify the account to receive funds wired from U.S. Bank if desired, Customer will sign a W-9 and blocked account agreement, to be completed by the Customer, to ensure the Customer's financial interest in said U.S. Bank account is preserved.
18. Vendor is authorized to charge, collect, and retain a convenience fee of \$4.00 each for electronic payments provided to Vendor from persons paying a Notice of Violation, and (if authorized by the County Court) from persons paying a Uniform Traffic Citation. Such fee is paid by the violator.

**Exhibit E**  
**Additional Rights and Obligations**

Vendor and the City shall respectively have the additional rights and obligations set forth below:

1. Vendor shall assist the City in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the TSCP, as offered in the Vendor's proposal.
2. Vendor shall be solely responsible for installing such Signage as required by City Ordinance. The Vendor shall be solely responsible for the fabrication of any signage, notices, or other postings required pursuant to any law, rule, or regulation of any Governmental Authority ("Signage"), including, but not limited to, the City and County Ordinances, State Statutes, and Florida Department of Transportation (FDOT) Regulations and shall assist in determining the placement of such Signage. Vendor shall be responsible for obtaining all necessary approvals from Governmental Authorities.
3. The Vendor Project Manager and the Project Manager shall meet or communicate on a weekly basis during the period commencing as of the date of execution hereof and ending on the termination of the Warning Period Date, and on a monthly basis for the remainder of the Term, at such times and places as the Vendor Project Manager and the City Project Manager shall mutually agree.
4. The City shall not access the Vendor System or use the TSCP Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Vendor System or the Vendor Photo Enforcement Program with respect to any Intersection constructed or maintained by Vendor for such Person, or which could damage, disable, impair or overburden the Vendor System or the Vendor Photo Enforcement Program, and the City shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Vendor System, or (iii) any materials or information not intentionally made available by Vendor to the City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other Person to do any of the foregoing.
5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Vendor System or using the TSCP.
6. Each of Vendor and the City shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, each of Vendor and the City shall reasonably follow any and all such rules and regulations.
7. The City shall promptly reimburse Vendor for the cost of repairing or replacing any portion of the Vendor System, or any property or equipment related thereto, damaged solely and directly by the City, or any of its employees, contractors or agents. In all other instances, such costs shall be solely the Vendor's costs.

**EXHIBIT F**  
**DESIGNATED INTERSECTIONS**

**Customer** will designate first phase implementation of cameras at designated intersections. **ATS** shall make its best efforts to install a camera system within thirty (30) days of permits being granted and power delivered for each agreed upon approach, providing that **Customer** has received permission for all implementations in writing from any third-party sources.

Implementation and installation of any approach is subject to video analysis and engineering results. Additional approaches may be selected in addition to first phase implementation and may be selected based on collision history, input, community safety and recommendations from **Customer** and engineering feasibility assessment. **ATS** can provide **Customer** with video evaluation of candidate approach sites using the AXIS VIMS system to assist **Customer** in its recommendations. Camera installations will be based on mutual agreement by **Customer** and **ATS**.

**EXHIBIT G**  
**DMV SERVICES SUBSCRIBER AGREEMENT**

ATS requires that your agency certify the intended use of the information made available to your agency through our services and that such uses are in compliance with the Federal Driver's Privacy Protection Act Title XXXI and other applicable laws governing dissemination of public records. Based on your agency's intended use of such information, ATS will either grant permission to use the service or deny the application. Please specify any of the following permissible uses under §2721 that apply:

- (1) For use by any government agency, including any court of law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State or local agency in carrying out its functions.
- (4) For use in connection with any civil, criminal administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- (7) For use in providing notice to the owners of towed or impounded vehicles.
- (10) For use in connection with the operation of private toll transportation facilities.

In consideration of ATS making its Services available, Subscriber agrees to:

- i) utilize ATS provided data only for the purpose(s) specified above; and
- ii) request such information only for the Subscriber's exclusive use in the ordinary course of Subscriber's business and not for resale.

I certified that I am authorized to execute the Subscribe Use Certification on behalf of the Subscriber listed below. On behalf of such Subscriber, I certify that the above statements are true and correct. Subscriber acknowledges and agrees that ATS may from time to time audit Subscriber's use of ATS' Services to ensure that such use is consistent with the intended uses set forth above and with all applicable laws.

This agreement shall be for \_\_\_\_\_ year(s) commencing on the date below and shall automatically renew annually. This agreement may be terminated within thirty (30) days notice of the anniversary date, annually.

SUBSCRIBER INFORMATION					
Subscriber Agency/Name:					
NLETS Agency ORI:					
Name of Authorized Representative:					
Title of Authorized Representative:					
Mailing Address:					
Customer:		State:		Zip Code:	
Telephone:	( ) -	Fax:	( ) -	Email:	
Signature of Authorized Representative:					
Date Signed:					