

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into on this 21st day of April, 2011, by and between the City of St. Petersburg, Florida ("City") and American Traffic Solutions, Inc. ("ATS").

WHEREAS, the City of Miami, Florida ("Miami") and ATS entered into a contract on September 21, 2010, for ATS to furnish, install, operate and maintain a traffic infraction detector program; and

WHEREAS, St. Petersburg City Code 2-234(e) authorizes the Mayor or his designee to piggy-back off contracts of other governmental entities if such contract was awarded after a competitive process and to do so is deemed in the best interest of the City; and

WHEREAS, the City has determined that it is in its best interest to piggy-back off the Miami contract with ATS for a traffic infraction detector program.

NOW THEREFORE, for and in consideration of the foregoing recitals (all of which are hereby adopted as an integral part of this Agreement), the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and ATS agree as follows:

1. **City of Miami Contract No. R-10-0387:** The Contract Documents between Miami and ATS ("Miami Contract Documents") are incorporated into this Agreement and made a part hereof by reference, except as otherwise set forth in this Agreement.
2. **Changes to Miami Contract Documents:** The City and ATS hereby agree that for the purposes of this Agreement the following terms and conditions of the Miami Contract Documents shall be amended and modified as follows:
 - a. The following definitions in Article 1 of the Contract are modified as follows:
 - i. City means the City of St. Petersburg, Florida.
 - ii. City Commission is deleted and replaced with the following: City Council means the legislative body of the City.
 - iii. City Manager means the Mayor or his authorized designee.
 - iv. Contract Documents means the documents described in Article 9 of this Contract.
 - v. Court means the Pinellas County court system which is responsible for the processing, disposition, and adjudication of all citations issued under the Contract.
 - vi. Force Majeure means those certain failures to perform due to a condition of force majeure as defined in Article 36 of this Contract.
 - vii. Program means the furnishing, installation, operation, and maintenance of the Intersection Public Safety Program also known as the Traffic Infraction Detector program in accordance with the Contract Documents,

HB325/Chapter 2010-80 Laws of Florida and the rules and procedures promulgated by the Court.

- viii. Risk Administrator means the City's Risk Manager or designee, or the individual named by the Mayor to administer matters relating to insurance and risk of loss for the City.
- b. The first paragraph in Article 5 of the Contract, Contract Term, is modified as follows: The Contract shall commence on April 21, 2011, and end on September 21, 2015, unless earlier terminated as provided for herein.
- c. Article 6 of the Contract, Notices, is deleted and the following inserted:

Whenever notice is desired or required under this Contract, the notice shall be given in writing, by mail, email, facsimile or via courier/delivery service, must be addressed to the party for whom it is intended and delivered at the place last specified ("Notice"); and the place for giving of notice shall remain such until it shall have been changed by Notice given in compliance with this provision. Notice shall be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. If given via email or facsimile, Notice shall be deemed given on the date sent. If given via courier/delivery service, Notice shall be deemed given upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

CITY:

City of St. Petersburg
Purchasing and Materials Management, 5th floor
One 4th Street North
St. Petersburg, FL 33701
Attn: Louis Moore, CPPO, Director

Copy to:

City of St. Petersburg
Police Department
Traffic Section
1300 1st Avenue
St. Petersburg, FL 33705
Attn: Lt. William Korinek

Copy to:

City of St. Petersburg
Transportation and Parking Management
One 4th Street North

St. Petersburg, FL 33701
Attn: Joe Kubicki, Director

CONTRACTOR:

American Traffic Solutions, Inc.
7681 E. Gray Road
Scottsdale, AZ 85260
Attn: Cathy Wilkins

During the Work, the Contractor and Program Manager shall maintain continuing communications with the Project Manager. The Contractor and Program Manager shall keep the City fully informed as to the status of the Program at all times throughout the term of the Contract.

- d. Article 12 of the Contract, Proposal Bond/Guaranty, is not applicable.
- e. Article 13 of the Contract, Indemnification, Elected and appointed officials are added to the list of entities and persons that Contractor is required to indemnify and hold harmless.
- f. The last paragraph in Article 14 of the Contract, Insurance, is modified as follows: The Risk Administrator reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to the Contractor in accordance with Article 6, Notices. Contractor shall comply with such requests unless the insurance coverage is not then readily available in the national market. An additive or deductive change order may be issued to adjust the monthly contract fee as necessary.
- g. Article 37 of the Contract, Resolution of Contract Disputes, is modified as follows:

Contractor understands and agrees that all disputes between it and the City based upon an alleged violation of the terms of this Contract by the City shall be submitted for resolution in the following manner.

The initial step shall be for the Contractor to notify the City's Project Manager in writing of the claim or dispute and submit a copy to the City personnel identified in Article 6, Notices.

Should the Contractor and the Project Manager fail to resolve the dispute, the Contractor shall submit the dispute in writing, with all supporting documentation, to the Director of Transportation and Parking Management, as identified in Article 6, Notices. Upon receipt of said notification, the Director of

Transportation and Parking Management shall review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Director of Transportation and Parking Management fail to resolve the dispute within fourteen (14) calendar days, or such other timeframe agreed to by both parties in writing, the Contractor shall submit the dispute in writing, within five (5) calendar days of the issuance of the written finding, to the Director. Failure to submit such appeal of the written finding within five (5) calendar days shall constitute acceptance of the finding by the Contractor. Upon receipt of said notification, the Director shall review the issues relative to the claim or dispute and issue a written finding within fourteen (14) calendar days, or such other timeframe agreed to by both parties in writing.

Contractor must submit any further appeal in writing within five (5) calendar days of the issuance of the written finding or failure by the Director to issue a written finding, to the Mayor. Failure to submit such appeal of the written finding within five (5) calendar days shall constitute acceptance of the finding by the Contractor. Appeal to the Mayor is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the amount of compensation hereunder exceed \$100,000, the Mayor's decision shall be approved or disapproved by the City Council. Contractor shall not be entitled to seek judicial relief unless it has complied with all of the requirements of this Article, and:

- It has first received Mayor's written decision, approved by the City Council, if applicable, or
- A period of thirty (30) days has expired after submitting to the Mayor a detailed statement of the dispute, accompanied by all supporting documentation, or a period of ninety (90) days has expired where Mayor's decision is subject to City Council for approval; or
- City has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the Mayor.

In the event the determination of a dispute under this Article is unacceptable to the Contractor, the Contractor must notify the City, in writing, within seven (7) calendar days of receipt of the written determination that it intends to seek mediation of the claim. The notice must state the basis of the objection and must be accompanied by a statement that any price or time adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled to as a result of the determination. Failure to submit such notification within the stipulated timeframe shall constitute acceptance of the City's final position in response to any claim. Both parties will work together and make their best efforts to have the mediation held within thirty (30) calendar days of the request being submitted by the Contractor.

Within sixty (60) calendar days after the expiration of the Contract, the parties shall participate in mediation to address all objections to any determinations

hereunder and to attempt to prevent litigation. The mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. Contractor specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

Notwithstanding the existence of any dispute between the City and Contractor, each Party shall continue to perform as required under the Contract Documents, and City shall continue to pay Contractor as provided in the Contract Documents.

- h. The last paragraph in Article 38 of the Contract, Mediation- Waiver of Jury Trial, is modified as follows: Any dispute submitted to the courts for resolution prior to the completion of the procedures stipulated in Article 37, Resolution of Contract Disputes and Article 38, Mediation – Waiver of Jury Trial shall be rejected by the courts until such time as the stipulated procedures have been completed.
- i. The first paragraph of Article 39 of the Contract, Applicable Law and Venue of Litigation; Waiver of Jury Trial and Permissive Counterclaims is deleted and the following inserted: This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction. Each party shall bear its own attorney's fees except in actions arising out of Contractor's duties to indemnify and hold harmless the City, its officers, employees, agents and elected and appointed officials under this Contract.
- j. Article 57 of the Contract, First Source Hiring Agreements, is not applicable.
- k. Article 64 of the Contract, Confidential Information, Trade Secrets, Intellectual or Proprietary Property, Trademarks or Patents is modified as follows:

The Program may involve the use of process, procedures, intellectual information, which the Contractor may consider confidential information, trade secrets, or intellectual or proprietary property, trademark or patents. The City will make its reasonably best efforts to ensure confidential information, trade secrets, intellectual property rights, copyright, trademark or patent, as defined by Florida Statute, are maintained in a secure manner and are not provided to member of the public, private company or any unauthorized individual without the express written consent of the Contractor unless required by all applicable laws, including Chapter 119, Florida Statutes, or by a court of competent jurisdiction or

governmental agency. Failure of the City to comply with this requirement shall result in the City being in default of the Contract. The Contractor at its discretion may terminate this Contract for said default upon providing the City with ninety (90) days written notice of its intent to terminate.

Contractor shall when providing information, documentation, data, or access thereto, to the City that it believes falls within the category of confidential information, trade secrets, or intellectual property shall clearly identify such to the Project Manager or other City representatives being provided with or access to such information, documentation or data. By designating information as confidential information, trade secrets, or intellectual property, Contractor agrees to indemnify and hold harmless the City for all damages, costs and reasonable attorney's fees incurred by the City by reason of any legal action challenging Contractor's claim.

The Contractor may take any necessary and appropriate actions available to it under this Contract or in law to protect its rights. Notwithstanding the forgoing, in the event that the City is required to disclose Contractor's confidential information, trade secrets, or intellectual property in accordance with applicable laws, including but not limited to Chapter 119, Florida Statute, or by an order of a court or governmental agency, the City shall give written notice to the Contractor to enable the Contractor to make a reasonable effort to a protective order or other confidential treatment for the confidential information, trade secret, or intellectual property. Such notice shall be provided prior to disclosure unless otherwise required by court order or applicable Laws. Contractor acknowledges that, in the event in of a public records request, the City may be limited in the amount of notice that it may be able to provide Contractor prior to disclosure of records and agrees that the City Attorney shall have the sole and absolute discretion to determine when public records must be released in order to comply with Chapter 119, Florida Statutes, and the court decisions construing same.

Contractor shall pay all royalties and license fees. If the City promptly notifies Contractor in writing of a claim for infringement of any copyright patent, trademark, or other right against the City, its officers, employees, agents, and appointed and elected officials, Contractor shall defend such claim at its expense, and will pay any costs and damages that may be finally awarded against the City its officers, employees, agents, and appointed and elected officials. The City may, at its sole discretion, terminate this Contract for convenience in accordance with the terms of the Contract should the Contractor be in breach of any copyright, patent, trademark, or other similar right.

Contractor may at its sole discretion procure the rights to continue to use any infringing item, modify the items to mitigate the alleged infringement, or replace the items with non-infringing items, all at no cost to the City.

l. Article 67 is added to the Contract, City Approvals, as follows:

67. City Consent and Action.

For purposes of this Agreement, any required written permission, consent, acceptance, approval, or agreement (“Approval”) by the City means the Approval of the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.

For purposes of this Agreement, any right of the City to take any action permitted, allowed, or required by this Agreement may be exercised by the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.

3. **City’s Clarification Questions:** The clarification questions for interpretive purposes only submitted by the City to ATS on January 28, 2011, and on February 15, 2011, and ATS’s response to the City’s clarifications questions are incorporated into this Agreement and made a part hereof.
4. **Termination due to Legislative Action:** If legislation is passed that repeals HB325/Chapter 2010-80, the Mark Wandall Traffic Safety Program, or if any laws are enacted that prohibits the operation of the Intersection Public Safety Program (as known as the Traffic Infraction Detector program), or if any other legal authority prohibits the operation of the Intersection Public Safety Program (as known as the Traffic Infraction Detector program), this Agreement shall automatically terminate with no notice required to be given by either party. In the event that this Agreement is terminated pursuant to this paragraph before “go-live” on the cameras, neither party will be liable to the other party for any costs or expenses incurred in connection with this Agreement. In the event that this Agreement is terminated pursuant to this paragraph after “go-live” on the cameras, the City will pay Contractor the monthly fee(s) due through the termination date, but the City shall incur no other liability in connection with termination of this Agreement pursuant to this paragraph.
5. **Order of Precedence:** In the event of a conflict between or among this Agreement, the City’s clarification questions and ATS’s response to the City clarification questions and the Miami Contract Documents, the follow order of precedence shall control:
 - a. This Agreement;
 - b. The City’s Clarification Questions;
 - c. ATS’s Response to the City’s Clarification Questions;
 - d. The Miami contract;
 - e. The Miami Request for Proposals and all addendum;
 - f. ATS’s response to the Miami RFP;

g. The remaining Miami Contract Documents.

IN WITNESS WHEREOF the City and ATS have caused this Agreement to be executed by their duly authorized representatives on the day and date first above written.

AMERICAN TRAFFIC SOLUTIONS, INC.:

By: [Signature]

James D. Tuton
(Please Print or Type Name)

President/CEO
(Title)

WITNESSES

By: [Signature]

Print: CATHERINE E. WICKMS

By: [Signature]

Print: BRANDI E. DYER

CITY OF ST. PETERSBURG, FLORIDA

By: [Signature]

Bill Foster
(Please Print or Type Name)

City of St. Petersburg
(Title)



(SEAL)

ATTEST:

[Signature]
Eva A. Andujar, City Clerk

Provisions of Contract Approved:

By: [Signature]
Print: JOSEPH KUBICKI
Project Manager

Approved as to Form and Content:

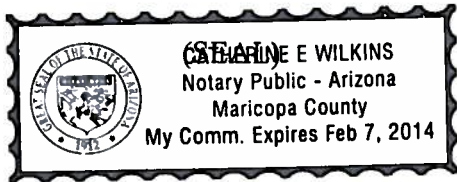
[Signature]
City Attorney (Designee)

(Acknowledgment of Contractor)

State of ARIZONA)
County of MARICOPA) ss:
City of SCOTTSDALE)

The foregoing Agreement was acknowledged before me this 2nd day of May, 2011,
by James D. Tuton, President & CEO
(Name and Title)
of American Traffic Solutions, Inc. ("Company"), on behalf of the Company. He/She is
personally known to me or has produced
as identification and appeared before me at the time of notarization.

James D. Tuton warrants that he/she is authorized by the Company
to execute the foregoing Agreement.



NOTARY PUBLIC:

Catharine E. Wilkins

My commission expires: Feb 7, 2014

final

NO. 2011-166

A RESOLUTION APPROVING THE AWARD OF AN AGREEMENT TO AMERICAN TRAFFIC SOLUTIONS, INC. ("ATS") FOR ATS TO FURNISH, INSTALL, OPERATE AND MAINTAIN AN INTERSECTION PUBLIC SAFETY PROGRAM, ALSO KNOWN AS A TRAFFIC INFRACTION DETECTOR PROGRAM, UTILIZING THE CITY OF MIAMI CONTRACT (NO. R10-0387) WITH ATS DATED SEPTEMBER 21, 2010; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE THIS TRANSACTION; APPROVING SUPPLEMENTAL APPROPRIATIONS FROM THE UNAPPROPRIATED BALANCE OF THE GENERAL FUND IN THE AMOUNT OF \$99,000 TO THE TRANSPORTATION AND PARKING MANAGEMENT DEPARTMENT, LOCAL TRANSPORTATION PLANNING AND IN THE AMOUNT OF \$63,000 TO THE POLICE DEPARTMENT, TRAFFIC AND MARINE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of St. Petersburg, Florida ("City") desires to have an intersection public safety program with the objective of its program to reduce the number of fatalities and injuries resulting from traffic accidents at critical intersections and to improve motorist and pedestrian safety; and

WHEREAS, American Traffic Solutions, Inc. ("ATS") has the experience and resources to furnish, install, operate and maintain an intersection public safety program for the City; and

WHEREAS, pursuant to Section 2-234(e) of the St. Petersburg City Code, the City is permitted to utilize competitively bid contracts of other governmental entities when it is in the best interest of the City; and

WHEREAS, the City has determined that utilizing the City of Miami contract with ATS dated September 21, 2010, for ATS to furnish, install, operate and maintain an intersection public safety program to be in its best interest; and

WHEREAS, ATS has met the specifications, terms and conditions of the City of Miami contract (No. R10-0387); and

WHEREAS, the Purchasing Department, in cooperation with the Police Department and the Transportation and Parking Management Department, recommends approval of this award; and

WHEREAS, supplemental appropriations to the Transportation and Parking Management Department and the Police Department are needed to cover FY11 expenses related to the intersection public safety program.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the award of an agreement to American Traffic Solutions, Inc. ("ATS") for ATS to furnish, install, operate and maintain an intersection public safety program, also known as a traffic infraction detector program, at a total cost not to exceed \$1,083,000 annually utilizing the City of Miami contract (No. R10-0387) with ATS dated September 21, 2010 is hereby approved.

BE IT FURTHER RESOLVED that the Mayor or his designee is authorized to execute all documents necessary to effectuate this transaction.

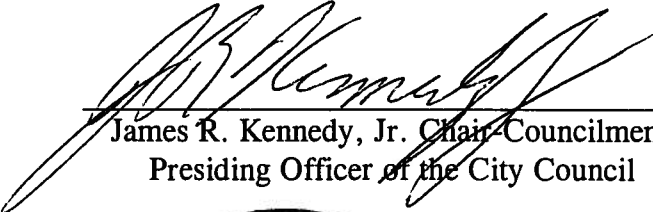
BE IT FURTHER RESOLVED that there is hereby approved from the unappropriated balance of the General Fund (0001), the following supplemental appropriations for FY11:

General Fund (0001):

Transportation and Parking Management Department, Local	
Transportation Planning (281-1801)	\$99,000
Police Department, Traffic and Marine (140-1477)	\$63,000

This resolution shall become effective immediately upon its adoption.

Adopted at a regular session of the City Council held on the 21st day of April, 2011.


James R. Kennedy, Jr. Chair-Councilmember
Presiding Officer of the City Council

ATTEST: 
Eva Andujar City Clerk

