

PROFESSIONAL SERVICES AGREEMENT

COPY

"AGREEMENT"

THIS AGREEMENT made this December 7, 2007 between AMERICAN TRAFFIC SOLUTIONS, LLC. (herein "ATS"), a limited liability company duly registered under the laws of the State of Delaware with its principal place of business at 14861 North Scottsdale Road, Suite 109, Arizona, County of Maricopa, State of Arizona, and the City of Capitola, herein "City", a municipal corporation of the State of California with principal offices at 420 Capitola Avenue, Capitola, California 95010.

WITNESSETH:

WHEREAS, ATS has the exclusive knowledge, possession and ownership of certain equipment, licenses, and processes, referred to collectively as the "Axisis™ System" (herein "Axisis™"), and

WHEREAS, City desires to explore the use of the Axisis™ to monitor red light violations, traffic speed or other traffic movements and to issue citations for traffic violations.

NOW THEREFORE, the parties agree:

**1. DEFINITIONS:**

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

"**Citation**" means a citation issued by a competent state or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a violation documented or evidenced by Axisis™.

**"Person"** or **"persons"** means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.

**"Dual Stationary Camera System"** means a photo-traffic monitoring device consisting of frontal and rear camera(s), where needed, and a traffic monitoring device capable of accurately detecting a traffic infraction and which records such data on at least two images of such vehicle and a single image of the driver of the vehicle. Dual Stationary Camera System shall, where the sense requires, also include any enclosure or cabinet in which the Axis™ is stationed.

**"Approach"** is defined as one direction of travel of one or more lane on a road or a traffic intersection.

**"Violation"** means failure to obey an applicable traffic law or regulations, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, and operating a motor vehicle without displaying a valid license plate.

**"Operational Time"** means the actual time that a Dual Stationary Camera System is monitoring traffic.

**2. ATS AGREES TO PROVIDE:**

The scope of work identified in Exhibit A.

**3. CITY AGREES TO PROVIDE:**

The scope of work identified in Exhibit B.

**4. TERM AND TERMINATION:**

a. The term of this Agreement shall be for three (3) years beginning on the execution date and shall automatically be extended for an additional two

(2) year period on the anniversary, unless the City shall notify ATS in writing, at least sixty (60) days prior to the anniversary of its intention to terminate this Agreement.

The Contractor's services may be terminated:

By mutual consent of the parties; or

For cause by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party provides written notification to the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within forty-five (45) days after receiving notice.

b. Upon termination of this Agreement, either for breach or because it has reached the end of its term, the parties recognize that the City will have to process traffic law violations in the "pipeline," and that ATS accordingly must assist the City in this regard. Accordingly, the parties shall take the following actions, and shall have the following obligations, which survive termination during the wind-down period: The City shall cease using Axis™, shall assist ATS to reacquire all equipment within a reasonable time not to exceed 30 days, and shall not generate further images to be processed. Unless directed by the City not to do so, ATS shall continue to process all images taken by the City before termination and provide all services associated with processing in accordance with this Agreement, and shall be entitled to all Fees specified in the Agreement as if the Agreement were still in effect.

## **5. FEES AND PAYMENT:**

City shall pay for all equipment, services and maintenance based on the pricing indicated in Exhibit C, ("Fees").

The City shall pay all fees due ATS based upon invoices received from ATS, which will be reconciled by Police Department staff, working with ATS accounting staff and verified by the City's Finance Department. Staff will utilize Santa Cruz County Red Light Photo Enforcement Fine Collection data and distribution reports provided to the city by the county for each billing period.

During the duration of this agreement, ATS will warrant that the City will have no financial loss with respect to fees paid to ATS. The fixed service fee will be adjusted monthly if project revenues (collected) do not cover the ATS fixed service fee. Additionally, ATS agrees to allow the City to recover the following administrative costs associated with the photo red light enforcement system: Police Department staff overtime associated with processing citations, conducting appeal hearings, attending traffic court and Finance staff's time needed to review the pertinent reports by the city, county and courts, not to exceed \$800 per/month, unless mutually agreed to by both parties. These costs shall be recovered as a reduction from the amount due to ATS per ATS invoice(s). "In the event that the Courts provide a true up of revenues to the City, ATS is entitled to receive the sum of actual earnings up to the applicable amount of service fees for the Dual Stationary Camera System(s) less reimbursable City expenses."

**6. MATERIALMAN LIENS:**

In the event ATS fails or neglects to pay for any product installation, maintenance or other obligations incurred under this Agreement and a demand or request is made on the City for payment, the City shall have the right to make such payments and deduct the sum from any amount that may be due to ATS, following written notification to ATS, with a reasonable opportunity for ATS to correct or defend the alleged failure to pay. The City's decision to take such action in one situation shall not create an obligation on the part of the City to take similar action in another situation,

nor shall it constitute a waiver of the City's right to prosecute any other legal remedy it may have against ATS.

**7. COMMUNICATION OF INFORMATION:**

ATS agrees that all information obtained by ATS through operation of the Axisis™ shall be made available to the City 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 City's obligation under this Agreement.

**8. CONFIDENTIAL INFORMATION:**

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

**9. OWNERSHIP OF SYSTEM:**

It is understood by the City that the Dual Stationary Camera System being installed by ATS is, and shall remain, the sole property of ATS, unless separately procured from ATS. The System is being provided to City only under the terms and for the term of this Agreement.

**10. INDEMNIFICATION AND INSURANCE:**

ATS shall at all times comply with all federal, state and local laws, ordinances and regulations and shall comply with the maintenance procedures and manufacturer recommendations for operation of the Axisis™ equipment which affect this Agreement, and shall indemnify and save

harmless the City against any claims arising from the violation of any such laws, ordinances and regulations or any claims arising from the violations of the maintenance procedures and manufacturer recommendations for operation of the equipment as a result of the negligence of willful misconduct of ATS, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of City.

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

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. Such insurance shall include the City, its officers, directors, employees, and elected officials as additional insured's for liability arising from ATS's operation.

2) Workers Compensation as required by applicable state law, and Employers' 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 City.

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.

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

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

Inasmuch as the City is a body politic and corporate, the laws from which City derives its powers, insofar as the same law regulates the objects for which, or manner in which, or the concerns under which, the City may enter into this Agreement, shall be controlling and shall be incorporated by reference into this Agreement. The City shall be responsible for vehicle insurance coverage on any vehicles driven by City employees. (The city does not have "vehicle insurance coverage." Instead, the City has a general liability insurance policy.) Coverage will include liability and collision damage.

**11. CORRESPONDENCE BETWEEN PARTIES:**

All notices required to be given under this Agreement shall be deemed given when mailed by first class mail, addressed to the proper party to the address set forth on the first page of this Agreement.

**12. STATE LAW TO APPLY:**

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

**13. DISPUTE RESOLUTION:**

All disputes arising out of or in connection with the Agreement shall be attempted to be settled through good-faith negotiation between senior management of both parties, followed if necessary within thirty (30) days by professionally assisted mediation. Any mediator so designated must be

acceptable to each party. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The parties will share the fees and expenses of the mediator equally.

a. Failing resolution through negotiation or mediation, any remaining dispute shall be submitted to binding arbitration in accordance with the Arbitration Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association (“AAA Rules”) before a single arbitrator. The place of arbitration will be Phoenix, Arizona. The party seeking discovery will permit limited discovery in connection with the arbitration upon agreement of the parties or upon a showing of substantial need. The arbitrator’s decision shall follow the plain and natural meaning of the relevant documents, and shall be final and binding. The arbitrator will have no power to award (i) damages inconsistent with the Agreement or (ii) punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. All aspects of the arbitration will be confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Each party will promptly pay its share of all arbitration fees and costs, provided that such fees and costs shall be recoverable by the prevailing party as determined by the arbitrator. If a party fails to pay such share promptly upon demand, the arbitrator shall, upon written request by the other party, enter a final and binding decision against the nonpaying party for the full amount of such



share, together with an award of attorney's fees and costs incurred by the other party in obtaining such decision, which decision may be entered in any court of competent jurisdiction. Except for the failure of a party to pay arbitration fees and costs that requires resort to the arbitrator to order such payment, the parties will bear their own attorneys' fees in any matter or dispute under this Agreement.

**14. ADDITIONAL SERVICES:**

Additional systems and services may be added to this agreement by mutual consent of the parties in writing as an addendum to this agreement. All other terms and conditions shall remain the same.

**15. LEGAL CONSTRUCTION:**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

**16. PRIOR AGREEMENT SUSPENDED:**

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

**17. AMENDMENT:**

No amendments, modifications, or alterations of the terms hereof shall be binding unless made in writing, dated subsequent to the date of this Agreement and duly executed by the parties.

**18. NO AGENCY:**

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

**19. TAXES:**

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

**20. NOTICES:**

Any notices or demand which under the terms of this Agreement or under any statute must or may be given or made by ATS or City 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:

City of Capitola  
420 Capitola Avenue  
Capitola, CA 95010

American Traffic Solutions, LLC.  
14861 N. Scottsdale Rd, Suite 109  
Scottsdale, AZ 85254

Attention: Police Chief

**21. DRUG-FREE WORKPLACE:**

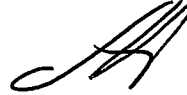
ATS hereby certifies that:

A drug-free workplace will be provided for ATS employees during the performance of this Agreement; and

This Agreement may be suspended, terminated, or debarred if it is determined that ATS has made false certification herein above; or ATS has violated such certification by failure to carry out any requirements as outlined within this Article.


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

AMERICAN TRAFFIC SOLUTIONS, LLC.



Adam E. Tuton, Manager

CITY OF CAPITOLA



City Manager

ATTEST:



Recorder

12-7-07

**Exhibit A**  
**ATS SCOPE OF WORK**

- a) Axis™ RLC-300 Red Light Stationary Camera Systems in the quantities indicated on Exhibit D;
- i) ATS shall install the Dual Stationary Camera System at south bound 41<sup>st</sup> Avenue at Clares Street and on 41<sup>st</sup> Avenue at the southbound entrance to the main Capitola Mall entrance, the parties may agree from time to time to add, subtract or modify locations where the System shall be installed and maintained. A Dual Stationary Camera System installed at a location shall be in operation for a minimum of one year at that location, unless the parties agree otherwise in writing.
  - ii) Each Stationary Camera System shall operate on a 24-hour basis, barring downtime for maintenance
  - iii) An automated web-based citation processing program (Axis™ VPS) including image processing, mailing of a citation with color images, printing and mailing costs. The program shall be conducted in a timely manner to comply with any applicable statute of limitation for filing citations. Each citation shall be delivered by First Class mail to the registered owner within the statutory period. Subsequent notices may be delivered by First Class or Certified Mail (return receipt requested) or by process servers for additional compensation to ATS as agreed by the parties.
  - iv) ATS will transmit an electronic file to the City with periodic updates of all citation notices issued, and will update the status of all accounts based on disposition information provided by the City, indicating payments received or cases otherwise closed, dismissed or resolved.
  - v) In-state vehicle registration information necessary to issue citations resulting from the Axis™ assuming ATS is named as an agent and the State provides registration data at no cost to the City for ATS.
  - vi) To the City prosecutor/hearing officer, one Evidence Package, typically including a set of images with related documentation for each citation issued;
  - vii) Necessary training for persons person designated by the City;

- viii) Expert witness as reasonably necessary to establish judicial notice, i.e. the accuracy, technical operations, and effectiveness of the Aaxis™ for contested citations. After establishment of judicial notice, the City may request the presence of expert witnesses. Expert witness fees will be billed to the City on a time and expense basis;
- ix) ATS shall submit to City a monthly report of Aaxis™ results within fifteen business days of the end of each calendar month. The report shall include the following information:
  - x) Total number of violation events.
  - xi) Total number of actionable violation events.
  - xii) Total number of citations sent.
  - xiii) Total citations paid.
  - xix) Performance Statistics by Location.
  - xv) Such reports of ongoing operations as are required pursuant to Subparagraph h, above, or such other reports and documents as are mutually agreed upon between ATS and the City.
  - xvi) Routine maintenance and cleaning of Dual Stationary Camera Systems.
  - xvii) ATS agrees to commence the installation of the Systems within 14 days after all aforementioned permits have been approved (the date all permits are approved shall hereinafter be referred to as the "Approval Date"). The Approval Date shall be marked by the issuance of a signed writing from ATS to City, stating that all permits have been approved.
  - xviii) ATS agrees to have all installation work completed and have the Systems fully operational no later than 120 days from the Approval Date.
  - xix) Where and when possible, ATS agrees to use existing street furniture, poles, available conduit and existing power for the purposes of installing and operating the Systems.
  - xx) The time schedule may be extended by reason of delay, changes, additions, deletions, or other reasons if approved by the City in writing, or without written approval by the City if the delay is caused by an event of Force Majeure.

**Exhibit B**  
**City Scope of Work**

- a) The City agrees to make standard court appearances regarding general violation court challenges.
- b) The City will carefully review each potential violation to determine in its sole Authority which violations will be issued as citations. Axisis™ will apply an electronic signature to each approved citation.
- c) The City or County will provide a judge or hearing officer and court facilities to schedule and hear disputed citations;
- d) The City agrees to make reasonable efforts to prosecute each citation filed, and provide customary fine collection services for all final dispositions.
- e) The City will assist in working with the Court in setting up the transmission of an electronic file to ATS with daily updates of all citation disposition information provided by the City indicating payments received or cases otherwise closed, dismissed or resolved.
- f) City will provide a project manager with authority to execute City responsibilities under the Agreement.
- g) City shall direct its departments to cooperate with ATS with respect to required systems integration and program implementation.
- h) The City agrees to use due diligence in working with ATS to acquire in a timely manner the necessary permits (e.g., but not limited to, an encroachment permit), approvals and other necessary documentation, from the City (and the State, if necessary) to enable the Axisis™ installation after the submission of the plans.
- i) City shall provide permits at no cost to ATS.
- j) City shall provide power and access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each Dual Stationary Camera System.
- k) In those instances where damage to the Dual Stationary Camera Systems or sensors is caused by a third party working for the City or by the City or authorized agent due to scheduled or unscheduled road construction or repair, ATS will provide an estimate of the cost of repair. Upon authorization to proceed with the repairs or

replacement, ATS shall replace or repair any damaged equipment and invoice for pre-approved repair cost.

- I) The City shall provide a letter for the Violation Processing subcontractor to use with the Department of Motor Vehicles indicating that the ATS is acting as an Agent of the City for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. § 2721, Section (b) (1).

**Exhibit C**  
**Service Fees**

The City agrees to pay ATS a monthly Service Fee for those selected services itemized below:

**Monthly Service Fee per Approach**

<b>Cost Element</b>	<b>Monthly fee</b>
<input type="checkbox"/> Axis RLC-300 Red Light Camera System monitoring front and rear images up to 4 lanes, image processing, data entry, California registered owner acquisition, final quality control review, access to web-based Axis VPS for Police Review, 1 <sup>st</sup> notice printing in color, postage and mailing, electronic notice file transmission to court system, evidence packages for scheduled hearings.	\$5,100
<input type="checkbox"/> Option A – Axis LIVE digital video system for monitoring up to 4 directions of travel at one intersection. Digital video will be internet accessible for remote police and court viewing.	\$ 295
Sub total	\$5,395
<b>Other Services</b>	
<input type="checkbox"/> Option C – Axis E-Payment Portal for Electronic and Phone-based IVR payments – online access convenience fee charged to user.	\$0
<input type="checkbox"/> Option D – Identifying out-of-state registered owners and mailing violation notices: \$3.00 per mailed citation except for AZ and NJ, which is \$7.00 (State access charges billed monthly).	
<b>TOTAL MONTHLY SERVICE FEE</b>	<b>\$5,395</b>

If a camera system is no longer generating adequate violations to cover the service fee, the ATS will consult with the City to determine an alternative location. The fee to move a camera from one location to another without mutual agreement is \$25,000.

The above Service Fees are maximum fees. In no case shall monthly fees exceed fines collected by the City.



**Exhibit D**  
**Initial Camera Locations**  
**Stationary Camera Systems**

An Approach is defined as one direction of travel of one or more lane on a road or a traffic intersection.

The sites where the Dual Stationary Camera Systems will be installed were selected after a careful analysis by the City Police, or the Traffic Engineering Department, or both, and ATS engineers. Based on that analysis, the City and ATS has determined that each of these intersections have a high incidence of intersection collisions, there is an extreme difficulty in identifying violators, and that other traffic light changes/modifications would be ineffective in resolving these problems. Accordingly, the City determined that photo enforcement was the best solution to the dangers posed by these intersections.

The City approves that ATS install Dual Stationary Camera Systems at the following intersection(s) and to monitor the identified lanes:

Camera Location or Intersection Approach	Straight Through Lane	Left Turn Lane	Right Turn Lane
41 <sup>st</sup> Avenue at Capitola Mall Entrance Southbound	X	X	X
41 <sup>st</sup> Avenue at Clares Street, Southbound	X	X	X