

**CITY AND COUNTY OF SAN FRANCISCO**

**Municipal Transportation Agency  
1 South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, California 94103-5417**

**Fourth Amendment**

THIS AMENDMENT (this "Amendment") is dated for convenience as of the 1<sup>st</sup> day of May, 2009, in San Francisco, California, by and between ACS State and Local Solutions ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency (the "Agency").

**RECITALS**

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**a. Agreement.** The term "Agreement" shall mean the Agreement dated December 19, 2005, between Contractor and City, as amended by the First Amendment dated December 1, 2007, Second Amendment dated December 4, 2008, and the Third Amendment dated January 1, 2009.

**b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**a. Section 2.** Section 2 "Term of the Agreement" currently reads as follows:

Subject to Section 1 (Certification of Funds), the term of this Agreement shall be from December 30, 2005 to December 30, 2009.

The term of this Agreement may be extended up to an additional one (1) year upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

Such section is hereby amended in its entirety to read as follows:

**2. Term of the Agreement**

**a. Existing System Intersections**

Subject to Section I (Certification of Funds), the term of this Agreement for program administration of Existing System Intersections as specified in Appendix A.I shall be from December 30, 2005 to December 30, 2009.

The term of this Agreement for program administration of Existing System Intersections as specified in Appendix A.I may be extended up to an additional one (1) year upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

**b. Expansion of Existing System**

Subject to Section 1 (Certification of Funds), the term of this Agreement for program administration and lease of system equipment for the Expansion of Existing System as specified in Appendix A.II and Appendix G shall be for three years from the date of the Agency's written notification to Contractor to proceed provided that such notification occurs on or before December 30, 2009.

The term of this Agreement for program administration and lease of system equipment for the Expansion of Existing System as specified in Appendix A.II and Appendix G may be extended up to an additional two (2) years upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

**b. Appendix A.** Appendix A "Services to Be Provided by Contractor - Section II, Expansion of Existing System - D. Supply of System Equipment" currently reads as follows:

**D. Supply of System Equipment**

Upon award of the Construction Contract, Contractor shall coordinate with the selected Construction Contractor to provide and deliver all necessary System Equipment for the enforcement at the new intersections in accordance with the contract construction schedule. All System Equipment shall be provided by Contractor and delivered to the City in accordance with construction contract (date and delivery location to be determined as agreed upon by all parties). All System Equipment identified in the PS&E in Section II.B shall be delivered by Contractor. All System Equipment shall meet or exceed each of the requirements listed in Appendix F - System Requirements for Supplied Equipment and Technical Specifications.

Costs for the supply of System Equipment shall be as specified in Contractor's cost proposal contained in Appendix B, Exhibit 5 - Supply of System Equipment Lease Fees for Future Expansion Locations. The lease term shall be for three years with two optional one-year additional lease terms.

City reserves the right to cancel the lease at any time. In the event City chooses to terminate the lease prior to the expiration of the three year lease term, the City agrees to pay any past-due payments and an early termination fee not to exceed 10% of the remaining lease amount.

Such section is hereby amended in its entirety to read as follows:

**D. Supply of System Equipment**

Upon award of the Construction Contract, Contractor shall coordinate with the selected Construction Contractor to provide and deliver all necessary System Equipment for the enforcement at the

new intersections in accordance with the contract construction schedule. All System Equipment shall be provided by Contractor and delivered to the City in accordance with construction contract (date and delivery location to be determined as agreed upon by all parties). All System Equipment identified in the PS&E in Section II.B shall be delivered by Contractor. All System Equipment shall meet or exceed each of the requirements listed in Appendix F – System Requirements for Supplied Equipment and Technical Specifications.

The terms and conditions for the City's lease of system equipment from Contractor shall be in accordance with the Equipment Lease Attachment incorporated herein as Appendix G. Costs for the supply of System Equipment shall be as specified in Contractor's cost proposal contained in Appendix B, Exhibit 5 – Supply of System Equipment Lease Fees for Future Expansion Locations. The lease term shall be for three years with two optional one-year additional lease terms.

The City reserves the right to cancel the lease at any time. In the event the City chooses to terminate the lease prior to the expiration of the three year lease term, the MTA agrees to pay any past-due payments and an early termination fee not to exceed 10% of the remaining lease amount.

c. **Appendix G.** Appendix G "Equipment Lease Attachment" is hereby incorporated into the Agreement. Appendix G is attached to this Amendment as Exhibit 1. In the event of any conflict between Appendix G and the Agreement, Appendix G shall take precedence with respect to any equipment leased pursuant to Appendix G.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after May 1, 2009.

**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

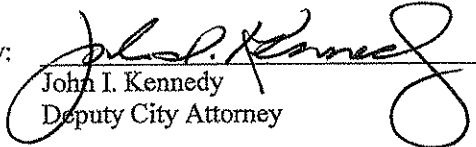
**CITY**

Recommended by:

  
Nathaniel P. Ford, Sr.  
Executive Director/CEO  
Municipal Transportation Agency

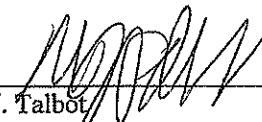
Approved as to Form:

Dennis J. Herrera  
City Attorney

By:   
John I. Kennedy  
Deputy City Attorney

**CONTRACTOR**

ACS State and Local Solutions

  
Mark J. Talbot  
Vice President  
ACS State and Local Solutions  
1800 M Street, NW  
Washington, DC 20036

City vendor number: 68769

**Appendix G**  
**EQUIPMENT LEASE ATTACHMENT**

This form is an Attachment to the Agreement between the City and County of San Francisco ("City"), acting by and through its Municipal Transportation Agency (the "Agency"), and ACS State and Local Solutions ("Lessor"), dated December 19, 2005. The Equipment to be leased from Lessor is set forth in Appendix B Exhibit 5 to the Agreement ("Equipment"). The terms and conditions of this attachment are referenced in and incorporated into the Agreement between the City and Lessor.

**Recitals**

WHEREAS, a Request for Proposal ("RFP") was issued on November 24, 2004, and the City selected Contractor as the highest qualified scorer pursuant to the RFP;

NOW, THEREFORE, City and Lessor agree as follows:

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated, and Lessor's sole remedy shall be repossession of the equipment.

This Section shall control against any and all other provisions of this Agreement.

**2. Term of the Agreement**

Subject to Section 1 (Certification of Funds), the term of this Attachment shall be for three years from the date of the Agency's acceptance of construction and installation of fully functioning system equipment at each new enforced intersections approach provided that such notification occurs on or before December 30, 2009.

The term of this Attachment may be extended up to an additional two (2) years upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

**3. No Automatic Renewal**

Notwithstanding anything to the contrary contained in this Lease (including, without limitation, any terms and conditions of Lessor attached hereto): (a) in no event shall the term of this Lease be longer than the initial term expressly stated in this Lease; (b) any automatic renewal or extension (whether or not

conditioned upon any notice or absence thereof from either party) or any similar "evergreen" provision shall be deemed null and void *ab initio*; and (c) the term of this Lease shall not be extended or renewed except by written agreement duly authorized, executed and delivered by City. In the event of any inconsistency within this Lease relating to the duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in this Lease, then the term shall be one year from the date on which the term commences.

#### **4. City's Payment Obligation**

In no event will the City make an advance payment. In the event any payment of any amount of monies is required by any Vendor or Manufacturer prior to acceptance of the Equipment by the City, Lessor is to advance such amounts.

The City will make a good faith effort to pay all invoices within thirty days of billing. In no event will the City pay any late fees or charges for payments made after the 30-day period.

Lessor and the City understand and intend that the obligations of the City to pay Rental Payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

The City shall pay Rental Payments, exclusively from legally available funds, to Lessor or, in the event of an authorized assignment by Lessor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Lessor in a form acceptable to the Controller. Each invoice must have a unique identifying number. Payments will be made in United States Dollars by warrant drawn on the Treasurer of City and County of San Francisco. Rental Payments shall be in consideration for the City's use of the Equipment during the applicable fiscal year in which such payments are due.

In no event shall the amount of this Agreement exceed two million dollars, four hundred eighty-one thousand, five hundred and seventy dollars. The breakdown of costs associated with this Attachment shall be as set forth in the Agreement, Appendix B, Calculation of Charges, Exhibit 5, Supply of System Equipment Lease Fees for Future Expansion Locations.

#### **5. Guaranteed Maximum Costs**

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

## 6. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) Conspires to defraud the City by getting a false claim allowed or paid by the City; (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; (e) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

## 7. Maintenance

The Contractor is responsible for general day to day maintenance of the Equipment throughout the term of the Attachment which includes but is not limited to the following tasks.

1. When Contractor services the Camera Units, Contractor shall inspect and test Camera Units and Equipment as necessary, to manufacturers' specifications, and shall complete a Field Technician Service and Inspection Log that is created by Contractor.

2. Contractor shall keep in its files the original Field Technician Service and Inspection Logs for use as evidence as required by the Court.

3. Contractor shall respond to any material malfunction of the Equipment within twenty four (24) hours after the MTA provides written notice regarding a Equipment malfunction to Contractor (Malfunction Notice). Contractor shall inspect the equipment and functionality of the System as a whole and individually at each of the System intersections when collecting film, but not less than on a weekly basis for digitally enforced locations. In the event that Contractor discovers any malfunction or defect, or in the event that Contractor receives a Malfunction Notice, Contractor shall notify the MTA Project Manager within 24 hours and use its best efforts to cause such malfunction or defect to be repaired within 48 hours, and in the event that such malfunction or defect has not been substantially repaired within 48 hours, the Contractor shall notify the MTA Project Manager with a written report identifying the problem, available options on how to correct it, and the Contractor's recommendation on how to proceed. The MTA reserves the right to determine the final course of action in all such cases. Should a defect or malfunction attributable to Contractor negligence or error result in a material loss of citation evidence, the MTA shall have the right to be compensated by Contractor for such loss based on the estimated number of citations lost (based on historical citation rates of the enforced approaches where the loss occurs) due to the malfunction or defect or liquidated damages as specified in Contract Section 19, whichever is less.

4. Contractor shall visit each camera installation at least twice per week to inspect and test the Camera Unit and all connections to verify that it is in proper working order. Contractor shall record and remedy any problems at Contractor's expense.

5. The City shall be responsible for relocating any Equipment that must be moved to meet the needs of the City outside the scope of this work. In this circumstance, the City shall relocate the Equipment at its sole expense.

6. All repair and maintenance of the Red Light Photo Enforcement System and related equipment shall be the sole responsibility of Contractor, including but not limited to maintaining the casings of the cameras and all other related Equipment in reasonably clean and graffiti-free condition.

7. Contractor shall not open the Traffic Signal Controller Boxes without prior authorization from the MTA and with a MTA representative present.

8. The provision of all necessary electrical, telephone services, DSL, cable, or other broadband services to the Designated Intersection approaches shall be the sole responsibility of Contractor.

9. In the event that images of a quality sufficient for the San Francisco Police Department (SFPD) personnel to identify violations cannot be reasonably obtained without the use of flash units, Contractor shall provide and install such flash units.

10. The Contractor Project Manager (or a reasonable alternate) shall be available to the MTA Project Manager each day, on a reasonable best efforts basis.

11. All electrical connections with MTA equipment and systems are limited to intersection signal outputs and must be optically or otherwise isolated.

12. The Image Processing Unit may be connected to the traffic signal controller to obtain the following:

- a. Contact closure of signal when traffic light enters the amber phase.
- b. Contact closure of signal when traffic light enters the red phase.
- c. Power source (110V AC).

13. Backup power should be provided so that the system clock and other data elements displayed in images are maintained for a minimum of seven (7) days in the event of a main power supply failure.

14. The Contractor shall make all necessary repairs and maintenance of the Equipment, including, but not limited to, maintaining the casings of the cameras and all other equipment in reasonably clean and graffiti-free condition.

15. Contractor shall make available a technician during any construction projects at designated intersections that will have a direct impact and implications on the overall functioning of the Equipment.

## **8. Use, Licenses**

The City will not use or operate the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease.

## **9. Delivery of Equipment; Transportation**

It is the responsibility of the Lessor to arrange with the manufacturer and/or vendor for the delivery and installation/construction management of the Equipment. Charges for delivery installation/construction management are the responsibility of the Lessor. The Equipment to be provided under this Lease is to be delivered to a location as designated by the City and installed and made ready for operation. The City shall provide a minimum of two weeks advanced notice to Lessor to deliver and furnish equipment ready and available for installation by Construction Contractor. All Equipment shall be



delivered to the SFMTA's Traffic Signal Shop located at 901 Rankin Street, San Francisco, California unless otherwise agreed upon.

**10. Installation**

The Lessor will arrange with the manufacturer and/or vendor to provide construction consultation services to the City's Construction Contractor during the installation of the Equipment at each new enforced intersection approach including preparation of job site, obtaining all permits and licenses, if any, necessary for the installation and operation of the equipment, furnish, assemble, install, and make any adjustments, fine tuning, and troubleshooting necessary to obtain optimal performance of the Equipment as necessary at the locations as designated by the City. Manufacturer and/or vendor must comply with all State laws and local Ordinances in installing the Equipment.

**11. Relocation of Equipment**

Lessor agrees that the City may upon reasonable notice to Lessor, relocate the Equipment or any item or items thereof to any location or locations within the geographical boundaries of the City where the City has offices at the City's sole discretion and cost. Prior to any such relocation the City agrees to execute or obtain and to deliver to Lessor such documents which Lessor reasonably requests to protect Lessor's right, title and interest in the Equipment.

**12. Lessor's Removal and the City's Surrender of the Equipment**

At the end of the lease term or unless sooner terminated, the City agrees to surrender the equipment in as good a condition as when furnished, reasonable wear and tear excepted. Lessor agrees, at Lessor's cost to accept and remove the Equipment as provided in this Lease. Lessor's failure to accept and remove the Equipment shall entitle the City to remove the Equipment and place it in any storage facility in San Francisco at Lessor's sole expense and Lessor shall hold the City free and harmless from any expense or damages of any kind occasioned thereby and arising therefrom.

**13. Default**

In the event of a default by Lessor under this Lease, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Lease. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Lessor any default by Lessor. Lessor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Lessor under this Lease all damages, losses, costs or expenses incurred by City as a result of such default by Lessor.

**14. Force Majeure**

Lessor shall not be liable for failure to furnish Equipment ready for use on the date specified or to remove in accordance with the terms of this Lease nor shall City be liable for delay in installation or removal when such failures are due to causes beyond the reasonable control of either such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event the party under obligations to perform shall perform as soon as such cause is removed.

**15. The City's Right to Use Other Equipment Simultaneously with the Equipment**

The City does not grant Lessor an exclusive right during the term of this Lease to supply the City with any other equipment. The City reserves the right to lease or purchase similar or different equipment from any other supplier or lessors which may be used contemporaneously with any item of Equipment leased hereunder.

**16. Disclaimer of Warranties**

Lessor hereby assigns to the City for and during the Lease Term, to the extent permitted by law, all Manufacturer's or Vendor's warranties or guaranties, express or implied, issued on or applicable to the Leased Equipment, and Lessor authorizes the City to obtain the customary services furnished in connection with such warranties or guaranties at the City's expense. Lessor authorizes the City, to the extent permitted by law, to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer or vendor. The City acknowledges that the Equipment has been purchased by Lessor on behalf of the City in accordance with the City's specifications.

The City shall look directly to the Manufacturer or Vendor for any warranties or any service for the equipment.

**17. Indemnification**

Lessor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Lessor or loss of or damage to property, arising directly or indirectly from Lessor's performance of this Agreement, including, but not limited to, Lessor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Lessor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Lessor's obligation to indemnify City, Lessor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Lessor by City and continues at all times thereafter.

Lessor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

**18. Enjoyment of the Equipment**

Provided that and so long as the City is not in default under this Lease, Lessor hereby covenants to provide the City during the Lease Term with quiet use and enjoyment of the Equipment, and the City

shall during the Lease Term peaceably and quietly have and hold and enjoy the equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. Any assignee of Lessor shall not interfere with the City's quiet use and enjoyment during the Lease Term so long as the City is not in default pursuant to this Lease.

#### **19. Title to the Equipment**

Title to the Equipment and any and all additions, repairs, replacements or modifications thereto shall be held in the name of Lessor, and the City shall have no right, title or interest in the Equipment or any additions, repairs, replacements or modifications thereto except as expressly set forth in the Lease.

#### **20. Liability for Damage to Equipment**

It is understood and agreed that the City is responsible for loss of or damage to any Lessor-owned equipment involved, only as caused by the negligent or wrongful actions of City's officers, agents and employees.

#### **21. Insurance**

a. Without in any way limiting Lessor's liability pursuant to the "Indemnification" Section of this Agreement, Lessor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to City of cancellation of policies for any reason, reduction of coverage or nonrenewal of coverages mailed to the following address:

Department of Parking and Traffic  
Red Light Camera Program  
Municipal Transportation Agency

1 South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, California 94103-5417

d. Should any of the required insurance be provided under a claims-made form, Lessor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by City shall not relieve or decrease the liability of Lessor hereunder.

## **22. Provisions Controlling**

Lessor further agrees that in the event of conflicting language between this "Equipment Lease Attachment" and Lessor's printed form, this "Equipment Lease Attachment" shall take precedence.

## **23. Lessor's Default**

Failure or refusal of Lessor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to the City, this Contract may be terminated by the City upon ten days' written notice. Such termination does not waive any other legal remedies available to the City.

## **24. Taxes**

The City will only pay California sales and use taxes. The Lessor is to add California sales and use taxes to the monthly payment and the tax must be properly identified on each monthly invoice. Any other taxes presently in effect which may be levied upon this Agreement, the transaction, or the Equipment or services delivered pursuant hereto shall be borne by the Lessor. The Lessor will be responsible for all property taxes. In the event any taxes or charges are enacted after the date of execution of this Lease Agreement, those taxes or charges shall be borne as mutually agreed. The Lessor will indemnify and hold City harmless from any fines, penalties or interest thereon imposed during the Lease term or in connection with termination of the lease by any federal, State or local government or taxing authority.

The taxes covered by this Section shall only include those attributable to the equipment. Under no circumstances will the City pay any taxes imposed on, based on, or measured by the net income of the Lessor.

**25. Assignment**

Notwithstanding any other provision in this lease, in no event shall all or any portion of this lease be assigned without the prior written approval of Purchasing and the City Attorney. Furthermore, in no event shall Lessor effect a public offering of certificates of participation, municipal securities or other debt instruments presenting fractionalized interests in this lease. For purposes of this Section, a public offering shall occur when the certificates of participation, municipal securities or other debt instruments are either: (a) offered or sold to more than twenty investors; or, (b) offered or sold in denominations of less than \$10,000.

**26. Reserved**

**27. Notices to Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: Department of Parking & Traffic  
Attn: Red Light Camera Program Manager  
Municipal Transportation Agency  
1 South Van Ness Avenue, 7th Floor  
San Francisco, California 94103-5417  
[Tabin.Chung@sfgov.org](mailto:Tabin.Chung@sfgov.org)  
Fax: 415-701-4737

To Contractor: Contractor State and Local Solutions  
Attn: Red Light Camera Program Manager  
255 California Street, Suite 550  
San Francisco, California 94111  
[James.Davis4@acs-inc.com](mailto:James.Davis4@acs-inc.com)  
Fax: 415-445-0190

Any notice of default must be sent by registered mail.

**28. Section Headings**

All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Lease.

**29. Waiver**

The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

**30. Governing Law**

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California.

**31. Entire Agreement; Modifications**

The Lease, together with the Appendices hereto, constitutes the entire Agreement between the parties and this Lease shall not be modified, amended, altered or changed except in writing as herein provided.

All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Lease.

Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. Subject to the specific provisions of this Lease, this Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**32. Nondiscrimination; Penalties**

**a. Lessor Shall Not Discriminate**

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts**

Lessor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Lessor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits**

Lessor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental

entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract**

As a condition to this Agreement, Lessor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Lessor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Lessor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Lessor and/or deducted from any payments due Lessor.

**33. EIC Forms**

a. Lessor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Lessor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Lessor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Lessor of the terms of this Agreement. If, within thirty days after Lessor receives written notice of such a breach, Lessor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Lessor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Lessor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

**34. MacBride Principles—Northern Ireland**

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

### **35. Tropical Hardwoods and Virgin Redwood Ban**

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

### **36. Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

### **37. Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this contract. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

### **38. Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

### **39. Conflict of Interest**



Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

#### **40. Compliance with Laws**

Lessor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

#### **41. Protection of Private Information**

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

#### **42. Graffiti Removal**

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute a material breach of this Agreement.

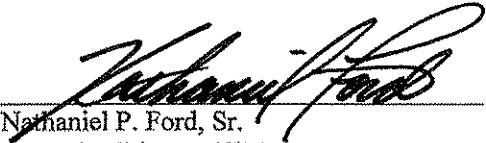
**43. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

IN-WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

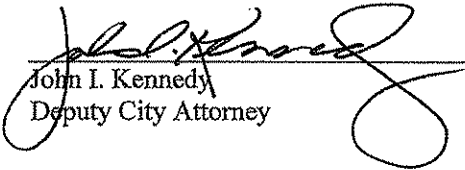
**CITY**

Approved by:

  
Nathaniel P. Ford, Sr.  
Executive Director/CEO  
Municipal Transportation Agency

Approved as to Form:

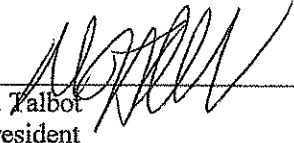
Dennis J. Herrera  
City Attorney

By:   
John L. Kennedy  
Deputy City Attorney

**CONTRACTOR**

ACS State and Local Solutions

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

  
Mark J. Talbot  
Vice President  
ACS State and Local Solutions  
1800 M Street NW  
7<sup>th</sup> Floor  
Washington, DC 20036

City vendor number: 68769