

**PHOTO ENFORCEMENT SERVICES AGREEMENT**

THIS AGREEMENT is between American Traffic Solutions, Inc. (herein "ATS"), with its principal place of business at 7681 East Gray Road, Scottsdale, Arizona, and the City of Bellevue, Washington, herein "Customer", with principal offices at 450 110th Avenue NE, Bellevue, Washington 98004.

WITNESSETH:

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

WHEREAS, Customer desires to use the Axis™ System to monitor and enforce red light violations, and may, in the future, desire to monitor and enforce traffic speed or other traffic movements and to issue citations for traffic violations.

WHEREAS, ATS acknowledges that Customer has an existing Interlocal Agreement For Provision of District Court Services Between King County and The City Of Bellevue (District Court Interlocal Agreement) that provides in part that duties imposed by "General Rules (GR) 29 – Presiding Judge in Superior Court, District and Limited Jurisdiction Court" - are non delegable as provided therein;

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:

**"Approach"** is defined as one direction of travel of one or more lanes on a road or a traffic intersection up to four (4) contiguous lanes controlled by up to two (2) signal phases.

**"Camera System"** means a photo-traffic monitoring device consisting of one (1) rear camera, strobe, and traffic monitoring device capable of accurately detecting a traffic infraction on up to four contiguous lanes controlled by up to two (2) signal phases and which records such data with one or more images of such vehicle. "Camera System" shall also, where the sense requires, include any enclosure or cabinet and related appurtenances in which the Axis™ is stationed.

**"Citation"** means a citation or notice of violation or equivalent instrument 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 Axis™.

**"Owner"** means the owner(s) of a motor vehicle as shown by the motor vehicle registration records of the motor vehicle department or the analogous agency of another state or country.

**"Paid Citation"** means a situation where the person cited has entered a plea of guilty and paid any portion of the fine and applicable court costs associated with the particular citation.

**"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.

**"Recorded Image"** means an image digitally recorded by a Camera System.

**"Axis System"** means the Axis Violation Processing System which is a hosted application

owned, maintained and managed by ATS from its facilities.

**"Traffic Control Signal"** means a traffic control device that displays alternating red, yellow and green lights intended to direct traffic when to stop at or proceed through and intersection.

**"VIMS Analysis"** is a statistical assessment of violations rates at suspected problem intersections and approaches to determine the need for a red light system.

**"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.

## **2. ATS AGREES TO PROVIDE:**

A. The scope of work is identified in Exhibit "A, Section 1". In addition to any other duties set forth in this Agreement, ATS, subject to the provisions of this Agreement including **Exhibit "A, Section 1" - Project Scope of Work**, shall:

1. Manage the delivery, installation and configuration of the System and the performance of all services in connection therewith as described in, and in conformance with, **Exhibit "A, Section 1" - Project Scope of Work**;
2. Provide, review, and approve all technical specifications with respect to Customer's hardware and equipment to ascertain compatibility with the System;
3. Develop, in consultation with, Customer and Subcontractors, the Acceptance Test Plan (ATP) for the System according to the **Exhibit "A, Section 1" - Project Scope of Work**;
4. Assist Customer in performing acceptance testing in the manner contemplated by the **Exhibit "A, Section 1" - Project Scope of Work**;
5. Assist Customer in performing the final acceptance testing to determine whether the System conforms to the ATP and is ready for Final System Acceptance;
6. Act as the central point of contact and coordinator for all services. Obtain license, warranty, and/or service agreements from vendors of Third Party Products and Services provided hereunder and transfer and/or pass through the benefits of such agreements to Customer including, but not limited to, any contracts or agreements with any and all Subcontractors;
7. Provide Customer with any Upgrades or Updates of, and Modifications, Customization, Interfaces or Enhancements to, the Axis System, concurrently with such Upgrades, Updates, Modifications, Customization, Interfaces and Enhancements being made available to other licensees of the Software (it being acknowledged that following expiration of the Warranty Period, such Upgrades, Updates, Modifications, Customization, Interfaces and Enhancements will be made available pursuant to the Software Maintenance Agreement). Any costs pertaining to the installation of such Upgrades, Updates, Modifications, Customization, Interfaces and Enhancements shall be the responsibility of ATS, to the extent the installation involves incorporating the Upgrade, Update, Modification, Customization, Interface or Enhancement into the System and in doing so securing for Customer, at a minimum, the same level of functionality that it had with respect to the System immediately prior to the installation of such Upgrade, Update, Modification, Customization, Interface or Enhancement;

Notwithstanding the paragraph above, the Customer understands that ATS will not be selling or delivering software to the Customer or accessing Customer systems and that the Customer will only be accessing the Axis System remotely using an internet

connection. As such, the Customer understands that ATS is not providing licensed software for installation on Customer systems but accessibility to the Axis System under the terms of this Service Agreement.

8. Verify with Customer that the services due from Subcontractors and any other vendor under this Agreement have been delivered and/or performed in accordance with the terms of this Agreement prior to releasing payments for such services;

9. Assist Customer in determining whether and when the Camera System and Axis System is ready for use in Live Operations;

10. Deliver, Install, and Implement the System at the stated location(s) and in stated quantities including, without limitation, all Deliverables in accordance with the Specifications and the Project Schedule included in **Exhibit "A, Section 1" - Project Scope of Work** or elsewhere in this Agreement or otherwise mutually agreed upon in writing by Customer and ATS; and with respect to delivery, installation and implementation, ATS shall comply with state, federal, and industry standards for such items;

11. Following Delivery and Installation of the System, provide Customer with training as specified in the Training Plan included in **Exhibit "A, Section 1" - Project Scope of Work**. Such training is to be provided on a mutually agreed upon schedule between Customer and ATS. If Customer is not available for training at the scheduled time(s), a revised training schedule will be established based upon the mutual agreement of both parties, and the Project Schedule shall, if necessary, be revised by mutual agreement of the parties. Training materials are to be provided electronically by ATS for review and approval by Customer in advance of the scheduled training date;

12. Work in cooperation with Customer staff and/or various other Customer contractors under contract with Customer. ATS agrees to coordinate and cooperate with all such staff and Customer Contractors as may be necessary, to assure timely and successful implementation of the System according to the Project Plan.

B. ATS shall perform the duties described in **Exhibit "A, Section 1" - Project Scope of Work**, as supplemented above, in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof. Having regard to **Exhibit "A, Section 1" - Project Scope of Work** and the Project Schedule, ATS shall, in consultation with Customer, determine the manner and means by which such duties shall be performed. Such duties shall be performed with Customer's full cooperation, at Customer's premises or, if agreed to by both parties, at an alternate location. ATS agrees, while working on Customer's premises, to observe Customer's rules and policies, ATS shall respond expeditiously to any inquiries pertaining to this Agreement and the Project from Customer.

### **3. ATS AND SUBCONTRACTORS**

A. ATS may enter into subcontracts with third parties for its performance of any part of ATS's duties and obligations, provided that, in no event shall the existence of a subcontract release or reduce the liability of ATS to Customer for any breach in the performance of ATS's duties. ATS agrees to hold Customer harmless hereunder for any loss or damage of any kind, including attorney's fees, occasioned by the acts or omissions of ATS's Subcontractors, their agents, or employees. Customer reserves the right to reject any Subcontractor. Third party products or services included in **Exhibit "A, Section 1" - Project Scope of Work** require a contract to be in place prior to the commencement of this contract.

B. ATS shall ensure, with written documentation, that Customer is an intended third-party beneficiary with the right to enforce the terms of any agreement between ATS and any Subcontractor used by ATS pertaining to the services, products and licenses provided under this Agreement. ATS shall be responsible for coordinating any response to disputes or issues, and shall use commercially reasonable efforts to ensure that any such dispute or issue is resolved to Customer's satisfaction. Failure to obtain a written agreement naming the Customer as a third party beneficiary shall be considered a material breach of this Agreement.

#### **4. CUSTOMER AGREES TO PROVIDE:**

The scope of work identified in Exhibit "A, Section 2."

#### **5. TERM AND EFFECTIVE DATE**

This contract shall be effective on the date of the last signature below. The term of this Agreement shall be for five (5) years from the date Customer signs same (the "Start Date") and may be extended for two additional five (5) year periods. Customer may extend this Agreement at the expiration of any term by providing ATS 60 days written notice of renewal.

#### **6. SOFTWARE ACCESSIBILITY**

A. Grant of License: Subject to the terms and conditions of this Agreement, CONTRACTOR hereby grants to CUSTOMER: a non-exclusive right to access and use the Axis System for the purposes intended under this service agreement as outlined in **Exhibit "A, Section 1" – Project Scope of Work**.

B. Term of Licenses: The access granted under the license herein commences on the Effective Date and terminates upon termination of the contract.

#### **7. FEES AND PAYMENT:**

A. Customer shall pay for all equipment, services and maintenance based on the fee schedule indicated in Exhibit A, Schedule 1, ("Fees") in consideration of acceptable ATS performance. Payment shall only be made for services performed, after acceptance (and initially only after acceptance as determined by ATP) and authorization by Customer. Such payment shall be made within thirty (30) days after the Customer's receipt of a properly completed invoice and acceptance of the services. Payment periods will be computed from the date of the acceptance by the Customer of completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract.

B. All records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the Customer for a period of three (3) years after final payment. Copies shall be made available to the Customer upon request.

C. If during the course of the Agreement, the work performed does not meet the requirements set forth in the Contract, ATS shall correct or modify the work to comply with the Agreement requirements and the Customer shall have the right to withhold payment for such work until it meets the requirements of the Agreement.

D. Invoices must show a breakdown of services provided and price for each. Only designated Customer staff may place work order(s). Invoices must specify the name and phone number of the Customer employee who placed the order.

E. Cost Neutrality Clause - During the term of the contract, Customer shall not be required to pay ATS more than Customer (or ATS on Customer's behalf) has collected/received in revenue through the use of the Axis System cumulatively throughout the term of the contract. For the purposes of this clause, the term "revenue" applies to that portion of fines actually received by the Customer ("revenue") according to the distribution method applicable under State law or by court contract. This clause will be applied as follows:

1. Where revenue for the program during any month, as defined by Customer, are less than the full amount of ATS invoices, ATS shall be entitled to payment in the full amount of revenue ATS will maintain an accounting of any net balances owed to ATS and shall apply future revenue received by Bellevue first to the accrued balance and then to the current months invoice.

Example: If during October, November and December revenue received is \$2,000 per month and ATS invoice is \$4,000 per month, Customer will only pay for each month \$2,000. However, if in January revenue is \$8,000, Customer will pay ATS the full \$8,000 which would then still leave a balance owing of \$2,000. In February Customer received \$8,000 in revenue. ATS would receive \$6,000. Additionally, the \$2,000 surplus would be available for payment in a future month in which revenue is less than amount invoiced. This running reconciliation shall be for the term of the contract which shall be documented by a monthly invoice showing to date deficit or surplus amounts.

F. Taxes, Fees and Licenses:

1. Taxes: Where required by state statute, ordinance or regulation, ATS shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Customer agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased.

2. Fees and Licenses: ATS shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the ATS' sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Agreement. ATS must pay all custom duties, brokerage or import fees where applicable as part of the contract price. ATS shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

**8. RESPONSIBILITY OF ATS**

**A. Safety**

ATS shall take all necessary precautions for the safety of employees and the general public on the work site and shall comply with all applicable provisions of federal, state and local regulations, ordinances and codes. ATS shall erect and properly maintain at all time, as required by the conditions and progress of the work, all necessary safeguards for the protection of the workers and the public and shall post danger signs warning against known or unusual hazards.

**B. Warranties**

ATS warrants that all materials, equipment, and/or services provided under this Agreement shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the

requirements and specifications herein. Acceptance of any service and inspection incidental thereto by Customer shall not alter or affect the obligations of the ATS or the rights of Customer. ATS shall be responsible for correcting any deficiencies and for completing the work as described in Exhibit A. 1. ATS shall comply with the maintenance procedures and manufacturer recommendations for operation of the Axis™ equipment which affect this Agreement.

### C. Warranty of Performance

For a period of ~~two~~ <sup>five</sup> years from date of this Agreement, ATS warrants that the system will perform in accordance with the specifications and requirements contained in this Agreement. ATS warrants to Customer that the deliverables will perform in accordance with the description of the functions and capabilities as described in **Exhibit "A, Section 1" – Project Scope of Work**, provided that the deliverables are properly used in accordance with ATS's instructions. ATS agrees that it will promptly make corrections of Errors in accordance with the response guarantees defined in **Exhibit "A, Section 1" – Project Scope of Work** which are reported in writing to ATS.

### D. Intellectual Property Rights

ATS represents and warrants that: (1) it is and will be either the sole author of, or duly licensed and authorized to use, all works employed by ATS in preparing any and all Software; (2) it has and will have full and sufficient right to assign or grant the rights and/or licenses in the Software, and (3) all Software provided to Customer does not and will not infringe any patents, copyrights, trademarks, or other intellectual property rights (including trade secrets), privacy or similar rights of any third party, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against ATS (or, insofar as ATS is aware, any entity from which ATS has obtained such rights). ATS represents and warrants that it owns or has the absolute right to sell, license, or otherwise grant the rights in the System conveyed to Customer herein, and that neither the System nor any of its components (including any third party products), infringes any patent, copyrights, or other intellectual property right of, or misappropriates the trade secrets of, any person or entity. ATS shall protect, indemnify, defend, and hold harmless Customer and Customer's officers and directors, agents, and employees, against any claim or legal action (whether or not such claim or action is frivolous) brought by a third party arising out of a claim of infringement of patent, copyrights, or other intellectual property rights, or misappropriation of trade secrets, in connection with the Use (copying of any portion of the Software from a storage unit or media into a computer or Server and execution of the software thereon ) of the System (including third party software incorporated into the Licensed Software by ATS and Updates) by Customer or in connection with the Use of the System.

### E. Patents

ATS does not convey to Bellevue, nor does Bellevue obtain, any right to any document or material utilized by ATS that was created or produced separate from this Contract or was preexisting material (not already owned by Bellevue), provided that the ATS has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the ATS grants Bellevue an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

