

City of Issaquah

COMMITMENT REVIEW & PROCESSING FORM non-PWE

2008-418 ✓

(Procedure explanations, forms, documents, etc. are found under: R:\Risk Management Info & Documents\Contracts & Assoc Documents...) Call Risk Management before starting processing procedure if exceptions to contract or insurance requirements are requested.

ALL INFORMATION ABOVE DOUBLE LINE MUST BE COMPLETED & PROVIDED; OTHERWISE PACKET WILL BE RETURNED TO ORIGINATOR.

- Print Agreement Processing Form on yellow paper - then submit to contract processing. Allow 7 business days processing.
Certificate of Insurance, with City listed as an Additional Insured, policy endorsement must be attached at submission.
If vendor has not worked with the City before - a signed and completed W-9 form must be attached.
Verify that vendor has a City Business License before submitting through contract process - list UBI# 602548774
At least two originals should be attached if vendor wants to receive an original signed copy for their files.
If document needs to be Recorded, department may be responsible for sending it in - order warrant concurrently with contract.
Documents usually must be signed by Contracting Party before the Mayor signs (except for State or County documents).

Contracting Entity: American Traffic Solutions, Inc.

Date Original Contract Signed By Contracting Party Number of Original Document(s) provided: 3

Contact Person and Title at Above Entity: Adam E. Tuton, or Chief Operating Officer Phone: (480-368-0900)

Official Title of Document Attached: Professional Services Agreement

Summary Purpose of Document: Provides Red Light and Fixed Speed Stationary Camera Systems to the City of Issaquah

Public Works Project: Formal Bid req'd? or Small Works Roster Used? (only if over \$30,000 single craft/\$45,000 multiple craft, but under \$200,000)

* Formal sealed bids are to be conducted by the City Clerk prior to Legal Notice of Advertisement for Bid - contact Clerk's office directly before proceeding. Regardless of cost - all public works & maintenance agreements must include a copy of the current L&I Prevailing Wage Rates applicable to the project.

Effective Date(s) of Document: From: Date Signed To: 5 years from date signed

Change Order/Addendum #

Originating Department: Police Department Staff Person: Paul Ayers Phone Ext 3205

- Total City Funding for this Contract (even if zero): \$ 47,000
Total Non-City Funding for this Contract (even if zero): \$
Total Overall Project Budget (for entire project - not just City portion or this single contract total): \$ 49,000.

Agenda Bill #/Date Approved (if City Council authorization needed - do not submit before approval) AB 5825-7/7/08

Originating Department Director/Manager Approval: (Signature) Paul D. Ayers, Chief of Police P. D. Ayers

***** FOR CONTRACT PROCESSOR USE & REVIEW PROCESS ONLY BELOW THIS LINE *****

Review by Contract Processor for All Documents:

- 1. Business License Needed? Yes (Current # 602548774) or No
2. Bond/Retainage Needed? (YES - if under \$35k & Small Works Roster not used OR YES - for all over \$35k) Yes or No
3. Certificate of Insurance (& Endorsement) Needed? Yes or No
4. If NEW VENDOR ONLY - is W-9 form attached? Existing vendor or New
5. Gov't Grant, Bill of Sale, Affidavit of Payment, Property Transfer, Construction, Item Loaned/Leased to City - cc: FINANCE Yes/No

Process for Legal/Financial Approval & Document Signature - Signers please initial and date - return to Contract Processor:

- 1. Risk Management (Hold Harmless, insurance, exceptions, City form or allowable other)
2. Finance Director Approval (all documents involving funds)
3. City Attorney Approval (all documents - Risk Mgmt. may sign standards)
4. Mayor Approval (all documents, unless Director authorized by Commitment Authority)
5. City Clerk's Attest (only if Mayor signed)

Recording:

- 1. Document Need to be Recorded with King County? Yes or No (CLERKS POST INTERLOCAL TO CITY WEBSITE - date done)
2. Fee(s) paid by: a) City or b) Contracting Party
3. Date Sent for Recording: Date Received Back from County:

Distribution of executed document(s) - original(s) and copies: Return one original countersigned copy to Clerks
ORIGINAL for City Clerk File
ORIGINAL for Contracting Party via Originating Department Staff Person for Staff Person to Send Out to Contracting Entity
COPY/ORIGINAL to Originating Department Staff Person for Department File (original if third set was provided)

Documents Distributed By (signature): Randy Reed On Date: 7-31-08

CITY CLERK'S OFFICE

AUG 14 2008

RECEIVED

CITY OF ISSAQUAH
PROFESSIONAL SERVICES AGREEMENT
Contract Title: Traffic Safety Camera System
Contract #: _____

THIS AGREEMENT made and entered into on this 11 day of August, 2008, by and between the City of Issaquah, a Washington Municipal Corporation (the "City"), and American Traffic Solutions, Inc., the Consultant (the "Consultant").

Consultant Business: American Traffic Solutions, Inc.
Consultant Address: 7681 East Gray Road, Scottsdale, AZ 85260
Consultant Phone: 480-596-4600
Consultant Fax: 480-607-0901
Contact Name: Adam E. Tuton or Chief Operating Officer
Consultant e-mail: adam.tuton@atsol.com
Federal Employee ID No.: 48-1114931

Authorized City Representative for
this contract:

WHEREAS, the City desires to implement and operate a turnkey traffic safety camera system pursuant to Washington State Law 46.63.170; and

WHEREAS, public convenience and necessity require the City to obtain the services of a Consultant with photo enforcement implementation and operations experience; and

WHEREAS, the City of Seattle awarded a contract to American Traffic Solutions, Inc. for a traffic safety camera system as a result of a competitive solicitation; and

WHEREAS, American Traffic Solutions, Inc., extends the City of Seattle contract to the City of Issaquah and such agreement is the basis for this contract; and

WHEREAS, the City finds that Consultant is qualified to perform and is experienced in performing the required services; and

WHEREAS, the City desires to engage the Consultant to provide red light and fixed speed traffic safety camera services, also known as photo enforcement services;

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. Employment of Consultant.

1.1 The City retains the Consultant to provide the services described in "Exhibit A – Scope of Work" (the "Work"). Any inconsistency between this Agreement and the Scope of Work shall be resolved in favor of this Agreement. The Consultant shall perform the Work according to the terms and conditions of this Agreement.

1.2 The City may revise the Work and the compensation only by a written Change Order signed by the authorized City representative that shall become a part of this Agreement.

1.3 The project manager(s) of the Work shall be Cmdr. Scott Behrbaum. The project manager(s) shall not be replaced without the prior written consent of the City.

1.4 Work shall commence when the City issues a notice to proceed and it shall be completed no later than 90 days after receipt of the last installation permit, unless the completion date is extended in writing by the City.

1.5 Consultant shall own all cameras and other equipment installed pursuant to this Agreement. All risk of loss shall remain with Consultant. Consultant shall repair and replace all such equipment at its sole cost, unless such loss was caused by a negligent act or omission of the City.

2. Payment Terms.

2.1 Compensation

2.1.1 The total compensation to be paid to Consultant, including all services and expenses, shall not exceed the fees indicated on each Work Order Exhibit, which shall be full compensation for the Work.

2.1.2 The Consultant shall be paid in such amounts and in such manner as described in each Work Order Exhibit.

2.1.3 Pricing shall be fixed and firm through the pilot project and for a total of three years, assuming the City elects to continue the project,

2.1.4 For service charge adjustment beyond the initial 5 years, the basis for adjustment shall:

- (a) Be County or other pricing index appropriate to the particular product herein;
- (b) Not produce a higher profit margin than that on the original contract;
- (c) Clearly identify the items impacted by the increase;
- (d) Be accompanied by documentation acceptable to the City sufficient to warrant the price increase request and shall be no greater than the total of changes to the CPI Index for King County; and
- (e) Remain firm for a minimum of 365 days.

2.1.5 This contract includes no reimbursable expenses.

2.1.6 The sole source of City funds for payment of any and all compensation to Consultant shall be from what the City has collected/received from fine payments through use of the Axis System. The City shall be under no obligation to use any other funds for payment of compensation to Consultant.

2.2 Cost Neutrality Clause:

After a 3-month ramp up period and during the remaining term of the contract, City shall not be required to pay ATS more than City (or ATS on City's behalf) has collected/received in fines payments through the use of the Axis System cumulatively throughout the term of the contract. For the purposes of this clause, the term "fines" applies to that portion of fines actually retained by the City according to the distribution method applicable under Washington State law.

2.2.1 This clause will be applied as follows:

(a) If collections for the program during any month are less than the full amount of ATS invoices, ATS shall be entitled the full amount of fines actually collected. ATS will maintain an accounting of any net balances owed to ATS and shall apply future collections first to the accrued balance and then to the current months invoice. At any time that ATS fees and any accrued balances are fully repaid, additional collections will be retained by the City. Any positive revenue balances generated from this program (whether reserved in cash or not by the City) will be used to offset future ATS invoices in the event of monthly deficits.

(b) Example: If during Year 1 of the program, revenues minus ATS fees yield a net surplus of \$100,000, this amount would be available to pay ATS invoices for any future periods in the event that lesser or no revenue were to be generated in future periods. However, at the point where the (actual or paper) surplus is exhausted, then no additional

payments would be due until additional collected fines were available to cover the cumulative deficit. For the purposes of this clause, the accrued surplus is a calculated figure determined by subtracting ATS fees from program fines collected. The obligation to pay is not subject to the existence of cash reserves from the program, for example, if the City chooses to use or has used these surplus funds for any other uses.

2.2.2 This provision shall not apply should the City elect not to enforce illegal right turn on red violations or if City elects not to pursue collections on unpaid violations, or if City directs ATS to install a camera at a site with an initial starting violation rate of fewer than 8 violations per day, or if City or Police waives more than 10 percent of valid violations forwarded to the Police for acceptance according to business rules.

3. Term of Contract.

3.1 The term of this contract shall commence on the date this agreement is made effective and shall expire five (5) years from that date.

3.2 The City, at its sole discretion, may extend the term of the contract for additional five (5) year terms. Such renewal terms requires the approval of Issaquah City Council.

4. Request for Payment.

4.1 Not more than once every thirty days the Consultant shall file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment, including a report of Work accomplished and tasks completed, and an itemization of Eligible Expenses with copies of receipts and invoices. Invoices must show a breakdown of services provided and price for each.

4.2 All requests for payment should be sent to

Cmdr. Scott Behrbaum
City of Issaquah Police Department
130 E. Sunsett Way
Issaquah, WA 98027

5. Work Order Methodology for Approved Work under this Contract:

5.1 Work Order Procedure

ATS shall provide the City the Camera Systems as specified in work orders issued under this Agreement. Each work order shall be a written document having its own specific Scope of Work ("Work Order Scope of Work") identifying the services to be performed and the associated deliverables to be provided and payment terms. Each work order shall be subject to the terms and conditions of this Agreement and shall be incorporated into this Agreement by this reference. ATS shall furnish the City with an integrated turnkey solution; that is, services identified in the work orders shall be provided as a single, complete transaction and not as separate items.

5.2 Work Order #1

Work Order #1 consists of the documents listed in the Scope of Work, Exhibit A to this Contract. Except for items listed as City responsibilities in Work Order #1, ATS shall furnish all services, labor, materials, documentation, equipment, and software to install and test the Camera System, and to provide the specified training, warranties, and maintenance for the System.

5.3 Notice to Proceed on Tasks Identified in Work Orders

The execution of this Agreement shall constitute the City's notice to ATS to proceed with Work Order #1. For each subsequent work order under this Agreement, ATS shall commence work upon issuance of a written notice to proceed from the City.

5.4 Additional Work Orders

5.4.1 Additional work orders issued under this Agreement may be generated by the City for the following purposes:

(a) Upgrade(s) of equipment, software, or change(s) of any deliverable provided hereunder; and

(b) Any other items related to red light traffic safety system for which the City places an order including removal of equipment previously installed.

5.4.2 For any work order(s) requested by either party subsequent to Work Order #1, ATS shall submit to the City for its review and approval a detailed proposal for the scope, implementation plan, milestones, test and acceptance procedures, as well as the cost consistent with previous work orders, the RFP and RFP response. Once this proposal is received and approved by the City, a new work order will be issued for the change or additional work. Upon the City's written approval and notice to proceed, ATS shall implement the change or additional work and invoice for the changed or additional work consistent with the City's approval notice and the terms and conditions of this Agreement.

6. Termination of Contract.

6.1 For Cause: The City may terminate this Contract if the Consultant is in material breach of any terms of this Contract, and such breach has not been corrected according to established standards and agreed upon designs indicated in a valid Work Order within thirty (30) days from notice of breach. For purposes of this subsection, a material breach is defined as a failure to perform any work identified in Paragraph 1 of the Scope of Work (Exhibit A).

6.2 For City's Convenience: The City may terminate this Contract in whole or in part, without cause and for any reason including The City's convenience, upon written notice to the Consultant at the conclusion of the first 12 months from activation of the Camera Systems in Work Order #1.

6.2.5 Termination by Consultant. In the event a court of competent jurisdiction determines that the City is unable to retain all fines imposed from a violation determined by the Camera System, the Consultant may elect to terminate this Contract, at no further cost to the City.

6.3 Acts of Insolvency: The City may terminate this Contract by written notice to Consultant if the Consultant becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

6.4 Notice: The City is not required to provide advance notice of termination. Notwithstanding, the City may issue a termination notice with an effective date later than the termination notice itself. In such case, the Consultant shall continue to provide products and services as required by the City until the effective date provided in the termination notice.

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6.5: Transition Upon termination of this Agreement, 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 the Axis™ System, shall allow ATS to remove all provided equipment and restore the site within a reasonable time not to exceed 60 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. There shall be no charge for removal of equipment pursuant to this section.

7. **Assignment of Contract – Subconsultants.** Consultant shall not assign this contract or sub-contract or assign any of the Work without the prior written consent of the City. However, for the purposes of ATS business financing purposes, ATS may sell, assign, transfer or convey any interest in this contract in whole or in part without the written consent of the Customer.

8. Indemnification.

8.1 To the extent provided by law and irrespective of any insurance required of the Consultant, the Consultant shall defend and indemnify the City from any and all Claims arising out of or in any way relating to this Agreement; provided, however, the requirements of this paragraph shall not apply to that

portion of such Claim that reflects the percentage of negligence of the City compared to the total negligence of all persons, firms or corporations that resulted in the Claim.

8.2 Consultant agrees that the provisions of this paragraph 8 apply to any claim of injury or damage to the persons or property of consultant's employees. As to such claims and with respect to the City only, consultant waives any right of immunity, which it may have under industrial insurance (Title 51 RCW and any amendment thereof or substitution therefore). THIS WAIVER IS SPECIFICALLY NEGOTIATED BY THE PARTIES AND IS SOLELY FOR THE BENEFIT OF THE CITY AND CONSULTANT.

8.3 As used in this paragraph: (1) "City" includes the City's officers, employees, agents, and representatives; (2) "Consultant" includes employees, agents, representatives sub-consultants; and (3) "Claims" include, but is not limited to, any and all losses, claims, causes of action, demands, expenses, attorney's fees and litigation expenses, suits, judgments, or damage arising from injury to persons or property.

8.4 Consultant shall ensure that each sub-consultant shall agree to defend and indemnify the City to the extent and on the same terms and conditions as the Consultant pursuant to this paragraph.

9. Insurance.

9.1 Consultant shall comply with the following conditions and procure and keep in force at all times during the term of this Agreement, at Consultant's expense, the following policies of insurance with companies authorized to do business in the State of Washington. The Consultant's insurance shall be rated by A. M. Best Company at least "A" or better with a numerical rating of no less than seven (7) and otherwise acceptable to the City.

9.2 Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Consultant shall require each sub-consultant to provide Workers' Compensation Insurance for its employees, unless the Consultant covers such employees.

9.3 Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

9.4 Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

9.5 Each policy shall contain a provision that the policy shall not be canceled or materially changed without 45 days prior written notice to the City.

9.6 Upon written request to the City, the insurer will furnish, before or during performance of any Work, a copy of any policy cited above, certified to be a true and complete copy of the original.

9.7 Before the Consultant performs any Work, Consultant shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the above-required insurance and naming the City of Issaquah, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Consultant's obligations to fulfill the requirements.

9.8 Consultant shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Consultant shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

9.9 In case of the breach of any provision of this section, the City may provide and maintain at the expense of Consultant insurance in the name of the Consultant and deduct the cost of providing and

