

**CONTRACT/DOCUMENT REQUIRING
CITY MANAGER'S OFFICE SIGNATURE:**

Date Submitted: March 2, 2015

Date needed: March 4, 2015

POC & phone: Deanna Wiuff x1979

Purpose of Contract/Document:

Agreement for management of the Photo Citation Program between the City of Fayetteville and American Traffic Solutions, Inc.

***2 copies; both need to be signed**

Routing

1. City IT Review:

 3/3/15

2. City Attorney's Office's Review:

a. E-Verify Compliance

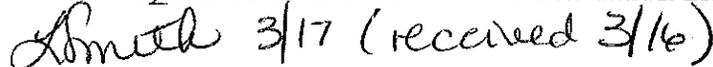
N/A

* Note Self addressed Fed Ex package for return of original

3. City Finance Office's Review:

a. Collections Supervisor – Privilege License Review

b. Lisa Smith, Chief Financial Officer – Fiscal Audit Review

 3/17 (received 3/16)

4. City Manager's Office's Review:

 3/18/15

5. City Clerk's Attestation:

6. PWC Purchasing Office's Review:

7. Originating Office:

a. Copy of document scanned into Laserfiche

b. Fully-executed originals distributed

c. Original returned for City Clerk's office for file maintenance

Created on 07/17/08 by Nancy Robles, CMO

Revised on 10/20/11 by Nancy Robles, CMO

Revised on 06/26/12 by Nancy Robles, CMO

Revised on 10/02/13 by Sandra Eller, CMO

**AGREEMENT FOR MANAGEMENT OF THE PHOTO CITATION PROGRAM
BETWEEN
THE CITY OF FAYETTEVILLE
AND
AMERICAN TRAFFIC SOLUTIONS, INC.**

This AGREEMENT FOR MANAGEMENT OF THE PHOTO CITATION PROGRAM (referred to herein as the "Contract") is entered into this 10th day of March, 2015, by and between the CITY OF FAYETTEVILLE (hereinafter referred to as the "City") and AMERICAN TRAFFIC SOLUTIONS, INC. (hereinafter referred to as the "Contractor") with reference to the following.

**ARTICLE 1
DESCRIPTION OF PROJECT**

The Contractor shall be responsible for purchase, installation, maintenance, operation of equipment, collections and management associated with Fayetteville's Safelite Program as described herein. The terms as used herein shall mean:

1.1. RED LIGHT CAMERA - The project involves the monitoring of ten (10) approaches. The number of approaches monitored may be increased by mutual consent of the City and Contractor. The installation of any Camera is contingent upon the determination by the City and Contractor that the site selected has been analyzed and concludes the installation is feasible. The Contractor will assist the City with the site selection analysis of the candidate sites. The results of these evaluations shall be disclosed to the City.

1.2. PROGRAM - Includes (a) Camera systems being installed in final configuration and in full working order, including the process to capture, transport and process images to the location where the citations are to be produced; (b) provide an automated web-based Citation processing system, first notice printing and mailing of Citation or notice of violation per chargeable event and a mailing of a text only reminder notice, a hearing scheduled letter, a hearing denied letter, an insufficient information letter and a dismiss letter; (c) any software needed to produce citations, track violations, issue citations; production of clear, easily identifiable citations; and d) connections needed with the Division of Motor Vehicles to obtain motor vehicle registration information, which may be done directly or through a third-party provider, such as the National Law Enforcement Telecommunication System (NLETS).

1.4. PHOTO CITATION CIVIL PENALTY RATES - Pursuant to N.C.G.S. 160A-300.1 (c), as amended by S.L. 2014-84 and Chapter 16, Article VI of the Fayetteville City Code, the civil penalty amount for running a red light is set by State statute at \$100.00. If the penalty is unpaid and no appeal is taken within thirty (30) days after issuance of the citation, an additional civil penalty of \$100.00 is assessed.

1.5. PROJECT LOCATION - The project location shall be Fayetteville, North Carolina with certain aspects of the processing portion of the operations, including data storage servers, to be located at a site selected and maintained by the Contractor during the term of the Agreement, unless otherwise mutually agreed to by the parties.

1.6. **WARNING PERIOD** - Upon installation of any Camera, warning citations shall be issued for a period not to exceed seven (7) calendar days. During this period, warning citations will be issued to violators, but no penalty will be collected. Notwithstanding the fact that no civil penalties will be collected from the warning citations, for purposes of compensation, such citations shall be treated as if penalties were paid within thirty (30) days pursuant to Section 12.1, Part 1 of this Contract. The City will make payments for warning citations issued pursuant to this section within one hundred eighty (180) days from receipt of invoice.

ARTICLE 2 SCOPE OF SERVICES

2.1. **PROCUREMENT OF EQUIPMENT** - Contractor agrees to procure City-approved equipment for the monitoring of a mutually agreeable number of intersections. All equipment shall remain the property of the Contractor.

2.2. **MAINTENANCE** - The Contractor shall maintain the Photo Citation system and all associated equipment in good working order. Any malfunctioning Camera or related equipment shall be returned to good working order within Seventy-two (72) hours of notification that the equipment is not in proper working order.

2.3. **ENFORCEMENT** - Using City-authorized contractor personnel, the Contractor shall issue civil citations to enforce regulations associated with N.C.G.S. 160A-300.1 (c), as amended by S.L. 2014-84 and Chapter 16, Article VI of the Fayetteville City Code. The City authorizes the Contractor to act as authorized agent of the City for the limited purpose of reviewing potential violations, approving or rejecting violations, and issuing citations for the violation of subsection 16-153(a) of the City Code. Notwithstanding anything in this contract to the contrary, the Contractor shall not have discretion to determine the process for addressing red light violations. The Contractor shall comply with the specific instructions in the business requirements questionnaire (BRQ) provided by the City to the Contractor, and agreed to by Contractor, as the same may be amended from time to time, upon the agreement of the City and Contractor subject to compliance with applicable law. The Contractor must strictly comply with the instructions set forth in the BRQ. If there is a conflict between any BRQ instruction and the terms of this contract, the BRQ instructions govern. Authorized City staff shall have access to a review queue in the Axis System to review violations to ensure quality control.

2.4. **COLLECTIONS** - The Contractor shall collect and deposit payments on civil penalties; issued pursuant to N.C.G.S. 160A-300.1 (c), as amended by S.L. 2014-84 and Chapter 16, Article VI of the Fayetteville City Code. Collections shall include referral to a collection agency and the filing of a civil action for collection in the nature of a debt, in accordance with the City of Fayetteville Traffic Services Division (CFTSD) approved procedures. Contractor shall be responsible for paying any and all filing and process fees that may be required in conjunction with the institution of civil actions and will be entitled to receive any such advanced costs that are awarded and received as provided in Section 12.1 B. Funds collected shall be deposited into an account designated by the City. Funds collected shall be deposited weekly.

2.5. **ADDITIONAL MONITORING** - The Contractor shall provide enforcement monitoring of traffic regulations, other than red light violations, as permitted by State statute and as directed by the City, at a compensation to be mutually agreed to.

2.6. ADJUDICATION - The City and Contractor will use the Axis Adjudication module to manage the adjudication process and to coordinate the hearing appeals process for citizen protests of citations and collect and process appeal hearing deposits.

The Contractor will be responsible for providing the City access to an evidence package containing a copy of the citation under appeal along with an affidavit designed to authenticate and ensure the admissibility of the citation. The affidavit must be from someone capable of stating facts necessary to qualify the citation as a business record and to establish the reliability of the equipment and processes that produced the citation.

In the event that a court requires the personal appearance of an individual capable of testifying as to the authenticating of the citation as a business record and/or to establish the reliability of the equipment and processes that produced the citation so as to ensure the admissibility of the citation, the Contractor will be responsible for satisfying any such court-imposed requirement. If the individual is required to testify more than twice in a twelve (12) month period the City agrees to compensate the Contractor for the travel and lodging of the individual.

The Contractor will not be responsible for costs related to hearing officers and the hearing location.

2.7. MANAGEMENT - The CFTSD will manage the Photo Citation Program and the Contractor will operate the Photo Citation Program, at the direction of the CFTSD.

2.8. CUSTOMER SERVICE - The Contractor shall provide a local office and employment of one FTE to staff the office, to accept walk-in payments and to answer and document citizen inquiries and a toll free Customer Service phone number to support public inquiries about the Photo Citation program, including, how the system works, how to schedule a hearing, and any citizen's concerns in accordance with procedures to be approved by the City Manager, or his/her designee. The Contractor shall keep records of citizen's inquiries and their resolution. Violators shall also be given access to review their violation and review answers to frequently asked questions on the Contractor's website violationinfo.com or at the local office. The City will refer requests for video or other information by non-violators to the Contractor's local office.

2.9. PUBLIC INFORMATION - The Contractor shall provide the City with access to one of Contractor's communications project managers who will assist the City in development and implementation of public information program, including providing content for mailings, public opinion pieces, surveys, the City's website, including a "how it works video" and content for public service announcements. Additional public relations support may be provided by Contractor upon request by the City and upon a mutually agreed additional fee.

2.10. RECORD KEEPING - The Contractor shall keep true and accurate records of revenue and expenses and shall provide copies to the City upon request in a form to be determined by the City and Contractor. All financial records relating to the project, with the exception of Contractor's cost or pricing data, shall be made available to a duly authorized representative of the City upon request. In accordance with the City's retention period, the Contractor will be requested to maintain other non-financial information as it relates to the project

for current year audit plus three (3) fiscal years. The Contractor will store video for a minimum of 30 days and make the video available upon request by the City for use in non-red light running investigations. In the event of a request for video by the City, copies of the video will not be released by Contractor without prior approval from the City.

2.11. **ADDITIONAL SERVICE** - The Contractor shall set up additional locations for red light monitoring, at the direction of the City's Project Manager and upon the agreement of the Contractor. The price charged by the Contractor for the additional locations shall be the same unit price specified in Article 12 of this Agreement, unless otherwise agreed to by the parties.

2.12 **WARRANTIES** - The Contractor represents and warrants that: (i) the Photo Citation equipment provided will satisfy all requirements and specifications set forth in the RFP and any addenda thereto unless otherwise exempted; (ii) all services performed by the Contractor will be of a professional quality and performed in a workmanlike manner with qualified personnel; (iii) none of the products or services provided by the Contractor will infringe on any third-party's patent, copyright, trademark, trade secret, or other right to tangible or intangible property; (iv) all information systems and devices which will be used or relied upon by Contractor in performing its obligations under this Contract have been properly secured and licensed and are functionally adequate for the purposes required by this Contract.

ADDITIONAL WARRANTIES

Contractor further represents and warrants that:

(1) It is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Arizona and is properly registered to do business in the State of North Carolina;

(2) It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

(3) The execution, delivery and performance of this Contract have been duly authorized by Contractor; and

(4) In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses.

**ARTICLE 3
SCHEDULE**

3.1. A Notice to Proceed will be issued to the Contractor upon receipt of a fully executed Contract, insurance certificates and any other documentation required by this Contract.

3.2. Within fifteen (15) working days of receipt of the Notice to Proceed, the Contractor shall proceed with the statistical analysis validating violation rates at a minimum of twenty (20) possible sites. The findings of such validations shall be presented to the City within thirty (30) days subsequent to commencement.

3.3. Upon agreement by the City and Contractor of locations for photo enforcement, the Contractor shall proceed with construction. The warning period shall commence within thirty (30) calendar days of site construction completion. All Cameras will issue warning notices, pursuant to section 1.6 of this Agreement. Contractor shall not be held responsible for delays associated with weather or permitting.

3.4. The remainder of installations will be completed in accordance with a mutually agreed schedule.

ARTICLE 4 TERM OF CONTRACT

The initial term of this Contract is for five (5) years commencing with the first issued and payable notice of violation pursuant to Article 3. No changes in the Contract terms shall be effective unless agreed to and accepted in writing, by the City and the Contractor. The City Manager or his/her designee shall be authorized on behalf of the City to amend the Contract.

ARTICLE 5 OWNERSHIP AND USE OF DOCUMENTS

Upon request, all documents, reports and computations prepared or obtained under the terms of this Contract, excluding any previously developed proprietary software, shall be delivered to and become the property of the City without restriction or limitation on their use in conjunction with the project. The City accepts responsibility for any changes made to these documents after final submittal by the Contractor. The City agrees not to release proprietary information and data, subject to required public disclosure laws.

ARTICLE 6 CONTRACT EXTENSIONS

Reasonable extensions of time for unforeseen or unavoidable delays may be made by mutual consent of the parties involved. Such extensions shall be made in writing.

ARTICLE 7 TERMINATION

7.1. **WITHOUT CAUSE** - This Contract may be terminated without cause by the City upon sixty (60) days written notice. In the event of termination, the Contractor shall immediately terminate work, but shall bring to a reasonable state, not to exceed thirty (30) days, the completion of those items whose value would be otherwise lost and shall turn over to the City all data, charts, reports, notes, figures, drawings and other records or information collected or secured herein, whether partial or complete. Upon such termination, the Contractor will be paid: (i) the compensation provided in Article 12 of this Contract for all civil penalties collected as of the termination date; and (ii) sixty percent (60%) of the amount Contractor would receive pursuant to Section 12.1 of all outstanding civil penalties for violations of Chapter 16, Article VI of the Fayetteville City Code that occurred within the 365-day period immediately preceding the date that notice of termination is given were paid immediately without additional collection efforts (i.e., addition of late payment civil penalty to citations not yet 21 days old, referral of civil penalty

accounts to collection agency, or filing of civil action to recover civil penalties), or the City shall pay the Contractor an early termination fee based on a price of \$120,000 for each Camera System, amortized over sixty (60) months on a straight-line basis, whichever is higher. The amortization schedule for said costs shall be reduced by 1/60th for each month each Camera System is installed. Said another way, for every month a camera is installed, \$2,000 will be subtracted from the total \$120,000 early termination fee for each Camera System. Example: City signs Agreement in March of year 1 and installs one (1) Camera System that same month. City terminates the Agreement in January of year 5. Fifty-eight (58) of the sixty (60) months having been amortized, City would owe Contractor \$4,000 (\$2,000 x 2) for the early termination fee.

A) Action by the Cumberland County School Board to terminate the Interlocal Agreement between the Board and the City relating to a red-light camera program will be a termination without cause as defined by this section and all relief, terms, conditions, and obligations hereunder shall apply. Notice of such action by the School Board shall operate as notice consistent with section 7.6 hereof.

7.2. FOR CAUSE - The City may terminate this Contract immediately without the penalty defined in section 7.1 upon written notice to the Contractor if:

A) The Contractor violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, including failure to deliver any services within seven (7) calendar days after the time required for delivery in the delivery schedule agreed upon by the parties, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the Contractor cures such default within twenty (20) calendar days of receipt of written notice of default from the City.

B) The Contractor ceases to do business as a going concern, except in the case of an assignment as contemplated in Article 16.11 of this Agreement, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a re-organization under which the business of such party is continued and performance of all its obligations under this Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of the Contractor's assets or properties.

C) The Contractor fails to obtain or maintain the insurance policies and endorsements as required by this Contract; or fails to provide the proof of insurance as required by this Contract.

D) Subject to the provisions of Articles 16.2 (Force Majeure) and 16.3 (City and Contractor Not Liable for Delays), the Contractor fails to meet the schedule set forth in Article 3 of this Contract. Upon termination under this provision, the Contractor will not be reimbursed for expenses incurred prior to the termination, but is entitled to payment for citations issued under the terms of the program for which payment is collected within 365 days of the date of termination.

7.3. FAILURE TO PERFORM OBLIGATIONS - Subject to the provision of Section 7.2A, if the Contractor fails to provide services, as described in this Contract on any day (or days) for which this Contract calls for such services to be provided, the Contractor will be in default and the City may take any of the following actions:

A) Employ such means as it may deem advisable and appropriate to continue work until the matter is resolved and the Contractor is again able to carry out operations under this Contract; and/or

B) Deduct reasonable operating expenses incurred by the City from any money then due or to become due the Contractor.

7.4. NON-APPROPRIATION OF FUNDS – Any monies due the Contractor by the City for services awarded under this Contract are subject to an appropriation of funds by the City Council. In the event a sufficient appropriation of funds is not made available to the City for payment of these services, this Contract shall terminate immediately without further obligation of the City. The City covenants that it will take all steps necessary to seek appropriations and will not use this Article 7.4 to substitute one Contractor for another.

7.5. CANCELLATION OF ORDERS AND SUBCONTRACTS – In the event this Contract is terminated by the City for any reason prior to the end of the term, the Contractor shall, upon the effective date of termination (unless the City's Notice of Termination directs otherwise), immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and any subcontracts which are chargeable to the Contract. As soon as practicable after receipt of Notice of Termination, the Contractor shall submit a statement to the City, showing in detail all products delivered and all services performed under the Contract to the date of termination.

7.6. AUTHORITY TO TERMINATE – The City Manager, and his/her designee is the authorized agent of the City to terminate this Contract on behalf of the City, in accordance with Article 7. Any termination of this Contract shall not relieve the Contractor of the obligation to pay any fees, taxes or other charges then due to the City nor relieve the Contractor of the obligation to file any daily, monthly, quarterly or annual reports for services for which such reports have not already been provided, which reports shall be filed within sixty (60) days of termination. In addition, the Contractor shall not be relieved from any claim for reasonable direct damages previously accrued or then accruing against the Contractor.

7.7. Upon any termination under Article 7, the wind-down of the contract shall proceed as either a lease or lease-purchase where the City shall have the option of purchasing the equipment or the Contractor shall be required to remove the equipment. If the City elects to purchase the equipment the Contractor and City shall assess the net book value of the equipment, the purchase price and will execute a change of title reflecting the change in ownership. If the City elects to have Contractor remove the equipment, within 90 days after the termination date Contractor shall remove all above-ground equipment. If the City and Contractor agree to continue to process violations in the pipeline after the termination date, the Contractor shall continue to process violations for up to a period of ninety (90) days, and the Contractor shall be entitled to its monthly fee as if the contract was not terminated, however the Contractor may take any steps necessary during this ninety (90) day period to reduce its costs regarding walk-in and online payments.

Upon final termination of the contract and after the ninety (90) day post-termination period has expired, Contractor shall provide all closed and open violation data to the City and the Contractor shall no longer retain any data pertaining to the City's program.

ARTICLE 8
THE CITY'S RESPONSIBILITIES

The City Manager will designate in writing a Project Manager who will coordinate all communication between the Contractor and all other parties and who is authorized to act on behalf of the City.

ARTICLE 9
(UNUSED)

ARTICLE 10
TAXES

The Contractor shall pay all applicable Federal, State and Local taxes, which may be chargeable, however, Contractor shall not be required to pay any tax not reasonably anticipated in the ordinary course of Contractor's business.

ARTICLE 11
DRUG-FREE WORKPLACE REQUIREMENT

DRUG-FREE WORKPLACE - The City of Fayetteville is a drug-free workplace employer. The Contractor shall provide a drug-free workplace during the performance of this Contract. This requirement is met by:

A) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken for violations of such prohibition;

B) Establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the contractor's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations.

C) Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in A) above, and (ii) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.

D) Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of drug crime;

E) Making a good faith effort to continue to maintain a drug-free workplace for employees; and

F) Requiring any party to which it subcontracts any portion of the work under the Contract to comply with the provisions of A)-F).

Failure to comply with the above drug-free workplace requirements during the performance of this Contract shall be grounds for suspension, termination or debarment.

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ARTICLE 12
COMPENSATION

12.1. The following is predicated upon a ten (10) Camera program.

| PART | DESCRIPTION | COST |
|------|---|--|
| 1 | This fee will cover the services set out in Article 2 – Scope of Services. For civil penalties assessed for violations of Section 16-154 of the Fayetteville City Code, the amount the City will pay the Contractor each month for each of the civil penalties that are deposited in a designated City bank account in the preceding month. Includes Red-Light Safety Camera (one camera/rear imaging) equipment for a four-lane approach with up to two signal phases, installation, maintenance, violation processing services, DMV records access, notice processing (first class mailing of 1st notice in color with return envelope), first class mailing of 2nd notice, epayment with up to 5% convenience fee charged to violator, call center support for general program questions, court and legislative support, access to SafetyCameraLaw.com and public awareness program support. | \$35.00 per paid violation |
| 2 | For civil penalties assessed pursuant to Section 16-154 of the Fayetteville City code for failure to timely pay the initial penalty, the Contractor shall provide skip-tracing services and send a pre-collections letter to the violator and City will pay the Contractor for each penalty deposited in a designated City account. | 10% of the recovered revenue in addition to the fee in Part 1 above. |
| 3 | This Part 3 shall be used to compensate Contractor for full collection services, as provided by law, which may include the subcontracting to a collection agency or law firm specializing in collections. If the City requests the Contractor to file a civil action to recover delinquent unpaid citations, the parties will negotiate the scope of work and associated fees for this action in an addendum to this Agreement. | 30% of the recovered revenue in addition to the fee in Part 1 above. |
| 4 | Optional Additional Services | |
| 4.a | Subsequent notices – Any additional notices or documents sent by First Class Mail required by the City or required by law. | \$2 per notice, plus \$2 per page after first page. |
| 4.b | Certified Mail - Any additional notices or documents sent by Certified Mail required by the City or required by law. | \$2 per notice, plus \$2 per page after first page, plus USPS per unit cost for certified mail |

12.2. Contractor will invoice the City in accordance with the provisions established in Parts (1), (2) and (3) of Article 12.1 above.

A) Civil penalty fee schedules for violations of Section 16-154 of the Fayetteville City Code are based upon the notice volumes stated within Article 12.1, Part 1 of this Contract.

B) In accordance with Article 12.1, Part (2), Contractor will bill additional fees to the City for those penalties collected after assessment of the late penalty pursuant to Section 16-154 of the Fayetteville City Code. The fee under Parts (2) and (3) (based upon the collections services provided and volume of penalties collected) will be added to the fee under Part (1) as described above.

12.3. Prior to the start of the program, and by January 15 of each year thereafter, the Contractor shall submit reports, or provide City access to reports, that allows for an estimate of total payments to be invoiced and revenue for the following fiscal year, beginning July 1, or as may be consistent with City budget practices.

12.4. Payment of the fees provided for under this Contract will be made to the Contractor on a monthly basis upon submission of an invoice by the fifteenth of each month stating the amount due and accompanied by proper supporting documentation. Proper supporting documentation is to include the number and dollar amount of citations collected the late fees and any civil action. In the event that the Contractor is to be paid on a time and material basis for any work performed under this Contract, proper supporting documentation will include the date the service was performed and the hours spent performing the service. A correct payment request is defined as an invoice that indicates only those items that have been satisfactorily completed and accepted by the City. Payment of the fee will be mailed to the Contractor no later than thirty (30) days after receipt of the invoice.

12.5. INVOICING - Original invoices shall be sent to:

City of Fayetteville
Traffic Services Division
339 Alexander Street
Fayetteville, NC 28301
Attention: Lee Jernigan, PE, City Traffic Engineer

ARTICLE 13
CONTRACT CORRESPONDENCE

All notices, demands, consents or reports provided for in this Contract shall be in writing and shall be given to the City or the Contractor at the address set forth below or at such other addresses as each may specify hereafter in writing:

City of Fayetteville
Traffic Services Division
339 Alexander Street
Fayetteville, NC 28301
Attention: Lee Jernigan, PE, City Traffic Engineer

American Traffic Solutions, Inc.
1330 W. Southern Ave., Suite 101
Tempe, Arizona 85282
Attention: Legal Department- Contract Division

Any such notice, demand, consent or report, shall be deemed to have been rendered or given on the date when it is received by the addressee or when it shall have been delivered by hand.

ARTICLE 14
PERSONNEL (*UNUSED*)

ARTICLE 15
INDEMNIFICATION AND INSURANCE

15.1 INDEMNIFICATION BY CONTRACTOR - Contractor assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any physical injury, or alleged physical injury (including death) to any person, or damage, or alleged damage, to property of the City of Fayetteville or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the negligence of the Contractor, his/her subcontractors, agents, and employees, in the performance of the work/service set forth under this contract, and agrees to indemnify and hold harmless the City of Fayetteville, its officials, employees or volunteers from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against them, or any of them, based on any such alleged physical injury or property damage, and to pay all damages, costs and expenses in connection therewith or resulting therefrom. Contractor agrees to purchase and maintain during the life of this contract contractual liability insurance in the amount required in the general liability requirements and to furnish proper evidence thereof.

15.2 INSURANCE - Contractor shall not commence any work in connection with this Contract until it has obtained all of the following types of insurance and such insurance has been approved by the City. Nor shall the Contractor allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved. All insurance policies shall be with insurers qualified and licensed to do business in North Carolina as recognized by the Secretary of State and the Insurance Commissioner's Office.

The Contractor will purchase and maintain during the life of this Contract, with an insurance company rated not less than A- by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the City.

AUTOMOBILE LIABILITY – Contractor shall take out and maintain during the life of this contract automobile liability insurance in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage from owned, non-owned, leased, hired or borrowed automobiles.

COMMERCIAL GENERAL LIABILITY - The Contractor shall take out and maintain during the life of this contract commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE – The Contractor shall take out and maintain during the life of this contract workers' compensation insurance as required by the laws of the State of North Carolina and Employers' Liability with limits of \$100,000 each accident, \$500,000 policy limit and \$100,000 each employee for all employees employed on the project. In case any employee(s) engaged in work under this contract is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

15.4 OTHER PROVISIONS:

(A) Any deductible or self-insured retention must be declared to and approved by the City.

(B) The policies are to contain, or be endorsed to contain, the following provisions:

(i) **Commercial General Liability Coverage** - The City of Fayetteville, its officials, employees and volunteers shall be named as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers. Certificates of required insurance shall accompany all Contract documents. The City shall in no way be liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor and/or subcontractor providing such insurance.

(ii) The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(iii) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(C) All Coverages – The Contractor shall not be suspend, void, cancel or reduce coverage or limits of any insurance policy required by this contract, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been made pursuant to Article 13 of this contract. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, and volunteers. In the event the City is damaged by the failure of the Contractor to maintain such insurance and to so notify the City, the Contractor shall bear all reasonable costs properly attributable thereto.

(D) Subcontractors – Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(E) No Waiver of Immunity – Notwithstanding the foregoing, neither the requirement of Contractor to have sufficient insurance nor the requirement that the City is named as an additional insured, shall constitute waiver of the City's governmental immunity pursuant to NCGS 160A-485 in any respects, under North Carolina law.

ARTICLE 16 GENERAL PROVISIONS

16.1. INDEPENDENT CONTRACTOR STATUS - The Contractor and the City agree that the Contractor is an independent contractor and not an employee or agent of the City, except for the limited purpose as described in section 2.3 of this contract. Nothing herein shall be construed as creating a partnership, agency, joint venture or other similar relationship between the City and Contractor.

The Contractor agrees that it will not represent to anyone that its relationship with the City is other than that of an independent contractor. The Contractor shall be fully and solely responsible for its own acts and omissions and those of its employees, officers, agents and subcontractors.

16.2. FORCE MAJEURE - The Contractor shall not be liable for any failure or delay in the performance of its obligations pursuant to the Contract and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, Acts of Government, strikes, riots, civil disorders, rebellions or revolutions or any other cause beyond the reasonable control of the Contractor.

Upon the occurrence of a Force Majeure Event, the Contractor shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable

detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Contractor from performing its obligations for the entire program for more than twenty consecutive (20) days, the City shall have the right to terminate the contract by written notice to the Contractor.

If the Force Majeure Event preventing the Contractor or the City from performing obligations under this Agreement is a change in state or federal law or judicial interpretation thereof, the City may terminate the Agreement without payment for early termination as described in section 7.1 after the exhaustion of reasonable legal action taken by either the City or the Contractor to defend against a legal challenge to the operation of the Program that prevented performance under this Agreement. The City shall have no obligation to pay the Contractor a fee for any period when it is unlawful to issue citations. The term of the Agreement shall be suspended during any period in which the City is not obligated to pay the Contractor and such time period shall be added to the term of the Agreement once it becomes lawful for the Contractor to issue citations.

16.3. CITY AND CONTRACTOR NOT LIABLE FOR DELAYS - It is further expressly agreed that in no event shall the City or Contractor be liable for or responsible for or responsible to each other, any subcontractor or to any other person for or on account of any stoppages or delay in the work herein provided for by injunction or other legal or equitable proceedings or on account of any delay for any cause over which the City or Contractor has no control. The Term of the contract shall be suspended during such period as performance is prevented by injunction or similar legal action.

16.4. AMENDMENTS TO THE CONTRACT - Any changes to this Contract must be mutually agreed upon by the parties and must be incorporated by written amendments to this Contract. The City Manager or his/her designee shall have the authority to amend the Contract on behalf of the City.

16.5. WAIVER - A waiver of any breach of any provision of this Contract shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.

16.6. LAW TO GOVERN - The parties acknowledge that the Contract is made and entered into in Fayetteville, North Carolina, and will be performed in Fayetteville, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under the Contract; and that North Carolina law shall govern the interpretation and enforcement of the Contract and any other matters relating to the Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to the Contract shall be brought in a state or federal court sitting in Cumberland County, North Carolina. By execution of the Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Cumberland County, North Carolina.

16.7. ENTIRETY OF CONTRACT - This Contract and Contractor's written proposals that are incorporated by reference, comprise the entire agreement between the City and the Contractor. In the Event of a conflict, the terms of this Contract control over the Proposal.

16.8. SEVERABILITY - The invalidity of one or more of the phrases, sentences, clauses or sections contained in the contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated.

16.9. NO JURY TRIAL - The City and Contractor waive and will waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way connected with or related to the Contract or the relationship of the City and the Contractor under the Contract.

16.10. APPROVALS - Notwithstanding anything herein which may be to the contrary, all approvals or consents required or permitted pursuant to the Contract shall be in writing in order to be considered valid and effective.

16.11. ASSIGNMENT - The Contractor may not assign this Contract or any of its rights, duties or obligations hereunder, or subcontract any of the services to be performed hereunder, without the prior written consent of the City. In the event of an assignment, the assignee shall assume all liabilities and responsibilities specified herein.

16.12. The Contractor shall notify the City within ten (10) days of the occurrence of a change in Control. As used in this Agreement, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Contractor or (ii) the power to direct or cause the direction of the management and policies of the Contractor whether through the ownership of voting securities, by contract or otherwise.

16.13. SUCCESSORS AND ASSIGNS - This Contract shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto; provided, however, this provision shall not be deemed to authorize the assignment or other transfer of this Contract which may only be accomplished as expressly provided in this Contract.

ARTICLE 17 CONTRACTOR CERTIFICATION

By signing this Agreement, the Contractor certifies:

17.1. Neither he/she, nor any official, agent or employee of the Contractor, has entered into any agreement, participated in any collusion, or otherwise taken any action, which is in restraint of free competitive contracting in connection with this Contract.

17.2. He/she will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or veteran status.

17.3. The City of Fayetteville has an equal opportunity purchasing policy. The City of Fayetteville seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City affirmatively works to encourage utilization of minority business enterprise in our procurement activities. The City provides equal opportunity for all businesses and does not discriminate against any vendors regardless of race,

color, religion, age, sex, national origin or disability.

ARTICLE 18
HUMAN RESOURCES PROVISIONS

18.1. PERSONNEL ADMINISTRATION

A) Character and Conduct of Employees

1) The Contractor's employees who normally and regularly come into direct contact with the public shall be clearly identifiable by, but not limited to, individual uniforms with name badges, nametags or identification cards.

2) The Contractor shall assure that its employees serve the public in a courteous, helpful and impartial manner. All employees of the Contractor in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Contractor.

3) In the event a report is received alleging an employee(s) of the Contractor was discourteous, belligerent, and profane or in any way intimidating, either physically or verbally, the Contractor shall submit a written report to the Project Manager, outlining the complete details of the incident. Said report shall include the nature of the incident, time, date and location and name, address and telephone number of the person alleging the violation. The report shall also include the name and title of the employee and what resolution or disciplinary action, if any, was taken. The report shall also include the action taken to re-contact the complaining party. The Contractor shall keep on file such reports for the duration of the project and make them available upon request by the Project Manager.

B) Nondiscrimination

1) The Contractor agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin or disability.

2) The Contractor agrees that on written request, it will provide the City with a copy of its EEO Policy.

3) The Contractor agrees that it will inform the City of any final court judgments which find Contractor liable of violating employment practices in connection with the Fayetteville Photo Citation Program.

C) Displaced City Employees

Consistent with the privatization guidelines established by the Fayetteville City Council, the following information must be with proposals:

1) The City may request that qualified current city employees have access to future jobs that may be available in connection with the services to be provided.

18.2. AUDIT AND INSPECTION - The Contractor agrees to an annual audit of project financial information by an independent auditor mutually acceptable to the City and the project management firm. The firm is to be hired by the Contractor and expense of the audit is to be paid by the Contractor. In addition, the Contractor must agree to periodic and random inspections of project records and equipment by duly authorized City staff. The result of the audit is to be the basis of an annual performance review of the management firm.

18.3. LOCAL AND SDBE PARTICIPATION - The Contractor agrees to make a good faith effort to give local and/or small disadvantaged business enterprise firms an opportunity to provide a bid on any subcontracting opportunity which may exist in the performance of the services under this Contract.

[Remainder of Page Intentionally Blank]

CITY:

(CITY SEAL)



CITY OF FAYETTEVILLE

By: *Theodore L. Voorhees*
Print Name: Theodore L. Voorhees
Title: City Manager

ATTEST: *Pamela Hegull*
(City Clerk)

CONTRACTOR:

AMERICAN TRAFFIC SOLUTIONS

By: *David Roberts*
Print Name: David Roberts
Title: President and COO

ATTEST: *Bethune J. Wilkins*
(Name and Title) *Office manager*

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Lisa J. Smith 3/17/15
Finance Officer

This is to certify that I have examined the attached contract documents, that after such examination I am of the opinion that such documents conform to the laws of the State of North Carolina, that the execution of the contract is in due and proper form and that the foregoing agreements constitute valid and binding obligations on such parties.

Brian M. M...
Attorney for the City of Fayetteville, North Carolina

[Signature Page to
AGREEMENT FOR MANAGEMENT OF THE PHOTO CITATION PROGRAM BETWEEN
THE CITY OF FAYETTEVILLE AND AMERICAN TRAFFIC SOLUTIONS]