CityofRedmond
WASHINGTON

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: February 7, 2012

SUBJECT: **APPROVAL OF AMENDED AMERICAN TRAFFIC SOLUTIONS SCHOOL SPEED ZONE SAFETY CAMERA CONTRACT**

I. RECOMMENDED ACTION:

At the November 1, 2011, City Council meeting, members of the City Council gave direction to the Police Department to cancel the current contract with American Traffic Solutions for Redmond's Pilot Traffic Safety Camera Program and attempt to negotiate a new short-term contract for school speed zone camera enforcement only until the end of the current 2011/2012 school year. This would allow the City to continue traffic safety camera enforcement on Northeast 116th Street (Einstein Elementary) beginning on February 1, 2012, until the end of the current school year.

Due to inclement weather, the January 17, 2012 City Council meeting was cancelled. The contract is now being brought forward with a modification; the amended contract clarifies the starting date of the agreement to be February 1, 2012 (page one of the Attachment).

As a result of Council direction, the following action is recommended; agree to the new contract with American Traffic Solutions effective February 1, 2012, for speed enforcement cameras at the Northeast 116th Street (Einstein Elementary) through June 22, 2012.

II. DEPARTMENT CONTACTS:

Ron Gibson, Chief of Police, 425.556.2528
Shari Shovlin, Police Operations Commander, 425.556.2564
Nick Almquist, Police Operations Lieutenant, 425.556.2570

III. DESCRIPTION:

Safety Camera Program Goal:

Consistent with citizen priorities, the City of Redmond is committed to the safety of our community. As part of its continuing evaluation of school zone safety, Council directed

Police Department • 8701 160th Avenue NE • PO Box 97010 • Redmond, WA • 98073-9710

the Police Department to research contract options to continue the use of American Traffic Solutions speed zone enforcement cameras at Northeast 116th Street in front of Einstein Elementary School until the end of the 2011/2012 school year.

Background:

The City Council and Public Safety Committee have had numerous briefings and discussions throughout 2010 and 2011 concerning Redmond's Traffic Safety Camera Program. At the November 1, 2011, Council meeting, the Police Department was directed to:

1. Terminate the existing contract with American Traffic Solutions effective January 31, 2012;

2. Negotiate a new contract with American Traffic Solutions allowing the City to continue the use of school zone speed enforcement cameras at Northeast 116th Street (Einstein Elementary) effective February 1, 2012, and through the end of the school year;

3. Research and make a recommendation for continuance and possible expansion of the School Zone Camera Speed Enforcement program beyond the 2010 to 2011 school year; and

4. Research and develop intersection safety recommendations for future consideration and implementation.

Contract with American Traffic Solutions (ATS):

In accordance with Council's direction, the Mayor has terminated our current contract with American Traffic Solutions for Redmond's Traffic Safety Camera program effective January 31, 2012. This new contract will allow the Police Department to continue with our current school speed zone camera enforcement program at Einstein Elementary School through June 22, 2012.

IV. IMPACT:

The City of Redmond's goal is to continue to curb dangerous driving behavior in school zones and prevent car-pedestrian collisions. The City has seen a reduction in speeding violations in the school zone at Einstein Elementary School since the start of this program.

V. FISCAL IMPACT:

Based on the ATS Contract, fees are based on per camera and are as follows: Fixed School Zone Speed System: $4,750 per month for the Einstein Elementary site. Each subsequent citation, above the total amount of the cameras multiplied by 800 per month:

$5.00. No fees will be charged if the cameras are shut down for summer break. American Traffic Solutions has agreed to a Flexible Payment Plan. Under the Flexible Payment Plan, the Customer may defer certain payments due and owing to ATS during the term of the agreement. If at the end of the term sufficient funds have not been collected by the City of Redmond to pay the accrued balance then due to ATS, ATS agrees to waive its right to recovery with respect to any balance owing to ATS at the end of that term.

VI. TIME CONSTRAINTS:

The current contract expires January 31, 2011. The new contract would begin on February 1, 2012 and end on June 22, 2012.

VII. ALTERNATIVES:

- The Council can enter into the proposed short-term contract with American Traffic Solutions beginning February 1, 2012, and ending June 22, 2012, for Einstein Elementary School Zone.

- The Council can decide not to agree to the contract and direct Police Department and City Staff to continue researching alternative school zone solutions for Council consideration at a later date that may or may not include speed zone cameras.

VIII. ATTACHMENTS:

A. Proposed short-term amended contract between Automated Traffic Solutions and the City of Redmond

Ron Gibson, Police Chief — Date: 1-20-12

Approved for Council Agenda — John Marchione, Mayor — Date: 1/26/12

STANDARD PROFESSIONAL SERVICES AGREEMENT

This *Standard Professional Services Agreement* which includes the attached Exhibits (herein "Agreement") is made by and between American Traffic Solutions, Inc. (herein "ATS"), with its principal place of business at 7681 East Gray Road, Scottsdale, Arizona, and the city of Redmond, Washington (herein "Customer"), with principal offices at 8701 160th Ave NE, Redmond, Washington 98073. (ATS and Customer referred to herein, individually, as a "Party", and collectively, as the "Parties"). This Agreement sets forth the terms, conditions and obligations of the Parties.

WITNESSETH:

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

WHEREAS, CUSTOMER desires to use the Axsis System to monitor and enforce traffic violations and to issue citations for said traffic violations; and

The attached Exhibits include:

Exhibit A.....SERVICE FEE SCHEDULE
Exhibit B.....SCOPE OF WORK
Exhibit C.....DESIGNATED LOCATIONS
Exhibit D.....DMV SERVICES SUBSCRIBER AUTHORIZATION

By signing below, the Parties agree to the terms and conditions of this Agreement together with the attached Exhibits. This Agreement contains the complete and exclusive statement of the agreement between the Parties relating to the matters referenced herein and replaces any prior oral or written representations or communications between the Parties. Each individual signing below represents that s/he has the requisite authority to execute this Agreement on behalf of the entity which s/he represents and that all the necessary formalities have been met.

ACKNOWLEDGED AND AGREED TO BY:

AMERICAN TRAFFIC SOLUTIONS, INC.

By: _____
B. Michael Bolton Date
Chief Operating Officer

CITY OF REDMOND, WASHINGTON

By: _____
Name/Title Date

ATTEST:

By: _____
Name/Title Date

This Agreement is effective as of February 1, 2012 ("Effective Date").

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I. DEFINITIONS

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

1. "***Approach***": One (1) direction of travel on a road, including up to four (4) contiguous lanes.

2. "***Business Hours***": Eight (8) hours per day, Monday through Friday, excluding weekends and holidays.

3. "***Camera System***" or "***Camera***": 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 (4) contiguous lanes which records such data with one (1) or more images of such vehicle. "***Camera System***" shall, where the context requires, also include any enclosure or cabinet and related appurtenances in which the equipment is stationed.

4. "***Change Order Notice***": Written notice from Customer requesting changes to the work required to be performed or the addition of products or services to those required to the terms of this Agreement, setting forth in reasonable detail the proposed changes.

5. "***Change Order Proposal***": A written statement from ATS describing the cost of the changes to the work or addition of products or services requested by Customer in a Change Order Notice.

6. "***Citation***": A citation or notice of violation or equivalent instrument issued by a competent state, county or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a violation documented or evidenced by Axsis.

7. "***Eligible Cameras***": Cameras for which ATS has been billing Customer for a minimum period of twelve (12) months.

8. "***Fees***": The amount payable by Customer to ATS for equipment, services, and maintenance as set forth in Exhibit "A".

9. "***Notice to Proceed***": Written confirmation from Customer that ATS may proceed with the installation of a given Camera System.

10. "***Owner***": 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.

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

12. "***Project Time Line***": The initial schedule and timelines required to begin the implementation of Customer's project, as mutually agreed upon by the Parties.

13. "***Start Date***": The first day of the month following the date on which the first Citation is issued from the last camera installed under this Agreement, notwithstanding any Change Order Notices.

14. "***Violation***": A failure to obey an applicable traffic law or regulation, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, or operating a motor vehicle without valid insurance.

II. GENERAL TERMS AND CONDITIONS

1. ATS AGREES TO PROVIDE:

The scope of work identified in Exhibit B, Section 1.

2. CUSTOMER AGREES TO PROVIDE:

The scope of work identified in Exhibit B, Section 2.

3. TERM AND TERMINATION:

This Agreement shall commence upon the Effective Date and shall continue until the last day of the 2011–2012 school year at Einstein Elementary School, currently scheduled to be on or about June 22, 2012. Customer shall have the option to renew for subsequent three (3) year terms.

3.1 ATS' services may be terminated:

(i) By mutual written consent of the Parties; or

(ii) For Cause, by either Party where the other Party fails in any material way to perform its obligations under this Agreement. Where Customer is in material breach of this Agreement for non-payment of Service Fees to ATS, then ATS may exercise any or all of the following remedies: (a) provide Customer written notice and ten (10) days to cure before suspending performance and turning off ATS' cameras; (b) withhold payments to Customer, as described in Section 5.1 below; (c) terminate this Agreement for cause where Customer's account remains delinquent sixty (60) days after written notice; and (d) in addition to the foregoing, seek any other available remedies at law or equity.

(iii) Termination under this subsection for any reason other than non-payment of Service Fees by Customer is subject to the condition that the terminating Party notifies the other Party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other Party fails to cure the default within forty-five (45) days after receiving written notice.

3.2 Upon termination of this Agreement, either for cause, except for termination by ATS for non-payment, or because it has reached the end of its term, the Parties recognize that the Customer will have to process Violations in the "pipeline", and that ATS accordingly must assist the Customer 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:

(i) The Customer shall cease using the Axsis System to capture Violations.

(ii) Unless it is unlawful to do so, ATS shall, for a period of ninety (90) days, continue to process all images taken by the Customer before termination and provide all services associated with processing in accordance with this Agreement and shall be entitled to a monthly fee of $3,000 per camera.

(iii) The Customer shall return or allow ATS to recover all provided equipment within a reasonable time not to exceed ninety (90) days.

(iv) If ATS recovers the provided equipment, ATS shall remove any and all equipment or other materials ATS installed in connection with ATS' performance of its obligations under this Agreement, at no cost to the Customer, including but not limited to housings, poles and Camera Systems. ATS shall restore the surface of Customer's property to substantially the same condition as such property was in immediately prior to this Agreement, except for foundation removal, which shall be left approximately flush with grade with no exposed bolts, or other hazards. Installed underground conduit and other equipment shall not be required to be removed.

3.3 In the event of termination by ATS for non-payment of Service Fees by Customer, ATS shall cease processing violations as of the date of termination.

4. **ASSIGNMENT:**

Neither Party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. However, for business financing purposes, ATS may sell, assign, transfer or convey any interest in this Agreement in whole or in part without the written consent of the Customer.

5. **FEES AND PAYMENT:**

Customer shall pay for all equipment, services and maintenance based on the fee schedule indicated in the Exhibit "A", Service Fee Schedule 1.

5.1 Customer shall pay all Fees due ATS based upon invoices from the preceding month within forty-five (45) days of submission. Late payments are subject to interest calculated at 1.0% per month on open balances. If Customer is more than sixty (60) days past due on payments to ATS, ATS may, in its sole discretion, either (i) withhold all transfers/sweeps of violation payments to Customer until Customer becomes current on its payments or (ii) exercise any other remedies pursuant to Section 3 of this Agreement for non-payment of Service Fees by Customer.

5.2 ATS' Fees will be fixed for the first term; thereafter, unit prices will increase annually by two percent (2%) per annum.

Flexible Payment Plan. During the term of the Agreement, payments by the Customer may be made to ATS under a Flexible Payment Plan if the total funds collected by the Program are insufficient to cover the Fees due ATS. Under the Flexible Payment Plan, the Customer may defer certain payments due and owing to ATS during the term of the Agreement. If at the end of the term sufficient funds have not been collected by the Customer to pay the accrued balance then due to ATS, ATS agrees to waive its right to recovery with respect to any balance owing to ATS at the end of that term.

This Flexible Payment Plan will be applied as follows: ATS will maintain an accounting of any net balances owed ATS each month during the term. If the total amount of funds collected from all Camera Systems combined during a month exceeds the amount of the ATS invoice for the same month, the Customer shall pay ATS the total amount due on the invoice. If the total amount of funds collected from all Camera Systems combined during a month is less than the amount of the ATS invoice for the same month, the Customer shall pay ATS only the amount collected during the same month and Customer may defer payment of the remaining balance. If opting to use a Flexible Payment Plan, Customer will provide ATS with sufficient information about payments received directly by the Customer or by the Courts to accurately determine the amount of funds collected. Payments due ATS shall be reconciled by applying funds collected in subsequent months, first to the accrued balance and then to the subsequent monthly invoice. If at any time the ATS invoices, including any accrued balance, are fully repaid, the Customer will retain all additional funds collected. Such additional funds (whether reserved in cash or not by the Customer) will be available to offset future ATS invoices during the term of the Agreement. Customer agrees and understands the Flexible Payment Plan shall be applied in the aggregate across all installed Camera Systems and will not be applied on a per camera basis or on a per month basis.

Example: Fee of $4,750 per Camera System per month and four (4) cameras installed. If during Month 1 camera #1 revenue is $5,000, camera #2 revenue is $3,500, camera #3 revenue is $6,000 and camera #4 revenue is $3,500, the total revenue from the cameras for the month is $18,000. ATS would invoice Customer for $19,000 ($4,750 x 4 Camera Systems). However, Customer would only be required to pay $18,000 in Month 1 and the $1,000 deficit would carry over to subsequent months. If in Month 2 the combined revenue from the 4 cameras was $28,000, ATS would invoice the Customer $20,000 (i.e., the $1,000 deficit from the prior month

plus the $19,000 monthly fee for the 4 Camera Systems). The Customer is not responsible for any deficit balance fee at the end of the term of the Agreement."

5.3 Flexible Payment Plan – Limitations. This provision shall not apply if: (1) the Customer elects not to enforce all legally enforceable Violations; (2) the Customer elects not to pursue collections on unpaid Violations when contractually obligated to do so; (3) the Customer directs ATS to install a camera at a site where violation rates are projected by ATS to be below the rate required by ATS for an acceptable installation; or (4) the Customer waives and/or fails to timely process more than ten percent (10%) of valid Violations forwarded to the Police for acceptance according to the business rules defined by the Customer prior to the start of the program.

6. COMMUNICATION OF INFORMATION:

ATS will comply with reasonable requests for information obtained by ATS through operation of the Axsis System. ATS reserves the right to assess a fee for such services.

7. CONFIDENTIAL INFORMATION:

No information given by ATS to Customer will be of a confidential nature, unless specifically designated in writing as proprietary and confidential by ATS. However, nothing in this paragraph shall be construed contrary to the terms and provisions of any "Open Records Act" or similar laws, insofar as they may be applicable.

8. OWNERSHIP OF SYSTEM:

It is understood by the Customer that the System being installed by ATS is, and shall remain, the sole property of ATS, unless separately procured from ATS through a lease or purchase transaction. The System is being provided to Customer only under the terms and for the term of this Agreement.

9. INDEMNIFICATION AND INSURANCE:

10.1 Indemnification by ATS. Subject to Section 10.3, ATS agrees to indemnify the Customer and its managers, officers, directors, employees, agents, representatives and successors (individually a "Customer Party" and collectively, the "Customer Parties") against all liabilities, obligations, losses, damages, penalties and judgments (collectively, "Losses"), which may be imposed on or incurred by any Customer Party arising out of or related to the negligence or willful misconduct of ATS, its employees or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the negligence or willful misconduct of any Customer Party.

10.2 Indemnification by Customer. Subject to Section 10.3, the Customer hereby agrees to indemnify ATS and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all Persons acting by, through, under or in concert with them (individually an "ATS Party" and collectively, the "ATS Parties") against any and all Losses which may be imposed on or incurred by any ATS Party arising out of or related to the negligence or willful misconduct of the Customer, its employees, contractors or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except (i) to the extent caused by the negligence or willful misconduct of ATS; (ii) any claim, action or demand (a "Claim") not caused by ATS' failure to perform its obligations under this Agreement; (iii) any Claim challenging the Customer's use of the Axsis System, or any portion thereof; (iv) any Claim challenging the validity of the results of the Customer's use of the Axsis System, or any portion thereof; or (v) any Claim challenging the validity of the Citations issued, prosecuted and collected as a result of the Customer's use of the Axsis System, or any portion thereof.

10.3 Indemnification Procedures. In the event of any Claim in respect of which any Party hereto seeks indemnification from the other, the Party seeking indemnification (the "Indemnified Party") shall

give the Party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim; and no Party shall have the right to enter into any settlement agreement, or make any admissions of liability, without first: (a) notifying the other Party; (b) obtaining its written consent concerning any statements or conduct; and (c) permitting that Party's participation in settlement negotiations to ensure that said settlement agreement does not materially affect the other Party's ability to assert any claims or defenses against the involved third-party (or third-parties) to such settlement, or bind the other Party without its consent. Each Party acknowledges that their respective insurance providers may have the right to participate in such settlement negotiations.

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

10.4.1 Commercial General Liability Insurance including coverage for bodily injury, property damage, premises and operations, products/completed operations, personal and advertising injury, and contractual liability with a combined single limit of $1,000,000 per occurrence.

10.4.2 Workers' Compensation as required by applicable state law, and Employer's Liability Insurance with limits of not less than $500,000 each accident. ATS shall at all times maintain Worker's Compensation insurance coverage in the amounts required by law, but shall not be required to provide such coverage for any actual or statutory employee of Customer.

10.4.3 Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by ATS with a minimum $1,000,000 per occurrence combined single limit bodily injury and property damage.

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

10.4.5 Certificates showing ATS is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to the Customer within thirty (30) calendar days after the Effective Date of this Agreement. Such certificates shall show that the Customer will be notified in accordance with the policy language relating to cancellations of such insurance policies. ATS shall forthwith obtain substitute insurance in the event of a cancellation.

10.4.6 The Customer shall be responsible for vehicle insurance coverage on any vehicles driven by Customer employees. Coverage will include liability and collision damage.

10.5 Limited Liability. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability, arising out of or relating to this Agreement.

11. STATE LAW TO APPLY:

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

12. DISPUTE RESOLUTION:

All disputes arising out of or in connection with the Agreement shall be attempted to be settled through good-faith efforts between senior management of both Parties. Following thirty (30) days of unsuccessful negotiation, a dispute may be submitted to professionally-assisted mediation. Before a demand for mediation may be filed by either Party, the management of both Parties shall have met at least two times in face-to-face meetings in an effort to resolve any dispute or controversy through normal business management practices. Unless otherwise agreed to in writing, a minimum of one meeting shall take place at each Party's home office location. Any mediator so designated must be acceptable to each Party. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties.

12.1 Failing resolution through negotiation or mediation, any remaining dispute shall be submitted to binding arbitration in accordance with the Arbitration Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association ("AAA Rules") before a single arbitrator. The place of arbitration will be mutually agreed upon within fourteen (14) days of a decision to seek arbitration. Limited discovery will be permitted in connection with the arbitration upon agreement of the Parties and upon a showing of substantial need by the Party seeking discovery.

12.2 The arbitrator's decision shall follow the plain and natural meaning of the relevant documents, and shall be final and binding. The arbitrator will have no power to award:

(i) damages inconsistent with the Agreement; or,

(ii) punitive damages or any other damages not measured by the prevailing Party's actual damages, and the Parties expressly waive their right to obtain such damages in arbitration or in any other forum.

12.3 All aspects of the arbitration will be confidential. Neither the Parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements.

12.4 Each Party will promptly pay its share of all arbitration fees and costs, provided that such fees and costs shall be recoverable by the prevailing Party as determined by the arbitrator. If a Party fails to pay such share promptly upon demand, the arbitrator shall, upon written request by the other Party, enter a final and binding decision against the nonpaying Party for the full amount of such share, together with an award of attorney's fees and costs incurred by the other Party in obtaining such decision, which decision may be entered in any court of competent jurisdiction. Except for the failure of a Party to pay arbitration fees and costs that requires resort to the arbitrator to order such payment, the Parties will bear their own attorneys' fees in any matter or dispute under this Agreement.

13. CHANGE ORDERS:

The Customer may from time to time request changes to the work required to be performed or the addition of products or services to those required to the terms of this Agreement by providing a Change Order Notice". Upon ATS' receipt of a Change Order Notice, ATS shall deliver a written statement describing the cost, if any (the "Change Order Proposal"). Following the Customer's receipt of the Change Order Proposal, the Parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes; the time, manner and amount of payment or price increases or decreases, as the case may be; and any other matters relating to the proposed changes. In the event that any proposed change involves only the addition of equipment or services to the existing locations or the addition of locations to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit A shall govern. Any failure of the Parties to

reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 12 ("Dispute Resolution") of this Agreement. Such Change Order shall not invalidate the procurement process or this Agreement nor relieve or release ATS or the Customer of any of its obligations under this Agreement unless stated therein.

14. AMENDMENTS TO THE AGREEMENT:

The Parties may from time to time consider it in their best interest to modify or extend terms, conditions or covenants of this Agreement; require modifications in the Scope of Services to be performed; or request the performance of additional services regardless of and without invalidating the process that was used to procure the services enumerated under this Agreement. If modifications result in additional costs to Customer, ATS will provide a written estimate of such. Any such addition, deletion, extension or modification, including any increase or decrease in the amount of ATS' compensation, which are mutually agreed upon by and between the Customer and ATS shall be incorporated in written amendments (herein "Amendments") to this Agreement. Such Amendments shall not invalidate the procurement process or this Agreement nor relieve or release ATS or the Customer of any of its obligations under this Agreement unless stated therein.

15. LEGAL CONSTRUCTION:

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein. This Agreement shall be enforced to the maximum extent possible so as to give effect to the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable herein.

16. PRIOR AGREEMENT SUSPENDED:

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

17. NO AGENCY:

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

18. FORCE MAJEURE:

Neither Party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

19. TAXES:

At the time of execution of this Agreement, it is the understanding of the Parties that ATS' services provided hereunder are not subject to federal, state or local taxes including but not limited to excise, sales, use, property or similar taxes or charges. The Customer agrees to reimburse ATS for any such tax or charge if charged against ATS. If incurred, such taxes or charges may be invoiced at any time.

20. NOTICES:

Any notices or demand which, under the terms of this Agreement or under any statute, must or may be given or made by ATS or Customer shall be in writing and shall be given or made by personal service,

telegram, first class mail, FedEx, or by certified or registered mail to the Parties at the following address:

City of Redmond, Washington
8701 160th Ave NE
Redmond, Washington 98073
Attn: _____

American Traffic Solutions, Inc.
7681 East Gray Road
Scottsdale, Arizona 85260
Attn: Chief Operating Officer

[REMAINDER OF PAGE INTENTIONALLY BLANK]

EXHIBIT A
SERVICE FEE SCHEDULE

1.0 **Description of Pricing**
Fees are based on per camera and are as follows:

Fixed School Zone Speed System: $4,750 per month for the Einstein Elementary site

Each subsequent citation, above the total amount of the cameras multiplied by 800 per month (example: 8 camera locations x 800 violations each per month = 6,400 total violations). : $5.00

No fees will be charged if the cameras are shut down for summer break.

Service Fees: Service Fee includes all costs required and associated with one rear-only Camera System installation, maintenance, and on-going field and back-office operations. First Class mailing of notice of violation with return envelope, mailing of second notice (as needed), lockbox and epayment processing services, excluding user convenience fee, IVR call center support for general program questions and public awareness program support.

2.0 **Optional Annual Training Conference:** ATS provides a comprehensive user training conference (the "Conference") for active photo traffic safety and enforcement clients. The Conference's main focus is training of the system. Core elements include training on implementation methods and improvements, operational monitoring and improvements, statistical analysis, public relations and technology assessment. The sessions include participation by industry members, industry speakers and panel discussions. The Conference will be held in the Phoenix Metropolitan area. Customer shall be invoiced $100 per month per attendee and can assign up to three (3) project team members to attend the Conference each year. The $1,200 fee per attendee will cover travel, accommodations and all related Conference fees.

3.0 **Optional Public Relations Services:** ATS may provide additional public relations services upon written request by Customer. These services may include advertising, media relations, and public relations consultants. The fee for such services shall be mutually agreed upon based on the scope of the public relations services to be provided.

4.0 **Video Retrieval Fee:** One video retrieval per week shall be provided at no cost to Customer. For all additional video retrievals, the fee is $10.00 each.

EXHIBIT B
SCOPE OF WORK

1. ATS SCOPE OF WORK

1.1 ATS IMPLEMENTATION

1.1.1 ATS agrees to provide Camera System(s) and services to the Customer as outlined in this Agreement, excluding those items identified in Section 2 titled "Customer Scope of Work". ATS and the Customer understand and agree that new or previously unforeseen requirements may, from time to time, be identified and that the Parties shall negotiate in good faith to assign the proper Party the responsibility and cost for such items. In general, if work is to be performed by the Customer, unless otherwise specified, the Customer shall not charge ATS for the cost.

1.1.2 The Customer and ATS will complete the Project Time Line within thirty (30) days of Agreement execution date, unless mutually agreed to otherwise by the Parties. ATS agrees to make every effort to adhere to the Project Time Line.

1.1.3 ATS will assist the Customer with Site Selection Analysis of candidate sites.

1.1.4 ATS will install Camera System(s) at a number of locations to be mutually agreed upon between ATS and the Customer after completion of Site Selection Analysis, unless already identified in Exhibit C ("Designated Locations") of this Agreement. In addition to any initial locations, the Parties may agree to add to the quantities and locations where Camera System(s) are installed and maintained.

1.1.5 ATS will operate each Camera System on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (i.e., acts of God, etc.).

1.1.6 ATS' in-house Communications Department will assist the Customer with public information content and outreach campaign strategies. Depending upon the mutually agreed-upon strategy, ATS may provide public relations consultants, advertising, or media relations for an additional fee as described in Exhibit A, Service Fee Schedule.

1.1.7 ATS agrees to provide a secure website (www.violationinfo.com) accessible to Owners who have received Notices of Violation by means of a Notice # and PIN, which will allow Violation image and video viewing. As part of the secure website, ATS will provide a Frequently Asked Questions (F.A.Q.) page. ATS will operate this secure website on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (i.e., acts of God, etc.).

1.1.8 ATS will provide technician site visits to each Camera System, as needed to perform preventive maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and, general system inspections and maintenance.

1.1.9 ATS shall take reasonable best efforts to repair a non-functional Camera System within seventy-two (72) business hours of determination of a malfunction, except for those causes of Force Majeure as outlined in Section 18 in the General Terms and Conditions of this Agreement.

1.1.10 For any customer using ATS lockbox or epayment services, ATS will establish a dedicated demand deposit account. If Customer is more than sixty (60) days past due on payments to ATS, ATS may withhold all transfers/sweeps of violation payments to Customer until Customer becomes current on its payments. One time setup, monthly merchant account servicing costs and nonsufficient funds fees shall be billed through to the Customer monthly.

1.1.11 ATS is authorized to charge, collect and retain a convenience fee of $4.00 for each electronic payment processed. Such fee is paid by the violator.

1.2 ATS OPERATIONS

1.2.1 If a warning period is required, ATS shall provide the Customer with a one-time warning period up to thirty (30) days in length following the installation and activation of the first installed Camera System. Customer shall not be charged a fee for the warning period; however for any warning period exceeding thirty (30) days the Customer shall be responsible for the normal monthly Service Fee.

1.2.2 ATS shall provide the Customer with an automated web-based Citation processing system (Axsis) including image processing, 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. Each Citation or notice of violation shall be delivered by First Class mail to the Owner within the statutory period. In the case of a transfer of liability by the Owner, ATS may also mail a Citation or notice of violation to the driver identified in the affidavit of non-liability or by rental car companies. Costs of certified mailings are priced separately and paid by the Customer for additional compensation to ATS as indicated in Exhibit A.

1.2.3 Subsequent notices, other than those specified in subsection 1.2.2 may be delivered by First Class or other mail means for additional compensation to ATS as agreed upon by the Parties.

1.2.4 ATS shall apply an electronic signature to the Citation when authorized to do so by an approving law enforcement officer.

1.2.5 ATS shall seek records from out-of-state vehicle registration databases and use such records to issue Notices of Violation for the Customer according to each pricing option. ATS assumes this responsibility as a named Customer's agent by signing of DMV Services Subscriber Authorization found in Exhibit D of this Agreement. ATS reserves the right to mail Notices of Violation to the address of the Owner obtained through the DMV, obtained through the National Change of Address (NCOA) database provided by the United States Postal Service, or obtained through other means including but not limited to skip tracing.

1.2.6 If Customer is unable to or does not desire to integrate ATS data to its adjudication system, ATS shall provide one on-line adjudication processing module, which will enable the adjudication function to review cases, related images, up to six (6) correspondences, and other related information required to adjudicate the disputed Violation. The system will also enable the Court staff to accept and account for payments. Any costs charged by a third party vendor related to the provision of ATS data to the adjudication system are the responsibility of the Customer.

1.2.7 The Axsis System shall provide the Customer with the ability to run and print standard system reports. For any reports not readily available from the Axsis System, ATS shall provide a cost estimate to the Customer for providing such services.

1.2.8 During the twelve (12) month period following the installation of the first camera, upon ATS' receipt of a written request from the Customer at least fourteen (14) calendar days in advance of a court proceeding, and if required by the Court or prosecutor, ATS shall provide the Customer with or train a local expert witness to testify in Court on matters relating to the accuracy, technical operations, and effectiveness of the Axsis System until judicial notice is taken. Customer shall use its best efforts to obtain judicial notice as soon as possible. If an ATS expert witness is required more than two (2) times during the twelve (12) month period, Customer shall reimburse ATS for any reasonable time and travel costs incurred for the additional dates.

1.2.9 In those instances where damage to a Camera System (or sensors where approved) is caused by (i) negligence on the part of ATS or its authorized agent(s), (ii) negligence or recklessness on the part of a driver, or (iii) severe weather or acts of God, ATS shall bear the cost of repair. For all other causes of damage, Customer shall reimburse ATS for the cost of repair.

1.2.10 ATS shall provide a help-line to assist the Customer with resolving any problems encountered regarding its Camera System and/or Citation processing. The help-line shall function during normal business hours.

1.2.11 As part of its Camera System, ATS shall provide violators with the ability to view Violations online. This online viewing system shall include a link to the ATS payment website(s) and may offer the opportunity to download an affidavit of non-liability online. Online obtained affidavits, if approved by the Court, may be directed to and processed by ATS and communicated to the Court via the Axsis transfer described above.

1.2.12 For video retrievals requested by Customer unrelated to enforcement of a Violation, including but not limited to investigation of a criminal matter, ATS will provide up to one (1) video retrieval per week at no cost to Customer. For each additional video retrieval, Customer shall pay a fee, pursuant to Exhibit A ("Video Retrieval Fee").

2. CUSTOMER SCOPE OF WORK

2.1 GENERAL IMPLEMENTATION REQUIREMENTS

2.1.1 Within seven (7) business days of the Effective Date of this Agreement the Customer shall provide ATS with the name, title, mailing address, email address and phone number of:

- a project manager with authority to coordinate Customer responsibilities under this Agreement
- Municipal Court manager responsible for oversight of all Court-related program requirements
- The Police contact
- The Court contact
- The person responsible for overseeing payments by violators (might be court)
- The Prosecuting Attorney
- The City Attorney
- The Finance contact (who gets the invoices and will be in charge of reconciliation)
- The IT person for the police
- The IT person for the courts
- The Public Works and/or Engineering contact responsible for issuing any/all permits for construction

2.1.2 Within seven (7) business days of the Effective Date of this Agreement, the Customer shall provide ATS with the name and contact information for a Municipal Court manager responsible for oversight of all Court-related program requirements.

2.1.3 The Customer and ATS shall complete the Project Time Line within thirty (30) calendar days of the Effective Date of this Agreement, unless mutually agreed to otherwise by the Parties. The Customer shall make every effort to adhere to the Project Time Line.

2.1.4 The Customer shall direct the Chief of Police or approved alternate to execute the ATS DMV Services Subscriber Authorization (Exhibit D) to provide verification to the State Department of Motor Vehicles, National Law Enforcement Telecommunications System, or appropriate authority indicating that ATS is acting on behalf of the Customer for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. 2721, Section (b) (1) and as may otherwise be provided or required by any provision of applicable state law.

2.1.5 The Customer is responsible for notifying ATS of any legislative and/or ordinance changes in writing within forty-eight (48) hours of the first read of the proposed legislation. ATS will not be responsible for any damages if not notified within the required time.

2.1.6 The Customer is responsible for all final jurisdictional issues.

2.1.7 Once a Notice to Proceed is granted to ATS in writing or by email, the Customer shall not issue a stop work order to suspend activity on the implementation process, unless Customer reimburses ATS for costs incurred up to the date the stop work order is issued.

2.1.8 Once a camera system is installed and certified by ATS as operational, it shall be immediately put into service. If a Camera is inactive for more than seven (7) days for any reason not caused by ATS, other than Force Majeure as provided in Section 18, the Customer shall pay a reduced fee of two thousand five hundred dollars ($2,500.00) per camera per month or, in the alternative, the term of this Agreement may be extended by an equivalent period of time, at the Customer's option.

2.1.9 Customer shall provide ATS all available speed-related accident reports and any applicable speed violation reports for the three (3) years immediately prior to the installation of the first Camera System and on a quarterly basis going forward.

2.2 STREETS AND TRAFFIC DEPARTMENT OPERATIONS

2.2.1 If the Customer requests that ATS move a Camera System to a new Approach after initial installation, the Customer shall pay for the costs to relocate the Camera System.

2.2.2 If a construction or improvement project requires an installed Camera System to be deactivated or requires a Camera System, including imbedded sensors, to be moved or removed, Customer shall reimburse ATS for its lost revenue and any costs for moving or removing the Camera System. Customer may elect to reimburse ATS directly or ATS may recover its costs from program funds in addition to its normal fee.

2.2.3 Prior to the installation of any Camera System, Customer shall provide ATS information regarding any and all road construction or improvement projects scheduled during the term of this Agreement for any location designated for Camera System installation.

2.2.4 Customer will design, fabricate, install and maintain red light camera warning signs. If Customer cannot provide such signage, ATS will do so and Customer shall reimburse ATS for such costs.

2.2.5 Customer understands that proper operation of the system requires access to traffic signal phase connections. Customer, therefore, shall provide free access to traffic signal phase connections according to approved design. When traffic signal phase connections are not under the jurisdiction of the Customer, it shall be the Customer's responsibility to negotiate agreements with the owner or maintaining agency of the traffic signal controller and infrastructure in order to provide the required access to said phase connections and infrastructure and any costs associated with needed agreements shall be funded by the Customer.

2.2.6 Customer understands that proper operation of the system sometimes requires attachment of certain items of detection equipment to existing signal masts, mast arms and / or other street furniture. Customer, therefore, shall provide free access to ATS to attach of certain items of detection equipment to existing signal masts, mast arms and / or other street furniture for the proper operation of the system.

2.2.7 Customer shall allow ATS to access power from existing power sources at no cost and shall allow or facilitate access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each Camera System within the Customer's jurisdiction. If these items are not made available, the costs of any additional conduit or power infrastructure needed to support installation of the Camera System shall be funded by Customer. ATS may agree to cover these upfront costs and recover the costs from the collected revenue in addition to its normal fees. If existing power sources are not immediately available, Customer will allow ATS to use temporary power until the existing power is established. In situations where it is not possible to obtain electrical power from a pre-existing source, Customer shall bear the costs (or reimburse ATS) for obtaining/routing power. When access to power facilities is not under the jurisdiction of the Customer, it shall be the Customer's responsibility to negotiate any necessary agreements with the owner or maintaining agency of the power facility and infrastructure in order to provide required access to said power facilities and infrastructure. Any costs associated with the needed agreements shall be funded by the Customer

2.2.8 Customer shall not require ATS to provide installation drawings stamped by a licensed civil engineer. However, ATS work product and drawings shall be overseen and approved by an ATS PE and such deliverables shall conform to applicable engineering norms and reflect the details of installation work to be completed.

2.2.9 Customer shall approve or reject ATS submitted plans within seven (7) business days of receipt and shall limit iterations to a total of one revision beyond the initially submitted plans. Total plan approval duration shall not exceed ten (10) business days. The Customer shall provide its best efforts in providing aid in achieving these timeframes for plan approvals when plans are being reviewed and permitted by any State and/or County agencies.

2.2.10 Customer, or any department of Customer, shall not charge ATS or its subcontractor(s) for building, construction, electrical, street use and/or pole attachment permits, including any fee for traffic control services during installation or maintenance of a Camera System. Customer shall also fund any and all needed State and/or County permits.

2.2.11 Customer understands and agrees that time is of the essence and that public safety is at issue and shall issue all needed permits to ATS and its subcontractor(s) within three (3) business days of plan approval. The Customer shall provide its best efforts to aid in achieving these timeframes for permit issuance when permitted by any State and/or County agency.

2.2.12 If required by the submitted design for proper operation, Customer shall allow ATS to install vehicle detection sensors in the pavement of roadways within the Customer's jurisdiction, as permitted. The Customer shall provide its best efforts to aid in acquiring any and all required permission and permits when the roadway is under the jurisdiction of the State or County.

2.2.13 Customer shall allow ATS to build needed infrastructure into any existing Customer-owned easement.

2.2.14 If use of private property right-of-way is needed, Customer shall assist ATS in acquiring permission to build in existing utility easements as necessary. Any costs for private property right-of-way lease/rental costs shall be borne by the Customer as it is expressly excluded from the base fee structure identified in the fee schedule.

2.3 LAW ENFORCEMENT DEPARTMENT OPERATIONS

2.3.1 *Customer shall process each potential Violation in accordance with State Law and/or* Municipality Ordinances within three (3) business days of its appearance in the Law Enforcement Review Queue, using Axsis to determine which Violations will be issued as Citations or notices of violation. In the event that Customer fails to process potential

Violations within this timeframe, ATS shall not be liable for failure to issue a notice or citation within statutory timeframes.

2.3.2 For optimal utilization, Customer workstation computer monitors for Violation review and approval should provide a resolution of 1280 x 1024.

2.3.3 For optimal data throughput, the Customer workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater.

2.3.4 Customer shall provide signatures of all authorized Law Enforcement users who will review events and approve Citations on forms provided by ATS.

2.4 COURTS OPERATIONS

2.4.1 If Customer does not provide payment processing services, Customer shall use ATS payment processing services. The fees for lockbox and epayment services are presented in Exhibit A.

2.4.2 Customer shall provide a judge or hearing officer and court facilities to schedule and hear disputed Citations.

2.4.3 Customer shall provide the specific text required to be placed on the Citation or notice of violation to be issued by ATS within thirty (30) days of the Effective Date of this Agreement.

2.4.4 Customer shall approve the Citation or notice of violation form within fifteen (15) days of receipt from ATS. ATS reserves the right to make non-substantive formatting or incidental changes to the Citation or notice of violation without approval by Customer.

2.4.5 Customer shall handle inbound and outbound phone calls and correspondence from defendants who have questions about disputes and other issues relating to Citation adjudication. Customer may refer citizens with questions regarding ATS or Axsis technology and processes to websites and/or toll free telephone numbers provided by ATS for that purpose.

2.4.6 Where permissible under state law, Customer shall pursue delinquent collections of unpaid notices with an existing contractor or ATS within ten (10) days after expiration of a second notice.

2.4.7 Any potential, one time, direct costs to ATS to develop an interface between the Court system will be initially paid by ATS and any such cost will be reimbursed to ATS from collected revenues in addition to the Fees in Exhibit A, Service Fee Schedule 1.

2.5 INFORMATION TECHNOLOGY DEPARTMENT OPERATIONS

2.5.1 In the event that remote access to the ATS Axsis System is blocked by Customer network security infrastructure, the Customer's Department of Information Technology shall coordinate with ATS to facilitate appropriate communications while maintaining required security measures.

EXHIBIT C
DESIGNATED LOCATIONS

Enforcement at the existing location of School Zone speed enforcement cameras at Northeast 116th Street (Einstein Elementary School), implemented under prior contract, will continue subject to the terms of this Agreement.

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EXHIBIT D
DMV SERVICES SUBSCRIBER AUTHORIZATION

Agency ORI: _____

_____[DATE]

Nlets
1918 W. Whispering Wind Dr.
Phoenix, AZ 85085

Attn: Steven E. Correll, Executive Director
Re: Authorization for American Traffic Solutions, Inc. to Perform MVD Inquiry

Dear Mr. Correll:

Please accept this letter of acknowledgement that a Agreement to perform automated enforcement between _____ and American Traffic Solutions, Inc. is or will be enacted and will be or is in force. As a requirement of and in performance of that Agreement between _____ American Traffic Solutions, Inc., it will be necessary for American Traffic Solutions, Inc. to access Nlets motor vehicle data.

Please accept this letter as authorization from _____ for American Traffic Solutions, Inc. to run motor vehicle inquiries. This authorization is and will be in effect for the term of our Agreement with Nlets and any subsequent renewals.

This authorization will automatically expire upon the termination of the Agreement between _____and American Traffic Solutions, Inc., and, such authorization is limited to violations detected by the automated enforcement camera systems. By completing the information below and signing this letter, I am stating that I am a member of the _____and have the authority to empower American Traffic Solutions, Inc. to use ORI _____ for this function.

SUBSCRIBER INFORMATION

Subscriber Agency/Name _____

Nlets Agency ORI _____

Name/Title of Authorized Representative _____

Mailing Address _____
_____
_____

Telephone _____ **Fax** _____

Email _____

Signature of Authorized Representative _____

Date Signed _____