

**WIND DOWN AGREEMENT
FOR THE
CITY OF PALM COAST, FLORIDA
SERVICES TWO PHASE AGREEMENT WITH AMERICAN TRAFFIC SOLUTIONS, INC.**

THIS WIND DOWN ("Wind Down Agreement") is made this ___ day of _____, 2017, by and between the City of Palm Coast, Florida, a municipal corporation ("City"), and American Traffic Solutions, Inc. ("ATS").

R E C I T A L S

WHEREAS, the City and ATS entered into a Services Two Phase Agreement on or about November 6, 2007, as such was amended by Amendment No. 1, dated August 17, 2012, the Second Amendment, dated March 30, 2015, and the Third Amendment, dated October 14, 2015 (the "Agreement") for the City's red light photo enforcement program (the "Program"); and

WHEREAS, the Agreement terminates on September 30, 2017, but the parties mutually desire to terminate the Agreement effective as of April 5, 2017; and

WHEREAS, the City and ATS desire to enter into this Wind Down Agreement for ATS to provide services for the orderly wind down of the Program;

NOW, THEREFORE, for and in consideration of the foregoing recitals, all of which are hereby adopted as an integral part of this Wind Down Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and ATS hereby covenant and agree as follows:

1. **Termination.** The Agreement shall terminate on April 5, 2017 (the "Program Termination Date"), and notwithstanding any other provisions in the Agreement, including but not limited to Section 25 of the Agreement, this Wind Down Agreement shall set forth the obligations of the parties upon the termination of the Agreement related to the wind down of the Program.
2. **Term.**
 - A. This Wind Down Agreement shall commence immediately upon the Program Termination Date and shall terminate on June 30, 2017, unless earlier terminated by the City by providing ATS at least fifteen (15) days prior written notice of termination (the "Wind Down Termination Date"). The period between the Program Termination Date and the Wind Down Termination Date is the Service Term. The City and ATS may mutually agree in writing to extend the Service Term, if such additional time is necessary to complete the services required by this Wind Down Agreement.
3. **ATS's Duties and Responsibilities.** ATS's duties and responsibilities during the Service Term shall include the following:
 - A. Beginning on the Termination Date, ATS shall cease operation of the camera systems. During the Service Term, ATS shall be responsible for event processing for events that occurred on or before the Program Termination Date, including web application hosting, maintenance and remote administration, clerical data entry and quality review steps, in-state and out-of-state DMV records access and data acquisition, mailing of 1st notice, complete with photos and in color with return envelope, mailing of Uniform Traffic Citation, lockbox payment services, web-payment access with user convenience fee charged to violator, call center support for general program questions, and website accessible to citizens for image viewing, information and payments (violationinfo.com).
 - B. Maintaining standard payment channels that were available under the Agreement to collect and process payments;

- C. Removal of photo enforcement equipment, including but not limited to housings, poles and camera systems, except for foundation removal, which shall be left approximately flush with grade with no exposed bolts or other hazards ("Equipment Removal"). Installed underground conduit and other equipment ("Underground Infrastructure") shall not be required to be removed. Within thirty (30) days of Program Termination Date, ATS shall provide the City with a proposed schedule for the Equipment Removal, which schedule is subject to FDOT approval;
- D. ATS shall submit itemized invoices to the City on a monthly basis, covering the fees and costs set forth in Section 4;
- E. ATS shall continue to be obligated to indemnify the City consistent with the terms of the Agreement; and
- F. Other than as set forth herein, ATS shall have no further obligations to the City with respect to the operation of the Program or Equipment Removal during or after the Service Period.

4. **The City's Duties and Responsibilities.**

A. The City shall pay ATS as follows:

- 1. The City shall pay ATS a fixed fee of \$16,000 for Equipment Removal, which shall be invoiced according to the program revenue retained by the City each month (and, for the avoidance of doubt, the City acknowledges that all camera equipment provided by ATS for the operation of the Program is and shall remain the sole property of ATS, with the exception of the Underground Infrastructure). If upon termination of this Agreement the City has not retained sufficient program revenue to pay the full fixed fee for Equipment Removal, ATS agrees to waive the unpaid balance. For purposes of this Agreement, "program revenue" shall not mean the gross amount of penalties to be assessed pursuant to Florida Statutes Section 316.0083(1)(b)3 and/or Florida Statutes Section 318.18(15)(a)3 for a violation of Florida Statutes Sections 316.074(1) or 316.075(1)(c) (such amount as of the Effective Date of this Agreement being \$158.00), rather "funds" shall be only such portions of said gross revenues that are either (i) retained by the City after remittances contemplated in Florida Statutes Section 316.0083(1)(b), or (ii) sums distributed to the City pursuant to Florida Statutes Section 318.18(15)(a)3.
- 2. Once the fee for Equipment Removal has been paid in full through program revenue retained by the City, thereafter the City shall pay ATS fifty percent of revenue retained by the City from the Program ("net revenue") during the Service Term. In other words, the City shall pay ATS fifty percent of any retained program revenue in excess of the \$16,000 paid to ATS for the Equipment Removal.
- 3. The City shall pay ATS \$4.00 per mailing for certified mailings of the Uniform Traffic Citation issued during the Service Term, which shall be included on the monthly invoice and such payment shall not be dependent on program revenues retained by the City.

B. The City's payment for items set forth in Section 4.A. are due in full within thirty (30) days of receipt of such detailed monthly invoice.

5. **Obligations After Wind Down Termination Date.** Within forty-five (45) days after the Wind Down Termination Date, ATS shall provide to the City all evidence package data and information for all violations currently maintained on the ATS Axis System on behalf of the City. The information shall be delivered to the City on removable media with search capabilities. The City agrees that, following the Wind Down Termination Date, ATS is under no obligation to maintain evidence package data or information and that any public records requests for such information shall be the full responsibility of the City. Upon the Wind Down Termination Date, the City shall terminate all use of the Axis System

and any lockbox services shall no longer be capable of accepting payments. Additionally, violationinfo.com will be disabled and all violators will need to contact the City to review images of their violations.

6. **Severability.** Should any Section or part of any Section of this Wind Down Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other section or any part of any other section of this Wind Down Agreement.
7. **Governing Law and Venue.** This Wind Down Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties hereto, their successors, and assigns.
8. **Amendment.** This Wind Down Agreement may be amended only in writing executed by an authorized representative of both the City and ATS.
9. **Entire Agreement/Conflicts.** This Wind Down Agreement sets forth all covenants, promises, agreements, conditions and understandings between the City and ATS concerning the parties' obligations and rights with respect to the Program termination, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. In the event of a conflict between this Wind Down Agreement and the Agreement, this Wind Down Agreement shall control.
10. **No Waiver.** No provision of this Wind Down Agreement will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Wind Down Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.
11. **Survival.** Sections 3, 4, 5, 7 and 9 of this Wind Down Agreement shall survive termination of the Wind Down Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Wind Down Agreement to be executed by their duly authorized representatives on the date first above written.

CITY OF PALM COAST, FLORIDA

ATTEST

By: _____

City Clerk (Designee)

Print: _____

(SEAL)

Title: _____

AMERICAN TRAFFIC SOLUTIONS, INC

By: _____

Print: _____

Title: _____