

LOS ANGELES POLICE COMMISSION

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September 22, 2011

BPC #11-0372

The Honorable City Council
City of Los Angeles
c/o City Clerk's Office

Dear Honorable Members:

RE: FIRST SUPPLEMENTAL AGREEMENT FOR THE PHASE-OUT OF THE PHOTO
RED LIGHT PROGRAM (COUNCIL FILE 11-1015)

At the regular meeting of the Board of Police Commissioners held Tuesday, September 20, 2011, the Board APPROVED the Department's report relative to the above matter.

This matter is being forwarded to you and to the Mayor for approval.

Respectfully,

BOARD OF POLICE COMMISSIONERS

A handwritten signature in cursive script that reads "Maria Silva".

MARIA SILVA
Commission Executive Assistant

Attachment

c: Chief of Police

INTRADPARTMENTAL CORRESPONDENCE

September 15, 2011
1.17

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: FIRST SUPPLEMENTAL AGREEMENT FOR THE PHASE-OUT OF THE PHOTO RED LIGHT PROGRAM (COUNCIL FILE 11-1015)

RECOMMENDED ACTIONS

1. That the Board of Police Commissioners REVIEW and APPROVE the attached First Supplemental Agreement to Contract C-109495 subject to review and approval by the City Attorney, as to form and legality.
2. That the Board of Police Commissioners TRANSMIT the First Supplemental Agreement to the Office of the Mayor and City Council for review and approval.
3. That the Board of Police Commissioners AUTHORIZE the Chief of Police to execute the First Supplemental Agreement upon approval.

BACKGROUND

On November 15, 2005, the City entered into Agreement No. C-109495 to provide Photo Red Light (PRL) services. The three-year contract was amended on March 26, 2009, which extended the Agreement for one additional year. On September 8, 2009, American Traffic Solutions, Inc. (ATS) purchased the assets of Nestor Traffic Systems, Inc. (Nestor) through a court-approved action. A Second Amendment to the Agreement, effective April 1, 2010, transferred the PRL contract from Nestor to ATS and extended the contract for three additional months.

On June 23, 2010, the City Council authorized the Chief of Police to release a Request for Proposal (RFP) for the PRL Program and to expedite the selection process. The Chief of Police was also authorized to execute a 10-month extension of the PRL contract, which expired on April 30, 2011, under the Third Amendment to the Agreement. A Fourth Amendment to extend the contract on a month-to-month basis was effective beginning May 1, 2011, through July 31, 2011.

On June 7, 2011, the Board of Police Commissioners (Board) considered the Department's report on the recommendation to award the PRL contract to ATS, as a result of the 2010-2011 RFP process. At that hearing, the Board voted not to award the contract.

On June 22, 2011, the City Council considered a Substitute Motion (Cardenas-Parks; C.F. 11-1015) to extend the current contract with ATS on a month-to-month basis up to one year, pending completion of reviews on traffic safety and revenue issues (Attachment 1).

The Motion was referred to the Budget and Finance Committee and Audits and Governmental Efficiency Committee. On July 27, 2011, the City Council considered and adopted the Committees' recommendations to terminate the operation of the PRL cameras on July 31, 2011, and to phase-out the PRL Program, allowing time for the City to collect revenue from any outstanding red light violations (*See Attachment 2 for Committee Reports*). As such, the City Council instructed the Department, with assistance from the Chief Legislative Analyst (CLA) and City Administrative Officer (CAO), to negotiate a supplemental agreement with ATS to phase-out the PRL Program. The City Council also instructed the City Attorney to review the ATS contract and advise the City Council on the need to execute an amendment or supplemental agreement (*See Attachment 3 for City Attorney's Report*).

The CLA advised the City Council that given the processing time of a Photo Red Light Notice of Violation, including pending court cases, it was anticipated that revenues would continue to be received within six months after termination of the red light cameras. The City Council instructed the CLA, with assistance from the Department, to report the revenues received quarterly to the City Council in order to determine when the phase-out should be concluded.

BOARD INSTRUCTIONS AND DEPARTMENT RESPONSE

On August 30, 2011, the Board considered the Department's request to approve the First Supplemental Agreement. As a result, the Board continued the item and asked the Department to report back on the following:

1. A cost breakdown of the monthly service fees charged by ATS;
2. Edits to the "Removal of Photo Red Light Equipment" section of the Statement of Work to ensure the Department will determine when the equipment is to be removed; and
3. A determination as to whether the City Council instructed the Department, CLA and CAO to negotiate retaining the PRL cameras at certain intersections to enable the Los Angeles Department of Transportation (LADOT) to gather traffic violation data as part of a study in regard to yellow light timing.

These three items have been addressed by the Department as follows:

1. **A cost breakdown of the monthly service fees charged by ATS**
A cost breakdown is now included in Exhibit A to the First Supplemental Agreement.
2. **Edits to the "Removal of Photo Red Light Equipment" section of the Statement of Work to ensure the Department will determine when the equipment is to be removed**
Rather than requiring the equipment to be removed "at such time as mutually agreed," Statement of Work, section III(a) now reads, "ATS staff will retrieve all physical photo red light cameras belonging to ATS (as outlined in Exhibit B "Disposition of Equipment" task list) within 30 calendar days from the date of execution of this First Supplemental Agreement."

3. Whether the City Council instructed the LAPD, CLA and CAO to negotiate retaining the PRL cameras at certain intersections to enable the LADOT to gather traffic violation data as part of a study in regard to yellow light timing

The Department requested that the CLA clarify this issue. The CLA reviewed the video recording of the July 27, 2011 City Council discussion regarding the PRL program and determined that this instruction was given by a Councilmember but was not part of an official motion. According to the CLA, it is common during City Council meetings for individual Councilmembers to provide instructions to City staff, and for City staff to comply with those instructions. Therefore, the CLA believed it was appropriate for the Department to include this provision in the Supplemental Agreement.

Following the discussion by the Board on August 30, 2011, Councilmember Parks introduced a Motion to the City Council, on September 13, 2011, to amend the original Motion, articulating the desired instructions relative to retaining the PRL cameras at certain intersections (Attachment 4). After a debate by members of the City Council, the Motion was not adopted. As such, this provision is not included in the attached Supplemental Agreement.

CONCLUSION

The First Supplemental Agreement will enable the Department to obtain access to ATS' services, equipment and technology after July 31, 2011, which was not covered by the Original Agreement. The term of the First Supplemental Agreement would commence on August 1, 2011, and terminate on January 31, 2012, with the option to extend the term on a month-to-month basis beginning February 1, 2012, for no more than six additional months through July 31, 2012.

The Department will conduct an assessment of the revenue generated by the phase-out of the PRL program at the end of September 2011, and report its findings to the Board in mid-October 2011. At that time, if the Board determines that the First Supplemental Agreement should be terminated, the Department will provide a 30-day written notice to terminate the First Supplemental Agreement, pursuant to the "Termination for Convenience" clause in the Original Agreement with ATS.

Should you have any questions, please contact Police Administrator III Maggie Goodrich, Commanding Officer, Information Technology Bureau, at (213) 486-0370.

Respectfully,



CHARLIE BECK
Chief of Police

BOARD OF
POLICE COMMISSIONERS
Approved *September 20, 2011*
Secretary *Maria Silva*

**FIRST SUPPLEMENTAL AGREEMENT TO CONTRACT NO. C-109495
BETWEEN THE CITY OF LOS ANGELES AND
AMERICAN TRAFFIC SOLUTIONS**

This **FIRST SUPPLEMENTAL AGREEMENT** to Contract No. C-109495 is made and entered into by and between the City of Los Angeles, California, a municipal corporation (hereinafter referred to as the "City") and American Traffic Solutions, an Arizona based company (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, Contract No. C-109495 (hereinafter "Original Agreement") was approved for assignment to Contractor on April 2, 2010 (C.F. 07-1202-S7) and the Original Agreement obligated Contractor to provide the Automated Photo Red Light Enforcement Program Services; and

WHEREAS, following subsequent amendments Contract No. C-109495 expired on July 31, 2011, the City requires the services of Contractor for the implementation of the phase out of the Photo Red Light Program authorized by City Council on July 27, 2011 (C.F. 11-1015); and

WHEREAS, the Los Angeles City Council approved the phase out of the Photo Red Light Program, instructing that such phase out be accomplished as quickly as possible, while allowing time for the City to attempt to collect revenue from any outstanding red light violations; and

WHEREAS, Contractor's services beyond Citation processing and Approval are necessary during the phase out period, as well as, the use of some of the Contractor's equipment, and the Contractor is not obligated under the Original Agreement to provide certain services or equipment beyond the term of the Agreement; and

WHEREAS, City staff estimates that it will take approximately six months to a year to accomplish the phase out of the Photo Red Light Program; and

WHEREAS, at the request of the City, and because of the need therefor, Contractor continued to provide services, equipment and technology access after July 31, 2011, and the parties wish to ratify those services and pay Contractor for those services not covered by the Original Agreement subject to the terms and conditions of this First Supplemental Agreement.

NOW THEREFORE, in consideration of the premises, and of the terms, covenants and conditions set forth herein and in Contract No. C-109495, the parties hereto covenant, agree and represent as follows:

1. Contract No. C-109495 (including all subsequent amendments thereto) is incorporated herein by this reference, as though set forth at length, except as modified below.

2. Section 4.0, Term of Agreement, is amended to read in its entirety, as follows:

The term of this First Supplemental Agreement to Contract No. C-109495 shall be the period commencing on August 1, 2011, and ending on January 31, 2012, with the option to extend the term, at the City's sole discretion, on a month-to-month basis starting on February 1, 2012, for no more than six additional months, and ending on July 31, 2012, subject to the termination provisions herein. The purpose of this Supplemental Agreement is to allow sufficient time to phase out the Photo Red Light Program and allow the City time to collect on any outstanding red light violations.

3. Exhibit A, Scope of Work, Fee Schedule and Cost Breakdown, attached hereto, is hereby incorporated herein by this reference. Exhibit A in no way amends Appendix B, Statement of Work, under the Original Agreement, or relieves Contractor of any duties or responsibilities under the Original Agreement.

4. Exhibit B, Disposition of Equipment, attached hereto, is hereby incorporated herein by this reference. Exhibit B in no way amends Appendix B, Statement of Work, under the Original Agreement, or relieves Contractor of any duties or responsibilities under the Original Agreement.

5. Except as amended herein, or in conflict with the terms of this Supplemental Agreement, all other terms and provisions of Contract No. C-109495 incorporated herein remain unchanged and in full force and effect as part of this Supplemental Agreement.

6. **Ratification.** City required that Contractor's services be provided continuously on an ongoing basis, and at the City's request, the Contractor provided services prior to the execution of this Supplemental Agreement. To the extent that those services were performed in accordance with the terms and conditions of this Supplemental Agreement, those services are hereby ratified and payment therefore is authorized subject to the terms and conditions of this Supplemental Agreement.

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IN WITNESS THEREOF, the parties hereto have caused the Agreement to be executed by their respective duly authorized representatives.

For: The City of Los Angeles

For: American Traffic Solutions

By: _____
CHARLIE BECK
Chief of Police

By: _____
JAMES D. TUTON
President and CEO

Date: _____

Date: _____

By: _____
GEORGE HITTNER
Vice President and General Counsel

Date: _____

APPROVED AS TO FORM:
Carmen A. Trutanich, City Attorney

ATTEST:
June Lagmay, City Clerk

By: _____
TERRY MARTIN-BROWN
Assistant City Attorney

By: _____

Date: _____

Date: _____

City Business Tax Registration Number: 0002467920-0001-0
Internal Revenue Service Taxpayer Identification Number: 48-1114931
Agreement Number: C-109495-5

Exhibit A

Scope of Work, Fee Schedule and Cost Breakdown for The Phase Out of the Photo Red Light System and Accelerated Transition of Services Provided by ATS to the LAPD

Below is a description of the services and fees:

1. July 31, 2011 at 11:59 PM the last violations will be captured and all 63 cameras located at 32 intersections will be shut down so that no further violations are captured.
2. All final violation images captured by the system will be processed by ATS and forwarded to LAPD for review. ATS will print and mail all citations approved during this period to ensure the 15 day mailing requirement. Final July monthly Performance Report will be provided to the client. These services are provided under the Original Agreement executed on February 6, 2006 and at no additional cost to the City.
3. ATS will provide services for a rapid transition of all operations from ATS to the LAPD based on a 30-day progressive transition plan outlined below.
4. LAPD will progressively assume all operational support under the phase out plan during the month of August. Starting on September 1, 2011, LAPD will assume full operational responsibility for management and delivery of all services required to process the outstanding tickets, including the following:
 - I. **Information Technology, Equipment Provisioning & Transitional Services for LAPD "Phase Out"**
 - a. ATS will provide access to the back-office violation processing system to include Citation Viewer and Citation Composer, which will enable LAPD to perform the services described above. This includes ongoing maintenance and support by ATS, as necessary, to restart failed merges of court evidence at no additional cost to the City.
 - b. ATS will continue to provide the three DSL connections used by LAPD for network connectivity to the ATS Data Center.
 - c. All inbound calls will be forwarded to a designated telephone number provided by LAPD after the transition period.
 - d. ATS will enable the LAPD to continue use of previously provided workstation computers, laptop computers, printers, monitors, etc. which are required to support the collections and adjudication process. ATS will repair or replace any such equipment at no cost to the City during the term of the First Supplemental Agreement if such equipment becomes unusable.

- e. ATS will assume responsibility for the cost of all consumables for each function prior to transition to the LAPD on September 1, 2011, such as printer paper, printer ink and envelopes, etc.
- f. ATS will provide training during the transition period to ensure LAPD is able to schedule court dates/merge jobs, produce court packets, affidavits, etc. The scope of such training will be agreed between the parties before the execution of the First Supplemental Agreement.
- g. ATS will provide and maintain the "Ticket Viewer" website during the term of the First Supplemental Agreement, including troubleshooting of technical problems at no additional cost to the City.

II. ATS Deliverables after Expiration or Termination of the First Supplemental Agreement

- a. After expiration or termination of the First Supplemental Agreement, all historical files and program data in ATS' possession will be transferred to the City, including digital versions of all statistical reports and monthly program reports (preferably in Excel format).
- b. ATS will provide LAPD with electronic media with all City Data within 60 days from termination.
- c. All ATS equipment (e.g., computer workstations, laptops, printers, monitors etc.) provided to the City will be returned to ATS within 30 days from the termination of this First Supplemental Agreement at the Contractor's expense and at no cost to the City.

III. Removal of Photo Red Light Equipment

- a. ATS staff will retrieve all physical photo red light cameras belonging to ATS (as outlined in Exhibit B "Disposition of Equipment" task list) within 30 calendar days from the date of execution of this First Supplemental Agreement. Where ATS camera retrieval will require obstructing traffic lanes, said retrieval shall be completed by ATS during off-peak hours only (peak hours being 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 7:00 p.m.) Where ATS camera retrieval will not impact or obstruct traffic lanes, retrieval may be completed by ATS during peak hours.

ATS shall provide the Los Angeles Department of Transportation ("LADOT") with the time schedule for the removal work at the 32 intersections, for LADOT's approval, seven (7) calendar days prior to starting any removal work, and notify the LADOT Traffic Signal Inspector three (3) working days in advance of any removal work at each location. ATS shall perform the work and provide worksite traffic control, in conformance with the latest edition, with supplements, of the Standard Specifications for Public Works Construction, adopted by the City of Los Angeles Board of Public Works, the Work Area Traffic Control Handbook (WATCH), and the California Manual on Uniform Traffic Control Devices (CA MUTCD) 2010 Edition. ATS shall not disrupt or affect the City's traffic signal equipment and operation in any manner. ATS shall comply with all City ordinances and other restrictions in regard to traffic lane impact.

- b. Following the completion of point III(a) above, LADOT will perform the removal and collection work in phases, of all ATS owned equipment that was originally installed by LADOT, including poles, foundations, camera housings, brackets, strobes, and warning signs. LADOT will place the equipment owned by ATS in the LADOT yard, and make the equipment available for pick up by ATS within seven (7) calendar days after each LADOT notification to ATS (as outlined in Exhibit B "Disposition of Equipment" task list). If the equipment is not picked up by ATS within this timeframe, LADOT shall dispose of the equipment at its discretion.

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IV. August Phase-Out Transition Schedule

Aug 1 – Aug 7: ATS Continuation of full back-end service, while preparing for transition

ATS Scope to include:

- Preparing court packets for subpoenas provided to ATS.
- Processing of Affidavits.
- Call Center Operations.
- Preparing outbound correspondence.
- Training of LAPD personnel to prepare to assume PRL functions.

Aug 8 – Aug 14: LAPD assumes affidavit processing and incoming correspondence

- Incoming correspondence is forwarded to LAPD beginning Aug 7th.
- ATS will provide additional training to LAPD as necessary.
- All other functions described above continue to be performed by ATS.
- Tangible media (i.e., file boxes containing mailing certificates, affidavit correspondence, maintenance logs, etc) are delivered to LAPD during end of this week (split between Central (PAB), Valley and West locations).

Aug 15 – Aug 22: LAPD assumes preparation of court packets

- Court packet preparation responsibility transferred to LAPD on Aug 15th

Aug 23 – Aug 31: LAPD assumes call center responsibilities

- Incoming calls are transferred to an LAPD phone number beginning Aug 23rd.

September 1 – Transition to LAPD Complete

- ATS will continue to provide the three DSL connections used by LAPD for network connectivity between the ATS Data Center and the LAPD. LAPD will be responsible for costs associated with the DSL service, which is incorporated in the Monthly Service Fee Schedule. The total monthly amount for the three connections is \$590.00.
- LAPD will have access to ATS' database using Citation Viewer and Citation Composer.
- ATS will continue to provide hardware lease (Desktops, laptops, printers, etc to LAPD).
- ATS will continue to provide and maintain "Ticket Viewer" website for LAPD.

Fee Schedule for Services under First Supplemental Agreement

Month		Monthly Service Fee	
1	Aug	2011	\$ 50,590
2	Sep	2011	\$ 11,340
3	Oct	2011	\$ 11,340
4	Nov	2011	\$ 11,340
5	Dec	2011	\$ 11,340
6	Jan	2012	\$ 11,340
7	Feb	2012	\$ 11,340
8	Mar	2012	\$ 11,340
9	Apr	2012	\$ 11,340
10	May	2012	\$ 11,340
11	Jun	2012	\$ 11,340
12	Jul	2012	\$ 11,340

Cost Breakdown for Monthly Service Fee

Service	August-11	Monthly Fee after Aug-11
Account Management	\$ 9,750.00	\$ -
Correspondence Processing & Court Pkt Preparation	\$ 16,325.75	\$ -
Call Center	\$ 11,674.25	\$ -
LAPD Training	\$ 1,500.00	\$ -
LAPD Communication Lines - Three Locations	\$ 590.00	\$ 590.00
Lease Computer Equipment	\$ 200.00	\$ 200.00
Access to Servers/Databases	\$ 7,500.00	\$ 7,500.00
LAPD Use of Proprietary Software - Citation Composer, Citation Viewer, Ticket Viewer	\$ 3,050.00	\$ 3,050.00
Monthly Cost	\$ 50,590.00	\$ 11,340.00

EXHIBIT B

Photo Red Light Enforcement Equipment at 32 Intersections Disposition of Equipment

	Component	Implementation		Removal	
		DOT	Nestor	DOT	ATS
1	25 ft. camera pole	I	S	R	
2	Cable (CAT5E sync) from camera to strobe	I	S	R	
3	Cable from camera controller to DOT controller	I	S	R	
4	Cables for power to camera	I	S	R	
5	Camera controller		S, I		R
6	Camera controller cabinet	I	S	R	
7	Cameras		S, I		R
8	Camera brackets	I	S	R	
9	Ethernet enclosure	I	S	R	
10	Fuse in service pullbox, for camera controller	I		R	
11	Relocation, removal of bus benches, newsracks, etc.	Coordinate			
12	Riser on power poll for power feed	I		R	
13	Signs	I	S	R	
14	Strobe lights	I	S	R	
15	Wireless communication dish		S, I		R
16	Wireless communication dish brackets	I	S	R	

I=Install, S=Supply, R=Remove

TASKS FOR EQUIPMENT REMOVAL

- 1 Prepare the construction drawings.
- 2 Remove the cameras and controllers.
- 3 Remove the wireless and DSL communication equipment.

Responsible

Party

- 4 Remove the poles, cabinets, and brackets and disconnect power.
Break out and remove 4-inch concrete topping at the base of the poles and controllers. Abandon foundation and conduits.
- 5 Cap the foundation bolts and fill the holes to restore pavement.
- 6 Collect the equipment and leave in yards for ATS pick up within 7 days.

DOT
ATS
ATS

DOT
DOT
DOT

SUBSTITUTE

ITEM NO. 18 _____

40

MOTION

On April 26, 2011, the Council approved a 90-day extension of the current contract with American Traffic Solutions for the City's Photo Red Light (PRL) Program. Given that the full extent of the traffic safety and the financial impacts to the City have not been fully analyzed and presented to the Council, it is appropriate to maintain operation of the Photo Red Light Program until this review has been completed by the Council.

I THEREFORE MOVE that the Council Action of April 26, 2011, relative to approval of a 90-day extension of the current contract for the Photo Red Light Program, (C.F. 11-0554) be amended to add the following instructions:

1. Instruct the Police Department (LAPD) to conduct a study of the public safety impact of terminating the Photo Red Light program to ensure that public safety is not compromised.
2. Instruct the LAPD, CAO and CLA to conduct a thorough review of the Photo Red Light (PRL) Program to ensure that fees/expenses are accounted for by all impacted parties (i.e. City of LA, County of LA, LA County Courts, PRL vendor), explore options to increase leverage for delinquent PRL violations (i.e. DMV hold) and meet with the Los Angeles County Superior Court regarding their refusal to impose penalties for PRL violations.
3. Request and direct the Board of Police Commissioners to obtain extensions of time for the acceptance of their proposals from the three highest ranked proposers who submitted proposals in the Request for Proposals (RFP) process for the Photo Red Light Program, pending further review and analysis of the public safety and revenue issues outlined above.
4. Instruct the LAPD to negotiate and execute a contract amendment on a cost-neutral, month-to-month basis with the existing contractor starting August 1, 2011, for a total period of time not to exceed 365 days, subject to the approval of the City Attorney as to form and legality, and pending the outcome of public safety and revenue issues outlined above. and authorize the Chief of Police to execute such contract amendment.

2011
2011

PRESENTED BY Tony Cardenas
TONY CARDENAS
Councilmember, 6th District

SECONDED BY Benjamin C. ...

ORIGINAL

June 17, 2011

[Handwritten signature]

File No. 11-1015

TO THE COUNCIL OF THE
CITY OF LOS ANGELES

Your AUDITS AND GOVERNMENTAL EFFICIENCY COMMITTEE

reports as follows:

AUDITS AND GOVERNMENTAL EFFICIENCY COMMITTEE REPORT relative to the Photo Red Light Program.

Recommendation for Council action:

CONCUR with the action of the Budget and Finance Committee taken at its meeting of July 25, 2011 relative to an instruction to the City Administrative Officer (CAO) and Chief Legislative Analyst (CLA) to work with the vendor of the Photo Red Light Program (PRLP), American Traffic Solutions (ATS), to negotiate all cost issues and other elements, including equipment removal, for a phase out approach to the PRLP and terminate the issuance of photo red light citations as of August 1, 2011.

Fiscal Impact Statement: The CLA reports that the Fiscal Year (FY) 2011-12 Budget assumed that the City would receive revenue from the PRLP of \$3.6 million and assumed contract expenditures of \$2.76 million resulting in net revenue of \$848,000. Factoring in the approximately \$600,000 Los Angeles Police Department/Department of Transportation (LAPD/DOT) staff costs results in a positive budget impact of approximately \$245,000. It is estimated that terminating the PRLP as of August 1, 2011 could result in the City receiving revenue amounting to \$2.5 million because of the lag time to process photo red light citations and payments made by violators. Contract payments of \$2.5 million would be avoided. Expenditures would total approximately \$400,000 (one month contract payment of \$256,000 plus DOT overtime staff costs of \$155,000 to remove PRL equipment) resulting in net revenue of \$2.1 million, and a FY 2011-12 Budget positive impact of \$1.5 million factoring in the LAPD/DOT staff costs. Net revenue would decrease, however, with expenditures for technology costs to transition the data from the vendor to LAPD; that amount is currently unknown. With PRLP termination, it is likely that revenue would phase out in FY 2012-13 with the City potentially receiving approximately \$880,000, and a positive budget impact of \$274,000 factoring in LAPD/DOT staff costs. If the PRLP is completely terminated with no phase-out, the FY 2011-12 Budget would result in a negative impact of approximately (\$200,000). LAPD/DOT staff costs of \$600,000 to administer the PRLP are on-going General Fund expenditures as these positions will continue in other assignments if the Program is concluded.

Community Impact Statement: Yes
Midtown North Hollywood Neighborhood Council
Northridge East Neighborhood Council
Sherman Oaks Neighborhood Council

Summary:

At its regular meeting of July 26, 2011, the Audits and Governmental Efficiency Committee considered a Motion (Cárdenas – Parks) and CLA reports relative to the PRLP. The CLA reports that on June 22, 2011, City Council considered the above-referenced Motion to extend the contract with American Traffic Solutions (ATS), on a month-to-month basis up to one year, pending completion of reviews on traffic safety and revenue issues. The matter was referred to Budget and Finance and Audits and

Governmental Efficiency Committees for evaluation of the financial impact of the PRLP; status of amending the California Vehicle Code to strengthen enforcement for failure to appear in court or pay the fine; results of discussion with the Los Angeles Superior Court regarding enforcement issues; feasibility of the City to take enforcement action rather than the Superior Court; and whether ATS would comply with the Arizona policy if it established a subsidiary in California. The CLA's Office was instructed to prepare an informational report on these issues which is attached to the Council file.

Representatives of the Chief Legislative Analyst (CLA), the Los Angeles Department of Transportation, and ATS appeared before the Committee to discuss the PRLP and responded to related questions. During the discussion, the issue of the court's process in handling the citations was raised and the Committee inquired that if the recipient of a Photo Red Light citation fails to respond, how long Failure to Appear information is kept on file by the Court, what are the consequences of having such a failure to appear on file, and how would a failure to appear for a Photo Red Light citation affect other citations or warrants on file with the Court. The Committee requested that the LAPD and CLA to obtain further clarification from the Court regarding this issue and provide it to the Council during its consideration of this item.

After providing an opportunity for public comment, the Committee recommended that Council approve the Committee recommendation as detailed above. This matter is now submitted to Council for its consideration.

Respectfully submitted,

AUDITS AND GOVERNMENTAL EFFICIENCY COMMITTEE

MEMBER VOTE

ZINE	YES
PARKS	YES
ENGLANDER	YES

REW

7/27/11

11-1015_rpt_age_07-26-2011

Not Official Until Council Acts

TO THE COUNCIL OF THE
CITY OF LOS ANGELES

Your

BUDGET AND FINANCE Committee

reports as follows:

BUDGET AND FINANCE COMMITTEE REPORT relative to the Photo Red Light Program.

Recommendation for Council action, as initiated by Motion (Cárdenas – Parks):

INSTRUCT the City Administrative Officer (CAO) and Chief Legislative Analyst (CLA) to work with the vendor of the Photo Red Light Program (PRLP), American Traffic Solutions, to negotiate all cost issues and other elements, including equipment removal, for a phase out approach to the PRLP and terminate the issuance of photo red light citations as of August 1, 2011.

Fiscal Impact Statement: The CLA reports that the Fiscal Year (FY) 2011-12 Budget assumed that the City would receive revenue from the PRLP of \$3.6 million and assumed contract expenditures of \$2.76 million resulting in net revenue of \$848,000. Factoring in the approximately \$600,000 Los Angeles Police Department/Department of Transportation (LAPD/DOT) staff costs results in a positive budget impact of approximately \$245,000. It is estimated that terminating the PRLP as of August 1, 2011 could result in the City receiving revenue amounting to \$2.5 million because of the lag time to process photo red light citations and payments made by violators. Contract payments of \$2.5 million would be avoided. Expenditures would total approximately \$400,000 (one month contract payment of \$256,000 + DOT overtime staff costs of \$155,000 to remove PRL equipment) resulting in net revenue of \$2.1 million, and a FY 2011-12 Budget positive impact of \$1.5 million factoring in the LAPD/DOT staff costs. Net revenue would decrease, however, with expenditures for technology costs to transition the data from the vendor to LAPD; that amount is currently unknown. With PRLP termination, it is likely that revenue would phase out in FY 2012-13 with the City potentially receiving approximately \$880,000, and a positive budget impact of \$274,000 factoring in LAPD/DOT staff costs. If the PRLP is completely terminated with no phase-out, the FY 2011-12 Budget would result in a negative impact of approximately (\$200,000). LAPD/DOT staff costs of \$600,000 to administer the PRLP are on-going General Fund expenditures as these positions will continue in other assignments if the Program is concluded.

Community Impact Statement: Yes,
Midtown North Hollywood Neighborhood Council
Northridge East Neighborhood Council
Sherman Oaks Neighborhood Council

(Audits and Governmental Efficiency Committee report to be submitted in Council. If public hearing is not held in Committee, an opportunity for public comment will be provided.)

SUMMARY

At its meeting of July 25, 2011, the Budget and Finance Committee considered a Motion (Cárdenas – Parks) and CLA reports relative to the Photo Red Light Program (PRLP). The CLA

reports that on June 22, 2011, City Council considered the above-referenced Motion to extend the contract with American Traffic Solutions (ATS), on a month-to-month basis up to one year, pending completion of reviews on traffic safety and revenue issues. The matter was referred to Budget and Finance and Audits and Governmental Efficiency Committees for evaluation of the financial impact of the PRLP; status of amending the California Vehicle Code to strengthen enforcement for failure to appear in court or pay the fine; results of discussion with the Los Angeles Superior Court regarding enforcement issues; feasibility of the City to take enforcement action rather than the Superior Court; and whether ATS would comply with the Arizona policy if it established a subsidiary in California. The CLA's Office was instructed to prepare an informational report on these issues which is attached to the Council file.

During Committee discussion, representatives of the CLA, DOT and City Attorney provided a summary of the information in the CLA report and responded to related questions from Committee members. The Executive Director, Board of Police Commissioners, provided additional information regarding decisions of the Police Commission relating to the PRLP.

After further consideration and an opportunity for public comment, the Budget and Finance Committee recommended that Council approve the Committee recommendation as detailed above. This matter is now forwarded to the Council for its consideration.

Respectfully submitted,

BUDGET AND FINANCE COMMITTEE

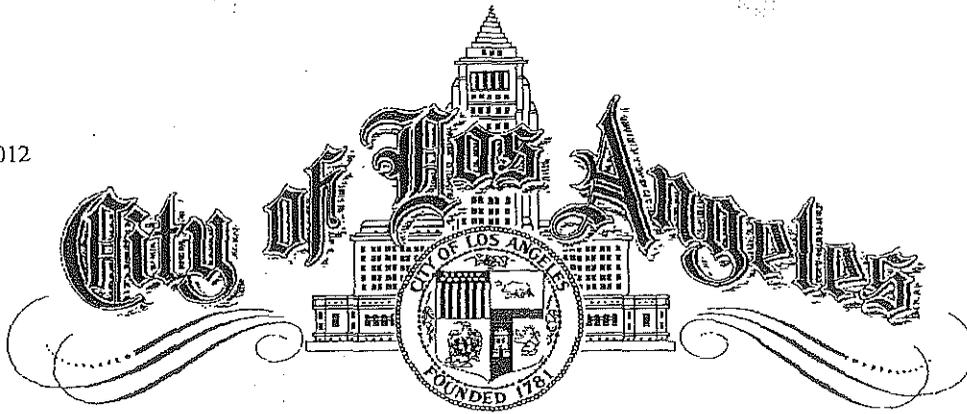
<u>MEMBER</u>	<u>VOTE</u>
PARKS:	YES
ENGLANDER:	YES
ROSENDAHL:	YES
HUIZAR:	YES
KORETZ:	YES

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11-1015_rpt_bfc_7-26-11

Not Official Until Council Acts

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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 1 - 0 3 2 7

AUG 1 6 2011

REPORT RE:

**THE REQUIREMENT OF A SUPPLEMENTAL AGREEMENT TO ACCOMPLISH THE
PHASE-OUT OF THE PHOTO RED LIGHT PROGRAM**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 11-1015

Honorable Members:

You have requested that this Office review Contract No. C-109495, an agreement between the City of Los Angeles and American Traffic Solutions for an Automated Photo Red Light Enforcement System, and advise you "whether or not any amendment or supplemental contract, or no action at all, other than a demand letter to the contractor, is necessary" in order to conduct the phase-out segment of the Photo Red Light Program.

Background

On February 6, 2006, the City of Los Angeles and Nestor Traffic Systems, Inc. executed Contract No. C-109495 (hereinafter the "Agreement") to provide Automated Photo Red Light Enforcement Program Services. In September of 2009, American Traffic Solutions (hereinafter "ATS" or "Contractor") purchased Nestor's assets in receivership proceedings. The assignment of the Agreement to ATS was subsequently approved by your Honorable Body. The Agreement expired on July 31, 2011, and the cameras that captured digital video images of red light violations ceased to operate at 11:59 p.m. on that date. It is the City's intent to prosecute all violations captured by the

cameras up to the point of expiration of the Agreement. According to the Los Angeles Police Department (hereinafter "LAPD"), in order to accomplish the City's objective of prosecuting the violators and collecting the citation revenue, a transition or phase-out period is required during which the captured digital video images are reviewed and approved, the citations are processed and issued, officer training is conducted, access to the Contractor's database using the Contractor's equipment is maintained and the necessary trial support for successful prosecutions continues to be provided. The prosecution of individuals who have received red light citations may include a trial requiring the preparation of a "court case package" (color digital video images, maintenance and calibration records, certificate of mailing, etc.) by the Contractor and depending on the asserted defense and the presiding bench officer, the Contractor may need to appear in court and offer "expert testimony." The question presented is which of these obligations is the Contractor legally required to continue to perform at no additional cost to the City and which of these "transition" costs must be borne by the City pursuant to the terms of the Agreement?

Contractor's Obligations Pursuant to the Terms of the Agreement

In interpreting a contract, the law requires that the "whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (California Civil Code section 1641, enacted in 1872) California law is well-settled in this regard. The California Supreme Court has firmly stated that "It is a primary rule of interpretation that contracts must be construed as a whole that is, from their four corners, and the intention of the parties is to be collected from the entire instrument and not detached portions thereof, it being necessary to consider all of the parts to determine the meaning of any particular part as well as of the whole. Individual clauses and particular words must be considered in connection with the rest of the agreement, and all of the writing and every word of it will, if possible, be given effect." (Hunt v. United Bank & Trust Co. (1930) 210 Cal. 108, 115; see also Stewart Title Co. v. Herbert (1970) 6 Cal. App. 3d 957, 963.)

Section 20.0 of the subject Agreement entitled CONCLUSION OF AGREEMENT states "At the conclusion of this Agreement, Contractor shall complete all PROGRAM work associated with the final violation images captured by the system on the last day of the Agreement. Such work shall include, but not be limited to, citation processing, citation approval procedures, violation viewings, preparation of court case packages, and court appearances, as identified in Appendix B." Section 20.0 read alone may seem to establish the intention of the contracting parties; but a careful legal analysis makes it essential to review the entire Agreement to accurately ascertain the parties' intentions and to correctly interpret the Agreement. The California Supreme Court has emphasized that although, "the language of the agreement, if clear and explicit and not conducive to an absurd result, must govern its interpretation This does not mean that a portion only of a written instrument, although it is clear and explicit, may be selected as furnishing conclusive evidence of the intention of the parties. Section 1641

of the California Civil Code embraces the true rule in providing that "[t]he whole of a contract is to be taken together" (Universal Sales Corp. v. California Press Mfg. Co. (1942) 20 Cal. 2d 751, 760.) Accordingly, it is essential to consider the language found in other sections of the Agreement, including the introductory or recitals section of the Agreement, Section 2.0 CONTRACTOR SERVICES TO BE PROVIDED, and the language of Appendix B which is incorporated into the Agreement by reference.

The term "PROGRAM" is defined in the Agreement's second recital (Agreement, page 1) and obligates the Contractor "to install automated photo red light enforcement cameras at a maximum of thirty-two (32) intersections, process digital images of red light violations, mail citations approved by the LAPD, interface with the Los Angeles Superior Court computer system, develop and supply management information reports, and to provide technical support to CITY management and staff (hereinafter referred to as the "PROGRAM")." Arguably, this definition of "PROGRAM" appears to limit the scope of "PROGRAM work" as referenced in section 20.0 of the Agreement. Considering section 2.0 of the Agreement entitled CONTRACTOR SERVICES TO BE PROVIDED, it specifies that "Contractor shall perform the work set forth in Appendix B, Statement of Work." The relevant portions of Appendix B are discussed below.

Considering the language of the entire Agreement, the above-referenced sections and Appendix B, the Statement of Work, it is clear that the Contractor is obligated at no additional cost to the City to process the violations captured by the cameras up to the time of expiration of the Agreement. These obligations include Citation Processing, the Citation Approval Process, and arguably, at least for some reasonable period of time, the provision of a toll-free number to answer citation related questions. The Citation Processing procedures include electronically interfacing with the Department of Motor Vehicles to determine the registered owner's information, maintaining a chain of custody for all documents (secure record keeping and evidence storage), a quality check of each violation, printing all citations, mailing all citations, and processing the digital video images of each violation. (Appendix B, page 5, Citation Processing.)

The Contractor's continuing obligations regarding the Citation Approval Process are also described in detail in Appendix B. Those obligations include making the citations available for online approval by LAPD, electronically transmitting a completed notice of violation to LAPD, electronically generating a digitized signature of an LAPD officer on each LAPD – approved citation, electronically processing all approved and mailed citations with the Los Angeles County Superior Court System, and downloading all citation information to the Los Angeles County Court computer database via the Expanded Traffic Records System (ETRS). (Appendix B, page 6, Citation Approval Process.)

According to very specific and unambiguous language in Appendix B, following expiration of the Agreement, the Contractor is **not** required to continue to do the following at no additional cost: (1) conduct training of LAPD staff to prepare officers to testify in court, (2) provide an expert witness to testify in court as to the operation of the camera system, collection and processing of the photographed evidence or (3) prepare a "court case package" which the Agreement states is to be "made available to LAPD within five (5) days prior to the scheduled court date." It should be noted that the scheduled court dates for violations captured during the last month of the Agreement's term may not occur for another year.

The section of Appendix B entitled "Training" limits the period of time that the Contractor is obligated to perform and states unequivocally "**Throughout the term of this entire Agreement**, Contractor shall provide training to all primary and backup personnel assigned to the Automated Photo Red Light Program as request[ed] by LAPD. The training shall provide an overview of all aspects of the automated program, including the technical information necessary to testify in court." (Appendix B, page 6-7, Training.)

Similarly, Sub-section I of the Appendix B section entitled "Court" clearly limits the time period of performance of the Contractor's obligations and reads "**Throughout the term of this entire Agreement**, Contractor shall provide . . . an expert witness to testify in court as to the operation of the camera system, collection and processing of the photographed evidence submitted to the court." Sub-section II repeats the same phrasing and states: "**Throughout the term of this entire Agreement**, Contractor shall prepare a court case package that shall contain front and rear color digital video images of the violation, a certified copy of the maintenance or calibration records covering the period prior to and immediately after the photographed violation, a certificate of mailing stamped by the United States Postal Service indicating the citation was mailed within eleven (11) days of the violation, and an affidavit by Contractor that outlines the duties performed throughout the entire processing of the violation. Court case information shall be available to the LAPD within five (5) working days prior to the scheduled court date." (Appendix B, page 7, Court, Sub-sections I and II.)

City's Retention of Contractor's Equipment and DSL Lines

During the term of the Agreement, LAPD had the possession and use of five (5) of the Contractor's computer workstations in order to access the Contractor's database using the Contractor's proprietary software, "Citation Viewer" and "Citation Composer". LAPD wants to retain the Contractor's computer workstations to continue such access during the close-out phase of the Photo Red Light Program. Section 15.0 Equipment of the Agreement states that all equipment owned and provided by the Contractor including computer workstations will be returned to the Contractor at the end of the contract period. Given these clearly stated contractual conditions, we are not aware of any legal precedent that would allow the City to retain the Contractor's equipment

without the Contractor's consent and reasonable compensation by the City for the continued use or purchase of the equipment.

In addition to the computer hardware equipment, City requires that Contractor leave in place during the phase-out period three (3) Digital Subscriber Lines (hereinafter "DSL") that facilitate LAPD's access to the Contractor's database. According to LAPD, the Contractor pays the costs to maintain the DSL. The DSL can reasonably be characterized as Contractor's equipment. Based on the terms of the entire Agreement, there is no legal basis to argue that Contractor is required to continue to provide those DSL connections at no additional cost to the City.

Conclusion

"The law is well established that "[t]he language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (California Civil Code section 1638, enacted in 1872; Pierce v. Merrill (1900) 128 Cal. 464, 472; Apra v. Aureguy (1961) 55 Cal. 2d 827, 830; Estate of Wemyss (1975) 49 Cal. App. 3d 53, 59.) Considering the clear and explicit language of the entire Agreement, it is reasonable to conclude that the terms of the Agreement clearly obligate the Contractor to continue to provide certain services related to citation processing and the citation approval process at no additional costs to the City. Applying the same primary principles of contract interpretation, leads to the conclusion that the terms are just as clear that other obligations only existed "**throughout the term of the Agreement**" and ended upon the Agreement's expiration. Based on our review and analysis of the entire Agreement, the Contractor has no obligation to continue to provide training, expert testimony/court appearances, court case packages, or computer workstations, DSL lines, use of its proprietary software or access to its database without the expectation of reasonable additional compensation from the City.

As the Agreement has expired, a supplemental agreement, rather than an amendment to an existing contract, is required to set forth the contractual obligations that the City would like the Contractor to continue to perform as the City's Photo Red Light Program is being phased out. The supplemental agreement should also specify the itemized costs for any work or equipment not covered by the original Agreement.

If you have any questions regarding this matter, please contact Assistant City Attorney Terry Martin-Brown at (213) 978-8134 or Chief Assistant City Attorney Pedro B. Echeverria at (213) 978-8748. They or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:TMB:ac
Transmittal

11-1015-S2

SEP 09 2011

CITY CLERK FOR PLACEMENT ON NEXT
REGULAR COUNCIL AGENDA TO BE POSTED

#54

MOTION

For Tuesday 9/13/11

On July 27, 2011, Council acted to terminate the Photo Red Light Program and instructed the Department of Transportation to lengthen signal timing (C.F. 11-1015). Also discussed in Council was the need to retain the cameras at certain intersections to enable an objective evaluation of whether lengthening signal timing improved traffic safety. The CLA, with assistance of the LAPD and DOT, were instructed to negotiate retention of cameras at specified intersections and cost, exclusively for this purpose, and report back to Council for further consideration. This instruction was omitted from the Council Action.

In correcting the record, the Council has not made a commitment for DOT to conduct the study, nor a commitment to use cameras as part of the study. Those determinations will be made by Council upon completion of the CLA's report.

I THEREFORE MOVE that the Council Action of July 27, 2011 (C.F. 11-1015) BE AMENDED to include the following additional instruction relative to termination of the Photo Red Light Program:

- INSTRUCT the CLA, with assistance of the LAPD and DOT, to negotiate retention of photo red light cameras at four (4) specified intersections and cost, and report back to Council for further consideration of using this technology to conduct an objective evaluation of the effect of lengthening signal timing on improving traffic safety.

PRESENTED BY

Bernard C. Parks

BERNARD C. PARKS
Councilmember, 8th District

SECONDED BY

M. Long

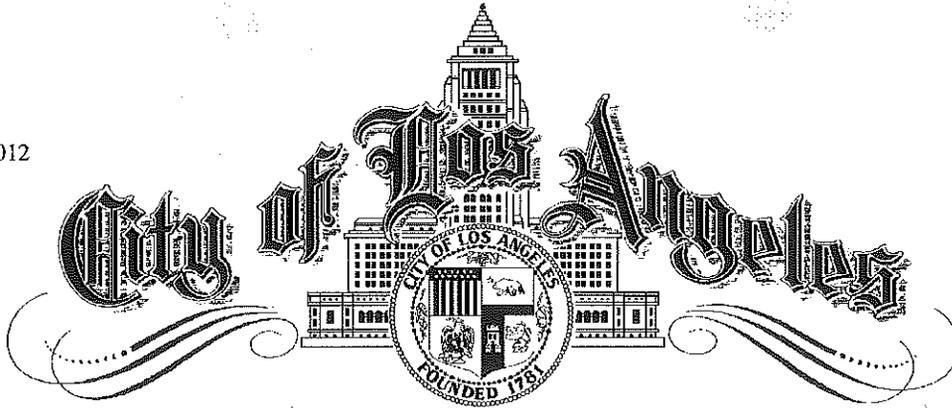
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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 1 - 0 3 2 7

AUG 1 8 2011

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PUBLIC SAFETY
AUG 1 8 2011

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By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:TMB:ac
Transmittal