NORTH MIAMI
FLORIDA

Council Report

776 N.E. 125 Street, North Miami, Florida 33161

To: The Honorable Mayor and City Council

From: Leonard Burgess, Chief of Police

Date: January 13, 2015

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR TRAFFIC SAFETY CAMERA PROGRAM, FOR A THREE YEAR RENEWAL PERIOD, IN ACCORDANCE WITH THE PROFESSIONAL SERVICES AGREEMENT, AS AMENDED, IN ORDER TO MAINTAIN CONTINUITY OF SERVICES WITH AMERICAN TRAFFIC SOLUTIONS, INC (ATS).

RECOMMENDATION

On March 25, 2008, the City and ATS entered into a five (5) year contact for the Traffic Safety Camera Program through the piggybacking of the City of Aventura contract. The City of Aventura issued a competitive RFQ # 08-11-13-2 solicitation to obtain a firm to provide a turn-key system and traffic safety camera program. Staff is requesting that the Mayor and City Council, hereby allows the City Manager to renew the professional services agreement with American Traffic Solutions, Inc. (ATS) for an additional three (3) years effective as of July 22, 2014. The renewal agreement with ATS will provide continuity of services to the City for its Traffic Safety Camera Program.

BACKGROUND

Staff is requesting the renewal of this agreement for an additional three (3) effective as of July 22, 2014 with the following modifications to the original terms and conditions of the agreement. All other terms and conditions would remain the same. Attached is a cost breakdown per year.

- The agreement would be renewed for three (3) years instead of the previously proposed five (5) year renewal term.
- All twenty-one (21) cameras installed prior to July 21, 2014, will be billed at the reduced rate of $4,250/camera/month. This is a reduction of $500 per camera or a total savings of $10,500 per month or $126,000 per year.

- Existing cameras will be billed at a further reduced rate of $3,750/camera/month beginning on the date which the camera has been operational for seven (7) years. This is an additional reduction of $500 per camera or an additional total savings of $10,500 per month. (See attached Schedule 1 for dates cameras would be operational for seven [7] years).

- Any new cameras installed after July 22, 2014 will also be billed at the reduced rate of $4,250/camera/month. This is a reduction of $500 per camera for a total savings of $10,500 per month or $126,000 per year.

FUNDING SOURCE

REVENUE GENERATING

ATTACHMENTS

Resolution
Contract Cost
Contract
Amendments 1 – 3
Schedule 1 – Camera Operation Dates
Red-Light Safety Camera Program Analysis

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A FOURTH AMENDMENT TO AN AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND AMERICAN TRAFFIC SOLUTIONS, INC., IN SUBSTANTIALLY THE ATTACHED FORM; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, on or about March 25, 2008, the City of North Miami ("City") and American Traffic Solutions, Inc. ("ATS") entered into an agreement for the provision of services in connection with the Traffic Camera Safety Program; and

WHEREAS, the parties executed a First Amended Agreement on June 30, 2010; and

WHEREAS, on July 23, 2013, the parties executed a Second Amended Agreement; and

WHEREAS, on July 22, 2014, the parties executed a Third Amended Agreement; and

WHEREAS, the City and ATS are desirous of amending the Agreement to reflect an extension of the term, changes to pricing and the fee schedule.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute a Fourth Amendment to the Agreement, in substantially the attached form, (Exhibit "A"), between the City of North Miami and American Traffic Solutions, Inc.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of January, 2015.

_____
DR. SMITH JOSEPH
MAYOR

ATTEST:

_____

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Dr. Smith Joseph	_____ (Yes)	_____ (No)
Vice Mayor Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

EXHIBIT A

FOURTH AMENDMENT
TO PROFESSIONAL SERVICES AGREEMENT

This Fourth Amendment ("Fourth Amendment") is entered into between American Traffic Solutions, Inc. ("ATS"), a corporation duly registered under the laws of the State of Kansas with its principal place of business at 1330 West Southern Avenue, Tempe, Arizona 85282 and the City of North Miami ("City"), a municipal corporation of the State of Florida. This amendment is effective as of July 21, 2014 ("Effective Date").

RECITALS

WHEREAS, on March 25, 2008, the City and ATS entered into a contract for Photo Enforcement Services Agreement (the "Agreement") to provide Automated Traffic Enforcement Systems;

WHEREAS, on June 30, 2010, the parties executed a First Amendment to the Agreement;

WHEREAS, on July 23, 2013, the parties executed a Second Amendment to the Agreement;

WHEREAS, on July 22, 2014, the parties executed a Third Amendment to the Agreement;

WHEREAS, Section 12.0 of the Agreement requires any amendments, modifications, or alterations of the Agreement to be in writing and duly executed by the parties; and

WHEREAS, the City and ATS mutually desire to amend, modify or alter certain terms and conditions of the Agreement.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Fourth Amendment, the City and ATS do hereby agree as set forth below:

1. The above recitals are true and correct and are incorporated herein.

2. Section 2.0 Term, of the Agreement, dated March 25, 2008, and as extended in the Third Amendment dated July 22, 2014, is hereby amended to renew the term of this Agreement for three (3) years from the Effective Date of this Fourth Amendment, as indicated by the last date written on the signature page below.

3. Section 1.0 of Exhibit F, Service Fee Schedule, of the First Amendment executed June 30, 2010, is hereby deleted in its entirety and replaced as follows:

1.0	**Description of Pricing**	**Fee (per Camera, per month)***
	Cameras installed prior to the Effective Date of this Fourth Amendment ("Existing Cameras"), will be billed at a reduced rate as of the Effective Date of	$4,250

	this Fourth Amendment until the Camera has been operational for seven (7) years (see Schedule 1, attached)	
	Existing Cameras will be billed at a further reduced rate beginning on the date on which the Camera has been operational for seven (7) years (see Schedule 1, attached)	$3,750
	Cameras installed after the Effective Date of this Fourth Amendment ("New Cameras")	$4,250
	Certified mail processing	$4.00 per piece
	Subsequent notices mailings fee	$2.00 per piece

* Service Fees Include: Fee includes all costs required and associated with Camera installation, maintenance and on-going field and back-office operations. Includes red-light camera equipment for a 4-lane approach with up to two (2) signal phases, installation, maintenance, violation processing services, DMV records access, mailing of Notice of Violation in color with return envelope, lockbox and e-payment processing services, call center support for general program questions and public awareness program support.

4. Section 6.3.4, of the First Amendment executed June 30, 2010, is hereby deleted in its entirety and replaced as follows:

6.3.4 After the first three (3) years following this Fourth Amendment, City may terminate this Agreement for City's convenience by providing ninety (90) days' written notice if the City Council determines to discontinue having a Traffic Safety Camera Program. The parties recognize that other provisions of this Agreement serve as consideration for this provision.

6.3.4.1 If City terminates this Agreement under this provision, City shall pay ATS an early termination fee based on a price of $120,000 for each New Camera, amortized over sixty (60) months on a straight-line basis. The amortization schedule for said costs shall be reduced by 1/60th for each month each New Camera is installed: Said another way, for every month a New Camera is installed, $2,000 will be subtracted from the total $120,000 early termination fee for each New Camera. Example: City signs this Fourth Amendment in October of year 1 and installs one (1) New Camera that same month. City terminates the Agreement without cause in August of year 5. Fifty-eight (58) of the sixty (60) months having been depreciated, the City would owe ATS $4,000 ($2,000 x 2 months) for the early termination fee.

6.3.4.2 For any Existing Camera, City will not be required to pay an early termination fee.

5. Section 10.4, of the First Amendment executed June 30, 2010, is hereby deleted in its entirety and replaced as follows:

10.4 Indemnification and Legal Challenges

(a) ATS agrees to defend, indemnify and hold harmless the City, its elected and appointed officers, agents, and employees, from and against any claims, demands, or causes of action, whatsoever of any kind or nature, especially as it pertains to ATS' equipment and its reliability, and the resulting losses, costs, expenses, attorney fees, liabilities, damages, orders, judgments, or decrees sustained by the City or any third party arising out of, or by reason of , or resulting from ATS' negligent acts, errors, or omissions, , including except to the extent such losses arise from the negligence of the City, its officers, agents or employees.

(b) The Vendor shall indemnify City for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to services furnished pursuant to this Agreement. The Vendor will defend and/or settle at its own expense, with legal counsel reasonably acceptable to the City, any action brought against the City to the extent that it is based on a claim that products or services furnished to City by the Vendor pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service becomes unusable as a result of any such infringement or claim. Any infringement or claim that renders any po1iion of the services to be performed by this agreement to be unusable, or materially affects the Vendor's Red Light System as functionally described herein, shall be grounds for a default of this Agreement.

(c) The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification to be provided by the Vendor and agree that in the event that the law is construed to require a specific consideration to be given therefore, the parties therefore agree that the sum of Ten Dollars and 00/100 ($10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Vendor. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the Vendor's responsibility to indemnify for events occurring during the term of this Agreement for a period of not less than five (5) years after expiration or termination of the Agreement.

(d) In the event of any legal challenge to the City's enforcement of the State Law, especially to the equipment and its reliability, Vendor shall provide reasonable administrative assistance to the City in responding to that challenge, including, but not limited to, providing reasonable assistance to the City in responding to discovery sought from the City, providing reasonable assistance to the City in explaining and presenting the technical aspects and operations of the Vendor

Photo Red Light System, and providing reasonable assistance to the City in identifying and locating violators. ATS shall provide an inspection program for all equipment located in the City and provide a copy of any documents generated from such program either to the City for review by violators or produce the documents electronically for review by violators.

(e) In the event of a legal challenge to the City's enforcement of State Law, the City agrees to cooperate with any legal action taken by the Vendor to oppose any such legal challenge and will not unreasonably oppose any legal counsel provided by the Vendor. However, at all times the City shall be free to obtain legal counsel at its own costs.

6. Except as expressly amended or modified by the terms of this Fourth Amendment, all terms of the Agreement as amended by the First, Second, and Third Amendments shall remain in full force and effect. In the event of a conflict between the terms of this Fourth Amendment and the Agreement or the prior amendments, the terms of this Fourth Amendment shall prevail and control.

7. The provisions of the Agreement, as amended by the First through the Fourth Amendments, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof.

8. This Fourth Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

9. Each party represents and warrants that the representative signing this Fourth Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Fourth Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment.

CITY OF NORTH MIAMI	**AMERICAN TRAFFIC SOLUTIONS, INC.**
By:_____	By:_____
Title:_____	Title:_____
Date:_____	Date:_____

APPROVED AS TO FORM

By:

_____

City Attorney Date

Schedule 1
Camera Operational Dates

Camera (Site ID)	Location	Date Camera First Became Operational	Date on which Camera has been Operational for 7 Years
NM01	SB::Biscayne Blvd @ NE 123rd St	4/1/2010	3/31/2017
NM02	SB::Biscayne Blvd @ NE 135th St	2/4/2011	2/3/2018
NM03	NB::NE 6th Ave @ NE 135th St	10/23/2009	10/22/2016
NM04	SB::NE 6th Ave @ NE 135th St	1/15/2011	1/14/2018
NM05	EB::NW 135th St @ NW 7th Ave	2/8/2010	2/7/2017
NM06	NB::Biscayne Blvd @ NE 151st St	7/22/2009	7/21/2016
NM07	SB::Biscayne Blvd @ NE 151st St	6/15/2011	6/14/2018
NM08	EB::NE 125th St @ NE 6th Ave	1/1/2011	12/31/2017
NM09	WB::NE 125th St @ NE 6th Ave	12/18/2009	12/17/2016
NM11	WB::NE 135th St @ NE 6th Ave	2/4/2011	2/3/2018
NM12	WB::Opa Locka Blvd @ NW 6th Ave	1/06/2011	1/05/2018
NM13	SB::W Dixie Hwy @ NE 135th St	1/15/2011	1/14/2018
NM15	EB::NE 135th St @ W Dixie Hwy	2/1/2011	1/31/2018
NM16	EB::NE 135th St @ NE 6th Ave	1/15/2011	1/14/2018

NM17	WB::Opa Locka Blvd @ NW 7th Ave	1/1/2011	12/31/2017
NM18	NB::NW 6th Ave @ Opa Locka Blvd / FL 916	1/15/2011	1/14/2018
NM19	EB::NW 135th St / FL 916 @ NW 6th CT	1/1/2011	12/31/2017
NM22	WB::NE 123rd St @ Biscayne Blvd	12/21/2011	12/20/2018
NM24	NB::NW 7th Ave / US 441 / FL 7 @ NW 125th St	12/20/2011	12/19/2018
NM25	SB::NW 7th Ave / US 441 / FL 7 @ NW 125th St	12/20/2011	12/19/2018
NM27	WB::NE 135th St @ W Dixie Hwy	12/20/2011	12/19/2018

COST OF THREE (3) YEAR CONTRACT

YEAR 1	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15		
Cost of Camera	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250		
# of Cameras	21	21	21	21	21	21	21	21	21	21	21	21		YEAR 1
	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	1,071,000	1,137,000
Mailings	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	66,000	

YEAR 2	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16		
Cost of Camera	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250		
# of Cameras	21	21	21	21	21	21	21	21	21	21	21	21		YEAR 2
	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	89,250	1,071,000	1,138,200
Mailings	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	67,200	

YEAR 3	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17		
Cost of Camera	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250	4,250		
# of Cameras	20	20	20	19	19	18	18	17	16	16	16	16		YEAR 3
	85,000	85,000	85,000	80,750	80,750	76,500	76,500	72,250	68,000	68,000	68,000	68,000	913,750	1,120,900
Cost of Camera	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750		
# of Cameras	1	1	1	2	2	3	3	4	5	5	5	5		
	3,750	3,750	3,750	7,500	7,500	11,250	11,250	15,000	18,750	18,750	18,750	18,750	138,750	
Mailings	5,700	5,700	5,700	5,700	5,700	5,700	5,700	5,700	5,700	5,700	5,700	5,700	68,400	

TOTAL COST:	**3,396,100**

AGREEMENT BETWEEN THE CITY OF NORTH MIAMI
AND AMERICAN TRAFFIC SOLUTIONS FOR
TRAFFIC SAFETY CAMERA PROGRAM

This Agreement (this "Agreement") is made as of this 25th day of ~~February~~ MARCH, 2008 by and between American Traffic Solutions, LLC., a Delaware Corporation, licensed to do business in Florida, with offices at 14861 N. Scottsdale Rd, Suite 109, Scottsdale, Arizona 85254 ("Vendor"), and The City of North Miami, a Florida municipal corporation, with an address at 776 NE 125th Street, North Miami, Florida (the "City").

RECITALS

WHEREAS, Vendor has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and Notice of Infraction processes related to the digital photo red light enforcement systems provided by Vendor pursuant to this Agreement; and

WHEREAS, the Mayor and City Council of the City of North Miami adopted Ordinance 1252, which authorizes the City's Traffic Safety Camera Program (TSCP) and provides for the implementation and operation of such; and,

WHEREAS, the City of Aventura, Florida issued RFQ # 08-11-13-2, to which Vendor responded and the City of Aventura selected Vendor to provide the services to implement and carry on their TSCP: and

WHEREAS, City of North Miami desires to piggyback on the agreement entered into between the Vendor and the City of Aventura and engage the services of Vendor to provide certain equipment, processes and back office services so that Authorized Employees of the City are able to monitor, identify and enforce red light running Infractions;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1.0 Definitions. All definitions set forth in Ordinance 1252 are incorporated herein. In addition, the following words and phrases shall have the following meanings in this Agreement:

1.1. "Authorized Employee" means the Traffic Control Infraction Review Officer, whose duties and qualifications are set forth in the City Ordinance.

1.2. "Authorized Infraction" means each Potential Infraction in the Infraction Data for which authorization to issue a Notice of Infraction in the form of an Electronic Signature is given by the Authorized Employee by using the Vendor System.

1.3. "City Ordinance" means Ordinance 1252, as may be amended from time to time.

1.4. "Civil Fee" means the fee assessed for violations of the City Ordinance, as set forth in the Ordinance.

1.5. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, City's or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:

1.5.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or City's, or at which such Person sells or has sold its services; and

1.5.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall mean the broadest and most inclusive interpretation of trade secrets.

1.5.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) is a public record, and not otherwise exempt, pursuant to Florida law; (ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (iii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iv) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (v) was required by a court of competent jurisdiction to be described, or (vi) was required by applicable state law to be described.

1.6. "Designated Intersection" means the Intersections, as that term is defined in the City Ordinance, set forth on **Exhibit "A"** attached hereto, and such additional Intersections, as Vendor and the City shall mutually agree from time to time through the parties' Project Managers.

1.7. "Electronic Signature" means the method through which the Authorized Employee indicates his or her approval of the issuance of a Notice of Infraction in respect of a potential Infraction using the Vendor System.

1.8. "Enforcement Documentation" means the necessary and appropriate documentation related to the enforcement of Red Zone Infractions, as defined in the City Ordinance, including but not limited to warning letters, Notices of Infraction (using the specifications of the hearing officer (also known as code enforcement Special Magistrate) and the City, a numbering sequence for use on all notices (in accordance with applicable state statutes and the City's Ordinance), instructions to accompany each issued Notice of Infraction (including in such instructions a description of basic enforcement procedures, payment options and information regarding the viewing of images and data collected by the Vendor System), chain of custody records, criteria regarding operational policies for processing Notices of Infraction (including with respect to coordinating with the applicable vehicle registry), and technical support documentation for applicable hearing officers .

1.9. "Equipment" means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Vendor Photo Red Light System(s), including but not limited to all camera systems, housings, sensor arrays, severs and poles.

1.10. "Governmental Authority" means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.

1.11. "Infraction" means any Infraction of the City's Ordinance.

1.12. "Infractions Data" means the images and other Infractions data gathered by the Vendor System at the Designated Intersection.

1.13. "Installation Date of the TSCP" means the date on which Vendor completes the construction and installation of at least one (1) Intersection in accordance with the terms of this Agreement so that such Intersection is operational for the purposes of functioning with the TSCP.

1.14. "Intellectual Property" means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person, consistent with the definition of such terms in Florida Statutes.

1.15. "Notice of Infraction" shall mean the Notice of an Infraction, which is mailed or otherwise delivered by Vendor to the alleged violator on the appropriate Enforcement

Documentation in respect of each Authorized Infraction pursuant to the requirements of the City Ordinance.

1.16. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the TSCP is functional in order to permit the identification and the issuance of Notices of Infraction for approved Infractions using the Vendor System.

1.17. "Ordinance" shall mean City of North Miami Ordinance 1252, as may be amended from time to time.

1.18. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.

1.19. "Project Manager" means the project manager appointed by the City in accordance with this Agreement, which shall be the City Manager, or his designee and shall be responsible, on behalf of City, for overseeing the installation at the Designated Intersections and the implementation of the TSCP, and which manager shall have the power and authority to make management decisions relating to the City's obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the City's Charter or Ordinance or by the City Council.

1.20. "Potential Infraction" means, with respect to any motor vehicle passing through a Designated Intersection, the data collected by the Vendor System with respect to such motor vehicle, which data shall be processed by the Vendor System for the purposes of allowing the Authorized Employee to review such data and determine whether a Red Zone Infraction has occurred.

1.21. "Proprietary Property" means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.

1.22. "Vendor Marks" means all trademarks registered in the name of Vendor or any of its affiliates, such other trademarks as are used by Vendor or any of its affiliates on or in relation to TSCP at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Vendor, and all modifications or adaptations of any of the foregoing.

1.23. "Vendor Project Manager" means the project manager appointed by Vendor in accordance with this Agreement, which project manager shall initially be named by the

Vendor within 14 days of the execution of this Agreement or such person as Vendor shall designate by providing written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersections and the implementation the TSCP, and who shall have the power and authority to make management decisions relating to Vendor's obligations pursuant to this Agreement, including but not limited to change-order authorizations.

1.24. "Traffic Safety Camera Program" means, collectively, the TSCP provided by Vendor and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.

1.25. "Traffic Safety Camera Program" means the process by which the monitoring, identification and enforcement of Infractions of the Red Zone Infractions is facilitated by the use of certain equipment, applications and back office processes of Vendor, including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of identifying Infractions and recording such Infraction data in the form of photographic images of motor vehicles.

1.26. "Photo Red Light Infraction Criteria" means the standards and criteria by which Potential Infractions will be evaluated by Authorized Employees of the City, which standards and criteria shall include, but are not limited to, the definition of a Red Zone Infraction set forth in the City Ordinance, relying upon the duration of time that a traffic light must remain red prior to a Infraction being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Infraction, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.

1.27. "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.

1.28. "Warning Period" means the period of thirty (30) days after the Installation Date of the first intersection approach, as set by the Ordinance.

2.0 Term. The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years after the date of the first paid notice from the first installed System (the "Initial Term"). The City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional, five (5) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Vendor not less than sixty (60) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.

3.0 Services. Vendor shall provide the TSCP to the City, in each case in accordance with the terms and provisions of the Ordinance.

3.1. Installation. With respect to the construction and installation of the Designated Intersection and the installation of the Vendor System at such Designated Intersection: the City and Vendor shall have the respective rights and obligations set forth on **Exhibit "B"** attached hereto.

3.2. Maintenance. With respect to the maintenance of the Vendor System at the Designated Intersections, the City and Vendor shall have the respective rights and obligations set forth on **Exhibit "C** "attached hereto.

3.3. Infraction Processing. During the Operational Period, Infractions shall be processed as set forth on **Exhibit" D"**, attached hereto.

3.4. Prosecution. The City shall prosecute Ordinance violations in respect thereof pursuant to the terms, procedures and requirements of the City Ordinance, subject to City's routine law enforcement discretion.

3.5. Other Rights and Obligations. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Vendor and the City shall have the respective rights and obligations set forth on **Exhibit "E"** attached hereto.

3.6. Change Orders. The City may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to Vendor, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Vendor's receipt of a Change Order Notice, Vendor shall deliver a written statement describing the effect, if any, the proposed changes would have on the terms set forth in Exhibit " E " (the "Change Order Proposal"), which Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the City. Following the City'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. 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 16.0.

4.0 License; Reservation of Rights.

4.1. License. Subject to the terms and conditions of this Agreement, Vendor hereby grants the City, and the City hereby accepts from Vendor upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City, access and use the Vendor System for the sole purpose of reviewing Potential Infractions and authorizing the issuance of Notices of Infraction pursuant to the terms of this Agreement, and to print copies of any content posted on the Vendor System in connection therewith, (b) disclose to the public

(including outside of the City) that Vendor is providing services to the City in connection with TSCP pursuant to the terms of this Agreement, and (c) use and display the Vendor Marks on or in marketing, public awareness or education, or other publications or materials relating to the TSCP, so long as any and all such publications or materials are approved in advance by Vendor.

4.2. Reservation of Rights. The City hereby acknowledges and agrees that: (a) Vendor is the sole and exclusive owner of the Vendor System, the Vendor Marks, all Intellectual Property arising from or relating to the Vendor System, and any and all related Equipment provided under this Agreement, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.

4.3. Restricted Use. The City hereby covenants and agrees that it shall not (a) make any modifications to the Vendor System, including but not limited to any Equipment, (b) alter, remove or tamper with any Vendor Marks, (c) use any of the Vendor Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Vendor therein, (d) use any trademarks or other marks other than the Vendor Marks in connection with the City's use of the Vendor System pursuant to the terms of this Agreement without first obtaining the prior consent of Vendor, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Vendor System, the Vendor System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Vendor, or cause any other Person to do any of the foregoing.

4.4. Protection of Rights. Vendor shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Vendor, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Vendor Marks, the filing of patent application for any of the Intellectual Property of Vendor, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such protective activities, and shall not in its own name make any registrations or filings with respect to any of the Vendor Marks or the Intellectual Property of Vendor without the prior written consent of Vendor.

4.5. Infringement. The City shall use its reasonable best efforts to give Vendor prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Vendor Marks or any of Vendor's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Vendor Marks or any other Intellectual Property of Vendor. Vendor shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto.

4.6. Infringing Use. The City shall give Vendor prompt written notice of any action or claim action or claim, whether threatened or pending, against the City alleging that the Vendor Marks, or any other Intellectual Property of Vendor, infringes or violates any

patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the City shall render to Vendor such reasonable cooperation and assistance as is reasonably requested by Vendor in the defense thereof; provided, that Vendor shall reimburse the City for any reasonable costs, including without limitation attorneys fees and court costs, as well as City staff costs, incurred in providing such cooperation and assistance. If such a claim is made and Vendor determines in the exercise of its sole discretion, or a court or administrative proceeding of competent jurisdiction determines, that an infringement may exist, Vendor shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items, all at no cost to the City. In addition, in such event, the City has the right, but not the obligation, to terminate this Agreement pursuant to paragraph 6.1.

5.0 Representations and Warranties.

5.1. Vendor Representations and Warranties.

5.1.1. Authority. Vendor hereby warrants and represents that:

5.1.1.1. it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; and,

5.1.1.2. to the extent legally required, Vendor has all ownership rights, licenses, or other required authority to use the software and hardware it installs to perform the services under this Agreement.

5.1.2. Professional Services. Vendor hereby warrants and represents that any and all services provided by Vendor pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Vendor System, subject to applicable law, in compliance with all specifications provided to Vendor by the City.

5.2. City Representations and Warranties.

5.2.1. Authority. The City hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; provided that Vendor acknowledges that the initial program is premised on being consistent with the requirements and authority of state law, applicable attorney general opinions, and the City's Ordinance, and City cannot and does not warrant the outcome of any judicial or legislative action that may be taken affecting these authorities subsequent to the execution of this Agreement.

5.3. Professional Services. The City hereby warrants and represents that any and all services provided by the City pursuant to this Agreement shall be performed in a professional and workmanlike manner in City's governmental capacity.

6.0 Termination.

6.1. Termination for Cause: Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state or federal statutes are amended, or regulations or policies are adopted by agencies with jurisdiction, to prohibit or materially change the operation of TSCP so as to make it reasonably impractical to operate the red light enforcement program, including without limitation changes that would prohibit the red light enforcement program, or which would impose restrictions on revenues and uses that are contrary to the terms of this Agreement; (ii) any court having jurisdiction over City rules, or declares, that the City's red light enforcement program is invalid or results from the Vendor System of photo red light enforcement are inadmissible in evidence, or otherwise renders a decision that makes it reasonably impractical to operate the red light enforcement program; (iii) a determination by a court of competent jurisdiction or other applicable dispute resolution forum that Vendor has infringed upon a third party's patent, trademark, copyright, trade secret or other intellectual property; (iv) the other party commits any material breach of any of the provisions of this Agreement; (v) Vendor's non-payment of revenues to City as required by this Agreement. In the event of a termination due to this Section, City shall be relieved of any further obligations to Vendor other than as specified herein. Either party shall have the right to remedy the cause for termination within forty-five (45) calendar days (or within such other time period as the City and Vendor shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

The rights to terminate this Agreement given in Section 6.1 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

6.2 Warning Period. The Ordinance provides for a one time thirty (30) day Warning Period, during which time courtesy notices of infractions, with no civil fees, are used. The parties hereto acknowledge that this Warning Period will be used to verify the reliability of the program and the detection of infractions, as well as to monitor anticipated changes in state law on the subject of camera enforcement of red light infractions. The Warning Period shall commence on the date the initial camera and the Infraction Processing procedures become operational, with the exact date to be confirmed in writing by the parties' Project Managers. At any time up to the conclusion of the initial Warning Period, the City, through a motion adopted by the City Commission, may terminate the TSCP, for any or no cause. The City shall not be liable for any costs or expenses incurred by Vendor during this Warning Period. If the City Commission determines to terminate the program pursuant to this paragraph, this Agreement shall be deemed terminated and the parties shall proceed pursuant to Section 6.3 below. In addition to the City's right to terminate during the Warning Period, for a period of 30 calendar days after the expiration of the Warning Period, either party shall have the right to terminate the Agreement.

6.3 Procedures Upon Termination. This section 6.3 shall apply to the expiration of this Agreement and to the early termination of the Agreement. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such

termination. Except as set forth in this Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

6.3.1 Vendor shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the TSCP, (ii) promptly deliver to the City any and all Proprietary Property of the City provided to Vendor pursuant to this Agreement, (iii) promptly deliver to the City a final report to the City regarding the collection of data and the issuance of Notices of Infraction in such format and for such periods as the City may reasonably request, and which final report Vendor shall update or supplement from time to time when and if additional data or information becomes available, (iv) provide City all data pertaining to outstanding Civil Fee payments due and owing to City and potential payments due to Vendor, (v) provide City with its proposed schedule for the removal of the Vendor's equipment, at no cost to the City, from the City and once such schedule is approved by City Vendor shall remove such pursuant to the schedule; and (vi) provide such assistance as the City may reasonably request from time to time in connection with prosecuting and enforcing Notices of Infraction issued prior to the termination of this Agreement.

6.3.2 The City shall (i), except for pending enforcement cases, immediately cease using the TSCP, accessing the Vendor System and using any other Intellectual Property of Vendor, and (ii) promptly deliver to Vendor any and all Proprietary Property of Vendor provided to the City pursuant to this Agreement, other than such equipment installed by Vendor along the roadways for the enforcement program.

6.3.3 Unless the City and Vendor have agreed to enter into a new agreement relating to the TSCP or have agreed to extend the Term of this Agreement, Vendor shall remove any and all Equipment or other materials of Vendor installed in connection with Vendor's performance of its obligations under this Agreement, at no cost to City, including but not limited to housings, poles and camera systems, and Vendor shall restore the Designated Intersections to substantially the same condition such Designated Intersections were in immediately prior to this Agreement, except for foundation removal, which shall be left approximately flush with grade and no exposed rebar, steel or other hazards, at no cost to City pursuant to the schedule agreed upon by the parties in section 6.3.1.

6.3.4 After the first three (3) years of this Agreement, City may provide for the early termination of this Agreement for City's convenience in the event that the City Commission determines to discontinue having a TSCP. In such event, the remaining provisions of section 6.3 shall apply. City shall have no further liability for any such early termination. The parties recognize that other provisions of this Agreement serve as consideration for this provision.

7.0 <u>Fees to be Paid to Vendor and Payment Processing.</u>

7.1. Vendor shall have the right to receive the compensation set forth on, and pursuant to, **Exhibit F** attached hereto.

7.2. Vendor shall be responsible for processing payments of the Civil Fees. The Vendor shall provide payment means through mail, telephone and on-line processes. Vendor shall track all payments and handle all applied payments, unapplied payments, overpayments, refunds, adjustments, dismissals and reversals.

7.3. Vendor shall pay City all payments received during a calendar month, no later than the 7th day of the next following month.

7.4. Vendor shall invoice the City for all applicable fees according to the fee schedule delineated on **Exhibit "F"**. Along with the invoice, Vendor shall provide information to the City, in a format acceptable to the City, supporting the invoice amounts forwarded by Vendor to the City. In addition, City shall have access to the financial reporting functions of Vendor's system upon City's request.

8.0 Survival. Notwithstanding the foregoing, the parties' obligations shall survive the termination of the Agreement to the extent necessary to fulfill the parties' accrued monetary obligations under this Agreement.

9.0 Confidentiality. During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement, subject to the obligations and requirements of Florida's public records laws and public meetings law. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

10.0 Indemnification and Liability.

10.1. Indemnification – Negligence. The Vendor agrees to defend, indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees ("Losses"), sustained by the City or any third party arising out of, or by reason of, or resulting from the Vendor's negligent acts, errors, or omissions, except to the extent such Losses arise from the negligence of the City or City's employees, officers or agents. In the event that a court of competent jurisdiction determines that the provisions of Sec. 725.06, F.S., and / or Sec. 725.08 , F.S., apply to this Agreement, then , in such event, Vendor shall defend, indemnify and hold harmless City and

City's officers, employees and agents only to the fullest extent authorized by said cited statutes .

10.2. Indemnification – Infringements. The Vendor shall indemnify City for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to services furnished pursuant to this Agreement. The Vendor will defend and/or settle at its own expense, with legal counsel reasonably acceptable to the City, any action brought against the City to the extent that it is based on a claim that products or services furnished to City by the Vendor pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service becomes unusable as a result of any such infringement or claim. Any infringement or claim that renders any portion of the services to be performed by this agreement to be unusable, or materially affects the Vendor's Red Light System as functionally described herein, shall be grounds for a default of this Agreement.

10.3. The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification to be provided by the Vendor and agree that in the event that the law is construed to require a specific consideration to be given therefore, the parties therefore agree that the sum of Ten Dollars and 00/100 ($10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Vendor. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the Vendor's responsibility to indemnify for events occurring during the term of this Agreement for a period of not less than five (5) years after expiration or termination of the Agreement.

10.4. Legal Challenges. The parties recognize and acknowledge that the TSCP contemplated herein may be subject to legal challenge and/or judicial review as a new or innovative program. It is understood and acknowledged that various aspects of the program may be challenged. In the event of a legal challenge to the Program, City and Vendor shall share in the cost of the defense on a pro-rata basis.

10.5. In the event that a court of competent jurisdiction or the State of Florida, including any of its agencies, orders or requires the City to return any payments made for infractions of the City Ordinance, Vendor shall, at no additional charge, assist City to perform all relevant portions of any such order, decree, judgment, etc., required to be performed by the City including, but not limited to, assisting the City to locate each violator so that any ordered reimbursement may be made. Prior to the close of the "Warning Period" established in Section 6.2, Vendor shall provide to the City with adequate security in an acceptable form to the City which is intended to protect City from liability, if any, under this paragraph 10.5. Such security may be in the form of lien on Vendor's equipment or other form of security to be determined by agreement of the parties.

10.6. Change in State Law. The parties recognize and acknowledge that it has been reported that the Florida Legislature is considering various revisions to State Uniform Traffic Laws which, if enacted, would expressly authorize municipalities to issue traffic infractions through the use of Red Light Cameras without the necessity of using the code enforcement system. Should the Florida Legislature enact any law modifying the Uniform Traffic Laws so as to expressly permit the TSCP, sections 10.4 and 10.5 shall automatically become void. Furthermore, the State Legislature is considering enactment of a law which would regulate the amount of fines imposed and the distribution of the fines imposed. If the Florida Legislature enacts any regulations which impact the terms and/or conditions of this agreement, the agreement shall immediately become null and void.

10.7. Notice of Claims. If the City or Vendor receives notice of any claim or circumstances which may give rise to an indemnified loss under this Section 10, the receiving party shall give written notice to the other party within ten (10) days of receipt. The notice must include the following:

(a) a description of the indemnification event in reasonable detail,

(b) the basis on which indemnification may be due, and

(c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Vendor is directly prejudiced, suffers loss, or incurs expense because of the delay.

10.8. Review of Indemnification Provisions. At the conclusion of the Warning Period, and the 2008 session of the Florida Legislature, the City and Vendor will review the indemnification provisions in this Section 10.

11.0 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the Vendor is an independent contractor under this Agreement and not the City's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The Vendor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor, which policies of Vendor shall not conflict with City, or United States policies, rules or regulations relating to the use of Vendor's funds provided for herein. The Vendor agrees that it is a separate and independent enterprise from the City, that it has full opportunity to find other business, that it has made its own investment in

its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor and the City and the City will not be liable for any obligation incurred by Vendor, including but not limited to unpaid minimum wages and/or overtime premiums.

12.0 Assignments; Amendments. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by either party, including without limitations purchases of controlling interest in Vendor or merger, without the prior written consent of the other party.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

13.0 No Contingent Fees. Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Vendor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or Infraction of this provision, the City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

14.0 Notices. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the VENDOR and the CITY designate the following as the respective places for giving of notice:

City: Clarance Patterson, City Manager
City of North Miami
776 NE 125th Street
North Miami, Florida 33161
Phone: (305) 895-6511

Copies To: V. Lynn Whitfield, City Attorney
.776 NE 125th Street
North Miami, Florida 33161
Phone: (305) 895-9810
Fax: (305) 895-7029

And

Clinton Shannon, Police Chief
City of North Miami
700 NE 124th Street
North Miami, Florida 33161
Phone: (305) 466-8066
Fax: (305) 466-8991

Vendor: American Traffic Solutions, LLC.
14861 N. Scottsdale Road, Suite 109
Scottsdale, AZ 85253
Attention: Chief Operating Officer

And

Alexander P. Heckler, Esq.
Shutts and Bowen LLP
200 East Broward Boulevard #2100
Fort Lauderdale, Florida 33301

15.0 Audit Rights. Each of parties hereto shall have the right to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than ten percent (10%) of the amount actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.

16.0 Dispute Resolution. Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 16.0, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then

the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

17.0 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

18.0 Headings. Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.

19.0 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits shall be treated as part of this Agreement and are incorporated herein by reference.

20.0 Waiver. Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

21.0 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

22.0 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law, except that this provision shall not be deemed to deprive any party of any legal remedy, including termination.

23.0 Insurance.

23.1. Throughout the term of this Agreement, the Vendor agrees to maintain in force at their own expense insurance as follows:

23.1.1. Comprehensive General Liability insurance to cover liability for bodily injury and property damage. Exposures to be covered are premises, operations, products\completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability

A. Bodily Injury/Property Damage

1.	Each Occurrence	$1,000,000
2.	Annual Aggregate	$1,000,000

B. Personal Injury

1. Annual Aggregate $1,000,000

23.1.2. Worker's Compensation Insurance shall be maintained during the life of this contract to comply with Florida statutory limits for all employees. The following limits must be maintained:

A.	Worker's Compensation	Statutory
B.	Employer's Liability	$100,000 each accident $500,000 Disease-policy limit $100,000 Disease-employee

If Vendor claims to be exempt from this requirement, Vendor shall provide City proof of such exemption along with a written request for City to exempt Vendor, written on Vendor letterhead.

23.1.3. Comprehensive Auto Liability – coverage shall include owned, hired and non-owned vehicles.

A. Bodily Injury and Property Damage combined single limit

1.	Each Occurrence	$1,000,000
2.	Annual Aggregate	$1,000,000

23.1.4. Professional Liability - $1,000,000.

23.1.5. Vendor shall name the City as an additional insured on each of the policies required herein, with the exception of the Vendor's Worker's Compensation policy and Professional Liability.

23.1.6. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. These Certificates shall contain a provision that coverage's afforded under these policies will not be canceled or impaired until at least forty five (45) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must not be less than "A-VI." Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the Vendor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and

like coverage for the balance of the period of the contract and extension thereunder is in effect.

23.1.7. Any insurance required of Vendor pursuant to this Agreement must also be required by any sub-contractor of Vendor in the same limits and with all requirements as provided herein, including naming the City as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Vendor and provided proof of such coverage is provided to City. The Vendor and any sub-contractor of Vendor shall maintain such policies during the term of this Agreement.

24.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Miami-Dade County, Florida.

25.0 Extent of Agreement. This Agreement represents the entire and integrated agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral.

26.0 Waiver of Jury Trial. In the event of any litigation between the parties which in any way arises out of this Agreement, the parties hereby agree to waive any right to trial by jury.

27.0 RFP. Vendor agrees to comply with any provisions of the RFP which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Vendor during the RFP process.

28.0 Compliance with Law. Vendor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above

CITY OF NORTH MIAMI

ATTEST:

By Clarance Patterson
CLARANCE PATTERSON, City Manager

Deputy for Jacqui Vieira
FRANK WOLLAND, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

V. LYNN WHITFIELD
CITY ATTORNEY

VENDOR

WITNESSES:

BY: _____

Print Name: ADAM TATON

Title: MANAGER

ATTEST:

SECRETARY

STATE OF ARIZONA :

: SS:

COUNTY OF MARICOPA :

ON THIS 19th day of JUNE, 2008, before me, the undersigned notary public, personally appeared ADAM TATON, personally known to me, or who has produced DL as identification, and is the person who subscribed to the foregoing instrument and who acknowledged that he executed the same on behalf of said Corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

JACQUELINE ST.LOUIS
NOTARY PUBLIC - ARIZONA
Maricopa County
My Commission Expires
November 15, 2010

NOTARY PUBLIC

JACQUELINE ST LOUIS

Print or Type Name

My Commission Expires:

EXHIBIT "A"
Designated Intersection

The contract provides for the implementation of cameras at no less than nine (9) intersections, at least three (5) of which shall be installed within forty five days (45) days of receipt of permits for each agreed upon approach.

The proposed six intersections are as follows:

Biscayne Blvd. & N.E. 123RD Street	Biscayne Blvd. & N.E. 151 Street
Biscayne Blvd. & N.E. 135 Street	NE 125th Street & NE 6th Avenue
NE 135th Street & NE 6th Avenue	NE 135th Street & W. Dixie Highway
NW 135th Street & NW 7th Avenue	Opa Locka Blvd & NW 6th Avenue
Opa Locka Blvd & NW 7th Avenue	

Installation of any approach is subject to engineering and video analysis results.

Additional approaches will be selected based on collision history, input and recommendations from the City's Police Department, and an engineering feasibility assessment. Vendor shall apply for a permit within sixty (60) days of the approval of this Agreement by the City Council.

Vendor will provide the City with video evaluation of candidate sites using the Axsis VIMS system to assist the City's Police Department in its recommendations.

The program may be implemented at additional intersections after the conclusion of the Warning Period. The intersections will be designated by the Police Department, which designation will be based upon Police Department staff review and an engineering analysis.

EXHIBIT "B"

Construction and Installation Obligations

Timeframe for Installation: Traffic Safety Camera Program

Vendor will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Vendor Traffic Systems and the City Manager.

Vendor will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Vendor will use reasonable commercial efforts to install and activate all specified intersection within forty-five (45) days subsequent to receipt of all permits required by section 1.4 of this Exhibit B.

1. Vendor Obligations. Vendor shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Vendor's sole expense):

    1.1. Appoint the Vendor Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Vendor Project Manager;

    1.2. Request current "as-built" electronic engineering drawings for the Designated Intersections (the "Drawings") from the County traffic engineer;

    1.3. Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required; and

    1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection (collectively, the "Approvals"), which will include compliance with City permit applications.

    1.5. Seek rights from private property owners, as necessary for the placement of System Equipment at designated intersections where Governmental Authorities have jurisdiction over the designated intersection and adjacent rights of right of way, and such governmental Entity denies authority to Vendor for the installation of its equipment.

    1.6. Finalize the acquisition of the Approvals;

    1.7. Submit to the City a public awareness strategy for the City's consideration and approval, which strategy shall include media and educational materials for the City's approval or amendment according to the ATS proposal (the "Awareness Strategy");

1.8. Develop the Red Light Infraction Criteria in consultation with the City;

1.9. Develop the Enforcement Documentation for approval by the City, consistent with the requirements of the City Ordinance;

1.10. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersections (under the supervision of the City);

1.11. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersections, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;

1.12. Install and test the functionality of the Designated Intersections with the Vendor System and establish fully operational Infraction processing capability with the Vendor System;

1.13. Implement the use of the Vendor System at each of the Designated Intersections;

1.14. Deliver the Materials to the City;

1.15. Issue Notices of Infraction, and if the civil penalty is unpaid or the alleged violator requests a hearing, issue Notices of Hearing for Authorized Infractions pursuant to City Ordinance;

1.16. Obtain access to the records data of the Department of Motor Vehicles in Vendor's capacity as needed for the program; and,

1.17. Vendor shall provide training for personnel of the City, including, but not limited to, the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the TSCP, regarding the operation of the Vendor System and the TSCP. This shall include training with respect to the Vendor System and its operations, strategies for presenting Infractions Data in court and judicial proceedings and a review of the Enforcement Documentation;

1.18. Interact with court and judicial personnel, including the City's hearing officer to address issues regarding the implementation of the Vendor System, the development of a subpoena processing timeline that will permit the offering of Infractions Data in hearings and judicial proceedings, and coordination between Vendor, the City and the City's Hearing officer; and

1.19. Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch of the TSCP.

1.20. Notice of Infraction processing and Notice of Infraction re-issuance, as well as notice of hearing.

2. CITY OBLIGATIONS. The City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):

2.1.1. Appoint the Project Manager;

2.1.2. Assist Vendor in obtaining the Drawings from the relevant Governmental Authorities;

2.1.3. Notify Vendor of any specific requirements relating to the construction and installation of any Intersection or the implementation of the TSCP;

2.1.4. Assist Vendor in seeking the Approvals

2.1.5. Provide reasonable access to the City's properties and facilities in order to permit Vendor to install and test the functionality of the Designated Intersections and the TSCP;

2.1.6. Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;

2.1.7. Seek approval or amendment of Awareness Strategy and provide written notice to Vendor with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Vendor begins the installation of any of the Designated Intersection and ending six (6) months after the Installation Date;

2.1.8. Assist Vendor in developing the Red Light Infraction Criteria; and

2.1.9. Seek approval of the Enforcement Documentation.

2.1.10. The City shall, on a form provided by Vendor, provide verification to the State Department of Motor Vehicles, National Law enforcement Telecommunications System, or appropriate authority indicating that Vendor is acting as an Agent 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.

2.1.11. If feasible, and only after all necessary approvals have been obtained from utilities and other governmental entities with jurisdiction, City shall allow Vendor to access power from existing power sources at no cost to City 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 City's jurisdiction.

2.1.12. The Police Department shall process each potential violation in accordance with State Laws and/or City Ordinances within seven (7) business days of its

appearance in the Police Review Queue, using Axsis™ to determine which violations will be issued as Citations or Notices of Violation or as soon as reasonably practical in the event of technical difficulties, power outages, or other circumstances beyond the City's control, or with the consent or approval of Vendor for extension.

2.1.13. City shall provide access to the internet for the purpose of processing violations and adjudications.

2.1.14. Vendor shall, at no additional cost to the City , provide Police Department / Adjudication workstation computer monitors for citation review and approval which should provide a resolution of 1280 x 1024, which shall be returned to Vendor in the event the Agreement is terminated.

2.1.15. For optimal data throughput, Police Department / Adjudication workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater. Vendor will coordinate directly with the City's Information Technology (IT) Department on installation and implementation of the computerized aspects of the program.

2.1.16. Police Department shall provide signatures of all authorized police users who will review events and approve citations on forms provided by Vendor .

2.1.17. In the event that remote access to the ATS Axsis VPS System is blocked by City's network security infrastructure, the City's IT Department and the counterparts at ATS shall coordinate to facilitate appropriate communications access while maintaining required security measures.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of Traffic Safety Camera Program systems and related equipment will be the sole responsibility of Vendor, including but not limited to maintaining the casings of the cameras included in the Vendor System and all other Equipment in reasonably clean and graffiti-free condition.

2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade County Traffic Engineering present.

3. The provision of all necessary communication, broadband and telephone services to the Designated Intersections will be the sole responsibility of the Vendor

4. The provision of all necessary electrical services to the Designated Intersections will be the sole responsibility of the Vendor.

5. In the event that images of a quality suitable for the Authorized Employee to identify Infractions cannot be reasonably obtained without the use of flash units, Vendor shall provide and install such flash units.

6. The Vendor Project Manager (or a reasonable alternate) shall be available to the City's Project Manager each day.

EXHIBIT "D"
Infraction Processing

1. All Infractions Data shall be stored on the Vendor System;

2. The Vendor System shall process Infractions Data gathered from the Designated Intersection into a format capable of review by the Authorized Employee via the Vendor System;

3. The Vendor shall make the initial determination that the image meets the requirements of the Ordinance and this Agreement, and is otherwise sufficient to enable the City to meets its burden of demonstrating a violation of the Ordinance. If the Vendor determines that the standards are not met, the image shall not be processed any further.

4. The Vendor System shall be accessible by the Authorized Employee through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser;

5. Vendor shall provide storage capabilities for the City to store infractions identified for prosecution for a period of time of not less than four (4) years after final disposition of a case.

6. Vendor shall provide the Authorized Employee with access to the Vendor System for the purposes of reviewing the pre-processed Infractions Data within seven (7) days of the gathering of the Infraction Data from the applicable Designated Intersections.

7. The City shall cause the Authorized Employee to review the Infractions Data and to determine whether a Notice of Infraction shall be issued with respect to each Potential Infraction captured within such Infraction Data, and transmit each such determination to Vendor using the software or other applications or procedures provided by Vendor on the Vendor System for such purpose. VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A NOTICE OF INFRACTION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "NOTICE OF INFRACTION DECISION"), AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF INFRACTION DECISION;

8. With respect to each Authorized Infraction, Vendor shall print and mail a Notice of Infraction within seven (7) days after Vendor's receipt of such authorization from the City's Authorized Employee; provided, however, during the Warning Period, warning Infraction notices shall be issued in respect of all Authorized Infractions;

9. Vendor shall provide a toll-free telephone number, at its sole expense, for the purposes of answering citizen inquiries.

10. Vendor shall permit the Authorized Employee to generate monthly reports using the Vendor Standard Report System.

11. Upon Vendor's receipt of a written request from the City and in addition to the Standard Reports, Vendor shall provide, without cost to the City, reports regarding the processing and issuance of Notices of Infraction, the maintenance and downtime records of the Designated Intersections and the functionality of the Vendor System with respect thereto to the City in such format and for such periods as the City may reasonably request, without cost to the City;

12. Upon Vendor's receipt of a written request from the City at least fourteen (14) calendar days in advance of a hearing, Vendor shall provide expert witnesses for use by the City in prosecuting Infractions, before the City's hearing officer, at no cost to the City;

13. Vendor shall provide such training to City personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Red Light Enforcement Program. However, if a specific case requires testimony on the technical aspects of the equipment, upon City's request Vendor shall provide the City with an expert in the hearing in that case at no cost to the City.

14. During the Warning Period, Vendor shall implement a public relations program, in coordination with the City and upon City's approval, at no cost to the City in accordance with the elements included in Vendor's proposal to the City of Aventura dated November 13, 2007.

15. Notice of Infraction Form. Vendor shall prepare and provide to City a Notice of Infraction Form that provides, at a minimum, the following information:

    a. name and address of the owner of the vehicle involved in the infraction;

    b. the registration number of the vehicle involved in the infraction;

    c. a citation to the City's Ordinance violated;

    d. the location of the intersection where the infraction occurred;

    e. the date and time of the infraction;

    f. a copy of the recorded image of the infraction;

    g. the amount of fee and charges imposed and the date by which the fee and charges must be paid or appealed;

    h. instructions on all methods of payment for the fee;

    i. a clear statement of the time limit to file an appeal and describing the procedure for appealing the infraction;

    j. a statement that the City's traffic infraction officer has reviewed and observed the recorded images evidencing the violation of the Ordinance and has found reasonable

and probable grounds to believe that an infraction has occurred and can identify the license tag number of the violating vehicle; and,

k. a conspicuous statement, printed on larger font than the remaining statements on the Notice of Infraction, and bolded, stating that if the owner of the vehicle fails to pay the civil fee within the time allotted, or fails to timely appeal the infraction, the owner shall be deemed to have waived his or her right to contest the infraction, and has admitted to the infraction reflected in the Notice of Infraction.

16. Vendor agrees that the City shall have the right to review and approve the form Notice of Infraction prior to its use, and that in the event City determines additional information should be included in the Notice of Infraction, Vendor shall modify the Notice of Infraction form, at its sole expense, to comply with those requirements.

17. For any city using ATS lockbox or epayment services, Vendor will establish a demand deposit account bearing the title, "American Traffic Solutions, Inc. as agent for Customer" at U.S. Bank. All funds collected on behalf of the Customer will be deposited in this account and transferred by wire the first business day of each week to the Customer's primary deposit bank. The Customer will identify the account to receive funds wired from U.S. Bank. If desired, Customer will sign a W-9 and blocked account agreement, to be completed by the Customer, to ensure the Customer's financial interest in said U.S. Bank account is preserved.

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

Exhibit "E"

Additional Rights and Obligations

Vendor and the City shall respectively have the additional rights and obligations set forth below:

1. Vendor shall assist the City in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the TSCP, as offered in the Vendor's proposal to the City of Aventura.

2. Vendor shall be solely responsible for installing such Signage as required by City Ordinance. The Vendor shall be solely responsible for the fabrication of any signage, notices, or other postings required pursuant to any law, rule, or regulation of any Governmental Authority ("Signage"), including, but not limited to, the City and County Ordinances, State Statutes, and Florida Department of Transportation (FDOT) Regulations and shall assist in determining the placement of such Signage. Vendor shall be responsible for obtaining all necessary approvals from Governmental Authorities.

3. The Vendor Project Manager and the Project Manager shall meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the termination of the Warning Period Date, and on a monthly basis for the remainder of the Term, at such times and places as the Vendor Project Manager and the City Project Manager shall mutually agree.

4. The City shall not access the Vendor System or use the TSCP Program in any manner other than **prescribed** by law and which restricts or inhibits any other Person from using the Vendor System or the Vendor Photo Enforcement Program with respect to any Intersection constructed or maintained by Vendor for such Person, or which could damage, disable, impair or overburden the Vendor System or the Vendor Photo Enforcement Program, and the City shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Vendor System, or (iii) any materials or information not intentionally made available by Vendor to the City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other Person to do any of the foregoing.

5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Vendor System or using the TSCP.

6. Each of Vendor and the City shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, each of Vendor and the City shall reasonably follow any and all such rules and regulations.

7. The City shall promptly reimburse Vendor for the cost of repairing or replacing any portion of the Vendor System, or any property or equipment related thereto, damaged solely and

directly by the City, or any of its employees, contractors or agents. In all other instances, such costs shall be solely the Vendor's costs.

EXHIBIT "F"
COMPENSATION & PRICING

Per Paid Fee

There will be no charge to City during the Warning Period, and Vendor shall not receive any compensation for any notices sent during the Warning Period.

At the conclusion of the Warning Period, and once Notices of Infractions are issued, Vendor shall be compensated as follows:

Per Camera Paid Notices

1st Tier Fee: First 2 paid notices per day in a month, per camera (i.e. first 60 paid per month)
$47.50

2nd Tier Fee: Next 2 paid notices per day in a month, per camera (i.e. 61-149 paid per month)
$27.50

3rd Tier Fee All other paid notices in a month, per camera (i.e. 150+ paid per month)
$17.50

Following the change of State Law as contemplated in Section 10.6, if the average number of paid notices is 2 or fewer per day in a month, per camera the Vendor shall receive all revenues collected for the billing period.

Vendor shall have the right of first refusal to provide collections services for this program, the collection methods and compensation for which shall be determined by the parties in an addendum to this Agreement.

AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND AMERICAN TRAFFIC SOLUTIONS FOR TRAFFIC SAFETY CAMERA PROGRAM

This Amendment No. 1 (the "Amendment") to the Agreement Between The City Of North Miami And American Traffic Solutions For Traffic Safety Camera Program dated as of March 25, 2008 (the "Agreement") is made and effective as of this 30 day of June, 2010 by and between the City of North Miami, Florida, a municipal corporation (the "City") and American Traffic Solutions, Inc., a Delaware limited liability company ("Vendor").

Recitals

WHEREAS, on or about March 28, 2008, the City adopted Ordinance 1252, codified at Chapter 17, Article IV of the City's Code of Ordinances, which established and authorized the City's Traffic Camera Safety Program; and

WHEREAS, on or about February 8, 2008, the City and Vendor entered into the Agreement, whereby the City and Vendor agreed to the provision by Vendor of services to the City in connection with the Traffic Camera Safety Program, subject to the terms and conditions stated in the Agreement; and

WHEREAS, on or about May 14, 2010, the Governor of the State of Florida signed CS/CS/HB325 into law, resulting in the Law of Florida 2010-80 taking effect on July 1, 2010; and

WHEREAS, Law of Florida 2010-80 expressly authorizes municipalities to use traffic infraction detectors to enforce certain provisions of Chapter 316 of the Florida Statutes, subject to certain requirements; and

WHEREAS, the City has amended Ordinance 1252 and Chapter 17, Article IV of the City's Code of Ordinances to provide for the operation of its Traffic Camera Safety Program in accord with the provisions of Law of Florida 2010-80; and

WHEREAS, the City and Vendor wish to amend and modify the Agreement to align the provision of services by Vendor with the provisions of Law of Florida 2010-80;

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Vendor and City agree that the Agreement shall be and hereby is amended and modified on the terms provided herein:

1. Recitals. The preceding recitals are true and correct and are incorporated into this Amendment by reference.

2. Definitions. Section 1.0 of the Agreement is deleted and replaced with the following:

1.0 Definitions. All definitions set forth in Chapter 17, Article IV of the City's Code of Ordinances, as may be amended or recodified from time to time, are incorporated herein. In addition, the following words and phrases shall have the following meanings in this agreement.

3. Definition of "Authorized Employee." Section 1.1 of the Agreement is deleted and replaced with the following:

1.1 "Authorized Employee" means the Traffic Infraction Enforcement Officer, whose duties and qualifications are set forth in the City Ordinance.

4. Definition of "City Ordinance." Section 1.3 of the Agreement is deleted and replaced with the following:

1.3 "City Ordinance" means Chapter 17, Article IV of the City's Code of Ordinances, as may be amended or recodified from time to time.

5. Definition of "Civil Fee." Section 1.4 of the Agreement is deleted and replaced with the following:

1.4 "Civil Fee" means the penalty assessed for violations of Florida Statutes §§ 316.074(1) or 316.075(1)(c)1 pursuant to Florida Statutes § 316.0083, as may be amended or recodified from time to time.

6. Definition of "Enforcement Documentation." Section 1.8 of the Agreement is deleted and replaced with the following:

1.8 "Enforcement Documentation" means the necessary and appropriate documentation related to the issuance and collection of notices of violation, as defined in the City Ordinance, for the enforcement of red zone infractions, also as defined in the City Ordinance, including notices of violation, instructions for notices of violation, form affidavits, instructions for form affidavits, reminder letters, a numbering sequence for notices of violation, chain of custody records, and technical support documentation.

7. Definition of "Infraction." Section 1.11 of the Agreement is deleted and replaced with the following:

1.11 "Infraction" means any red zone infraction as defined in the City's Ordinance.

8. Definition of "Notice of Infraction." Section 1.15 of the Agreement is deleted and replaced as follows:

1.15 "Notice of Violation" shall mean the notice of an Infraction, which is delivered by first class mail by vendor to the owner of a motor vehicle involved in an Infraction based upon the appropriate Enforcement Documentation pursuant to the requirements of the City Ordinance.

All references to the term "Notice of Infraction" in the Agreement are deleted and replaced with the term "Notice of Violation."

9. Removal of Duplicate Definitions of "Traffic Safety Camera Program". Section 1.24 of the Agreement is deleted.

10. Definition of "Ordinance". Section 1.17 of the Agreement is deleted and replaced with the following:

> "Ordinance" shall mean Chapter 17, Article IV of the City of North Miami's Code of Ordinances, as may be amended or recodified from time to time.

11. Prosecution. Section 3.4 of the Agreement is deleted and replaced with the following::

> 3.4 Prosecution. The City shall prosecute red zone infractions pursuant to the terms, procedures, and requirements of the City Ordinance and general law, subject to the City's routine law enforcement discretion.

12. Fees And Payment. Section 6 of the Agreement will now include this wording as follows:

> **Flexible Payment Plan.** During the term of the contract, payments by the Customer may be made to ATS under a Flexible Payment Plan. Under the Flexible Payment Plan, the Customer may defer certain payments to ATS until the Customer has collected sufficient funds pursuant to the terms of the contract. If, at the end of the term of the contract, sufficient funds have not been collected by the Customer to pay the balance then due to ATS, ATS agrees to waive its right to recovery of any outstanding balance. For purposes of this clause, the term "funds" means the revenue retained by the Customer according to the distribution methods applicable under this contract and applicable state law.
>
> This clause will be applied as follows:
> ATS will maintain an accounting of any net balances owed to ATS. If the amount collected during a billing period exceeds the amount of ATS invoices during the same period, the Customer shall pay ATS the total amount due. If the amount collected during a billing period is less than the amount of ATS invoices during the same period, the Customer shall pay ATS the amount collected, and may defer payment of the remaining balance. Payments due to ATS shall be reconciled by applying future funds collected, first to the accrued balance, and then to the invoice for the current billing period. At any time that ATS invoices, including any accrued balance, are fully repaid, the Customer will retain all additional funds collected during that billing period. Such additional funds (whether reserved in cash or not by the Customer) will be available to offset future ATS invoices.

13. Termination for Cause. Section 6.1 of the Agreement is deleted and replaced as with the following:

6.1 Termination for Cause: Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state or federal statutes are amended so as to prohibit the operation of a TSCP by the City; (ii) a court having jurisdiction over the City rules or declares that Law of Florida 2010-80 is invalid, in whole or material part; (iii) a determination by a court of competent jurisdiction or other applicable dispute resolution forum that Vendor has infringed upon a third party's patent, trademark, trade secret or other intellectual property; (iv) the other party commits a material breach of any of the provisions of this agreement; and (v) Vendor's non-payment of revenues to City as required by this Agreement. In the event of a termination due to this Section, City shall be relieved of any further obligations to Vendor other than as specified herein. Each party shall have the right to remedy the cause for termination within forty-five (45) calendar days (or within such other time period as City and Vendor shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

The rights to terminate this Agreement given in Section 6.1 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

14. Warning Period. Section 6.2 of the Agreement is deleted.

15. Procedures for Processing Payments. Sections 7.2, 7.3, and 7.4 of the Agreement are deleted and replaced with the following:

7.2 Vendor shall be responsible for processing payments of Civil Fees paid pursuant to Notices of Violation and/or Uniform Traffic Citations. Vendor shall provide payment means through mail, telephone and on-line processes. Vendor shall track all payments and handle all applied payments, unapplied payments, overpayments, refunds, adjustments, dismissals and reversals. Any payments made in person to the City will be taken by the City and applied through Axsis System.

7.3 Vendor's lockbox shall remit to the designated City account all payments received during a week, no later than 5:00 p.m. Eastern Time on Tuesday of the following week.

7.4 Vendor shall invoice the City for all applicable fees for services rendered by Vendor pursuant to this Agreement according to the fee schedule delineated on Exhibit F. Along with the invoice, Vendor shall provide information to the City, in a format acceptable to the City, supporting the invoice amounts forwarded by Vendor to the City. In addition, City shall have access to Vendor's financial records evidencing

payments for all paid citations for red zone infractions at City's Designated Intersections upon City's reasonable request.

16. Legal Challenges and Indemnification. Sections 10.4, 10.5, 10.6, and 10.8 of the Agreement are deleted and replaced with:

10.4 Legal Challenges and Indemnification

(a) ATS agrees to defend, indemnify and hold harmless the City, its elected and appointed officers, agents, and employees, from and against any claims, demands, or causes of action, whatsoever of any kind or nature, and the resulting losses, costs, expenses, attorney fees, liabilities, damages, orders, judgments, or decrees sustained by the City or any third party arising out of, or by reason of , or resulting from ATS' negligent acts, errors, or omissions, except to the extent such losses arise from the negligence of the City, its officers, agents or employees.

(b) The parties recognize and acknowledge that the Florida Legislature recently enacted Florida Law 2010-80, which expressly authorizes governmental entities, such as the City, commencing July 1, 2010 to enforce red light camera violations using traffic infraction detectors The parties further acknowledge that prior to the enactment of Florida Law 2010-80 the City in accordance with Ordinance 1252, ran a Red Light Camera Program ("Old Program"), and contracted with ATS for that purpose. There current exist one claim filed regarding the operation of the Old Program. City and Vendor shall share the cost of defense in that certain action styled Sierra v. City of North Miami, et al, American Traffic Solutions, LLC, and ATS American Traffic Solutions, Inc., Case No. 09-62226-CA-06, pending in the 11th Judicial Circuit, 3rd DCA, on a pro rata basis or any other claim which might be filed pursuant to the operation of the Old Program. To the extent claims may be made with respect to the City's Old Program, if legal review is sought and in the event a court of competent jurisdiction or the State of Florida orders or requires the City to return any payments made for infractions of the City Ordinance, ATS shall at no additional charge, assist the City to perform all relevant portions of any such order, decree judgment, or directive required to be performed by the City including, but not limited to assisting the City to locate each violator so that any ordered reimbursement may be made. Moreover, ATS shall repay all sums collected by it in accordance with any such court order or directive.

(c) In the event of any legal challenge to the City's enforcement of the State Law, especially to the equipment and its reliability, Vendor shall provide reasonable administrative assistance to the City in responding to that challenge, including, but not limited to, providing reasonable assistance to the City in responding to discovery sought from the City, providing reasonable assistance to the City in explaining and presenting the technical aspects and operations of the Vendor Photo Red Light System, and providing reasonable assistance to the City in identifying and locating violators. ATS shall provide an inspection program for all

equipment located in the City and provide a copy of any documents generated from such program to either the City for review by violators or produce the documents electronically for review by violators.

17. Exhibits. Exhibits A, B, C, D, and F to the Agreement are deleted and replaced with Exhibits A, B, C, D, and F to this Amendment.

18. Effect of Amendment on Agreement. Except as expressly amended or modified by the terms of this Amendment, all terms of the Agreement shall remain in full force and effect. Unless a different meaning is specified in the Amendment, all capitalized terms used herein shall have the meaning described in the Agreement. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall prevail and control.

19. Entire Agreement. The provisions of this Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof. All representations and promises made by any party to another, whether in writing or orally, concerning the subject matter of this Amendment are merged into this Amendment. Except as amended by this Amendment, the terms of the Agreement shall continue in full force and effect.

20. Counterpart Execution. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Each party represents and warrants that the representative signing this Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Amendment.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

City of North Miami, Florida

By: _____ 7-8-10
Russell Benford, City Manager Date

ATTEST:

By: _____ 7/13/10
Deputy for Alix, Desulme, City Clerk Date

American Traffic Solutions, Inc.

By: _____ 7-6-10
Adam E. Tuton, Chief Operating Officer Date

Approved as to legal sufficiency and form

_____
V. Lynn Whitfield
City Attorney

EXHIBIT "A"
Designated Intersection

The contract provides for the implementation of cameras at no less than nine (9) intersections, at least three (3) of which shall be installed within forty five days (45) days of receipt of permits for each agreed upon approach.

The proposed intersections are as follows:

SB Biscayne Blvd at NE 135th St	EB NE 125th St at NE 6th Ave.
EB NE 135th St. at NE 6th Ave	WB NE 135th St at NE 6th Ave.
SB NE 6th Ave. at NE 135th St.	NB W Dixie Hwy at NE 135th St.
Opa Locka Blvd. at NW 6th Ave.	Opa Locka Blvd at NW 7th Ave.
WB NE 163rd St @ Biscayne Blvd	EB NE 163rd St @ NE 35th Ave
WB NE 163rd St @ NE 35th Ave	SB Biscayne @ 135th

Installation of any approach is subject to engineering and video analysis results.

Additional approaches will be selected based on collision history, input and recommendations from the City's Police Department, and an engineering feasibility assessment. Vendor shall apply for a permit within sixty (60) days of the approval of this Agreement by the City Commission.

Vendor will provide the City with video evaluation of candidate sites using the Axsis VIMS system to assist the City's Police Department in its recommendations.

The program may be implemented at additional intersections after the conclusion of the Introductory Period. The intersections will be designated by the Police Department, which designation will be based upon Police Department staff review and an engineering analysis.

Camera installations will be based on mutual agreement by Customer and ATS.

EXHIBIT "B"

Construction and Installation Obligations

Timeframe for Installation: Traffic Safety Camera Program

Vendor will have each specified intersection installed and activated in phases in accord with an implementation plan to be mutually agreed to by Vendor and the City Manager.

Vendor will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Vendor will use reasonable commercial efforts to install and activate all specified intersections within forty-five (45) days subsequent to receipt of all permits required by Section 1.4 of this Exhibit B.

I. Vendor Obligations. Vendor shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Vendor's sole expense):

1.1 Appoint the Vendor Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Vendor Project Manager;

1.2 Request current "as-built" electronic engineering drawings for the Designated Intersections (the "Drawings") from the County traffic engineer;

1.3 Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection, including but not limited to specifications for all sensors, pavement loops, electrical connections, and traffic controller connections, as required;

1.4 Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection (collectively, the "Approvals"), which will include compliance with City permit applications;

1.5 Seek rights from private property owners, as necessary for the placement of System Equipment at designated intersections where Governmental Authorities have jurisdiction over the designated intersection and adjacent rights of right of way, and which such Governmental Entity denies authority to Vendor for the installation of its equipment, but City shall be responsible for any costs associated with such work by Vendor;

1.6 Finalize the acquisition of the Approvals;

1.7 Submit to the City a public awareness strategy for the City's consideration and approval, which strategy shall include media and educational

materials for the City's approval or amendment according to the Vendor proposal (the "Awareness Strategy");

1.8 Develop the Red Light Infraction Criteria in consultation with the City;

1.9 Develop the Enforcement Documentation for approval by the City, consistent with the requirements of the City Ordinance;

1.10 Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersections (under the supervision of the City);

1.11 Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersections, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;

1.12 Install and test the functionality of the Designated Intersections with the Vendor System and establish fully operational Infraction processing capability with the Vendor System;

1.13 Implement the use of the Vendor System at each of the Designated Intersections;

1.14 Deliver the Materials to the City;

1.15 Upon approval by the City's Traffic Infraction Enforcement Officer, issue Notices of Violation or Uniform Traffic Citations;

1.16 Obtain access to the records data of the Department of Motor Vehicles in Vendor's capacity as needed for the program;

1.17 As needed, Vendor shall provide training for personnel of the City, including, but not limited to, the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the TSCP, regarding the operation of the Vendor System and the TSCP. This shall include training with respect to the Vendor System and its operations, strategies for presenting Infractions Data in court and judicial proceedings and a review of the Enforcement Documentation, and;

1.18 Notice of Violation processing and Notice of Violation re-issuance.

II. CITY OBLIGATIONS. The City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at the City's sole expense):

2.1. Appoint the Project Manager;

2.2 Assist Vendor in obtaining the Drawings from the relevant Governmental Authorities;

2.3 Notify Vendor of any specific requirements relating to the construction and installation of any Intersection or the implementation of the TCSP;

2.4 Assist and cooperate fully with Vendor in seeking Approvals, including, but not limited to, executing all such documents as may be necessary or desirable to obtain the Approvals;

2.5 Provide reasonable access to the City's properties and facilities in order to permit Vendor to install and test the functionality of the Designated Intersections and the TSCP;

2.6 Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;

2.7 Seek approval or amendment of Awareness Strategy and provide written notice to Vendor with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Vendor begins the installation of any of the Designated Intersection and ending six (6) months after the Installation Date;

2.8 Assist Vendor in developing the Red Light Infraction Criteria;

2.9 Seek approval of the Enforcement Documentation;

2.10 On a form provided by Vendor, provide verification to the State Department of Motor Vehicles, National Law Enforcement Telecommunications System, or appropriate authority indicating that Vendor is acting as an Agent 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;

2.11 If feasible, and only after all necessary approvals have been obtained from utilities and other governmental entities with jurisdiction, City *shall* allow Vendor to access power from existing power sources at no cost to City 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 City's jurisdiction;

2.12 The Traffic Infraction Enforcement Officer shall process each potential violation in accordance with State Laws and/or City Ordinances

and notify Vendor of whether a Notice of Violation shall issue within five (5) days of the appearance of the potential Infraction in the Police Review Queue, using Axsis™ to determine which potential Infractions will be issued as Notices of Violation. In the event of a system failure or power outage, the Traffic Infraction Enforcement Officer shall process each potential Infraction as soon as possible, or with the consent or approval of Vendor for extension;

2.13 Provide access to the Internet for the purpose of processing violations;

2.14 Vendor shall, at no additional cost to the City, provide Police Department workstation computer monitors for citation review and approval which provide a resolution of 1280 x 1024.

2.15 For optimal data throughput, Police Department / Adjudication workstations should be connected to a high-speed Internet connection with bandwidth of T-1 or greater. Vendor will coordinate directly with the City's Information Technology (IT) Department on installation and implementation of the computerized aspects of the program;

2.16 Police Department shall provide signatures of all authorized police users who will review events and approve citations on forms provided by Vendor;

2.17 In the event that remote access to the ATS Axsis VPS System is blocked by City's network security infrastructure, the City's IT Department and the counterparts at ATS shall coordinate to facilitate appropriate communications access while maintaining required security measures;

2.18 City shall provide a computer terminal at a public location where persons receiving Notices of Violation may review the recorded images of the violation.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of Traffic Safety Camera Program systems and related equipment will be the sole responsibility of Vendor, including but not limited to maintaining the casings of the cameras included in the Vendor System and all other Equipment in reasonably clean and graffiti-free condition.

2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade County Traffic Engineering present.

3. The provision of all necessary communication, broadband and telephone services to the Designated Intersections will be the sole responsibility of the Vendor.

4. The provision of all necessary electrical services to the Designated Intersections will be the sole responsibility of the Vendor.

5. In the event that images of a quality suitable for the Authorized Employee to identify Infractions cannot be reasonably obtained without the use of flash units, Vendor shall provide and install such flash units.

6. The Vendor Project Manager (or a reasonable alternate) shall be available to the City's Project Manager each day.

7. Vendor shall ensure that all equipment that it provides pursuant to this Agreement meets the specifications and requirements, if any, adopted by the Florida Department of Transportation pursuant to Florida Statute, Section 316.07456, by July 1, 2011 for the inspection and maintenance, if any, of said equipment.

EXHIBIT "D"

Infraction Processing

1. All Infractions Data shall be stored on the Vendor System.

2. The Vendor System shall process Infractions Data gathered from the Designated Intersections into a format capable of review by the Authorized Employee via the Vendor System.

3. Vendor shall act as City's agent for the limited purpose of making an initial determination of whether the recorded images should be forwarded to the Traffic Infraction Enforcement Officer to determine whether a violation has occurred and shall not forward for processing those recorded images that clearly fail to establish the occurrence of a red zone infraction.

4. The Vendor System shall be accessible by the Authorized Employee through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser.

5. Vendor shall provide storage capabilities for the City to store infractions identified for prosecution for a period of time of not less than four (4) years after final disposition of a case or such time as required by general law.

6. Vendor shall provide the Authorized Employee with access to the Vendor System for the purposes of reviewing the pre-processed Infractions Data within five (5) days of the gathering of the Infraction Data from the applicable Designated Intersections.

7. Within five (5) days of receipt, the City shall cause the Authorized Employee to review the Infractions Data and to determine whether a Notice of Violation shall be issued with respect to each Potential Infraction captured within such Infraction Data, and transmit each such determination to Vendor using the software or other applications or procedures provided by Vendor on the Vendor System for such purpose. VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A NOTICE OF VIOLATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "NOTICE OF VIOLATION DECISION"), AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF VIOLATION DECISION.

8. With respect to each Authorized Infraction, Vendor shall print and mail by first class mail a Notice of Violation within the statutorily required timeframe.

9. Vendor shall provide a toll-free telephone number, at its sole expense, for the purposes of answering citizen inquiries.

10. Vendor shall permit the Authorized Employee to generate monthly reports using the Vendor Standard Report System.

11. Upon Vendor's receipt of a written request from the City at least fourteen (14)

calendar days in advance of a hearing, Vendor shall provide expert witnesses for use by the City in prosecuting Infractions at no cost to the City.

12. Vendor shall provide such training to City personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Red Light Enforcement Program. However, if a specific case requires testimony on the technical aspects of the equipment, upon City's request Vendor shall provide the City with an expert in the hearing in that case at no cost to the City.

13. Vendor shall provide to City a Notice of Violation form that complies with all requirements of the Ordinance. Vendor shall also provide to City a form of affidavit for use by owners of motor vehicles who claim an exemption under Florida Statutes § 316.083 and shall make that affidavit available to owners through an Internet location or upon telephone request by an owner who has received a Notice of Violation or Uniform Traffic Citation.

14. Vendor agrees that the City shall have the right to review and approve the form Notice of Violation prior to its use, and that in the event City determines additional information should be included in the Notice of Violation, Vendor shall modify the Notice of Violation form, at its sole expense, to comply with those requirements.

15. City shall provide Vendor with a form of Uniform Traffic Citation that complies with the provisions of Chapter 316 of the Florida Statutes, with the understanding that some modifications may be necessary to enable use with Vendor's systems.

16. If a motor vehicle owner who receives a Notice of Violation fails to pay the statutory penalty or submit an affidavit that complies with all of the requirements of Florida Statutes. § 316.0083(1)(d) within the time period provided in Florida Statutes § 316.0083(1)(b), the issuance of a Uniform Traffic Citation shall automatically occur based upon the prior Authorized Employee approval of the Notice of Violation.

17. For all violations occurring prior to July 1, 2010, City shall provide a magistrate, judge, hearing officer, or other similar official as may be required, together with adjudication facilities, all for the purpose of scheduling and hearing disputed Uniform Traffic Citations. All violations occurring after July 1, 2010 shall be heard in accordance with general law in the forum established by the court in the local jurisdiction.

18. For any city using ATS lockbox or epayment services, Vendor will establish a demand deposit account bearing the title, "American Traffic Solutions, Inc. as agent for Customer" at U.S. Bank. All funds collected on behalf of the Customer will be deposited in this account and transferred by wire the first business day of each week to the Customer's primary deposit bank. The Customer will identify the account to receive funds wired from U.S. Bank. if desired, Customer will sign a W-9 and blocked account agreement, to be completed by the Customer, to ensure the Customer's financial interest in said U.S. Bank account is preserved.

EXHIBIT "F"
SERVICE FEE SCHEDULE

1.0 **Description of Pricing** — **Fee**

Fees are based on per Camera (approach) and are as follows:

Option 1: Flat Fee per Camera per Month, plus certified mail processing surcharge of $4 per piece metered for mailing Uniform Traffic Citations (no return receipt): — $4,750

Option 2: Lane based pricing, plus certified mail processing surcharge of $4 per piece metered for mailing Uniform Traffic Citations (no return receipt):

- For 1 or 2 lanes — $3,750
- For 3 or 4 lanes — $4,750
- For 5 or 6 lanes — $5,750

Option 3: Base Fee Per Camera Per Month, plus flat fee per service unit for individual work elements. — $2,750

- For violation data transmission, first review, second quality review service, supervisory review, Traffic Infraction Enforcement Officer (TIEO) access and review portal — $6.50
- Data acquisition fee per registered owner match — $3.50
- Mail printing, processing, and handling service includes Notice of Violation (NOV) by first class mail and UTC by certified mail including bad address processing and remailing. — $7.50
- Inbound call/customer service — $4.50
- Affidavit processing service — $4.50
- Payment processing service — $1.50
- Data archival service — $1.50

Service Fees Include: Fee includes all costs required and associated with camera system installation, maintenance and on-going field and back-office operations. Includes red-light camera equipment for a 4-lane approach (except for Option 2) with up to two (2) signal phases, installation, maintenance, violation processing services, DMV records access, mailing of Notice of Violation in color with return envelope, lockbox and epayment processing services, call center support for general program questions and public awareness program support.

Note: Customer will notify ATS which Pricing Fee Option to utilize within 30 days of Amendment being executed by both parties.

2.0 **Optional Collection Services**: ATS will initiate collection efforts of delinquent notices upon written request by Customer. ATS will be entitled to receive portions of the collected revenue as noted below. The maximum is 30% total for both pre-collection and collection. For those accounts in default that go to collection, this is in addition to our Fees noted above.

Pre-Collection Letters	10% of Recovered Revenue
Delinquent Collections Services	30% of Recovered Revenue

3.0 **Optional Annual Training Conference**: ATS provides a comprehensive user training 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 *Annual User Conference* will be held in Phoenix Metro 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.

Pricing valid through July 31, 2010.

17-12-12 RB

SECOND AMENDMENT
TO PROFESSIONAL SERVICES AGREEMENT

This Second Amendment (this "Amendment") is dated effective this 23rd day of July, 2013 and is entered into between American Traffic Solutions, Inc. ("ATS"), a Kansas corporation and the City of North Miami, Florida ("Customer"), a municipal corporation of the State of Florida.

RECITALS

WHEREAS, on March 25, 2008, Customer and ATS entered into a Professional Services Agreement (the "Agreement"); and

WHEREAS, the Florida Legislature passed and the Governor of the State of Florida signed into law CS/CS/HB7125, authorizing local hearings for notices of violations connected with the use of red light cameras as traffic infraction detectors to enforce Chapter 316, the State of Florida Uniform Traffic Code and taking effect on July 1, 2013; and

WHEREAS, Customer and ATS mutually desire to amend certain terms and conditions of the Agreement to align the provision of services by ATS with the provisions and requirements of Law of Florida 2013-160.

TERMS AND CONDITIONS

NOW THEREFORE, Customer and ATS hereby agree as set forth below:

1. A Section 19 is hereby added to Exhibit D as follows: "ATS is authorized to charge, collect and retain a convenience fee of up to 5% of the total dollar amount of each electronic payment processed. Such convenience fees are paid by the violator."

   Section 8 of Exhibit D, is hereby amended to add the following: "Subsequent notices, other than the first Notice of Violation in section in this Section 8 and the UTC in Exhibit F, may be delivered by First Class mail for additional compensation as set forth in Exhibit A."

2. Exhibit F is hereby amended to add the following: "Subsequent notices mailings fee: $2.00 per piece"

3. Section 17 of Exhibit D is hereby amended to add the following: "Customer shall provide, either for itself or through an inter-local agreement with another jurisdiction, a local hearing officer, clerk, and hearing facilities to schedule and hear disputed Notices of Violation."

4. The provisions of the Agreement, as amended by this Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof. Except as expressly amended or modified by the terms of this Amendment, all terms of the Agreement shall remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall prevail and control.

5. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Each party represents and warrants that the representative signing this Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed by their respective and duly authorized representatives effective as of the date first written above:

ATTEST:
Corporate Secretary or Witness:

By: _____

Print Name: LAURA DANIEL

Date: 7/25/13

AMERICAN TRAFFIC SOLUTIONS, INC.,

By: _____

Print Name: GEORGE J. HIFTNER

Date: 7/25/13

ATTEST:

By: _____
Michael A. Etienne, Esq.

City Clerk

City of North Miami, a Florida municipal corporation: "**City**"

By: _____
Stephen E. Johnson

City Manager

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY:

By: _____
Regine M. Monestime
City Attorney

THIRD AMENDMENT
TO PROFESSIONAL SERVICES AGREEMENT

This Third Amendment ("Third Amendment") is dated effective this _____ day of 7/22/2014, 2014 and is entered into between American Traffic Solutions, Inc. ("ATS"), a corporation duly registered under the laws of the State of Kansas with its principal place of business at 1330 West Southern Avenue, Tempe, Arizona 85282 and the City of North Miami ("City"), a municipal corporation of the State of Florida.

RECITALS

WHEREAS, on March 25, 2008, the City and ATS entered into a contract for Photo Enforcement Services Agreement (the "Agreement") to provide Automated Traffic Enforcement Systems;

WHEREAS, on June 30, 2010, the parties executed a First Amendment to the Agreement;

WHEREAS, Section 12.0 of the Agreement requires any amendments, modifications, or alterations of the Agreement to be in writing and duly executed by the parties; and

WHEREAS, the City and ATS mutually desire to amend, modify or alter certain terms and conditions of the Agreement.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Third Amendment, the City and ATS do hereby agree as set forth below:

1. The above recitals are true and correct and are incorporated herein.

2. Section 2.0 of the Agreement sets forth a term of five (5) years following the date of the first paid notice from the first installed Camera. The current term of the Agreement expires on July 21, 2014. Section 2.0 is hereby amended to extend the term on a month-to-month basis for up to six months to allow the parties' time to further negotiate a longer extension.

3. During the month-to-month extension of the Agreement, ATS will not waive any accrued balance under the Flexible Payment Plan set forth in Section 12 of the First Amendment (which amended Section 6 of the Agreement). If any balances are deferred under the Flexible Payment Plan, such balances will continue to accrue into any subsequent longer-term extension.

4. Except as expressly amended or modified by the terms of this Third Amendment, all terms of the Agreement as amended by the First Amendment shall remain in full force and effect. In the event of a conflict between the terms of this Third Amendment and the Agreement or the First Amendment, the terms of this Third Amendment shall prevail and control.

5. The provisions of the Agreement, as amended, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof.

6. This Third Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

7. Each party represents and warrants that the representative signing this Third Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Third Amendment.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment.

CITY OF NORTH MIAMI, FLORIDA

DocuSigned by:
Aleem Ghany
By: AD8C42C3AFAE44B...
City Manager
Title:
7/22/2014
Date:

AMERICAN TRAFFIC SOLUTIONS, INC.

DocuSigned by:
By: E6815CF5D1F54D0...
President
Title:
7/21/2014
Date:

APPROVED AS TO FORM

DocuSigned by:
By: Regine Monestime
9787DB01BC7F413...
City Attorney

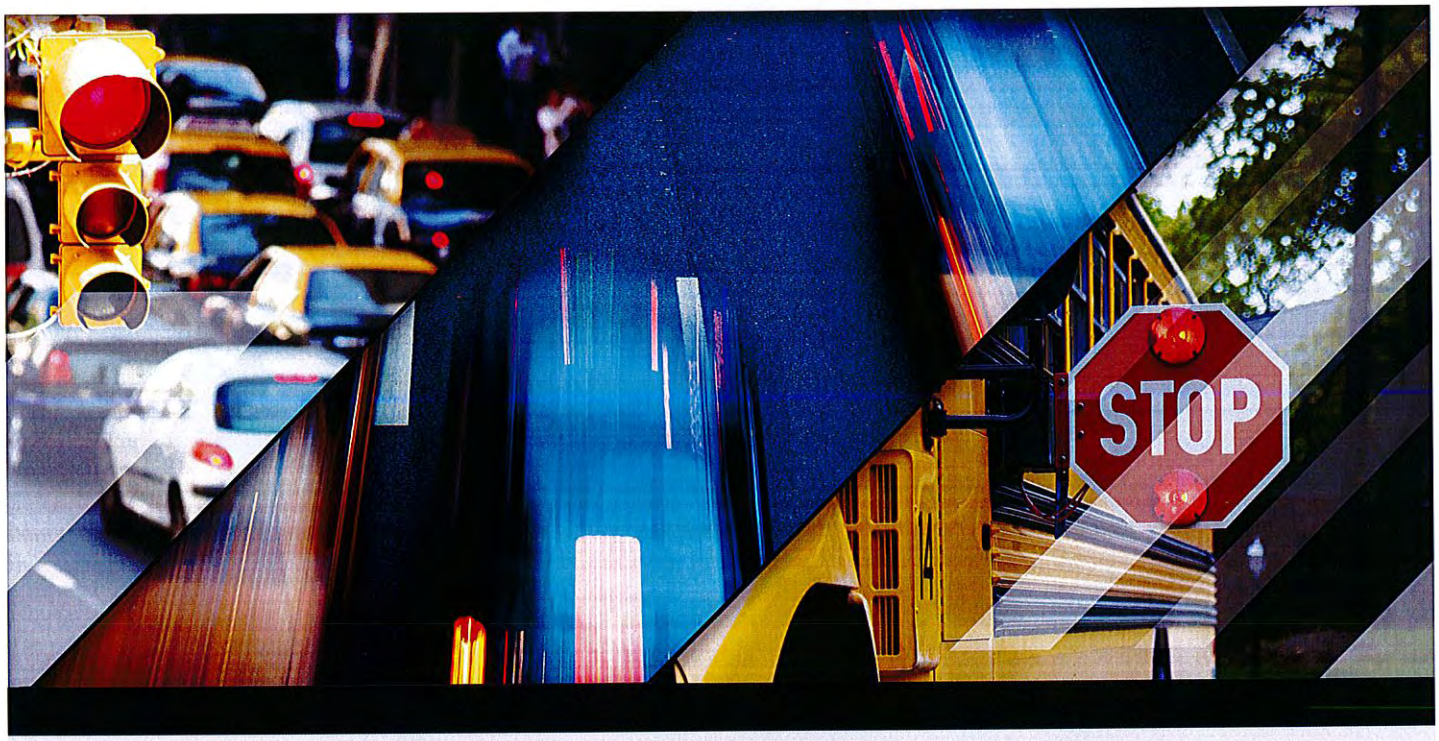
7/21/2014
Date

SCHEDULE 1
CAMERA OPERATION DATES

	CAMERA	ADDRESS	LANES	ACTIVATION DATE
		21 CAMERAS		
1	NM01	SB BISC. BLVD. @ NE 123 ST	4	04/16/10
2	NM02	SB BISC. BLVD. @ NE 135 ST	4	02/04/11
3	NM03	NB NE 6 AVE @ NE 135 ST	3	10/23/09
4	NM04	SB NE 6 AVE @ NE 135 ST	3	01/15/11
5	NM05	EB NW 135 ST @ NW 7 AVE	4	02/09/10
6	NM06	NB BISC. BLVD. @ NE 151 ST	4	07/22/09
7	NM07	SB BISC. BLVD. @ NE 151 ST	4	06/15/11
8	NM08	EB NE 125 ST @ NE 6 AVE	4	01/04/11
9	NM09	WB NE 125 ST @ NE 6 AVE	4	12/18/09
10	NM11	WB NE 135 ST @ NE 6 AVE	3	02/04/11
11	NM12	WB OPA LOCKA BLVD @ NW 6 AVE	4	01/06/11
12	NM13	SB W DIXIE HWY @ 135 ST	3	01/15/11
13	NM15	EB NE 135 ST @ W DIXIE HWY	3	02/01/11
14	NM16	EB NE 135 ST @ NE 6 AVE	3	01/15/11
15	NM17	WB OPA LOCKA BLVD @ NW 7 AVE	5	01/01/11
16	NM18	NB NW 6 AVE @ OPA LOCKA BLVD/FL916	2	01/15/11
17	NM19	EB NW 135 ST/FL916 @ NW 6 COURT	4	01/01/11
18	NM22	WB NE 123 ST @ BISC. BLVD.	3	12/21/11
19	NM24	NB NW 7 AVE/US 441/FL 7 @ NW 125 ST	4	12/20/11
20	NM25	SB NW 7 AVE/US 441/FL 7 @ NW 125 ST	4	12/20/11
21	NM27	WB NE 135 ST @ W DIXIE HWY	3	12/20/11

Red-Light Safety Camera Program Analysis

North Miami, Florida



JANUARY 2015

SUBMITTED BY AMERICAN TRAFFIC SOLUTIONS, INC.

ATS American Traffic Solutions™

1. SUMMARY

1.1 Program Overview

- The red-light safety camera program began in July 2009.
- Red-light safety cameras are at 11 intersections, with a total of 21 cameras.

1.1.1 WHEN IS RED-LIGHT RUNNING HAPPENING?

- Most red-light running violations occur between the hours of 1 p.m. and 3 p.m.
- Saturday is the day of the week when most red-light running violations occur.

1.1.2 WHO IS RUNNING THE RED LIGHT?

- 24 percent of violations are issued to North Miami residents since the program's inception.

1.1.3 PUBLIC SAFETY BENEFIT

- Most red-light runners in North Miami do not get a second ticket. The community's recidivism rate is 18%, which means 82% of all violators who receive a ticket and pay it do not violate again. This low rate of repeat behavior, tracked from program inception through November 2014, indicates a change in driver behavior to stop on red.

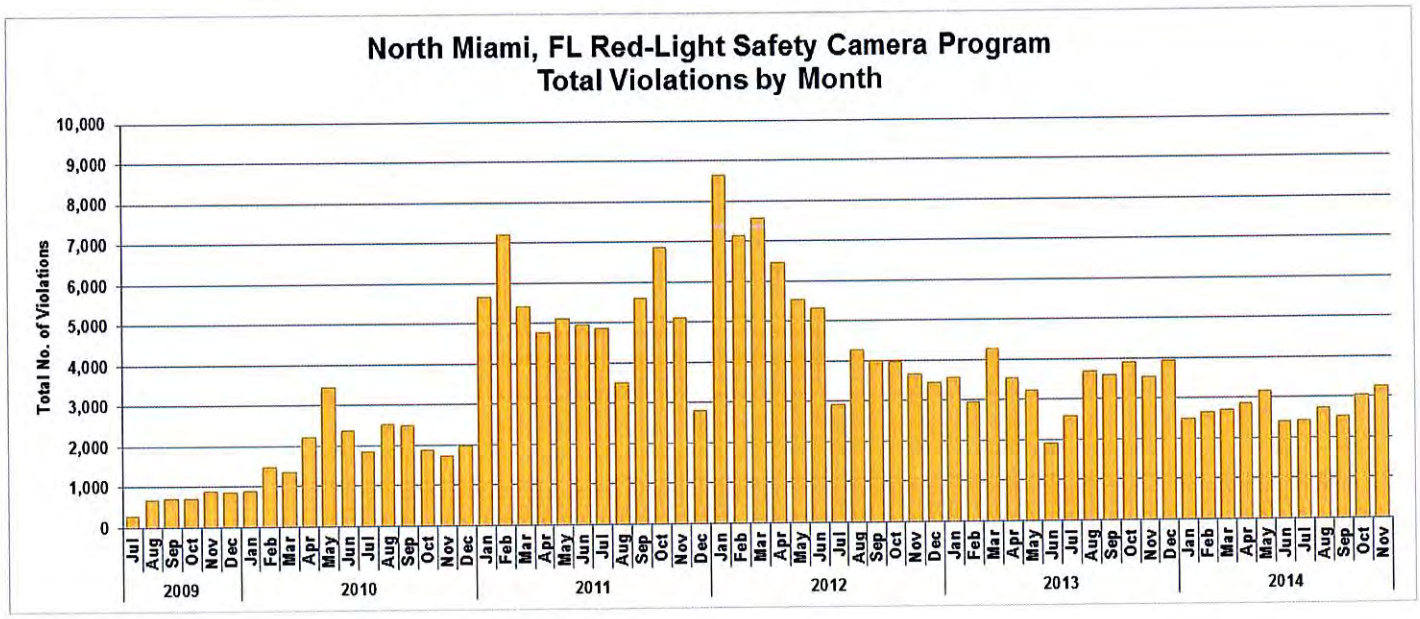
ATS ©2015 American Traffic Solutions

2. VIOLATIONS OVERVIEW

2.1 Total Violations

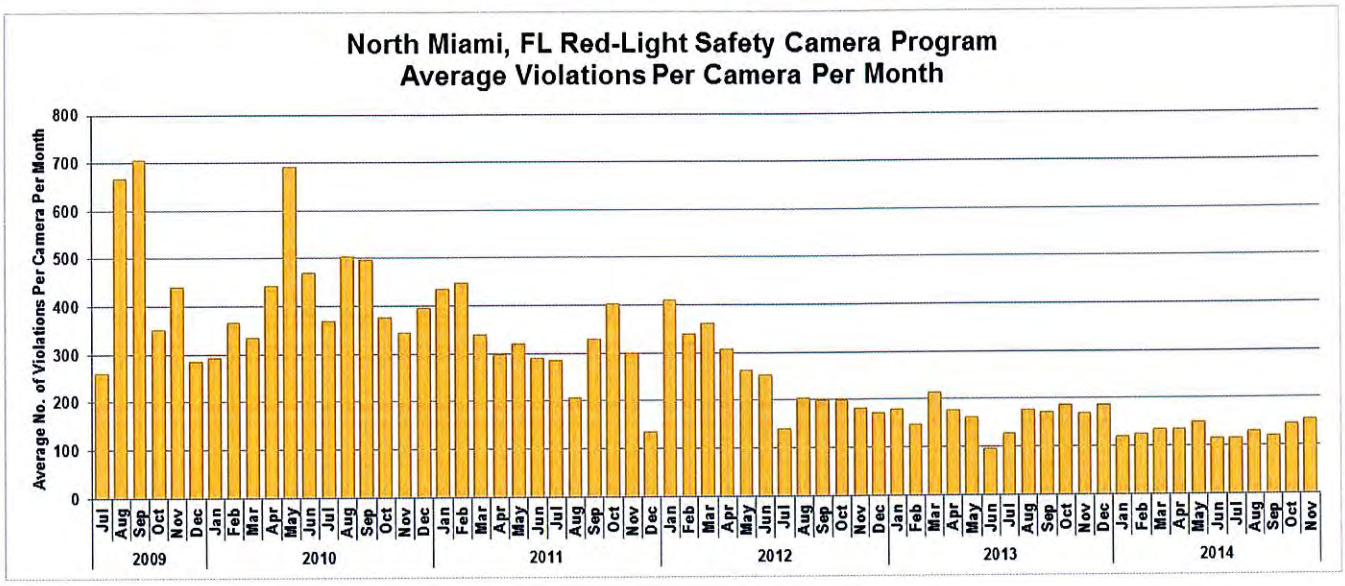
North Miami began its Red-Light Safety Camera Program in July 2009. The program consists of 21 cameras at 11 intersections. This graphic tracks the change over time in the total number of violations issued per month. As violations decrease, the opportunity for dangerous red-light running related crashes drops, contributing to safer traveling throughout the city.

The increases in the early part of 2011 and 2012 are not surprising considering the program changes and installation of additional of red-light safety cameras. Note how the violations continue to decrease since mid-2013 as drivers adjust their behavior to the new camera locations.



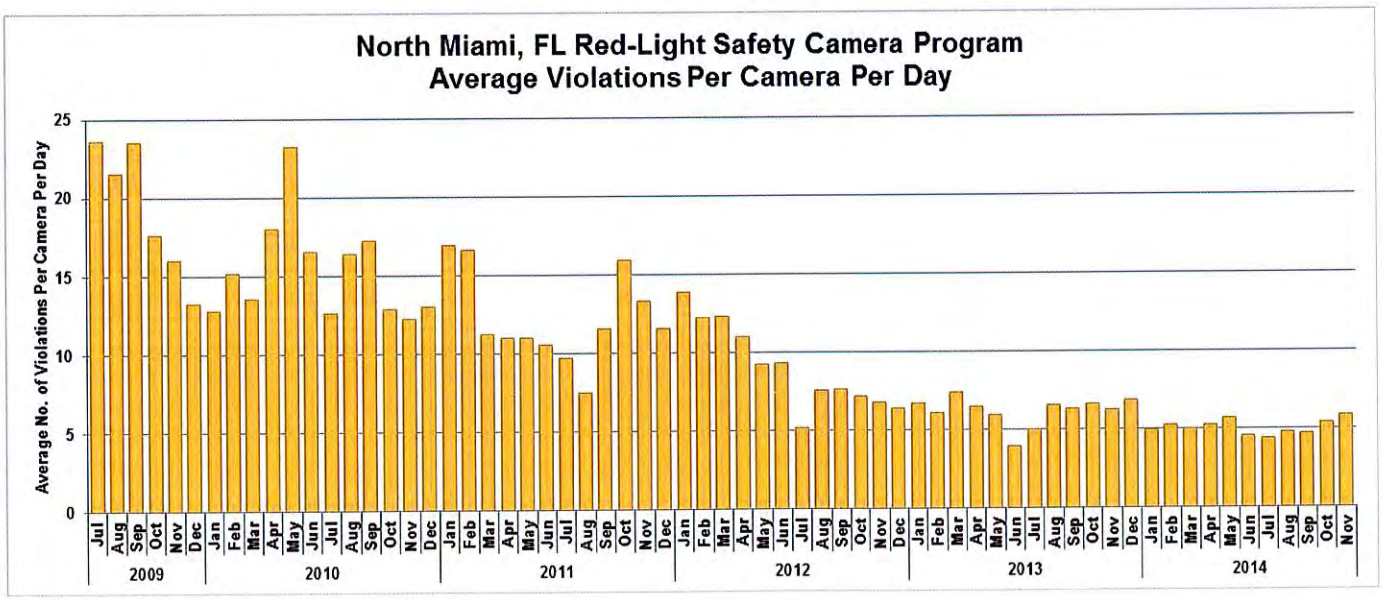
2.2 Average Violations Per Camera Per Month

Since program inception, the monthly average red-light running violations per camera per month have decreased by 77 percent.



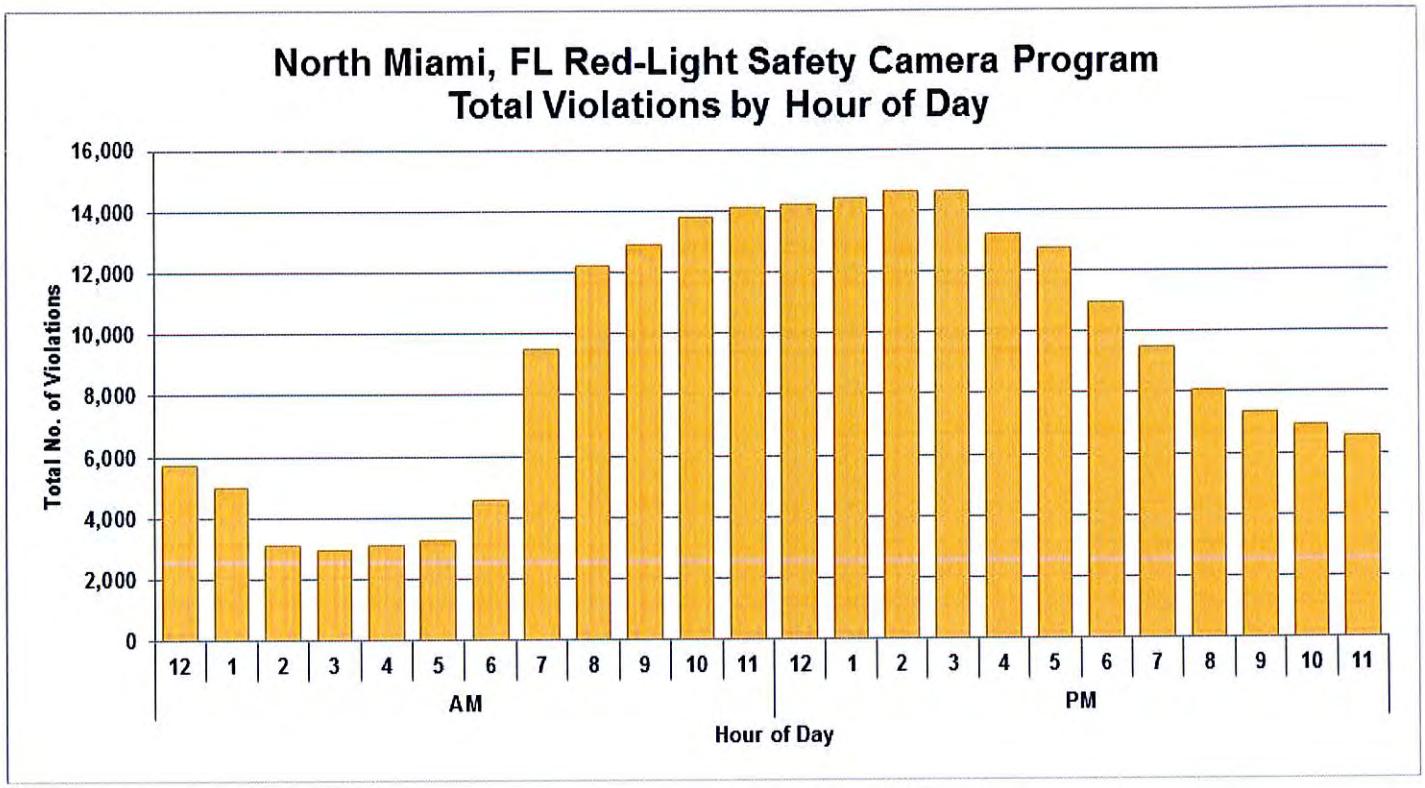
2.3 Average Violations Per Camera Per Day

Since program inception, the daily average red-light running violations per camera per day have decrease by 73 percent.



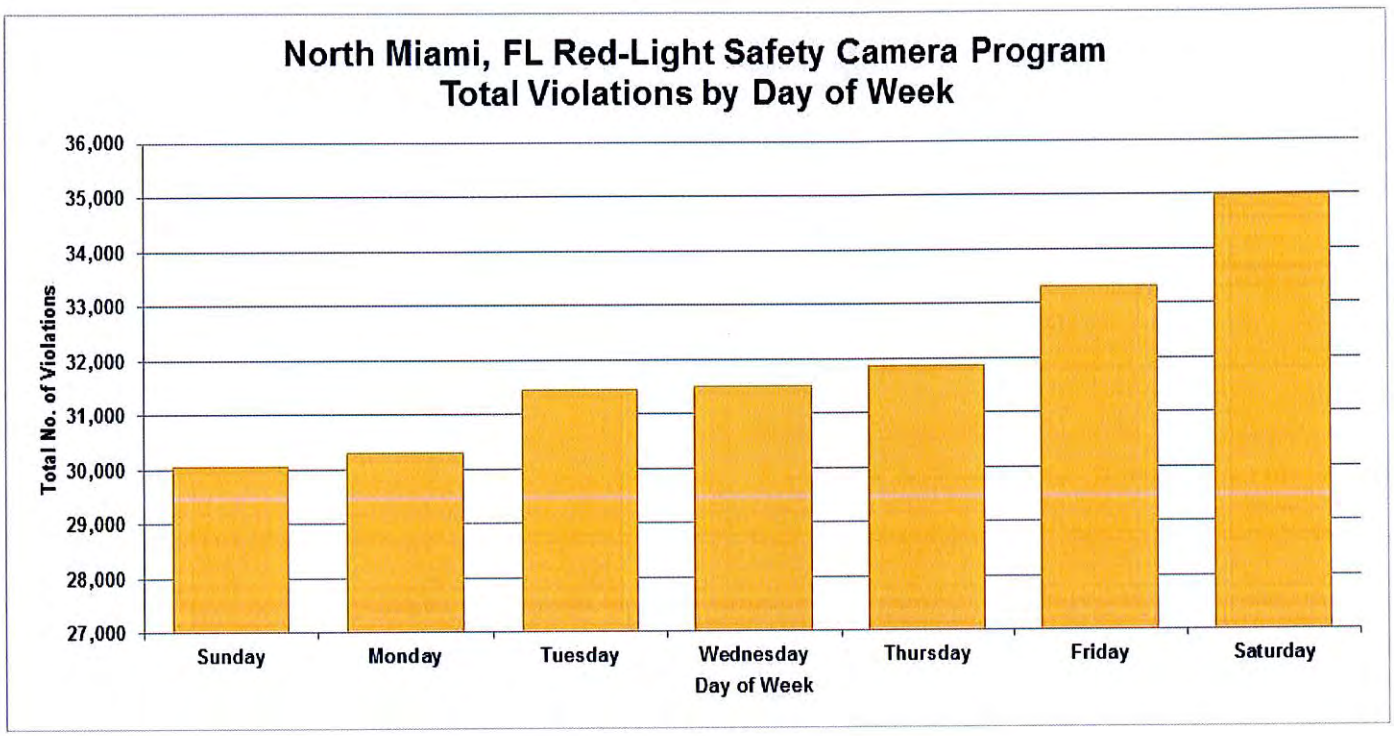
2.4 Total Violations by Time of Day

When looking at total violations by time of day, the most dangerous hours for red-light running is 1 p.m. through 3 p.m. 40 percent of violations occurred before noon and 60 percent of violations occurred after noon.



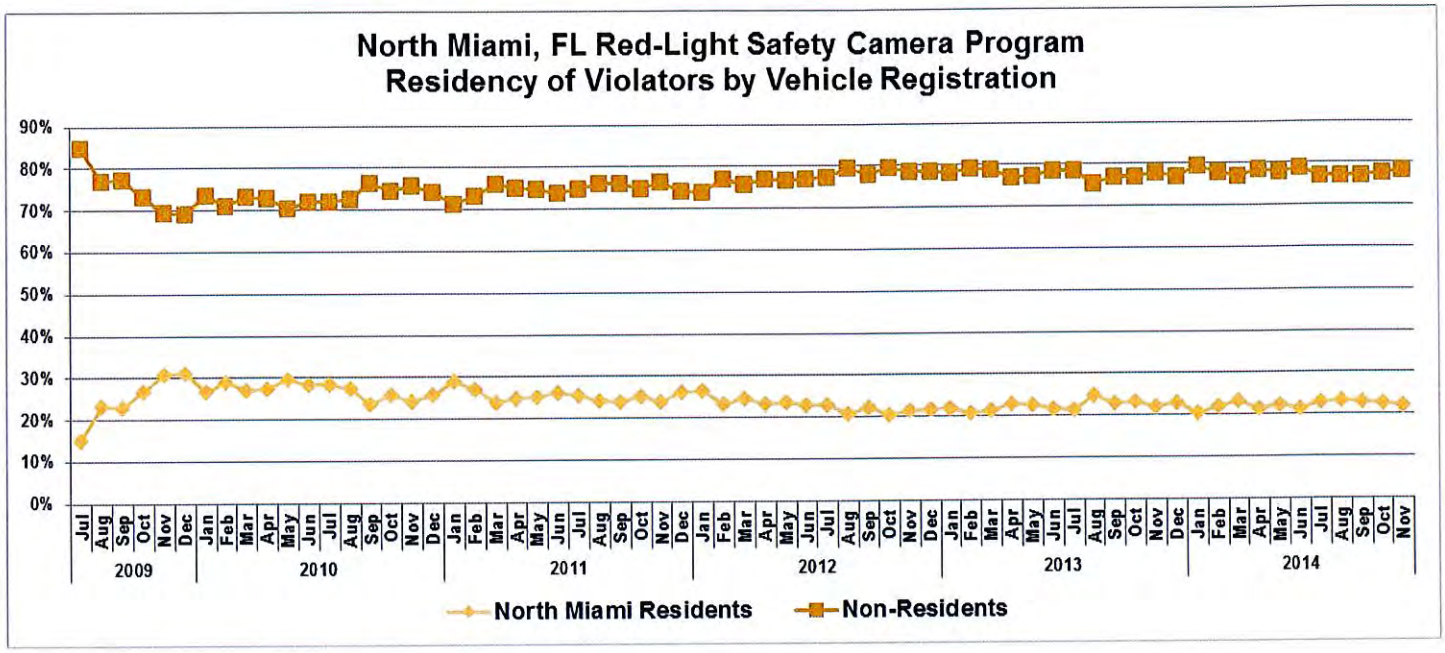
2.5 Total Violations by Day of the Week

When looking at the total number of violations by day of the week, the day with the most violations is Saturday, accounting for 16 percent of all violations. The weekdays account for 71 percent of total violations.



2.6 Violations by North Miami Residents

Vehicles registered in North Miami are the recipients of 24 percent of all violations issued since the program's start.

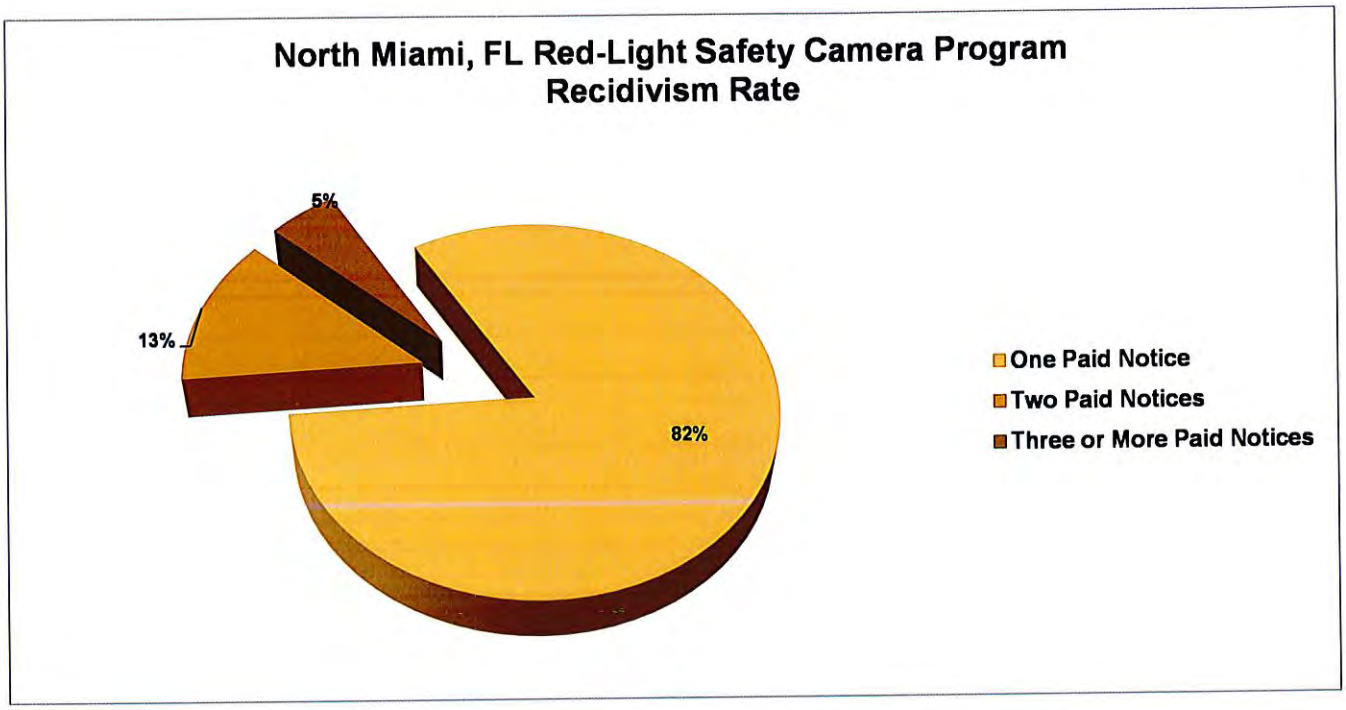


Zip Codes Used for Residency: 33181, 33167, 33161, 33168, 33261.

Top 5 Violator Cities	
City	% of Violations
North Miami	24%
Miami	24%
Hollywood	8%
Opa Locka	5%
El Portal	5%

2.7 Repeat Violators

Repeat violations are low in North Miami, indicating the safety camera program is successful in changing driver behavior. The community's recidivism rate is 18% percent, which means 82% percent of all violators who receive a ticket and pay it do not get another violation. This low rate of repeat behavior, dating from program inception through November 2014, indicates a change in driver behavior for the better.



3. Program Footage: The Dangers of Red-Light Running

Shocking new video footage showing the dangers of red-light running is available for viewing and for use as a public service announcement. The video from red-light safety cameras can be used to alert motorists across the state of Florida about the need for continued intersection safety enforcement and increased driver attention.

Videos, which can be viewed at https://www.youtube.com/user/ATSRoadSafety serve as a reminder for all drivers about the need to obey the law and stop on red.

The value of North Miami's Red-Light Safety Camera program hasn't just been in terms of public safety. An additional value for taxpayers is the availability to police investigators of red-light safety camera videos. **The police have requested videos nearly 140 times as a tool for investigating collisions and various other police investigations.** It helps reduce police operating costs when a video can help reconstruct an accident scene or provide another view of unrelated incidents at intersections.

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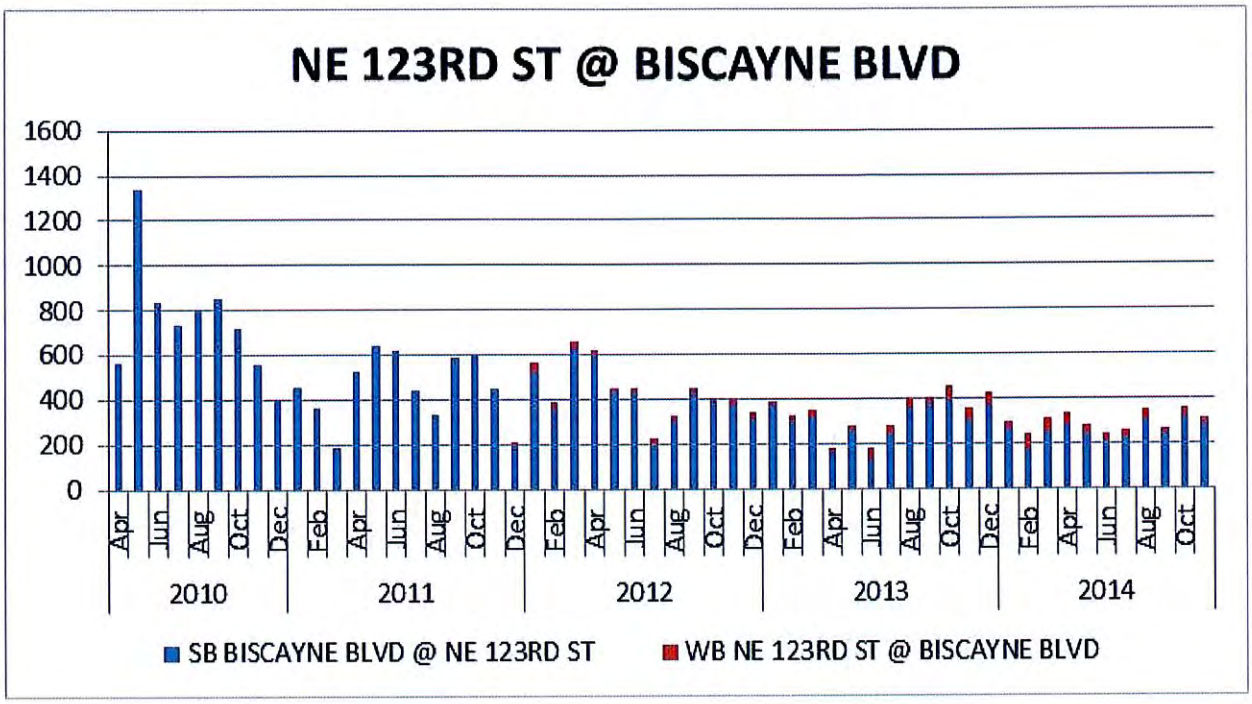
4. Map of Locations

North Miami, FL RLSC Program Locations

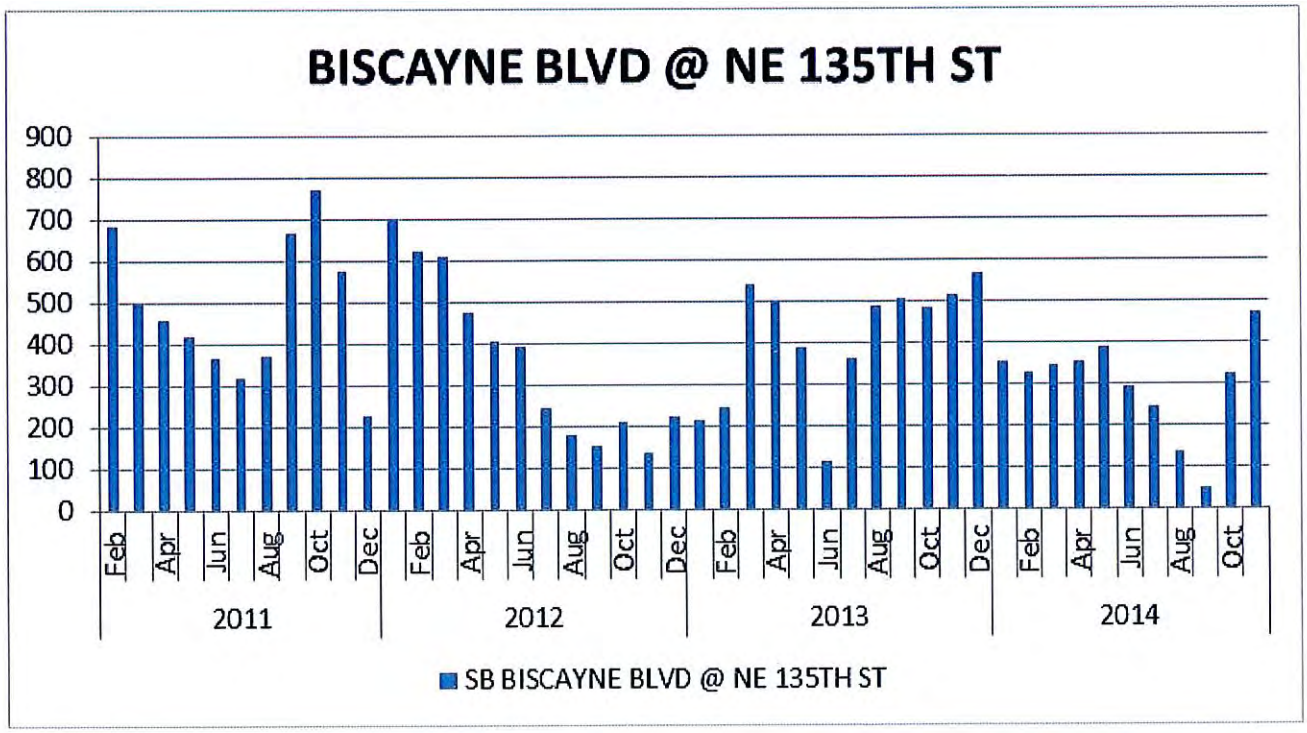
- EB/WB NE 125th St @ NE 6th Ave
- NB/SB/EB/WB NE 135th St @ NE 6th Ave
- EB/WB/SB NE 135th St @ W Dixie Hwy
- EB NW 135th St / FL 916 @ NW 6th CT
- EB NW 135th St @ NW 7th Ave
- NB/SB Biscayne Blvd @ NE 151st St
- NB/WB NW 6th Ave and Opa Locka Blvd / FL 916
- NB/SB NW 7th Ave / US 441 / FL 7 @ NW 125th St
- WB/SB Biscayne Blvd @ NE 123rd St
- SB Biscayne Blvd @ NE 135th St
- WB Opa Locka Blvd @ NW 7th Ave

5. INTERSECTION ANALYSIS

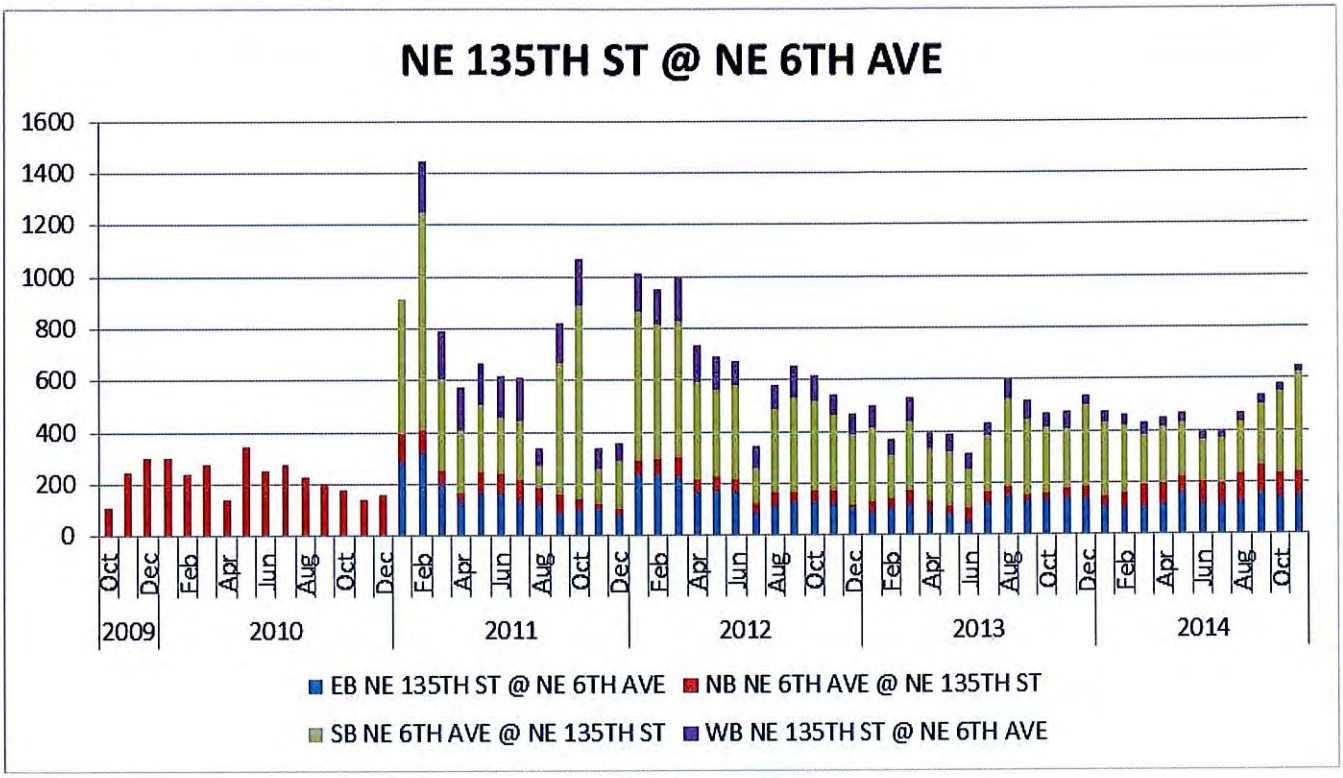
5.1 Biscayne Blvd @ NE 123rd St



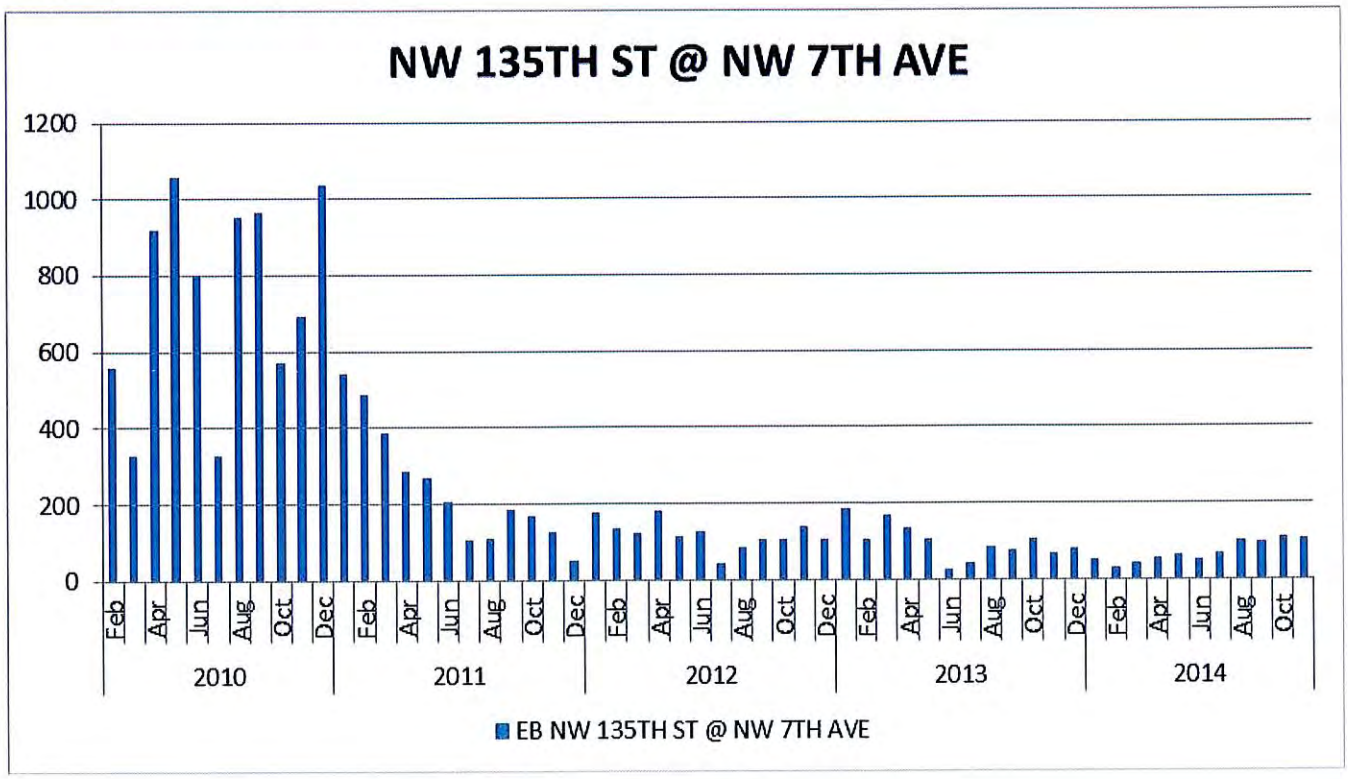
5.2 BISCAYNE BLVD @ NE 135TH ST



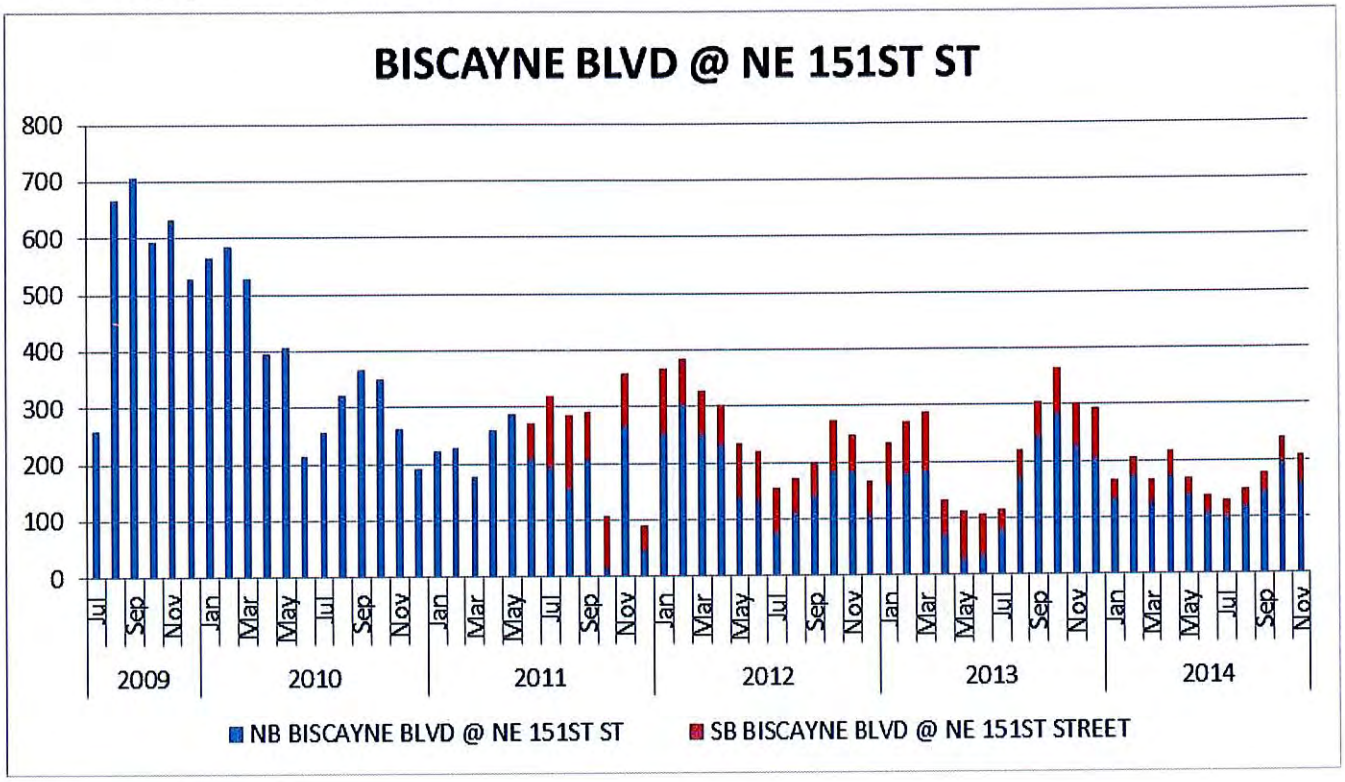
5.3 NE 6th Ave and NE 135th St



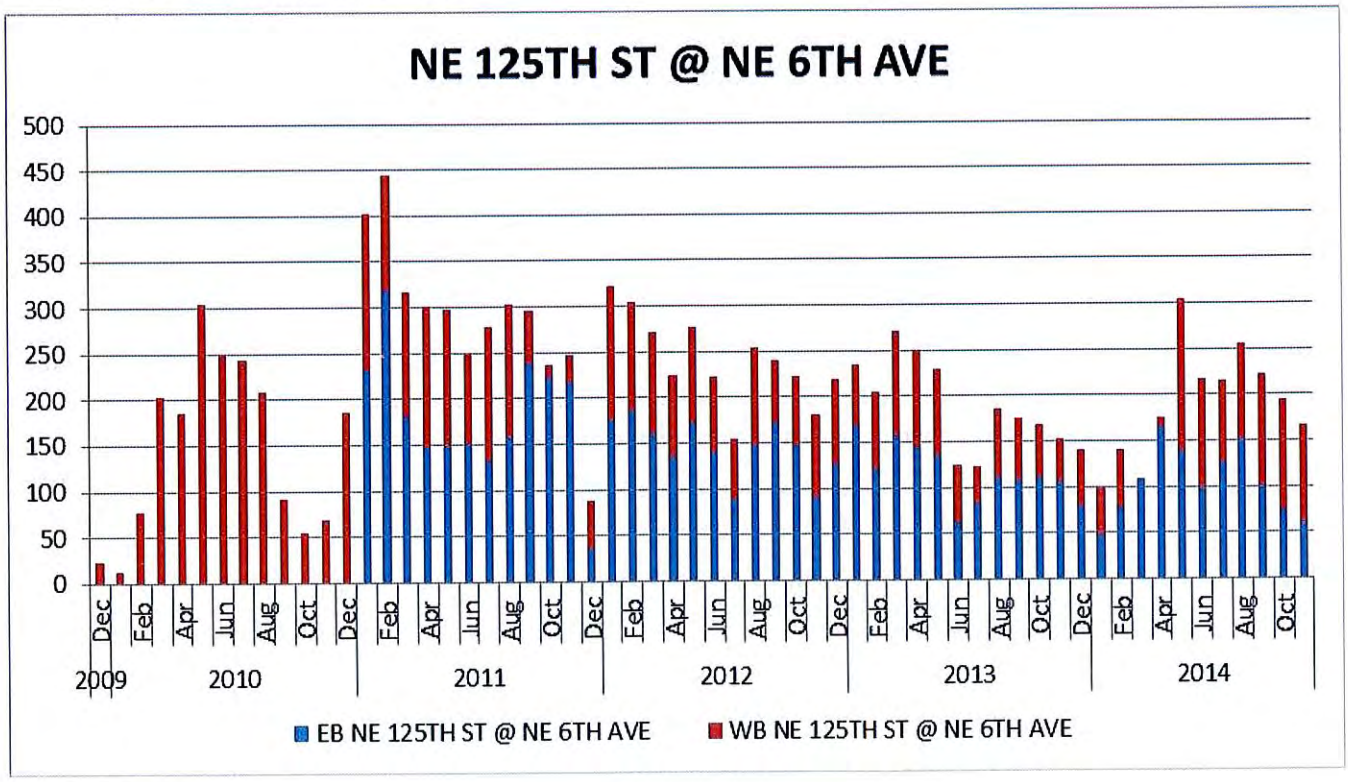
5.4 NW 135th St and NW 7th Ave



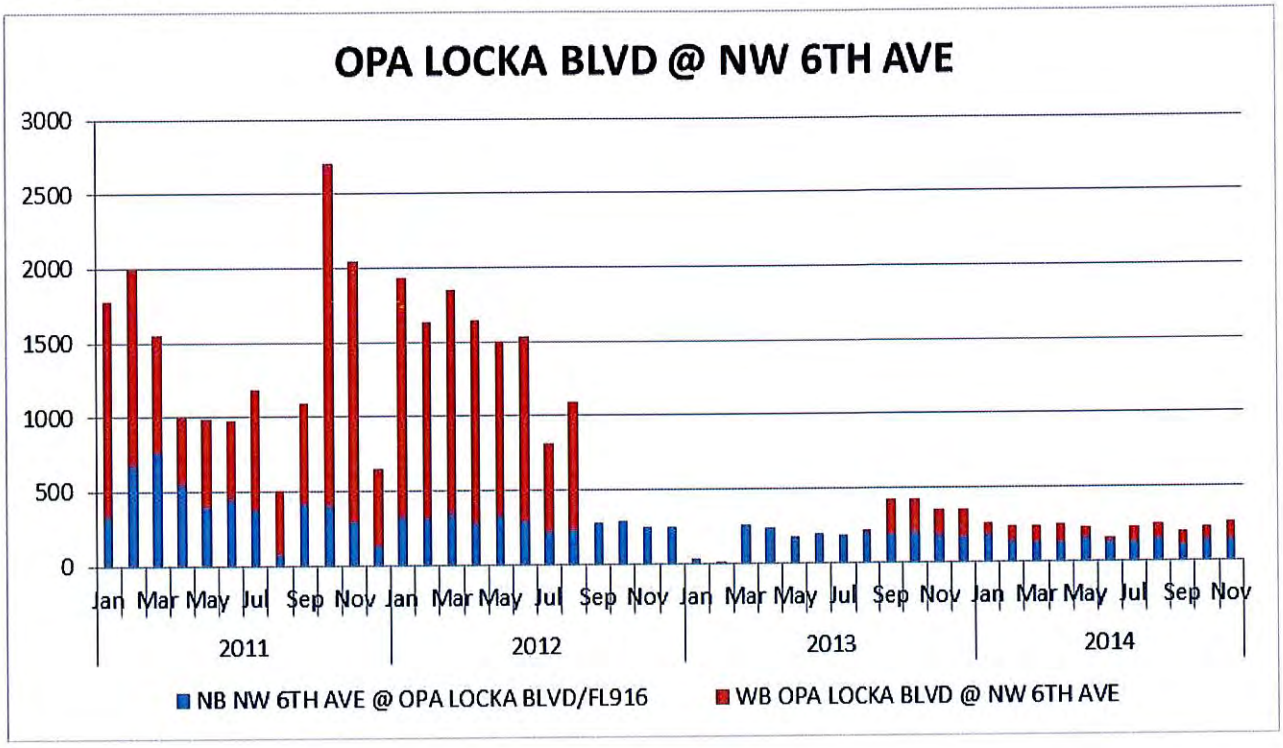
5.5 Biscayne Blvd and NE 151st St



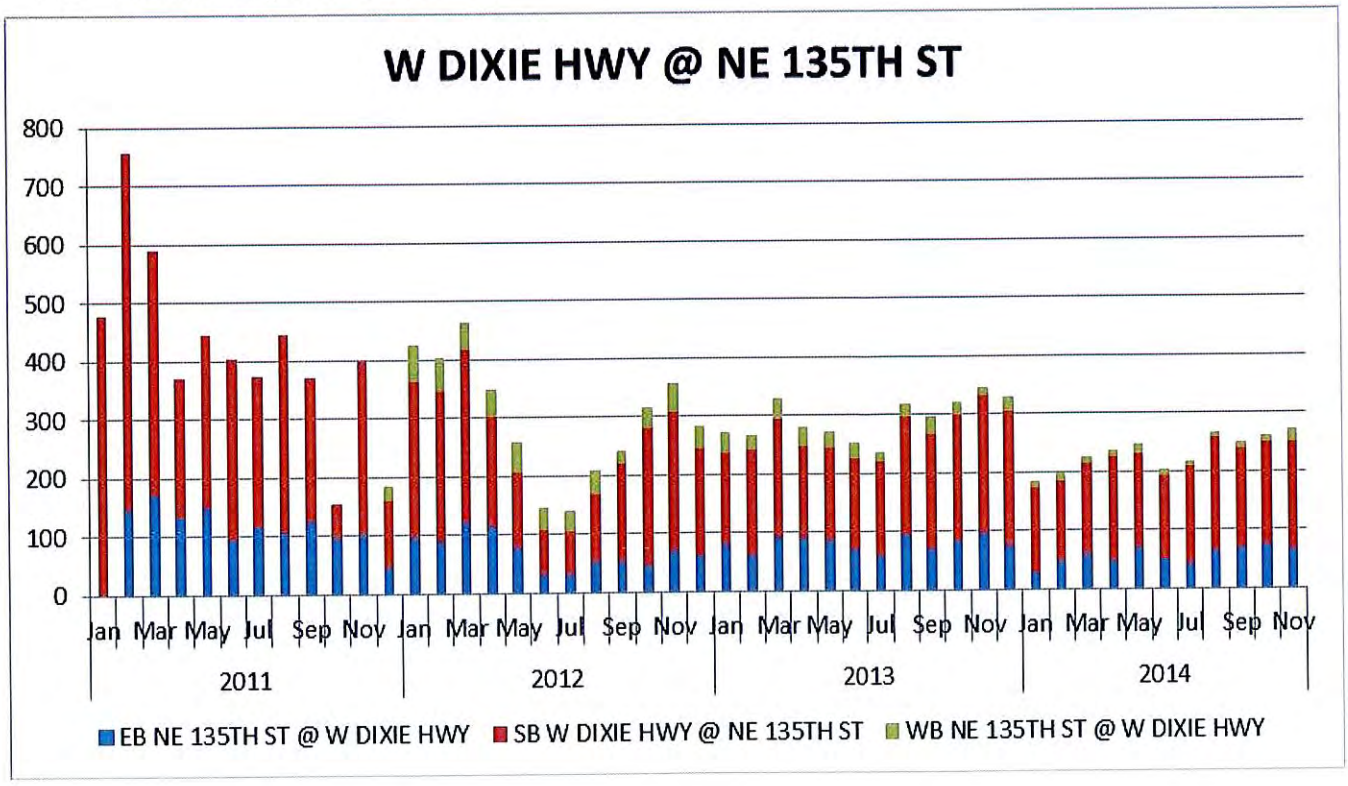
5.6 NE 125th St and NE 6th Ave



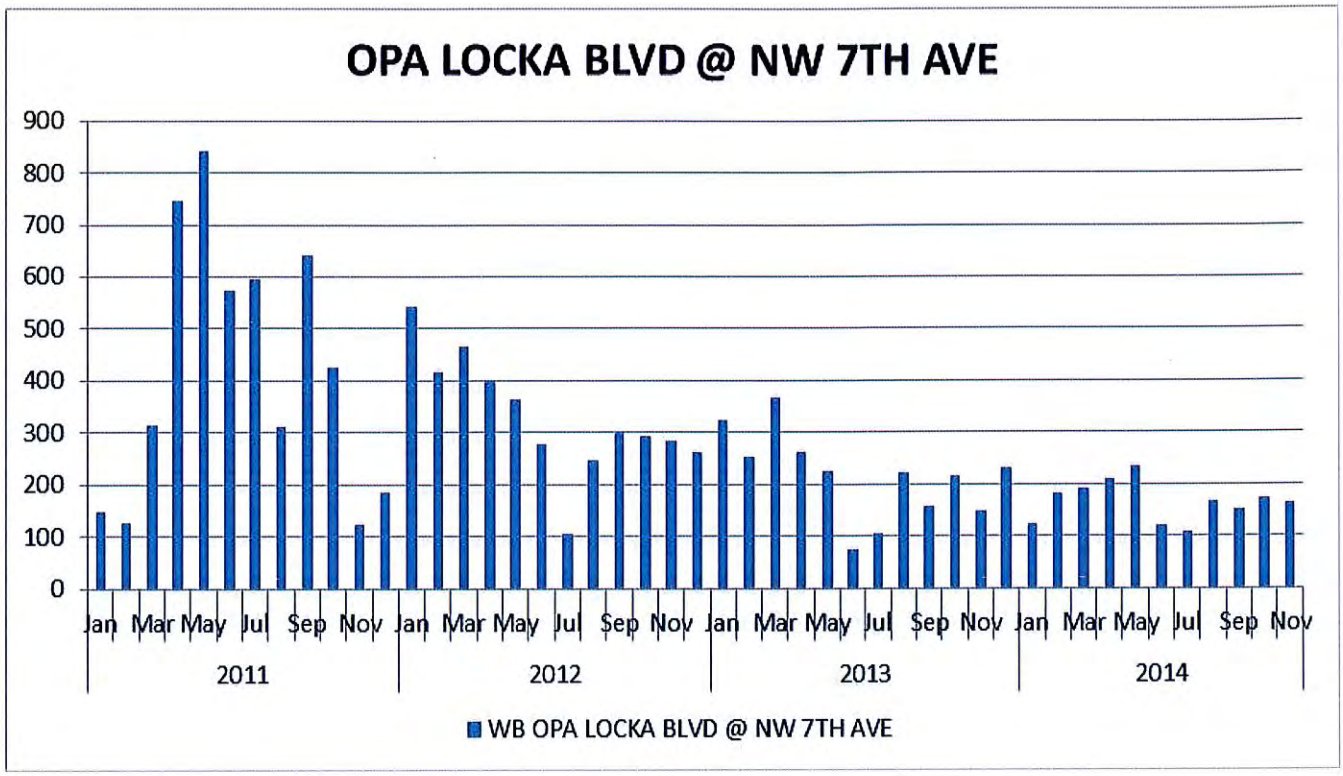
5.7 Opa Locka Blvd and NW 6th Ave



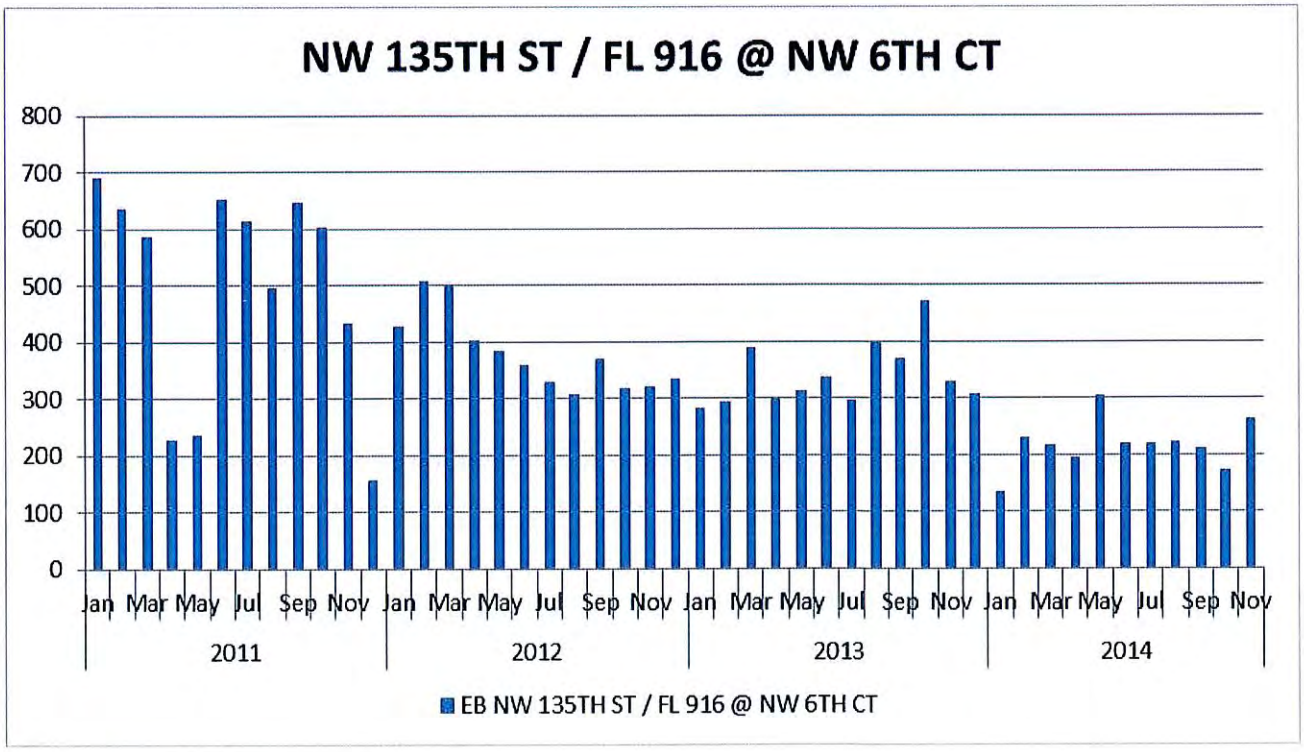
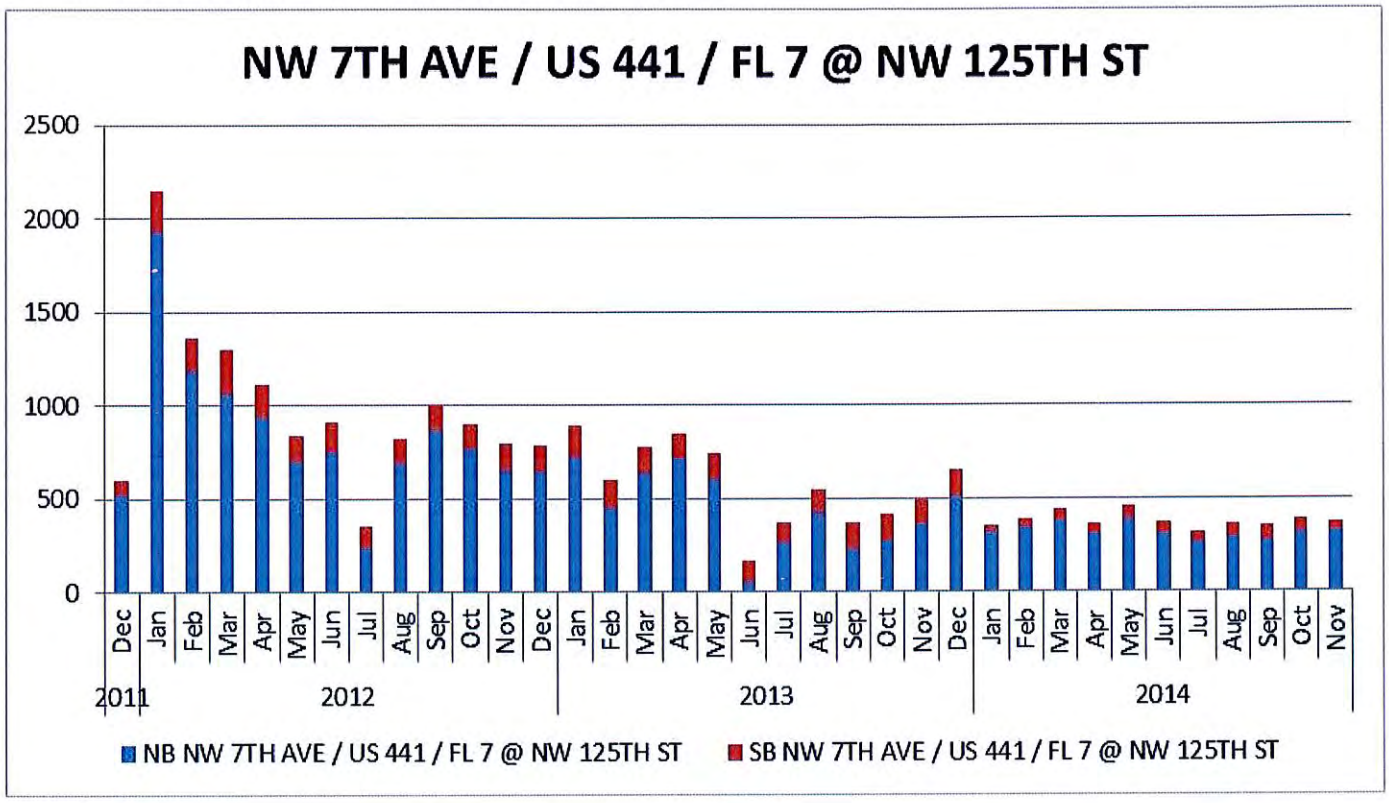
5.8 W Dixie Hwy and NE 135th St



5.9 Opa Locka Blvd and NW 7th Ave



5.10 NW 135th St/FL 916 and NW 6th St



5.11 NW 7th Ave/US 441/FL 7 and NW 125th St