

### THIRD AMENDATORY AGREEMENT

**THIS THIRD AMENDATORY AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "CITY"), and **ACS STATE & LOCAL SOLUTIONS, INC.**, a New York corporation with an address of 1800 M Street, NW, Washington, DC 20036 (the "CONTRACTOR").

#### RECITALS:

**WHEREAS**, the City and the Contractor entered into an Agreement on July 1, 2008, a Revival and Amendatory Agreement dated September 29, 2009, and a Second Amendatory Agreement dated June 29, 2010, for the implementation and operation of a Photo Speed Enforcement Program which utilizes an Automated Vehicle Identification System (the "Agreement"); and

**WHEREAS**, the parties now desire to amend the Agreement to extend the program for an additional year and to increase the total compensation to be paid for such additional year.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties hereto mutually agree as follows:

1. That Section F, **Maximum Contract Amount**, of Article IV, **COMPENSATION** of the Agreement is hereby amended to read as follows:

**"F. Maximum Contract Amount:** The Maximum Contract Amount to be paid by the City to the Contractor under this Agreement shall in no event exceed the sum of **Five Million Two Hundred Thirteen Thousand Five Hundred Ninety-Nine and No/100 Dollars (\$5,213,599.00)**. The parties agree that all Equipment and Services to be provided by the Contractor hereunder are not subject to any other cost, charge or fee in addition to those specified above and as set forth in *Exhibit B-1*."

2. That Section G, **Funding**, of Article IV, **COMPENSATION** of the Agreement is hereby amended to read as follows:

**"G. Funding:** Notwithstanding any other term, condition or covenant of this Agreement, it is expressly understood and agreed that any obligation of the City under this Agreement, or any renewal or extension, for all or any part of any payment obligations set out herein, whether direct or contingent, shall extend only to payment of monies duly and lawfully appropriated for the purpose of this Agreement by the City Council, paid into the Treasury of the City, and encumbered for the purposes of this Agreement. The City represents that **Five Million Two Hundred Thirteen Thousand Five Hundred Ninety-Nine and**

No/100 Dollars (\$5,213,599.00)), the City's maximum expressly stated payment obligation under this Agreement for the initial term, has been legally appropriated and encumbered for the purpose of this Agreement by the City Council and paid into the Treasury of the City for expenditure under this Agreement. Such amount will not lapse if not expended by the end of the current City fiscal year, but will remain available for expenditure during the term of this Agreement, unless the Agreement is otherwise terminated. The Contractor acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves over and above the said amount of appropriated and encumbered funds for payments in this or future fiscal years, and (ii) this Agreement is not intended to create a multiple fiscal year direct or indirect debt or financial obligation of the City. The Contractor understands and agrees that the provision of any Services or Equipment by the Contractor which would cause the total amount payable to the Contractor to exceed the amount of previously appropriated and encumbered funds is strictly prohibited. In the event the continuation of services by the Contractor would cause the amount payable to the Contractor to exceed such amounts, the Contractor agrees to stop providing services until such time as additional funds sufficient to cover the services are appropriated and encumbered for purposes of this Agreement."

3. That Section A, **Term** of Article VII, **TERM AND TERMINATION** of the Agreement is hereby amended to read in its entirety as follows:

"A. **Term**: The term of this Agreement shall commence on July 1, 2008, (the "Contract Effective Date"), and shall end June 30, 2012, subject to the unilateral option of the City to renew for additional one (1) year renewal terms through June 30, 2013. In no event shall the full term of this Agreement, including all authorized renewal terms, extend beyond five years from the Contract Effective Date. In the event that such appropriation for this Agreement is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to renew this Agreement for any additional years and the Agreement shall expire at the end of the current term."

4. Except as herein amended, the Agreement, as previously executed, is affirmed and ratified in each and every particular.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the City and the Contractor have executed, through their respective lawfully empowered representatives, this Second Amendatory Agreement as of the day and year first above written.

**ATTEST:**

\_\_\_\_\_  
STEPHANIE Y. O'MALLEY,  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

**APPROVED AS TO FORM:**

David W. Broadwell  
Attorney for the City and County of Denver

By \_\_\_\_\_  
Assistant City Attorney

**CITY AND COUNTY OF DENVER**

By \_\_\_\_\_  
MAYOR

**RECOMMENDED AND APPROVED:**

By \_\_\_\_\_  
Manager of Safety

By \_\_\_\_\_  
Police Chief

**REGISTERED AND COUNTERSIGNED:**

By \_\_\_\_\_  
Manager of Finance  
Contract Control No. CE81107(3)

By \_\_\_\_\_  
Auditor

"CITY"

**ATTEST:**

By \_\_\_\_\_  
Title Director of Operations

**ACS STATE & LOCAL SOLUTIONS, INC.**  
Taxpayer (IRS) Identification  
No. 13-1996647

By \_\_\_\_\_  
Title \_\_\_\_\_

"CONTRACTOR"